# JUDGMENT OF THE COURT
28 March 1985 *

In Case 2/84

**Commission of the European Communities,** represented by G. Marenco and A. Abate, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

**Italian Republic,** represented by its Government in the person of A. Squillante, President of Chamber at the Consiglio di Stato, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters in the Ministry of Foreign Affairs, acting as Agent, assisted by I. Braguglia, Avvocato dello Stato, with an address in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by requiring a transport authorization for road vehicles registered in the Federal Republic of Germany and transported by rail to Lugano, when that is the nearest suitable rail unloading station to the point of unloading the goods, the Italian Republic 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 (Official Journal 1975, L 48, p. 31), and in particular under Article 2 thereof,

## THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), P. Pescatore, T. Koopmans, K. Bahlmann and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

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gives the following

* Language of the Case: Italian.

** after hearing the Opinion of the Advocate General delivered at the sitting on 13 February 1985,

# JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

## Decision

1 By an application lodged at the Court Registry on 3 January 1984, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Italian Republic, by requiring a transport authorization for road vehicles registered in the Federal Republic of Germany and transported to Italy by rail as far as Lugano station, when that is the nearest suitable unloading station to the point of unloading of the goods, 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 (Official Journal 1975, L 48, p. 31), and in particular under Article 2 thereof.

2 The directive is part of the Common Transport Policy provided for by Articles 74 and 75 of the Treaty and is intended to free from all quantitative restrictions the international carriage of goods by road between Member States using the railway network in such a way as to reduce the road journey to a minimum. According to the second recital in the preamble to the directive, such use of the road/rail method is economically advantageous; in addition, it is intended to reduce road traffic and thus to enhance road safety, and it also contributes to the protection of the environment.

3 According to Article 1, the directive applies to carriage where the road vehicle or that part of it which is intended to bear the load is 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.

4 Article 2 of the directive provides that the Member States are to liberalize the carriage referred to in Article 1 from all quota systems and systems of authorization.

5 Certain control measures are provided in Articles 3 and 4 in order to ensure that the regulations are complied with. According to Article 3, the transport document must specify the rail loading and unloading stations, and those details must be confirmed by means of a stamp affixed by the rail authorities in the stations concerned.

6 In this case it appears that German transporters carrying goods from Germany to Northern Italy transported their vehicles by rail to Lugano station in Switzerland, that station being nearer to the point of unloading of the goods than the Italian stations which are equipped for unloading road vehicles. Nevertheless, the Italian customs authorities required a transport authorization on the vehicles' entry into Italy by road, because they considered that the directive was inapplicable where the unloading station was situated in the territory of a non-member country.

7 The German Government informed the Commission of the Italian authorities' interpretation of the directive and the practice which they had adopted. Considering that the Italian authorities' action was not consistent with a proper interpretation of the directive, the Commission in a letter dated 22 July 1982 invited the Italian Republic to submit its observations on the matter.

8 As the Italian Government's reply did not satisfy the Commission, it addressed a reasoned opinion to the Italian authorities by letter dated 2 March 1983.

9 After the Italian Government had challenged the arguments set out by the Commission in the reasoned opinion, the Commission brought this action.

10 In support of its application, the Commission relies in particular on the wording of the directive, which does not provide any exception for the case in which the station nearest to the point of unloading is situated in the territory of a non-member country. The Commission considers that, in view of the geographical situation of Italy and the position of the principal commercial routes departing from other Member States and converging upon Northern Italy, the interpretation

of the directive put forward by the Italian authorities partially deprives the directive of its effectiveness in the case of Italy.

11 The Italian Government stresses that the directive concerns only carriage between Member States. It considers that if the directive had been intended to refer also to stations which are situated in the territory of a non-member country it would have contained an express provision to that effect.

12 The Italian Government contends that the interpretation put forward by the Commission would have the result that, so far as Italy is concerned, goods could only be transported within the country of destination by road, which would deprive Italy of the advantages justifying the freedom provided for by the directive.

13 Moreover, the measures of control provided for by the directive are inconsistent with the Commission's interpretation. In particular, the obligations imposed on the rail authorities by Article 3 of the directive cannot apply to rail authorities in non-member countries unless they have concluded appropriate agreements with the Community. It cannot rightly be maintained that the system established by the directive can function on the basis of voluntary collaboration by the rail authorities in non-member countries.

14 The Italian Government states that its view is clearly confirmed by the Council decision of 26 March 1981 on the opening of negotiations between the European Economic Community and non-member countries on the establishment of common rules for certain types of combined road/rail carriage of goods. According to the preamble to that decision, the aim of those negotiations is to extend to certain non-member countries, including Switzerland, the application of the rules laid down by the directive. The Italian Government stresses that according to the negotiating directives annexed to the decision, the negotiations must cover *inter alia* carriage

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

15 In particular the Italian Government refers to the fact that the text cited above is accompanied by the following note:

'Carriage between two Member States involving transit by rail only through a non-member country is already covered by the directive.'

From that note the Italian Government infers *a contrario* that combined carriage in which the frontier between a non-member country and a Member State is crossed by road is excluded from the scope of the directive.

16 In view of these arguments, it must first be stated that the directive covers combined rail/road carriage between two Member States even when the territory of one or more non-member countries is crossed. Since the carriage is thus regarded as a single operation from the point of departure to the point of arrival, the fact that the directive does not contain any exception for the case in which one of the stations used is situated in a non-member country in fact militates in favour of the Commission's interpretation.

17 However, the main support for that interpretation is to be found in an examination of the aims of the directive as set out in the preamble. The advantages of that type of carriage must be assessed by reference to the interests of the Community as a whole. The mere fact that in the Member State of destination the goods are carried solely by road cannot remove the advantages of combined road/rail carriage. Moreover, contrary to the Italian Government's assertion, even the State of destination benefits from those advantages, since the distance to be covered in that State by road is thus reduced.

18 It is true that Article 3 of the directive provides for a system of control requiring the collaboration of the rail authorities, and that a directive cannot impose on the authorities in a non-member country an obligation to cooperate in that way. However, as the Commission has rightly observed, the affixing of a stamp by the station in question serves solely as evidence of the distance actually covered by rail. In view of the close cooperation which exists between all European rail authorities, there is no reason to question the probative value of a stamp of that kind affixed by the authorities of a non-member country even if those authorities are not obliged to issue it.

19 Thus the directive in question 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.

20 That interpretation is not seriously called in question by the decision of 26 March 1981 cited above on the opening of negotiations with non-member countries. In view of its context, the note set out in the negotiating directives does not justify the conclusion drawn *a contrario* by the Italian Government.

21 The decision in question is intended not to define the scope of the directive but merely to authorize the opening of negotiations and lay down directives for the conduct of those negotiations. Their aim is to organize cooperation with certain non-member countries and to guarantee reciprocal rights for the parties to the intended agreements. Although the directive applies in principle to carriage between Member States involving the crossing of a frontier between a Member State and a non-member country by road, and although in certain cases, such as that of the vehicles unloaded at Lugano, the non-member country concerned already of its own accord affords the cooperation needed for the application of the directive, it was nevertheless necessary to include such carriage in the negotiating directives so that that cooperation would be subject to the rules set out in the proposed agreements. On the other hand, in the case covered by the note, that of transit solely by rail through the non-member country concerned, the cooperation of the authorities in that country is unnecessary for the application of the directive and that case could therefore be excluded from the negotiating directives, as provided for by that note.

22 It follows from the foregoing that the Italian Republic has failed to fulfil its obligations under Council Directive 75/130/EEC of 17 February 1975, and in particular under Article 2 thereof, by requiring a transport authorization for road vehicles registered in the Federal Republic of Germany and carried to Italy by rail as far as Lugano station, when that is the nearest suitable rail unloading station to the point of unloading of the goods and the transporter is able to prove the distance covered by rail in accordance with the provisions of Article 3 of the directive.

## Costs

23 According to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, the first paragraph of Article 69 (3) provides that where the circumstances are exceptional the Court may order that the parties bear their own costs in whole or in part.

24 In view of the doubt as to the scope of the Community provisions interpreted by the Court in this case, the Italian Government cannot be reproached for having sought a ruling from the Court before it would accept the interpretation advocated by the Commission. Under those exceptional circumstances, it seems fair to order the parties to bear their own costs.

On those grounds,

## THE COURT

hereby rules that:

**(1) The Italian Republic has failed to fulfil its obligations under Council Directive 75/130/EEC of 17 February 1975, and in particular under Article 2 thereof, by requiring a transport authorization for road vehicles registered in the Federal Republic of Germany and transported to Italy by rail as far as Lugano station, when that is the nearest suitable rail unloading station to the point of unloading of the goods and the transporter is able to prove the distance covered by rail in accordance with the provisions of Article 3 of the directive.**

**(2) The parties are to bear their own costs.**

Mackenzie Stuart Bosco Due

Pescatore Koopmans Bahlmann Joliet

Delivered in open court in Luxembourg on 28 March 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President