OPINION OF ADVOCATE GENERAL LÉGER

delivered on 21 November 2002 [1]

1. In the present proceedings, the Commission of the European Communities seeks a declaration that, by establishing a registration procedure for driving licences [2] issued by other Member States and by calculating their period of validity as from the date on which they were issued, the Kingdom of the Netherlands has failed to comply with its obligation of mutual recognition of licences under Article 1(2) of Council Directive 91/439/EEC of 29 July 1991 on driving licences. [3] The Commission also seeks a declaration that the Kingdom of the Netherlands has failed to comply with its obligations by adopting legislation which is not in accordance with that envisaged by the said directive, concerning both the minimum age conditions and medical checks.

I — The relevant legislation

A — *Community law*

2. A first step towards the harmonisation of driving licences was taken with the adoption of the First Council Directive 80/1263/EEC. [4] This directive was intended to contribute towards the improvement of road traffic safety and to facilitate the movement of persons settling in a Member State other than that in which they passed their driving test, or moving within the European Economic Community.

To that end, Directive 80/1263 harmonised certain national rules, notably those concerning the classification of vehicles into categories, the national systems for issuing licences and the conditions for the validity of licences. The directive established a Community model licence as well as a system for the mutual recognition of such

1 — Original language: French.

2 — Hereinafter the 'licences'.

3 — OJ 1991 L 237, p. 1.

4 — Council directive of 4 December 1980 on the introduction of a Community driving licence (OJ 1980 L 375, p. 1).

licences, and provided for the exchange of licences by holders transferring their residence or place of employment from one Member State to another.

3. Directive 80/1263 was repealed by Directive 91/439, which represented a new stage in the harmonisation of national provisions, in particular with reference to the conditions governing the issue of licences and to vehicle categories. Thus, Article 6 of Directive 91/439 sets down minimum age conditions for the issue of driving licences according to relevant vehicle categories. Further, Article 7 of the directive states that the issue of licences is conditional on the applicant having passed certain tests and meeting medical standards, as well as having normal residence [5] in the territory of the Member State issuing the licence or providing evidence that he has been studying there for at least six months.

4. In addition, Directive 91/439 removes the obligation to exchange licences provided for by Directive 80/1263 where the holder transfers his normal residence to another Member State, because it had become an obstacle to the free movement of persons in the light of the progress made towards European integration. [6] The directive however allows the exchange of licences under certain defined circumstances. [7]

5. Article 1(2) of Directive 91/439 lays down the principle that 'driving licences issued by Member States shall be mutually recognised'. Article 1(3) provides that where the holder of a licence takes up normal residence in a Member State other than that which issued the licence, the host Member State may apply its national rules on tax, medical checks and the period of validity of the licences to the holder of the licence, and may enter on the licence any information essential for administrating it.

Similarly, Article 8(2) of Directive 91/439 provides, subject to observance of the principle of territoriality of criminal and police laws, that the host Member State may apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued by another Member State and, if necessary, exchange the licence for that purpose.

5 — The term 'normal' residence is defined in Article 9 of Directive 91/439 as meaning the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

6 — Recitals 1 and 9.

7 — Point 4 of Annex I to Directive 91/439 states that the host Member State may indicate information essential for administrative purposes on the licence issued by another Member State such as serious offences committed in its territory, provided that it also enters this type of information in the licences which it issues and that there is a space available for that purpose.

6. The directive was amended on several occasions and in particular by Directive 96/47/EC. [8] Directive 96/47 afforded Member States the possibility of issuing licences according to a model, set down in Annex I B to that directive and different from the model provided for in Annex I to Directive 91/439. Member States can therefore choose to comply with the traditional model drawn up on paper, or the more advanced model issued on a polycarbonate card similar to that used for bank and credit cards.

B — *National legislation*

7. The main provisions in the Netherlands concerning driving licences are contained in the Wegenverkeerswet (Law on Road Traffic) [9] and in the Rijbewijs (the regulation implementing the WVW). [10]

8. Article 107(1) of the WVW states that the driver of a vehicle must hold a licence issued by the Netherlands authorities.

