For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.

2. Neither Regulation No 543/69 on the harmonization of certain social legislation relating to road transport nor the general principles of Community law preclude the application of national provisions under which an employer whose drivers infringe Articles 7(2) and 11 of the regulation may be the subject of a criminal penalty notwithstanding the fact that the infringement cannot be imputed to an intentional wrongful act or to negligence on the employer's part, on condition that the penalty provided for is similar to those imposed in the event of infringement of provisions of national law of similar nature and importance and is proportionate to the seriousness of the infringement committed.

REPORT FOR THE HEARING
in Case C-326/88 *

I — Facts and procedure

1. *Legal background and facts of the case*

Article 7 of Regulation (EEC) No 543/69 of 25 March 1969 concerns the driving period for drivers of certain vehicles. According to Article 7(2):

'The total period of driving time between two consecutive daily rest periods (hereinafter called the "daily driving period") shall not exceed eight hours.'

Article 11 prescribes compulsory daily rest periods; in paragraph 1 it provides that:

'Every crew member engaged in the carriage of goods shall have had a daily rest period of not less than 11 consecutive hours during the 24-hour period preceding any time when he is performing any activity covered by Article 14(2)(c) or (d).'

Article 14(2)(c) refers to driving periods and Article 14(2)(d) refers to other periods of attendance at work. Article 13 permits Member States to apply to the crews of

* Language of the case: Danish.

vehicles registered in their territory higher minima or lower maxima than those laid down *inter alia* by Articles 7 and 11. Article 18 of the regulation provides that the Member States are to adopt the provisions necessary for the implementation of the regulation and, in particular, the penalties to be imposed in case of breach.

Article 1(1) of Danish Law No 508 of 29 November 1972 implementing the regulation authorized the Minister for Labour to lay down the necessary provisions. Article 2(1) of the law confers on the Minister authority to decide that infringements of Community law are to be punishable by a fine, and Article 2(2) of the law provides that under the provisions in question employers may be made liable to a fine for infringements committed by employees of the undertaking even though the infringement cannot be imputed to an intentional act or to negligence on the employer's part. That system of criminal liability corresponds to the rules generally applicable in Denmark on the protection of the working environment. By Order No 448 of 2 June 1981, the Minister for Labour availed himself of that possibility and laid down, in Article 9, that an employer may be made liable to a fine on the basis of strict liability for infringement of Articles 7 and 11 of the regulation.

In March 1984, on the occasion of a check carried out by the Dutch police at Denekamp in the Netherlands, it was established that a driver employed by the defendant had infringed Articles 7(2) and 11 of Regulation No 543/69. When prosecuted before the Graasten District Court in Denmark, the driver pleaded guilty and was ordered to pay a fine. His employer, the defendant, was prosecuted as liable in criminal law for the infringements committed and was also ordered to pay a fine. The defendant appealed to the Vestre Landsret (Western Regional Court), before which the case is now pending.

It is common ground between the parties, and is acknowledged by the Landsret, that the employee in question infringed Articles 7 and 11 of the regulation and that there was no intent or negligence on the defendant's part.

The defendant asked for the charges to be dismissed on the ground that strict criminal liability on the part of the employer was incompatible with the regulation. It maintained that the employer's obligations were limited to organizing the work of his drivers in such a way as to enable them to comply with the regulation, carrying out periodic checks to ensure that the regulation had in fact been complied with and, if any breaches were found to have occurred, taking appropriate steps to prevent their repetition. That obligation corresponds to the express wording of Article 15 of Council Regulation (EEC) No 3820/85 (Official Journal 1985 L 370, p. 1), which repealed Regulation No 543/69 as from 29 September 1986 and which, according to the defendant, merely renders more explicit the provisions that were already applicable under the regulation previously in force. In its view, Article 9 of Danish Order No 448 goes beyond the limits of those obligations and cannot therefore take Article 13 of the regulation as its legal basis.

The defendant further maintained that the Danish approach jeopardizes the application of uniform rules within the Community and might therefore distort the conditions of

competition, contrary to one of the fundamental objectives of the regulation. Finally, the defendant emphasized that a conviction for infringement of the regulation could entail the revocation of the licences needed by haulage contractors.

The *public prosecutor* argued before the Landsret that, according to a fundamental principle of Community law, the imposition of penalties is exclusively a matter for the Member States. That principle is confirmed, in this case, by Article 18 of the regulation, whose wording has been taken over by Article 17 of Regulation No 3820/85, and by the fact that the Resolution of 20 December 1985 to improve the implementation of the social regulations in road transport (Official Journal 1985 C 348, p. 1) was passed jointly by the Council and the representatives of the Member States, the imposition of penalties being a matter which goes beyond the powers of the Community authorities. However, the Member States' freedom of choice as regards the penalties for infringement of Community law is limited by two criteria: the penalties chosen must be effective and they must correspond to the penalties provided for infringement of comparable provisions of national law.

The compatibility with the rules of Community law of a system under which an employer is strictly liable for an infringement of the regulation by his employees is a matter of considerable significance for the outcome of the proceedings pending before the Landsret; accordingly, by decision of 28 January 1988, the Landsret referred the following question to the Court for a preliminary ruling:

'Does Regulation (EEC) No 543/69 of the Council on the harmonization of certain social legislation relating to road transport, as amended, prohibit national provisions under which an employer whose drivers infringe Articles 7(2) and 11 of the regulation concerning driving and rest periods may be the subject of a criminal penalty notwithstanding the fact that the infringement cannot be imputed to an intentional act or to negligence on the employer's part?'

The Landsret emphasized that, even though the question was submitted in connection with the 1969 regulation, the Court's answer would in substance have the same effect as regards Council Regulation No 3820/85.

2. *Procedure before the Court*

The reference for a preliminary ruling was received at the Court Registry on 9 November 1988.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted on 14 February 1989 by the Danish Government, represented by Jørgen Molde, acting as Agent, on 16 February 1989 by the United Kingdom, represented by S. J. Hay, acting as Agent, and on 1 February 1989 by the Commission of the European Communities, represented by Johannes Buhl, Legal Adviser, and Ricardo Gosalbo Bono, a member of the Commission's Legal Department, acting as Agents.

In its observations the Danish Government asked for the case to be heard by the full Court.

On 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.

II — Summary of written observations submitted to the Court

The *Danish Government* fully agrees with the conclusions reached by the public prosecutor in the proceedings before the national court. The public prosecutor starts from the premiss that Member States have full freedom of action and may lay down the conditions for criminal liability which seem to be most appropriate in the light of the specific traditions of the country in question and its policy with regard to criminal law. That being so, infringements of Community law and of similar national provisions must be penalized in the same manner.

The Danish legislature is thus under an obligation to adopt rules on strict liability of employers as regards the working and rest periods referred to in the regulation since the same system is in force with regard to infringements of the Danish rules (see the Danish law on the working environment).

According to the Danish Government, the Court acknowledged in Case 203/80 *Casati* [1981] ECR 2595 that the imposition of penalties is a matter for the Member States. It also refers to the Resolution of 20 December 1985 as confirming that the Member States have exclusive power in that regard. The imposition of penalties is, and must remain, a matter for national law because policy in the field of criminal law has not been the subject of international cooperation except sporadically and each country thus retains its own traditions with regard to the severity of penalties and the discretion of the courts.

The Danish Government considers that a country's policy in the field of criminal law is bound up with its national culture, and it is therefore crucial for the evolution of society as a whole that the possibility for Member States to pursue an independent policy in that area should not be completely nullified. The Court's judgment in Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1981 confirms that the obligation to impose a penalty rests on the Member States alone. In that judgment, moreover, the Court emphasizes that the penalty chosen must be effective, proportionate and in conformity with the rule that penalties for infringements of national rules must correspond to those for infringements of Community rules.

Danish Law No 508 of 29 November 1972 and Order No 448 of 2 June 1981 are in conformity with those principles.

The introduction of strict criminal liability is designed to encourage the adoption of control procedures and preventive measures by the undertakings concerned, especially on the part of supervisory staff. Concern for prevention is particularly significant where the infringement penalized is unlikely to result in an obligation to compensate a third party. In such a case the penalty lies solely in the fine imposed on the employer on the basis of his strict liability. Implicit in that deterrent purpose is also the possibility of imposing a fine on legal persons. In that case, strict liability is singularly appropriate as it is often difficult to identify the perpetrator(s) of the infringement. It is worth

noting, however, that a legal person is not normally fined purely on the basis of strict liability, since such liability depends on a person within the undertaking (the driver in this case) having acted, either intentionally or negligently, in a manner connected with the infringement committed.

Finally, and in reply to the defendant's argument concerning the lack of uniformity in the application of the regulation, the Danish Government points out that the regulation only lays down minimum rules and that its purpose may be understood as being to prevent certain undertakings from enjoying an unjustified advantage by infringing its provisions with impunity.

