JUDGMENT OF THE COURT (Fifth Chamber)

19 September 2002 *

In Case C-101/00,

REFERENCE to the Court under Article 234 EC by the Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings pending before that court brought by

Tulliasiamies,

Antti Siilin,

on the interpretation of the first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC) and of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), in the version of Council

* Language of the case: Finnish.

Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47),

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, S. von Bahr, A. La Pergola, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Siilin, by P. Snell, oikeustieteen kandidaatti,

— the Finnish Government, by T. Pynnä and E. Bygglin, acting as Agents,

— the Commission of the European Communities, by E. Traversa and I. Koskinen, acting as Agents,

having regard to the Report for the Hearing, after hearing the oral observations of Mr Siilin, the Finnish Government and the Commission at the hearing on 12 September 2001,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

Judgment

1 By order of 15 March 2000, received at the Court Registry on 17 March 2000, the Korkein hallinto-oikeus (Supreme Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC six questions on the interpretation of the first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC) and of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), in the version of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47) ('the Sixth Directive').

2 Those questions were raised in two appeals to the Korkein hallinto-oikeus, one by Mr Siilin and the other by the Tulliasiamies (Customs Agent), against a decision of the Uudenmaan lääninoikeus (Uusimaa Provincial Administrative Court) in proceedings between Mr Siilin and the Finnish customs authorities concerning the

tax levied on the import into the Republic of Finland of a used car which he had acquired in another Member State.

The national legal background

3 The relevant provisions of national law are in the Autoverolaki (Law on car tax, 1482/1994) of 29 December 1994, in the version applicable in 1998, and the Arvonlisäverolaki (Law on value added tax, 1501/1993), as amended by laws 1483/1994, 1486/1994 and 1767/1995.

4 Paragraph 1 of the Autoverolaki provides that car tax must be paid before the registration or bringing into service of private cars and other classes of vehicles. The provisions of the Tieliikennelaki (Road Traffic Law, 267/1981) lay down the criteria for classifying motor vehicles in the various classes.

5 Under Paragraph 6(1) of the Autoverolaki:

'Car tax shall be payable on the amount of the car's taxable value less FIM 4 600. The amount of tax shall however always at least be 50% of the car's taxable value.'

6 Paragraph 7 of the Autoverolaki provides:

'On an imported used vehicle, tax shall be charged on an equivalent new vehicle, reduced however by 0.5% thereof for each completed calendar month calculated from the date on which the vehicle has been registered or in use for six months to the date of the tax declaration. If the date of first registration of the vehicle or the date of first bringing into use cannot be reliably stated, the period of use shall be calculated from the end of the year of manufacture. The tax shall be reduced only for the first 150 months of use.

If an equivalent new vehicle cannot be identified, the tax shall be determined on the basis of the tax on the new vehicle most nearly equivalent as regards technical and other characteristics.

...

The provisions of this paragraph shall not apply to vehicles if... 25 years or more have passed from the end of the year of manufacture.'

7 Paragraph 10 of the Autoverolaki states that an imported vehicle is to be regarded as a used vehicle if, according to reliable indications, it has been driven for more than 10 000 km and if it has been registered abroad for longer than six months.

8 Paragraph 11 of the Autoverolaki provides:

'The basis of the taxable value of an imported vehicle shall be its acquisition value to the taxpayer less the amounts mentioned in Paragraph 16.

The acquisition value of an imported vehicle shall be:

1. in accordance with the Customs Code of the European Community (Council Regulation (EEC) No 2913/92 of 12 October 1992 [establishing the Community Customs Code, OJ 1992 L 302, p. 1, "the Customs Code"]), for a vehicle imported as other than Community goods, the customs value within the meaning of the Customs Code and Commission Regulation (EEC) No 2454/93 of 2 July 1993 [laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ 1993 L 253, p. 1, "the implementing regulation"]; and

2. the value of a vehicle imported as Community goods, which shall be determined in accordance with the provisions of point 1 as far as applicable.

All costs directly or indirectly incurred by the taxpayer before tax in respect of the vehicle in bringing it to Finland or to the taxpayer's first place of storage in Finland, and also customs duty if payable in respect of the vehicle, shall be included in the taxable value.

The taxable value of a vehicle manufactured in Finland, if the manufacturer is a taxpayer, shall be the price of the vehicle at the place of manufacture defined on the basis of the costs of manufacture of the vehicle.

...'

9 It is apparent from the order for reference that the system of taxation laid down by the Autoverolaki, as it applied in March 1998 and hence to the facts at issue in the main proceedings, was the subject of a letter of formal notice from the Commission. The Finnish Government replied on 29 June 1998 that it intended to draw up by autumn 1998 the necessary proposals for amending the provisions of that law which had been criticised by the Commission.

10 The Law amending the Autoverolaki (1160/1998) entered into force on 15 January 1999, and amended *inter alia* the percentage of the monthly tax reduction on a used vehicle. The percentage of the reduction, which had previously been fixed at 0.5% of the tax on an equivalent or nearly equivalent new vehicle, thus became 0.6% for the first 100 months of use, 0.9% for the next 100 months and 0.4% after that, those two percentages being calculated on the residual value of the tax at the end of the preceding month. However, the amending law does not apply to the facts at issue in the main proceedings, and is thus not material to the present proceedings.

11 Paragraph 5 of the Autoverolaki provides that the person liable to pay car tax is also to be liable to pay value added tax on the car tax, the amount of which — corresponding to a percentage of the car tax — is laid down by the Arvonlisäverolaki.

12 Under Paragraph 102(1)(4) of the Arvonlisäverolaki:

'The taxpayer may deduct, in respect of a taxable business activity:

...

4. value added tax paid on car tax under the Autoverolaki'.

13 Paragraph 102(1)(4) of the Arvonlisäverolaki applied for one year only. It was repealed by Law 1767/1995 of 29 December 1995, which entered into force on 1 January 1996.

