JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 28 NOVEMBER 1978 [1]

Fritz Schumalla
(preliminary ruling requested by the Oberlandesgericht Düsseldorf)

"Road Safety"

Case 97/78

Transport — Common policy — Powers of the Council — Extent — Legislation relating to social policy and road safety — Adoption — Lawfulness
(EEC Treaty, Arts. 74 and 75; Regulation No 543/69 of the Council)

In giving the Council the task of adopting a common transport policy within the meaning of Article 74, the Treaty confers wide legislative powers upon it as regards the adoption of appropriate common rules. Regulation No 543/69 of the Council, adopted under Article 75 of the Treaty and referring mainly to the social sphere, is merely a partial implementation of such a policy. The Council did not exceed its powers by regulating, by this measure, matters which concern the social protection of the driver and road safety in so far as they are not interlinked.

In Case 97/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Oberlandesgericht (Higher Regional Court) Düsseldorf (Second Senate) for a preliminary ruling in the proceedings pending before that court concerning fines imposed on

FRITZ SCHUMALLA, residing at Emmerich-Elten,

on the validity of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170),

1 — Language of the Case: German.

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President, A. O'Keeffe and G. Bosco, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Fritz Schumalla, residing in the Federal Republic of Germany, covered long distances as the driver of a 38 tonne articulated lorry.

On 18 July 1977 the Amtsgericht (Local Court) Krefeld ordered him to pay 11 fines totalling DM 3 350, together with costs, for several offences committed over the period from 15 July to 8 September 1976 under certain provisions of

— the Fahrpersonalgesetz (Law on road haulage crews), in particular Article 7a (1) 1 (c) and (d),

— Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170), in particular Article 7 (1) and (2) and Article 11 (1) laying down the maximum driving period and minimum rest period respectively.

The accused appealed against this judgment before the Oberlandesgericht Düsseldorf (Second Senate), contending that Regulation (EEC) No 543/69 is not authorized by the EEC Treaty and is therefore invalid. He maintains in particular that that regulation, which is concerned with promoting road safety, covers matters which are not within the Council's powers. In support of his view he produced an opinion of Professor R. Knöpfle dated 15 December 1976. The national court by order of 6 March 1978 decided to stay the proceedings and to refer to the Court under Article 177 (b) of the EEC Treaty the question whether Regulation (EEC) No 543/69 of the Council of 25 March 1969 is authorized by the EEC Treaty and therefore valid.

2. A copy of the order making the reference was received at the Court Registry on 24 April 1978.

The Commission of the European Communities, represented by its Legal Adviser, Gerhard Bebr, and the Council of the European Communities, represented by Raffaello Fornasier, Director in the Legal Service, acting as Agent, assisted by Bernhard Schloh, Legal Adviser, submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

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. By an order of 20 September 1978 it decided to assign the case to the First Chamber in accordance with Article 95 of the Rules of Procedure.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — In order to answer the question which has been asked the *Commission* considers it necessary

— first of all to interpret the provisions and the objectives of Articles 74 and 75 of the Treaty, and

— then to define the extent of the Community's powers in the field of transport.

(a) On the *first point*, it observes that "transport" appears among the "foundations of the Community" and thus constitutes an essential instrument for the development of the Common Market: to assign transport to a secondary, ancillary role designed merely to facilitate the free movement of goods would be to ignore its essential function in that development.

In the system of the Treaty, the rules on transport in no wise constitute a special, isolated sector. As the Court itself has pointed out, the basic provisions of Articles 2 and 3 of the Treaty are to be interpreted as applying to the whole complex of economic activities, and as such to the transport sector. According to Article 3 (e), the activities of the Community shall include "the adoption of a common policy in the sphere of transport". Article 74 refers to the objectives of the Treaty, which the Community is to pursue "within the framework of a common transport policy". However, it emerges from the Treaty that this common policy must take account of all the objectives mentioned in the aforesaid Articles 2 and 3: the object of the rules relating to the common transport policy is precisely to implement those objectives — which may all be identified with "general principles of the Treaty" — and complement them by means of common action. The provisions applicable to transport must also be understood and interpreted in the light of the principles defined in the preamble, which affirms as "the essential objective" of Community policy "the constant improvement of the living and working conditions of their peoples".

Although transport is an essential instrument for the development and establishment of the Common Market and although it is subject to all the provisions of the Treaty, transport has certain distinctive features, as is emphasized in Article 75 (1) of the Treaty. The general principles are amended, supplemented or declared inapplicable only in clearly defined cases.

Moreover the objectives of that common policy, as set out in a general way in Articles 3 (e) and 74 of the Treaty, were specified in the Council Decision of 13 May 1965 (Official Journal, English Special Edition 1965-1966, p. 67) which is intended essentially to reduce or eliminate disparities between the Member States in the sphere of transport by road, rail and inland waterway, liable to cause substantial distortion in competition. That decision emphasizes the need for

harmonization in particular as regards social legislation relating to working conditions and working and rest periods.

However the introduction of a common transport policy would be an impossible task for the Comission if it did not have extensive powers and a broad margin of discretion in the exercise of those powers.

This is confirmed by Article 75 (1) (c) of the Treaty, and that article is the legal basis both of the Decision of 13 May 1965 and of Regulation No 543/69.

(b) On the *second point*, the Commission points out that Regulation No 543/69 simultaneously pursues several objectives directly concerning transport. While providing for harmonization of certain social legislation applicable in that sphere, the regulation is intended primarily to reduce disparities in transport conditions which cause substantial distortion in competition. In particular it lays down uniform working conditions for crews, the period of continous driving, the total period of driving time and rest periods. These are social measures which have a considerable effect on road safety. All these objectives are closely interlinked, and concern road transport exclusively. From this point of view, the harmonization of social legislation is a measure which essentially answers the needs and requirements of road transport and which as such forms an integral part of the common transport policy.

It follows that the Community was empowered under Article 75 (1) (c) of the Treaty to adopt a regulation such as Regulation No 543/69, precisely intended to ensure such harmonization. The broad terms in which that provision is formulated clearly show that the Community has extensive discretion in this area. This power on the part of the Community is not excluded by the fact that such a regulation also helps promote road safety: indeed the objective of road safety falls within the framework of the common transport policy, and thus comes within Community powers by virtue of the aforesaid Article 75 (1) (c).

Even if the opposite were the case — which is denied — it should be observed that the primary, fundamental objectives of the said regulation concern competition, particularly competition in road transport. It would be absurd if the Community could not adopt a regulation exclusively concerning road transport for the sole reason that the regulation might have positive effects on road safety. If such were the case, it would be practically impossible to conduct an effective common transport policy.

Finally, and in the alternative, it is pointed out that according to the case-law of the Court a legal act remains valid even if the Community has pursued an objective other than that for which the Treaty conferred a power on it, provided that the objective primarily pursued is legitimate. Thus, even if Regulation No 543/69 is not confined to harmonizing certain social legislation relating to road transport but also helps promote road safety — which, in the Commission's submission, is an entirely legitimate objective of the common transport policy — the said regulation remains valid by virtue of its principal objective.

The Commission concludes by citing certain judgments of the Court of Justice which concern *inter alia* Regulation No 543/69 and which, it claims, confirm by implication the validity of Regulation No 543/69 because they assume that the Community's external competence in road transport is based on that regulation.

The Commission also mentions opinions expressed by the other institutions of the Community and their consultative bodies on the legal basis of Regulation No 543/69, which are claimed to indicate precisely that Article 75 of the Treaty is the appropriate legal basis for that regulation.

In conclusion, the Commission proposes that the answer to the national court should be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulation (EEC) No 543/69.

B — The *Council* considers first of all whether and to what extent road safety is an objective of Regulation No 543/69, the validity of which is at issue in this case, and then whether such an objective comes within the common transport policy governed by the EEC Treaty.

(a) On the *first point*, the Council submits that there are three basic considerations:

— first, it emerges from the case-law of the Court on the interpretation of Regulation No 543/69 that this regulation pursues the following objectives in order of priority:
  — first a social objective,
  — then, the elimination of disparities in the conditions of competition,
  — and then, safety in road transport;
— secondly, the preamble to the said regulation refers not only to Article 75 of the Treaty (implementation of the common transport policy) but also to the Council Decision of 13 May 1965 on "the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway";
— finally, in the German version of the regulation the word "Verkehrssicherheit" ("road safety" in the English version) appears only in the ninth recital in the preamble to the regulation. In the third recital that concept is designated by the words "Sicherheit im Straßenverkehr" ("road safety" in the English version), whilst in the eight recital the concept is evoked by reference to the conditions under which drivers can drive "with complete safety" ("sicher ... führen"). It is submitted that the first of these three passages in the preamble lays down the principle that the provisions of the regulation concerning "driving periods" should be brought into operation "by stages"; the other two passages are intended to ensure continued observance of national rules and to preserve the legislative power of the Member States in the sphere concerned.

It follows from these considerations that road safety is not the primary objective of Regulation No 543/69. That regulation first of all pursues a social objective, and secondly is intended to eliminate disparities in the conditions of competition. Road safety is no more than an auxiliary consideration.

(b) On the *second point*, the Council is of the opinion that road safety, along with safety of transport by rail and inland waterway, comes within the objectives of the common transport policy. The Council states that in the absence of more precise details from the national court it is not able to adopt a position on all the arguments raised before that court, and then in support of its argument it cites the views expressed on this question by the Community authorities in particular:

— by the Commission (Communications to the Council of 8 November 1971 and 25 October 1973, in Supplements 8/71 and 16/73, Annexes to the Bulletins of the European Communities);
— by the European Parliament (cf. *inter alia* Official Journal 1974, No C 127, p. 23 *et seq.*, 38 *et seq.* and 67);
— by the Economic and Social Committee, in its Opinion of 28 March 1974 (Official Journal 1974, No C 126, p. 26 *et seq.*);
— and by the Council, which following the aforementioned communications

from the Commission adopted two directives directly relating to transport: Directive 76/135/EEC of 20 January 1976 (Official Journal 1976, No L 21, p. 10) and Directive 77/143/EEC of 29 December 1976 (Official Journal 1977, No L 47, p. 47).

In the Council's submission, it follows from all these factors that:

— Regulation No 543/69 is valid, even if road safety is found not to come within the objectives of the common transport policy, since the objective of road safety does not have a predominant position in the regulation;

— in any case, road safety is one of the objectives of the common transport policy.

On the basis of these conclusions therefore, the Council proposes that the answer to the national court should be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulation No 543/69.

III — Oral procedure

The Council and the Commission of the European Communities submitted oral argument at the hearing on 26 October 1978.

The Advocate General delivered his opinion at the hearing on 9 November 1978.

Decision

1 By an order of 6 March 1978 which was received at the Court Registry on 24 April 1978, the Oberlandesgericht (Higher Regional Court) Düsseldorf referred to the Court under Article 177 of the EEC Treaty the question whether Regulation No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170), is valid, in so far as it is concerned with promoting road safety.

2 It appears from the judgment making the reference that the appellant in the main action was convicted at first instance under Article 7 a (1) 1 (c) and (d) of the Fahrpersonalgesetz (Law on road haulage crews) for infringements of Article 7 (1) and (2) and Article 11 (1) of the aforesaid regulation, laying down the maximum driving period and the minimum rest period respectively, which he committed between 18 July 1976 and 8 September 1976 as a lorry driver in transporting goods over a long distance.

The appellant maintains that in so far as the aforesaid provisions of Regulation No 543/69 are concerned with promoting road safety, that regulation covers matters which are not within the Council's powers under the Treaty in the sphere of transport.

In order to clarify this issue, the national court asked the Court of Justice whether Regulation No 543/69 is authorized by the EEC Treaty and therefore valid.

3 As appears from the preamble to Regulation No 543/69 of the Council, the essential purpose of that regulation is to bring into operation the provisions of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway (Official Journal, English Special Edition 1965-1966, p. 67), in particular Section III thereof concerning "social provisions".

The fact that the preamble to the regulation at issue cites not only Article 75 but also the Treaty as a whole indicates that the harmonization of certain national legislation, which the regulation is to bring about in one of the sectors covered by the said decision, is one of the objectives of the Community defined in Article 3 of the Treaty.

As part of this harmonization of national laws, the regulation pursues a group of interlinked objectives which are concerned with social protection of the driver, road safety and equality of competition between transport undertakings.

4 Implying the adoption of "common rules" within the meaning of Article 75 (1) (a) of the Treaty, such harmonization is an essential part of the common transport policy, which is required to be adopted by Article 3 (e) of the Treaty and is one of the foundations of the Community.

According to Article 74 of the Treaty, the objectives of the Treaty shall, in matters of transport by rail, road and inland waterway, be pursued by the Member States within the framework of such a policy.

For this purpose, in giving the Council the task of adopting this policy, the Treaty confers wide legislative powers upon it as regards the adoption of appropriate common rules.

Article 75 (1) (c) of the Treaty provides that for the purpose of implementing the aforesaid Article 74 and taking into account the distinctive features of transport, the Council shall lay down, in addition to the rules and conditions referred to in subparagraphs (a) and (b), "any other appropriate provisions".

Article 75 (2) indicates that the Council holds this legislative power even after the transitional period.

Article 79 (2) of the Treaty also confirms that this power is conferred on the Council in a general way, in order *inter alia* to eliminate discrimination in transport affecting competition.

5 Referring primarily to the social matters which form the subject-matter of Section III of the Decision of 13 May 1965, Regulation No 543/69 is merely a partial implementation of Article 74 of the Treaty and of the aforesaid decision, which provides for the harmonization of national legislation in the realms of taxation and State intervention as well as in the realm of social legislation.

In these circumstances, and having regard to the extent of its powers for the adoption of a common transport policy, the Council did not exceed its powers by regulating matters which concern social policy and road safety at the same time in so far as they are interlinked.

6 Furthermore, since common provisions ensure an improvement of road safety as well as the social protection of the driver, they cannot but contribute to the elimination of disparities liable to cause substantial distortion in competition in the transport sector, and thus prove "appropriate" within the meaning of Article 75 (1) (c) of the Treaty for the purpose of establishing a common transport policy.

Moreover, safety of transport by rail, road and inland waterway fulfils not only the objectives of the common transport policy but also the requirements of the Common Market as laid down in Article 3 (f), because as a result of being subject to common rules it contributes to the observance of the conditions of competition in the sphere of transport.

7 For these reasons it is to be concluded that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulation No 543/69.

Costs

8 The costs incurred by the Council and the Commission of the European Communities, which submitted observations to the Court, are not recoverable.

As these proceedings are in the nature of a step in the criminal proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question refered to it by the Oberlandesgericht Düsseldorf by an order of 6 March 1978, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport.

Mertens de Wilmars O'Keeffe Bosco

Delivered in open court in Luxembourg on 28 November 1978.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 9 NOVEMBER 1978

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Oberlandesgericht of Düsseldorf. It concerns the validity of Council Regulation (EEC) No 543/69 of 25 March 1969 "on the harmonization of certain social legislation relating to road transport" (OJ L 77/49 of 29. 3. 1969).

The Court has had occasion to consider that Regulation in a number of cases: Case 20/70 *Commission* v *Council* [1971] ECR 263, the *"ERTA* case"; Case 69/74 *Auditeur du Travail* v *Cagnon* [1975] 1 ECR 171; Case 65/76 *Derycke's* case [1977] ECR 29; and Case 76/77 *Auditeur du Travail* v *Dufour* [1977] ECR 2485. Never before, however, has the validity of the Regulation been directly in question. None the less, certain views expressed by the Court in the cases I have mentioned have, as I shall show, a bearing here.

As Your Lordships know, the Regulation contains *inter alia* provisions about working conditions of road transport