1. Since expert's reports on traffic accidents are not binding on the courts and leave the discretion of the judicial authority intact, the activity of an expert appearing before the court in that context cannot be regarded as participating in the exercise of official authority within the meaning of Article 55 of the Treaty and consequently exempted from the application of the rules of the Treaty on freedom of establishment and freedom to provide services.

   In that respect, declarations that certain Member States may have caused to be entered in the minutes of a meeting of the Council are of little significance, since the objective scope of rules of Community law can be derived only from those rules themselves, having regard to their context.

2. Where a directive is aimed at creating rights for individuals, implementing measures must not only be binding on the public authorities, but must also enable the beneficiaries to ascertain the full extent of their rights and to rely on them, where necessary, before the national courts. A mere administrative circular does not comply with those requirements.

REPORT FOR THE HEARING
in Case C-306/89 *

I — Summary of the facts

1. *Legal framework*

1.1 Community rules

Council Directive 82/470/EEC of 29 June 1982 (Official Journal 1982 L 213, p. 1) is intended to ensure that measures are provided to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies and in storage and warehousing.

Article 8 of that directive provides that the Member States are to adopt the measures necessary to comply with the directive within 18 months of its notification and forthwith to inform the Commission thereof. Since the directive was notified on 2 July 1982, the time-limit for transposing it into Greek law expired on 2 January 1984.

1.2 National rules

The Hellenic Republic refers to the following measures which are intended to regulate the activities provided for in Directive 82/470:

* Language of the case: Greek.

(a) Presidential Decree No 453/1984 (transport agents);

(b) Circular of the Ministry of Merchant Shipping No 3111.9/2407 of 22 April 1988 to the port authorities;

(c) Law No 393/1976 'concerning the establishment and operation of travel agencies';

(d) Legislative Decree No 3077/1954 'concerning general warehouses'.

2. Background to the dispute

When it did not receive within the period laid down any communication from the Greek Government regarding the transposition measures, and since it did not have any information enabling it to conclude that the Hellenic Republic had satisfied its obligation to adopt the necessary provisions, the Commission referred to that infringement in a letter of 16 April 1985 and invited the Greek Government to submit its observations regarding that infringement within two months.

By letter of 19 June 1985 the Greek Government informed the Commission that the matters governed by the directive concerned significant sectors of the Greek economy and that its implementation was causing serious difficulties.

On 24 June 1987 the Commission issued a reasoned opinion which was answered by letters of 13 November 1987 and 27 April 1988, which did not lead the Commission to change its point of view.

II — Written procedure and forms of order sought by the parties

The Commission's application was lodged at the Court Registry on 6 October 1989.

The written procedure followed its normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it decided to put a question to the Hellenic Republic: that question was answered within the prescribed period.

The *Commission* claims that the Court should:

(i) declare that the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 82/470/EEC of 29 June 1982 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 718) and in storage and warehousing (ISIC Group 720);

(ii) order the Hellenic Republic to pay the costs.

The *Hellenic Republic* contends that the Court should:

(i) dismiss the Commission's application;

(ii) order the Commission to pay the costs.

III — Submissions and arguments of the parties

The *Commission* maintains that the Hellenic Republic has not adopted any measures whatsoever to transpose Directive 82/470 into its legal system.

The Commission does not share Greece's view that it is not necessary to adopt measures to transpose the directive because the Greek legislation makes no distinction between Greek nationals and foreign nationals and because certain activities are not regulated in Greece.

According to the Commission, since the abolition of discrimination based on nationality is not sufficient to ensure that freedom of establishment and freedom to provide services are achieved, the directive, without compelling the Member States to give statutory protection to the activities in question, requires them to adopt the measures provided for in Articles 4, 5, 6 and 7 which are necessary to create an administrative infrastructure of such a kind as to afford the persons concerned:

— access to the exercise of the activities covered by the directive, where those persons fulfil equivalent conditions to those laid down by the laws or customs of the host country;

— precise official information regarding the conditions that will apply in the host country;

— the requisite certificates and documents provided for in Articles 4 and 7.

The Commission maintains that the absence of that administrative infrastructure leaves the persons concerned uncertain with regard to their rights and obligations in the host country and does not facilitate the free movement of persons.

With regard to the activity of shipping agents, which, according to Greece, has been opened to Community nationals by a circular, the Commission points out that, according to the consistent case-law of the Court, that practice is not to be regarded as appropriate compliance with the obligation placed on the Member States, since it may be amended at the whim of the authorities and does not receive adequate publicity.

As for the persons carrying on the activities set out in Article 2(D)(a) and (b) of the directive, consisting in carrying out inspection or technical valuation of motor vehicles and measuring, weighing and gauging goods, called 'road accident experts' by Greece, the Commission disputes Greece's submission that they come within the exercise of official authority. According to the Commission, the concept of official authority implies that the person exercising it is able to use special public-law powers and possesses privileges relating to public authority and powers of coercion vis-à-vis citizens, which is clearly not the case here. It adds that the exception envisaged in Article 55 of the Treaty must be interpreted restrictively.

The *Hellenic Republic* states, first of all, that Directive 82/470 covers a wide range of activities which come within the competence of not one but several ministries.

For the most part, those activities are regulated in Greece by legislation. Those rules are not incompatible with Community law provided that they do not involve any discrimination based on nationality.

The specific positions are as follows:

— transport agents: there is no legislation regulating access to that occupation; Presidential Decree No 453/1984 defines a number of obligations and provides for certain authorizations for the exercise of the activities of transit carriers and transport agents;

— shipping agents: a draft law on access to that activity has been drawn up and it makes no distinction between Greek nationals and those of other Member States of the Community; in order to mitigate the effects of the delay in the progress of that bill, the Ministry of Merchant Shipping, by Circular No 3111.9/2407 of 22 April 1988, gave the port authorities instructions regarding the grant to Community nationals of permits relating to the pursuit of the occupation of shipping agent;

— travel agents: Law No 393/1976 'concerning the establishment and operation of travel agencies' provides that the necessary permit to carry on the activity in question is to be issued to nationals and to foreigners according to the detailed rules for implementing that Law;

— general warehouses: Legislative Decree No 3077/1954 'concerning general warehouses' makes no distinction between nationals and foreigners for the grant of permits for the establishment of general warehouses;

— motor vehicle experts: for the activity mentioned in Article 2(D)(a) of the directive, Greece has used the description 'traffic accident experts',

which follows from Article 51 of the Greek Code on Road Traffic, which provides that, pursuant to Article 185 of the Code of Criminal Procedure, persons with scientific technical training or experience in traffic matters, preferably appointed from among acting or retired civil servants, will be entered on the register of traffic accident experts.

The rules relate not to the activity of expert, but to expert's reports themselves. The connection between the description of 'traffic accident experts' and the exercise of official powers is exclusively due to the fact that preference is given to civil servants when compiling the register of experts, without any question of nationality arising.

Greece disputes the Commission's view that an administrative infrastructure must be established in order to enable the directive to be applied, since the directive does not differ, as regards the provisions adopted, from the directives of a transitional nature in the field of the right of establishment and the freedom to provide services.

With regard to those directives, the obligation imposed on the Member State, apart from the obligation to designate the authorities competent to issue the documents and certificates in question, consists in abolishing any discriminatory treatment based on nationality and not in the obligation to give statutory protection to an occupation or activity.

Greece contends that it follows from the documents sent to the Commission that Greek and Community nationals have access, under the same conditions, to each of those occupations and that the authorities competent to issue and accept the certificates are the Greek tourism organization for travel agents, the Minister of Commerce for warehousekeepers and the local port authorities for shipping agents.

Greece observes, moreover, that the occupations of transport agents, shipping suppliers and freighters and traffic accident experts have no statutory protection in Greece; consequently no particular qualifications or conditions are required for their exercise, and it is not necessary to designate authorities competent to accept or issue those documents.

IV — Reply from the Hellenic Republic to a question put by the Court

Question

Since the Hellenic Republic mentions in its rejoinder the existence of authorities competent to issue and accept certificates (Article 7(4) of Directive 82/470), it is requested to indicate to the Court the legal provisions which confer such competence.

Answer

The certificates under Article 7(4) of Directive 82/470 are issued by the department for Greece's relations with the European Communities, in so far as the activities of the persons concerned come within the scope of the directive.

Acceptance of the certificates provided for in the abovementioned provisions is effected by the competent authorities designated in each case to issue the authorizations to carry on the occupation.

J. C. Moitinho de Almeida
Judge-Rapporteur