14 Paragraph 102b of the Arvonlisäverolaki provides:

'The right to deduct value added tax levied on car tax shall be conditional on a debit decision which shows the amount of tax payable.'

15 It is apparent from Paragraph 141(5) of the Arvonlisäverolaki that the deductions of tax referred to in Paragraph 102(1)(4) of that law are allocated to the month during which the tax is paid.

The main proceedings and the questions referred for a preliminary ruling

16 On 2 March 1998 Mr Siilin bought from a garage in Germany, at a price of DEM 7 350, a used Mercedes Benz car (model 190 2.0 diesel). The car had been brought into use on 13 November 1986 and had done 180 000 km. It had an automatic transmission and a sunroof.

17 On 20 April 1998 Mr Siilin imported the car into Finland and declared it to the Helsinki district customs board ('the customs office') for the purposes of car tax.

18 By decision of 20 April 1998 ('the assessment notice'), the customs office determined the amount of car tax payable by Mr Siilin at FIM 46 288 and the amount of value added tax on that tax (at the rate of 22%) at FIM 10 183, making a total of FIM 56 471.

19 That amount was calculated by the customs office on the basis of a comparison between Mr Siilin's used car and a car of the same make, of a different model (C 220 D) but with technical characteristics very similar to those of the model of Mr Siilin's car. The list price for the reference car as a new car in Germany was

DEM 41 100 excluding tax. The customs office added to that price DEM 2 200 for the automatic transmission and DEM 1 680 for the sunroof. The taxable value was thus fixed at DEM 44 980, or FIM 136 851 after conversion. Pursuant to the Autoverolaki, a flat-rate reduction of FIM 4 600 and an amount of FIM 85 963, corresponding to a depreciation coefficient of 65%, were deducted from that amount.

20 On 21 April 1998 Mr Siilin paid the customs office the car tax and the value added tax thereon. He then brought proceedings against the assessment notice in the Uudenmaan lääninoikeus, which had jurisdiction.

21 He submitted, first, that the amount of the tax fixed for the car he had imported was greater than the amount of the residual tax incorporated in the value of a car already on the Finnish market, registered new in Finland and similar in age, characteristics and condition. He claimed that the tax levied was therefore discriminatory and contrary to Article 95 of the Treaty. Citing the judgments in Case C-345/93 *Nunes Tadeu* [1995] ECR I-479 and Case C-375/95 *Commission* v *Greece* [1997] ECR I-5981, he argued that the depreciation of a car cannot be linear and that its value falls by more than 5% a year.

22 He submitted, second, that the charging of value added tax on the car tax was contrary to the Sixth Directive, so that that tax should not be applied.

23 He therefore sought, first, annulment of the assessment notice as regards the value added tax on the car tax. He sought, second, for the case to be remitted to the customs office as regards the car tax, in order for that tax to be fixed in such a

way as not to exceed the amount of residual tax incorporated in the value of a car already on the Finnish market, registered new in Finland and similar in age, characteristics and condition.

24 The customs office submitted that Mr Siilin's action should be dismissed, arguing that the car tax and the value added tax on that tax had been determined in accordance with Finnish law.

25 In its decision of 3 June 1999, the Uudenmaan lääninoikeus found that it was in accordance with Article 7 of the Autoverolaki to determine the amount of tax on Mr Siilin's car by referring to the tax on a new car with similar technical and other characteristics and making a reduction as provided for by that law.

26 Noting, however, that the car in question was a used car imported into the Republic of Finland from another Member State, the Uudenmaan lääninoikeus pointed out that in *Nunes Tadeu* the Court had ruled that it was contrary to Article 95 of the Treaty for a Member State to charge on used cars from other Member States a tax which, being calculated without taking the vehicle's actual depreciation into account, exceeded the residual tax incorporated in the value of similar used cars already registered in the national territory.

27 The Uudenmaan lääninoikeus held that in this case the car tax had been calculated without the customs office examining the actual depreciation of Mr Siilin's car or checking whether the amount of car tax fixed for that vehicle exceeded the residual tax incorporated in the value of a similar used car of the

same make and year registered in Finland. It therefore set aside the assessment notice as regards the car tax and remitted the case to the customs office to determine the amount of that tax.

28 As regards the value added tax on the car tax, the Uudenmaan lääninoikeus held that it was not contrary to the Sixth Directive to levy it, since it was not a tax which by its essential properties constituted 'value added tax' within the meaning of that directive or a turnover tax prohibited by Article 33 of the directive.

29 However, having set aside the part of the assessment notice which concerned the car tax because of its excessive amount, the Uudenmaan lääninoikeus considered that the value added tax on that tax might also have been set too high. It therefore set aside the assessment notice and remitted the case to the customs office with respect to the value added tax as well.

30 Two applications were made to the Korkein hallinto-oikeus for leave to appeal against the decision of the Uudenmaan lääninoikeus.

31 One application, by the Tulliasiamies, sought for the decision of the Uudenmaan lääninoikeus to be set aside with respect both to the car tax and to the value added tax thereon. The other application, by Mr Siilin, related only to the part of the decision concerning the value added tax on the car tax. He sought for the

decision to be set aside in that respect and a declaration that such value added tax should not be charged in relation to the car he had imported.

32 In those circumstances, the Korkein hallinto-oikeus decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'*Car tax*

1. Under Paragraph 11 of the Autoverolaki, in determining car tax on a vehicle imported as Community goods, the basis of the taxable value is the transaction value of the vehicle for the taxable person. The transaction value is the customs value within the meaning of the Customs Code and implementing regulation so far as applicable.

   May [Article 95 of the Treaty] be interpreted as meaning that such national legislation relating to the determination of the taxable value for car tax purposes is not discriminatory, taking into account in particular that the taxable value of a vehicle will be a different amount depending on the marketing stage at which the importer of the vehicle operates, that is, whether he operates as a wholesaler, a retailer or a consumer?

