OPINION OF ADVOCATE GENERAL LÉGER

delivered on 17 February 2000 *

1. A dispute has been referred to the Nederlandse Raad van State (Council of State of the Kingdom of the Netherlands) regarding the Netherlands rules for establishing the way in which the date of first authorisation of motor vehicles for use on the public highway is determined. By this reference for a preliminary ruling the Nederlandse Raad van State is asking the Court of Justice for its interpretation of two series of questions: It is asking it to say whether:

(a) a rule such as that in issue in the main proceedings constitutes a technical regulation subject to an obligation to notify as laid down in Directive 83/189/EEC, [1] as amended by Directive 88/182/EEC [2] ('Directive 83/189'), and whether

(b) Articles 30 and 36 of the EC Treaty (now amended to Articles 28 and 30 EC) should be interpreted as meaning that they preclude national rules governing the way in which the date of first authorisation of vehicles is determined.

As a preliminary point to those questions, the Nederlandse Raad van State would also like to know which version of Directive 83/189 is applicable *ratione temporis* to the dispute in the main proceedings.

I — The legal background

Directive 83/189

2. Directive 83/189 seeks to protect the free movement of goods by preventive control. [3] To that end it establishes a procedure obliging Member States to notify the Commission of their plans in the field of

* Original language: French.

1 — Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8).

2 — Council Directive of 22 March 1988 (OJ 1988 L 81, p. 75).

3 — See, in particular, Case C-13/96 *Bic Benelux* [1997] ECR I-1753, paragraph 19.

technical regulations prior to adopting them. [4]

3. Article 1 of Directive 83/189 provides:

'For the purposes of this Directive, the following meanings shall apply:

(1) "technical specification", a specification contained in a document which lays down the detailed particulars required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking or labelling;

...

(5) "technical regulation", technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities;

(6) "draft technical regulation", the text of a technical specification including administrative provisions, formulated with the aim of enacting it or ultimately having it enacted as a technical regulation ...;

(7) "product", any industrially manufactured product and any agricultural product.'

4. Articles 8 and 9 of Directive 83/189 oblige Member States both to notify the Commission of any proposed technical rules falling within its scope and, in some cases, to postpone adopting those plans for several months so as to give the Commission the chance to check whether they are compatible with Community law or to propose or adopt a directive on the matter.

5. Article 10 of Directive 83/189 provides that 'Articles 8 and 9 shall not apply where Member States honour their obligations arising from Community directives and regulations ... '.

4 — See the first recital of the preamble to Directive 83/189.

6. In its judgment in the *CIA Security International* case,[5] the Court of Justice interpreted Directive 83/189 as meaning that failure to comply with the obligation to notify, imposed by Articles 8 and 9 thereof, renders the technical regulations in question inapplicable so that they cannot be enforced against private individuals. Accordingly, the Court of Justice ruled that private individuals may rely on Articles 8 and 9 of Directive 83/189 in national proceedings and it is for the national court to refuse to enforce a national technical regulation which has not been notified in accordance with that directive.

7. On 23 March 1994, the European Parliament and the Council adopted Directive 94/10/EEC materially amending for the second time Directive 83/189.[6]

8. The 12th recital of the preamble to that directive states '...whereas the implementation of Directive 83/189/EEC has revealed the need to clarify the concept of a *de facto* technical regulation ...'. Furthermore, the fourteenth recital states '... whereas experience of the operation of Directive 83/189/EEC has also revealed the need to clarify or explain in more detail certain definitions, rules of procedure or obligations of the Member States under the directive ...'.

9. Article 1 of Directive 94/10 contains the following new definitions:

'(2) "technical specification": a specification contained in a document which lays down the characteristics required of a product such as levels of quality, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

...

(3) "other requirement": a requirement other than a technical specification, imposed on a product for the purpose of protecting, in particular, consumers or the environment, and which affects its life cycle after it has been placed on the market, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or its marketing;

...

5 — Case C-194/94 [1996] ECR I-2201 (paragraph 54).
6 — OJ 1994 L 100, p. 30.

(9) "technical regulation": technical specifications and other requirements, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product.'

10. Under Article 2 of Directive 94/10, Member States must bring into force the necessary laws, regulations or administrative provisions to comply with the directive before 1 July 1995.

The National provisions [7]

11. The Wegenverkeerswet 1994 (Road Traffic Law) forms the basis of Netherlands road traffic legislation. It creates a public organisation, the Dienst Wegverkeer (Office for Road Traffic, 'the DW'), responsible for issuing registration numbers and certificates for motor vehicles in the Netherlands.

