ORDER OF THE COURT (Fourth Chamber)
12 November 1998 *

In Case C-162/98,

REFERENCE to the Court under Article 177 of the EC Treaty by the Oberlandesgericht Köln (Germany) for a preliminary ruling in the appeal against an administrative fine brought before that court

by

Hans-Jürgen Hartmann

on the interpretation of Article 4(1) of the Agreement of 9 February 1994 on the levying of charges for the use of certain roads by heavy commercial vehicles, concluded between the Governments of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands (*Bundesgesetzblatt* 1994, Part II, p. 1768),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn (Rapporteur), President of the Chamber, J. L. Murray and H. Ragnemalm, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

* Language of the case: German.

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By order of 13 March 1998, received at the Court on 27 April 1998, the Oberlandesgericht Köln (Higher Regional Court, Cologne) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question concerning the interpretation of Article 4(1) of the Agreement of 9 February 1994 on the levying of charges for the use of certain roads by heavy commercial vehicles, concluded between the Governments of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands (*Bundesgesetzblatt* 1994, Part II, p. 1768, hereinafter 'the Agreement').

2 That question was raised in proceedings concerning fines imposed on Mr Hartmann for offences against the Autobahngebührengesetz (Law on Motorway Charges).

3 In ruling on the appeals brought by the accused and by the Public Prosecutor's Office against the judgment delivered on 15 September 1997 by the Amtsgericht Köln (Cologne Local Court), the Oberlandesgericht Köln made the order in question, the operative part of which reads as follows:

'The case is referred to the Court of Justice of the European Communities under the third paragraph of Article 177 of the EEC Treaty for a ruling on the following question concerning the interpretation of Article 4(1) of the Agreement ...:

Does the exemption from charges afforded to motor vehicles belonging to "road maintenance and operation services" apply only to vehicles belonging to regional and/or local authorities, or does it also apply to vehicles belonging to private contractors acting on behalf of such authorities?

In the latter case:

does the exemption from charges apply only in respect of journeys undertaken for that purpose, or does it apply generally to all journeys made using such vehicles, thus including those made for contractors' own operations?'

4 Article 4(1) of the Agreement provides as follows:

'Vehicles belonging to the armed forces, civil protection and civil defence services, firefighting and other emergency services, services responsible for the maintenance of public order and road maintenance and operation services shall be exempt from the user charges referred to in Article 3.'

5 Article 2(1) of the Agreement provides that the definitions contained in Article 2 of Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1993 L 279, p. 32, hereinafter 'the Directive') are to apply to the Agreement.

6 Article 2 of the Directive defines the meaning of the terms 'motorway', 'toll', 'user charges' and 'vehicle'.

7 Article 8(1) of the Directive provides: 'Two or more Member States may cooperate in introducing a common system for user charges applicable to their territories as a whole. In that case, these Member States shall ensure that the Commission is closely involved therein and in the system's subsequent operation and possible amendment.'

8 First of all, it must be remembered that the Court has jurisdiction under Article 177 of the Treaty to give preliminary rulings on the interpretation of that Treaty and on the validity and interpretation of acts of the institutions of the Community.

9 In the present case, the national court is asking the Court to rule on the interpretation of a provision of an agreement concluded between certain Member States. It does not appear from either the grounds or the wording of the decision making the reference that the question referred concerns either the interpretation of the EC Treaty or the validity or interpretation of acts of the institutions of the Community.

10 It is true that the preamble to the Agreement refers to the Directive, Article 8 of which authorises two or more Member States to cooperate in introducing a common system of user charges, subject to certain conditions in addition to those governing the imposition of such charges where Member States act individually.

11 However, the mere fact that that provision authorises Member States to cooperate in that way is not enough to justify the view that an agreement concluded for that purpose forms an integral part of Community law whose interpretation falls within the jurisdiction of the Court.

12 It is only the fact that the provisions of such an agreement are adopted jointly that distinguishes them from other legislation which Member States may enact individually pursuant to the Directive and the interpretation of which falls outside the Court's jurisdiction to give rulings under Article 177 of the Treaty.

13 Nor, moreover, can such jurisdiction of the Court be inferred from the reference in Article 2(1) of the Agreement to the definitions contained in Article 2 of the Directive, since those definitions do not include the term 'road maintenance and operation services'.

14 In those circumstances, it must be held, pursuant to Articles 92 and 103(1) of the Rules of Procedure, that the Court manifestly lacks jurisdiction to reply to the reference for a preliminary ruling made by the Oberlandesgericht Köln.

Costs

15 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

hereby orders:

The Court manifestly lacks jurisdiction to reply to the reference for a preliminary ruling made by the Oberlandesgericht Köln by order of 13 March 1998.

Luxembourg, 12 November 1998.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Fourth Chamber