REPORT FOR THE HEARING
in Case C-45/89*

I — Facts

A — *Legal Background*

(a) Community Law

1. On the basis of Article 75 of the EEC Treaty, the Council adopted on 17 February 1975 Directive 75/130/EEC 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). The second recital of the Directive explains the reasons for its adoption as follows:

'Whereas the use of the road/rail method for the international carriage of goods by road is economically advantageous over long distances; whereas it reduces road traffic and thus enhances road safety; whereas at the same time it contributes to the protection of the environment; whereas its development is encouraged by freedom from all quantitative restrictions and by the elimination of various existing administrative restraints; whereas control measures must be provided to ensure that the regulations are complied with;'.

Article 1(1) contained the following definition:

'For the purposes of this Directive:

— combined road/rail carriage means road transport of goods between Member States where the tractor unit, lorry, trailer, semi-trailer or their swop bodies 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;

— swop body means the part of a vehicle which is intended to bear the load, has supports and, by means of a device which is part of the vehicle, may be detached from the vehicle and re-incorporated therein'.

Council Directive 79/5/EEC of 19 December 1978 (Official Journal 1979 L 5, p. 33) which amended Directive 75/130/EEC, replaced the wording of Article 1(1) with the following:

'For the purposes of this Directive:

— combined road/rail carriage shall mean road transport of goods between

* Language of the case: Italian.

Member States where the lorry, trailer, semi-trailer (with or without tractor unit), swap body and container of 20 feet or more 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;

— swap body shall mean the part of a road vehicle on which it is intended that the load shall be placed and which may be detached from the vehicle and re-incorporated therein'.

Article 2 of Directive 75/130/EEC provides as follows:

'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 6 of the Directive is drafted as follows:

'This 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'.

A statement on this provision appears in the minutes of the Council meeting at which Directive 75/130/EEC was adopted. That statement is as follows:

'*The Council and the Commission* stated that the use of a tractor to make delivery of or collect a vehicle carried by combined road/rail transport or a swop body on an internal journey, shall be subject to the rules in force in the Member State concerned, without this resulting in quantitative restrictions and without prejudice to more advantageous provisions which the Member States might adopt, should the need arise.'

(b) National Legislation

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.

Another Decree dated 16 September 1986 (GURI No 219 of 20.9.1986) states in its preamble that, having regard to Directive 75/130/EEC which obliges Member States of the Community to liberalize the combined road/rail carriage from all quota systems and systems of authorization by 1 October 1975 at the latest, and in the light of the Decree of 4 July 1985, Article 7 of which institutes the aforementioned quota, the provisions of the Directive should be implemented forthwith. The 1986 Decree's only Article stated, in consequence, that the quota under Article 7 of the Decree applied only to carriage between third countries, and added that combined carriage between Member States was excluded from any form of quota system.

Shortly after, a further Decree dated 24 October 1986 (GURI No 263 of 12.11.1986, p. 8) revoked the Decree of 16 September 1986.

B — *Background to the Proceedings*

3. The Commission received a complaint from the Milan office of the German firm Emons, which had written to it drawing attention to the fact that the Italian authorities refused to issue any new carriage permits to their firm for tractors used in combined carriage. The Commission asked the Italian authorities, by letter of 2 June 1986, to indicate which provisions were in force in Italy relating to the implementation of Directive 75/130/EEC.

This letter remained unanswered despite being followed up with a telex on 1 September 1986.

4. The Commission considered that the Italian legislation on combined carriage was in direct conflict with the Community rules and consequently instituted the procedure under Article 169 of the EEC Treaty. By letter of 25 May 1987, it brought the obligations both under Article 5 and under Directive 75/130/EEC to the attention of the Italian authorities. As no reply to this letter was received, the Commission delivered a reasoned opinion on 4 July 1988.

As the Italian authorities did not respond to the reasoned opinion, the Commission then decided to bring the present action.

II — Written Procedure and forms of order sought by the parties

5. The Commission's application was registered at the Court on 20 February 1989.

By an order of 4 October 1989, the Court granted the Kingdom of the Netherlands leave to intervene in support of the Commission.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The *Commission*, supported by the *intervener*, claimed that the Court should:

— declare that, by maintaining in force a system of authorizations and/or quotas for combined road/rail carriage 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;

— order the Italian Republic to pay the costs.

6. The *Italian Republic* contends that the Court should:

— dismiss the action as being unfounded.

III — Pleas in law and submissions of the parties

7. The *Commission*, supported by the Netherlands Government, considers that the Italian Republic has failed to fulfil its obligations under Directive 75/130/EEC and in particular under Article 2 thereof.

The Commission notes that Directive 75/130/EEC forms part of a framework of progressive liberalization of services between Member States in the sphere of carriage.

This Directive (see Articles 1 and 2) states that the Member States must liberalize from all quota systems and systems of authorization the carriage of goods between Member States:

(a) by road, from the point of loading of the goods to the nearest suitable rail station to the point of loading;

(b) by rail, from that rail station to the nearest suitable rail station to the point of unloading of the goods;

(c) again by road, from that rail station to the point of unloading of the goods.

According to the Commission, any quota system or even system of simple authorization, for combined carriage falls under the prohibition of such systems under Article 2 of Directive 75/130/EEC.

The Commission notes that transport by rail of the tractor unit is not essential for combined carriage. In the Commission's view, this interpretation finds support in the letter of Article 1(1) of the Directive, especially after the changes brought to the initial wording of this provision by Directive 79/5/EEC. The tractor unit is no longer part of the list contained in this Article: it appears next to the term 'semi-trailer' precisely to indicate that its transport by rail is of little importance ('with or without tractor unit').

The Commission adds that the same interpretation applies to an analysis of the aims pursued by liberalizing combined carriage. It is difficult to see why, when undertakings are to be encouraged to use this method of carriage, they should be required to bear the cost — irrationally from an economic point of view — of transport by rail of the tractor unit, which entails higher costs both in terms of increased rail carriage costs and in terms of non-productive immobilization of the tractor unit. In practice, the great majority of combined carriage occurs without the tractor unit being transported by rail.

The Commission also stresses that Article 6 of Directive 75/130/EEC does not have the effect of modifying the foregoing conclusions, as is confirmed by the statement concerning this provision which

appears in the minutes of the Council meeting at which the Directive was adopted. That statement precludes any possibility of subjecting the use of tractor units for the initial or final journey stages of combined carriage to quantitative restrictions.

Conversely, the Commission considers that it is lawful for Member States to apply a system of automatic licences to the use of tractor units for these journey stages. Such a system is inevitable in practice because all other types of transport are subject to a system of authorization: the licence, granted automatically on demand, is designed to allow a distinction to be made between liberalized carriage and other types of carriage when the necessary controls are carried out. This is the reason for which all Member States apply a system of automatic licences. The Commission concludes that only Italy subjects the journey stages in question to a true quantitative restriction, which is incompatible with Article 2 of Directive 75/130/EEC.

For its part, the *Government of the Netherlands* maintains that the definition of combined carriage which appears in Article 1(1) of Directive 75/130 allows for the following variations (in road transport units):

(a) the rail journey is carried out by the semi-trailer with its tractor unit (accompanied combined carriage);

(b) the rail journey is carried out by the semi-trailer without the tractor unit (non-accompanied combined carriage);

(c) the rail journey is carried out exclusively by the swap body (non-accompanied combined carriage).

The definition in Article 1(1) of Directive 75/130 includes not only accompanied combined carriage (situation (a)), but also non-accompanied combined carriage (variations (b) and (c) above).

According to the Netherlands Government, this conclusion is inevitable for three principal reasons: First, if that were not the case, to mention the tractor unit and the lorry separately on the one hand and the trailer, semi-trailer or their swap body, on the other, would be meaningless. Secondly, combined carriage must be regarded as a single operation from the point of departure to the point of arrival, as was confirmed by the Court in the judgment in *Commission* v *Italy* [1985] ECR 1127, at paragraph 16. That one or more journeys are carried out by rail or by road does not alter the fact that the carriage constitutes a single operation, nor does the fact that the combination of units can vary throughout the journey. Finally, the interpretation according to which Article 2 of Directive 75/130 refers only to accompanied combined carriage is not compatible with the aims of the Directive, such as they are stated in the second recital.

As for Article 6 of Directive 75/130, the Netherlands Government maintains that this provision does not stand in the way of the above interpretation of Article 1(1) of the Directive, as Article 6 relates only to the

dispatch and collection during a national journey of units to be transferred in the context of a combined carriage operation. When a frontier is crossed, it is not Article 6 which applies but only Article 2 of Directive 75/130.

The Netherlands Government adds that Article 6 of Directive 75/130 implies that the entry or exit permit must always be issued when all the qualitative conditions which apply to everyone without distinction, with no direct or indirect discrimination according to nationality, are fulfilled.

8. The *Italian Republic* states, in its rejoinder, that it fully accepts that, according to Directive 75/130, combined carriage includes not only cases where the tractor unit is carried by rail, but also where the carriage by rail only relates to the transport unit without the tractor unit.

According to the Italian Government, however, it follows from this that the liberalization provided for by Article 2 of the Directive with respect to combined carriage must take effect differently according to whether, in practice, combined carriage occurs in one or other form (that is to say with or without transport of the tractor unit by rail).

In the Italian Government's view, in the second case, that is to say, when the combined carriage involves units without their own means of propulsion, the final road journey on a single national territory remains partially subject to the system in force in the Member State in question, pursuant to Article 6 of the Directive, since it is necessary to use a tractor unit not included in the combined carriage, and in accordance with the rules of the market in the country where only the final journey stage by road is carried out.

The Italian Government adds that road carriage of this type within a single country, carried out with a view to transporting through the final journey stages the road transport units used in combined carriage, does not fall under Article 2 of the Directive; on the contrary it constitutes national carriage in the country in question and, as such, remains exclusively subject to the national legislation of that country, under Article 6 of the Directive. If that provision is not to be understood in this way, it is meaningless.

G. C. Rodríguez Iglesias
Judge-Rapporteur