2. Under Paragraph 7(1) of the Autoverolaki, the basis of the tax levied on an imported used car is the tax on an equivalent new vehicle, with the reductions as laid down in that provision. Under the old law 1482/1994, the tax charged on an imported used car was the tax on an equivalent new car reduced by 0.5% for every complete calendar month calculated from the time when the vehicle had been registered or had been in use for six months, and the tax was reduced for only the first 150 months of use. Under the current law 1160/1998, the tax charged on an imported used car is the tax on an equivalent new car reduced by 0.6% per month of use for the first 100 months of use and then for the next 100 months by 0.9% per month of use of the residual value calculated at the end of each preceding month, and for subsequent months of use by 0.4% of the residual value calculated at the end of each preceding month. Months of use are taken as complete calendar months from when the vehicle was first put into use or registered.

May [Article 95 of the Treaty] be interpreted as meaning that such national tax legislation is not discriminatory, taking into account in particular that

— the starting point is the tax on an equivalent new car,

— under the previous law the tax was reduced only after a period of six months, and

— under both the previous and current law the tax is reduced linearly as described above?

3. In addition to using the bases of calculation prescribed in the national tax legislation, is it always necessary to establish a vehicle's individual characteristics to ensure that the levying of car tax does not lead, in the individual case, to discrimination contrary to [Article 95 of the Treaty]?

Value added tax payable on car tax

4. May the [Sixth Directive] be interpreted as meaning that the tax called value added tax payable on car tax under Paragraph 5(1) of the Autoverolaki and Paragraph 1(5) of the Arvonlisäverolaki is value added tax within the meaning of the [Sixth Directive], taking into account that under national legislation the tax is levied exclusively on the basis of car tax?

5. If the answer to Question 4 is in the negative, may such a tax nevertheless be regarded as a tax or charge the levying of which is permitted under Article 33 of the [Sixth Directive]?

6. If such national tax provisions are not regarded as contrary to the [Sixth Directive], may [Article 95 of the Treaty] be interpreted as meaning that those tax provisions are not discriminatory within the meaning of that article?'

The questions relating to car tax

33 The first three questions seek to ascertain whether the first paragraph of Article 95 of the Treaty allows a Member State to apply to used vehicles imported from another Member State a tax having the characteristics of the car tax at issue in the main proceedings.

Question 1

34 By its first question the national court asks essentially whether the first paragraph of Article 95 of the Treaty allows a Member State to apply to used vehicles imported from another Member State a system of taxation under which the taxable value, determined by reference to the customs value as defined by the Customs Code and the implementing regulation, is defined differently depending on the marketing stage at which the importer of the vehicle operates.

Observations submitted to the Court

35 Mr Siilin claims that new cars are imported into Finland essentially by official importers, inasmuch as, for the same new car, the price offered to consumers by an official importer is substantially lower than the price paid by an individual who imports the vehicle directly into Finland. The latter price includes the margins added in the distribution channels in the seller's Member State, which represent on average 30% of the purchase price.

36 He further claims that the residual tax incorporated in the value of a used car already on the Finnish market is lower than the tax on a used car imported by a private individual, as a result of taking into account the marketing stage at which the importer of the vehicle operates.

37 He thus claims that the tax on a new car imported by an official importer of the make is calculated on the basis of the actual price at which the importer has bought it and is included in the price at which the new car is sold to the final consumer, of which it accounts for 26% to 30%. It is therefore not the sale price of the new car to the consumer, which includes the distributor's margin (generally 25% of the sale price, according to Mr Siilin) and other ancillary sums, which is taken into account to calculate the Finnish tax on a new car imported in that way.

38 By contrast, according to Mr Siilin, to calculate the tax payable on the import of a used car by an individual, the taxable value is determined by reference to the selling price to the consumer of a similar new car. The difference between that method of calculation and the method described in the preceding paragraph for the importation of a new car by an official importer has the effect that the taxable value of a used car is overestimated in relation to that of a new car and that the tax on imported used cars represents 40% to 70% of the price paid by a consumer for the purchase in Finland of a similar used car.

39 According to Mr Siilin, the determination by the Finnish authorities of the taxable value of an imported used car by reference to its customs value, taking into consideration the marketing stage at which the importer operates, has the result in practice that the tax on such a car amounts to at least double,

proportionally, the tax levied on a similar car imported new by the official importer of the make in Finland and subsequently sold on the Finnish market as a used car.

40 The Finnish Government submits, on the other hand, that Article 95 of the Treaty does not preclude taxation such as the car tax levied in Finland, according to objective criteria, on both new and used vehicles (Case 319/81 *Commission* v *Italy* [1983] ECR 601, Case 106/84 *Commission* v *Denmark* [1986] ECR 833, and Case 196/85 *Commission* v *France* [1987] ECR 1597).

41 In particular, the car tax may not be regarded as contrary to Article 95 of the Treaty because the marketing stage is taken into account in determining the taxable value of the vehicles. The Finnish Government submits on this point that both the taxable value of a new car and that of a used car are determined by reference to the Community customs legislation. The taxable value of a new car is determined as a rule according to the method set out in Article 29 of the Customs Code, namely by using the actual transaction value of the goods. According to the Government, the use of that value can lead, in the case of two similar new cars, to different taxable values depending on the price paid and the distribution stage. To determine the taxable value of a used car, the most commonly used procedure of those provided for in Article 31 of the Customs Code is, where the person liable for the car tax is a consumer, that which takes as a reference the lowest price, excluding tax, to the consumer of a similar new car, either in the country of purchase of the used car or on the Finnish market.

42 The Commission submits that Article 95 of the Treaty does not preclude the application by a Member State of a system of taxation under which the amount of the car tax on a used car imported from another Member State is determined on

the basis of the tax applicable, at the time of import of the used car, to a reference new car with a reduction calculated according to the age of the vehicle following rules laid down by law, provided that two conditions are satisfied.