12. There are three parts to Netherlands registration certificates. Part II shows the identity of the person in whose name the vehicle is registered. Part III shows the registration number, brief technical details about the vehicle and the duration of validity of the registration certificate. Part I contains detailed technical information about the vehicle and a section entitled 'Detailed particulars': this section shows the date of the vehicle's entry into service, that is to say the date on which it was first authorised to travel on the public highway. [8]

13. The rules for determining the date on which a vehicle is first authorised for use on the public highway are laid down by the Regeling houdende vaststelling van regels omtrent de wijze waarop de datum van eerste toelating tot de openbare weg op het kentekenbewijs, dan wel het registratiebewijs van een voertuig wordt bepaald (Regulation laying down rules concerning the way in which the date of first authorisation of a vehicle for use on the public highway is to be determined for the purposes of entry in its registration certificate, 'the contested regulation'). This regulation was adopted

7 — The description I give of the national legal context is based on the French translation of the order for reference (pp. 4 and 5), the observations of the Netherlands Government (points 3, 4 and 30 to 52) and the observations of the Commission (points 15 to 29).

8 — Article 10.1(1) of the Voertuigreglement 1994 (Netherlands order implementing the Wegenverkeerswet) provides that the date on which a vehicle enters service is to be understood as meaning the date on which it was first authorised for use on the public highway.

by the Netherlands Minister of Transport and Public Works on 9 December 1994. It entered into force on 1 January 1995.

14. Essentially, the contested regulation [9] provides for three situations for the purpose of determining the date of first authorisation.

15. The *first situation* concerns vehicles which have never been registered in the Netherlands or abroad. In this case, Article 3 of the contested regulation provides that the DW is responsible for checking whether the vehicle shows 'clear signs of use'.

If the vehicle shows clear signs of use, the DW automatically fixes the date of first authorisation of the vehicle as its date of manufacture. [10]

On the other hand, if the vehicle shows no clear signs of use, the DW is empowered to issue a 'blank' registration certificate. This is a certificate showing as the first date of authorisation the date on which the Netherlands registration certificate was issued. However, the certificate is only issued on condition that the person applying for registration produces an official document vouching for the fact that the vehicle has been registered earlier. [11]

16. The *second situation* concerns vehicles which have already been registered in the Netherlands. In this case, Article 2 of the contested regulation provides that the details shown on the previous Netherlands registration certificate must be transferred to the new certificate. So the date on which a vehicle is first authorised is that which appears on the previous Netherlands registration certificate.

17. Finally, the *third situation* concerns vehicles previously registered outside the Netherlands. In this case, Article 4 of the contested regulation provides that the DW is responsible for checking whether the vehicle shows 'clear signs of use'.

9 — I am relying on Articles 2 to 8 of the contested regulation (on this point, see pages 4 and 5 of the French translation of the order for reference; points 44 to 45 of the observations of the Netherlands Government and points 22 to 28 of the observations of the Commission).

10 — However, Article 8 of the contested regulation authorises the person applying for registration to provide evidence to the contrary based documents listed exhaustively.

11 — Article 3(4) of the contested regulation provides that, in the absence of such a document, the DW is to make enquiries from the competent authorities of the other Member States. If the DW discovers that the vehicle has already been registered abroad, it fixes as the date of first authorisation the date on which the registration certificate was issued abroad. However, if the enquiry is fruitless, the DW is entitled to issue a 'blank' registration certificate.

If the vehicle does not show any clear signs of use, the DW is entitled to issue a 'blank' registration certificate. However, in order to obtain that certificate the person applying for registration is obliged to produce two kinds of documents, that is to say:

(a) a foreign registration certificate issued for a period not exceeding two days,

and

(b) the original purchase invoice showing the following information: the number of kilometres covered by the vehicle, which must be less than 2 500, and a declaration from the vendor stating that the vehicle is new and unused.

On the other hand, if the vehicle shows clear signs of use or if it has been registered abroad for a period exceeding two days, the DW issues a registration certificate showing, as the date of first authorisation of the vehicle for use on the public highway, the date on which it was first registered abroad as evidenced by the foreign registration certificate.

II — Facts and procedure in the main proceedings

18. Autohaus Werner Pelster GmbH ('Autohaus Werner'), whose registered office is in Gronau, Germany, is an official reseller for the dealer network of Bayerische Motorenwerke AG ('BMW').

19. On 6 August 1996, it registered a BMW saloon car in Germany. The competent authorities issued a registration certificate in the name of Autohaus Werner so that the vehicle was first authorised in that State.

20. On 13 August 1996, Snellers Auto's BV ('Snellers'), a parallel Netherlands importer, bought the vehicle from Autohaus Werner. The invoice stated that the vehicle was new and had covered 800 kms. The registration in Germany was cancelled that day.

