OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 17 March 1987 *

Mr President,
Members of the Court,

My Opinion on the question referred to the Court for a preliminary ruling by the Politierechtbank, Harelbeke, by a judgment of 4 June 1986, is as follows.

1. 1. An interpretation of the provisions of Community law referred to in the question is, in my view, necessary only in regard to the case where a vehicle authorized to use the roads in France and complying with French legislation which was to be used for international transport to Belgium is barred from that country's roads because it exceeds the maximum permitted height laid down by Belgian legislation. Those were the facts of the case before the Politierechtbank. On the other hand, it is not necessary in these proceedings to consider what the position would have been if the intention had been to import such a vehicle into Belgium and admission had been refused on the same grounds. Although the Commission has discussed the point, I do not consider it necessary to examine it.

2. 2. After making that point clear, the first matter to consider is what assistance is to be found in the provisions of the Treaty relating to the freedom to provide services. It is true that the Politierechtbank began with the free movement of goods, but in view of the facts of the case, it seems to me more logical to begin by examining the question from the point of view of the freedom to provide services.

3. Article 61 of the EEC Treaty states that the freedom to provide services in the field of transport is to be governed by the provisions of 'the title relating to transport'. It is therefore necessary to begin with those provisions.

4. It is clear that it is pointless to refer to Article 76, which provides that, until the provisions referred to in Article 75 (1) have been laid down, no Member State may make the provisions governing the subject at the time of the Treaty's entry into force less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State. The main reason why that is so is that at the material time, namely August 1985, the Council directive 'on the weights, dimensions and certain other technical characteristics of certain road vehicles' had already been adopted on the basis of *inter alia* Article 75 (the directive, dated 19 December 1984, was published in Official Journal 1985, L 2, p. 14).

5. Article 3 of the directive — and this seems particularly important — provides that:

'Member States may not reject or prohibit the use on their territories in international traffic of vehicles registered or put into circulation in any Member State for reasons relating to their weights and dimensions provided that such vehicles comply with the limit values specified in Annex I . . . '.

* Translated from the German.

6. Annex I stipulates that the maximum height of any vehicle is to be four metres (point 1.3). From that provision it may immediately be inferred that Member States may turn back vehicles which exceed the specified maximum permitted height.

7. It must not be overlooked that, in so far as is relevant for these proceedings, the measures which the Member States were required to take in order to implement the directive under Article 7 did not need to be taken until 1 July 1986. That date, however, clearly represents a final deadline. Each Member State was therefore at liberty to take all necessary measures for its implementation as soon as the directive entered into force. Since Belgian law was already in compliance with the provisions of the directive as regards the maximum permitted heights, it may be concluded from this alone that all necessary measures for the implementation of the directive in this regard had been taken in Belgium.

8. The only conclusion to be drawn from this is therefore that the special provisions relating to transport (the application of provisions other than those referred to is certainly excluded) afford no grounds for disputing the validity of the Belgian provisions at issue and their application to events which took place in August 1985.

3. 9. As regards the 'rules regarding free movement of goods', to which reference was also made, I accept that it is necessary to examine those rules because the Politierechtbank has asked the Court do so.

10. *(a)* However, I think it would be wrong to refer to those rules on the ground that the Belgian provisions prohibiting the *temporary use* of certain foreign vehicles in Belgium are an obstacle to trade in goods, which also include means of transport. In that regard, the question whether Article 30 of the Treaty has any application at all to the entry of goods into another Member State which is not definitive but only temporary may be left open.

11. *(b)* In any event, it may be said that in a situation like that in the main proceedings, where vehicles are merely the means of providing a service, the provisions governing that sector take precedence. If those provisions do not give rise to any doubt, further reference to the provisions relating to the free movement of goods is excluded.

12. *(c)* The only possible basis for considering Article 30 applicable would therefore be an indirect hindrance to the free movement of goods, namely the movement of goods requiring to be transported in vehicles prohibited in Belgium. However, it seems first of all extremely doubtful whether Article 30 can really be given such a broad interpretation, including even 'obstacles' of the type described, since, considered realistically, the exclusion of one means of transport in the goods' country of export can hardly be regarded as a real obstacle to the free movement of goods in view of the many other means of transport available.

13. *(d)* At all events, if it is considered that Article 30 can have an application to a case such as this, it would be necessary to take into account the possibility that a justification under Article 36 of the Treaty (on grounds of public security) may be available.

14. On this point it may be assumed (and it is useful in this regard to refer to the preamble to the regulation cited above, which emphasizes *inter alia* road safety) that vehicles exceeding the permitted height have been banned on Belgian roads because of the particular features of the road network

where obstacles in the form of bridges, underpasses, electric cables and the like constantly occur, which may lead to serious accidents involving high vehicles.

15. It is worth noting that, even in the country in which a greater height is permitted, a special degree of caution is, as we were told at the hearing, expressly required of those who use such vehicles. We were told that a French legislative provision makes this quite clear.

16. *(e)* Moreover, the possibility of adopting less drastic measures, such as designating special alternative routes for very high vehicles or placing signposts at critical points, cannot be seriously considered. This solution would be quite impossible because there are not always appropriate alternative routes and because the risk of accidents on such routes would be increased because of their unsuitability for heavier traffic. It must also be recognized that road signs might not be seen so that they are not a sufficient guarantee of safety.

17. *(f)* It can only be concluded therefore that none of the provisions on the free movement of goods affords grounds for opposing the application of the Belgian provision at issue in the main proceedings.

4. 18. On the question of the application of Article 85 of the EEC Treaty, which was mentioned in the Politierechtbank's order (but which is not mentioned in its question), a few words will suffice, if indeed it is necessary to discuss this point. The Court will recall that it was introduced into the discussion by counsel for the defendant who argued that the Belgian provision in question impeded competition in so far as it gave Belgian haulage contractors a competitive advantage because French haulage contractors could not use the greater part of their fleets in Belgium.

19. *(a)* The point here is that Article 85 quite clearly has no direct application in a situation such as that in the main proceedings because the question is not about the conduct of undertakings or associations of undertakings which affects competition but about the assessment of a legislative provision.

20. *(b)* Nor is it possible to see how the Belgian State could be accused (possibly having regard to Article 5 of the Treaty) of having infringed Community competition law. As a matter of fact, there cannot be said to be a real restriction on competition because competition exists in any event on the Belgian transport market between Belgian undertakings and, to the extent determined by the common transport policy, also between Belgian undertakings and transport undertakings from other Member States, including France, provided that they do not exceed the maximum permitted dimensions. Here again, Article 85 cannot be invoked in order to challenge the Belgian provisions at issue.

21. I therefore consider that the answer to the question submitted by the Politierechtbank Harelbeke can only be as follows:

'The provisions of Community law regarding the free movement of goods and the freedom to provide services (including those in the title on transport) cannot be interpreted as meaning that the Member States may not lay down a maximum height for vehicles such as that which is also provided for in Council Directive 85/3/EEC of 19 December 1984 and that they may not exclude from their public highways vehicles from other Member States which do not comply with that limit.'