43 First, the reference car must be identical in all respects to the imported used car, that is, it must be of the same model and type as the imported car and must be similar in its other characteristics. If such a car is no longer on sale on the date of taxation of the imported new car, the reference car must be a car of the same type and model put on sale earlier. In that case the value of the reference car might be adjusted to take account of inflation.

44 Second, the car tax thus determined must not exceed the residual tax incorporated in the value of similar used cars already registered in the Member State of import.

45 The Commission argues, on the other hand, that Article 95 of the Treaty precludes the application by a Member State of a system of taxation under which the various marketing stages are taken into account, if that has the consequence that the amount of tax on an imported used car differs from the average amount of the residual tax incorporated in the value of used cars already registered in the national territory.

46 It regards the judgment in Case C-68/96 *Grundig Italiana* [1998] ECR I-3775 as of relevance here, even though that case did not relate to taxation in the automobile sector, as it concerned an Italian tax on audiovisual and photo-optical products. In paragraph 16 of that judgment the Court ruled that the

prohibition of discrimination laid down in Article 95 of the Treaty is infringed where a tax is assessed on the value of a product if, in the case of the imported product alone, assessment criteria are taken into consideration which are likely to increase its value in relation to the corresponding domestic product.

47 The Commission contends that taking into account the marketing stage at which the importer operates in order to determine the transaction value and hence the taxable value of an imported used car concerns an assessment factor referred to in *Grundig Italiana* and thus infringes Article 95 of the Treaty, since it results in an unjustified increase in the value of the vehicle, which is incompatible with the principle of non-discrimination.

48 The Commission also put forward at the hearing an example with figures to show the discriminatory effect of the car tax for imported used vehicles. After paying the equivalent of EUR 3 758 in Germany to buy his used car, Mr Siilin had to pay in Finland the equivalent of EUR 7 785.08 as car tax and EUR 1 712.64 as value added tax on the car tax. His car thus cost him, in total, EUR 13 255.74. By contrast, the average price on the Finnish market of a used car similar to Mr Siilin's but registered when new in Finland was, at the material time, EUR 9 500, that being confirmed by the certificate of the value of Mr Siilin's car issued by Auto-Data Oy on 21 April 1998. Referring to the document from the Motor Vehicle Sector Information Centre, entitled 'Composition of the price of a private car', produced by Mr Siilin in annex to his reply to the Court's questions, the Commission states that, on 1 January 1997, car tax represented 29.28% of the retail price of a car. It concludes that the amount of residual tax incorporated into the value of a used car comparable to Mr Siilin's, EUR 9 500, amounted to EUR 2 850 at most. It therefore says that Mr Siilin had to pay more than EUR 13 000 for the used car he imported, whereas he would have paid only EUR 9 500 for a similar car bought on the Finnish market.

Findings of the Court

49 The Court observes, at the outset, that the Autoverolaki refers to the Customs Code and implementing regulation in order to determine the taxable value of a used car at the various marketing stages. Consequently, as the Advocate General says in point 60 of her Opinion, the difference in taxable value according to marketing stages derives from the application of the Community legislation on customs value.

50 The Court has previously held that the mere reference to the Customs Code for determining taxable value is not in itself contrary to the Treaty (see Case C-228/98 *Douanias* [2000] ECR I-577, paragraph 45).

51 The Court's case-law relating to the taxation of imported used vehicles should also be recalled.

52 Article 95 of the Treaty seeks to guarantee the complete neutrality of internal charges as regards competition between products already on the domestic market and imported products (see, to that effect, Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, paragraph 9, and *Nunes Tadeu*, paragraph 18).

53 According to settled case-law, the first paragraph of Article 95 of the Treaty is infringed where the tax charged on the imported product and that charged on the similar domestic product are calculated in a different manner on the basis of

different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product (*Commission* v *Greece*, paragraphs 20 and 29, Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 34, and Case C-393/98 *Gomes Valente* [2001] ECR I-1327, paragraph 21).

54 In particular, it is contrary to the first paragraph of Article 95 of the Treaty to levy a tax on imported used vehicles based on a value which is higher than the real value of the vehicle with the result that imported used vehicles are taxed more heavily than similar used vehicles which are on sale on the domestic market (see, to that effect, *Commission* v *Denmark*, paragraph 22). In taxing used vehicles, their actual depreciation must therefore be taken into account.

55 Thus the Court has held that the charging by a Member State of a tax on used cars from another Member State is contrary to the first paragraph of Article 95 of the Treaty where the amount of the tax, being calculated without taking the vehicle's actual depreciation into account, exceeds the residual tax incorporated in the value of similar used vehicles already registered in the national territory (see *Nunes Tadeu*, paragraph 20, and *Gomes Valente*, paragraph 23).

56 Moreover, in order to determine whether products are similar within the terms of the prohibition laid down in the first paragraph of Article 95 of the Treaty, it is necessary to consider whether they have similar characteristics and meet the same needs from the point of view of consumers (see Case C-265/99 *Commission* v *France* [2001] ECR I-2305, paragraph 42 and the case-law cited).

57 A system of taxation of vehicles such as that at issue in the main proceedings is characterised by the taking into account of different marketing stages in so far as, in the case of a used car already registered in the national territory, car tax may

have been paid on it when new on the basis of the purchase value of the new car to the official importer, excluding his profit margin and that of any dealers or retailers, whereas the car tax payable for used cars imported by private individuals is calculated on the basis of the purchase price, to the consumer, of a similar new car, which is as a rule higher than that paid by the official importer.

58 Examining whether such a system of taxation is compatible with the first paragraph of Article 95 of the Treaty involves verifying that the amount of tax charged on imported used cars does not exceed the residual tax incorporated in the value of a similar used car already registered in the national territory. That presupposes that the taxable value, defined in both cases by reference to the value of a new vehicle, is assessed in the same way for both terms of the comparison, without taking into account the different marketing stages.