21. On 14 August 1996, Snellers collected the vehicle from Gronau and imported it into the Netherlands. On 15 August, it presented the vehicle for testing at the Lichtenvoorde Vehicle Testing Centre (Netherlands) and applied for it to be registered in that State.

22. On 10 January 1997, the DW in Zoetermeer issued a registration certificate fixing the date of first authorisation of the vehicle as 6 August 1996. Part I of the registration document under the heading 'Detailed Particulars' contained the words: 'date of first authorisation 06.08.96'.

The DW justified its decision by the fact that the vehicle had been registered outside the Netherlands for more than two days. In accordance with Articles 4 and 5 of the contested regulation, the DW was not therefore entitled to issue a 'blank' registration certificate but had to fix the date of first authorisation of the vehicle as the date on which it was authorised to travel on the public highway in Germany.

23. Snellers took the view that the DW's decision had the effect of reducing the resale value of the vehicle. In fact, on 10 January 1997, the date on which the Netherlands registration certificate was issued, the vehicle would be deemed to be a vehicle manufactured in 1996 because of the words 'date of first authorisation 06.08.96'. If, however, the DW had issued a 'blank' registration certificate, the vehicle could have been treated, on that same date, as having been manufactured in 1997. [12]

24. So Snellers lodged an appeal against the DW's decision before the Arrondissementsrechtbank te Almelo. On 3 April 1997, the President of that court annulled the contested decision. However, the DW lodged an appeal against the judgment before the referring court.

25. In the main proceedings, Snellers puts forward two sets of arguments. Firstly, it maintains that the contested regulation constitutes a technical regulation which was not notified to the Commission in accordance with Directive 83/189. That regulation could therefore not be enforced against it pursuant to the Court's decision in *CIA Security International*. Furthermore, Snellers takes the view that the contested regulation is incompatible with Articles 30 and 36 of the Treaty because it constitutes a measure having an effect equivalent to a quantitative restriction which is not capable of being justified by requirements relating to environmental protection or road safety.

26. In its order for reference, [13] the Nederlandse Raad van State finds that the contested regulation had not been notified to the Commission in accordance with the provisions of Directive 83/189.

12 — See points 6 to 11 of Snellers' observations.

13 — See page 13 of the French translation.

III — The questions referred to the Court

27. In those circumstances, it decided to stay proceedings and to submit the following questions to the Court of Justice:

'(1) For the purposes of applying Directive 83/189/EEC, as amended by Directive 88/182/EEC, to national rules adopted on 9 December 1994, is it necessary also to take into consideration the amendments introduced after that date by Directive 94/10/EC, having regard to, *inter alia*, the wording used in the preamble to the latter directive?

(2) If Question 1 is answered *in the affirmative*: does a regulation such as the 1995 Regulation fall within the scope of Directive 83/189/EEC, as amended by Directive 94/10/EEC?

(3) If Question 1 is answered *in the negative*:

(a) Must the term "technical specification" appearing in Article 1(1) of Directive 93/189/EEC, as amended by Directive 88/182/EEC, be interpreted as meaning that it also covers a regulation such as the 1995 Regulation?

(b) If not, does such a regulation fall within the scope of Article 1(5) of the directive as thus amended (which defines the term "technical regulation")?'

(4) Where national rules concerning the issue of blank registration certificates do not formally differentiate between official importers and parallel importers but in fact make it more difficult for parallel importers to supply vehicles with a blank registration certificate, because they can obtain from abroad only vehicles which are already registered, and those rules make the issue of a blank registration certificate conditional on *inter alia*, the relevant vehicle imported from another Member State having been registered in that other Member State for a period not exceeding two days, do those rules constitute a measure having an effect equivalent to a quantitative restriction on imports

which is prohibited by Article 30 of the EC Treaty?

(5) If question 4 must be answered *in the affirmative*, are rules such as those contained in the 1995 Regulation justified by considerations relating to road safety and/or protection of the environment, particularly on account of their link with the requirements applicable to vehicles and with the determination of the date from which vehicles become subject to a general obligation to undergo periodic tests?

(6) If Question 5 is answered *in the affirmative*, must such an obstacle to trade be regarded as proportional to the objective pursued by the national rules concerning the issue of blank registration certificates if those rules make it impossible to prove that the vehicle is new? Is the answer to that question affected by the fact that a parallel importer may agree with his supplier in another Member State that, following the issue of a foreign certificate of registration, the supplier is to seek suspension of the authorisation thus granted and is to have that suspension lifted when the parallel importer applies for registration in the country of import?

IV — The replies to the questions referred

The first question

28. By its first question, the referring court asks whether, in order to assess whether national rules adopted on 9 December 1994 constitute a technical regulation subject to the obligation to notify laid down in Directive 83/189, it is necessary to apply only the provisions of that directive or the provisions of that directive as amended by Directive 94/10.

