JUDGMENT OF THE COURT
7 May 1991 *

In Case C-45/89,

Commission of the European Communities, represented by Giuliano Marenco and Ingolf Pernice, Legal Advisers, both acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

supported by

Kingdom of the Netherlands, represented by J. W. de Zwaan and M. A. Fierstra, Deputy Legal Advisers at the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

intervener,

and

Italian Republic, represented by Luigi Ferrari Bravo, Head of Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that 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 L 48, p. 31) and, in particular,

* Language of the case: Italian.

Article 2 thereof, by maintaining a system of authorizations or quotas for combined carriage between Member States and by refusing authorizations to private persons wishing to undertake such carriage,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida and G. C. Rodriguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, R. Joliet, F. A. Schockweiler and M. Zuleeg, Judges,

Advocate General: M. Darmon,
Registrar: J.-G. Giraud,

having regard to the Report for the Hearing,

after hearing oral argument from the parties' representatives at the hearing on 29 January 1991,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 February 1991,

gives the following

Judgment

1 By an application lodged at the Court Registry on 20 February 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by maintaining in force a system of authorizations or quotas for combined road/rail carriage of goods between Member States and by refusing authorizations to private persons wishing to undertake such carriage, 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 L 48, p. 31 — hereinafter referred to as 'the Directive'), and in particular Article 2 thereof.

2 Article 7 of a Decree adopted by the Italian Government on 4 July 1985 (GURI No 197 of 22. 8. 1985) fixed the 1985 quota for special permits for tractor units to be used solely to transport trailers and semi-trailers used in combined international carriage. In the light of the Directive, another Decree adopted by the Italian Government on 16 September 1986 (GURI No 219 of 20. 9. 1986) provided in its only article that combined carriage between the Member States was excluded from any type of quota system. Shortly afterwards, a new Decree, dated 24 October 1986 (GURI No 263 of 12. 11. 1986) repealed the Decree of 16 September 1986.

3 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 The Commission argues that any system of quotas, or even merely of authorization, for combined carriage falls under the prohibition laid down in Article 2 of the Directive, which provides:

'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'.

5 The Italian Government maintains that the liberalization provided for by this article should be carried out differently according to whether, in practice, the combined carriage occurs with or without transport by rail of the tractor unit. In the Italian Government's opinion, in the latter case, the completion of the final stage of the journey by road within the territory of a single Member State remains partially subject to the system in force in the Member State in question by virtue of Article 6 of the Directive, which provides that the directive 'shall not affect the conditions in force in each Member State governing admission to the occupation of road transport operator and access to the transport market'.

6 First, it should be noted that, as is clear from the wording of Article 1(1) of Directive 75/130, as amended by Council Directive 79/5/EEC of 19 December

1978 (Official Journal 1975 L 5, p. 31), combined road/rail carriage under the directive includes not only accompanied carriage, that is to say where the tractor unit is transported by rail, but also non-accompanied carriage, where the rail journey is made without the tractor unit.

7 It should also be noted that, as the Court has already held in Case 2/84 *Commission* v *Italy* [1985] ECR 1127, at paragraph 16, combined carriage should be regarded as a single operation from the point of departure to the point of arrival.

8 Consequently, in the case of non-accompanied carriage the final stage of the journey by road to the point where the goods are unloaded from the nearest rail unloading station cannot be regarded as purely national carriage, even if it occurs within the territory of a single Member State.

9 That conclusion is not affected by Article 6 of the Directive.

10 It is sufficient in this respect to note, as the Commission rightly stressed, that that provision refers, on the one hand, to the conditions of access to the occupation of road-transport operator, which include in particular those relating to financial capability, standing and professional competence, and, on the other hand, to the conditions of access to the transport market, which covers capacity to carry on the occupation of road-transport operator and the system for granting permits giving the right to carry on that occupation. It does not, however, deal with the system of quotas and authorization, a matter that is exclusively dealt with by Article 2 of the Directive, which provides for total liberalization at the latest by 1 October 1975.

11 It follows from the foregoing that there are grounds for making a declaration of failure to fulfil obligations in the terms suggested in the Commission's conclusions.

Costs

12 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the Italian Republic has failed in its pleas it must be ordered to pay the costs, including those of the intervener.

On those grounds,

THE COURT

hereby:

(1) Declares that, by maintaining in force a system of authorization and/or quotas for combined road/rail carriage of goods between Member States and by refusing authorizations to private persons wishing to undertake such carriage, 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, and in particular Article 2 thereof;

(2) Orders the Italian Republic to pay the costs, including those of the intervener.

Due Mancini O'Higgins Moitinho de Almeida

Rodríguez Iglesias Slynn Joliet Schockweiler Zuleeg

Delivered in open court in Luxembourg on 7 May 1991.

J.-G. Giraud
Registrar

O. Due
President