59 As that is not necessarily the case in the system of taxation at issue in the main proceedings, it cannot be ruled out — as is confirmed by the calculations submitted to the Court by the Commission and not challenged by the Finnish Government — that the tax levied on the used car imported by a private individual, such as Mr Siilin, calculated on the basis of the sale price to the consumer of a similar new vehicle, may exceed the residual tax incorporated in the value of a similar used car already registered in the national territory. That would be the case, for instance, if the latter vehicle had been taxed when new, taking into consideration a marketing stage where its value was lower.

60 A system of taxation such as that at issue in the main proceedings does not therefore exclude altogether the possibility of imported used cars being subjected, in certain cases, to tax in an amount exceeding the residual tax incorporated in the value of a similar used vehicle already registered in the national territory.

61 Consequently, the answer to the first question must be that the first paragraph of Article 95 of the Treaty allows a Member State to apply to used vehicles imported from another Member State a system of taxation under which the taxable value is determined by reference to the customs value as defined by the Customs Code and implementing regulation, but precludes the taxable value from varying according to the marketing stage where this may result, at least in certain cases, in the amount of the tax on an imported used car exceeding the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.

Question 2

62 By its second question, the national court essentially seeks to know whether the first paragraph of Article 95 of the Treaty precludes a Member State from applying to used cars imported from another Member State a system of taxation under which the tax on those vehicles

— is equal, during the first six months from the registration or bringing into use of the vehicle, to the tax charged on a similar new vehicle, and

— is equal, from the 7th to the 150th month of use of the vehicle, to the tax on a similar new vehicle with a linear reduction by a percentage of 0.5% per full calendar month.

Observations submitted to the Court

63 Mr Siilin, having argued that a system of taxation of imported used vehicles which takes into consideration the marketing stage at which the importer operates is contrary to Article 95 of the Treaty, contends that the monthly reductions provided for in Paragraph 7 of the Autoverolaki are only of marginal importance in assessing the residual proportion of tax incorporated in the value of a similar used car already registered in the national territory. They do not make it possible to avoid discrimination, since the new vehicle used as a reference for calculating the tax on the imported used car and the equivalent new vehicle imported by the official importer have different taxable values from the outset.

64 After noting that the Court has already ruled that the reduction of such a tax cannot be linear (*Commission* v *Greece*, paragraph 22), Mr Siilin concludes that the reductions laid down in Paragraph 7 of the Autoverolaki are contrary to Article 95 of the Treaty.

65 Relying on *Nunes Tadeu*, he submits that the amount of tax on an imported used car must be calculated on the basis of the tax paid on first registration of a similar car, and that it must be reduced in the same proportions as the reduction in the actual value of the used car.

66 Mr Siilin submits, consequently, that the car tax has discriminatory effects for imported used cars and is therefore contrary to Article 95 of the Treaty.

67 The Finnish Government contends that, in the context of assessing the compatibility of the car tax with Article 95 of the Treaty, it is not important that the tax on used cars is determined by reference to the tax on a similar new car. The essential point, according to the Court's case-law, is that the reductions applied according to the age of the vehicle correspond to its real depreciation.

68 The Finnish Government submits that in practice the real depreciation of vehicles is virtually linear, so that no argument based on Community law can call into question the reductions laid down in Paragraph 7 of the Autoverolaki for calculating the value of imported used vehicles.

69 The Commission submits that Article 95 of the Treaty precludes the application by a Member State of a system of taxation under which

— the reduction in the tax on the reference vehicle is determined linearly and the actual depreciation of the used car is not taken into account; or

— the first six months from the registration or bringing into use are left out of the determination of the depreciation of the used car, and its actual depreciation is not taken into account; or

— the particular features of the vehicle are not taken into account in the taxation, if the result is that the amount of tax applied to an imported used car is greater than the residual tax incorporated in the value of a similar used car already registered in the Member State concerned.

70 Thus, according to the Commission, the failure to take into account the depreciation of the vehicle during the first six months from its registration or bringing into use does not correspond to reality. Similarly, a system of taxation under which, on the expiry of those first six months, the (theoretical) tax on the reference vehicle is reduced in linear fashion is contrary to Article 95 of the Treaty, since it does not permit the actual depreciation of the car to be taken into account.

71 The Commission acknowledges that it is impossible to determine by a universal formula the actual depreciation of a vehicle, which depends on a number of factors which may vary by country or by the type or model of car. Since Mr Siilin's car was imported into the Republic of Finland in 1998, it is necessary, in order to determine the actual depreciation of the reference vehicle, to consider the situation observed at that time in that Member State.

72 The Commission observes in this respect that the Finnish Government has drawn attention to studies carried out in 1998 to assess the average monthly depreciation of some 30 models of car on the Finnish market. In June 1998 the Finnish Government stated to the Finnish Parliament that, on the basis of those studies, the Autoverolaki was to be amended to make the system of reducing the tax according to the vehicles' age correspond more closely to the depreciation

observed in the Finnish market. The Commission is therefore surprised that the Finnish Government should intervene in the present case to defend a tax assessment of April 1998 and maintain that the application of the system of tax reductions in force at that time is compatible with the requirements of Article 95 of the Treaty.

Findings of the Court

73 To answer the second question, it must be examined, first, whether the first paragraph of Article 95 of the Treaty allows national legislation to take the value of a new vehicle as the basis for determining the taxable value of an imported used vehicle.

74 It should be noted that it is settled case-law that the vehicle used as a reference for calculating the tax on an imported used car must be a similar vehicle.

75 Products such as cars are similar for the purposes of the first paragraph of Article 95 of the Treaty if their characteristics and the needs which they serve place them in a competitive relationship, with the degree of competition between two models depending on the extent to which they meet various requirements regarding price, size, comfort, performance, fuel consumption, durability, reliability and other matters (*Commission* v *France*, paragraph 43).

