# JUDGMENT OF THE COURT (Sixth Chamber)
10 July 2003 *

In Case C-246/00,

**Commission of the European Communities,** represented by M. Wolfcarius and H.M.H. Speyart, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Kingdom of the Netherlands,** represented by M.A. Fierstra, acting as Agent,

defendant,

* Language of the case: Dutch.

supported by

**Kingdom of Spain**, represented by R. Silva de Lapuerta, acting as Agent, with an address for service in Luxembourg,

intervener,

APPLICATION for a declaration that, by adopting and maintaining in force Articles 107(1), 108(1)(h), 109 and 111(1)(a) of the Wegenverkeerswet (Road Traffic Law) of 21 April 1994 (Stbl. 1994 No 475), as amended (Stbl. 1996 No 276) and Article 100 of the Reglement Rijbewijzen (Decree on driving licences) of 28 May 1996 (Stbl. 1996 No 277), as amended by the Decree of 18 June 1996 (Stbl. 1996 No 326), the Kingdom of the Netherlands has failed to comply with its obligations under Articles 1(2) and 6(1)(c) of, and point 4 of Annex III to, Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 96/47/EC of 23 July 1996 (OJ 1996 L 235, p. 1),

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 September 2002, at which the Commission was represented by H.M.H. Speyart, the Kingdom of the Netherlands by J.G.M. van Bakel, acting as Agent, and the Kingdom of Spain by R. Silva de Lapuerta,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 20 June 2000, the Commission of the European Communities brought an action for a declaration that, by adopting and maintaining in force Articles 107(1), 108(1)(h), 109 and 111(1)(a) of the Wegenverkeerswet (Road Traffic Law) of 21 April 1994 (Stbl. 1994 No 475), as amended (Staatsblad 1996 No 276) ('the WVW 1994') and Article 100 of the Reglement Rijbewijzen (Decree on driving licences) of 28 May 1996 (Stbl. 1996 No 277), as amended by the Decree of 18 June 1996 (Stbl. 1996 No 326) ('the RR'), the Kingdom of the Netherlands has failed to comply with its obligations under Articles 1(2) and 6(1)(c) of, and point 4 of Annex III to, Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Council Directive 96/47/EC of 23 July 1996 (OJ 1996 L 235, p. 1, hereinafter 'Directive 91/439').

## Legal background

### *Community legislation*

2 The first recital of Directive 91/439 reads as follows:

'... for the purpose of the common transport policy, and as a contribution to improving road traffic safety, as well as to facilitate the movement of persons settling in a Member State other than that in which they have passed a driving test, it is desirable that there should be a Community model national driving licence mutually recognised by the Member States without any obligation to exchange licences'.

3 The ninth and tenth recitals of that directive read as follows:

'... the provisions set out in Article 8 of Directive 80/1263/EEC, and in particular the obligation to exchange driving licences within a period of one year of changing normal residence, constitute an obstacle to the free movement of persons;... this is inadmissible in the light of the progress made towards European integration;

... in addition, for reasons connected with road safety and traffic, Member States should be able to apply their national provisions on the withdrawal, suspension and cancellation of driving licences to all licence holders having acquired normal residence in their territory'.

4 Article 1 of Directive 91/439 provides:

'1. Member States shall introduce a national driving licence based on the Community model described in Annex I or Ia, in accordance with the provisions of this Directive.

2. Driving licences issued by Member States shall be mutually recognised.

3. Where the holder of a valid national driving licence takes up normal residence in a Member State other than that which issued the licence, the host Member State may apply to the holder of the licences its national rules on the period of validity of the licences, medical checks and tax arrangements and may enter on the licence any information indispensable for administration.'

5 Article 2(2) of Directive 91/439 reads as follows:

'Member States shall take all necessary steps to avoid any risk of forgery of driving licences.'

6 Article 3 of the directive lists different categories of vehicles which may be driven using the driving licence provided for in Article 1.

7 Article 6 of Directive 91/439 provides as follows:

'1. The minimum age conditions for the issue of driving licences shall be as follows:

(a) ...

(b) 18 years:

— for category A; however, access to the driving of motorcycles with a power exceeding 25 kW or a power/weight ratio exceeding 0.16 kW/kg (or motorcycles with sidecars with a power/weight ratio exceeding 0.16 kW/kg) shall be subject to a minimum of two years' experience on motorcycles with lower specifications under an A licence; this requirement as to previous experience may be waived if the candidate is at least 21 years old, subject to the candidate's passing a specific test of skills and behaviour;

— for categories B, B+E;

— for categories C, C+E...;

(c) 21 years:

— for the categories D and D+E....

