



Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 7 November 2013¹

Case C-639/11

European Commission

v

Republic of Poland

Case C-61/12

European Commission

v

Republic of Lithuania

(Failure of a Member State to fulfil obligations — Article 2a of Directive 70/311/EEC — Article 4(3) of Framework Directive 2007/46/EC — Articles 34 and 36 TFEU — Free movement of goods — Restrictions — Measures having equivalent effect — Legislation of a Member State in which vehicles are driven on the right-hand side of the road prohibiting the registration of passenger cars equipped to be driven on the left that are new or have already been registered in another Member State — Whether the requirement that steering equipment should be situated on the left-hand side of the vehicle is permissible)

I – Introduction

1. In both Poland and Lithuania, the registration of motor vehicles having their steering equipment situated on the right-hand side is prohibited and/or made dependent on the removal of that equipment to the left-hand side of the vehicle, irrespective of whether those vehicles are new or have previously been registered in other Member States.

2. In the present case, two infringement actions have been brought before the Court, by which the European Commission seeks declarations from the Court that, by applying such measures, the Republic of Poland and the Republic of Lithuania, respectively, have failed to fulfil their obligations under Article 2a of Directive 70/311/EEC relating to the steering equipment for motor vehicles² and Article 4(3) of Directive 2007/46/EC establishing a framework for the approval of such vehicles,³ in respect of new passenger cars, and under Article 34 TFEU, in respect of passenger cars already registered in the territory of another Member State.

¹ — Original language: French.

² — Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ English Special Edition 1970(II), p. 375), as last amended by Commission Directive 1999/7/EC of 26 January 1999 adapting to technical progress Council Directive 70/311/EEC (OJ 1999 L 40, p. 36).

³ — Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1). It repealed and replaced, with effect from 29 April 2009, Council Framework Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ English Special Edition 1970(I), p. 96).

3. The defendants strongly dispute the complaints made against them. The Republic of Poland submits that the disputed national measures comply with Directives 2007/46 and 70/311, while the Republic of Lithuania asserts that the measures in question do not even fall within the scope *ratione materiae* of those directives. Only the Republic of Poland claims that such measures do not constitute an obstacle to the free movement of goods prohibited by Article 34 TFEU. Both take the view that, at all events, those measures ought to be permitted under Article 36 TFEU, as being justified by overriding requirements relating to the public interest linked to road safety. The Commission does not dispute that that objective may justify such an obstacle, but it takes the view that the legislation at issue is neither suitable for attaining, nor proportionate to, that objective.

4. Although the two present cases have not been formally joined, the common nature of the complaints put forward by the Commission warrants a single Opinion.

II – The alleged infringements, the legislation at issue, the pre-litigation procedures and the procedures before the Court

5. It is clear from the documents in Case C-639/11 that in Poland, in accordance with the Law of 20 June 1997 on road traffic⁴ ('the Polish law on road traffic'), the registration of vehicles is carried out, with regard to new vehicles, on the basis of, inter alia, an extract from the vehicle's approval certificate or the copy of a decision to waive approval,⁵ under Article 72(1) of that law, and with regard to vehicles already registered for the first time abroad, following a technical inspection, under Article 81(5) of that law.

6. That technical inspection consists in determining whether a vehicle satisfies, inter alia, the requirements laid down in that law and in the Regulation of the Minister for Infrastructure of 31 December 2002 concerning the technical conditions applicable to vehicles and the extent of their essential equipment.⁶ Under Paragraph 9(2) of that regulation, '[t]he steering-wheel of a vehicle with more than three wheels, whose construction allows it to reach a speed greater than 40 km/h, must not be on the right-hand side of the vehicle'.

7. The scope of the technical inspection and the procedures for carrying it out were laid down by the regulation of the same minister dated 16 December 2003.⁷ Under Paragraph 5(1) of Annex I to that regulation, the positioning of the steering-wheel on the right-hand side is an essential criterion which makes it possible to establish that such a vehicle does not satisfy the national technical requirements. The same provision appears in Paragraph 6(1) of Annex I to the regulation, which was adopted on 18 September 2009 by that minister⁸ for the purpose of replacing the above-mentioned regulation of 2003.

8. In the light of the information provided in Case C-61/12, Article 25(4) of the Lithuanian Law on Road Safety⁹ states that '[i]t is prohibited on public roads to drive motorised vehicles intended to be driven on the left-hand side of the carriageway and/or in which the steering-wheel is on the right-hand side, unless they were registered in the Republic of Lithuania before 1 May 1993 or are intended, owing to their design and their equipment, to carry out specific functions. That prohibition

4 — Dz. U. [Journal of laws], 2005, No 108, heading 908, as amended.

5 — The waiver may result from Article 68 of that law, which provides that the manufacturer or importer of a new motor vehicle is required to obtain, for each new type of vehicle, an approval certificate issued by the Minister for Transport, except where the manufacturer or importer has obtained an approval certificate issued, in accordance with the European Community type-approval system, by the competent authority of a Member State of the European Union.

6 — Dz. U., 2003, No 32, heading 262, as amended.

7 — Dz. U., 2003, No 227, heading 2250, as amended.

8 — Dz. U., 2009, No 155, heading 1232. That regulation, which came into force on 22 September 2009, was repealed on 8 October 2012 by the regulation of the Minister for Transport of 26 June 2012 (DZ. U., 2012, No 0, heading 996).

9 — Valstybės žinios, 2000, No 92-2883. The Commission states that a new version of that law entered into force from 1 July 2008.

does not apply temporarily (up to 90 days per year) to foreign nationals who arrive in the Republic of Lithuania in a vehicle registered abroad and do not have a permit to stay temporarily or indefinitely in the Republic of Lithuania, or to Lithuanian citizens whose permanent residence is abroad, or to vehicles belonging to the category of historic vehicles in accordance with the legislation.’

9. Article 27 of that law provides that motorised vehicles driven in Lithuania must, in principle, be registered there. However, under Article 27(1), that registration requirement does not apply, temporarily (up to 90 days per year), to foreign nationals who have arrived there in a vehicle registered abroad and do not have a permit to stay temporarily or indefinitely in Lithuania or have an EU residence permit, or to Lithuanian citizens permanently resident abroad. Article 27(2) adds that motorised vehicles designed to be driven on the left-hand side of the carriageway and/or with a steering wheel on the right-hand side are not to be registered in Lithuania, unless they are historic vehicles or vehicles intended for specific functions.

10. Decree No 2B-290 of 29 July 2008 of the Director of the National Road Transport Inspectorate within the Ministry of Communications, which lays down, in particular, the technical requirements relating to motor vehicles and their trailers, provides, under Chapter IV, that ‘the steering system of a vehicle [¹⁰] may not be installed on the right-hand side of the passenger/driver’s compartment, except in motor vehicles which were registered in Lithuania before 1 May 1993, or motor vehicles which are subject to a specific registration scheme’. Decree No 2B-515 of 23 December 2008 of that director sets out, in Paragraph 28, the detailed rules under which the removal of a vehicle’s steering equipment from the right- to the left-hand side is authorised.

11. The Commission received a series of complaints from persons residing in Poland or Lithuania who had found it impossible to register passenger cars from another Member State, in particular from the United Kingdom or Ireland, because the steering equipment of those vehicles was on the right-hand side. It took the view that the constraint arising from the obligation to transfer that equipment to the left amounted to a prohibition of registering such vehicles in each of those Member States. In its view, that constitutes, as regards new vehicles, an infringement of Article 4(3) of Framework Directive 2007/46 and Article 2a of separate Directive 70/311 and, as regards vehicles previously registered in another Member State, an infringement of Article 34 TFEU.

12. On 9 October 2009 and 3 November 2009, respectively, the Commission gave formal notice to the Republic of Poland and the Republic of Lithuania to end those infringements. On 8 December 2009, the Republic of Poland and, on 5 January 2010, the Republic of Lithuania disputed the Commission’s complaints. Not convinced of the merits of the arguments put forward in defence by those Member States, the Commission sent them a reasoned opinion on 1 October 2010 and 25 November 2010, respectively. Having examined the responses to the reasoned opinion which were provided on 30 November 2010 by the Republic of Poland and on 19 January 2011 by the Republic of Lithuania, the Commission decided to bring the present infringement actions.