29. The reasons for the first question are easy to understand. Directive 94/10 was adopted on 23 March 1994. However, in accordance with common practice, it fixed a time-limit at the end of which Member States were obliged to implement the provisions necessary to comply with that directive. This time-limit — commonly known as 'the transposition period' — expired on 1 July 1995.

In the case in point, the contested regulation was adopted on 9 December 1994. It was therefore adopted *after* the adoption of Directive 94/10 but *before* the transposition period expired.

Consequently, the referring court is seeking to identify which version of Directive 83/189 should be used to examine whether the contested regulation constitutes a technical regulation, and, if it does, whether it was subject to the obligation to notify imposed by that legislation.

30. In my view, the reply to the first question referred for a preliminary ruling is apparent from two provisions of the EC Treaty.

Firstly, the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC) provides: 'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'.

It follows from that provision '... that States to which a directive is addressed are under an obligation to achieve a result, which must be fulfilled before the expiry of the period laid down by the directive itself.' [14]

Moreover, under Article 191 of the EC Treaty (now article 254 EC), directives addressed to all Member States enter into force on the date fixed by those directives, or if none is fixed, on the twentieth day after they have been published. Other directives take effect on the date on which they are notified to the States to whom they are addressed. [15]

31. In simple terms, one might consider that the aforementioned provisions and the directive itself impose two sets of successive obligations on Member States: firstly an 'obligation to transpose' a directive and then 'an obligation to implement' the directive.

32. According to the standard formula, the 'obligation to transpose' requires Member States to adopt and implement all the laws, regulations or administrative provisions necessary to comply with the directive within the time-limit granted. Member States are obliged to take all necessary measures to ensure that the result laid down in the directive will be achieved at the end of the transposition period. More particularly, that obligation means that they must incorporate the 'substantive' provisions of the directive into their national legal system, that is to say the provisions of the directive other than those which concern the obligation to transpose and the period allowed for transposition.

Under Article 191 of the Treaty, the obligation upon Member States to transpose commences on the date on which the

14 — Case 8/81 *Becker* [1982] ECR 53, paragraph 18.

15 — Before being amended by the Treaty on European Union, Article 191 of the EEC Treaty provided that all directives would take effect on the date on which they were notified to their addressees.

directive enters into force [16] — that is to say on the date on which it is notified, on the date prescribed by the directive or, if none is fixed, on the twentieth day following publication thereof in the *Official Journal*. In addition, under the third paragraph of Article 189 of the Treaty, the obligation to transpose continues throughout the entire period prescribed by the directive for that purpose.

In its judgment in *Inter-Environnement Wallonie*, cited above, the Court also inferred from the obligation to transpose certain restrictions on the legislative freedom of Member States during the transposition period for Community directives. [17]

Having pointed out '... that a directive has legal effect with respect to the Member State to which it is addressed from the moment of its notification', [18] the Court held that: '... it is clear from the second paragraph of Article 5 in conjunction with the third paragraph of Article 189 of the Treaty and from the directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed'. [19]

33. With regard to the 'obligation to implement', this requires Member States to comply with the *wording* or the *purpose* of the result prescribed by the Community directive. Member States, like the competent authorities and persons concerned, must implement and comply with the substantive provisions of the directive in the situations governed by the directive. That obligation arises from the transposition measures adopted by Member States, or, in the absence of such measures, from the direct effect which the relevant provisions of the directive in question may have.

However, under the third paragraph of Article 189 of the Treaty, the obligation to implement only takes effect, as a rule, at the end of the transposition period prescribed by the directive itself. [20]

In the *Becker* case, cited above, the Court held that: 'It is clear from that provision that States to which a directive is addressed are under an obligation to achieve a result, which must be fulfilled *before the expiry of the period laid down by the directive itself*'. [21]

16 — In this regard, see the Opinion of Advocate General Jacobs in Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 30. However, some learned writers take the view that the obligation to transpose commences on the date on which the directive is *adopted*: see Tomasevic D., 'La situation des particuliers durant le délai de transposition des directives européennes' in *Journal des tribunaux de droit européen*, 1998, page 184, paragraph 12.

17 — See also on this point the Opinion of Advocate General Mancini in Case 30/85 *Teuling* [1987] ECR 2497, paragraph 7.

18 — Judgment in *Inter-Environnement Wallonie*, cited above, paragraph 41.

19 — Ibid., paragraph 45.

20 — Except in the situation where a Member State has transposed the directive into its national law *before* expiry of the transposition period. In this case, the obligation to implement would arise solely from the national measures for transposition and would have effect from the date fixed by those measures.

21 — *Becker* judgment cited above, paragraph 18 (emphasis added). See also, to the same effect, Case 148/78 *Ratti* [1979] ECR 1629, paragraph 44, and the Opinion of Advocate General Jacobs in Case C-156/91 *Hansa Fleisch Ernst Mundt* [1992] ECR I-5567, point 22. See also the academic writings of S. Prechal, *Directives in European Community Law*, 1995, page 24.

Furthermore, in its judgment in *Inter-Environnement Wallonie* cited above, the Court held that:

'Since the purpose of such a period [for transposition] is, in particular, to give Member States the necessary time to adopt transposition measures, they cannot be faulted for not having transposed the directive into their internal legal order before expiry of that period ... In that respect ... *Member States are not obliged to adopt those measures before the end of the period prescribed for transposition ...*'. [22]

34. My interpretation of the provisions of the third paragraph of Article 189 of the Treaty would also appear to be confirmed by the Court's previous decisions regarding the direct effect of Community directives. [23]

It is apparent that the main basis of the Court's recognition of the direct effect of directives lies in the Member State's failure to act. The Court has stated that '... a Member State which has not adopted the implementing measures required by the directive in the prescribed period may not rely, as against individuals, on its own failure to perform the obligations which the directive entails'. [24] By this ruling the Court seeks '... to prevent the State from taking advantage of its own failure to comply with Community law'. [25] It considers that 'It would be unacceptable if a State, when required by the Community legislature to adopt certain rules intended to govern the State's relations or those of State entities with individuals and to confer certain rights on individuals, were able to rely on its own failure to discharge its obligations so as to deprive individuals of the benefits of those rights'. [26]

Following settled case-law, the Court has held that '... a directive can be relied on by individuals before national courts only after the expiry of the time-limit laid down for its transposition into national law'. [27] The implications of this case-law merge with the result in *Inter-Environnement Wallonie*, cited above: as long as the time-limit for transposing a directive has not

22 — Paragraphs 43 and 45 (emphasis added).

23 — For more detailed arguments regarding the direct effect of directives, I refer to my Opinion in Case C-287/98 *Linster* [2000] ECR I-6917, I-6920.

24 — Judgment in Ratti cited above, paragraph 22.

25 — Case 152/84 Marshall [1986] ECR 723, paragraph 49.

26 — Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 23.

27 — Case C-316/93 *Vaneetveld* [1994] ECR I-763, paragraph 16, emphasis added.

expired, a Member State cannot be considered to be 'in default' because it has not yet transposed that directive into its own national law. [28]

35. In the case at issue, the referring court asks whether, in order to determine whether the contested regulation is a technical regulation subject to the obligation to notify laid down in Directive 83/189, it is appropriate to apply the provisions of that directive as amended by Directive 94/10.

In that respect, it should be pointed out that, if the contested regulation were to be categorised as a 'technical regulation' within the meaning of Directive 94/10, that categorisation would follow from the *substantive* provisions of that directive. In other words, any obligation to notify the contested regulation to the Commission in accordance with Directive 94/10 would fall entirely within the scope of what I have referred to as 'the obligation to implement' Directive 94/10.

However, on the date when the contested regulation was adopted, 9 December 1994, Directive 94/10 did not impose on Member States any 'obligation to implement' since the transposition period for this piece of legislation had not yet expired. Under the third paragraph of Article 189 of the Treaty, that obligation only took effect on the date when the transposition period expired, that is to say on 1 July 1995. Before the end of that period, the only obligations incumbent on Member States related to what I have called the 'obligation to transpose' Directive 94/10.

36. In those circumstances, the Netherlands authorities cannot be accused of failing to examine, and, where appropriate, of failing to notify the contested regulation pursuant to Directive 94/10.

37. I therefore propose that the Court's reply to the national court's first question should be that, in order to establish whether a national regulation adopted on 9 December 1994 constitutes a technical regulation subject to the obligation to notify laid down by Directive 83/189, only the provisions of that directive should be applied and not the provisions of that directive as amended by Directive 94/10.

38. My conclusion would obviously be different if it turned out that the Kingdom of the Netherlands had taken the measures necessary to transpose Directive 94/10 *before* adopting the contested regulation. In those circumstances, the question whether it could be categorised as a 'technical regulation' as well as the question whether it should have been notified to the Commission would have to be assessed having

28 — This interpretation is further confirmed by the Court's previous decisions regarding Article 169 of the EC Treaty (now Article 226 EC). As Advocate General Jacobs quite rightly pointed out in his Opinion in the Inter-Environnement Wallonie case: '... in its many judgments in proceedings under Article 169 of the Treaty concerning non-implementation of directives, the Court, in declaring Member States to be in breach of their obligations under Community law, has consistently defined the breach as a failure to adopt the necessary implementing measures *within the prescribed period*' (point 16).

regard only to the Netherlands transposition measures: that categorisation and obligation would then take effect from the date prescribed by those measures.

However, in the absence of any indication regarding an 'early' transposition of Directive 94/10 into Netherlands law, I shall examine the question whether the contested regulation constitutes a technical regulation in the light of the provisions of Directive 83/189.

The second question

39. In view of the above proposed reply, the second question submitted by the Nederlandse Raad van State becomes irrelevant.

The third question

40. By its third question, the Raad van State asks whether the date of first authorisation of a vehicle for use on the public highway constitutes a technical specification within the meaning of Directive 83/189 and whether the national rule determining the method of fixing that date is a technical regulation within the meaning of that directive.

Furthermore, it is clear from the reasons in the order for reference [29] that the Nederlandse Raad van State is also seeking to establish whether a Member State which adopts such a rule is obliged to notify it to the Commission pursuant to Article 8 of Directive 83/189 or whether it is exempt from that obligation under Article 10 of that directive.

Identifying a technical regulation

41. In my Opinion in Joined Cases C-425/97 to C-427/97 *Albers and Others*, [30] I stated that the wording of Article 1(1) and (5) of Directive 83/189 was sufficiently clear, precise and general to be applied to the various situations arising in the context of proceedings for a preliminary ruling. I also identified all the factors to be taken into consideration when applying the definition of 'technical regulation' laid down by that legislation.

29 — See pages 10 and 16 of the French translation.

30 — Joined Cases C-425/97 and C-427/97 [1999] ECR I-2947, paragraphs 15 to 19.

42. Accordingly, it follows from the aforementioned provisions of Directive 83/189 and from the Court's relevant case-law [31] that:

— *as regards the content of the national legislation:* it must consist of a set of formalised indications concerning the characteristics of a product;

— *as regards the drafter of the national legislation:* it must be drafted by a national authority other than a local authority;

— *as regards the effect of the national legislation*: it must be binding in fact or in law and produce its own legal effects; [32]

— *as regards the penalty for failure to comply with national legislation:* this must consist of a ban on marketing or use of the product in the Member State or in a large part thereof. In other words, only a national rule capable of '... hindering, directly or indirectly, actually or potentially, intra-Community trade in goods' [33] can be categorised as a technical regulation within the meaning of Directive 83/189.

43. Contrary to the view held by the majority of the parties which have submitted observations in this case, [34] I consider that the contested regulation does in fact meet the aforementioned conditions.

44. Firstly, vehicles are products of the motor industry and are therefore industrially 'manufactured products' within the meaning of Article 1(7) of Directive 83/189.

45. Secondly, in accordance with Article 1(1) of Directive 83/189, the date of first authorisation of a vehicle for use on the public highway is a piece of express information which appears on an administrative document (the registration certifi-

31 — In particular the *CIA Security International* and *Bic Benelux* cases cited earlier.

32 — See paragraphs 29 and 30 of the judgment in *Cia Security International*, cited above.

33 — Paragraph 19 of *Bic Benelux*, cited above.

34 — See the observations of the Austrian Government (pages 6 and 7 of the French translation); the observations of the Belgian Government (page 2); the observations of the French Government (points 6.1 to 6.3); the observations of the Netherlands Government (points 87 to 93), and the observations of the Commission (points 66 to 71).

cate) and which defines certain characteristics of the product (the vehicle). It constitutes a distinctive, recognisable detail allowing the vehicle to be identified and distinguishing it from any other.

So, a vehicle's date of first authorisation determines the date on which the competent authorities officially authorised the use for which the product was intended and the potential duration for which it is used. Moreover, that date entails certain requirements regarding the 'use of the product', such as the obligation to present the vehicle for periodic testing. According to Directive 96/97/EC, [35] such an obligation is prescribed, as a rule, four years from the 'date of first use' of the vehicle. [36]

Furthermore, the provisions of the contested regulation show that the date of first authorisation of a vehicle is a direct reflection of certain technical details regarding the *age* of the vehicle. Under that regulation, determination of the date of first authorisation of the vehicle is dependent on technical information such as:

(a) whether or not there are 'clear signs of use' on the vehicle;

(b) whether the vehicle is new or used;

(c) the number of kilometres it has covered, which, depending on the case, is more or less than 2 500 km, and

(d) whether it has already been registered in the Netherlands or abroad, and the possible duration of that registration. [37]

46. *Thirdly,* the contested regulation was adopted by the Netherlands Minister for Transport and Public Works. [38] It therefore emanates from a national authority other than a local authority.

35 — Council Directive of 20 December 1996 concerning the harmonisation of the laws of Member States relating to periodic testing of motor vehicles and their trailers (OJ 1997 L 46, p. 1).

36 — This period may be reduced to one year depending on the category of vehicles concerned: see Annex I of Directive 96/96.

37 — In that respect, it is significant that the date of first authorisation of a vehicle for use on the public highway is shown in part I of Netherlands registration certificates, which contains the 'detailed technical characteristics' of the vehicle (see points 43 and 44 of the observations of the Netherlands Government).

38 — See page 4 of the French translation of the order for reference.

47. *Fourthly*, there is little doubt that the contested regulation contains provisions the observance of which is compulsory for the purposes of selling and using vehicles in the Netherlands. An individual or a legal entity which refused to comply with the registration procedure under which the DW determines a vehicle's date of first authorisation could not lawfully sell or use the vehicle in the Netherlands. The contested regulation is therefore a measure which is likely to directly or indirectly, actually or potentially hinder intra-Community trade. [39]

48. It follows from the above that the contested regulation must therefore be categorised as a 'technical regulation' within the meaning of Article 1(5) of Directive 83/189.

49. In their written opinions, some parties making representations have argued that the registration of vehicles falls within the scope of the rights and powers of the public authorities of the Member States. In fact, the main purpose of the national provisions regarding the registration of vehicles is to enable the competent authorities to identify people who have infringed the highway code and to apply the appropriate penalties. Accordingly, those provisions would fall outside the scope of Directive 83/189.

That line of argument cannot be accepted.

In the *Lemmens* case, the Court held that '... there is nothing in the Directive (83/189) to suggest that technical regulations within the meaning of Article 1 thereof are excluded from the notification requirement because they fall within the scope of criminal law, or that the scope of the Directive is limited to products intended to be used otherwise than in connection with the exercise of public authority. As the Court has already stated ... directive [83/189] applies to technical regulations irrespective of the grounds on which they were adopted'. [40]

50. It remains for me to examine whether the Netherlands authorities were obliged to

39 — It is apparent from the order for reference (pages 17 and 18 of the French translation) that the contested regulation might have other repercussions on the free movement of goods. It would appear that in some Member States motor manufacturers oblige resellers in their official dealer network to register vehicles destined for resale to parallel importers, as soon as they leave the factory. Thus, unlike official resellers, parallel importers could only obtain from those resellers vehicles which have already been registered in the exporting country. However, the contested regulation makes the issue of a 'blank' registration certificate — that is to say a certificate which does not contain any information relating to a previous registration — dependent on the express condition that the vehicle has not already been registered outside the Netherlands *for a period not exceeding two days*. The Nederlandse Raad van State infers from these circumstances that the effect of the contested regulation is to make parallel imports of vehicles more difficult than official imports (see the wording of the fourth preliminary question).

40 — Case C-226/97 [1998] ECR I - 3711, paragraph 20.

notify the contested regulation to the Commission pursuant to Article 8 of Directive 83/189 or whether they were exempt from that obligation under Article 10 of that directive.

The obligation to notify

51. As a preliminary point, I consider it may be useful to ascertain whether Snellers may indeed rely on the Court's decision in *CIA Security International* before the referring court.

52. We know that, in its judgment in the *Lemmens* case, the Court found it necessary to circumscribe the scope of the direct effect of Article 8 of Directive 83/189.

The *Lemmens* case concerned a national rule governing the specifications to be met by intoximeters used by the police for checking the presence of alcohol in the blood. The Court was asked to determine the consequences of failing to notify such a rule on criminal proceedings instituted against drivers accused of driving whilst intoxicated in whose the blood the presence of alcohol had been proven by those intoximeters.

In that case, the Court held that: '... While failure to notify technical regulations, which constitutes a procedural defect in their adoption, renders such regulations inapplicable inasmuch as they hinder the use or marketing of a product which is not in conformity therewith, *it does not have the effect of rendering unlawful any use of a product which is in conformity with regulations which have not been notified*'. [41]

The Court held that the national rules applied to the accused in the main proceedings — that is to say the rules prohibiting driving in a state of inebriation and those which oblige the driver to breathe into an intoximeter — were different from those which, because they had not been notified, were not enforceable against individuals. In that case, the Court observed that 'the use of the product by the public authorities, in a case such as this, is not liable to create an obstacle to trade which could have been avoided if the notification procedure had been followed'. [42]

53. It is clear from the *Lemmens* case that the effects of the decision in *CIA Security*

41 — Ibid., paragraph 35 (emphasis added).
42 — Ibid., paragraph 36.

International are limited only to persons who can show evidence of a *direct interest* in having national regulations which have not been notified to the Commission reviewed on the basis of Directive 83/189.

54. In my view, in the case in point Snellers has provided evidence of such an interest because it imported a vehicle on a parallel basis and applied to have it registered in the Netherlands. Furthermore, Snellers considers that the rules applicable under the registration procedure have the effect of reducing the resale value of the vehicle and thereby constitute a hindrance to the free movement of goods. Snellers therefore has an obvious direct interest in having the technical regulations contained in the contested regulation reviewed on the basis of Directive 83/189.

55. That said, I believe that the contested regulation is not likely to fall within the scope of application of exemption from the obligation to notify laid down by Article 10 of Directive 83/189.

56. As far as I know, there is no Community legislation which directly or indirectly governs the method of determining the date of first authorisation of vehicles for use on the public highway.

57. However, at the hearing before the Court, the Netherlands Government referred to Directive 1999/37/EC regarding vehicle registration documents. [43]

That directive seeks to harmonise the layout and wording of registration certificates in order to make them easier to understand, thereby contributing to the free movement of road traffic in other Member States, in so far as vehicles registered in a Member State are concerned. [44] Annexes I and II to the directive [45] require registration certificates to show in particular the 'date of first registration of the vehicle'.

Relying on those annexes, the Netherlands Government maintained that the effect of Directive 1999/37 was to remove the freedom of Member States with regard to the method used to determine the date of first authorisation of vehicles in their country. Conversely, the French Government takes the view that Directive 1999/37 only imposes an obligation to show the date on which the vehicle was first registered on registration certificates and its purpose is not to govern the *manner* in which Member

43 — Council Directive 1999/37/EC of 29 April 1999 (OJ 1999 L 138, p. 57).

44 — See the third recital of the preamble to Directive 1999/37.

45 — See point V, B of Annexes I and II.

States should determine this date under their respective national legislation.

58. However, in my view the Court does not have to settle this argument in order to establish whether or not the Netherlands authorities were exempt from the obligation to notify laid down by Directive 83/189.

It is sufficient to point out that Directive 1999/37 was adopted by the Council on *29 April 1999*, that is to say well after the contested regulation (adopted on 9 December 1994). Thus, on the date on which that regulation was adopted, Directive 1999/37 did not therefore lay down any obligation which the Netherlands Government ought to have fulfilled.

59. In those circumstances, I take the view that the Netherlands authorities were obliged to notify the contested regulation to the Commission pursuant to Article 8 of Directive 83/189.

60. I therefore propose that the Court should reply to the third preliminary question that the date on which a vehicle is first authorised for use on the public highway constitutes a technical specification within the meaning of Article 1(1) of Directive 83/89 and that the national rule for establishing the method of determination constitutes a technical regulation within the meaning of Article 1(5) of that directive. I would also propose that the Court rule that a Member State which adopts a national rule such as that described above is obliged to notify it to the Commission pursuant to Article 8 of Directive 83/189.

The other questions

61. It is clear from the order for reference that the other questions posed by the Nederlandse Raad van State were submitted to the Court only in case the second or third questions should elicit a negative reply. [46] In view of the fact that I am asking the Court to give an affirmative reply to those questions, there is no need to give a ruling on whether Articles 30 and 36 of the Treaty preclude a national rule such as that at issue in the main proceedings.

46 — In its order for reference, the Nederlandse Raad van State expressly stated that: 'If the 1995 Regulation should have been notified, it must, in view of the fact that it has not been so notified, and having regard to the judgment of the Court of Justice in Case C-194/94 *CIA Security* v *Signalson and Securitel*, be left out of account. In the event that it follows from the answer to Question 2 or Question 3 that the 1995 Regulation did not need to be notified, it will be necessary to consider whether it contains a restriction of trade prohibited by Article 30 of the EC Treaty' (page 16 of the French translation).

Conclusion

62. On the basis of the foregoing considerations I propose that the Court should rule as follows:

(1) Subject to the transposition measures adopted by the Member State concerned, in order to assess whether a national rule adopted on 9 December 1994 constitutes a technical regulation subject to the obligation to notify laid down by Council Directive 83/189/EEC of 28 March 1983, prescribing a procedure for providing information in the field of technical regulations and standards, it is necessary to apply the version of that directive as amended by Council Directive 88/182/EEC of 22 March 1998, and not the version of that directive as amended by Directive 94/10/EC of 23 March 1994 of the European Parliament and the Council.

(2) The date of first authorisation of a vehicle for use on the public highway constitutes a technical specification within the meaning of Article 1(1) of Directive 83/189 as amended by Directive 88/182, and the national rule for determining the method of fixing that date is a technical regulation within the meaning of Article 1(5) of that directive.

A Member State which adopts a national rule such as that described above is obliged to notify the Commission pursuant to Article 8 of Directive 83/189 as amended by Directive 88/182.