2. Member States may derogate from the minimum age requirements laid down for categories A, B and B+E and issue such driving licences from the age of 17 years, except in the case of the provisions for category A laid down in the last sentence of the first indent of paragraph 1(b).

3. Member States may refuse to recognise the validity in their territory of driving licences issued to drivers under 18 years of age.'

8 Article 7 of Directive 91/439 provides:

'1. Driving licences shall, moreover, be issued only to those applicants:

(a) who have passed a test of skills and behaviour and a theoretical test and who meet medical standards, in accordance with the provisions of Annexes II and III;

(b) who have their normal residence in the territory of the Member State issuing the licence, or can produce evidence that they have been studying there for at least six months.

2. Without prejudice to provisions to be adopted by the Council in this regard, each Member State shall retain the right to determine, on the basis of national criteria, the period of validity of the driving licences which it issues.

3. Member States may, with the agreement of the Commission, derogate from the provisions of Annex III where such derogations are compatible with the development of medical science and with the principles laid down in that Annex.

4. Without prejudice to national criminal and police laws, Member States may, after consulting the Commission, apply to the issue of driving licences the provisions of their national rules relating to conditions other than those referred to in this Directive.

5. No person may hold a driving licence from more than one Member State.'

9 Article 8 of Directive 91/439 provides:

'1. Where the holder of a valid national driving licence issued by a Member State has taken up normal residence in another Member State, he may request that his driving licence be exchanged for an equivalent licence; it shall be for the Member State effecting the exchange to check, if necessary, whether the licence submitted is in fact still valid.

2. Subject to observance of the principle of territoriality of criminal and police laws, the Member States of normal residence 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.

3. The Member State effecting the exchange shall return the old licence to the authorities of the Member State which issued it and give the reasons for so doing.

4. A Member State may refuse to recognise the validity of any driving licence issued by another Member State to a person who is, in the former State's territory, the subject of one of the measures referred to in paragraph 2.

A Member State may likewise refuse to issue a driving licence to an applicant who is the subject of such a measure in another Member State.

...'

10 Under Article 9 of Directive 91/439, 'normal residence' means the place where a person usually lives, that is, for at least 185 days in each calender 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.

11 Article 12(1) of Directive 91/439 provides that, after consulting the Commission and before 1 July 1994, Member States are to adopt the laws, regulations or administrative provisions necessary to comply with that directive as of 1 July 1996.

12 Under point 2 of Annex I to Directive 91/439, the Community model driving licence consists of six pages.

13 Point 4 of Annex I to Directive 91/439 provides:

'Where the holder of a driving licence issued by a Member State has taken up normal residence in another Member State, the latter may indicate:

— change(s) of residence on page 6,

— information essential for administrative purposes such as serious offences committed in its territory, on page 5,

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.

...'

14 Point 1 of Annex III to Directive 91/439, entitled 'Minimum standards of physical and mental fitness for driving a power-driven vehicle', provides that drivers are classified in two groups: group 1, which includes drivers of vehicles of categories A, B and B+E, and group 2, which includes drivers of vehicles of categories C, C+E, D and D+E.

15 Annex III provides as follows with regard to medical examinations that those two groups of drivers must undergo:

'3. *Group 1*:

Applicants shall be required to undergo a medical examination if it becomes apparent, when the necessary formalities are being completed or during the tests which they have to undergo prior to obtaining a driving licence, that they have one or more of the medical disabilities mentioned in this Annex.

4. *Group 2*:

Applicants shall undergo a medical examination before a driving licence is first issued to them and thereafter drivers shall undergo such periodic examinations as may be prescribed by national legislation.'

16 According to the common declaration of the Council and the Commission concerning Article 1(3) of Directive 91/439, they recognise that the directive does not preclude Member States from registering the information from driving licences issued by another Member States when the holders of those licences take up normal residence in their territory.

17 Directive 96/47, which entered into force on 18 September 1996, added Annex Ia to Directive 91/439. That annex offers Member States the possibility of issuing

licences according to a model defined therein, which is different from the one provided for in Annex I to Directive 91/439. The second licence model is in the form of a polycarbonate card of the type used for bank and credit cards.

18 In accordance with point 2 of Annex Ia, the licence model is to have two sides, with the second side having a space reserved for the possible entry by the host Member State of information essential for administering the licence, in implementation of paragraph 3(a) of that annex.

19 Point 3(a) of Annex Ia to Directive 91/439 provides:

'Where the holder of a driving licence issued by a Member State in accordance with this Annex has his normal place of residence in another Member State, that Member State may enter in the licence such information as is essential for administering it, provided that it also enters this type of information in the licences which it issues and provided that there remains enough space for the purpose.'