9. Furthermore, Article 108(1)(h) of the WVW lays down specific rules in favour of drivers who hold a licence issued by another Member State where they are resident in the Netherlands. The obligation to hold a Netherlands licence to drive on national territory does not apply to these drivers for a certain period, which varies according to whether or not the holder has registered his licence in the Netherlands. Where the licence has been registered, the length of the period corresponds to the duration of the validity of the licence in the Netherlands. Where the licence has not been registered, the duration of the period is one year after the individual concerned has settled in the Netherlands.

10. For the purposes of Article 109(1) of the WVW, licences are valid in the Netherlands during:

— 10 years from the date of issue when, on the date of issue, the holder was under 60 years old;

— the period until the date on which the holder is 70 years old when, on the date of issue, the holder was over 60 and under 65 years old;

— five years from the date of issue when, on the date of issue, the holder was 65 years old.

8 — Council directive of 23 July 1996 (OJ 1996 L 235, p. 1).

9 — Law of 21 April 1994 (*Staatsblad* 1994 No 475), subsequently amended by the Law of 24 May 1996 (*Staatsblad* 1996 No 276) (hereinafter the 'WVW').

10 — Decree of 30 May 1996 (*Staatsblad* 1996 No 277), amended by the Decree of 18 June 1996 (*Staatsblad* 1996 No 326).

11. The Netherlands procedure for the registration of licences takes place in the following manner.[11] The holder of the licence must first of all complete a form, attach a number of documents to it[12] and send it to the mayor of the municipality where he is registered. The mayor must then send it in his turn to a public body which is responsible for the centralised registration of licences on a register set up for that purpose. That body subsequently checks the identity of the applicant, usually by calling on him to attend in person at its premises, and ensures the validity of the licence as well as that the conditions required for registration are satisfied. At the same time, it determines the period of recognition, in the Netherlands, of the registered licence.

12. Article 177(1) of the WVW provides that driving without a licence, or driving with a licence which has expired or a licence which does not satisfy the statutory requirements, is liable to criminal penalties, namely a term of imprisonment of two months or a fine.

II — The pre-litigation procedure

13. The Kingdom of the Netherlands, by letters dated 22 March 1994 and 25 October 1995, sent the Commission a number of draft texts of laws and regulations which were intended to transpose Directive 91/439. Although the Commission expressed a number of criticisms regarding the draft texts, the drafts led to the adoption of the WVW and the implementing regulation.

14. Following an exchange of letters between the Netherlands authorities and the Commission, the Commission formally requested, on 17 June 1997, that the authorities submit their observations on the abovementioned texts to it.

15. The Commission was not convinced by the observations submitted by the Kingdom of the Netherlands in response to its letter of formal notice, and on 7 December 1998 sent it a reasoned opinion.

III — The application

16. The Commission initiated the present proceedings by application lodged at the Court Registry on 20 June 2000. The Commission has set out four grounds of complaint against the Kingdom of the Netherlands.

11 — This procedure is set out in Article 109(2) to (5) of the WVW, and Articles 10 and 11 of the regulation implementing the WVW.

12 — It is necessary to provide a certified photocopy of the licence for which registration is sought, a certified copy (dated a maximum of six months before the application) containing information concerning the applicant from the population register on which he is enrolled, as well as documents' attestation, notably that the applicant has resided in the country which issued the relevant licence for at least 185 days and that the licence is still valid on the date on which the application for registration was submitted.

17. First, the Commission contends that the licence registration procedure in the Netherlands, where it is applicable to holders of licences issued by other Member States, is contrary to the principle of the mutual recognition of licences laid down in Article 1(2) of Directive 91/439.

18. Second, according to the Commission, this principle also precludes the use of the date of issue of licences issued by other Member States as the starting point for the duration of their validity in the Netherlands.