13. By its application lodged on 13 December 2011, the Commission sought a declaration from the Court ‘that, by making the registration in Poland of passenger cars which have their steering equipment on the right-hand side, whether they are new or previously registered in other Member States, dependent on the removal of the steering wheel to the left-hand side, the Republic of Poland has failed to fulfil its obligations under Article 2a of the Directive [70/311], Article 4(3) of the Framework Directive [2007/46], and Article 34 [TFEU]’.

10 — That system is defined in Paragraph 4(18) of Decree No 2B-152 of 9 May 2006 of that director, establishing the rules of type-approval for steering equipment in motorised vehicles, as being the ‘equipment which alters the direction of movement of the vehicle, including the steering control, the steering transmission, the steered wheels and the energy supply, if any’.

14. The Republic of Poland contended that the Court should dismiss the application, relying on a different interpretation of the provisions referred to, and order the Commission to pay the costs. The Republic of Lithuania lodged a statement in intervention in support of the claims of the Republic of Poland. No hearing has been held.

15. By its application lodged on 6 February 2012, the Commission asked the Court to ‘declare that by prohibiting the registration of passenger cars whose steering wheel is mounted on the right-hand side and/or requiring, for the registration of right-hand drive passenger cars which are new or were previously registered in another Member State, that the steering wheel be removed to the left-hand side, the Republic of Lithuania has failed to fulfil its obligations under the Directive [70/311], the Directive [2007/46] and Article 34 [TFEU]’.

16. The Republic of Lithuania, disputing the Commission’s interpretation of the provisions referred to, contended that the Court should dismiss the application and order the Commission to pay the costs. In their statements in intervention, the Republic of Estonia and the Republic of Poland supported the form of order sought by the Republic of Lithuania. No hearing has been held.

III – Analysis of the two infringement actions

A – Preliminary observations

17. It is clear from the present cases that the legislation applicable in Lithuania and Poland impedes the registration of vehicles having their steering equipment on the right. The Republic of Lithuania does not allow vehicles to be used on the public highway or to be registered that are designed to be driven on the left-hand side of the carriageway and/or have a steering wheel on the right, save for those exceptions exhaustively listed in the Lithuanian law on road safety,¹¹ and it requires the steering equipment of those vehicles to be transferred to the left beforehand.¹² For its part, the Republic of Poland makes the registration of any motor vehicle, whether new or already registered for the first time abroad, dependent on the production of a technical inspection certificate and, under several regulations of the Polish Minister for Infrastructure,¹³ vehicles which have steering equipment on the right cannot pass that inspection, for they are deemed not to comply with the national technical requirements.

18. First of all, it should be pointed out that when national legislation relating to the technical characteristics of motor vehicles began to be harmonised at Community level the European Community was made up solely of Member States in which traffic circulated on the right-hand side of the road. Following the accession of both Ireland and the United Kingdom of Great Britain and Northern Ireland (‘the United Kingdom’), where road traffic moves on the left-hand side,¹⁴ a standard practice developed between the Member States according to which they do not refuse to register vehicles having their steering equipment on the same side as the direction of traffic.¹⁵ It was only after

11 — See points 8 and 9 of this Opinion.

12 — See point 10 of this Opinion.

13 — See points 6 and 7 of this Opinion.

14 — Currently, the category of Member States in which traffic moves on that side also includes the Republic of Cyprus and the Republic of Malta.

15 — It seems to me that the Republic of Finland was the last of the Member States concerned to adopt that practice, as it is only since 1 January 2003 that the rule requiring that the steering equipment be situated on the left, with some exceptions, has been abolished.

the enlargement of the European Union in 2004 that that uniform approach was called into question by some of the new Member States, including the Republic of Lithuania and the Republic of Poland, which relied, in essence, on the threat posed to road safety by the use of motor vehicles in which the positioning of the steering equipment is not suited to the direction of traffic.¹⁶

19. It must be emphasised too that the present actions concern infringements arising not from interference with the freedom to market vehicles having their steering equipment on the right, but from a restriction of the ability to register such vehicles in Lithuania and Poland, respectively. Indeed, neither the sale nor the import of those vehicles is prohibited in those Member States. Only the registration of that category of vehicles, regardless of whether they were produced locally or imported, is prohibited unless that equipment is transferred to the left-hand side.

20. Furthermore, these actions are limited to ‘passenger cars’, both new and used, which excludes certain categories of motor vehicles, in particular commercial vehicles, which are, however, covered by the provisions to which the Commission refers.¹⁷ I would point out that the classification ‘passenger car’ is used neither in Framework Directive 2007/46¹⁸ nor in Directive 70/311,¹⁹ but corresponds to the concept of vehicles belonging to Category M₁, namely ‘vehicles used for the carriage of passengers and comprising no more than eight seats in addition to the driver’s seat’.²⁰

21. In that restriction the Republic of Lithuania finds arguments on the substance.²¹ However, in the Commission’s view, its formal choice in no way calls into question the field covered by the provisions referred to, but is explained by the fact that the present actions followed complaints submitted to it specifically concerning passenger cars,²² and by the consideration that one of the aims of infringement proceedings is to help citizens of the European Union to resolve the genuine problems facing them in the Member States. In my view, it is clear from the case-law that the Commission has discretion not only to initiate infringement proceedings²³ but also to restrict the subject-matter of its action.²⁴ The sole consequence of this finding is that the scope of the judgment to be delivered will be restricted to motor vehicles belonging to Category M₁, without prejudice to any subsequent decision concerning vehicles of another type.

22. Among passenger cars having the steering equipment on the right, the Commission draws a distinction between, first, those that are new, in respect of which the obstacles to registration created by the Lithuanian and Polish legislation are contrary to Framework Directive 2007/46 and Directive 70/311, both of which relate to the EC type-approval of new motor vehicles, and, secondly, those that

16 — The problems linked to the registration of vehicles from other Member States are listed among the twenty main concerns with the single market as it now stands [see the explanatory memorandum of the proposal for a Regulation of the European Parliament and of the Council simplifying the transfer of motor vehicles registered in another Member State within the Single Market, dated 4 April 2012, COM(2012) 164 final, p. 2, and the statistics set out at http://europa.eu/rapid/press-release_MEMO-12-242_en.htm].

17 — Article 1 of Directive 70/311 identifies the vehicles covered by the provisions of that directive, by referring to the definition which was given in Framework Directive 70/156. The fourth recital et seq. in the preamble to Framework Directive 2007/46 sets out why its material scope was extended in relation to the earlier provisions, while Articles 1, 2 and 3(11) et seq. determine the new vehicles to which it applies. As regards Article 34 TFEU, its provisions are capable of encompassing all types of vehicles.

18 — Similarly, in paragraph 15 of Case C-83/05 *Voigt* [2006] ECR I-6799, the Court pointed out that Framework Directive 70/156 contained no provision regarding the classification of motor vehicles as ‘passenger cars’.

19 — Unlike, for example, Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ 2002 L 203, p. 30), which defines a ‘passenger car’ as ‘a motor vehicle intended for the carriage of passengers and comprising no more than eight seats in addition to the driver’s seat’.

20 — As defined, in particular, in Note (b)(1) of Annex I to Framework Directive 70/156.

21 — It submits that the Commission implicitly acknowledges that vehicles which have their steering equipment on the right pose a danger provided that they are heavy goods vehicles, which makes it possible to restrict the registration at least of those vehicles, for safety reasons, without infringing EU law.

22 — See point 11 of this Opinion.

23 — In particular Case C-383/00 *Commission v Germany* [2002] ECR I-4219, paragraph 19, and Case C-327/08 *Commission v France* [2009] ECR I-102, paragraph 26.

24 — The Court has repeatedly ruled that, in the context of performing the task conferred upon it by Article 258 TFEU, the Commission is free to determine the subject-matter of the proceedings (in particular, Case C-221/04 *Commission v Spain* [2006] ECR I-4515, paragraph 33 et seq., and Case C-531/06 *Commission v Italy* [2009] ECR I-4103, paragraph 23).

have already been registered in another Member State, in respect of which those obstacles constitute an infringement of the free movement of goods provided for in Article 34 TFEU. That distinction is contested by the Lithuanian Government, which takes the view that the first category of vehicles referred to should also fall within the scope of Articles 34 and 36 TFEU, and not within the scope of those directives. At all events, in accordance with the case-law of the Court,²⁵ inasmuch as the harmonisation provided for by Directives 2007/46 and 70/311 is exhaustive in nature, the legislation at issue must be examined first by the yardstick of the provisions of those directives, and not in the light of the provisions of the TFEU.

B – *The complaint relating to new passenger cars*

1. Introductory remarks concerning harmonisation of the technical requirements applicable to passenger cars and the EC type-approval procedure

23. In order to implement the free movement of goods in the automobile sector, the European Economic Community initiated, in the 1960s, an ambitious process of harmonisation of national requirements relating to the technical requirements and type-approval of motor vehicles, since the differences in that field between the Member States impeded access to the internal market and free movement within that market.²⁶ At the time, the legislature accordingly adopted a methodology which, unlike the ‘new approach’,²⁷ involved the direct incorporation of all the technical standards into the relevant acts of EU law, in the present case, into a Framework Directive relating to the EC type-approval of vehicles, known as EC approval, supplemented by separate directives,²⁸ to which the framework directive refers.

24. The development of that process led to the adoption of Framework Directive 2007/46, the second recital of which stresses that ‘[f]or the purposes of the establishment and operation of the internal market of the Community, it is appropriate to replace the Member States’ approval systems with a Community approval procedure based on the principle of *total harmonisation*’.²⁹

25. The purpose of that directive, as defined in Article 1 thereof, is to establish a harmonised framework containing the administrative provisions and general technical requirements for approval, in particular, of all new vehicles within its scope, with a view to facilitating their registration, sale and entry into service within the Community.

26. The national technical requirements and the requirement for national type-approval of vehicles are motivated by the desire to safeguard road safety. That is why both EC approval and the uniform technical requirements that are defined by EU law also seek to ensure a high level of road safety, as stated in recitals 3 and 14 in the preamble to Framework Directive 2007/46.³⁰

25 — Indeed, any national measure taken in a field which has been exhaustively harmonised at Community level must first be examined in the light of the provisions of that harmonisation measure, before being examined in the light of the provisions of primary law (see, in particular, Case C-170/07 *Commission v Poland* [2008] ECR I-87, paragraph 35; Case C-205/07 *Gysbrechts and Santurel Inter* [2008] ECR I-9947, paragraph 33, and Case C-150/11 *Commission v Belgium* [2012] ECR, paragraph 47).

26 — See preamble to Framework Directive 70/156.

27 — See, in particular, Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards (OJ 1985 C 136, p. 1).

28 — These seek to define the harmonised technical requirements which are applicable in respect of each of the different elements or different characteristics of the vehicle, in accordance with the fourth recital in the preamble to Framework Directive 70/156.

29 — Emphasis added.

30 — According to the third recital in the preamble to the Framework Directive 2007/46, those technical requirements ‘should primarily seek to ensure a high level of road safety’ and according to the fourteenth recital in the preamble to that directive, ‘[t]he main objective of the legislation on the approval of vehicles is to ensure that new vehicles, components and separate technical units put on the market provide a high level of safety and environmental protection’.

27. Thus, the objective of the rules of EU law applicable in this matter is to allow the free movement of goods in the automobile sector to be attained and to function properly, whilst maintaining essential requirements which offer a high level of road safety.

28. As stated in a Commission interpretative communication,³¹ for the purposes of registering a motor vehicle in a Member State, a maximum of three different steps must be followed: first, the approval of the technical characteristics of the vehicle, in the context of which the EC vehicle type-approval process referred to in Framework Directive 2007/46 takes place; secondly, a possible technical inspection which makes it possible to verify the roadworthiness of a used vehicle; thirdly, registration itself, which consists in administrative authorisation for the entry into service in road traffic, involving identification of the vehicle and issuing it with a registration number.

29. With a view to simplifying, in particular, registration in the Member States, the national approval systems were replaced by a uniform approval procedure applicable to all types of motor vehicle. As a result of that procedure, which is based on the principle of total harmonisation,³² all vehicles placed on the European market must comply with common standards concerning their technical characteristics. Vehicles that have been approved in one of the Member States, and comply with those harmonised rules, may subsequently lawfully be marketed throughout the European Union.

30. More specifically, Article 4(3) of Framework Directive 2007/46 lays down the ‘Obligations of Member States’, providing that they ‘shall register or permit the sale or entry into service only of such vehicles ... as satisfy the requirements of this Directive’, and that they ‘shall not prohibit, restrict or impede the registration, sale, entry into service or circulation on the road of vehicles ... on grounds related to aspects of their construction and functioning covered by this Directive, if they satisfy the requirements of the latter’. Under the third paragraph of Article 1 of that directive, ‘[s]pecific technical requirements concerning the construction and functioning of vehicles shall be laid down in application of this Directive in regulatory acts, *the exhaustive list of which is set out in Annex IV*’.³³

31. Directive 70/311 is the second measure of secondary legislation referred to by the Commission in the present infringement actions. It relates to steering equipment in motor vehicles and their trailers, and is one of the separate regulatory acts referred to in Annex IV to Framework Directive 2007/46.

32. Article 2a of Directive 70/311 was added to that directive in the context of the accession, *inter alia*, of Ireland and the United Kingdom to the European Communities.³⁴ It states that ‘[n]o Member State may refuse or prohibit the sale or registration, entry into service or use of a vehicle on grounds relating to its steering equipment, if this equipment satisfies the requirements set out in the Annex [35]’.

33. One of the cornerstones of the EC approval procedure is that every Member State recognises the inspection carried out by the other Member States. That procedure enables every Member State to ascertain whether a vehicle type has been submitted to the checks laid down by separate directives and listed in a type-approval certificate. When the competent authorities of the Member State to which the manufacturer submitted his application state that the vehicle type concerned meets all the applicable European requirements, the EC approval they grant in relation to that vehicle type is valid in all the other Member States. For their part, manufacturers who hold EC approval for one vehicle type are required to issue a certificate of conformity for all the vehicles they produce, in order to certify that those vehicles conform to that type. If a vehicle is accompanied by such a certificate, it

31 — Point 3.2 of the Commission interpretative communication on procedures for the registration of motor vehicles originating in another Member State (OJ 2007 C 68, p. 15).

32 — See the second recital in the preamble to Framework Directive 2007/46.

33 — Emphasis added.

34 — Act concerning the accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (OJ 1972 L 73, p. 14).

35 — It should be pointed out that that directive now includes not one, but four annexes. See the most recent amendments made by Commission Directive 1999/7/EC of 26 January 1999 adapting to technical progress Council Directive 70/311/EEC (OJ 1999 L 40, p. 36).

must be considered by all Member States as conforming to their own laws.³⁶ Thus, the first subparagraph of Article 26(1) of Framework Directive 2007/46 provides that Member States are to register, and permit the sale or entry into service of, vehicles only if they are accompanied by a valid certificate of conformity issued in accordance with Article 18 of that directive.

2. The applicability of Directives 2007/46 and 70/311

34. The Republic of Lithuania claims that the contested legislation does not fall within the scope *ratione materiae* of Directives 2007/46 and 70/311.³⁷ The prohibition, laid down by national law, of registering vehicles that have their steering equipment on the right is linked not to technical considerations, relating to the proper functioning or reliability of such equipment, but to road safety considerations, relating to the possibility of driving such vehicles safely on roads where traffic moves on the right. However, only the first of those factors is regulated, and regulated exhaustively, by Directives 2007/46 and 70/311, in the light, in particular, of *Voigt*.³⁸

35. In the view still of the Republic of Lithuania, it remains in large part within the powers and responsibility of the Member States to ensure road safety, by establishing conditions for using vehicles that satisfy the technical requirements of those directives. Therefore, the contested national measures should be assessed not from the perspective of those directives but solely from the perspective of Articles 34 and 36 TFEU, irrespective of whether it is new vehicles or vehicles that have already been registered in another Member State that are involved.

36. However, I concur with the Commission's analysis that Directives 2007/46 and 70/311, and all the separate directives referred to in Annex IV to the former, define all the technical requirements relating to new motor vehicles, including those relating to the steering equipment, and leave no discretion to the Member States in that field. Those technical requirements ensure a level of road safety consistent with the assessment of the EU legislature. While it is true that the determination of the positioning of the steering equipment is not, in itself, the subject-matter of binding provisions in those directives, that positioning is nevertheless one of the characteristics of the construction of a vehicle satisfying, moreover, all the technical requirements laid down in those directives as a whole. *Voigt* does not call that analysis into question.³⁹

37. The Lithuanian legislation, in that it requires the positioning of that equipment to be altered, introduces a requirement of a technical nature involving an alteration that affects the construction of a vehicle, a requirement governed by Directives 2007/46 and 70/311. It therefore falls within the ambit of those directives, as does the Polish legislation at issue.

36 — See the fifth and sixth recitals in the preamble to the original version of Framework Directive 70/156.

37 — Texts as amended on the date of expiry of the period of two months laid down in the reasoned opinions which the Commission sent, first, to the Republic of Poland and, secondly, to the Republic of Lithuania, namely on 1 December 2010 and 25 January 2011, respectively, dates which determine for each of those Member States the point at which the existence of the alleged infringement must be assessed.

38 — That Government relies on paragraph 18 of that judgment, in which the Court ruled that 'Directive 70/156 ... applies to the technical characteristics of a type of vehicle and contains no other provision relating to the road traffic rules which are to be complied with by the drivers of motor vehicles', which also applies to Framework Directive 2007/46, which replaced it from 29 April 2009.

39 — Indeed, it is clear from that judgment (in particular paragraphs 14, 17 and 20) that, in the case in question, the Court ruled solely on the issue of whether the Community legislature had intended to attach to the EC vehicle type-approval, established by Directive 70/156, consequences as regards the application of national rules on road traffic governing the speed of the different categories of motor vehicles.

3. The relevant provisions of Framework Directive 2007/46

38. I would point out that Framework Directive 2007/46 establishes ‘total harmonisation’ in the areas it covers, while laying down safeguard clauses in order to ensure road safety if it is established that a type of vehicle, although complying with the requirements applicable with regard to EC approval, poses a danger according to a Member State.⁴⁰ However, the Member State must then follow a special alert procedure, which involves both the other Member States and the Commission, without which the effectiveness of the uniform system of approval would be jeopardised.⁴¹

39. The present infringement actions are based, in particular, on Article 4(3) of Framework Directive 2007/46. As the Commission argues, under that provision, read in conjunction with Article 9(1)(a) of that directive,⁴² the competent authorities of a Member State must register a new passenger car if it satisfies the technical requirements laid down in that directive and the separate directives listed in Annex IV thereto.

40. The wording of that provision is better understood in the light of the context of and reasons for its adoption. It is clear from the *travaux préparatoires*⁴³ that ‘a *free circulation clause* has been introduced in the third paragraph of Article 4’⁴⁴ ‘[i]n order to ensure that the provisions on the approval of motor vehicles laid down in this directive and in the separate regulatory acts are not undermined by the imposition of national construction and functioning requirements on vehicles after they have been sold, registered and/or put into service’.

41. With regard to Articles 18⁴⁵ and 26 of Framework Directive 2007/46, and point 0 of Annex IX thereto,⁴⁶ the Republic of Lithuania claims that the manufacturers of motor vehicles should state, on page 1 of the EC certificate of conformity,⁴⁷ the direction of traffic in which the vehicle concerned is exclusively suitable for use, from which it follows that, in the view of the EU legislature, vehicles may be unsuitable for use on a given side of the carriageway, left or right, as the case may be. For its part, the Republic of Estonia argues that manufacturers must state that the vehicle may be registered permanently, without any other EC approval, in Member States in which vehicles are driven, respectively, on the right or on the left.

40 — See Articles 8(3) and 29 of Framework Directive 2007/46.

41 — See, regarding Article 7(1) of Framework Directive 70/156, which is equivalent to Article 4(3) of Framework Directive 2007/46, Case C-329/95 *VAG Sverige* [1997] ECR I-2675, paragraphs 18 and 19, and, by analogy, Case C-470/03 *AGM-COS.MET* [2007] ECR I-2749, paragraph 70.

42 — That provision provides, under the heading ‘Specific provisions concerning vehicles’, that ‘Member States shall grant an EC approval in respect of ... a type of vehicle which conforms to the particulars in the information folder and which meets the technical requirements specified by the relevant regulatory acts listed in Annex IV’.

43 — See p. 10, point 5, of the amended proposal for a directive dated 29 October 2004 [COM 2004 (738) final].

44 — Emphasis added.

45 — Under the first subparagraph of Article 18(1) of that directive, relating to the ‘Certificate of Conformity’, ‘[t]he manufacturer, in his capacity as the holder of an EC type-approval of a vehicle, shall deliver a certificate of conformity to accompany each vehicle, whether complete, incomplete or completed, that is manufactured in conformity with the approved vehicle type.’

46 — That Annex IX, as amended by Commission Regulation (EC) No 385/2009 of 7 May 2009 replacing Annex IX to Framework Directive 2007/46 (OJ 2009 L 118, p. 13), relates to the ‘EC certificate of conformity’. Point 0 of that annex lays down the dual objective of that certificate, stating that, first, it ‘is a statement delivered by the vehicle manufacturer to the buyer in order to assure him that the vehicle he has acquired complies with the legislation in force in the European Union at the time it was produced’, and, secondly, it ‘also serves the purpose to enable the competent authorities of the Member States to register vehicles without having to require the applicant to supply additional technical documentation’.

47 — According to Annex IX, page 1 of the EC certificate of conformity includes a reference to the fact that ‘the vehicle ... can be permanently registered in Member States having right/left (b) hand traffic ... (d)’. In that regard, explanatory note (b) relating to that annex states that it is necessary to ‘[i]ndicate whether the vehicle is suitable for use in either right or left-hand traffic or both right and left-hand traffic’.

42. In my view, the EC certificate of conformity attests to the validity of the production of the vehicle referred to in that certificate, on the basis of the type of vehicle to which that vehicle belongs. It is clear from the description of the technical characteristics of the vehicle set out in that certificate, in essence, that it is not necessary to produce other technical documents in order for permanent registration to take place in a Member State, irrespective of the side of the road on which traffic moves in the territory of that Member State.

43. As regards points 1.8 and 1.8.1 of Annexes I and III to Directive 2007/46,⁴⁸ the Polish Government claims that the EU legislature provided for a special section under point 1.8.1 for the purpose of stating whether the vehicle is suitable for use in right- or left-hand traffic. Furthermore, point 1.8 of those annexes states that in order to be authorised to be driven on a given side of the road, the vehicle should be adapted to the direction of traffic in question. That point is therefore concerned with indicating in the approval certificate the positioning of the steering wheel. Similarly, the Republic of Estonia considers that it is clear from those provisions that manufacturers must state, in the list of details required for vehicle type-approval, whether the vehicle concerned is designed for use in right or left-hand traffic.

44. However, I concur with the Commission's view that those points mean only that the vehicle in question satisfies the requirements for the vehicle to be driven in complete safety on the stated side of the carriageway, right or left, like those relating to the installation of lighting and indirect vision devices and the parts of the steering equipment which are set out in Directive 70/311. It seems to me that the EU legislature sought to distinguish, not to confuse, the issue of the positioning of the steering equipment from that of adapting a vehicle for use on a particular side of the road.

45. In that regard, I would point out that explanatory note (d) relating to Annex IX to Directive 2007/46, referred to above, specifies that the 'statement [that the vehicle is suitable for use in right- or left-hand traffic] shall not restrict the right of the Member States to require *technical adaptations* ... when the direction of the traffic is on the opposite side of the road', without, however, defining what is meant by the expression to which I have added emphasis here.

46. In the view of the Republics of Lithuania, Poland and Estonia, that reference enables a Member State in which traffic moves on the right to require a vehicle designed to be driven on the left to be adapted for use on the right before it is registered, in particular by transferring the steering equipment to the left.

47. It is true that that explanatory note provides that if a vehicle is equipped to be driven on the left-hand side of the road alterations may be required for the purposes of its registration in a Member State in which traffic moves on the right-hand side. Nevertheless, in the light of the other provisions of both Framework Directive 2007/46 and Directive 70/311, and in order to prevent those provisions from being rendered ineffective, I consider that repositioning the steering equipment does not constitute one of the 'technical adaptations' authorised by the note referred to above.

48. Like the Commission, I take the view that such adaptations may relate solely to procedures having minimal impact, such as the adjustment of headlights or the installation of an additional rear-view mirror, and not to technical aspects which significantly alter the very construction of the vehicle. However, the contested legislation involves the latter kind of alteration, for the repositioning it requires calls not only for the steering system to be moved but also for the whole dashboard to be changed and the vehicle's pedals and the systems they control to be moved.

48 — Annex I to Framework Directive 2007/46 contains the 'Complete list of information for the purpose of EC type-approval of vehicles'. Point 1 of that annex, entitled 'General construction characteristics of the vehicle', requires, under point 1.8, a reference to the 'Hand of drive: left/right', and, in point 1.8.1, an indication of whether it is 'right/left hand traffic' which 'the vehicle is equipped to be driven in'. Identical provisions appear in Annex III, relating to the 'Information document for the purpose of EC type-approval of vehicles', part I, point 1.8, point 1.8.1.

49. I would point out that that approach is consistent with the practice of many Member States, in which motor vehicles having their steering equipment on the same side as the direction of traffic may be registered provided that an EC certificate of conformity is presented⁴⁹ and/or subject only to minor technical alterations, such as those relating to dipped-beam headlamps, exterior rear-view mirrors or other modifications of that nature.⁵⁰

50. Thus, I consider that no provision of Framework Directive 2007/46 provides for the possibility of refusing registration of a new passenger car by reason of the side on which the steering equipment is installed. That interpretation, both literal and contextual, of the provisions of that directive that are referred to in the infringement actions is supported in the light of the provisions of Directive 70/311, which is among the separate directives listed in Annex IV to that framework directive.

4. The relevant provisions of Directive 70/311

51. According to the Republic of Lithuania, Directive 70/311 sets out only the construction, fitting, and inspection requirements for the steering equipment, without determining on which side of the vehicle the steering equipment should be fitted for reasons of road safety.

52. With regard, in particular, to point 1.8 of Appendix 1 to Annex I to Directive 70/311,⁵¹ the Republic of Poland submits that that provision introduces a distinction between vehicles according to whether they are designed to be driven on the right or the left and that the EU legislature drafted that directive based on the assumption that the driver's position was linked directly to the side on which the traffic moves.

53. The Commission replies, rightly, that the fact that it was necessary, under that point, to indicate the positioning of the steering wheel merely means that the construction of the vehicle, and in particular its steering equipment, satisfies the technical requirements of Directive 70/311 relating to the hand of drive, and not that the EU legislature found it necessary to establish a formal link according to which for driving on the right the steering equipment should be on the left, and vice versa.

54. Furthermore, I share the view of the Commission when it argues that Article 2a of Directive 70/311 precludes Member States from refusing or prohibiting the registration of vehicles on grounds relating *solely* to the siting of their steering equipment, in cases in which those vehicles in fact satisfy the requirements set out in the annexes to that directive. Given that those requirements do not specify whether the steering equipment should be on the left, on the right, or in the middle, the national authorities are therefore required to register a motor vehicle wherever that equipment is situated, if the steering equipment otherwise complies with those requirements. In my view, that provision would be redundant, in the scheme of Directive 70/311, if it were considered not to have the purpose of prohibiting restrictions based solely on the positioning of the steering equipment of vehicles which fall within its scope.

55. Relying on historical factors, the Republic of Lithuania submits that as Directive 70/311 was adopted at a time when the European Community did not include any Member State in whose territory vehicles were driven on the left, the Community legislature could not, therefore, resolve a problem which did not then exist.

49 — To my knowledge, the production of that certificate is decisive, in particular, in Belgium, the Czech Republic, France, Italy, Luxembourg, Malta, Austria and Sweden.

50 — According to the information at my disposal, that is the case, in particular, in Belgium, the Czech Republic, Denmark, Germany, Spain, France, Cyprus, Luxembourg, Hungary, the Netherlands, Romania, Finland, Sweden and the United Kingdom.

51 — That appendix contains a model 'Information Document ... pursuant to Annex I to Directive 70/156/EEC relating to EC type-approval of a vehicle with respect to the steering equipment'. Point 1 of that document, relating to the 'General construction characteristics of the vehicle', includes point 1.8, drafted as follows: 'Hand of drive: left/right'.

56. That is to disregard the fact that the relevant provision, namely: Article 2a, was added to that directive by the act concerning the accession of, inter alia, Ireland and the United Kingdom, as I mentioned above. In that regard, the Commission refers to a report, dated 28 June 1971, issued by the Council ‘ad hoc’ group responsible for examining Commission reports on the technical adaptations of Community legislation in the context of negotiations with the States which had applied to accede to the Communities,⁵² a report which is indeed interesting⁵³ but which does not seem to me to be relevant as that group expressed no view on the matter. It is, in my view, of far more relevance to focus on the content of that accession document, in that it amended the directives concerning the technical requirements relating to motor vehicles. Indeed, it is very clear from a reading of that document that specific provisions were adopted with regard to the position of rear-view mirrors⁵⁴ in order to introduce a change to that position according to whether traffic moves on the right or on the left in each Member State, while the legislature refrained from providing for equivalent provisions with regard to the positioning of steering equipment, although Directive 70/311 was also the subject-matter of amending provisions.⁵⁵

57. The wording and origin of Directive 70/311 are therefore revealing. Furthermore, a teleological approach to the provisions of both directives referred to in the infringement actions supports the position which I propose that the Court should adopt.

5. The objectives of Directives 2007/46 and 70/311

58. As regards the teleological interpretation of Article 4(3) of Directive 2007/46 and Article 2a of Directive 70/311, the Republic of Poland submits that the legislation at issue is entirely justified in the light of the fact that the principal objective pursued by those directives is to ensure a high level of road safety. That is confirmed by the third recital⁵⁶ in the preamble to Directive 2007/46 and by point 4.1.1 of Annex I to Directive 70/311.⁵⁷

59. The Commission does not deny that the technical requirements laid down in the directives relating to approval seek to ensure a high level of road safety. However, it argues, in my view rightly, that the total harmonisation of the vehicle approval procedures established by Directives 2007/46 and 70/311 was decided upon in order to ensure the establishment and functioning of the internal market, and that, according to the EU legislature, the technical requirements thus laid down, fully harmonised, are sufficient to ensure road safety. Indeed, that is clear from the reasons, referred to above,⁵⁸ underlying the adoption of Article 4(3) of Framework Directive 2007/46.

60. The Commission also acknowledges that a vehicle’s having its steering wheel on the right, when traffic moves on the right, restricts the driver’s visibility at junctions on two-way single-carriageway roads. Nevertheless, it is made clear in Articles 2a of Directive 70/311 and 4(3) of Directive 2007/46 that the EU legislature did not consider those difficulties to be serious enough to justify legislation such as that at issue, in contrast to the provisions expressly introduced concerning the position of rear-view mirrors, in the context of the accession of Ireland and the United Kingdom.

52 — Note from the Council of the European Communities, of 28 June 1971, I/117/71.

53 — The Commission submits that, in point 3 of that report, that group took the view that the siting of the steering equipment on the right- or left-hand side of the vehicle was a problem of an economic nature, not a technical requirement.

54 — Amendments inserted into Council Directive 71/127/EEC of 1 March 1971 on the approximation of the laws of the Member States relating to the rear-view mirrors of motor vehicles (OJ, English Special Edition 1971 (I), p. 136).

55 — See, in the Act concerning the conditions of accession and the adjustments to the Treaties (OJ 1972 L 73, in particular p. 114 et seq.), the directives referred to in subpoints 2 to 10 of point X, entitled ‘technical barriers’, of Annex I to that act, in particular subpoints 7 and 10.

56 — The content of the third recital is noted in footnote 30 of this Opinion.

57 — Point 4 of that annex lays down the ‘Construction provisions’ and, in particular, in point 4.1.1, that ‘[t]he steering equipment shall ensure easy and safe handling of the vehicle up to its maximum design speed’.

58 — Point 40 of this Opinion.

61. The Republic of Lithuania is astonished that the Commission accepts alterations as regards, inter alia, lighting devices, but opposes them as regards steering equipment.

62. However, that is justified, in my view, by the fact that minimal technical adaptations are acceptable, and even authorised, in accordance with explanatory note (d) of Annex IX to Framework Directive 2007/46 referred to above, unlike alterations to structural elements that affect the construction or the functioning of a vehicle, when that vehicle satisfies all the conditions necessary for the granting of EC approval.

63. In conclusion, I propose that the Court should hold, first, that Directives 2007/46 and 70/311 are indeed applicable to the contested legislation with regard to new passenger cars and, secondly, that the Republic of Lithuania and the Republic of Poland have both failed to fulfil their obligations in that respect.

64. If those directives should be held to be inapplicable by the Court, in accordance with the claims made by the Republic of Lithuania, it would be necessary, at all events, to find that, in respect of all the vehicles affected by the present infringement actions,⁵⁹ the Member States must, in the exercise of their legislative powers, fulfil their obligations under the provisions of the TFEU relating to the free movement of goods.⁶⁰

C – The complaint relating to passenger cars already registered in another Member State

1. The views of the parties

65. The Commission alleges that, by restricting the registration in their territory of passenger cars having their steering equipment on the right, the Republic of Lithuania and the Republic of Poland have failed to fulfil the obligations incumbent upon all Member States under the provisions of primary law relating to the free movement of goods. It takes the view that those restrictions constitute a disproportionate obstacle to the right to import such vehicles from other EU Member States in which they were previously registered.

66. In its defence, the Republic of Poland considers that the national measures at issue cannot be regarded as a restriction prohibited by Article 34 TFEU. By contrast, the Republic of Lithuania concedes that the applicable provisions and the practice followed in Lithuania constitute a restriction of the free movement of goods for the purposes of Article 34 TFEU. Both agree that, at all events, a restriction of that nature is justified by objectives relating to safeguarding road safety and protecting human life and health. The Commission does not deny the public-interest nature of such objectives, but it does deny that the measures taken by the two defendant States are entirely necessary and appropriate for addressing those concerns.

59 — That is to say, in such a situation, passenger cars equipped with steering equipment on the right, irrespective of whether they are new or have previously been registered in another Member State.

60 — See, in particular, Case C-142/09 *Lahousse and Lavichy* [2010] ECR I-11685, paragraph 43.

2. Whether there exists a restriction of the free movement of goods for the purposes of Article 34 TFEU

67. There being no harmonisation by EU law of the national legislation applicable to the registration by a Member State of vehicles imported into its territory after previously being registered in another Member State, the national measures at issue must be examined in the light of the provisions of the TFEU relating to the free movement of goods. In that regard, I would point out that it is clear from the first paragraph of Article 1 of Framework Directive 2007/46 that that directive harmonises only ‘the administrative provisions and general technical requirements for approval of all *new* vehicles within its scope’.⁶¹

68. I would observe, at the outset, that I consider that the prohibition of measures having an equivalent effect to quantitative restrictions on imports laid down in Article 34 TFEU applies to national provisions such as those referred to in the present actions.

69. Indeed, it is clear from settled case-law that legislation of the Member States which is capable of hindering, directly or indirectly, actually or potentially, trade within the European Union must be regarded as a measure having equivalent effect to such restrictions.⁶²

70. In the present case, the Commission rightly claims that the effect of the Lithuanian and Polish legislation is to treat less favourably goods from other Member States, that is to say, vehicles having their steering equipment on the right and previously registered outside the national territory, inasmuch as the keepers of such vehicles may be dissuaded from importing with a view to registering them in Lithuania or in Poland, given the requirement to reposition that equipment on the left, which involves a significant alteration.⁶³

71. The Republic of Lithuania does not dispute that aspect of the infringement action directed against it, and nor does the Republic of Estonia, according to the statement in intervention which it lodged in that case.

72. In contrast, the Republic of Poland submits that its legislation does not hinder the free movement of goods, on the grounds, first, that registration is merely an administrative formality, not a condition for purchasing a vehicle, and, secondly, that the contested requirement applies to all vehicles which have their steering equipment on the right-hand side, irrespective of their origin, since such vehicles are also manufactured in Poland⁶⁴ and may be purchased there.

73. However, the Court has repeatedly ruled that even if, as in the present cases, the measures at issue are applicable without distinction, and therefore do not relate solely to goods originating in other Member States, that fact does not prevent the contested prohibition’s being regarded as having an effect equivalent to a quantitative restriction in accordance with Article 34 TFEU, when goods lawfully manufactured and marketed in another Member State are not allowed, without restrictive conditions, onto the market of the defendant Member State.⁶⁵

61 — Emphasis added.

62 — See, in particular, Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5, and Case C-150/11 *Commission v Belgium*, paragraph 50 and case-law cited.

63 — The Commission submits that that procedure requires replacing almost all of the steering and braking equipment as well as the entire dashboard.

64 — In a factory owned by General Motors.

65 — Case 120/78 *Rewe-Zentral* [1979] ECR 649, paragraph 14; Case C-443/10 *Bonnarde* [2011] ECR I-9327, paragraph 27 and case-law cited, and Case C-385/10 *Elenca* [2012] ECR, paragraphs 22 and 23 and case-law cited.

74. Now, it seems to me that the legislation which is the subject-matter of these infringement actions is such as to place at a disadvantage, more specifically, vehicles imported from other Member States after being registered there, whereas they have to benefit from the free movement of goods. Potential buyers residing in Lithuania or Poland, knowing that they will incur high costs for transforming a vehicle equipped with a steering wheel on the right, will, in practice, lose any interest they had in purchasing such vehicles in another Member State in which they are frequently sold.⁶⁶

75. In that regard, I would point out that the provisions relating to the free movement of goods apply to products originating in the Member States and to products coming from third countries that are in free circulation in Member States.⁶⁷ Furthermore, according to settled case-law,⁶⁸ a product becomes a domestic product as soon as it has been imported and placed on the market, and as a result imported used cars and those bought locally constitute similar or competing products.

76. The treatment accorded by the Republic of Lithuania and the Republic of Poland to the registration of right-hand drive vehicles from other Member States is therefore disadvantageous as compared with that accorded to used cars in their national territory, the vast majority of which are equipped with a left-hand drive.

77. It follows, in my view, from all the foregoing considerations that legislation such as that at issue has the effect of impeding the free movement of goods for the purposes of Article 34 TFEU.

3. Whether there is justification under Article 36 TFEU

78. In their defences in the present actions, the Republic of Lithuania and the Republic of Poland argue that, even if the Court were to rule that an obstacle did exist, they should nevertheless not be declared to have acted unlawfully, since the contested measures seek to safeguard both road safety and human health and life. However, in the Commission's view, there is no such justification in the present cases for the obstacles in question.

a) Whether the justification relied on is permissible

79. Article 36 TFEU expressly provides that the 'protection of health and life of humans' is one of the reasons capable of justifying obstacles to the free movement of goods which amount to quantitative restrictions or measures having equivalent effect. The Court has already ruled that that objective ranks foremost among the interests protected by that derogating provision.⁶⁹ It is also settled case-law that, when there are no harmonising rules capable of safeguarding human life and health, the Member States are free to decide on the degree of protection they wish to afford to human life and health and on the way in which that degree of protection may be achieved, although the discretion left to the Member States must be exercised within the limits imposed by the Treaty.⁷⁰

80. Furthermore, the Court has established that road safety is to be included among the overriding requirements relating to the public interest which, although not referred to in Article 36 TFEU, are also capable of justifying restrictions of the intra-Community free movement of goods, there being no comprehensive Community legislation applicable in the field concerned.⁷¹ While it is true, as argued by

66 — See, by analogy, Case C-265/06 *Commission v Portugal* [2008] ECR I-2245, paragraph 33; Case C-286/07 *Commission v Luxembourg* [2008] ECR I-63, paragraphs 32 and 34, and *Bonnarde*, paragraph 30.

67 — In accordance with Article 28(2) TFEU.

68 — See, in particular, Case C-47/88 *Commission v Denmark* [1990] ECR I-4509, paragraph 17.

69 — See, in particular, Case C-170/04 *Rosengren and Others* [2007] ECR I-4071, paragraph 39.

70 — Case C-141/07 *Commission v Germany* [2008] ECR I-6935, paragraph 51; Case C-484/10 *Ascafor and Asidac* [2012] ECR, paragraph 60 and case-law cited, and *Elenca*, paragraph 28.

71 — Case C-55/93 *van Schaik* [1994] ECR I-4837, paragraph 19, Case C-110/05 *Commission v Italy* [2009] ECR I-519, paragraph 60 and case-law cited.

the Republics of Lithuania and Poland, that the Member States may decide upon the level at which they wish to ensure road safety in their territory, there being no fully harmonising provisions at EU level, they must nevertheless take account of the requirements related to the free movement of goods, as the Court has pointed out on many occasions.⁷²

81. In the present case, the Commission does not dispute the serious nature of the risks which the Republics of Lithuania and Poland seek to guard against, for it accepts that the objectives relied on by those States may, in themselves, be legitimate. However, it submits, rightly, that that is not sufficient to fulfil the obligations under EU law.

82. As the Court has ruled, national legislation may indeed derogate from the fundamental principle of the free movement of goods on the ground of protecting human life and health or of road safety, but only in so far as the measures taken, first, are suitable for protecting the legitimate interests relied upon and, secondly, do not adversely affect that principle more than is necessary for that purpose.⁷³ It is therefore necessary to ascertain whether those conditions are met with regard to the measures that are the subject-matter of the present actions.

b) Whether the means used are proportionate

83. It is clear from the settled case-law of the Court that it is for the defendant Member States to show, in accordance with the principle of proportionality, first, that the legislation called into question is appropriate for attaining the desired objectives and, secondly, that it does not go beyond what is necessary for those objectives to be attained.⁷⁴

84. The issue raised with regard to the first of those conditions is whether the measures taken by the Republic of Lithuania and by the Republic of Poland, consisting in making the registration of vehicles that have their steering equipment on the right dependent on the repositioning of that equipment on the left, are indeed such as to safeguard road safety and protect human health and life.

85. I would note that the Commission, having originally called that matter into question, no longer actually disputes the reality of the dangers which the defendant Member States state that they wish to guard against by imposing those specific requirements with regard to such vehicles. In my view, it is undeniable that driving those vehicles in a territory in which traffic moves on the right is more difficult, more perilous even, for the driver has a narrower field of vision than if he were sitting on the left-hand side of the vehicle and therefore closer to the centre line of the road. That presents a problem mainly when carrying out overtaking manoeuvres, and in particular on two-way single carriageway roads, as the Republic of Lithuania and the Republic of Poland point out⁷⁵ and as the Commission appears to accept, though the Commission emphasises that the positioning of the steering equipment is not the only risk factor for accidents.⁷⁶

72 — In particular, Case C-150/11 *Commission v Belgium*, paragraph 50 and case-law cited.

73 — *Gysbrechts and Santurel Inter*, paragraph 51, and *Ascafor and Asidac*, paragraph 58.

74 — See, in particular, Case C-170/07 *Commission v Poland*, paragraph 47 and case-law cited; Case C-110/05 *Commission v Italy*, paragraph 62 and case-law cited, and Case C-150/11 *Commission v Belgium*, paragraphs 54 and 60 and case-law cited.

75 — These governments refer to expert studies according to which the fact that the steering wheel is not on the side nearest to the centre line is a factor which significantly increases the risk of accidents owing to a considerable loss of the visibility required to overtake, both in front of the driver, in terms of spotting vehicles coming towards him in the opposite direction, and behind him, in terms of his perception of the blind spot in which vehicles approach from the rear.

76 — The Commission rightly points out that lack of road safety results from a combination of various factors such as the state of the road infrastructure, driving habits and the overall technical condition of a vehicle.

86. I would clarify that I do not share the Commission's view that it seems paradoxical or even inconsistent, on the part of the Republic of Lithuania and the Republic of Poland, that they are more tolerant towards vehicles of this type that are driven temporarily in their territory.⁷⁷ That tolerance stems expressly from the Lithuanian law on road safety.⁷⁸ With regard to Poland, it is clear from its defence that the contested legislation does not relate to tourists.⁷⁹

87. In that regard, I would point out that the derogations in question result from agreements under international law. Indeed, in accordance with Article 39(1), read in conjunction with Annex 5.1 to the Convention on Road Traffic, signed in Vienna on 8 November 1968,⁸⁰ every motor vehicle in international traffic must satisfy the provisions of that Convention, and the technical requirements in force in its country of registration when it first entered into service. However, Annex 1.8⁸¹ to that Convention provides that 'Contracting Parties may refuse to admit to their territories in international traffic any motor vehicle equipped with passing lamps with asymmetric beams if such beams have not been adapted to suit the direction of traffic in their territories'. Under the provisions of that Convention, which are binding upon the Republic of Lithuania and the Republic of Poland,⁸² those Member States are therefore required to allow the use in their national territories of motor vehicles which have their steering equipment on the right and which were registered abroad, even though they may require a temporary adjustment of their lighting devices, by, for example, using black corrective stickers.

88. At all events, I accept that making registration dependent on the repositioning of the steering equipment in vehicles designed to be driven on the left is a measure which, by its radical nature, is capable of ensuring effective protection of road users in the territory of Member States, like Lithuania and Poland, in which traffic moves on the right, for that measure curbs the risks inherent in driving those vehicles in such conditions.

89. However, the obstacle to the free movement of goods created by a requirement of that nature is, in my view, disproportionate in so far as measures not going so far beyond the scope of ordinary law could have been taken to achieve the same ends.

90. In that regard, the Commission rightly emphasises that the measures at issue apply automatically and generally, regardless, in particular, of whether the vehicle concerned has already been approved and registered in a Member State in which traffic moves on the left or indeed in a Member State in which it moves on the right.⁸³ The contested legislation in fact lays down binding requirements without taking into account the fact that any measures taken in the Member State in which the vehicle has already been registered, also with a view to safeguarding road safety, may be as effective as those laid down by the Member State of importation, in particular if the direction of traffic in the first Member State is the same as that in Lithuania or Poland.

77 — It argues that persons, such as tourists, who occasionally drive a passenger car which has its steering equipment on the right, and are therefore not used to the specific nature of traffic on the right, are a greater threat to road safety than persons who drive such a car on the right-hand side of the road on a permanent basis.

78 — See point 9 of this Opinion.

79 — According to the Commission's application, derogations from the national requirements may also be granted by the Polish Minister for Infrastructure, but they do not relate to passenger cars, which are the subject-matter of the infringement action, as they are restricted to special vehicles in which the positioning of the steering equipment on the right-hand side is necessary in order to ensure the proper performance of the functions for which they are designed (for example, road sweepers) and to vehicles belonging to members of the diplomatic corps.

80 — See United Nations Treaty Series, vol. 1042, p. 17, as well as <http://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20XI/XI-B-19.en.pdf> for the consolidated version incorporating the amendments which entered into force on 3 September 1993 and 28 March 2006, respectively.

81 — Annex relating to the exceptions to the obligation to admit motor vehicles and trailers in international traffic.

82 — The Republic of Lithuania acceded to that Convention on 20 November 1991, while the Republic of Poland signed it on 8 November 1968 and ratified it on 23 August 1984.

83 — See, by analogy, with regard to the requirements imposed by one Member State in relation to vehicles previously registered in other Member States, Case C-54/05 *Commission v Finland* [2007] ECR I-2473, paragraph 42, and Case C-170/07 *Commission v Poland* [2008], paragraph 44 et seq.

91. Furthermore, the Commission argues that there are measures less invasive than those adopted by the Republic of Lithuania and the Republic of Poland that would nonetheless be capable of assisting drivers of vehicles equipped with a steering wheel on the right-hand side to drive without risks in traffic which moves on the right.

92. Proposing various alternative options, it raises, first of all, the possibility of an absolute statutory prohibition of overtaking on two-way single-carriageway roads by that type of vehicle, but I would state at the outset that that proposal seems to me to be irrelevant and even dangerous.⁸⁴ The Commission also suggests making it a requirement for those vehicles to be equipped with devices to correct the driver's field of vision in order to facilitate overtaking manoeuvres.⁸⁵ Despite the fact that the Republic of Lithuania and the Republic of Poland dispute the relevance of that second approach, it should be noted that it is specifically measures of such a nature which have been adopted by most of the Member States.

93. Indeed, according to the elements of comparative law available to me, the rules in force in both of the Member States and forming the subject-matter of the present infringement actions are relatively isolated. The registration of passenger vehicles having their steering equipment on the same side as the direction of traffic, whether new vehicles or vehicles already registered in another Member State, is similarly prohibited only in Latvia⁸⁶ and in Slovakia,⁸⁷ and, to a lesser extent, in Estonia.⁸⁸

94. In contrast, in all the other Member States, either the national legislation contains no prohibition or restriction concerning the registration of such vehicles⁸⁹ or it expressly authorises them, sometimes with a reference to the requirements resulting from EU law.⁹⁰

95. So far as I know, in all those Member States the detailed rules laid down for registrations of that type are restricted, as a general rule, to conditions or adaptations of an essentially technical nature, which are mainly or even exclusively concerned with lighting devices, in order not to dazzle other road users and the better to see pedestrians on the side of the road, or with rear-view mirrors, in order to ensure that the driver has a wider field of vision.⁹¹

96. The more moderate approach adopted in most Member States in fact demonstrates that, in the field covered by the two actions, the protection of road safety may be sufficiently ensured by procedures less restrictive than that of making the registration of a vehicle which has its steering equipment on the right dependent on the repositioning of that equipment on the left. From the point of view of European citizens who wishing to import such a vehicle into Lithuania or Poland, even

84 — The Polish Government states that that prohibition could be dangerous in so far as such vehicles should be able to overtake in certain emergency situations or if slow vehicles, such as agricultural machinery, cause traffic to slow down significantly, creating a long line of traffic.

85 — Such as wide-angle rear-view mirrors, cameras, monitors or other indirect vision systems.

86 — See Article 10(8)(1) of the Law of 1 October 1997 on Road Traffic (*Ceļu satiksmes likums*) and Government Regulation No 1080 of 30 November 2010 on the registration of vehicles (*Transportlīdzekļu reģistrācijas noteikumi*).

87 — See Articles 16c(2) and 17 of Law No 725/2004 on the conditions of use for vehicles in road traffic (*Zákon č. 725/2004 Z. z., o podmienkach prevádzky vozidiel v premávke na pozemných komunikáciách a o zmene a doplnení niektorých zákonov*).

88 — See Articles 63(3) and (6), 73(11), 80(3) and 83(5) of the Law of 17 June 2010 on road traffic (*liiklusseadus*) and points 301 of Annexes 1 and 2 to Regulation No 42 of 13 June 2011 on the technical requirements for a vehicle and its caravan and the requirements relating to equipment (*mootorsõiduki ja selle haagise tehnonõuded ning nõuded varustusele*).

89 — The issue is not governed expressly by the provisions of national law relating to road traffic and road safety or to motor vehicles, in particular, in Bulgaria, Germany, Ireland, Greece, Croatia, Italy, Malta, Austria or Slovenia.

90 — In the Czech Republic, a statement was published, in May 2008, by the Ministry of Transport, providing for a derogation from the principle that steering equipment must be on the left, in order to comply with requirements linked, in particular, to the free movement of goods. Similarly, in Finland, since the entry into force of Law on vehicles No 1090/2002 on 1 January 2003 the rule is no longer that the steering equipment may be on the right-hand side only in exhaustively listed cases (for example, a postal van), but that the vehicle must comply with the technical requirements arising from the relevant directives.

91 — That is the case, in particular, in Belgium, the Czech Republic, Denmark, Spain, France, Cyprus, Luxembourg, the Netherlands, Romania, Sweden and the United Kingdom.

though the Republic of Lithuania claims — without adducing formal evidence — that the Commission exaggerated the financial cost involved in effecting that positioning, it is clearly less restrictive and less onerous simply to have to adjust dipped-beam headlamps or to invest in an additional rear-view mirror.

97. It is true, as argued by the Republic of Poland, that when assessing whether the principle of proportionality in road safety matters has been observed, account must be taken of the fact that every Member State may determine the degree of road safety protection and the manner in which it intends to ensure it. Because that degree of protection is likely to vary from one Member State to another, it is clear from the discretion thus conferred on the Member States that the mere fact that another Member State imposes rules less strict than those applicable in the defendant Member State does not necessarily mean that the latter are disproportionate and therefore incompatible with the rules on the free movement of goods.⁹²

98. Nevertheless, in the light of the case-law of the Court,⁹³ it seems to me that the elements of comparative law set out above may, in the present case, amount to a serious indication of the excessive nature of the legislation forming the subject-matter of the infringement actions, for those elements reveal that other, less restrictive, measures are implemented with no particular difficulty by a large majority of the EU Member States.

99. I consider that alternative measures less restrictive of the free movement of goods could also have been taken by the two defendant States, given that the latter have failed to demonstrate, although the burden of proof falls on them,⁹⁴ that the possible risks associated with the vehicles concerned in their territory differ considerably from those involved in the territory of the other Member States.

100. The statistics submitted by the two defendant States are not conclusive in that regard, for in so far as they may be the result of other road safety factors,⁹⁵ it is not possible to establish from those statistics that the rate of accidents caused in their national territory by vehicles which have their steering equipment on the right is significantly higher than the rate of accidents of the same type occurring in the territory of Member States in which the legislation is less demanding.⁹⁶

101. On the same ground of the inadequacy of the evidence adduced, it is necessary to disregard the Republic of Poland's argument that it would have to address such a massive influx of such vehicles that this would pose a far greater danger in its national territory and make it necessary to adopt stricter requirements, having far more onerous and therefore deterrent consequences, than in most Member States.

92 — Case C-110/05 *Commission v Italy*, paragraph 65 and case-law cited.

93 — See, by analogy, Case C-333/08 *Commission v France* [2010] ECR I-757, paragraph 105, and Case C-421/09 *Humanplasma* [2010] ECR-I-12869, paragraph 41, in which the Court held, in relation to public health, that the compared content of the legislation of several other Member States, even of all or almost all the other Member States, is a fact which may be relevant when assessing the objective justification put forward in relation to the legislation of one Member State, and, particularly, with regard to the assessment of its proportionality.

94 — In addition to the case-law concerning the principle of proportionality, in footnote 74 of this Opinion, see the more general case-law on the apportionment of the burden of proof in infringement proceedings and in particular Case C-416/07 *Commission v Greece* [2009] ECR I-7883, paragraphs 32 and 33, and Case C-301/10 *Commission v United Kingdom* [2012] ECR, paragraphs 70 to 72 and case-law cited.

95 — The Commission points out that the higher percentage of accidents in Lithuania and Poland compared to the other Member States could be explained by numerous reasons such as the state of the road infrastructure or the high incidence of drink-driving in those countries.

96 — The statistics provided by the Polish Government relate to the number of accidents occurring in the national territory or to the number of second-hand vehicles imported from other Member States, but make no significant distinction in terms of road safety between vehicles which have their steering equipment on the right and those which have that equipment on the left. The Lithuanian Government argues that, according to the data from Eurostat, the number of persons killed on the roads in Lithuania and Poland is two to three times higher than in the other Member States, but this does not establish that fatal accidents caused by right-hand drive vehicles are significantly more numerous in those two States.

102. It is true that the Court has already accepted that certain specific features of the Member State concerned⁹⁷ should be taken into account when assessing the proportionality of the restriction at issue. However, in the present case, it has not been demonstrated that the adoption of the contested legislation was prompted by the specific features of the two defendant States relating to the fact that a large number of their nationals, having immigrated to Ireland or the United Kingdom, have a strong interest in importing passenger cars from the latter States when they return to settle permanently in their country of origin.

103. Thus, it is apparent that the means used by the Republic of Lithuania and the Republic of Poland, consisting in making the registration of such vehicles dependent on the repositioning of the steering equipment, are disproportionate to the objectives of protecting road safety and safeguarding human health and life relied upon.

104. In view of those factors, and in particular the fact that the national measures at issue are incompatible with the requirement of proportionality imposed by EU law, I consider that those two Member States have failed to fulfil their obligations under Articles 34 and 36 TFEU and that those measures may not be maintained.

D – Costs

105. Under Article 138(1) 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 the Republic of Lithuania and the Republic of Poland, respectively, to be ordered to pay the costs, those applications must be granted if, as I propose, the present infringement actions are upheld and those Member States are unsuccessful in their defences.

106. In accordance with Article 140(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

IV – Conclusion

107. In the light of the foregoing considerations, I propose that the Court should rule as follows:

- (1) The Republic of Poland, in Case C-639/11, and the Republic of Lithuania, in Case C-61/12, have failed to fulfil their obligations under Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers and Article 4(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, and under Articles 34 and 36 TFEU, by maintaining in force national provisions making the registration, in their national territory, of passenger cars having their steering equipment on the right-hand side, whether they are new or have previously been registered in another Member State, dependent on the repositioning of the steering equipment of those cars on the left-hand side.
- (2) The Republic of Poland is ordered to pay the costs in Case C-639/11 and the Republic of Lithuania is ordered to pay the costs in Case C-61/12.

⁹⁷ — For example, in relation to public health, the eating habits of the national population (Case 53/80 *Koninklijke Kaasfabriek Eysen* [1981] ECR 409, paragraphs 13 and 14).

- (3) The Republic of Lithuania is to bear the costs which it incurred in its intervention in Case C-639/11, while the Republic of Estonia and the Republic of Poland are to bear the costs they have incurred in their intervention in Case C-61/12.