*National legislation*

20 In the Netherlands, most of the provisions governing driving licences are contained in the general legislation on road traffic, of which the WVW 1994 is the foundation.

21 Article 107(1) of the WVW 1994 requires the driver of a motor vehicle operating on public roads to be in possession of a driving licence issued by the competent authority authorising that person to drive that vehicle, it being understood that the authority contemplated is the competent one in the Netherlands. Article 107(2) lays down the various characteristics the licence must have, in particular that it must be valid.

22 Article 108(1)(h) of the WVW 1994 provides:

'1. Article 107 shall not apply to drivers of:

...

(h) motor vehicles if those drivers reside in the Netherlands and the competent authority of another Member State of the European Communities or another Contracting Party to the European Economic Area has issued them a driving licence valid for driving a motor vehicle such as the one they are driving, for the duration of validity in the Netherlands fixed when that licence is registered in the registry of driving licences or, if the licence is not registered in the registry of driving licences or if the duration of validity in the Netherlands fixed at the time of registration is less than one year, provided that a year has not elapsed since the day of their establishment in the Netherlands.'

23 Article 109 of the WVW 1994 provides:

'1. The duration of validity in the Netherlands fixed at the time of registration provided for in Article 108(1)(h) shall be:

(a) 10 years from the date of issue if the driving licence was issued to a person who had not yet reached the age of 60 at the date of issue;

(b) the period to the date when the holder will reach the age of 70, if the licence was issued to a holder who was over the age of 60 but under the age of 65 at the date of issue;

(c) five years as from the date of issue if the driving licence was issued to a holder having reached the age of 65 at the date of issue.

2. The registration takes place at the request of the holder.

3. The person responsible for the registration shall verify the identity of the applicant, and shall be empowered to require the applicant to be present at a specific time and place before a specific person.

4. The person responsible for the registration shall ensure that the driving licence presented for registration is valid and that it satisfies the conditions of registration applicable to it.

5. The methods of registration shall be prescribed by public administrative regulations. A ministerial regulation may lay down how the rules are to be implemented.'

24 Article 10 of the RR adopted to define the methods envisaged in Article 109(5) of the WVW 1994 provides:

'The driving licence to be registered pursuant to Article 108(1)(h) of the [WVW 1994] must have been issued to the applicant during the period forming part of a year during which he or she resided at least 185 days in the country where the licence was issued or during a period during which he or she was enrolled for at least six months at a university, middle, secondary or post-secondary professional teaching institution or in another middle, secondary or post-secondary teaching institution in the country where the licence was issued and must still be valid on the date the application is filed.'

25 Article 11 of the RR provides:

'When the application for registration is made, the following documents must be provided:

(a) a completed application form, in accordance with the model established by ministerial regulation;

(b) a certified photocopy of the driving licence for which the application for registration is being made;

(c) a certified copy of the necessary information concerning the applicant, from the population registry of the municipality where the applicant is registered, issued no more than six months prior to the application;

(d) supporting documents certifying that the requirements of Article 10 for registering licences are satisfied.'

26 Article 13 of the RR specifies the information which must be notified to the holder of the registered licence. That information includes the date of registration and the duration of validity of the licence registered in the Netherlands.

27 Article 28 of the RR provides that the holder of a foreign driving licence may obtain a Netherlands driving licence in exchange for his or her foreign driving licence. The exchange takes place at the request of the holder. That request, made by means of a form, must, pursuant to Article 33 of the RR, be accompanied by a number of supporting documents which are essentially the same as those provided for in Article 11 of the RR, although the driving licence to be exchanged must also be included. Article 109 of the RR provides that the licence is to be sent back to the authority which issued it.

28 The duration of validity of Netherlands driving licences obtained by exchange is determined pursuant to Article 122 of the WVW 1994, a provision which corresponds essentially to Article 109(1) of the WVW 1994.

29 Article 126(1) of the WVW 1994 provides that a registry of driving licences is to be kept. Article 126(2) states that the registry is to contain information about the licences issued and case-law on revocation of motor vehicle driving licences, in so far as that information is necessary to ensure proper implementation of the WVW 1994. Article 126(4) provides that, for the application of the other provisions of that article, 'driving licence' is to be understood as meaning also a driving licence issued by the competent authority of another Member State of the European Union or a Contracting Party to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) whose holder resides in the Netherlands.