19. Third, the Commission points out that the minimum age provided for by the Netherlands rules for driving category D vehicles does not correspond with that envisaged by Article 6(1)(c) of Directive 91/439.

20. Finally, the Commission states that the Netherlands rules do not provide for a periodical medical examination for group 2 drivers, contrary to what is required by point 4 of Annex III to Directive 91/439.

21. The two last grounds of complaint are not disputed by the Kingdom of the Netherlands. I therefore limit my Opinion to the two first grounds of complaint, and propose, for the remainder, to uphold the application.

A — *The first ground of complaint, regarding the licence registration procedure*

1. The parties' arguments

22. The Commission points out that the licences issued by a Member State to persons residing in the Netherlands for over a year are not recognised unless they have been registered during that period. These individuals are therefore systematically obliged to register their licence within the prescribed period in order to continue to be entitled to drive on the territory of that Member State. Furthermore, the Commission observes that the registration formalities in the Netherlands are almost as cumbersome as those prescribed for the exchange of licences, whereas Directive 91/439 expressly prohibits Member States from establishing such a procedure in their mutual relations.

23. This situation is incompatible with the principle of the mutual recognition of licences laid down in Article 1(2) of Directive 91/439. After one year of residence in the Netherlands, the recognition of licences issued by another Member State is no

longer automatic, but is dependent on various registration formalities being satisfied.

24. Moreover, the disputed procedure cannot be justified by Article 1(3) of Directive 91/439 which states that where the holder of a licence takes up normal residence in a Member State other than that which issued the licence, the host Member State may apply its national rules on tax, medical checks and the period of validity of the licence to the holder of the licence, and may enter on the licence any information which is essential for administrating it. According to the Commission, these provisions must be interpreted strictly as they provide for an exception to the mutual recognition of licences. The Commission notes that even before the entry into force of Directive 80/1263 the Court held, in its judgment in the *Choquet* case of 28 November 1978, [13] that restrictions on the right to drive a vehicle in the Community under a licence issued by another Member State are only acceptable, in the light of the Treaty rules regarding the free movement of persons, if they can be reasonably related to the requirements of road safety. This is not the case here.

25. The Commission adds that the criminal penalties incurred in the Netherlands in the event of infringement of the disputed procedure do not satisfy the condition of proportionality laid down by the Court in its judgment of 29 February 1996 in *Skanavi and Chryssanthakopoulos*. [14]

26. The Netherlands Government, for its part, points out that there is no registration system common to the Community or coordinated between the Member States. The introduction of a national registration system is therefore essential in order to ensure the validity of licences submitted during road traffic controls, in conformity with the objectives of road safety and the combat against fraud pursued by Directive 91/439.

27. Only such a system enables the police to check on the spot the conformity of the licences presented with the registered data, in particular as concerns the period of validity and the existence of penalties liable to affect them adversely. Moreover, immediate consultation of the registered information is essential in order to check the validity of licences issued before the entry into force of Directive 91/439, as these licences do not conform to a uniform model which is easily identifiable. Further, a registration system makes it possible to record information essential for the administration of licences, without being confronted with the problem of the physical impossibility of entering such information on licences which are in the form of a polycarbonate card.

13 — Case 16/78 [1978] ECR 2293.

14 — Case C-193/94 [1996] ECR I-929.

28. In other words, the registration system in question is the only way for the host Member State effectively to apply the national provisions concerning the period of validity of licences and penalties to holders of licences issued by another Member State, in conformity with Article 1(3) and Article 8(2) of Directive 91/439.

29. Furthermore, the Netherlands Government contends that the principle of mutual recognition is limited to prohibiting procedures for exchanging licences, but not registration procedures. This interpretation is confirmed by the declaration made by the Council and the Commission when Directive 91/439 was adopted, and recorded in the minutes. [15] Moreover, a licence issued by a Member State remains valid and recognised in the Netherlands, even though it has not been registered. The absence of registration has the sole consequence that the licence in question no longer allows its holder to drive on Netherlands territory.

30. Finally, the Netherlands Government asserts that since 1990 criminal penalties have no longer been applied to drivers holding a licence that has not been registered. Moreover, the national rules in question have been amended in order to replace the criminal penalties with administrative ones. These new rules should enter into force at the beginning of the year 2003.

31. The Spanish Government, intervening in support of the Kingdom of the Netherlands, also considers that the obligation of registration is compatible with the principle of mutual recognition and is justified by Article 1(3) of Directive 91/439.

32. In support of this contention, the Spanish Government states that the application of national provisions regarding the renewal of licences necessarily implies that the host State is aware of the existence of the licences issued by another Member State and used on its territory. It adds that the registration of a driver's history is essential in order to apply an appropriate penalty to him, as its determination depends most often on whether or not the driver has already been found guilty of an offence. Finally, the Spanish Government considers that simple traffic controls on the public highway are not sufficient to ensure the application of the relevant national provisions of the host Member State, as holders of licences issued by another Member State do not necessarily respond to police questioning and may, as a result, avoid all control of their licence's validity.

15 — Declaration concerning Article 1(3) of Directive 91/439: 'The Council and the Commission recognise that the present Directive does not prevent the Member States from registering the information regarding licences issued by another Member State when the holders of such licences take up normal residence on their territory (hereinafter the "contested declaration")'.

2. Assessment

(a) The compatibility of the registration procedure with the principle of the mutual recognition of licences laid down in Article 1(2) of Directive 91/439

33. The Commission does not in general call into question the actual principle of registering licences issued by another Member State. This point was clearly stressed in its written observations on the Spanish Government's statement in intervention, [16] and then at the hearing.

34. It is the specific character of the registration procedure in the Netherlands which is in dispute in the present case. [17] This procedure is criticised in several respects, on account of its mandatory and systematic nature, the cumbersome administrative formalities which it involves and the seriousness of the penalties which are related to it.

35. The present application raises two questions in turn. The first is to determine whether the registration procedure in the Netherlands is compatible with the principle of mutual recognition of licences laid down in Article 1(2) of Directive 91/439. If it is not compatible, it will then be necessary to consider whether this procedure can be justified by Article 1(3) of the said directive.

36. The Netherlands Government contends that a licence issued by a Member State is valid and recognised in the Netherlands, even though it has not been registered. The sole consequence of not registering a licence is that the licence no longer enables its holder to drive in the Netherlands. I have some difficulty, as does the Commission, in following the reasoning of the Netherlands Government. It appears to me that under the national rules in question, a licence issued by a Member State is no longer valid and recognised in the Netherlands where it has not been registered within the prescribed period.

37. As the Commission points out, it seems that the Netherlands rules effectively subject the continued recognition, in the Netherlands, of licences issued by another Member State beyond a one-year residence period to the fulfilment of registration formalities.

38. Such national rules appear more restrictive than the wording of Article 1(2) of Directive 91/439 indicates, which states that '[d]riving licences issued by Member

16 — Points 21 and 22.

17 — The Commission has also initiated infringement proceedings against the Kingdom of Spain, notably on account of a mandatory and systematic licence registration system, in Case C-195/02 *Commission* v *Spain*, pending before the Court.

States shall be mutually recognised'. This provision uses a general formula in favour of the mutual recognition of licences, without subjecting it to the fulfilment of any particular conditions. The Court noted this in its judgment in the abovementioned *Skanavi and Chryssanthakopoulos* case, stating that Article 1(2) of Directive 91/439 provides for the mutual recognition, without any formality, of licences issued by the Member States. [18] In its judgment in *Awoyemi*, [19] the Court added that this provision imposes a precise and unconditional obligation to recognise licences following the Community model and that the Member States to which Directive 91/439 is addressed are not to enjoy any margin of discretion as to the methods to be adopted in order to comply with this requirement. The Court came to the conclusion that Article 1(2) of Directive 91/439 had direct effect.

39. In this respect, Directive 91/439 can be distinguished clearly from Directive 80/1263, which it repealed. Article 8(1) of Directive 80/1263 provided that, at the end of one year of normal residence in a Member State other than that which issued the licence, the continued recognition of the licence was subject to the exchange of the licence. No condition of this kind is provided for by Directive 91/439. Indeed, the Community legislature took care to exclude expressly, in the preamble to the directive, this condition of exchanging licences.

40. In my view, although — contrary to the situation as regards the exchange of licences — Directive 91/439 does not specifically exclude registration procedures, such as that in the Netherlands, it nevertheless excludes them implicitly and necessarily. A number of factors point in this direction.

41. Firstly, the formalities required for registration are almost as cumbersome as those provided for regarding the exchange of a licence. It is true that, as the Netherlands Government pointed out, the procedure in question can be completed without expense or delay, unlike the situation for the exchange of a licence. However, it should be borne in mind that numerous documents are required at registration, something which necessitates the prior completion of various administrative steps in addition to the registration itself, which generally entails a journey to the competent departments following receipt of a notice to attend.

42. Secondly, it is important to note that the Netherlands rules require probative documents to be submitted, on application for registration, attesting that the holder of the licence has resided at least 185 days in

18 — Paragraph 26.

19 — Case C-230/97 [1998] ECR I-6781, paragraphs 41 to 43.

the Member State which issued it or has been enrolled in a school or university there for at least six months.

This requirement is not acceptable, because it falls within the scope of a control which duplicates that which has necessarily been carried out on this point by the authorities issuing the licence, in accordance with Article 7(2) of Directive 91/439. This specific formality is contrary to the very spirit of the system established by the directive, which defines common rules for issuing licences and gives the issuing Member State exclusive competence to ensure that the rules are complied with. This analysis may be compared to that which the Court adopted regarding a number of restrictions to the freedoms guaranteed by the Treaty. [20]

43. Thirdly, the Netherlands legislation provides that driving with a non-registered licence is punishable by criminal penalties, namely a term of imprisonment of two months or a fine. It is of little importance that the legislation providing for such severe penalties has been repealed by new legislation, for which as yet there are no implementing measures, or that the legislation in question is not in fact implemented by reason of a mere administrative practice. It is settled case-law that whether or not a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take into account any subsequent changes. [21] The failure to adopt measures, during this period, enabling the new national legislation invoked to be implemented is liable to engender doubts incompatible with the principle of legal certainty since such a situation does not enable the beneficiaries of the principle of mutual recognition of licences, laid down in Article 1(2) of Directive 91/439, a provision having direct effect, to ascertain easily the full extent of their rights. [22] Furthermore, according to settled case-law, the incompatibility of national legislation with provisions of the Treaty, even provisions which are directly applicable, can be finally eliminated only by means of national provisions of a binding nature which have the same legal force as those which must be amended. It follows that mere administrative practices, which by their nature are alterable at will by the authorities and are not given appropriate publicity, cannot be regarded as constituting proper fulfilment of the Treaty obligations. [23]

44. It follows that Directive 91/439 necessarily intended to preclude the establishment

20 — For a recent example, see Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 36.

21 — See, in particular, Case C-200/88 *Commission* v *Greece* [1990] ECR I-4299 and Case C-133/94 *Commission* v *Belgium* [1996] ECR I-2323.

22 — Compare the judgment in Case C-197/96 *Commission* v *France* [1997] ECR I-1489, paragraph 15 and the judgment in Case C-185/96 *Commission* v *Greece* [1998] ECR I-6601, paragraph 30.

23 — See, notably, Case C-334/94 *Commission* v *France* [1996] ECR I-1307, paragraph 30.

of a licence registration system, such as that existing in the Netherlands.

45. Contrary to what the Netherlands Government maintains, the contested declaration does not cast doubt on this conclusion. The Court has consistently held that a declaration recorded in the minutes of the Council meeting during which secondary legislation has been adopted cannot be admitted for the purpose of interpreting that law where no reference is made to the content of the declaration in the wording of the provision in question and where the declaration therefore has no legal significance. [24] That is the case here. Article 1(3) of Directive 91/439, to which the contested declaration refers, does not include any provision which relates to 'the registration of information concerning driving licences'. The only procedure mentioned is the entering of certain information on the licence. The use of this procedure is limited to information which is indispensable for administrating the licence. Its purpose and modalities are specified in point 4 of Annex I to Directive 91/439 and point 4 of Annex Ia to Directive 96/47. These provisions are designed to limit the circumstances in which the host Member State may enter information on a licence. This logic is not echoed in the contested declaration because the declaration deals with, generally, the registration of information concerning licences without restricting the nature and use of the data to be registered.

46. All the same, should the Court consider that the content of the contested declaration find expression in Article 1(2) of Directive 91/439, it must be pointed out that such a declaration does not necessarily authorise Member States to set up any system of licence registration whatsoever, in particular such as that existing in the Netherlands. While it may be accepted that a Member State may set up a registration system, with limited formalities and without penalties, for example, for statistical purposes, it is difficult to see how the system in the Netherlands could be accepted, in light of its conflict with the principle of mutual recognition.

47. As the registration procedure in the Netherlands is, in my opinion, contrary to the principle of mutual recognition laid down in Article 1(2) of Directive 91/439, the relevant question is therefore whether this procedure can be justified by Article 1(3) of the directive.

24 — See Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18; Joined Cases C-197/94 and C-252/94 *Bautiaa* and *Société française maritime* [1996] ECR I-505, paragraph 51; and Case C-329/95 *VAG Sverige* [1997] ECR I-2675, paragraph 23.

(b) Whether the registration procedure is justifiable under Article 1(3) of Directive 91/439

(i) The application of the national provisions of the host Member State concerning the period of validity of licences

48. In the abovementioned judgment in *Canal Satélite Digital*, the Court held that when a directive does not contain provisions relating to the administrative rules implementing the obligations on Member States under that directive, Member States may provide for an administrative procedure for that purpose, but they must at all times respect the fundamental freedoms guaranteed by the Treaty. [25]

49. In my view, this case-law may be transposed to the present case for the application of the rights which are granted to the host Member State under Article 1(3) of Directive 91/439. That directive does not provide for an administrative procedure, allowing the Kingdom of the Netherlands to apply its national provisions concerning the period of validity of licences to holders of licences issued by another Member State. Neither Article 1(3) of nor point 4 of Annex I to Directive 91/439 provides that the period of validity of licences may be entered on the licence as information essential for its administration. The Kingdom of the Netherlands is therefore entitled to establish an administrative procedure to apply the right granted to it by Article 1(3) of Directive 91/439, that is, to apply its national provisions concerning the period of validity of licences. However, in so doing, it must observe the fundamental freedoms guaranteed by the Treaty. The conformity of the Netherlands registration procedure on this point should therefore be considered.

50. In *Kraus*, [26] the Court held that 'Articles 48 and 52 [of the Treaty] preclude any national measure... where that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals... of fundamental freedoms guaranteed by the Treaty'. The Court reiterated that '[t]he situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest..., application of the national rules in question [must] be appropriate for ensuring attain-

25 — Paragraphs 27 and 28.

26 — Case C-19/92 [1993] ECR I-1663, paragraph 32.

ment of the objective they pursue and not... go beyond what is necessary for that purpose'. [27]

51. In my opinion, the registration procedure in the Netherlands falls within the scope of this category of restrictive national measures. In the abovementioned judgment in *Skanavi and Chryssanthakopoulous*, [28] the Court pointed out that 'rules relating to the issue and mutual recognition of driving licences by the Member States exert an influence, both direct and indirect, on the exercise of the rights guaranteed by the provisions of the Treaty relating to freedom of movement for workers, to freedom of establishment and to the freedom to provide services'. In that regard, the Court stated that '[i]n view of the importance of individual means of transport, possession of a driving licence duly recognised by the host State may affect the actual pursuit by persons subject to Community law of a large number of occupations for employed or self-employed persons and, more generally, freedom of movement'. [29] In the light of these general points, the cumbersomeness of the Netherlands registration procedure and the penalties attaching to it, the national procedure is liable to hamper or to render less attractive the exercise by Community nationals of the freedom of establishment or of the freedom of movement.

