OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 19 February 1987 *

Mr President,
Members of the Court,

A — Facts

1. The proceedings before us today once more concern the failure of a Member State to implement the First Council Directive of 4 December 1980 on the introduction of a Community driving licence. [1]

2. That directive contains provisions

(i) on the harmonization of existing national regulations on driving tests;

(ii) health standards;

(iii) the reciprocal recognition of national driving licences;

(iv) the exchange of the driving licences of persons who change their place of work or of residence from one Member State to another; and

(v) the introduction of a Community model for national driving licences.

3. Under Article 12 of the directive the Member States were to adopt, in good time and at the latest by 30 June 1982, the laws, regulations or administrative provisions necessary for the implementation of the directive from 1 January 1983. The Member States were, however, at liberty to delay the issue of Community model driving licences until a later date, but in any event not later than 1 January 1986.

4. Under Article 6 (2) of the directive the Member States may apply to the issue of driving licences the provisions of national law concerning matters other than practical and theoretical tests, medical standards and residence conditions. Under Article 9 of the directive, pending introduction of the final system the Member States may, after consulting the Commission, derogate from certain aspects of the directive.

5. The Commission, the applicant, considered that the Italian Republic, the defendant, had not taken the measures necessary for the implementation of the directive in national law, and on 9 November 1983 it therefore initiated the procedure provided for under Article 169 of the EEC Treaty.

6. The defendant informed the applicant that pending the enactment of legislation it had taken a first step towards the implementation of the directive by issuing an administrative circular. According to the applicant, however, while that circular did implement Article 8 of the directive, it did not implement its other provisions, in particular Article 6 concerning the issue of driving licences.

7. In its reasoned opinion issued on 11 February 1985 the applicant stated that insufficient account had been taken of Article 6 of the directive, particularly inasmuch as no practical test whatsoever was required for Category A (motor-cycle) driving licences and the duration of the test for other categories of driving licences was

* Translated from the German.

1 — Directive 80/1263, Official Journal 1980, L 375, p. 1.

left to the discretion of the examiner, although Annex II of the directive requires a minimum duration of 20 minutes. Furthermore, Italian law contains no provisions preventing the grant or renewal of driving licences for persons suffering from certain severe illnesses.

8. The *applicant* claims that the Court should:

Declare that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary for the implementation of Council Directive 80/1263 of 4 December 1980 on the introduction of a Community driving licence the defendant has failed to fulfil its obligations under the EEC Treaty;

Order the defendant to pay the costs.

9. The *defendant* asks the Court to:

Dismiss the action as inadmissible, or in any event as unfounded.

10. It takes the view that in the light of Article 12 (2) of the directive the commencement of proceedings for failure to implement the directive as a whole was unwarranted before 1 January 1986.

11. It may be concluded from Articles 6 (2), 9 and 12 (2) of the directive, says the defendant, that the Member States are not obliged to implement the Community provisions regarding driving licences immediately and in full. In the case of Category A driving licences an optional test is provided for. Legislation is necessary for the introduction of a compulsory test.

12. With regard to the prescribed medical standards the defendant states that the applicant has criticized a number of details of its system. Since, however, the minimum requirements may differ — though not substantially — from the requirements of the directive, it is not sufficient to complain of the absence of a specific provision: it is necessary instead to examine whether the national minimum requirements are equivalent.

13. In so far as is necessary I shall deal with the details of the parties' submissions in the course of my Opinion. For the rest, reference may be made to the Report for the Hearing.

B — Opinion

I — *Admissibility*

The date on which the action was brought

14. The defendant's submission to the effect that in the light of Articles 6 (2), 9 and 12 (2) the action must be regarded as premature and therefore inadmissible cannot be upheld. Under Article 12 (1) the Member States were obliged to adopt the laws, regulations and administrative provisions necessary for the implementation of the directive from 1 January 1983 in good time and at the latest on 30 June 1982. From 1 January 1983 at the latest, therefore, proceedings could be brought against a Member State which had failed to fulfil that obligation, although only to the extent to which the directive already gave rise to obligations.

15. It is only in that respect that the exception provided for in Article 12 (2), under which the issue of Community model driving licences could be delayed until 1

January 1986, has any relevance. The exception in Article 12 (2) is restricted to that point alone; in no way can it justify the conclusion that the implementation of the other provisions of the directive could also be delayed until 1 January 1986.

16. Nor do Articles 6 (2) and 9 of the directive cast doubt on the admissibility of the action. Article 6 (2) empowers the Member States to apply to the issue of driving licences provisions of national legislation concerning conditions other than the imposition of a practical and theoretical test, medical standards and the residence requirement. Article 9 permits the Member States, after consulting the Commission, to derogate from certain details of the directive. Neither of those provisions, however, can be regarded as placing in question the obligation of the Member States to implement the directive within the period laid down in Article 12 (1).

Interpretation of the application

17. It must be admitted that the application is very generally worded, so that it may be interpreted as claiming that the defendant has failed to implement the directive in its entirety. Interpretation of the application on the basis of the applicant's statement of its claim and the preliminary procedure gives a different picture, however.

18. It may be concluded from the applicant's letter of 27 August 1984 and in particular from the reasoned opinion of 11 February 1985 that it is not concerned with the manner in which the defendant has implemented Article 8 of the directive, on the recognition and exchange of national driving licences. Since the reasoned opinion defines the limits of what may subsequently become the subject-matter of infringement proceedings, it is therefore clear that the defendant is not accused of a failure to implement Article 8 of the directive. In that respect the defendant's statements must be regarded as nugatory.

19. Furthermore, in the reasoned opinion the applicant emphasized the defendant's obligation to implement the whole of the directive — that is to say, to transpose all of its provisions, and not just some of them, into national law, and in particular Article 6. Neither in the reasoned opinion of 11 February 1985 nor in the application to the Court is any mention made of incorrect implementation of other provisions of the directive. The application must therefore be interpreted as alleging a breach by the defendant of the EEC Treaty in so far as it has failed to implement Article 6 of the directive in question.

20. In its reply the applicant made it clear that the application is not concerned with the fact that even after 1 January 1986 the defendant does not issue Community model driving licences. Nor could a reasonable interpretation of the application lead to any other conclusion, since it cannot be assumed that at the time of bringing these proceedings the applicant intended to claim that the defendant had failed to fulfil an obligation by which it was not yet bound at the time when the infringement proceedings were initiated or even when the matter was brought before the Court.

21. Interpreted in the restrictive manner which I have proposed, therefore, the application is admissible.

II — *Substance of the case*

22. As a result of what was stated during the written procedure and at the hearing it is clear that more than four years after the directive in question should have been implemented the defendant has not fulfilled its obligations under Article 6.

23. The applicant raises three specific points:

1. No practical test is required for Category A (motor-cycle) driving licences;

2. The duration of the test is left to the discretion of the examiner;

3. The defendant's legislation does not make it clear that driving licences are not to be issued or renewed for applicants suffering from certain illnesses set out in the directive.

24. With regard to the practical test for the issue of a Category A (motor-cycle) driving licence, the defendant has conceded that provision is made only for an optional test. It follows that there is no compulsory practical test.

25. On the question of the duration of the practical test the defendant made no remarks in the written procedure or at the hearing.

26. It must therefore be concluded that the defendant has taken no steps of any kind to ensure that the duration of the driving test in Italy complies with the prescribed minimum. Under paragraph 8 of Annex II to the directive the duration of the tests should be more than 30 minutes, and must not be less than 20 minutes.

27. On the issue of medical standards the defendant made no statement in the written procedure, and at the hearing its remarks were extremely unclear. In essence it stated that the applicant had challenged specific details of the Italian system; since, however, Article 6 (1) (a) simply provides that the minimum requirements of a national system may not be substantially less stringent than those set out in the directive, the applicant should have shown that the Italian system was not equivalent to that of the directive. The defendant did not show that the applicable provisions are not substantially less stringent than those of the directive.

28. In proceedings against Member States for failure to fulfil their obligations under the Treaty it is of course for the applicant to produce evidence of the alleged infringement. The limits of that obligation are reached, however, where the Member State in question is not sufficiently cooperative in clarifying the circumstances, in particular in determining the situation under national law. The defendant ought to have refuted the applicant's assertion that Italian law contains no provisions preventing persons suffering from certain serious illness from being issued driving licences or having them renewed.

29. It did not do so: in reply to the applicant's request, in the preliminary stage of the proceedings, for information on the measures adopted in implementation of the directive, the defendant merely referred to a circular on the recognition and exchange of foreign driving licences. In the remainder of the proceedings the defendant did not show what other concrete measures it had taken; indeed, it admitted that legislation was necessary and that that legislation had not yet been finally enacted.

30. With specific reference to the minimum medical requirements the defendant merely recited the charges made by the applicant and disputed its assessment of the situation. It did not describe the substance of its system; in particular it did not state whether the national minimum medical requirements were contained in a circular, in a legislative measure or in the bill which had not yet been enacted, and it did not show in what respect they were 'not substantially less stringent' than the Community standards.

31. In those circumstances I am of the view that for the purposes of these infringement proceedings it may be concluded that the defendant has not yet adopted appropriate measures concerning driving tests and medical standards.

C — Conclusion

32. I therefore propose that the Court should declare that the defendant has failed to fulfil its obligations under the EEC Treaty inasmuch as it has not adopted, within the prescribed period, the laws, regulations and administrative provisions necessary for the implementation of Article 6 (1) (a) of Council Directive 80/1263 of 4 December 1980 on the introduction of a Community driving licence and should order the defendant to pay the costs.