30 Article 177(1) of the WVW 1994 provides that driving without a driving licence, with an expired driving licence or with a driving licence which does not satisfy the requirements imposed by or under the WVW 1994 is to be subject to a penal sanction of up to two months in prison or a fine.

31 Article 2(1) of the Wet administratiefrechtelijke handhaving verkeersvoorschriften (Law on the administrative implementation of the traffic rules) of 3 July 1989 (Stbl. 1989 No 300), as most recently amended by the Law of 28 October 1999 (Stbl. 1999 No 469), provides for the application of administrative sanctions instead of the penal sanctions provided for in the WVW 1994 in the case of certain conduct which infringes provisions established by or under the WVW 1994.

32 As regards the age-limits for obtaining driving licences, Article 111(1)(a) of the WVW 1994 provides that a driving licence may not be issued to a person who has not reached the age of 18. That provision holds for all categories of vehicles.

33 As regards the compulsory medical examinations, Article 100(3) of the RR provides that, when an application for a driving licence is made, a medical report established no more than two weeks before the application is made must be provided when the application concerns:

'(a) the issue of a driving licence to an applicant over 70 years of age;

(b) the issue of a driving licence to an applicant who has reached 65 years of age and is in possession of a driving licence which expires on or after the day the applicant reaches 70 years;

(c) the issue of a type C, D or E driving licence.'

**Pre-litigation procedure**

34 Following an exchange of correspondence between the Kingdom of the Netherlands and the Commission, the provisions of the WVW 1994 and the RR were adopted and notified to the Commission. The Commission, taking the view that the legislation adopted contained provisions which were not compatible with Directive 91/439, sent the Netherlands a letter of formal notice on 17 June 1997, asking it to submit its observations within two months.

35 By letters of 23 October 1997 and 22 July 1998, the Netherlands Government sent the Commission supplementary information on the provisions referred to in the letter of formal notice.

36 Not satisfied by the observations submitted by the Kingdom of the Netherlands, the Commission issued a reasoned opinion on 7 December 1998 asking that Member State to fulfil its obligations under Directive 91/439 within two months of notification of the reasoned opinion.

37 By letter of 19 April 1999, the Netherlands Government again gave the Commission explanations about the system adopted in the Netherlands for registering driving licences.

38 The Commission, judging that information not to be sufficient, decided to bring the present action.

39 By application lodged at the Court Registry on 6 December 2002, the Netherlands Government asked for the oral procedure, which had been closed on 21 November 2002, to be reopened, following delivery of the Opinion of the Advocate General. That request was denied by order of the Court of 10 February 2003.

40 By order of the President of the Court of 20 February 2001, the Kingdom of Spain was granted leave to intervene in support of the forms of order sought by the Kingdom of the Netherlands.

## The action

41 In support of its action, the Commission relies on four complaints, concerning the procedure for registering driving licences issued by another Member State, the

calculation of the duration of validity of those licences, the age-limit set for obtaining a Category D licence and the obligation for drivers of vehicles in categories C, C+E, D and D+E to undergo medical examinations periodically.

*Procedure for registering driving licences issued by another Member State*

Arguments of the parties

42 By its first complaint, the Commission criticises the Kingdom of the Netherlands for having infringed Article 1(2) of Directive 91/439 by having established a compulsory registration system for driving licences issued by other Member States one year after the licence holder's establishment in the Netherlands and for having provided for a registration procedure which, by its cumbersomeness, is barely distinguishable from the procedure for exchanging driving licences.

43 As regards, first, the obligation to register under Articles 107 to 109 of the WVW 1994, the Commission submits that, in the light of the first and ninth recitals to Directive 91/439, the mutual recognition provided for in Article 1(2) of that directive implies that driving licences issued by a Member State must be recognised by the other Member States and that holders of those licences may not be required to go through any additional formalities. Accordingly, at the current stage of harmonisation of the conditions for obtaining driving licences, the host Member State cannot require holders of driving licences issued by other Member States to register their driving licences as a precondition for driving a motor vehicle on its territory.

44 The Commission adds that, since driving a motor vehicle with an unregistered licence is an offence, it matters little that the sanction provided for in the event of non-compliance with the obligation to register is administrative or penal in nature.

45 In addition, it follows from Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929, paragraph 26, and Case C-230/97 *Awoyemi* [1998] ECR I-6781, paragraphs 41 and 42, that any formalities required in order to have a driving licence issued in one Member State recognised in another Member State constitutes an obstacle to the free movement of persons.

46 Turning, next, to the registration procedure provided for by the WVW 1994 and the RR, the Commission maintains that the formalities to be completed during that procedure are excessively cumbersome and are similar to those required for the exchange of a driving licence, whereas Directive 91/439 expressly prohibits Member States from providing for such an exchange procedure.