76 As the Advocate General observes in point 71 of her Opinion, the reference vehicle must be the one whose characteristics are closest to those of the imported vehicle, which implies that account must be taken of the model, type and other characteristics such as drive and equipment.

77 Second, it must be examined whether the first paragraph of Article 95 of the Treaty allows national legislation concerning the taxation of imported used cars to provide for a reduction of tax which is linear and does not begin until the expiry of the first six months from the registration or bringing into use of the car.

78 It should be noted that, in paragraph 22 of *Commission* v *Greece*, the Court observed that the annual depreciation in the value of cars is in general considerably more than 5%, that that depreciation is not linear, especially in the first years when it is much more marked than subsequently, and that vehicles continue to depreciate more than four years after being put into circulation. It should be added that a vehicle starts to depreciate as soon as it is bought or brought into use.

79 In those circumstances, a system of taxation under which the tax on an imported used car corresponds to the tax on a similar new car, reduced by 0.5% a month from the expiry of six months from the registration or bringing into use of the car, is not compatible with the requirements of the first paragraph of Article 95 of the Treaty, since it does not take into consideration the actual depreciation of the used car.

80 The answer to Question 2 must therefore be that the first paragraph of Article 95 of the Treaty precludes a Member State from applying to used cars imported from another Member State a system of taxation under which the tax on those vehicles

— is equal, during the first six months from the registration or bringing into use of the vehicle, to the tax charged on a similar new vehicle, and

— is equal, from the 7th to the 150th month of use of the vehicle, to the tax on a similar new vehicle, with a linear reduction by a percentage of 0.5% per full calendar month,

since such a system of taxation does not take the actual depreciation of the vehicle into account and does not provide a guarantee that the amount of tax it determines will in no case exceed the residual tax incorporated in the value of a similar used car already registered in the national territory.

Question 3

81 By its third question, the national court is essentially asking whether, if a Member State applies to used cars imported from other Member States a system of taxation under which the actual depreciation of vehicles is defined in a general and abstract way on the basis of criteria laid down by national law, the first

paragraph of Article 95 of the Treaty requires the individual characteristics of each vehicle to be examined in order to ensure that the amount of tax applied never exceeds the residual tax incorporated in the value of a similar used car already registered in the national territory.

Observations submitted to the Court

82 According to the Finnish Government, it is not necessary, in order to take account of vehicles' depreciation, to provide for individual assessments of the value of each of them. A method of calculation defined by statute suffices, if it is based on objective criteria and if it may be regarded as not obstructing the working of the internal market. The Government thus submits that it is compatible with the first paragraph of Article 95 of the Treaty to calculate the reduction of the car tax payable in Finland on the basis of the average depreciation of vehicles.

83 The Commission refers to the *Gomes Valente* judgment, according to which, it claims, a system of taxation based on general criteria is compatible with the first paragraph of Article 95 of the Treaty provided that it is free from any discriminatory effect and that owners of imported used cars have a procedure available for challenging the application to their vehicles of the calculation method based on general criteria.

84 The Commission submits that those conditions presuppose that the criteria for calculating the tax are publicised, which was not the case for the taxation system at issue in the main proceedings. The Finnish authorities neither published nor communicated to persons who so requested the results of the studies which they rely on for the purpose of determining the taxable value of imported used cars and depreciation according to age. Nothing in the official documents or the

case-file shows that the studies carried out on the Finnish market were objective and scientifically reliable. Moreover, the Finnish tax authorities refused to transmit information which would make it possible to calculate the amount of tax on new cars and the amount of the residual tax incorporated in the value of used cars already registered in the national territory.

Findings of the Court

85 It may be seen from *Gomes Valente*, paragraph 26, that a system of taxation of imported used cars which takes into account the actual depreciation of the vehicles on the basis of general criteria is compatible with the first paragraph of Article 95 of the Treaty only if it is arranged in such a way, making allowance for the reasonable approximations inherent in any system of that type, as to exclude any discriminatory effect.

86 On this point, the Court has already mentioned the factors of depreciation which may be taken into account so that the flat-rate method of calculating the tax on imported used cars reflects precisely their actual depreciation and is best able to attain the objective of taxation on such cars which, making allowance for the reasonable approximations inherent in any system of that type, does not exceed the amount of the residual tax incorporated in the value of similar used vehicles already registered in the national territory (see *Gomes Valente*, paragraph 28).

87 For such a system to be compatible with the first paragraph of Article 95 of the Treaty, the criteria on which the flat-rate method of calculating the depreciation of vehicles is based must, in any event, be made known to the public.

88 Furthermore, such compatibility also presupposes that the owner of an imported used vehicle is able to challenge the application of a flat-rate method of calculation to that vehicle in order to demonstrate that it leads to taxation exceeding the amount of the residual tax incorporated in the value of similar used vehicles already registered in the national territory (*Gomes Valente*, paragraph 32).

89 The answer to Question 3 must therefore be that, where a Member State applies to used cars imported from other Member States a system of taxation under which the actual depreciation of the vehicles is defined in a general and abstract way on the basis of criteria laid down by national law, the first paragraph of Article 95 of the Treaty requires that system of taxation to be arranged in such a way, making allowance for the reasonable approximations inherent in any system of that type, as to exclude any discriminatory effect. That requirement presupposes, first, that the criteria on which the flat-rate method of calculating the depreciation of vehicles is based are made public and, second, that the owner of a used vehicle imported from another Member State is able to challenge the application of a flat-rate method of calculation to that vehicle, which may mean that its particular characteristics have to be examined in order to ensure that the tax applied to it does not exceed the residual tax incorporated in the value of a similar used vehicle already registered in the national territory.

The questions relating to value added tax

90 By its fourth to sixth questions, the national court seeks to ascertain whether the tax called 'value added tax' payable on car tax constitutes, first, 'value added tax' within the meaning of the Sixth Directive and is, second, compatible with Article 33 of that directive and the first paragraph of Article 95 of the Treaty.