The Danish Government therefore suggests that the question submitted for a preliminary ruling should be answered as follows:

'Community law does not contain any rules which preclude a Member State from adopting provisions under which an employer may be penalized when his employees infringe Regulation No 543/69, even though that infringement cannot be imputed to an intentional act or to negligence on the employer's part.'

The *United Kingdom* relies on the Court's judgment in Case 50/76 *Amsterdam Bulb* v *Produktschap voor Siergewassen* [1977] ECR 137 in support of the view that, in the absence of specific provisions in the relevant Community regulation, Member States are free to decide which penalties are appropriate, and that is confirmed in this case by the wording of Article 18 of the regulation. However, the measures selected must be in conformity with the requirements of the Treaty and must take into account existing provisions of national law.

It is clear, according to the United Kingdom, that the purpose of the regulation and the grave social dangers which it is aimed at require the imposition of effective penalties on both drivers and their employers, and the fact that Regulation No 543/69 is less explicit than Regulation No 3820/85 as regards the duties of employers is irrelevant. The nature of the employer's criminal liability must be consistent with the approach taken by the Member State in question in other areas concerning the performance of duties by an employee for his employer, as is the case in Denmark.

If Denmark had not introduced strict criminal liability, penalties for infringement of Community law would not be in line with penalties for infringements of Danish domestic rules, which would undermine the authority of the Community rules.

The United Kingdom suggests that the question referred to the Court for a preliminary ruling by the Vestre Landsret should be answered as follows:

'Regulation No 543/69 of the Council on the harmonization of certain social legislation relating to road transport, as amended, does not prohibit national provisions under which an employer, whose

drivers infringe Articles 7(2) and 11 of the regulation concerning driving and rest periods, is subject to criminal sanction, notwithstanding the fact that the infringement cannot be imputed to him in the sense that there was no intention or negligence on his part.'

The *Commission* does not accept the Danish Government's argument to the effect that the imposition of penalties is systematically a matter for the Member States. The Community's powers in that field are expressly provided for by Article 87(2) of the EEC Treaty, for instance, and are exercised on the basis of Regulation (EEC) No 17/62 of 6 February 1962 (Official Journal, English Special Edition 1959-62, p. 87).

Such powers are conferred on the Community in the field of transport by Article 79(2) of the Treaty. However, the Community decided not to impose penalties itself for infringement of the regulation but to impose an obligation on the Member States to provide for such penalties.

The Commission considers that Article 18 of the regulation leaves to the Member States the power to determine which penalties are appropriate, on condition that they correspond to what is provided for elsewhere by national legislation. In its view, the system established by the Danish legislation is entirely consistent with the regulation. The Member States are free to hold an employer whose drivers have infringed Articles 7 and 11 of the regulation strictly liable in criminal law if they consider that a system of that kind is capable of ensuring compliance with the provisions in question, especially where the type of liability concerned applies to similar infringements of national law.

The Commission also denies that the introduction of strict liability has unilaterally extended the scope of the regulation since the nature of the penalty imposed does not affect the employer's obligation. Even if the limits of that obligation had been extended, such an extension would be acceptable and consistent with the discretion conferred on the Member States by the regulation.

Finally, in answer to the defendant's argument concerning the need to ensure that the regulation is uniformly applied and thus to prevent distortion of the conditions of competition, the Commission acknowledges that although a lack of harmonization persists to some extent with regard to penalties, that does not lead to distortion of competition because the deterrent effect of the penalty and the economic disadvantages to which it gives rise must remain common to all the Member States, whatever basis of liability is chosen.

The Commission suggests that the question submitted by the Vestre Landsret should be answered as follows:

'Regulation No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (and Council Regulation No 3820/85 of 20 December 1985 which deals with the same matter as the aforesaid regulation and which repealed it) permits the Member States to adopt national provisions under which an employer whose drivers infringe Articles 7(2) and 11 of the regu-

lation concerning driving and rest periods may be penalized, even though the infringement cannot be imputed to an intentional act or to negligence on the employer's part. The reason is that even if the Community has power to introduce a system of penalties, particularly as regards the application of social legislation in the field of road transport, it has not exercised that power, but has expressly authorized the Member States to do so under their own legal systems so as to ensure that the best possible results are obtained as a result of the efforts made to achieve the objectives of the regulation.'

Gordon Slynn
Judge-Rapporteur