Case 2/84

Commission of the European Communities
v
Italian Republic

'Combined road/rail carriage — Unloading station in a non-member country'

Summary

Transport — Carriage by road — Combined road/rail carriage — Transit through a non-member country — Unloading of the road vehicle in a station in the non-member country — Application of Directive 75/130/EEC — Conditions
(Council Directive 75/130/EEC)

Directive 75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States must be interpreted as applying also to combined rail/road carriage between two Member States through a non-member country, even if the road vehicle is unloaded in a station in the non-member country, provided that that station is the nearest suitable station to the point of unloading of the goods and proof of the unloading is given by a stamp affixed on the transport document by the rail authorities in the said station.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 13 February 1985 *

Mr President,
Members of the Court,

1. In this action the Commission asks the Court to declare that Italy has failed to fulfil its obligations under Council Directive 75/130/EEC of 17 February 1975 on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States. [1]

* Translated from the French.

1 — Official Journal 1975 L 48, p. 31.

By that directive, which was adopted in the framework of the Common Transport Policy, the Community legislature granted preferential treatment to a type of mixed carriage of goods, by road and rail. The objective of the directive is to reduce to a minimum the distance covered by road and to promote carriage by rail for the sake of three anticipated advantages: energy-saving, the reduction of road traffic and increased road safety, and protection of the environment (second recital in the preamble).

For that purpose, whereas the carriage of goods by road is still subject to a system of authorization of Community quotas, Directive 75/130/EEC provides that:

'Each of the Member States shall, by 1 October 1975, liberalize the combined road/rail carriage referred to in Article 1 from all quota systems and systems of authorization' (Article 2).

However, Article 2 relates only to combined road/rail carriage, that is to say,

'road transport of goods between Member States where [the vehicles] ... are transported by rail between the nearest suitable rail loading station to the point of loading and the nearest suitable rail unloading station to the point of unloading' (first indent of Article 1 (1)).

To ensure that the regulations are complied with, control measures are provided for. Article 3 requires that the transport document shall specify 'the rail loading and unloading stations'.

Article 3 also states that:

'These details shall be recorded before the transport operation is carried out and shall be confirmed by means of a stamp affixed by the rail authorities in the stations concerned when that part of the journey carried out by rail has been completed'.

2. Those provisions are the subject of a disagreement as to the interpretation of the concept of 'the nearest suitable rail unloading station' to the point of unloading of the goods.

The Italian authorities in fact still require that all vehicles transported by rail from the Federal Republic of Germany and unloaded at Lugano have a transport authorization in order to enter Italy, on the ground that the directive cannot apply to combined road/rail carriage where the unloading station is not situated in Community territory but is in a non-member country, in this instance Switzerland. The Commission, on the other hand, considers that, where the goods are to be delivered to a place situated in a Member State, the unloading station may be situated in a non-member country. Incidentally, it is not disputed that Lugano is in fact the unloading station nearest to the Italian localities situated in the extreme north of the State, since it is closer to those localities than Milan.

Thus the dispute involves an examination of the question whether the retention by Italy of a system in which a transport authorization is required from vehicles passing through an unloading station situated in a non-member country before arriving by road at the unloading point situated in a Member State is compatible with the directive.

I shall now consider the arguments of the parties.

3. The Commission claims that there is nothing in the directive which prevents the unloading station from being situated in the territory of a non-member country. It claims

that, in implementing the directive, Italy introduced a restriction which was not provided for and which, the Commission argued at the hearing, was contrary to the objectives pursued by the Community legislature.

Italy rejects that line of argument.

It states, first, that if it had been intended to include in the field of application of the directive stations situated in the territory of a non-member country, an express statement would have been made to that effect. It considers, secondly, that that view is borne out both by Article 3 of the directive and by the guidelines for negotiation addressed to the Commission by the Council for the implementation of the decision of 26 March 1981 'on the opening of negotiations between the European Economic Community and non-member countries concerning the establishment of common rules applicable to certain types of combined road/rail carriage of goods'.

Italy contends that Article 3 imposes an obligation on the rail authorities to affix a stamp to the transport document. As the directive can only lay down rules for the Community, such an obligation cannot bind the authorities of a non-member country.

Italy considers that its interpretation is confirmed by the guidelines for negotiations referred to above, which expressly refer to this type of case. It infers from that *a contrario* that the case in question — where the unloading station is situated in a non-member country — does not fall within the ambit of Directive 75/130.

4. At first sight it is indeed tempting to accept the arguments of the Commission. It certainly cannot be disputed that its interpretation is consonant with the policy pursued by the Council in this sphere. By providing certain advantages for combined intra-Community transport, the Council has sought to encourage the use of rail transport and to reduce the length of the road journey to a minimum. It is therefore understandable that on that basis the Commission includes this case. It must, however, be questioned whether the Commission is entitled in law to do so.

In reply to the submissions put forward by Italy, the Commission claims that the obligation contained in Article 3 affects chiefly the transport operator who must, in order to benefit from the directive, produce proof in the form of a stamp affixed to the transport document. It is therefore of little importance if that transaction, to be carried out by the authorities of the Member States, is effected by the authority of a non-member country where that authority, though not bound, agrees to to do.

As regards the instructions given on the negotiations with non-member countries, the Commission states that they do not affect the field of application and interpretation of Directive 75/130.

5. Unlike the Commission, I take the view that Article 3 must be interpreted as imposing an obligation on the rail authorities *inter alios*. The words used — 'these details *shall ... be confirmed by means of a stamp affixed by the rail authorities* in the stations concerned' (emphasis added) — are mandatory and thereby show that they

contain an obligation which as such can only be imposed on the rail authorities of the Member States.

That interpretation is confirmed by the negotiating brief which includes among the traffic links to which the negotiations relate:

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...

between two Member States and in transit through the territory of a third country (in so far as the road transport operation involves crossing the frontier between a Member State and a third country)',

while, in order to give a clearer definition of the task assigned to the Commission, the Council stated that:

'Carriage between two Member States involving transit by rail only through a third country (e.g. between Italy and Germany with rail transit through Austria) is already covered by the directive' (75/130).

The interpretation put forward by the Commission in support of its application certainly reflects the approach of the Community legislature, but in my opinion it anticipates the law to be enacted, of which Directive 75/130 is only one stage. The rules laid down by that directive need to be completed. If that is clearly the object of the decision adopted by the Council on 26 March 1981, it seems difficult to achieve that result immediately by a wide interpretation of the field of application of Directive 75/130, which would result in a declaration that a Member State had failed to fulfil an obligation which was not clearly imposed upon it.

6. I therefore conclude that the Commission's application for a declaration that Italy has failed to fulfil its obligations under Council Directive 75/130 of 17 February 1975 should be dismissed and that the applicant should be ordered to pay the costs.