Questions 4 and 5

91 By its fourth and fifth questions, which should be taken together, the national court essentially asks whether a tax such as that at issue in the main proceedings, described in national law as 'value added tax' on car tax, constitutes 'value added tax' within the meaning of the Sixth Directive and whether it is compatible with Article 33 of that directive.

Observations submitted to the Court

92 Mr Siilin and the Commission both contend that the tax payable on car tax constitutes 'value added tax' within the meaning of the Sixth Directive. According to Mr Siilin, it has features identical to those of value added tax. Thus it can be deducted in the way provided for in Paragraph 102(1)(4) of the Arvonlisäverolaki. Moreover, it is of a general nature.

93 The Commission submits, without explaining its position in more detail, that the tax on car tax, as described by the national court, satisfies all the criteria of value added tax. It points out that this Finnish tax, introduced in December 1995 by Paragraph 5 of the Autoverolaki, was expressly provided for in the Arvonlisäverolaki, that it was stated in the various draft laws proposed in 1994 that this was value added tax, and that the aim was that the consumer should pay, in respect of cars imported directly from abroad, value added tax in addition to car tax.

94 The Commission also submits that it is apparent from the proposal for the law introducing the tax on car tax that it was intended to compensate for the impact on tax revenue of the abolition, on the accession of the Republic of Finland to the European Union, of the charging of customs duty on goods coming from other Member States. It was thus estimated that, if a decision were not made to levy a tax on car tax, a loss of several hundred million Finnish marks would be discernible in value added tax receipts.

95 The Commission adds that the charging of the tax on car tax is contrary to the Sixth Directive, in particular Article 2, Article 7(1) read in conjunction with Article 10, and Article 28a. First, the tax is contrary to Article 2 of the Sixth Directive because it is charged in the absence of any of the events giving rise to value added tax under that provision. It is levied in respect neither of a commercial transaction performed by a taxable person in the national territory nor of an import within the meaning of Article 2. Next, the tax is not charged following the arrival of the goods on Community territory or their import into Finland. Finally, it is not value added tax charged on intra-Community acquisitions within the meaning of Article 28a of the Sixth Directive.

96 The Finnish Government submits that, despite its name, the tax on car tax charged at the value added tax rate is not to be regarded as 'value added tax' within the meaning of the Sixth Directive and is not prohibited by Article 33 of that directive.

97 It argues that that tax, which is laid down by a provision of the Autoverolaki and calculated in accordance with the provisions of that law, is charged independently of value added tax. Above all, it does not have the essential characteristics of value added tax. In particular, the tax on car tax is not of general application, it

arises exclusively on payment of car tax, it is accordingly levied only once, and it is not charged on the added value of goods or services.

Findings of the Court

98 It should be noted, to begin with, that categorisation as value added tax within the meaning of the Sixth Directive depends not on the name given to a national tax in the legislation introducing it, but on whether it has the essential characteristics of value added tax within the meaning of that directive.

99 The Court has held that among the essential characteristics of value added tax are the following features: it applies generally to transactions relating to goods or services; it is proportional to the price charged by the taxable person in return for the goods and services which he has supplied; it is charged at each stage of the production and distribution process, including that of retail sale, irrespective of the number of transactions which have previously taken place; the amounts paid during the preceding stages of the process are deducted from the tax payable by a taxable person, with the result that the tax applies, at any given stage, only to the value added at that stage and the final burden of the tax rests ultimately on the consumer (see Joined Cases C-338/97, C-344/97 and C-390/97 *Pelzl and Others* [1999] ECR I-3319, paragraph 21 and the case-law cited).

100 A tax such as the tax payable on car tax described by the national court does not have those features.

101 First, the tax on car tax does not constitute a general tax since it is not intended to catch all economic transactions in the Member State concerned (see, to that effect, Case C-208/91 *Beaulande* [1992] ECR I-6709, paragraph 16, and Case C-130/96 *Solisnor-Estaleiros Navais* [1997] ECR I-5053, paragraph 17). It is apparent from Paragraph 5 of the Autoverolaki, read in conjunction with Paragraph 1 of that law, that the tax on car tax in fact concerns only a limited class of goods, namely certain vehicles. It does not, therefore, apply generally to transactions relating to goods or services. Moreover, it arises exclusively on payment of the tax payable on the registration or bringing into use of such vehicles.

102 Second, the amount of the tax on car tax is not proportional to the price of the goods. Only indirectly does that amount depend on the price of a vehicle. As the Finnish Government observes, the basis of assessment to the tax is not the value of the vehicle but the amount of car tax, which is itself calculated on the basis of the price of the vehicle.

103 Third, and finally, the tax on car tax does not have to be paid at each stage in the production and distribution process, which is however necessary for a tax to be categorised as value added tax (see Case 295/84 *Rousseau Wilmot* [1985] ECR 3759, paragraph 15, Case C-347/90 *Bozzi* [1992] ECR I-2947, paragraph 12, and Case C-437/97 *EKW and Wein & Co.* [2000] ECR I-1157, paragraph 49), but only on the charging of car tax. Moreover, the effect of the tax is not to tax the added value at a particular stage of production and distribution, but the total value.

104 The compatibility with Article 33 of the Sixth Directive of the tax on car tax will now be considered.

105 Article 33 of the Sixth Directive precludes the maintenance or introduction of stamp duties or other types of taxes, duties or charges which have the essential characteristics of value added tax. The Court has held that that provision does not preclude the maintenance or introduction of a tax where it does not have any of those characteristics (see *EKW and Wein & Co.*, paragraph 23 and the case-law cited).

106 In that the tax on car tax does not have the essential characteristics of value added tax within the meaning of the Sixth Directive, it is not contrary to the provisions of Article 33 of that directive.

107 The answer to Questions 4 and 5 must therefore be that a tax such as that at issue in the main proceedings, described in national law as 'value added tax' on car tax, does not constitute 'value added tax' within the meaning of the Sixth Directive and is compatible with Article 33 of that directive.