47 The Commission adds that in any case it is not possible to justify the registration procedure at issue in this case by the fact that the Kingdom of the Netherlands is seeking to use the opportunity provided for in Article 1(3) of Directive 91/439 to apply to the holder of a driving licence issued by another Member State its national rules on the period of validity of the licences, medical checks and tax arrangements and to enter on the licence any information indispensable for administration.

48 First, such an approach disregards the fact that Article 1(3) of Directive 91/439 constitutes merely an exception to the principle of mutual recognition of driving licences provided for in Article 1(2) and thus must be interpreted narrowly. Second, it undermines the effectiveness of Article 1(3) of Directive 91/439, to the detriment of the effectiveness of Article 1(2), which is, in the light of the relation

between the two provisions, unacceptable. Lastly, there are other, less restrictive ways of ensuring the application of the national provisions referred to in Article 1(3) of Directive 91/439.

49 In its observations concerning the intervention by the Kingdom of Spain, the Commission states that the infringement it alleges on the part of the Kingdom of the Netherlands does not reside in the fact of having established a registration system for driving licences, but rather in the compulsory nature of the registration and the cumbersomeness of the registration procedure itself.

50 The Netherlands Government submits that, in the absence of a European registration system which is centralised or coordinated between the Member States, the establishment of a national registration system for driving licences, such as the one in place in the Netherlands, is indispensable if the validity of the licences is to be checked effectively. Such a system, which is justified on grounds of road traffic safety and anti-fraud efforts, enables any officer checking a driver to ascertain whether the information on the driving licence corresponds to the information in the driving licence register.

51 The Netherlands Government points out that Directive 91/439 gives Member States the opportunity to apply to the holder of a licence issued by another Member State their national rules on the period of validity of the driving licences and to enter on the licence any information indispensable for administration. The Netherlands legislature availed itself of that opportunity and, because of the physical impossibility of including some of the information on some driving licences, had to adopt a system which enabled the competent authorities to enter that information elsewhere than on the licences themselves. In addition, since driving licences from other Member States are still very varied, an assessment of their validity requires expert knowledge, which makes registration indispensable.

52 The Netherlands Government submits that although Directive 91/439 provides for the mutual recognition of driving licences, it does not ensure their complete harmonisation and that, as long as those differences persist as regards, for example, the duration of validity, there can be no complete mutual recognition.

53 At the hearing, the Netherlands Government added that there is no system of compulsory registration of driving licences, as the Commission maintains, because holders of driving licences issued by another Member State who take up residence in the Netherlands may choose between registration and exchange of their licence. In response to a question put by the Court, the Netherlands Government stated that holders of driving licences issued by another Member State who have resided in the Netherlands for more than one year without registering or exchanging their licence are subject to a sanction if they operate a motor vehicle in the Netherlands. That sanction is, however, administrative in nature, not penal.

54 Regarding the registration procedure, the Netherlands Government maintains that, contrary to what the Commission contends, the registration procedure is different in several respects from the exchange procedure and is not a constraint which is disproportionate to the objective pursued.

55 The Kingdom of Spain, which has intervened in support of the submissions of the Netherlands on the first complaint put forward by the Commission, submits that a provision such as Article 108(1)(h) of the WVW 1994 does not infringe Article 1(2) of Directive 41/439 and is covered by Article 1(3).

56 The registration of licences issued by other Member States is essential if the host Member State is to be able to avail itself of the powers conferred by Article 1(3)

of Directive 91/439. Were it not for such registration, a host Member State would be unable to apply the provisions of its own legislation to the holder of a driving licence who has taken up residence on its territory, because it would have no specific information on that holder or the vehicles that person is authorised to operate.

57 The Spanish Government submits that a register containing information on the holder is also necessary for the application of Article 8(2) of Directive 91/439. Only such a register can enable a Member State to take measures providing, for example, for harsher penalties in the event of repeat offences.

58 It adds that the Netherlands registration system is not contrary to the principle of mutual recognition of driving licences because the holder of a driving licence issued by another Member State may continue to use that licence and is not obliged to exchange it for a Netherlands driving licence.

59 The Spanish Government also maintains that Article 1(3) of Directive 91/439 is not an exception to the principle of mutual recognition laid down in Article 1(2) because the two provisions are independent of each other.