52. This restrictive national measure, which is applicable without distinction to Netherlands nationals and nationals of other Member States, is indeed justified by imperative requirements related to road safety. [30] However, in my opinion, the measure is disproportionate, because it goes beyond what is necessary for that purpose. A number of factors point to this conclusion.

53. Firstly, the host Member State may apply correctly its national provisions on the period of validity of licences at road checks, without it being necessary to adopt a registration system such as that existing in the Netherlands. Where such checks are carried out, the police are in a reasonable position to calculate themselves the period of validity of the licences which are presented to them. It is sufficient, as Netherlands law now stands, for them to add 10 years on to the date of issue of the licence, which is mandatorily indicated on the licences drawn up in accordance with the Community model.

27 — Ibid.

28 — Paragraph 23. See also *Choquet*, cited above, paragraph 4.

29 — *Skanavi and Chryssanthakopoulous*, cited above, paragraph 23.

30 — The Court has held, on a line of decisions, that protection of road safety is an overriding requirement. See Case C-55/93 *Van Schaik* [1994] ECR I-4837, paragraph 19 and Case C-314/98 *Snellers* [2000] ECR I-8633, paragraph 55.

54. Contrary to what the Netherlands Government maintains, this situation is applicable both as regards licences drawn up on paper and as regards those issued on a polycarbonate card. The date of issue is cited in point 2 of Annex I to Directive 91/439 as part of the mandatory information which should appear on a licence (for licences drawn up on paper) and point 2 of Annex Ia to Directive 96/47 (for licences issued on a polycarbonate card). It is therefore not indispensable, at road checks, to consult a register in order to find out the period of validity of a licence and to ensure compliance with the relevant national rules.

55. Admittedly, this is not necessarily the case for all licences, and more specifically for those which were issued before 1 January 1986, that is to say before the expiry of the period allowed for transposition of Directive 80/1263, which established a Community model licence on which the date of issue had to be mentioned. [31] However, the absence of such mentions on licences issued before 1 January 1986 cannot justify an obligation to register all licences, without distinguishing between those issued before and after 1 January 1986.

31 — As of today, over 80 different models of driving licences are still in circulation in the European Economic Area, most of which were issued before the transposition of Directive 91/439 (see the Commission's interpretative Notice 2002/C 77/03 on the issuing of driving licences in the European Community (OJ 2002 C 77, p. 5)). It is not known how far the licences issued before 1 January 1986 are considered in this assessment.

56. Secondly, I am not convinced that, in order to apply its provisions on the period of the validity of licences, the host Member State would be forced to impose a registration procedure in order to record that information systematically and to ensure that holders renew their licences within the necessary time-limits.

(ii) The entering of information on the licence essential for administrating it

57. According to the Netherlands Government, the establishment of a registration system is technically necessary because of the impossibility of entering information on licences issued on a polycarbonate card. This however is not the case. Point 3 of Annex Ia to Directive 96/47 envisages the possibility of entering information on licences issued on a polycarbonate card, as does point 4 of Annex I to Directive 91/439 for licences drawn up on paper. As a result, information such as serious offences committed on the territory of the host Member State may be entered on all types of licence. I think, as does the Commission, that this information may usefully be entered when the infringement is formally recorded, or when the penalty is imposed, without its being absolutely

necessary to adopt a registration procedure such as that in the Netherlands.

58. It follows from all the considerations set out above that the licence registration procedure in the Netherlands is contrary to the principle of mutual recognition laid down in Article 1(2) of Directive 91/439 and cannot be justified by Article 1(3) of that directive. I therefore propose that the Court uphold this complaint.

