veterinary surgeon in his own country, on the ground that he is not enrolled on the register of veterinary surgeons of the first Member State, where such enrolment is refused in breach of Community law.

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 15 December 1983.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 27 OCTOBER 1983

My Lords,

Mr Rienks is a Dutch national. In 1970 he obtained a degree in veterinary medicine from the University of Utrecht which entitled him to practise as a veterinary surgeon in the Netherlands.

On 12 May 1981, by which time he was living in Italy, he applied to be enrolled on the register of veterinary surgeons in Varese where he wished to practise. His application was refused. The reason for the refusal appears to have been that Council Directives 78/1026 and 78/1027 had not been implemented in Italy. They should have been implemented by December 1980. Those two directives deal respectively with the mutual recognition of diplomas in veterinary medicine, with measures to facilitate the effective exercise of the rights of establishment and the right to provide services and with the coordination of rules relating to the activities of veterinary surgeons.

On 1 December 1981, Mr Rienks signed a pharmaceutical prescription which, under Italian national law, could only be lawfully issued by a veterinary surgeon

who was enrolled on the register of the place where he practised. He was subsequently prosecuted for improperly exercising a profession contrary to Article 348 of the Italian Criminal Code. The magistrate before whom the case came considered that Mr Rienks had only committed this offence because Directives 78/1026 and 78/1027 had not been implemented in Italiy. He found that if the directives had been implemented, Mr Rienks' application to be enrolled would not have been opposed, so that he would have been entitled to practise.

The judge considered that this failure to implement the directives was a breach of Community law, a fact which was evidenced by proceedings commenced by the Commission under Article 169 of the EEC Treaty against Italy for failure to implement the directives. The judge, however, found it necessary to refer to this Court the question whether these directives could be relied on by individual veterinary surgeons when the Italian Government had not implemented them. And so he posed two questions to the Court: the first in summary, is whether a host Member State which is in default in not implementing the directives can prosecute a national of another Member State who is qualified in his own State but who is not enrolled on the register in Italy for an offence, which can be committed equally by an Italian national who is not enrolled on a veterinary surgeon's register, where the person's failure to enrol is due solely to the fact that the host country has not implemented the directives timeously. The second question posed by the court, to be answered only if the first question is answered to the effect that a prosecution may be brought, asks whether such a national of another Member State qualified in his own State has the right to be enrolled which he can enforce even if the host Member State has not implemented the directives.

These questions were raised by the judge before the judgment of this Court in the First Chamber in Case 271/82 *Auer* v *Ministère Public, L'Ordre National des Vétérinaires de France, le Syndicat National des Vétérinaires Practiciens de France* on 22 September 1983 (Case 271/82 [1983] ECR 2727).

On behalf of the Italian Government, it is contended that a distinction is to be drawn between the act of enrolment which, under the directives may be made obligatory by the national authorities, as part of its supervisory role recognized by the directive, on the one hand, and the prosecution for practising without enrolment which it is said may be brought whatever the reason for non-enrolment, including an unjustified refusal to enrol the applicant. It is said that this Court should not extend the effect of directives so as to enable people to sidestep national provisions. Counsel for the Italian Government had stressed that, under the directive, certain powers are reserved to the national authorities. One of those is the power to register. It is said that the Court should not give such effect to a directive that it cuts down provisions of national law which

are compatible with the directive. Registration is said to be one of those. Moreover, it is argued that in a case like the present, Mr Rienks should not have done the act of issuing the prescription contrary to national law, but should have approached a civil law administrative court for a ruling. Having done what he did he must take the consequences.

A failure to be registered does not, according to the *Auer* judgment, prevent a veterinary surgeon from practising his profession, or justify a prosecution based on lack of registration, if registration is refused contrary to the principles of Community law.

Finally, and perhaps, this is the crux of the matter, it is argued that judgment of the Court in the *Auer* case does not answer any of the questions which are raised and which fall to be decided in the present case.

The Court recognized the Italian Government's contention in the present case that there is a supervisory role left to the Government, but made it quite clear that that role cannot be exercised in such a way that it conflicts with the principles of Community law.

As to the last matter, I take the opposite view. The judgment in the *Auer* case, following the principles defined by this Court in the cases of *Ratti* and more recently of *Becker*, makes it quite clear that these directives impose on the Member States obligations which so far as are relevant here, are clear, precise and unconditional, leaving no margin of discretion. An individual can accordingly rely on the terms of those directives against a Member State which has failed to implement them in breach of its obligations.

Even though a directive may not cut down the provisions of national law which are incompatible with the directive, it does prevent steps being taken by a Member State which are in conflict with Community rules which it should have adopted. That does not in any way extend the effect of a directive, which has not been implemented, beyond its proper limits. It does not, contrary to the Italian Government's submissions, impinge on national law which is compatible with the directive.

The Court in the *Auer* judgment makes it clear that a professional body cannot properly refuse to register a veterinary surgeon holding the appropriate qualifications. The Court expressly ruled that a veterinary surgeon holding one of the qualifications specified in Article 3 of Directive 78/1026 has the right to practise his profession in another Member State so long as he can provide a certificate that his diploma complies with Article 1 of Regulation 78/1027.

Nor does the fact that Mr Rienks challenged the law in the way he did disentitle him from a ruling on the question involved or prejudice the answer to that question.

A certificate dated 11 May 1981 has been received, issued on behalf of the Netherlands Ministry of Education and Sciences. That certificate makes it clear that Mr Rienks' degree is in conformity with Article 1 of Directive 78/1027.

In the light of that fact and the decision of the Court in the *Auer* case, I consider that the answer to the questions raised by the judge are governed by the Court's ruling in the *Auer* case and that the first question should be answered on the basis that a Member State which has not implemented in due time Council Directives 78/1026 and 78/1027 of 18 December 1978 may not enforce penal measures against the national of another Member State holding one of the qualifications mentioned in Article 3 of Directive 78/1026 (so long as that qualification complies with Article 1 of Directive 78/1027) for having performed an act, which can only lawfully be performed by someone enrolled on the appropriate professional register, and where that national is not enrolled only because the first-mentioned Member State has not implemented the directives within the prescribed period.

In these circumstances, no answer is sought to the second question. It is, however, in my view, as the Commission contends, the duty of the appropriate body to register a veterinary surgeon with the qualifications which satisfy the two directives.

In my view, Mr Rienks' costs should be reserved to the national judge dealing with the case to which the reference is made. The Italian Government and the Commission should bear their own costs.