Findings of the Court

60 As regards, first, the compulsory nature of the registration provided for by the Netherlands legislation, it is appropriate to recall that Article 1(2) of Directive

91/439 provides for mutual recognition of driving licences issued by other Member States and that the Court has held that that recognition is to be carried out without any formality (see *Skanavi and Chryssanthakopoulos*, paragraph 26, and *Awoyemi*, paragraph 41).

61 In addition, as indicated in paragraph 41 of *Awoyemi*, the obligation of mutual recognition of driving licences is a clear and unconditional obligation and the Member States have no discretion as to the measures to be adopted in order to comply with the requirement.

62 It is thus clear that if registration of a driving licence issued by another Member State becomes an obligation because holders of such a licence are subject to a sanction if, after having taken up residence in the host Member State, they operate a motor vehicle without having registered their driving licence, such registration must be deemed to constitute a formality within the meaning of the case-law referred to in paragraph 45 of this judgment and is thus contrary to Article 1(2) of Directive 91/439.

63 In the present case, it is common ground that holders of driving licences issued by another Member State who have been resident in the Netherlands for over a year are deemed to have committed an offence which is subject to a fine if they operate a motor vehicle without having registered their driving licence in the Netherlands. Consequently, the registration in question constitutes such a formality and is thus contrary to Article 1(2) of Directive 91/439.

64 This finding is not affected by the argument that the sanction applied in the event of failure to comply with the registration obligation is administrative and not penal in nature; nor is it affected by the argument that the compulsory registration of driving licences is essential in order to make use of the possibility offered by Article 1(3) of Directive 91/439.

65 First, the nature of the fine to which drivers who have not registered their driving licences within the prescribed time-period are subject is irrelevant because the very existence of a sanction, of whatever nature, necessarily makes the registration in question compulsory.

66 Second, for the reasons indicated by the Advocate General in paragraphs 49 to 51 of his Opinion, the measures adopted by a Member State to avail itself of the possibility offered by Article 1(3) of Directive 91/439 of applying to the holder of a driving licence issued by another Member State who takes up residence in the Netherlands its national rules on the period of validity of the licences, medical checks and tax arrangements and to enter on the licence the information indispensable for administration must not hinder or make less attractive for Community nationals the exercise of their right to free movement of persons and freedom of establishment and, where they none the less do so, those measures must be applied in a non-discriminatory manner, be justified by imperative reasons of public interest, be appropriate for guaranteeing the attainment of the objective pursued and not go beyond what is necessary to attain that objective.

67 In the present case, it is clear that although road traffic safety, which is the objective pursued by Article 1(3) of Directive 91/439, is among the imperative reasons of public interest which may justify a restriction on fundamental freedoms guaranteed by the EC Treaty, and although the measure in dispute here is in effect applied to Netherlands nationals and nationals of other Member States alike and appears to be appropriate for attaining the objective pursued, the compulsory registration of driving licences goes beyond what is necessary to attain the objective pursued.

68 First of all, the fact that a licence issued by another Member State is not registered in the Netherlands does not prevent the Netherlands authorities from applying

correctly the national provisions on the duration of validity of driving licences by adding 10 years to the date of issue stated on the driving licence when road checks are carried out.

69 Next, the registration at issue here is also not essential in order to enable the competent authorities to ensure that the national provisions governing the renewal of driving licences and medical examinations have been complied with, since it is for the holder of the driving licence to prove that the relevant provisions have been complied with. Accordingly, it is sufficient to inform holders of driving licences issued by other Member States of the obligations they have under national legislation when they take the steps necessary to take up residence in the Netherlands and apply the sanctions provided for in the event of non-compliance with the provisions in question.

70 Lastly, the fact that in some Member States driving licences made of polycarbonate are used does not make compulsory registration of those licences essential because, contrary to the contentions of the Netherlands Government, those licences must contain a space reserved for the possible entry by the host Member State of information essential for administering the licence.

71 Accordingly, the Court finds that the first part of the Commission's first complaint is well founded.

72 As regards, second, the cumbersomeness of the registration procedure, it is important to emphasise that it follows from Article 109(5) of the WVW 1994 and from Articles 11, 28 and 33 of the RR, adopted to ensure the application of the WVW 1994, that the supporting documents to be submitted for a registration or an exchange of a driving licence are almost identical. Since, as noted in paragraph 53 of this judgment, the registration procedure must be completed if holders of driving licences issued by another Member State who have taken up residence in

the Netherlands wish to operate a motor vehicle in the Netherlands without being subject to a sanction, it is clear that the system at issue in this case is similar to the system for exchanging driving licences, a system which Directive 91/439 is expressly intended to abolish, as evidenced by its ninth recital.

73 The Court notes, moreover, on a reading of Articles 10 and 11 together of the RR, that holders of driving licences issued by another Member State who wish to have their licence registered in the Netherlands must provide proof that, during the year in which the licence was obtained, they resided at least 185 days in the Member State where the licence was issued or were enrolled for at least six months at a school or university in that State.

74 This requirement, along with the fact that it requires the holder of the licence to be registered to prove something the evidence for which can be extremely difficult to provide owing to the time which may elapse between when the licence is obtained and when the person takes up residence in the Netherlands and the distance there may be between the place where the licence holder resided when the driving licence was obtained and the municipality in which the licence holder decides to take up residence in the Netherlands, negates the very recognition of driving licences issued by other Member States, because it amounts to rechecking whether the licence holder has fulfilled the conditions for obtaining a licence provided for in Articles 7(1)(b) and 9 of Directive 91/439.

75 The Court notes, from a reading of Articles 7(1)(b) and 9 together of Directive 91/439, that it is for the authorities who issue driving licences to ensure that applicants have their normal residence in the State issuing the licence or that they are enrolled at a school or university there. Accordingly, if a person holds a driving licence issued by a Member State, that should be deemed to be proof that the licence holder has fulfilled the conditions for the issue of a licence provided for in Directive 91/439; the host Member State cannot then require the holder to

prove again that he or she actually satisfied the conditions laid down in Articles 7(1)(b) and 9 of Directive 91/439, without violating the principle of mutual recognition of driving licences.

76 Accordingly, the second part of the first complaint is also well founded.

*Calculation of the duration of validity of driving licences issued by other Member States*

Arguments of the parties

77 By its second complaint, the Commission alleges that the Kingdom of the Netherlands has infringed Article 1(2) of Directive 91/439 by providing that the duration of validity of a driving licence issued by another Member State is determined on the basis of the date of issue of that licence in that State rather than the date on which the licence holder took up residence in the Netherlands.

78 It submits in this regard, first, that one consequence of the Netherlands system is that holders of licences issued by another Member State more than nine years

before they take up residence in the Netherlands will have their licences recognised for only one year, due to the application of Article 108(1)(h) of the WVW 1994. After that period has lapsed, they will be obliged to have their licences registered. Since under Article 109(1)(a) of the WVW 1994 the maximum duration of validity of a driving licence is 10 years, the licence holders will have to exchange their licences for Netherlands licences. The Commission adds, and has not been contradicted on this point by the Netherlands Government, that the Netherlands system prevents some 54% of Community nationals likely to have a driving licence and be entitled to exercise their right to free movement from being able effectively to enjoy the benefit of the mutual recognition of driving licences provided for by Directive 91/439.

79 The Commission maintains, second, that the Netherlands registration system constitutes an obstacle to the free movement of persons because it obliges large numbers of people who have exercised their right to move freely to exchange their driving licence for a Netherlands licence. The exception provided for in Article 1(3) of Directive 91/439 is to be construed narrowly and cannot be used to negate the principle of mutual recognition of driving licences provided for in Article 1(2). In addition, the calculation of the duration of validity of the driving licences does not 'concern the safety of highway traffic' as contemplated in Case 16/78 *Choquet* [1978] ECR 2293.

80 Moreover, the sanction provided for in the WVW 1994 in the event of failure to comply with the obligation to exchange a driving licence issued by another Member State for a Netherlands driving licence is disproportionate and constitutes an obstacle to the free movement of persons.

81 The Commission submits, third, that the argument that calculating the duration of validity of a driving licence issued by another Member State on the basis of the date of issue rather than the date of the holder's taking up residence in the Netherlands serves, in order to combat fraud, to ensure that rights cannot be derived from documents over 10 years old proves that the Kingdom of the Netherlands does not intend to recognise many of the licences issued in other Member States or the measures taken by those Member States to combat fraud. Moreover, the Netherlands system is disproportionate to the objective pursued, since that objective could also be attained by calculating the duration of validity of a foreign licence on the basis of the date on which the holder takes up residence in the Netherlands.

82 The Netherlands Government contends, first, that Directive 91/439 does not limit the power the Member States have to apply their legislation governing the duration of validity of driving licences to licences issued by other Member States. The purpose of the scheme established by Article 109(1) of the WVW 1994 is precisely to exercise that power. The fact that the implementation of that scheme means that mutual recognition of driving licences remains a dead letter for many driving- licence holders, as maintained by the Commission, is merely an inevitable consequence of the possibility offered by Article 1(3) of Directive 91/439. The provisions adopted by other Member States in order to be able to apply their respective legislation leads in any case to the same result.

83 Next, the Netherlands Government maintains that the decision to calculate the duration of validity of driving licences issued by other Member States on the basis of their date of issue rather than the date of the holders' taking up residence in the Netherlands was necessary for reasons of effective control and road traffic safety and to combat fraud. It is necessary to prevent individuals from being able to

derive rights from documents over 10 years old because an identification photo over 10 years old is not sufficient to identify a person clearly. Moreover, in order to combat fraud effectively, it is necessary to remain at the forefront of progress in security techniques.

Findings of the Court

84 Since neither the title of the second complaint nor the appurtenant observations indicate that this complaint by the Commission concerned the obligation to exchange driving licences resulting from the Netherlands legislation, the second complaint must be understood as concerning only the calculation of the duration of validity of driving licences issued by other Member States the holders of which have taken up residence in the Netherlands.

85 The Court finds, in this connection, that the Commission has not demonstrated how calculating the duration of validity on the basis of the date of issue rather than the date of the holder's taking up residence in the Netherlands undermines Article 1(2) of Directive 91/439 and the principle of the mutual recognition of driving licences laid down therein.

86 The method of calculation proposed by the Commission amounts merely to giving nationals of other Member States wishing to take up or having taken up residence in the Netherlands more time to fulfil the conditions provided for by the Netherlands legislation in order to obtain an extension of the duration of validity of their driving licences in the Netherlands. Provided that the provisions of the

host Member State governing the duration of validity of driving licences or medical examinations may validly be applied to the holders of driving licences issued by other Member States and are not such as to undermine the principle of mutual recognition laid down by Directive 91/439, the method chosen to determine the date from which those holders must fulfil the conditions provided for in the host Member State's legislation cannot by itself amount to a violation of the principle of mutual recognition of driving licences.

87 It follows that the second complaint must be dismissed.

*The minimum age requirement for obtaining a Category D driving licence and the periodic medical examination for drivers of category C, C+E, D and D+E vehicles*

Arguments of the parties

88 The Commission's third complaint is based on infringement of Article 6(1)(c) of Directive 91/439 by Article 111(1)(a) of the WVW 1994, on the ground that that provision provides for a minimum age of 18 instead of 21 for obtaining a category D driving licence.

89 By its fourth complaint, the Commission criticises the Kingdom of the Netherlands for having infringed point 4 of Annex III to Directive 91/439 by not providing for a periodic medical examination for drivers of category C, C+E, D and D+E vehicles in Article 100 of the WVW 1994.

90 As regards the third and fourth complaints, the Kingdom of the Netherlands admits that it has not yet adopted the measures necessary to comply with Article 6(1)(c) of, and point 4 of Annex III to, Directive 91/439. It stresses, however, that national legislative provisions designed to end those infringements are in the process of being adopted.

Findings of the Court

91 Since it is common ground in the present case that the Kingdom of the Netherlands has not adopted the measures necessary to ensure the transposition of Article 6(1)(c) of, and point 4 of Annex III to, Directive 91/439, the Court finds that the third and fourth complaints are well founded.

92 In the light of all the foregoing, the Court finds that, by adopting and maintaining in force Articles 107(1), 108(1)(h), 111(1)(a) of the WVW 1994, Article 100 of the RR, and Article 109(5) of the WVW 1994, read in conjunction with Articles 11, 28 and 33 of the RR, the Kingdom of the Netherlands has failed to comply with its obligations under Articles 1(2) and 6(1)(c) of, and point 4 of Annex III to, Directive 91/439.

## Costs

93 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful in the main, the latter must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, the Kingdom of Spain must pay its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by adopting and maintaining in force Articles 107(1), 108(1)(h) and Article 111(1)(a) of the Wegenverkeerswet (Road Traffic Law) of 21 April 1994, as amended, as well as Article 100 of the Reglement Rijbewijzen (Decree on driving licences) of 28 May 1996, as amended by the Decree of 18 June 1996, together with Article 109(5) of the 1994**

Wegenverkeerswet, read in conjunction with Articles 11, 28 and 33 of the Reglement Rijbewijzen, the Kingdom of the Netherlands has failed to comply with its obligations under Articles 1(2) and 6(1)(c) of, and point 4 of Annex III to, Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Council Directive 96/47/EC of 23 July 1996;

2. Dismisses the remainder of the application;

3. Orders the Kingdom of the Netherlands to pay the costs;

4. Orders the Kingdom of Spain to bear its own costs.

Schintgen Gulmann Skouris

Macken Colneric

Delivered in open court in Luxembourg on 10 July 2003.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber