OPINION OF ADVOCATE GENERAL
M. POIARES MADURO
delivered on 19 May 2004 [1]

1. In this reference for a preliminary ruling, the Hoge Raad der Nederlanden seeks guidance on the interpretation of concepts such as 'personal property' and 'possession' used in Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (hereinafter 'Regulation 918/83'). [2] The questions have been raised in a case concerning the tax payable on a private car imported into the Netherlands by a private individual who transferred his normal place of residence from Austria. In this context it also becomes necessary to analyse the problem of the applicability of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (hereinafter 'Directive 83/183'). [3]

I — Facts of the main proceedings and questions referred to the Court

2. Mr J.H.M. Feron (hereinafter 'Mr. Feron') was employed in Austria by Océ Österreich GmbH (hereinafter 'the employer' or 'Océ'). During the period from 18 October 1996 to 14 December 1997 Océ made a car available to Mr Feron for both private use and use in connection with his occupation. During that period the car was wholly and exclusively at the disposal of Mr Feron but the employer remained the owner of the car. On 15 December 1997 Mr Feron exercised the option to buy the car which had been granted to him by the employer on delivery to him of the car in October 1996.

3. In January 1998 Mr Feron left his normal place of residence in Austria and on 10 February 1998 he made a declaration with the municipality of Venlo in the Netherlands concerning his installation there.

1 — Original language: Portuguese.
2 — OJ 1983 L 105, p. 1
3 — OJ 1983 L 105, p. 64.

4. On 4 March 1998 the inspector of the Staatssecretaris van Financiën (State Secretary for Finance) made a determination refusing exemption from Belasting van personenauto's en motorrijwielen (tax on cars and motorcycles, hereinafter 'BPM') in respect of the car brought by Mr Feron into the Netherlands from Austria. The inspector took the view that the exemption in respect of the removal of household effects from one Member State to another when a change of normal place of residence occurs was not applicable in regard to the levying of BPM.

5. It is this determination by the inspector that lies at the origin of the dispute between Mr Feron and the Staatssecretaris van Financiën which eventually came before the Hoge Raad and gave rise to this reference to the Court for a preliminary ruling.

6. According to the Hoge Raad in its reference for a preliminary ruling, under Article 1(2) of the Wet op de belasting van personenauto's en motorrijwielen 1992, the law on tax payable on cars and motorcycles of 1992 (hereinafter 'the BPM Law'), BPM is payable on cars and motorcycles in connection with the registration of a car or a motorcycle in the register of declared registration numbers.

7. Article 14(1) of the BPM Law determines that 'exemption from BPM may be granted by regulation of the public service, according to the modalities and the exceptions to be established, for cars and motorcycles from a different country which have been imported into the Netherlands for specific purposes or in particular circumstances...'.

8. Article 14(1) of the BPM Law was implemented by the Uitvoeringsbesluit belasting van personenauto's en motorrijwielen of 24 December 1992, a decree implementing the BPM Law (hereinafter 'the BPM decree'). Article 4(1) of the BPM decree provides that 'exemption from the [BPM] tax is granted on cars and motorcycles originating in another country where in respect of imports thereof entitlement to exemption from import duties subsists or would subsist if the vehicle were imported from a country other than a Member State of the European Community in which it was in free circulation'.

9. Under Article 4(1) of the BPM decree, exemption from BPM is granted for cars and motorcycles originating abroad, including in another Member State, where exemption from import duties on entry into free circulation is available under Regulation 918/83. In its reference for a preliminary ruling, the Hoge Raad does not consider the issue of the applicability, in this case, of

Directive No 83/183, specifically establishing a regime of tax exemptions applicable to permanent imports from a Member State of the personal property of individuals.

(c) "personal property" means any property intended for the personal use of the persons concerned or for meeting their household needs.

10. Article 2 of Regulation No 918/83 provides that 'personal property imported by natural persons transferring their normal place of residence from a third country to the customs territory of the Community shall be admitted free of import duties'.

The following, in particular, shall constitute "personal property":

...

11. Article 3 of Regulation 918/83 provides that '[t]he relief shall be limited to personal property which: (a) except in special cases justified by the circumstances, has been in the possession of and, in the case of non-consumable goods, used by the person concerned at his former normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the third country of departure...'.

— cycles and motor cycles, private motor vehicles and their trailers, camping caravans, pleasure craft and private aeroplanes.

Household provisions appropriate to normal family requirements, household pets and saddle animals, as well as the portable instruments of the applied or liberal arts, required by the person concerned for the pursuit of his trade or profession, shall also constitute "personal property". Personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons...'.

12. For the purposes of Regulation No 918/83, Article 1(2) provides that:

13. The dispute between Mr Feron and the State Secretary for Finance, as is apparent from the two grounds of appeal presented before the Hoge Raad by the State Secretary for Finance, concerns, first, the characterisation of Mr Feron's car as 'personal property' for the purposes of Articles 2 and 3 of Regulation No 918/83 and, second, the question as to whether Mr Feron may be regarded as having had 'possession' of the car during the six months preceding the date on which he ceased to have his normal place of residence in Austria.

14. In the light of these factual and legal data, the Hoge Raad has referred the following three questions to the Court:

(1) Must a car which is made available to a natural person by his employer and is used by him for both business and private purposes be regarded as personal property within the meaning of Article 1(2)(c) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty?

(2) Must Article 3(a) of that regulation requiring property to have been in the possession of the person concerned at least six months before the date on which he gave up his normal place of residence in the country of origin be interpreted as meaning that the person concerned who has had property made available to him, albeit free of charge, in the context of his employment by the owner of the property in question, is to be deemed to be in possession of the property for the purposes of the above-mentioned provision?

(3) Is it material to the reply to be given to Question 2 that during the whole period of six months the person concerned had the right to buy the car?'

15. Written and oral observations have been submitted by the Netherlands Government and by the Commission. They will be referred to in the context of the assessment of the legal issues raised by this case.

II — Assessment

A — *Preliminary observations*

16. It is appropriate to make a number of observations at this point in order to define

the scope of the questions arising in this case and the plan of the analysis, or the order in which those questions will be assessed.

17. As expressly described by the Netherlands Government in its written observations 'the Netherlands legislation states that the conditions for relief from Community duties on importation presented in Regulation No 918/83 are applicable by analogy' to the granting of exemption from payment of BPM on a car imported into the Netherlands by a natural person transferring his normal place of residence to the Netherlands. Relief from payment of BPM will apply, therefore, regardless of whether the person moving to the Netherlands had his normal place of residence in a Member State or in a non-member country

18. This reference by the Netherlands legislation to the legal regime established in Title I of Regulation No 918/83, concerning 'Relief from import duty' for 'personal property belonging to natural persons transferring their normal place of residence from a third country to the Community', has the consequence that, for the purpose of exemption from payment of BPM, situations in which a person transfers his residence to the Netherlands, either from a non-member country or from a Member State, are treated equally.

