OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 15 NOVEMBER 1984 [1]

Mr President,
Members of the Court,

A — The proceedings with which I must concern myself today are based on the following circumstances.

1. The plaintiff in the main proceedings is a German national, resident in Belgium. A civil servant in the *Land* of Baden-Württemberg, he was seconded to the Commission of the European Communities where he has had the status of an official since 1 October 1979. After moving to Brussels, in November 1981 he bought a motor car in Aachen in the Federal Republic of Germany. He obtained customs registration plates for it, in order to export it to Belgium and register it there. At the same time he took out third-party liability insurance for the vehicle for one month with the defendant in the main proceedings. Until he bought his new car the plaintiff had driven a car registered and insured in the Federal Republic of Germany. Since he had had a claim-free driving record since January 1976 he had been accorded a "no-claims discount" amounting to 60% of the basic premium. In the calculation of the insurance premium for the new car with customs registration plates the plaintiff was not granted a no-claims discount and the premium was set at 150% of the basic premium.

2. In his action before the Amtsgericht Aachen the plaintiff seeks to recover that portion of the insurance premium which he would not have had to pay had his entitlement to a no-claims discount been recognized (DM 127.61). He takes the view that the German tariff provisions, according to which classification in claims-free classes does not apply to insurance contracts for vehicles bearing customs registration plates, are not objectively justified; he contends in particular that they are contrary to the prohibition of discrimination laid down in the EEC Treaty, in so far as they deprive him, as a resident of another EEC country, of the benefit of premium reductions granted on an individual basis.

The defendant insurance company contends that the action should be dismissed. It takes the view that the tariff provisions in issue are objectively entirely justified. In cases such as this, the risk may be assumed to have increased, since the car is habitually being kept abroad and for most of the period covered by the policy is being driven in places with which the driver is not sufficiently familiar. It cannot be said that the defendant's officially approved tariff conditions systematically exclude policyholders resident in other countries of the European Communities from tariff reductions accorded on an individual basis to German residents.

3. The Amtsgericht Aachen is the court of first and last instance in this case. On the application of the plaintiff, it stayed proceedings and referred the following question, drafted by the plaintiff, for a preliminary ruling pursuant to the third paragraph of Article 177 of the EEC Treaty:

"Is it compatible with the EEC Treaty and other provisions of Community law that officially approved conditions of insurance for compulsory motor vehicle liability insurance systematically exclude from personal tariff reductions accorded to the residents of the country in which the said conditions were approved insured persons resident in other countries of the European Communities?"

1 — Translated from the German.

By order of 19 November 1983 the Amtsgericht supplemented its order of 26 October 1983 and rephrased the question in the following more precise manner:

"Is it compatible with the EEC Treaty and other provisions of Community law that insured persons resident in another country of the European Community and driving a motor car with customs registration plates are not granted no-claims discounts?"

4. Under German law, motor vehicles may be driven on public roads only if they are covered by third-party liability insurance. Motor vehicles bearing customs registration plates are no exception. Such registration plates are issued for motor vehicles used temporarily in Germany by persons who are not permanent residents of the Federal Republic of Germany, and for vehicles which are to be exported from Germany travelling under their own power. For such vehicles a liability insurance policy must be taken out with a German insurer, on the basis of the General Conditions of Insurance and of Tariffs, which are approved by the competent Government authorities. According to Paragraph 7 of the Regulation of 20 November 1967 on Motor-vehicle Insurance Tariffs (as last amended by a Regulation of 2. 12. 1982, Bundesanzeiger No 228 of 8. 12. 1982) it is permissible to grant no-claims discounts for German-registered motor vehicles but to refuse them for motor vehicles bearing customs registration plates. The plaintiff in the main proceedings considers that German provision to be incompatible with the EEC Treaty, whereas the defendant in the main proceedings and the Commission are of the view that Community law contains no provisions which forbid such a rule.

B — My views in the matter are as follows:

1. I assume that of the two versions of the question submitted to the Court it is the *later version* which should be regarded as the basis of these proceedings.

2. The defendant in the main proceedings expressed doubts as to the *admissibility* of the question. Such doubts are also expressed in the written observations of the Commission. The argument is that the question posed is too general, that no reference is made to any provisions of Community law which are to be interpreted, and that the national court did not indicate in what way the question was relevant to its decision. The Commission is of the view, however, that it is a request for interpretation which is capable of more precise definition, since the summary of the facts and other information provided by the Amtsgericht make it possible to determine which provisions of Community law may be relevant and require interpretation, and the subject-matter of the request is at least sufficiently identifiable. In such cases the Court has held orders for reference to be admissible. [1] I concur with that view, despite the understandable reservations of the defendant in the main proceedings.

3. The plaintiff in the main proceedings and the Commission criticized the German rules on liability insurance for motor vehicles with customs registration plates. The parties are entirely at liberty to make such criticism in the proper place and in the proper way, and to press for changes. The Court, however, can only concern itself with such criticism in so far as it is asserted that Community law has been infringed.

1 — Judgment of 29. 11. 1978 in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347.

4. In support of his view that the German rules are incompatible with the EEC Treaty, the plaintiff in the main proceedings relies on the "prohibitions of discrimination laid down in Articles 7, 30 and 34, 48 and 59, based on the customs union provided for in Article 9". Like the Commission and the defendant in the main proceedings, however, I am of the opinion that the plaintiff in the main proceedings has not been able to demonstrate any such infringement of Community law.

5. The first paragraph of Article 7 of the EEC Treaty prohibits "any discrimination on grounds of nationality" within the scope of application of the Treaty. By virtue of its *wording* that provision does not apply to this case, since the German rules do not differentiate according to the nationality of the user of the motor vehicle but according to whether or not he is a permanent resident in the Federal Republic of Germany or whether the vehicle is taken abroad under its own power (Paragraphs 1 and 7 (2) of the Regulation of 12 November 1984 on International Motor Vehicle Traffic, as last amended by the Regulation of 23 November 1982, Bundesgesetzblatt I, pp. 1533 to 1536). This could at most amount to what the Court has called a covert form of discrimination on the basis of nationality. [1] Such discrimination has not however been sufficiently proven. The plaintiff in the main proceedings is German which demonstrates that the German rules apply without distinction to Germans as well as to nationals of other countries. The German rules refer not to nationality but to the prospective use of the motor vehicle in a foreign country, which follows from the fact that the vehicle is intended for export or from the fact that the user is not a permanent resident of the Federal Republic of Germany. As the Commission correctly pointed out, differences in classification can be justified by considerations of residence. Indeed, within the Federal Republic of Germany differentiation is made on the basis of so-called "regional classes".

6. The plaintiff in the main proceedings also considers that the German rules constitute a breach by the Federal Republic of Germany of the principle of the *free movement of goods* (Articles 30 and 34). In his view, the approval by the authorities of the insurance conditions constitutes the measure adopted by the Federal Republic of Germany. It is however doubtful whether the approval by Government authorities of private conditions of insurance can be regarded as equivalent to a governmental measure in this case. As the representative of the German Government stated in the oral procedure, there is no legal impediment to the granting, by German insurers, of a no-claims discount for motor vehicles bearing customs registration plates. In a special circular of 23 November 1977 the Verband der Haftpflichtversicherer, Unfallversicherer, Autoversicherer und Rechtsschutzversicherer eV (Association of Liability, Accident, Motor Vehicle and Legal Protection Insurers), the "HUK-Verband", expressly drew its members' attention to that possibility. This seems rather to be a case of a contractual proposal made by the insurer, governed by private law but eligible for approval, which the plaintiff in the main proceedings freely accepted.

The question can however remain open, since as the Court has held, [2] Article 34 of the EEC Treaty applies only to those national measures which have as their specific *object* or *effect* the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member

1 — Judgment of 12. 2. 1974 in Case 152/73 *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153.

2 — Judgment of 10. 3. 1983 in Case 172/82 *Fabricants Raffineurs d'Huile de Graissage* v *Inter-Huiles* [1983] ECR 555.

State and its export trade, in such a way as to provide a special advantage for national products or for the domestic market of the State in question. It is difficult to accept that that can be said of the tariff provisions referred to by the plaintiff in the main proceedings. He has not attempted to show what interest the Federal Republic of Germany might have in hindering the export of motor vehicles. Furthermore, the measure in question would not be effective for that purpose, since the plaintiff in the main proceedings also had the possibility of exporting his vehicle otherwise than under its own power and with customs registration plates. He could have done so using another vehicle (for instance a transporter) or another type of registration plate (the red plate, which may be used only for the transfer of the vehicle and which includes appropriate insurance).

7. Nor is there any infringement of Article 48 of the EEC Treaty. According to Article 48 (2) any *discrimination based on nationality* between *workers* of the Member States as regards employment, remuneration and other conditions of work and employment must be abolished. As I have already pointed out, in this case there has been no discrimination based on nationality. Nor does this case touch on "employment, remuneration and other conditions of work and employment". The German rules concern not only workers, but all persons who have the right to drive motor vehicles bearing customs registration plates, irrespective of whether they are workers or not.

8. Finally, it is not possible to agree with the view of the plaintiff in the main proceedings that the German rules constitute an infringement of Article 59 of the EEC Treaty. That provision governs the position of persons *providing* services, whereas the plaintiff in the main proceedings is a *recipient* of services. It may be that the failure to implement the *freedom to provide services* in the insurance sector has been detrimental to the plaintiff in the main proceedings. He did not however provide any further details on that point. That suggestion, moreover, does not justify the conclusion that the existing tariffs are contrary to the EEC Treaty. The provisions on the freedom to provide services do not preclude *differences in the treatment* of motor vehicles in insurance contracts according to the place where the motor vehicle concerned is to be used. It is not clear, therefore, which provision the differentiation between normal registration plates and customs plates is alleged to infringe. Furthermore, those provisions on freedom to provide services do not indicate how insurance contracts in a given country are to be structured where there has been no attempt at all to call upon the services of an insurance undertaking established in another Member State.

C — For all those reasons I propose that the following answer be given to the question put by the Amtsgericht Aachen:

No provisions of Community law can be identified which would require a no-claims discount to be granted in liability insurance for motor cars.