B — *The second ground of complaint, regarding the calculation of the period of validity of licences*

1. The arguments of the parties

59. The Commission points out that the Netherlands authorities use, as a starting point, the date on which the licence was issued, and not the date on which the holder of the licence settled in the Netherlands, when applying the national rules concerning the period of validity of licences. Accordingly, the principle of mutual recognition remains a dead letter for numerous holders of licences issued by Member States other than the Netherlands. This is the case, in particular, for holders of licences issued more than nine years before they settled in the Netherlands and who are at least 60 years old. These holders cannot register their licences within the prescribed one-year time-limit, as the period of validity of their licence, 10 years in the Netherlands, will have expired. They are therefore obliged to exchange their licence. [32]

60. The Netherlands Government states that Directive 91/439 allows a host Member State to apply its national provisions concerning the period of validity of licences without specifying the date which should be used as a starting point. It adds that the starting point used in the Netherlands applies both to Netherlands licences and to those issued by other Member States, which ensures that holders are treated equally. On this point, the Netherlands Government contends, in essence,

32 — A similar situation led to questions being submitted by a Netherlands court concerning the compatibility of the rules at issue with Article 1(1) and (2) of Directive 91/439 and the Treaty provisions on the freedom of movement, in Case C-253/01 *Krüger*, judgment of 29 January 2004, not published in ECR.

that the adoption of different starting points to calculate the period of validity of a licence in the Netherlands, according to whether the licence has been issued by its national authorities (from the date of issue) or by another Member State (from the date on which the holder settled in the Netherlands), would bring about 'reverse discrimination' as the holders of licences issued in the Netherlands would be in an adverse situation as compared to that of holders of licences issued by another Member State. Furthermore, rules according to which the period of validity of licences issued by another Member State begins to run from the date of issue of the licence, and not from the date on which the holder settled in the Netherlands, are dictated by imperative requirements of effective control, road safety and the best possible method of enabling fraud.

2. Assessment

61. I think, as does the Commission, that the effectiveness of the principle of mutual recognition laid down in Article 1(2) of Directive 91/439 precludes the adoption of national rules, such as those in the Netherlands, according to which the period of validity of licences issued by another Member State begins to run from the date of issue of the licence, and not from the date on which the holder settled in the Netherlands. It is apparent from various factors, notably statistical, put forward by the Commission, that the rules in question have the effect of limiting significantly the application of the principle of the mutual recognition of licences.

62. I do not agree, as this case stands, with the objection put forward by the Netherlands Government in order to contest the Commission's arguments on this point. The Court has held that situations such as 'reverse discrimination' are not taken into account by Community law. They must be resolved in the context of the internal legal system of the Member State concerned. [33]

63. Moreover, contrary to what the Netherlands Government maintains, the rules in question appear disproportionate in comparison with the objectives of a best possible campaign against fraud and of road safety, on which the government relies in order to restrict the free movement of persons.

64. I therefore propose that the Court uphold this complaint.

33 — See Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171.

IV — Conclusion

65. In the light of the foregoing, I propose that the Court:

(1) declare that, by adopting rules which require that the holder of a driving licence issued by another Member State register his licence, within a year of his taking up residence in the Netherlands, in order to continue to enjoy the right to drive in that State, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 1(2) of Council Directive 91/439/EEC of 29 July 1991 on driving licences;

(2) declare that, by adopting rules which provide that the period of validity of a licence starts to run from its date of issue, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 1(2) of Directive 91/439;

(3) declare that, by not adopting the legal and administrative provisions envisaged by Article 6(1)(c) and by point 4 of Annex III to Directive 91/439, concerning, on the one hand, the minimum age for driving and, on the other hand, medical checks, the Kingdom of the Netherlands has failed to fulfil its obligations under the said directive, and

(4) order the Kingdom of the Netherlands to pay the costs.