19. The Commission, in its written observations, draws attention to the fact that the Community legislature, alongside Regulation No 918/83, established in Directive 83/183 a specific Community law regime on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals. [4] According to the Commission, the present case concerns a tax levied on personal property imported by a private person transferring his normal place of residence between Member States, which falls within the scope of Directive 83/183. If, as the Commission claims, Directive 83/183 establishes a tax exemption which directly benefits Mr Feron, this will be decisive for the resolution of the case in the main proceedings before the Hoge Raad.

20. In so far as '[i]t is the Court's duty to interpret all provisions of Community law which national courts need in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the

4 — Directive 83/183 and Regulation No 918/83 were published on the same date as Directive 83/181/EEC determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (OJ 1983 L 105, p. 38) and Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59). All of these Directives, together with Regulation No 918/83, purport to establish a uniform regime of tax reliefs in the Community on the importation of property.

Court of Justice by those courts',[5] I cannot agree with the Netherlands Government's argument at the hearing that the Court cannot examine the issue of the applicability of Directive 83/183 raised by the Commission. This issue will be assessed first in this Opinion.

21. Secondly, should the Court of Justice rule that a tax such as BPM is excluded from the regime of tax exemptions established by Directive 83/183, it will be necessary to ascertain whether the Court is competent to interpret provisions and concepts of Regulation No 918/83 which is applicable to this case by virtue of a reference in Netherlands national law.

22. Finally, to the extent that this problem of competence of the Court concerning the interpretation of Regulation No 918/83 is answered in the affirmative, an answer to the specific questions raised by the Hoge Raad will be provided. With respect to those questions, I shall analyse the second and third questions together. The right to buy the car granted to Mr Feron by the employer at the time of the delivery of the car constitutes a circumstance which will be examined together with other circumstances mentioned in Question 2.

5 — Case C-280/91 Wiessman [1993] ECR I-971, paragraph 17.

B — *The problem of the application of Directive 83/183*

1. The objectives of Directive 83/183 and the determinant reasons for the actual definition of its scope of application.

23. Article 1 of the directive defines the 'scope' of the directive as follows:

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

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

24. Directive 83/183 was repealed in part by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system

of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers.[6] Article 2(2) of Directive 91/680 provides that '[t]he provisions on value added tax laid down in the following Directive shall cease to have effect on 31 December 1992: ... — Directive 83/183/EEC'. Similarly, Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products[7] also repealed Directive 83/183 in part, by providing in Article 23(3) that '[t]he provisions on excise duty laid down in the following Directives shall cease to apply on 31 December 1992: ... — Directive 83/183/EEC'. Despite thus being repealed in part, Directive 83/183 remains in force after the completion of the internal market in 1992 except in relation to VAT and excise duties.[8]

25. Directive 83/183 has as its objective to eliminate, through the introduction of a harmonised regime of tax exemptions concerning turnover taxes, excise duty and other consumption taxes affecting the importation of property,[9] the tax obstacles which hinder the free movement of persons within the Community.[10] It is for that purpose that, according to Article 1(1), exemption from consumption taxes which normally apply to personal property imported by a natural person who changes his normal place of residence from one Member State to another is granted on the conditions set out in Directive 83/183.

26. This directive seeks to ensure that a private individual who acquired personal property in the Member State of origin and paid the corresponding taxes there, is not required to pay consumption taxes in the Member State of the new place of residence, with respect to that property, which would undoubtedly hinder the free movement of persons within the Community. If a private individual who had paid all consumption taxes at the time of the acquisition of personal property (a television set, or a car, for example) in his normal place of residence had to pay other consumption taxes on the same property as a consequence of the

6 — OJ 1992 L 376, p. 1.

7 — OJ 1991 L 76, p. 1.

8 — Recent cases at the Court of Justice (case C-387/01 *Weigel*, ECR I-4981, Opinion of Advocate General Tizzano delivered on 3 July 2003, and Case C-365/02 Lindfors, ECR I-7183, Opinion of Advocate General Stix-Hackl delivered on 4 March 2004) but not yet decided, have focused on this problem of the alleged inclusion within the scope of the tax exemption established in Directive 83/183, of taxes such as the NoVA and the Autovero payable in Austria and Finland respectively, in the context of the permanent importation of a motor vehicle by a natural person transferring his normal place of residence from one Member State to another. Immediately before the delivery of this opinion the Second Chamber delivered the judgment in Weigel which conflicts in part with the analysis followed in this opinion.

9 — Article 99 of the EEC Treaty (now Article 93 EC), which constitutes the legal basis of Directive 83/183, provides that '[t]he Council shall ... adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to the establishment and the functioning of the internal market ...'.

10 — See the second recital of the preamble to Directive 83/183.

change of residence to another Member State, this would influence the decision to move. [11] The taxation in the new Member State of residence would constitute an incentive for the person to leave the personal property behind in the country of origin and, ultimately, to decide not to move. [12]

27. It is by no means inconsistent with these objectives that the Community legislature expressly left certain duties and taxes outside the scope of the regime of exemption of Directive 83/183. In effect Article 1(2) expressly provides that '[s]pecific and/or periodical duties and taxes connected with the use of such [personal] property within the country ...' remain outside the scope of the directive and are not therefore subject to the tax exemption regime therein established.

28. It follows from paragraphs 1 and 2 of Article 1 that the definition of the scope of Directive is made on the basis of the distinction between taxes connected with the use of the property within the country and consumption taxes normally applied to the importation of such property. At this point we face the central issue of determining the meaning of 'connected with the use of the property within the country' for the purposes of Article 1(2). For this interpretation and, subsequently, in order to determine whether or not BPM is a tax connected with the use of vehicles in the Netherlands, it is necessary to consider the reasons behind the inclusion of Article 1(2) in the directive.

29. Although it was not included in the initial proposal for the directive submitted by the Commission to the Council on 30 October 1975, Article 1(2) was added later, in response to the demands of certain Member States, namely the Kingdom of Denmark. [13]

30. There is surely no reason why 'a citizen of the Community who establishes his normal residence in a different Member State and there lives and makes use of that property should be exempted from the payment of the taxes connected to the use of such goods in that Member State'. [14] The inclusion of paragraph 2 in Article 1 is therefore perfectly understandable. This is so in so far as the use of certain goods within a country may entail costs for the State, resulting from the use of such property in

11 — Article 2(2)(a) provides that the exemption is to be granted only for personal property 'which has been acquired under the general conditions of taxation in force in the domestic market of one of the Member States and which is not the subject, on the grounds of exportation, of any exemption or any refund of turnover tax, excise duty or any other consumption tax'.

12 — It is worth mentioning that the Economic and Social Committee considered that 'the provisions of the draft Directive are a major step ... [which] will have a significant psychological effect on members of the general public'. See Opinion on the proposal for a Council Directive on tax exemption for personal property of individuals permanently imported from another Member State (OJ 1976 C 131, p. 49).

13 — See the observations of the Danish Government in *Lindfors*.

14 — Opinion of Advocate General Stix Hackl in *Lindfors*, not yet published in ECR, point 39.

its territory. Among these costs we find, for instance, the development and maintenance of the road network, the provision of conditions of safety, vigilance and emergency services for users of vehicles in the territory of the State and also environmental costs. A Member State may therefore legitimately decide to impose certain taxes related to those costs on the individuals who are ultimately responsible for them in so far as they use that property on a permanent basis within its territory. This is confirmed by the examples of such taxes provided by Article 1 (2) of Directive 83/183: 'motor vehicle registration fees, road taxes and television licences'.

31. These costs may vary from one State to another, according to the specific conditions of the use of motor vehicles in its territory. They are State-specific. The corresponding taxes and duties will, consequently, also vary from one country to another. States may also have different reasonable judgments on the amount and nature of taxation related to the cost generated by the use of the vehicle. The fact that each Member State is free to demand payment of such taxes will not in any event impose a tax burden on private individuals transferring their normal place of residence from one Member State to another, which would be incompatible with Directive 83/183. That is so, of course, in so far as such taxes present a link with the costs related to the use of the property within the country.

32. As the Court stated in *Cura Anlagen*, 'the taxation of motor vehicles is not harmonised in the Community and differs considerably from one Member State to another'. [15] Although 'registration appears to be the natural corollary of the exercise of those powers of taxation', [16] Member States are 'free to exercise their powers of taxation in this area, *provided that they do so in compliance with Community law*'. [17]

33. Directive 83/183 is precisely one limit which Community law places on the freedom of Member States to levy *consumption taxes which affect the importation of motor vehicles by private individuals* when they change their normal place of residence from one Member State to another. Member States' freedom to levy taxes in this context is confined by the legislature, in a positive and express manner, in Article 1(2) of the directive solely to taxes 'connected with the use' of the car in the territory of the State. Consumption taxes instead affect the decision whether or not to buy the car. This decision is taken according to the tax conditions existing at the time of the acquisition and should not be affected ex post facto by a later decision to move to another Member State. If a tax levied in the course of a subsequent importation of the car due to a permanent change of residence is such that de facto it would have a negative effect on the initial decision to buy the car, then that tax will certainly hinder the

15 — Case C-451/99 *Cura Anlagen v Auto Service* [2002] ECR I-3193, paragraph 40.

16 — See *Cura Anlagen*, paragraph 41.

17 — *Cura Anlagen*, paragraph 40 (emphasis added).

decision to move to another Member State. In other words, the decision to move to another State should be neutral with respect to the previous consumption decision taken in the Member State of origin. If it is not, then the decision to move will be substantially affected.

2. Is the fact that the tax is payable at the time of registration a decisive element for the characterisation of a tax such as BPM as a tax 'connected with the use' of the car within the meaning of Article 1(2) of Directive 83/183?

34. According to the information provided by the Hoge Raad, BPM is levied at the time of registration of the vehicle and taxes such as 'registration fees' (or in the French version '*droits perçus lors de l'immatriculation des voitures automobiles*') are presented in Article 1(2) as examples of 'taxes connected with the use of the car'.

35. The fact that the chargeable event for a tax such as BPM is the registration of the car merely constitutes a prima facie indication that the tax is 'connected with the use' of the car 'within the country'. If this were the crucial element for the characterisation of a tax as 'connected with the use' of the car, the category of duties levied on registration of motor vehicles would become a 'catch-all' concept within which a Member State could include any tax, irrespective of its substantial elements and finalities, by virtue of the mere chronological fact that such tax was levied by the State at the time of registration of the vehicle. [18] This would allow a Member State to continue to levy genuine consumption taxes on imported property to the extent that the tax was payable some time after the introduction of the property into the country, based on a different chargeable event such as the time of registration of the vehicle. This would deprive of all useful effect Directive 83/183 with respect to the importation of motor vehicles. It would also be virtually impossible to achieve uniformity in the harmonisation of the tax exemption regime pursued by Directive 83/183.

36. To illustrate this point, let us consider two identical taxes imposed in connection with the importation of a car from the point of view of their characteristics, objectives and amount, each levied in a different Member State. One would be regarded as being outside the scope of the Directive

18 — On its Opinion referred to in footnote 12 above, the Economic and Social Committee expressly stated with regard to Directive 83/183 that '[s]ince the proposed provisions are very generous, the detailed implementing provisions which are to be brought out subsequently should be tightly worded; they should not leave loopholes which might lead to abuse of the scheme and cause Member States to withdraw support for the very principle of tax exemptions'.

83/183, in Member State X, where the tax is payable at the time of registration of the car after its importation, whereas payment of the other, in Member State Y, would have to be exempted simply because the State had chosen to levy it earlier, at the time of the introduction of the vehicle into the territory of the State.

37. As Advocate General Stix-Hackl stated in *Lindfors* 'the fact, alone, that a tax is levied as a consequence or as a condition of the registration cannot exclude that it can be considered a kind of consumption tax on the importation'. [19] The fact that a particular tax is called a 'registration tax' and levied at that time cannot dispense with an analysis of its characteristics and finalities, indispensable to conclude that the tax is, *in substance*, connected with the use of the vehicle within the country and, therefore, legally outside the scope of Directive 83/183. A determination of whether or not a tax such as BPM is, within the meaning of Article 1(2) of Directive 83/183, a tax 'connected with the use' of the car in the Netherlands, must, therefore, take into account the reasons underlying Article 1(2), the finalities of the tax exemption regime of Directive 83/183 and the essential material elements of a tax such as BPM.

38. The Netherlands Government argued at the hearing that BPM is connected with the use of the property and is not a consumption tax connected with importation, since a private individual may always decide to import a vehicle as part of his personal property in order to keep it at home or in a museum as part of a collection of vehicles and thus avoid having to register it after importation.

39. This argument purports to demonstrate that a tax levied on registration would not be apt to affect the importation of the car as a tax payable at the precise time of importation, because the individual importing the vehicle is able to avoid taxes levied by the Member State at the time of registration. It would therefore demonstrate the material relevance of the distinction between taxes levied at the time of registration and taxes levied at another time prior to that. This argument would also reveal that the adoption of this criterion does not contradict the finalities of Directive 83/183, because a private individual importing a motor vehicle with the intention of keeping it outside the road network, in a museum or in a garage, would not be required to pay any taxes on importing the vehicle. This example would illustrate how the tax exemption regime granted by the directive always remains valid.

40. To my mind, there is no doubt that a private individual may, in fact, choose not to register the imported car simply by deciding to keep it at home or in a museum. The

19 — Opinion of Advocate General Stix-Hackl in *Lindfors*, not yet published in ECR, point 56.

problem is that this occurs only in this very unusual situation, where a person decides to import his motor vehicle with the intention of not using it for the normal and essential purpose for which a motor vehicle is designed, that is, for use as a means of transport.

41. It must be recalled that an argument similar to that presented by the Netherlands Government was rejected by the Court in *Commission* v *Belgium*. [20] Advocate General Mischo then stated that '[t]he case of a person wishing to purchase a car without also applying for a registration plate is in practice so unusual that it may be disregarded'. [21] I must draw attention to the fact that in the context of *Commission* v *Belgium* the argument could actually weigh more than in the present case. In fact, it is more plausible that someone should acquire a motor vehicle in one Member State but decide to register it in a different Member State, than that a private individual transferring his normal place of residence from one Member State to another should import a vehicle — and there will most likely be only one vehicle, constituting his personal property [22] — for a purpose other than that of using it for its normal and essential purpose as a means of transport on the road network.

42. Consistently with this, the Court has, in a different context, also rejected similar formal arguments. In *Lehtonen* [23] the Court considered that certain rules on transfer periods restricted the freedom of movement of workers who intended to pursue their activity in another Member State by preventing clubs from fielding in championship matches basketball players engaged after a specified date. The Court held that although such rules did not 'concern the employment of such players, on which there is no restriction ... [i]n so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned'. To accept that a motor vehicle may be imported by an individual *not to* be used on the road is to ignore *the essential purpose* of a motor vehicle, just as to accept that a basket ball player may be employed by a club *not to* play in championship matches is to ignore *the essential purpose* of a professional player's activity. In both cases, the restriction imposed within the Member State amounts, in fact, to a restriction on freedom of movement to that State.

20 — Case 391/85 *Commission* v *Belgium* [1988] ECR 579.

21 — *Commission* v *Belgium*, point 44.

22 — In this regard it must be emphasised that according to Article 2(1) 'personal property' means property for the personal use of the persons concerned or the needs of their household. Such property must not, by reason of its nature or quantity, reflect any commercial interest ...' (emphasis added).

23 — Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraphs 49 and 50.

3. Is BPM, *in substance*, a tax connected with the use of the vehicle in the territory of the Member State, within the meaning of Article 1(2)?

43. Article 1(2) of Directive 83/183 refers to specific and/or periodical taxes connected with the use of personal property within the country. Periodical duties are taxes payable at regular intervals, such as road taxes existing in some Member States. In the Netherlands the Motorrijtuigenbelastingis a good example of a road tax which undoubtedly falls outside the scope of Directive 83/183. Its connection with the use of the motor vehicle in the Netherlands, as the Commission has pointed out at the hearing, is clear from the fact that payment of this tax may be suspended when the car is not in use. [24] This is perfectly understandable if we consider that during that period of non-use the owner of the vehicle will not be responsible for any costs related to its use within the country. This is material evidence of the connection between the tax and the use of the vehicle.

44. Article 1(2) also mentions specific duties or taxes connected with the use of the motor vehicles within the country. There are numerous examples of such specific duties which are not payable at regular intervals but are clearly connected with the use of the vehicle, such as motorway or bridge tolls. A person may use a certain motorway only once, or never, or several times. There is no characteristic of payment of these duties at regular intervals, unlike road taxes. We can also imagine specific taxes with environmental objectives, for example a tax payable to allow motor vehicles to enter and travel within a particular natural park, even where the tax is payable without reference to the length of time the car remains in the protected area.

45. It may also happen that a specific tax or duty is levied only once and permanently and is without doubt connected with the use of the motor vehicle within the meaning of Article 1(2). This is the case of the registration duty charged in the Netherlands, alongside BPM, at the time of registration of the vehicle. According to the description made at the hearing by the Netherlands Government and the Commission, this duty, corresponding, for the year 2004, to EUR 47.20 is clearly connected with the use of the vehicle in the Netherlands. It has the characteristics of a duty purporting to compensate the administrative costs inherent in the registration of the vehicle in that Member State.

24 — It follows from Article 19 of the road tax law (Wet van 16 december 1993, tot vastselling van de Wet op de motorrijtuigenbelasting 1994) that for a vehicle for which a licence plate was either suspenderd or cancelled, this tax will not be charged. According to Article 6 of the Wet van 21 april 1994, houdende vervanging van de Wegenverkeerswet, referred to by Article 19 of the road tax law, the owner of the vehicle may request the suspension of the licence plate.

46. These are what I would consider the 'easy cases' of taxes falling outside the scope of Directive 83/183, in so far as they reveal, in substance, by their characteristics, a connection with the use of the vehicle within the country, which is not simply a formal one. The analysis of the characteristics of such taxes materially reveals the existence of a link between their payment and the costs related to the use of the vehicle, be it the costs of building and maintaining motorways or bridges, environmental costs or administrative costs. With respect to BPM, the situation is different.

47. The Netherlands Government asserted at the hearing that BPM does not have the objective of compensating the costs which result from the use of the vehicles in the national territory. Moreover, it stated that the proceeds of BPM constitute general revenue of the State which goes to the public purse and has no direct link with the costs related to the use of vehicles in the territory of the State. [25]

48. Having regard to the evidence before the Court, a tax such as BPM does not reveal, in substance, by its characteristics, any link with the costs related to the use of the vehicle in the territory of the State. A tax such as this does not even have any connection with the administrative costs of registration (including the cost of the registration plate), which are already compensated by another specific duty charged by the Netherlands Government, and also levied at the time of registration of the vehicle.

49. This last fact, however, contrary to the understanding of the Commission, does not mean that in order to come within Article 1 (2) a tax such as the BPM would have to be limited to the mere compensation of the administrative costs related to the registration of the vehicle in the Netherlands. Such a reading of Article 1(2) is too narrow and a literal argument based on the English version, which refers to 'motor vehicle registration fees' does not provide conclusive support for it. In my view, Article 1(2) clearly allows Member States to levy taxes or duties at the time of registration or at any other time, provided that they are connected with the use of the vehicle within the country, in the sense that their essential elements provide some indication of a relationship between such taxes and the costs (administrative costs or others) related to the use of the vehicle within the territory of the State.

25 — The Netherlands Government argues that the same occurs with the Netherlands road tax (the Motorrijtuigenbelasting). Nevertheless, as the Commission pointed out, this tax may be suspended as long as the owner of the car decides not to use it for a certain period, or permanently, within the country, thus avoiding making a contribution towards those costs. Nothing comparable occurs with BPM. This tax is levied only once, at the time of registration of the vehicle, and cannot be reimbursed, even partially, to the owner of the car if for some reason (sale to a buyer in a different country, subsequent change of residence by the owner, terminal accident, etc.) the vehicle is not used any more in the territory of the Netherlands.

50. This connection between a tax such as BPM and the use of the vehicle within the territory of the Netherlands cannot be acknowledged, except for the chargeable event which, as I have argued, is a purely fortuitous and formal sign of that connection. Moreover, it is the Netherlands legislation that clearly indicates that such connection with use is absent. In fact, this conclusion results from the fact that the Netherlands legislation grants exemption from BPM to motor vehicles originating abroad (either in a Member State or in a non-member country), in cases where exemption from import duties on entry into free circulation is available under Regulation No 918/83. The Netherlands Government emphasises in its observations that the conditions established in Regulation No 918/83 for relief from Community import duties 'are applicable by analogy' with respect to the granting of relief from payment of BPM. This reference to Regulation No 918/83 'by analogy' is incompatible with a characterisation of a tax such as BPM as being connected in substance with the use of the vehicle in the Netherlands.

51. There would be, in effect, no rational explanation, from an economic point of view, why the BPM law and the BPM decree should grant relief by reference to Regulation No 918/83, as they actually do, to a car permanently imported by a person transferring his normal place of residence to the Netherlands, if BPM were in substance conceived as a tax connected with the use of the property in that Member State. That exemption would mean that the Netherlands legislature was deliberately granting to new residents in the Netherlands the status of typical 'free-riders' by comparison with all other users of motor vehicles who registered their vehicles in the Netherlands and necessarily paid BPM. In fact, private individuals moving permanently to the Netherlands with their motor vehicles would be allowed to register and use their cars there and generate all the costs related to such use within the country, largely at the expense of all the other citizens who have always lived in the Netherlands and, consequently, had to pay BPM at the time of registration of their vehicles. This runs directly counter to the objective sought by Article 1(2) of Directive 83/183, already described above, [26] when it expressly recognises that Member States remain free to levy any '[s]pecific and/or periodical duties and taxes connected with the use of such property within the country'.

52. On the contrary, that exemption granted by Netherlands law makes perfect sense if a tax such as BPM is characterised as a consumer tax which, owing to the elevated amounts involved and also to the fact that all consumption taxes have already been paid in the country of origin, the Netherlands legislature decided to exempt.

26 — See above, point 30 of this Opinion.

53. This reasoning is consistent with the justification for the tax exemption regime of Directive 83/183, despite the significant disagreement between the Commission and the Netherlands Government owing to the fact that the Netherlands Government does not consider itself to be obliged by Directive 83/183 to grant exemption from BPM. It voluntarily grants the exemption, but only on the slightly stricter terms of Regulation No 918/83.[27] In any event, the justification for the exemption granted by BPM law and BPM decree, and the justification for the exemption granted by Directive 83/183, are functionally the same. To this extent, a tax such as BPM cannot be rationally considered by Netherlands law as a tax connected with the use of the vehicle within the country. In this regard, I must assume that a decision such as the one made by the Netherlands tax legislature to grant an exemption from BPM by analogy to an import tax relief has an economically rational basis, and is not the outcome of an economically irrational act of generosity which would, moreover, discriminate against all car owners who have always resided in the Netherlands.

54. Moreover, according to the information provided at the hearing by the Commission and not contradicted by the Netherlands Government, the basis of calculation of BPM is the net list price of the vehicle, which basically corresponds to the suggested retail price of the vehicle, applying on the day of assignment of the licence plate or, for a used vehicle, applying on the day of first use, less turnover tax and BPM. The percentage rate of BPM corresponds to about 45% less a certain fixed amount according to the age of the vehicle.

55. On the one hand, the elevated amount of BPM, as the Commission points out, constitutes, as a matter of fact, a decisive obstacle to the free movement of persons into the Netherlands, thus contradicting the objective of Directive 83/183 as stated in Article 1(1). That is not to say that taxes connected with use cannot be high. They can certainly be high, but only to the extent that there is evidence of a connection, in substance, with the use of the property within the country, which in this case is absent. How high is too high is a difficult question but it is certainly not difficult to say that in this case the size of the tax is so high that it becomes reasonably impossible to discern any connection with the use of the vehicle. Its calculation on the basis of the list price of the vehicle (which is linked to the

27 — Unlike Regulation No 918/83, Article 2(2) of Directive 83/183 does not make the tax exemption dependent on the condition that the property has been in possession of the person during the last six months at his normal place of residence in the country of origin. Directive 83/183 only requires that the motor vehicle has been used by the person concerned in the Member State of origin, for a period of at least six months before the change of residence.

decision of buying) is further evidence of its consumption nature.

56. On the other hand, the level of the tax rate and the fact that the taxable amount for the purposes of BPM is basically the list price of the vehicle, and not even, for example, the engine size, shows that the tax is clearly intended to generate revenue for the State. [28] A tax such as BPM, with these characteristics, can hardly be considered to be connected, in substance, with the use of the property within the country, but is rather a consumption tax normally applied to a motor vehicle once it is permanently imported by a private individual into the Netherlands.

4. Does BPM operate as a consumption tax within the meaning of Article 1(1) of Directive 83/183?

57. The conclusion that a tax such as BPM is ultimately a consumption tax within the meaning of Article 1(1), despite the purely fortuitous chronological circumstance, exclusively decided by the State, that it is levied not at the time of importation but at the time of registration, is emphasised by other information provided by the Commission and not contradicted by the Netherlands Government.

58. According to the Commission, BPM was introduced in 1993 and it purported to revise the regime of a pre-existing special consumption tax on motor vehicles (bijzondere verbruiksbelasting van personenauto's, hereinafter 'BVB') for which the chargeable event was the importation or delivery of the vehicle and not its registration. Taxes levied on importation of property transferred from one Member State ceased to be allowed after 31 December 1992, and therefore, according to the Commission, the BPM law purported to retain the taxable amount of BVB, by levying the tax at a different time.

59. The Court has already analysed this Netherlands tax in *Wisselink* [29] in the different context of the analysis of the compatibility of BVB with the Community system of value-added tax. BVB was levied only once and passed on in full at the next marketing

28 — This basic purpose of raising revenue for the State in the case of BPM largely takes priority even over some environmental concerns which are evident, for instance, in the level of deductions accepted by the BPM law from the basic 45% rate.

29 — Joined cases 93/88 and 94/88 *Wisselink and Others* [1989] ECR 2671.

stage without any fresh taxation and it amounted to 18.2% for the part of the list price below HFL 10 000 and 27.3% for the part of the list price in excess of that amount. [30] The BPM law expressly refers to BVB in Article 9(8), which excludes the amount corresponding to BVB from the list price used for the calculation of the taxable amount for the purposes of BPM, if the day of the assignment of the licence plate, or the day of the first use of the vehicle, falls before 1 January 1993, when BVB existed but BPM did not. Just as the amount of BPM is not included in the list price, the amount of the pre-existing BVB, is also excluded from that list price.

60. It is therefore the BPM law that expressly recognises this equivalence between BPM and the pre-existing special consumption tax. To this extent, even if this case were analysed in the light of the reasoning followed, in a different context, in *Commission* v *Belgium*, [31] the relationship between these two taxes is in my view strong enough to eliminate 'the notional difference between the events upon which the two taxes become chargeable'. [32]

61. As the Court stated with respect to BVB in *Wisselink*, even though it does not exhibit the features of a turnover tax, 'it is a consumption tax whose basis of assessment is proportional to the price of passenger cars ...'. '[I]t is applied once only, at the time of supply by the manufacturer or at the time of importation, and is then passed on in full at the next marketing stage without being levied anew. BVB paid is not deductible but forms an integral part of the cost price of the car.' [33] With BPM, too, once the amount of the tax is paid it becomes irreversibly incorporated in the price of the car in future transactions (i.e. with no possibility of reimbursement or suspension) and will be passed on to a subsequent buyer of the car. This characteristic is typical of a consumption tax and not of periodical or specific taxes connected with the use of the vehicle already described.

629. As a consumption tax affecting, in substance, the importation of motor vehicles at the time of their registration, it constitutes a good illustration of the kind of obstacle to the free movement of persons within the Community which Directive 83/183 was intended to eliminate. It suffices to imagine

30 — See Opinion of Advocate General Mischo in *Wisselink*, point 2.

31 — See footnote 20 above.

32 — *Commission* v *Belgium*, paragraph 25.

33 — *Wisselink*, paragraph 20.

the situation of Mr A who lived and worked in Member State X. He bought a car there, and paid a tax such as BPM in that country at the time of registration of the vehicle. One year later he moved to Member State Y to work. There Mr A had to register the vehicle and pay, again, a tax with the characteristics of BPM. If at the end of that year Mr A decides to move to another Member State (or even to return to Member State X ...), he will be required to pay, for the third time, a tax such as BPM. Mr A had to pay a very high 'price' each time he moved from one Member State to another, corresponding more or less to one third of the list price of the vehicle. The cost of the car for Mr A doubled, although its market value naturally decreased. If Mr A had always remained in Member State X he would not have had such loss, even though the use made of the vehicle would have been to a large extent the same.

63. In my view, therefore, a tax such as the Netherlands BPM, which is levied once and for all at the time of registration of a motor vehicle subsequent to its importation, the amount of which is calculated on the basis of the list price of the car and is included in its cost and passed on in future transactions relating to the vehicle and whose characteristics do not reveal, in substance, a link with the costs related to the use of the vehicle within the country, does not constitute a tax falling outside the scope of Directive 83/183, within the meaning of Article 1(2), but is, rather, a consumption tax normally applied to personal property permanently imported by a private individual changing his normal place of residence from one Member State to another, within the meaning of Article 1(1) of Directive 83/183, which is the relevant instrument of Community law applicable.

C — The competence of the Court to interpret provisions of an instrument of Community law which is applicable by virtue of domestic law.

64. If the Court considers that Directive 83/183 is not applicable to the case in the main proceedings, it will be necessary to analyse the specific questions referred by the Hoge Raad concerning the interpretation of certain concepts and provisions of Regulation No 918/83.

65. There is no doubt that Regulation No 918/83 is made applicable to the present situation before the Hoge Raad purely by virtue of Netherlands national law. This regulation is applicable to the importation of property originating in non-member States and concerns relief from Community import duties. It is therefore not applicable

in the context of permanent imports from a Member State. [34]

66. The Court has, nevertheless, explained its competence to interpret provisions in legal instruments of Community law, when requested to do so by national courts on the basis of Article 234 EC, in cases in which such provisions are applicable by virtue of a reference in domestic law, such as in the present case. [35] I do not wish to suggest that the Court, in the context of the present case, should follow a different path. The decisions of the Court have been clear in this regard. In *Dzodzi* the Court stated that 'it is manifestly in the interest of the Community legal order that, in order to forestall future differences of interpretation, every Community provision should be given a uniform interpretation irrespective of the circumstances in which it is to be applied.'. [36] It is then for the national court to apply the provisions or concepts of Community law thus interpreted, taking into account the circumstances of fact and law of the particular case being examined. [37]

34 — See, to that effect, Opinion of Advocate General Tizzano in *Weigel*, point 62.

35 — See Case C-247/97 *Schonbroodt* [1998] ECR I-8095, paragraphs 13 and 14, where the Court held that it had jurisdiction to interpret a certain provision of Regulation No 918/83 rendered applicable by Belgian domestic law.

36 — Joined cases C-297/88 and C-197/89 [1990] ECR I-3763, paragraph 37.

37 — Case C-231/89 *Gmurzynska-Bscher* [1990] ECR I-4003, paragraph 21; see also Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraphs 32 and 34.

D — *The concept of 'personal property' within the meaning of Article 2(1) of Regulation No 918/83*

67. The first question referred by the Hoge Raad concerns the interpretation of the concept of personal property within the meaning of Article 1(2)(c) of Regulation No 918/83, which defines 'personal property' as 'any property intended for the personal use of the persons concerned ..., including, in particular, private motor vehicles ...' and further provides that 'portable instruments of the applied or liberal arts, required by the person concerned for the pursuit of his trade or profession, shall also constitute "personal property". Personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons...'.

68. The question arises because, although at the time of the importation of the vehicle into the Netherlands in 1998 it was fully owned by Mr Feron and intended for his personal use, until 15 December 1997 the car did not belong to him and was made available by his employer not only for Mr Feron's personal use but also for use in connection with his occupation as Océ's employee.

69. The notion of personal property provided in Article 1(2)(c) does not make the characterisation of a vehicle as 'personal

property' dependant upon the fact that the person concerned fully owns the property for a specific time before importation. It suffices that the vehicle 'is intended for the personal use of the persons concerned or for meeting their household needs', in order to be characterised as personal property. Contrary to the view of the Netherlands Government, the fact that Mr Feron was not the owner of the car during the six months before the date on which he ceased to have his normal place of residence in Austria does not affect the characterisation of the vehicle as his 'personal property'.

70. Certainly, at the time of importation, the personal property— after having been characterised as such according to Article 1(2)(c) — must belong to the person concerned in order to be granted relief from import duty. Furthermore Article 3(a) of Regulation No 918/83 establishes a requirement of attachment to the 'personal property', before importation, which constitutes a condition precedent to the grant to that property of relief from import tax. According to Article 3 (a) such attachment is analysed not in terms of ownership, but rather in terms of 'possession' and 'use' during a certain period of time before importation.

71. In any event, these are conditions which must be met in order for tax relief to be granted to personal property, and not conditions for the characterisation of the property concerned as 'personal property'. Even if these requirements for tax relief are not satisfied, the property may continue to be the 'personal property' of the person concerned, within the meaning of Article 1(2)(c) (although not qualifying for tax exemption), to the extent that it is intended for his 'personal use'.

72. But should the notion of personal property in Article 1(2)(c) be restricted to property *exclusively* 'intended for the personal use' of the person concerned during the period of six months at the normal place of residence? This would be justified, according to the Netherlands Government, by the necessity for a strict interpretation of exempting provisions such as the one in the present case. The Netherlands Government implies, therefore, that the adjective 'exclusive' must be added to characterise 'personal use' in the definition of 'personal property' provided by Article 1(2)(c).

73. In my view, this constitutes a particularly strict interpretation. It leaves outside the scope of the concept of personal property all goods, which, despite the fact that they are intended for the exclusive personal use of the person concerned at the time of importation, were used also for the purposes of that person's occupation, during the six months preceding the transfer of residence. Such a restrictive interpretation would have to be imposed by the objectives of the exemption

regime established in Title I of Chapter I of Regulation 918/83. [38]

74. It is apparent from the preamble Regulation to 918/83 that such tax relief has the purpose of avoiding taxation which would be unjustified 'in certain well defined circumstances, where by virtue of the special conditions under which goods are imported the usual need to protect the economy is absent'. Moreover, the objective of facilitating the establishment of the new residence in the Member State, as well as the work of the customs authorities of the Member States, would be rendered more difficult if personal property imported without any commercial purpose were subject to taxation upon importation. [39]

75. The concern with the non-commercial nature of the importation assumes particular relevance in the analysis. It is made explicit by the last sentence of Article 1(2)(c) to Regulation No 918/83, which clarifies, in a negative way, the definition of personal property, by saying that this property 'must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons'. [40] If to this we add that such tax relief is particularly connected with the personal sphere of natural persons and their families, and does not have a significant impact on Member States' fiscal resources, there is no justification for the restrictive interpretation of the notion of personal use proposed by the Netherlands Government. [41]

76. For the characterisation of certain property as personal property of an individual, the relevant criterion is not whether that property is used, or not, also for the pursuit of his

38 — That a restrictive interpretation in the context of tax exemption regimes has to be based on the consideration of the objectives of such regimes, is made clear, for example, in Case C-287/00 *Commission* v *Germany* [2002] ECR I-5811, paragraphs 45 to 48. See also Case 348/87 Stichting Uitvoering Financiële Acties [1989] ECR 1737, paragraphs 13 and 14.

39 — See specifically to this effect the Opinion of Advocate General Saggio in Case C-394/97 Heinonen [1999] ECR I-3599, point 16, with express reference to Regulation No 918/83 together with Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232). See also the judgment in Heinonen, paragraph 24.

40 — See with respect to the justification for these autonomous reliefs from customs duty the 'Proposal for a Council Regulation setting up a Community system of relief from customs duty (presented by the Commission to the Council)' Com (79) 104 final, Brussels, 12 March 1979, paragraph 4.

41 — See Opinion on the proposal for a Council Regulation setting up a Community system of reliefs from customs duty (OJ 1980 C 72, pp. 20 and 21) where the Economic and Social Committee observed that '[i]t should thus be clearly stated that the subject matter being dealt with affects the lives of private individuals and families, and a restrictive approach should not be adopted. Furthermore, the conditions under which the goods granted relief are imported are such that these goods cannot be in real competition with similar goods of Community origin or have an adverse tax effect on States' tax revenue.' Later in the Opinion, regarding the definition of personal property, the Committee suggested that 'saddle horses' be changed to 'riding animals' (a change which was eventually accepted in the form of 'saddle animals') with the following comment: '[e]ven though the list is not exhaustive, terms which could be used to restrict the text's scope must be avoided'.

trade or profession during the period preceding the importation.[42] This does not disqualify it as personal property. The relevant criterion is, rather, whether the importation being examined is of a non-commercial nature. The information provided by the Hoge Raad does not present any evidence that Mr Feron imported his car for any commercial purpose.

77. It cannot be assumed, therefore, that 'personal use' ought to be interpreted as requiring 'exclusive personal use' during the last six months of residence in the country of origin. Such distinction was not expressly made by the Community legislature and there is no reason why the expression should be interpreted in that way.[43]

42 — It is significant that Article 1(2)(c) of Regulation No 918/83 expressly states that 'portable instruments of the applied or liberal arts, required by the person concerned for the pursuit of his trade or profession, shall also constitute "personal property". Personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons ....'.

43 — It was affirmed, in a different context, that when adopting provisions granting suspension of customs duties, the Council must take account 'of the requirements of legal certainty and of the difficulties confronting national customs administrations' (Case 58/85 [1986] ECR 1131, paragraph 12). Such provisions must be interpreted according to objective criteria derived from their wording.

E — *The concept of 'possession' within the meaning of Article 2(1) of Regulation No 918/83*

78. The second and third questions referred by the Hoge Raad seek to ascertain whether a private individual is in possession of certain property (such as a motor vehicle), within the meaning of Article 3 of Regulation No 918/83, when that person has its exclusive use and an option to buy granted by the employer owner of that property at the time of delivery and eventually exercised that option before the change of residence occurred.

79. The Court has held that 'the need for uniform application of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the legislation in question.'[44]

44 — See Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43, and Case C-357/98 *Yiadom* [2000] ECR I-9265, paragraph 26.

80. Article 3 of Regulation No 918/83 requires possession and use of the non-consumable personal property during six months before the date on which the person concerned ceases to have his normal place of residence in the non-member country of departure. This requirement is stipulated in order to preclude the tax relief from operating as an incentive to sudden and possibly extensive acquisitions of property immediately before the change of residence. Through this requirement for possession during a certain period of time, the Community legislature defined the required level of attachment between the individual and the personal property indispensable in order to avoid such undesirable consequences.

81. The concept of 'possession' is a well-known legal concept extensively discussed in most legal systems. In broad terms, and as a common denominator, possession is characterised by the factual relationship concerning an object irrespective of whether one is owner or not.[45] It means the exercise of factual control by a person over a thing, either in its own or through someone else. From a different perspective it consists ultimately on an outward appearance that the possessor has a proprietary right over the thing which does not have to be ownership but can be a more limited proprietary interest. At this point the differences among legal systems become more visible, because it is the understanding of the structure of proprietary rights on each legal system that is ultimately at stake.[46] I do not endorse, therefore, the possibility, mentioned by the Hoge Raad, of construing the legal concept of possession within the meaning of Article 3 of Regulation No 918/83, by reference to the common language usage or generally accepted views.[47] This construction would not only ignore the manifest legal nature of the concept of possession, but also would render particularly difficult the achievement of a uniform meaning to this concept within Article 3 of Regulation No 918/83.

82. An autonomous interpretation which takes account of the context and objectives of the requirement of possession for the purposes of Article 3 of Regulation No 918/83 must be based on certain preliminary considerations compatible with the common core understanding of the concept of possession in Member States: firstly, that an individual may be in possession of certain property if he has de facto control over that property even though he is not the owner and does not claim to have the ownership over that property; and, secondly, that when the Community legislature employed the concept of possession in Article 3, it certainly did not intend to have its meaning dependaent on the understanding of each legal system with respect to possession and proprietary rights.

45 — See Beekhuis, Jacob H., 'Structural Variations in Property Law — Civil Law', *International Encyclopedia of Comparative Law*, Vol. VI, Property and Trust, Chapter 2, J.C.B. Mohr, 1972, p. 18, and Lawson, F.H., 'Structural Variations in Property Law — Common Law', ult. op. cit., p. 24.

46 — See Sacco, Rodolfo, 'Possesso (Diritto Privato)', *Enciclopedia del Diritto*, Vol. XXXIV, Giuffrè, pp. 491 to 519, esp. pp. 496 to 499 and also pp. 506 to 510.

47 — See, to that effect, Case 139/84 Van Dijk's Boekhuis [1985] ECR 1405, paragraph 20 and operative part.

83. This has to be so despite the fact that the existence of a situation of possession over certain property will depend, in principle, on the rules of possession in force in the State in which the property is situated, just as the assessment of the existence and/or the extent of proprietary rights will depend on the national law of the place in which the property is situated, the *lex situs*.[48] In fact, if this approach were to be adopted for the interpretation of the concept of possession within the meaning of Article 3 of Regulation No 918/83, it would be impossible to achieve uniformity in the regime of relief from import taxes with respect to personal property, owing to the diversity between legal systems with respect to proprietary rights and, consequently, also to possession.[49]

84. Were that the case, in order to determine whether a certain person coming from a non-member country had possession over certain personal property, it would be necessary to determine whether that person could be considered possessor according to the law of his State of origin. The concept of possession would vary, in fact, according to the specific law of the place where the property was located during the six-month period referred to in Article 3. In the context of Regulation No 918/83, which deals with tax relief in the case of a transfer of residence from non-member States, this situation would mean that the concept could have as many different meanings as there are legal systems in the world. This would not only impose an enormous burden on the national authorities notably customs authorities, which would need to be familiar with the law of an almost infinite number of legal systems with respect to the concept of possession, but also result in a lack of uniformity in the rights granted by Regulation No 918/83.[50]

85. In my view, in order to correspond to the objectives for which the concept of possession was included in Article 3 it is sufficient that the private individual concerned has had, during the relevant six-month period, the exclusive use of that property and a legally enforceable right against the proprietor which enables him to acquire ownership. Such right does not need to be characterised as a proprietary right, according to the law of the normal place of residence in the third country of origin. It is sufficient that it is a qualified right in the sense that it gives rise to a claim against the owner in the event of breach.

48 — This classic conflict of laws approach may be seen in the Opinion of Advocate General Jacobs in Case C-291/92 *Armbrecht* [1995] ECR I-2775, at I-2790, point 15, on which it affirmed that '[t]here can, I think, be little doubt that Article 5(1) [of Directive 77/388/EEC which provides that «supply of goods shall mean the transfer of the right to dispose of tangible property as owner»] refers to national law for the purpose of determining the extent of the property rights transferred ...'.

49 — See Gambaro, Antonio, 'Perspectives on the codification of the law of property, an overview', *European Review of Private Law*, Vol. 5, (1997), pp. 497-504, p. 503.

50 — See above point 74 of this Opinion. Also unacceptable would be the alternative of interpreting the concept of possession according to the law of the Member State in which the person concerned established the new normal place of residence. In this case, the lack of uniformity in the interpretation would also exist and would, de facto, leave entirely to that Member State the decision to grant the exemption.

86. I suggest that the Court, in the alternative, in case Directive 83/183 is deemed to be inapplicable, should answer the second and third questions referred by the Hoge Raad in the sense that when a private individual has property at his full disposal and for his exclusive use, including personal use, with the right to buy it expressly granted by the employer and owner of that property, at the time of its delivery, that person shall be considered to be in possession of such property within the meaning of Article 3 of Regulation No 918/83.

III — Conclusion

94. I am therefore of the opinion that the Court should give the following answer to the questions raised by the national jurisdiction:

95. A tax such as Netherlands BPM, which is levied once and for all at the time of registration of a motor vehicle subsequent to its importation, the amount of which is calculated on the basis of the list price of the car and is included in its cost and passed on in future transactions relating to the vehicle and whose characteristics do not reveal, in substance, a link with the costs related to the use of the vehicle within the country, does not constitute a tax falling outside the scope of Directive 83/183, within the meaning of Article 1(2), but is, rather, a consumption tax normally applied to personal property permanently imported by a private individual changing his normal place of residence from one Member State to another, within the meaning of Article 1(1) of Directive 83/183, which is the relevant instrument of Community law applicable.