Question 6

108 By its sixth question, the national court asks essentially whether the first paragraph of Article 95 of the Treaty precludes the levying of a tax such as that at issue in the main proceedings, which is payable on car tax.

Observations submitted to the Court

109 The Finnish Government submits that the tax on car tax is compatible with Article 95 of the Treaty, since it applies to all vehicles in the same way.

110 According to the Commission, the tax on car tax constitutes a charge having equivalent effect to customs duties, contrary to Articles 23 EC and 25 EC. In practice, the tax prevents an individual who is not liable to value added tax from importing new and used cars into Finland.

111 However, should the Court hold that the tax on car tax does not constitute a charge having equivalent effect, the Commission submits that the tax produces discriminatory effects as against imported used cars, in so far as, pursuant to Paragraph 102(1)(4) of the Arvonlisäverolaki, a person liable to value added tax is entitled to deduct the tax on car tax in connection with a taxable business activity, while in practice a private consumer who has bought a used car in another Member State is not entitled to do so. Such a consumer is consequently in a less advantageous situation that a purchaser of a used car already registered in the national territory, who does not have to pay either car tax or the tax on car tax, inasmuch as those taxes have already been paid in respect of the car when new. The tax on car tax is thus incompatible with Article 95 of the Treaty, since it does not apply to used cars already registered in the national territory, on which car tax has already been paid, but to used cars imported from another Member State.

Findings of the Court

112 As regards the assessment of the compatibility with the first paragraph of Article 95 of the Treaty of a tax such as the tax on car tax, it must be noted that that tax, like the tax on which it is charged, is levied only once, prior to the registration or bringing into use of a vehicle in Finland. Such a tax does not therefore have to be paid in respect of a used car which has already been subjected to it when it was registered or brought into use when new on the basis of its value at that time.

113 The Commission's argument that the tax on car tax is contrary to the first paragraph of Article 95 of the Treaty because it applies not to used cars already registered in the national territory but to used cars imported from another Member State must therefore be rejected. It is also immaterial that such a tax is deductible in connection with the exercise of a business activity.

114 As the tax provided for in Paragraph 5 of the Autoverolaki is based specifically on car tax, its compatibility with the first paragraph of Article 95 of the Treaty must be assessed according to the same criteria as the compatibility of car tax with that provision. Consequently, that provision of the Treaty precludes a tax such as the tax on car tax where the amount charged by way of that tax on an imported used car exceeds the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.

115 As regards categorisation as a charge having equivalent effect, it is settled case-law, most recently set out in Case C-234/99 *Nygård* [2002] ECR I-3657,

paragraph 17, that the provisions relating to charges having equivalent effect and those relating to discriminatory internal taxation cannot be applied together, so that the same charge cannot, under the system established by the Treaty, belong to both those categories at the same time.

116 Since the tax on car tax constitutes discriminatory internal taxation in so far as the amount charged as such a tax on an imported used car exceeds the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory, it cannot at the same time constitute a charge having equivalent effect.

117 The answer to Question 6 must therefore be that the first paragraph of Article 95 of the Treaty precludes the levying of a tax such as that at issue in the main proceedings, which is payable on car tax, in so far as the amount charged as such a tax on a used car imported from another Member State exceeds the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.

Costs

118 The costs incurred by the Finnish Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Korkein hallinto-oikeus by order of 15 March 2000, hereby rules:

1. The first paragraph of Article 95 of the EC Treaty (now, after amendment, the first paragraph of Article 90 EC) allows a Member State to apply to used vehicles imported from another Member State a system of taxation under which the taxable value is determined by reference to the customs value as defined by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, but precludes the taxable value from varying according to the marketing stage where this may result, at least in certain cases, in the amount of the tax on an imported used car exceeding the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.

2. The first paragraph of Article 95 of the Treaty precludes a Member State from applying to used cars imported from another Member State a system of taxation under which the tax on those vehicles

— is equal, during the first six months from the registration or bringing into use of the vehicle, to the tax charged on a similar new vehicle, and

— is equal, from the 7th to the 150th month of use of the vehicle, to the tax on a similar new vehicle, with a linear reduction by a percentage of 0.5% per full calendar month,

since such a system of taxation does not take the actual depreciation of the vehicle into account and does not provide a guarantee that the amount of tax it determines will in no case exceed the residual tax incorporated in the value of a similar used car already registered in the national territory.

3. Where a Member State applies to used cars imported from other Member States a system of taxation under which the actual depreciation of the vehicles is defined in a general and abstract way on the basis of criteria laid down by national law, the first paragraph of Article 95 of the Treaty requires that system of taxation to be arranged in such a way, making allowance for the reasonable approximations inherent in any system of that type, as to exclude any discriminatory effect. That requirement presupposes, first, that the criteria on which the flat-rate method of calculating the depreciation of vehicles is based are made public and, second, that the owner of a used vehicle imported from another Member State is able to challenge the application of a flat-rate method of calculation to that vehicle, which may mean that its particular characteristics have to be examined in order to ensure that the tax applied to it does not exceed the residual tax incorporated in the value of a similar used vehicle already registered in the national territory.

4. A tax such as that at issue in the main proceedings, described in national law as 'value added tax' on car tax, does not constitute 'value added tax' within the meaning of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover

taxes — Common system of value added tax: uniform basis of assessment, in the version of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax, and is compatible with Article 33 of that directive.

5. **The first paragraph of Article 95 of the Treaty precludes the levying of a tax such as that at issue in the main proceedings, which is payable on car tax, in so far as the amount charged as such a tax on a used car imported from another Member State exceeds the amount of the residual tax incorporated in the value of a similar used car already registered in the national territory.**

Jann von Bahr La Pergola

Wathelet Timmermans

Delivered in open court in Luxembourg on 19 September 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber