powers regarding the conditions for authorizing undertakings established in their territory. Those provisions, by their very nature, may be relied upon in legal proceedings; it is therefore for the national court or tribunal to check whether the relevant national legislation conforms to those provisions if a party relies upon them in proceedings before that court.

3. By virtue of the provisions of the First Council Directive on the establishment of certain common rules for the international carriage of goods by road the competent authorities of a Member State are entitled to continue to apply to undertakings established in its territory a system of authorizations for the types of international carriage of goods by road for hire or reward listed in Annex II to the directive if the aim of such a system is to restrict the load capacity to be used by those undertakings for the international carriage of goods, even if they satisfy all the other requirements laid down by the national legislation for authorization to engage in national and international carriage of goods.

4. The aim of Article 7 of the Treaty is to eliminate any discrimination on the ground of nationality resulting from the legislation or administrative practices of a given Member State rather than any disparity in the way in which undertakings of different Member States are treated as a result of differences between the legislation of the Member States, in the absence of a common transport policy.

Thus, by virtue of the First Council Directive on the establishment of certain common rules for the international carriage of goods by road, the fact that a Member State imposes on transport undertakings established in its territory quantitative restrictions regarding the load capacity to be employed in international carriage of goods between Member States does not amount to discrimination contrary to Article 7 of the EEC Treaty even though it is under an obligation, by virtue of Article 1(3) of that directive, to allow within its territory without any restriction transport operations originating in other Member States even in cases where those Member States impose less severe conditions regarding load capacity on the undertakings established in their territory.

In Case 126/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van State, Afdeling voor de Geschillen van Bestuur [Administrative Appeals Division of the State Council], of the Netherlands, for a preliminary ruling in the action pending before that court between

D. J. SMIT TRANSPORT BV, a transport undertaking having its registered office in The Hague,

and

COMMISSIE GRENSOVERSCHRIJDEND BEROEPSGOEDERENVERVOER van de Stichting Nederlandsche Internationale Wegvervoer Organisatie [Committee of the Netherlands International Road Haulage Organization on the Commercial Carriage of Goods Abroad],

on the effect in national law and on the interpretation of Articles 1 (3) and 3 of the First Council Directive of 23 July 1962 on the establishment of certain common rules for international transport (carriage of goods by road for hire or reward), and on the interpretation of Article 7 of the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, K. Bahlmann and Y. Galmot, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

In the Netherlands the carriage of goods by road is governed principally by the Wet Autovervoer Goederen (Law of

4 August 1951 governing the carriage of goods by motor vehicle; Staatsblad 342), which has since been amended a number of times, and by the Uitvoeringsbesluit Autovervoer Goederen (Decree of 16 January 1954 adopting administrative regulations for implementing the Law governing the carriage of goods by motor vehicle; Staatsblad 6).

Article 4 of the law provides that the carriage of goods by road is subject to possession of an authorization or to registration for transport on own account; Article 18 of the decree makes the international carriage of goods by road for hire or reward likewise subject to a special authorization. Authorization to effect international carriage is subject, pursuant to Article 25 of the decree, to the applicant's being already in possession of one or more authorizations for other forms of transport of goods, as provided for by the law.

The law lays down specific conditions for issuing an authorization to effect the carriage of goods by road for hire or reward: Article 56 lays down criteria of a "qualitative" nature (technical aptitude and creditworthiness), whilst pursuant to Article 44 the authorization must indicate the maximum payload allowed for the operation.

The decree also provides, in Article 23, that individual authorizations to effect the international carriage of goods for hire or reward is subject to the fixing of a maximum load capacity.

Article 36 of the law provides that an authorization may be refused and that "a departure may be made from the terms of the application" in the "general interests of transport", an expression which is stated by Article 1 of the law to embrace "the need for fair and balanced management of the various interests involved in the carriage of goods, including the interests of society in general".

Furthermore, the secondary legislation applicable to this case (Decree of the Minister van Verkeer en Waterstaat [Minister of Transport, Water Control and Construction] of 2 February 1954, on the delegation of powers relating to the international carriage of goods for hire or reward, Nederlandse Staatscourant 1954, No 26) provides that, as a general rule, applications are not to be rejected if they ralte to the international carriage of goods for hire or reward.

D. J. Smit Transport BV, a transport undertaking established in The Hague and specializing in international removals, obtained on 17 March 1976 an authorization valid until 3 June 1981 to effect for hire or reward the international carriage of goods to and from all European countries with a maximum load capacity of 18 tonnes.

On 3 April 1979 Smit sought to have the authorization amended to allow the maximum load capacity to be increased to 36.29 tonnes so as to be able to use all its vehicles at the same time for such carriage.

Its request was rejected by a decision of 13 September 1979 of the Commissie Grensoverschrijdend Beroepsgoederenvervoer of the Stichting Nederlandsche Internationale Wegvervoer Organisatie. The reason given for the refusal was the fact that it was not in the "general interests of transport" to increase the authorized capacity, which was not justified by existing demand in the field of transport, as an investigation had revealed that the Smit undertaking was using only part of the transport capacity which it had already been authorized to use.

On 10 December 1979 Smit challenged the decision by application to the Crown

and the case was referred to the Administrative Appeals Division of the Raad van State.

In support of its action it relied in particular on the argument that restricting load capacity was incompatible with the First Council Directive of 23 July 1962 on the establishment of certain common rules for international transport (carriage of goods by road for hire or reward (Official Journal, English Special Edition 1959-1962, p. 267), especially Articles 1 (3) and 3 thereof.

Article 1 (1) of the directive provides as follows:

"Each Member State shall, by the end of 1962 at the latest and in the manner laid down in paragraphs (2) and (3) of this article, liberalize the types of international carriage of goods by road for hire or reward involving other Member States listed in Annexes I and II to this directive, where such carriage is performed to or from the territory of that Member State or passing in transit across the territory of that Member State."

Pursuant to Article 1 (3) the types of carriage listed in Annex II, which include "removals by undertakings having special staff and equipment for this purpose",

"shall no longer be subject to a quota system. They may, however, remain subject to authorization provided no quantitative restriction is involved; in such case Member States shall ensure that decisions on applications for authorization are given within five days of receipt."

According to Article 3:

"This directive shall not affect the conditions under which any Member State authorizes its own nationals to engage in the activities mentioned in this directive."

The directive of 23 July 1962 was amended by the following Council Directives: 72/426/EEC of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 71; 74/149/EEC of 4 March 1974 (Official Journal L 84, p. 8); 77/158/EEC of 14 February 1977 (Official Journal L 48, p. 30); 78/175/EEC of 20 February 1978 (Official Journal L 54, p. 18); and 80/49 of 20 December 1979 (Official Journal 1980, L 18, p. 23). Those amendments do not affect the provisions which were relied upon before the Administrative Appeals Division of the Raad van State.

On 6 April 1982, after obtaining an authorization by Royal Decree dated 26 March 1982, the Administrative Appeals Division of the Raad van State decided to refer to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty the following questions, which were raised before it in the course of a full administrative appeal based on the Law governing the carriage of goods by motor vehicle:

1. Is it the responsibility of a national court or tribunal to examine national legislation in the light of Articles 1 (3) and 3 of the First Council Directive of 23 July 1962 on the establishment of certain common rules for certain types of carriage of goods by road between Member States (as last amended by Council Directive 78/175/EEC of 20 February 1978 (Official Journal L 54, p. 18) if an appellant relies on those provisions to support his case?

2. If so, may those provisions be construed as allowing the competent authorities of a Member State the freedom to apply a system of author-

izations for the types of international carriage of goods by road for hire or reward mentioned in Annex II to the directive to undertakings established in that Member State if the aim of such a system is to restrict the load capacity to be used by them in the carriage of goods abroad, even if those undertakings satisfy the relevant requirements of creditworthiness and technical aptitude laid down by national legislation as regards the carriage of goods abroad and inland and if, pursuant to the national licensing system for the carriage of goods inland, they possess load capacity which has been approved as being perfectly satisfactory?

3. If the answer to Question 2 is in the affirmative, does the prohibition of discrimination on grounds of nationality laid down in Article 7 of the EEC Treaty, properly construed, mean that a statutory licensing system whereby transport undertakings established in one Member State are subject to quantitative restrictions as regards the load capacity to be employed in the carriage of goods between Member States may be operated if transport undertakings established in other Member States are not or may not be subject to such restrictions by that Member State under Community law?

The reference for a preliminary ruling from the Administrative Appeals Division of the Raad van State of the Netherlands was lodged at the Court Registry on 7 April 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 18 June 1982 by the Commission of the European Communities, represented by Auke Haagsma, a member of its Legal Department; on 16 July by the Government of the Kingdom of the Netherlands, represented by C. H. A. Plug, Secretary General of the Ministry of Foreign Affairs; and on 20 July 1982 by the Government of the Federal Republic of Germany, represented by Martin Seidel, Ministerialrat, and Ernst Röder, Regierungsdirektor at the Federal Ministry of Economic Affairs.

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, the Smit undertaking, the Government of the Kingdom of the Netherlands and the Commission were each asked to answer a question before the hearing.

II — Written observations submitted to the Court

1. The observations submitted by the *Government of the Kingdom of the Netherlands* may be summarized as follows.

First question

The national legislation implementing the first directive is wholly in conformity with the directive.

As regards in particular the provisions contained in Article 1 (3) and Article 3 of the directive they may, in the light of the criteria which have been established by the decisions of the Court of Justice, be relied upon by individuals before the courts.

Second question

The purpose of the system of authorization for the international carriage of goods in the Netherlands is not to restrict undertakings' load capacity, but to achieve and maintain healthy market conditions and profitable commercial activity; restricting load capacity might, in certain conditions, be one of the effects of the system.

Article 3 of the directive of 23 July 1962 provides for the continuance of national systems of authorization inasmuch as they apply to a country's own nationals. The expression "conditions under which any Member State authorizes its own nationals to engage in the activities" mentioned in the directive must be given a broad interpretation so as to include authorization schemes which may entail a restriction of load capacity. Article 3 is not restricted to conditions for access to the occupation (technical aptitude, solvency and creditworthiness); in other provisions, such as the Commission's proposal of 15 June 1967 for a Council regulation concerning access to the occupation of transport operator and rules governing capacity (Journal Officiel L 254, p. 3), access to the occupation and rules controlling capacity are discussed separately.

The liberalization which the directive requires can only refer to systems of authorization governing access by foreign undertakings to the territory of a (different) Member State in order to effect the types of carriage referred to in Annex I or Annex II from or to that territory or in transit across it. The wording of Article 1 of the directive implies that little significance is attached to whether the foreign undertaking effects such transport from or to the Member State in which he is established, or from or to a third Member State.

The view that Article 3 of the directive does not affect national rules governing access by its own nationals to the occupation of international carrier of goods is borne out by the opinion of the Economic and Social Committee on the Commission's original proposal.

In adapting Netherlands legislation to the requirements of the directive and of the subsequent amendments thereto, the Government of the Netherlands, without any objection on the part of the Commission, has always followed that view, which appears to be shared by the other Member States.

Moreover, in the first recital in the preamble to the directive, which states that "the adoption of a common transport policy involves, *inter alia*, laying down common rules for the international carriage of goods by road to or from the territory of a Member State or passing across the territory of one or more Member States" there is no indication that the rule applies equally to national systems of authorization governing access by a country's own nationals to the occupation of international carrier of goods. Community rules to that effect have yet to emerge, despite the Commission's proposal in 1967 and the fact that Article 75 (1) of the Treaty provides for the establishment of common rules applicable to international transport; the question arises whether once the transitional period has expired the present situation, where in many cases types of carriage not covered by the directive of 1962 are still subject to quota restrictions, is still compatible with the Treaty.

The second question may therefore be answered in the affirmative.

Third question

The directive does not affect national systems of authorization inasmuch as they apply to a country's own nationals; as Community legislation on transport stands at present, nationals of a Member State may therefore still be subjected by that State to certain restrictions which do not apply to transport undertakings established in other Member States.

That cannot amount to a breach of the prohibition of discrimination contained in Article 7 of the EEC Treaty: application of national systems of authorization does not give rise to any inequality in the treatment of EEC citizens on grounds of nationality of the kind prohibited by Article 7. According to the case-law of the Court of Justice there is no breach of the prohibition of discrimination contained in Article 7 where rules apply, not on the basis of the nationality of the undertaking, but on the basis of the place where the undertaking is established. Only differences in the treatment of undertakings not established in the Member State concerned would amount to a breach of the prohibition of discrimination; that question does not arise in this case.

2. The *Government of the Federal Republic of Germany* submits, in substance, the following observations.

First question

The case-law of the Court of Justice is consistent to the effect that this question must be answered in the affirmative.

Second question

The question must be understood as asking whether a Member State is complying with the provisions of the directive if it prescribes for the types of carriage referred to in Annex II a maximum payload, in particular when the latter is lower than the ceiling which is fixed within the territory of the Member State in question.

The reply to the question must be in the affirmative, subject to certain restrictions.

Merely restricting the authorized payload for the international carriage of goods does not amount to a "quantitative restriction" within the meaning of Article 1 (3) of the directive: the payload is fixed for a single vehicle and the restriction can only affect the way in which loads are distributed for transport between different vehicles. Restricting the payload does not in itself prevent the transport undertaking concerned from obtaining as many authorizations as it wishes for an unlimited number of vehicles.

The restrictions on the authorized payload which are permitted by the rules of the Member State within which the carriage is to be effected are equally compatible with other provisions of Community law, in particular those concerning the freedom to provide services.

Restrictions on payload exist in all the Member States of the Community; maximum loads, which have been fixed at levels which vary widely from one Member State to another, have not yet been harmonized; national provisions remain applicable. Council Directive 65/269 of 13 May 1965 concerning the standardization of certain rules relating to authorizations for the carriage of goods by road between Member States (Official Journal, English Special Edition 1965-1966, p. 64) deals solely with authorization procedures and does not touch

on national substantive rules. The model authorizations annexed to the directive provide expressly for "restrictions, if any", which may include, in particular, restrictions on the payload. The carrier is required to comply, in the territory of each Member State, with the laws, regulations and administrative provisions of that State, and in particular with those concerning transport and traffic.

Community law does not compel Member States to allow vehicles registered in other Member States to travel within their territory with a payload which meets the restriction applicable in the country of origin when that is higher than in the country visited. It is in the general interest to retain the national restrictions on payload. The different maxima fixed at national level for payloads for vehicles are attributable to significant differences in the topographical and technical characteristics of the road networks in the various Member States. National restrictions of that sort are only at variance with Community law if, as the Court of Justice has held, they are not in due proportion to the requirements of road safety.

The maximum payload adopted by the Member State which issues the authorization depends on the scope of the authorization. The models annexed to Directive 65/269 show that the authorization defines its geographical scope; the authorization may be issued only if it takes account of the legislative requirements of all the Member States in question, and applies the most stringent provisions if there is a discrepancy between the various national provisons; as far as the payload is concerned, the authorization must therefore mention the maximum payload of whichever Member State prescribes the lowest.

A restriction of the maximum payload for the international carriage of goods is therefore compatible with the first directive in so far as it is within the limits fixed by the Member States through whose territory the carriage is to be effected.

The application of such a restriction by a Member State might, in certain cases, be aimed solely at restricting access to the transport market for undertakings; in the German legislation that is not the case.

Third question

Authorizations issued in compliance with the requirements of the first directive and with those of Directive 65/269 do not offend against Article 7 of the EEC Treaty.

It would be contrary to the directive if when granting authorizations for the international carriage of goods Member States fixed different restrictions on payload for one and the same journey: for international carriage between several Member States the authorization must take account of the restrictions which apply to the payload in the various States concerned and therefore refer expressly to the lowest of the various ceilings in question. If the directive is applied correctly it is immaterial to know which Member State has issued the authorization.

The nationality of the carrier is wholly irrelevant in that respect; according to Article 1 of Directive 65/269 the authorization is to be issued by the Member State in which the vehicle to be used for such carriage is registered.

As to the lawfulness of the various national restrictions on payload in the light of Article 7 of the EEC Treaty, it must be emphasized that the restrictions apply regardless of the nationality of the carrier or the driver of the vehicle.

However the third question is to be interpreted, it shows no infringement of Article 7 of the EEC Treaty, provided that the authorization is issued in conformity with the requirements of the two directives in question.

3. The *Commission* observes with regard to the first question raised by the Administrative Appeals Division of the Raad van State of the Netherlands that whatever the direct effect, if any, of the first directive or the provisions thereof the result can only be that Member States are prohibited after the expiry of the period allowed for implementing the directive from relying, as against individuals, on national provisions which are incompatible with the directive. Before any decision as to whether Articles 1 (3) and 3 of the directive are directly applicable, therefore, it must first be determined whether or not the Netherlands legislation determining the maximum authorized load capacity for the international carriage of goods is compatible with the directive.

Second question

The way in which Articles 1 (3) and 3 are to be interpreted depends generally on the view which is taken of various aspects of the directive.

(a) The directive may be regarded as applying solely to the grant of authorizations to undertakings established in a Member State other than that which issues the authorization; if so, it does not affect the power of each Member State to issue authorizations to its own nationals. The question whether the Netherlands system of restricting load capacity for its own nationals in the carriage of goods between Member States is compatible with the first directive does not arise; the reply to the second question must be in the affirmative.

That hypothesis is supported by the fact that the aim of the directive is to eliminate "obstacles in the transport sector"; such obstacles existed when the directive was adopted and continue to exist in the case of types of carriage which do not appear in the annexes to the directive, especially where it is a question of obtaining international authorizations in Member States other than that in which the undertaking concerned is established.

However, it might also be considered that where there are obstacles to authorizations' being issued by a Member State to its own nationals, the directive might have been intended to eliminate those, too. That view finds support in the first recital in the preamble to the directive, according to which "the adoption of a common transport policy involves, *inter alia*, laying down common rules"; if they are to be truly common, such rules must apply without distinction to all individuals regardless of the Member State of which they are nationals.

(b) The directive may be interpreted as relating to all authorizations for the international carriage of goods issued by a Member State whether to its own nationals or to those of other Member States.

In that case the authorizations issued by a Member State to its own nationals would also, in principle, be subject to the requirements of the directive.

In the case of Article 3, in particular, it may be noted that it is not worded as a provision which derogates from the other articles of the directive, but that its aim is to define the scope thereof; this view is borne out by the history of the article.

The question arises whether Article 3 of the directive concerns authorization "to engage in activities" *stricto sensu,* in other words, solely as regards the qualitative conditions which must be complied with, or whether it should be understood as having a wider meaning so as to include conditions based on the criterion of supply and demand. Howsoever that may be, even if a restriction on capacity such as that provided for in the Netherlands rules falls outside the scope of Article 3 that would not necessarily bring it within the ambit of the directive itself: Article 3 is designed solely to define the scope of the directive by indicating what it clearly does not cover, the scope of the directive must be positively established in the light of the other provisions it contains, in particular Article 1 (3).

That provision prohibits, in particular, the application of a quota system to removals, which may, by contrast, be subject to authorization provided that that does not have the effect of a quantitative restriction. Article 1 (3) does not exclude all quantitative restrictions, but only those which result from the systems of authorization to which it refers. The issue is therefore whether an authorization to effect the international carriage of goods of the kind in question in the main action constitutes an "authorization" within the meaning of Article 1 (3) of the directive.

Arguments which may be advanced in favour of a negative reply are that the authorization in question concerns access to the occupation of international carrier of goods, that the conditions governing access to the occupation may include both qualitative criteria and criteria based on supply and demand and that the authorization does not, therefore, according to Article 3, fall within the scope of the directive. A similar line of argument is that the authorization is not, in so far as it is based on the criterion of supply and demand, an authorization governing access to the occupation, but rather an authorization relating to the pursuit of such an occupation and to activities on a particular market; although they are not caught by the derogation contained in Article 3, such authorizations remain outside the scope of the directive.

These two interpretations have one feature in common: they are based on the principle that Article 1 (3) is concerned solely with specific authorizations to effect one or a number of well-defined journeys; under both interpretations more general systems of authorization would not fall within the terms of the directive regardless of whether or not they were covered by Article 3.

The arguments which militate in favour of an affirmative reply to the question are based on the principle that Article 1 (3) of the directive covers all systems of authorization which cannot be considered as governing access *stricto sensu* to the occupation, in other words, concerning solely qualitative criteria; in that case the authorization, inasmuch as it concerns criteria based on supply and demand, falls within the terms of Article 1 (3).

The reply to the second question put by the Raad van State must indicate whether the first directive concerns solely authorizations issued by a Member State to undertakings of other Member States, or includes authorizations issued to its own nationals and, in that case, whether Article 1 (3) concerns only specific authorizations or also more general authorizations.

First question

If the Court considers that the legislation at present in force in the Netherlands is incompatible with the first directive, it will be necessary to determine whether individuals may rely on the provisions of the directive before the Raad Van State of the Netherlands.

According to the case-law of the Court individuals must, in such a case, be in a position to invoke Articles 1 (3) and 3 of the first directive in order to obtain a review as to whether the national implementing measures are compatible with those provisions.

Third question

Since an affirmative reply to the second question cannot be ruled out consideration must be given to whether Article 7 prohibits the imposition on carriers established in a given Member State of restrictions which are not imposed on carriers established in another Member State. If thus worded, the question must be answered in the negative: Article 7 clearly concerns not unequal treatment based on the place of establishment, but unequal treatment based on discrimination on grounds of nationality.

Nevertheless, a distinction must be made according to which answer is given to the second question. Should the Court decide that the first directive concerns only authorizations issued by a Member State to undertakings established in another Member State, it would be possible to claim that there is unequal treatment between nationals of Member States, but, in that case, Article 7 would not apply. If, by contrast, the first directive is considered applicable without distinction to authorizations issued by a Member State to nationals of other Member States and to its own nationals, it would be possible to claim that there is unequal treatment only if the Court adopts the theory that the system of authorization in question and the restriction on capacity which it entails are not covered by the directive or, as a result, by Article 1 (3); in that case the conclusion must be that in the absence of harmonization Member States retain the power to determine the conditions on which authorizations are to be issued. Each Member State would thus determine for itself the conditions on which carriers established on its territory may obtain authorizations to engage in the activities in question; that too would amount not to discrimination based on nationality, but to discrimination based on the place of establishment.

The reply to the third question should be that the continuance of a legal system of authorization whereby carriers established in a Member State are subject to quantitative restrictions on load capacity which do not apply to carriers established in other Member

States does not amount to discrimination prohibited by Article 7 of the EEC Treaty.

Directive 74/561

If in answer to the second question the Court should take the view that systems of authorization such as that which is the subject-matter of the main action do not fall within the ambit of the first directive, it would be advisable to determine whether or not such systems are compatible with other provisions of Community law, in particular Council Directive 74/561 of 12 November 1974 on admission to the occupation of road-haulage operator in national and international transport operations (Official Journal L 308, p. 18). That directive lays down only qualitative conditions (creditworthiness, financial standing and competence of the carrier); the question is therefore whether its provisions are exhaustive on that point and exclude any consideration of other conditions, in particular conditions related to the concept of supply and demand, or whether it merely harmonizes three conditions without preventing Member States from applying others. There is nothing to indicate that the directive is aimed at an exhaustive harmonization of conditions for access to that occupation; its purpose is to harmonize objective qualitative criteria. Criteria which take account of supply and demand would be far more difficult to harmonize because they depend entirely on the actual situation on a particular market. The fact that the directive does not refer to such criteria does not justify the conclusion that they may not be applied but, on the contrary, implies that the directive does not affect them and that they have not yet been harmonized.

In so far as the system of authorizations in question in the main action is considered as regulating conditions for access to the occupation in question, restricting the capacity by applying a criterion which is linked with supply and demand is not incompatible with Directive 74/561.

III — Oral procedure

At the sitting on 19 October 1982 oral argument was presented and replies were given to the questions put by the Court by D. J. Smit Transport BV, the plaintiff in the main proceedings, represented by D B. J. Siemensma, an expert on the issue of authorizations under the Wet Autovervoer Goederen, the Government of the Kingdom of the Netherlands represented by Adriaan Bos, Assistant Legal Adviser, Ministry of Foreign Affairs, assisted by Wouter van Zijst, Head of Department, Ministry of Transport, as technical adviser, the Government of the French Republic, represented by Alexandre Carnelutti, Secretary for Foreign Affairs, Ministry of Foreign Relations, and the Commission, represented by A. Haagsma.

Smit argued in particular that it had the right, using the whole of its fleet of vehicles, to carry goods not only within the borders of the State where it was established but also beyond them; that removals constituted a very special sector of the transport business; that it had used the authorization it had received in respect of removals in a wholly profitable manner and that excessively restrictive

load capacity criteria were not permissible in the light of the directive.

The *Government of the Kingdom of the Netherlands* emphasized the embryonic nature of the common transport policy and expressed the view that a system of bilateral quotas was not really compatible with the principles laid down in the Treaty in that field. It also pointed out that the Government of the Federal Republic of Germany, in its written observations, confused the concept of the maximum load capacity of vehicle with the authorized load capacity of a transport undertaking.

In the view of the *Government of the French Republic*, the relevant provisions of the directive have direct effect; Community law, as it now stands and in the absence of harmonization, does not prevent a Member State from imposing on or applying to its nationals requirements which are less favourable than those which it imposes or applies in respect of the same operations carried out by the nationals of other Member States and an authorization system involving a restriction on load capacity falls within Article 3 and not within Article 1 (3) of the directive. Such a restriction constitutes, within the meaning of Article 3, a condition relating to authorization to engage in the activities mentioned in the directive and, provided that it serves the general interest, its imposition on the nationals of that Member State is permissible; Article 1 (3) of the directive refers only to a system applicable to undertakings established outside the State which issues the authorization.

The *Commission* reiterated its view that Article 3 of the directive should be interpreted widely and that a restriction on the load capacity of the type at issue in the main proceedings is incompatible with that provision.

The Advocate General delivered his opinion at the sitting on 30 November 1982.

Decision

1 By judgment of 6 April 1982, which was received at the Court on 7 April 1982, the Administrative Appeals Division of the Raad van State [State Council] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning the effect in national law and the interpretation of Articles 1 (3) and 3 of the First Council Directive of 23 June 1963 on the establishment of certain common rules for international transport (carriage of goods, by road for hire or reward) (Official Journal, English Special Edition, 1959-1962, p. 267) and on the interpretation of Article 7 of the EEC Treaty.

2 Those questions were raised in the course of an action brought by a transport undertaking established in the Netherlands which specializes in international removals against a decision of the Commissie Grensover-

schrijdend Beroepsgoederenvervoer van de Stichting Nederlandsche Internationale Wegvervoer Organisatie [Committee of the Netherlands International Road Haulage Organization on the Commercial Carriage of Goods Abroad], rejecting its application for an increase in its transport capacity for international transport operations.

3 It appears from the file on the case that by virtue of prior decisions adopted by the same authority the plaintiff's authorized capacity is 50.1 tonnes for national transport and it is authorized to use 18 tonnes of that total capacity for international transport. The plaintiff applied for the latter capacity to be increased to 36.29 tonnes, which corresponded to its effective transport capacity at that time, in order to enable it to use all its vehicles for international transport.

4 That request was rejected by the Commissie Grensoverschrijdend Beroepsgoederenvervoer by virtue of the national legislation on carriage of goods by road, namely the Wet Autovervoer Goederen [Law governing the carriage of goods by motor vehicle] of 4 August 1951 and the Uitvoeringsbesluit Autovervoer Goederen (Decree adopting administrative regulations for implementing the Law governing the carriage of goods by motor vehicle) of 16 Janaury 1954. The reason given for that rejection was that it was not in the general interests of transport to increase the authorized capacity in the absence of an existing demand for international transport, as an investigation had shown that Smit was not using (to the full) the transport capacity for which it already had authorization.

5 In the proceedings before the Raad van State, Smit relied on the provisions of the Directive of 23 July 1962 pursuant to which certain types of carriage, including removals by undertaking having special staff and equipment for that purpose, are no longer to be subject to a quota system. It argued that, by permitting restrictions on intra-Community transport capacity, the Netherlands legislation is contrary to that directive and that its effect is to put undertakings established in the Netherlands at a competitive disadvantage in relation to the removal undertakings of other Member States.

6 The Commissie Grensoverschrijdend Beroepsgoederenvervoer, for its part, drew attention to Article 3 of the same directive, according to which the directive is not to affect the conditions under which any Member State authorizes its own nationals to engage in the activities mentioned therein.

7 The Raad van State considered that a question of interpretation of Community law had been raised and submitted the questions referred to above to the Court.

The first question

8 The first question submitted by the Raad van State is as follows:

"Is it the responsibility of a national court or tribunal to examine national legislation in the light of Articles 1 (3)and 3 of the First Council Directive of 23 July 1962 (Official Journal, English Special Edition 1959-62, p. 267), on the establishment of certain common rules for certain types of international carriage of goods (as last amended by Council Directive 78/175/EEC of 20 February 1978 (Official Journal L 54, p. 18)) if an appellant relies on those provisions to support his case?"

9 In order to answer this question it is sufficient to refer to the Court's well-established case-law concerning the effect of directives, most recently mentioned in its judgment of 19 January 1982 in Case 8/81 *Ursula Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53.

10 It is apparent from that case-law that if the provisions of the directives are unconditional and sufficiently precise, as far as their subject-matter is concerned, they may be relied on in legal proceedings by individuals where the Member State in question has not correctly implemented the directive within the framework of its domestic legislation.

11 The provisions referred to by the plaintiff in the main proceedings comply with that requirement. In fact Article 1 (3) contains a precise and unconditional prohibition in so far as it forbids the application of any quota

or quantitative restriction to the types of carriage listed in Annex II to the directive. Article 3 reserves certain powers to the Member States regarding the conditions which they may impose for authorization of transport undertakings subject to their authority to engage in the activities mentioned in the directive. By its very nature, in so far as it defines the powers of the Member States in that area, that provision may also be relied upon in legal proceedings where it appears that the national authorities have exceeded their powers as defined by the directive.

12 Thus it must be stated in reply to the first question that it is the responsibility of the national court or tribunal to examine the relevant national legislation in the light of Articles 1 (3) and 3 of the First Council Directive on the establishment of certain common rules for international transport if a party relies on those provisions in proceedings before that court.

The second question

13 The second question submitted by the Raad van State is as follows:

"If so, may those provisions be construed as allowing the competent authorities of a Member State the freedom to apply a system of authorizations for the types of international carriage of goods by road for hire or reward mentioned in Annex II to the directive to undertakings established in that Member State if the aim of such a system is to restrict the load capacity to be used by them in the carriage of goods abroad, even if those undertakings satisfy the relevant requirements of creditworthiness and technical aptitude laid down by national legislation as regards the carriage of goods abroad and inland and if, pursuant to the national licensing system for the carriage of goods inland, they possess load capacity which has been approved as being perfectly satisfactory?"

14 The answer to this question must be obtained by reference to the purpose and structure of the directive of 23 July 1962.

15 By virtue of Article 1 of the directive the Member States are required to liberalize the types of international carriage of goods by road for hire or

reward involving other Member States listed in Annexes I and II to the directive, by the end of 1962 at the latest. According to paragraph (3) thereof "the types of carriage listed in Annex II shall no longer be subject to a quota system. They may, however, remain subject to authorization provided no quantitative restriction is involved; in such case Member States shall ensure that decisions on applications for authorizations are given within five days of receipt".

16 Article 3 provides as follows. "This directive shall not affect the conditions under which any Member State authorizes its own nationals to engage in the activities mentioned in this directive." As the Commission has rightly stated in the course of the proceedings, that provision must be taken to relate to the authorization accorded by each Member State to undertakings established in its territory to engage in the activities mentioned in the directive, regardless of the nationality of the persons concerned.

17 The Commission supports the view taken by the plaintiff in the main proceedings and considers that the requirement laid down in Article 1 (3) that all quotas must be abolished may be relied upon by all transport undertakings in the Community without distinction and that, consequently, the "conditions" referred to in Article 3 of the directive relate solely to conditions of quality and not to conditions of quantity of the type existing in the Netherlands legislation.

18 The Governments of the Federal Republic of Germany, the French Republic and the Kingdom of the Netherlands, on the other hand consider that the word "conditions" in Article 3 is used in a general sense and therefore includes conditions relating to restrictions on transport capacity, such as are found not only in the Netherlands legislation but also in the legislation of the other Member States.

19 In view of those different interpretations it is appropriate to state in the first place that the directive of 23 July 1962 is a first measure designed to establish certain common rules for international transport and that, according to the second recital in the preamble thereto, it was adopted with a view to the "progressive expansion" of the international carriage if goods by road, account being taken of developments in trade and the movement of goods within the Community.

20 It therefore seems, as is confirmed by the contents of Annexes I and II to the directive, that the directive is intended to liberalize certain types of carriage by road within the Community without yet laying down uniform conditions for authorization to engage in the activities in question.

21 In those circumstances, although Article 1 (3) of the directive provides that the types of carriage listed in Annex II thereto are no longer to be subject to a quota system but may remain subject to authorization provided that no quantitative restriction is involved, the terms "quota" and "quantitative restriction" can only relate to the measures which a Member State applies to transport carried out by undertakings established in another Member State.

22 Furthermore, the requirement contained in Article 1 (3) that each Member State is to ensure that decisions on applications for authorization are given within five days of receipt can only be explained, within the framework of the directive in question, if it is taken to relate to an application for authorization coming from another Member State.

23 That interpretation is in conformity with the content of Article 3 of the directive which leaves the Member States the power to fix the conditions for authorizing undertakings established in their territory to engage in the activities mentioned in the directive and which therefore implies, in the absence of other rules of Community law applicable to this field, that another Member State may impose on such undertakings conditions which restrict their transport capacity.

24 Consequently, as Community law stands at present, legislation of a Member State which is intended to restrict capacity in relation to the types of international transport listed in Annex II to the directive in order to maintain a balance between transport needs and available capacity cannot be considered to be contrary to the directive.

25 Thus, it must be stated in reply to the second question that the provisions at issue must be interpreted as meaning that the competent authorities of a Member State are entitled to continue to apply to undertakings established in its territory a system of authorizations for the types of international carriage

of goods by road for hire or reward listed in Annex II to the directive if the aim of such a system is to restrict the load capacity to be used by those undertakings for the international carriage of goods, even if they satisfy all the other requirements laid down by the national legislation for authorization to engage in national and international carriage of goods.

The third question

26 The third question submitted by the Raad van State is as follows:

"If the answer to Question 2 is in the affirmative, does the prohibition of discrimination on grounds of nationality laid down in Article 7 of the EEC Treaty, properly construed, mean that a statutory licensing system whereby transport undertakings established in one Member State are subject to quantitative restrictions as regards the load capacity to be employed in the carriage of goods between Member States may be operated if transport undertakings established in other Member States are not or may not be subject to such restrictions by that Member State under Community law?"

27 It follows from the reply given to the second question that, in the absence of a common policy in this area, the Council directive recognizes that responsibility is to be divided among the Member States, so that each Member State may determine the conditions subject to which undertakings established in its own territory may be authorized to engage in the types of transport referred to in the directive in order to maintain, as far as is necessary, a balance between supply and demand in the sector in question. The application of national legislation cannot be regarded as discrimination contrary to the Treaty on the ground that other Member States may apply less severe restrictions to the transport undertakings established in their territory. The aim of Article 7 of the Treaty is to eliminate any discrimination on the ground of nationality resulting from the legislation or administrative practices of a given Member State rather than any disparity in the way in which undertakings of different Member States are treated as a result of differences between the legislation of the Member States, in the absence of a common transport policy.

28 Thus, it must be stated in reply to the third question that the fact that, by virtue of the directive of 23 July 1962, a Member State imposes on transport undertakings established in its territory quantitative restrictions regarding the load capacity to be employed in international carriage of goods between Member States does not amount to discrimination contrary to Article 7 of the EEC Treaty even though it is under an obligation, by virtue of of Article 1 (3) of that directive, to allow within its territory without any restriction transport operations originating in other Member States even in cases where those Member States impose less severe conditions regarding load capacity on the undertakings established in their territory.

Costs

29 The costs incurred by the Governments of the Kingdom of the Netherlands, the Federal Republic of Germany and the French Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Administrative Appeals Division of the Raad van State, by order of 6 April 1982, hereby rules as follows:

1. **It is the responsibility of the national court to examine the relevant national legislation in the light of Articles 1 (3) and 3 of the First Council Directive of 23 July 1962, on the establishment of certain common rules for the international carriage of goods by road if a party relies on those provisions in proceedings before that court.**

2. **The provisions in question must be interpreted as meaning that the competent authorities of a Member State are entitled to continue to apply to undertakings established in its territory a system of authorizations for the types of international carriage of goods by road for hire or reward listed in Annex II to the directive, if the aim of such a system is to restrict the load capacity to be used by those undertakings for the international carriage of goods, even if they satisfy all the other requirements laid down by the national legislation for authorization to engage in national and international carriage of goods.**

3. **The fact that, by virtue of the directive of 23 July 1962, a Member State imposes on undertakings established in its territory quantitative restrictions regarding the load capacity to be employed in the international carriage of goods between Member States does not amount to discrimination contrary to Article 7 of the EEC Treaty even though it is under an obligation, by virtue of Article 1 (3) of that directive, to allow within its territory without any restriction transport operations originating in other Member States even in cases where those Member States impose less severe conditions regarding load capacity on the undertakings established in their territory.**

Mertens de Wilmars Pescatore O'Keeffe Everling

Bosco Koopmans Due Bahlmann Galmot

Delivered in open court in Luxembourg on 25 January 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President