JUDGMENT OF THE COURT
OF 7 FEBRUARY 1979 [1]

Commission of the European Communities v United Kingdom

"Tachographs"

Case 128/78

1. *Measures adopted by an institution — Regulation — Application — Obligation of Member States*
   (EEC Treaty, Article 189)

2. *Obligations of Member States — Unilateral action contrary to the Treaty — Failure in the duty of solidarity*

1. It cannot be accepted that a Member State should apply in an incomplete or selective manner provisions of a Community regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests. Practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to opt out of fulfilling its obligations.

2. For a State unilaterally to break, according to its own conception of national interest, the equilibrium between the advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and creates discrimination at the expense of their nationals. This failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the very root of the Community legal order.

In Case 128/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, George Close, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

1 — Language of the Case: English.

v

UNITED KINGDOM, represented by R. D. Munrow, assistant Treasury Solicitor, acting as Agent, assisted by Peter Scott, Q. C., of the Middle Temple, with an address for service in Luxembourg at the Embassy of the United Kingdom,

defendant,

APPLICATION for a declaration that the United Kingdom has failed to fulfil its obligations under the EEC Treaty and under Regulation (EEC) No 1463/70 of the Council of 20 July 1970 on the introduction of recording equipment in road transport (Official Journal L 164, p. 1),

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions and submissions of the parties may be summarized as follows:

I — Facts and procedure

1. On 25 March 1969 the Council adopted Regulation (EEC) No 543/69 on the harmonization of certain social legislation relating to road transport (Official Journal 1969 L 77, p. 49).

The regulation secured a number of objectives such as the harmonization of conditions for competition, the promotion of social progress of workers in industry and road safety. To this end the regulation laid down provisions relating to minimum ages for drivers, the

composition of crews of vehicles, the length of driving periods and daily and weekly rest periods.

In order to ensure that the provisions of the regulation were being observed crew members of vehicles were required to keep individual control books.

Article 16 of Regulation No 543/69 provided that this individual control book should be replaced by mechanical recording equipment called a tachograph.

On 20 July 1970 the Council adopted Regulation (EEC) No 1463/70 on the introduction of recording equipment in road transport (Official Journal 1970, L 164, p. 1)

Among the objectives of that regulation is the effective enforcement of Regulation No 543/69 and in particular the replacement so far as possible of the individual control book by recording apparatus, to contribute to road safety, to remove hindrances to the free circulation of vehicles in the Community and to avoid distortions of competition arising from different rules in Member States (see in particular the first, sixth, seventh and eleventh recitals in the preamble).

To this end the regulation provides for the installation and use of tachographs on vehicles used for the carriage of passengers or goods by road which were registered in Member States, subject to certain exceptions (Article 3). The installation and use of the apparatus were made compulsory with effect from 1 January 1975 for:

(a) vehicles registered for the first time after that date;

(b) vehicles used for the carriage of dangerous goods, whatever the date of registration,

at the time of their entry into service.

With effect from 1 January 1978 the installation and use of recording equipment were made compulsory for all vehicles to which the regulation applied (Article 4).

Crew members of vehicles fitted with tachographs conforming to the approved specifications were exempted from the requirement to carry the individual control book required by Regulation No 543/69 (Article 5).

Other provisions of the regulation relate to type-approval of tachographs (Articles 6 to 13), installation and inspection (Article 14), the use of tachographs (Articles 15 to 18) and transitional provisions (Articles 19 and 20). Finally Article 21 (1) [1] provides that:

"Member States shall, in good time and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this regulation.

Such measures shall cover, *inter alia*, the reorganization of, procedure for, and means of carrying out, checks on compliance and the penalties to be imposed in case of breach."

The Act of Accession contains a provision relating to the entry into force of Regulation No 1463/70 in the United Kingdom. Article 133, read in conjunction with Point 4 of Title III of Annex VII provides that:

"Provisions identical with those contained in Article 4 (1) shall apply in respect of ... the United Kingdom from 1 January 1976."

Thus the Act of Accession delayed by one year the initial application of the provisions of the regulation with regard to the United Kingdom.

On 25 June 1973 the Council adopted Regulation (EEC) No. 1787/73 amending Regulation (EEC) No 1463/70. This deals with cases in which

1 — Article 21 was amended by Article 11 of Council Regulation (EEC) No 2828/77 of 12 December 1977 (Official Journal 1977, L 334, p. 5) and became Article 23 with effect from 1 January 1978.

tachographs conforming to national legislation had been fitted to road vehicles. Moreover in order to encourage installation and use of tachographs in the interests of road safety on vehicles used for the carriage of dangerous goods, the period during which tachographs conforming only to national standards could be used on such vehicles was extended to 31 December 1979. The regulation provides however that the tachographs in question should have been fitted before 1 January 1975 (or, in the case of new Member States, 1 January 1976).

Regulation No 1463/70 was further amended by Regulation (EEC) No 2828/77 of 12 December 1977. This regulation in particular authorized Member States to exempt certain categories of vehicles from the requirements of the earlier regulation and deferred the application of that regulation in respect of other categories of vehicles (Articles 1 and 2). These provisions have the effect of rendering the application of the 1970 regulation more flexible as from 1 January 1978, the date of their entry into force.

2. In a letter of 30 January 1976 to the United Kingdom Permanent Representation the Commission's Directorate General for Transport drew attention to the fact that Regulation No 1463/70 was applicable in new Member States as from 1 January 1976 for newly registered vehicles and for those carrying dangerous goods whatever their date of registration. Moreover it asked to be informed as soon as possible of the action taken by the United Kingdom Government in accordance with Article 21 to implement the regulation.

By letter dated 25 February 1976 the United Kingdom Representation sent the Commission a draft statutory instrument entitled "The Passenger and Goods Vehicles (Recording Equipment) Regulations 1976" designed to introduce a voluntary scheme covering both international and national traffic.

The Commission's opinion on this measure, transmitted to the Secretary of State for Foreign and Commonwealth Affairs by letter dated 25 June 1976, declared that a voluntary scheme was insufficient for the proper application of Article 4 (1) of Regulation No 1463/70. The Commission's letter also requested the United Kingdom Government to amend the draft statutory instrument as soon as possible to take account of the points made in the Commission's opinion and to transmit the amended draft to the Commission for consultation in order to ensure the implementation of Regulation No 1463/70 without further delay.

On 10 March 1977 the Commission sent a further letter, to which a reply dated 16 May 1977 was received. In that letter the Government of the United Kingdom confirmed its intention not to implement completely the Community legislation and quoted the measures actually adopted.

3. By letter of 21 October 1977 the Commission initiated the procedure provided for in Article 169 of the EEC Treaty.

In its reply of 10 January 1978 the Government of the United Kingdom expressed its intention not to implement the regulation fully for reasons based on economic, industrial and practical considerations.

On 15 February 1978 the Commission delivered a reasoned opinion inviting the United Kingdom to take the necessary measures to comply with the regulation in question within two months.

By letter of 14 April 1978 the Government of the United Kingdom stated that it would not be practical or politic to take the measures requested in the Commission's reasoned opinion within the period mentioned.

The Commission, in pursuance of the second paragraph of Article 169 of the Treaty, referred to the Court of Justice the failure alleged against the United Kingdom. The application was lodged at the Court Registry on 8 June 1978.

On 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.

II — Conclusions of the parties

The *Commission* claims that the Court should:

(a) Declare that by failing to adopt in good time the measures which remain to be taken to implement Regulation (EEC) No 1463/70 on the introduction of recording equipment in road transport and by failing to consult the Commission on the measures in question before adoption the United Kingdom has failed to fulfil its obligations under the Treaty and in particular those imposed by Article 23 (1) of the said regulation, as amended;

(b) Order the Government of the United Kingdom to pay the costs.

The *Government of the United Kingdom* contends that the Court should:

— Refrain from making a declaration pursuant to Article 169 of the Treaty if as in the present case to do so would not substantially promote the achievement of the aims of the Treaty and would or might well on the contrary tend to defeat the objectives of Article 2 of the Treaty and distort competition by imposing a wholly disproportionate strain on the economy of a Member State without corresponding advantages to the Community.

III — Submissions and arguments of the parties

According to the *Commission* the only measures of application adopted by the United Kingdom Government are those contained in the Passenger and Goods Vehicles (Recording Equipment) Regulations 1977. The British Government admits that these regulations are only "initial" measures and that they are intended to enable vehicles registered in the United Kingdom to comply with tachograph regulations whilst travelling in other Community countries.

However, the regulations do not require the compulsory installation of tachographs even for international journeys. In fact they provide only for a *voluntary* scheme applying to both national and international traffic. It is only by reason of rules applicable in other Member States that operators are compelled to install tachographs for international journeys.

The British regulations lack any provision creating offences and laying down penalties for failure to install and use tachographs in accordance with Community legislation.

The British Government cannot, by pleading the risk of damaging industrial relations and an increase in wage claims in case of introduction of tachographs and by claiming that the failure to comply with the regulation for national journeys will not affect significantly conditions of competition, justify in law the failure of the United Kingdom fully to implement the regulation in question.

The United Kingdom solemnly undertook to abide by its Treaty obligations, subject to the various modifications which were incorporated in the Act of Accession and amending regulations by which the special needs of the United Kingdom were taken into account.

The Community system would become unworkable if a Member State could reserve the right to decide not to apply in whole or in part a binding Community measure which had been duly adopted according to Community procedure if in its opinion it was more advantageous not to do so.

In accordance with Regulation No 1463/70, with the provisions of the Treaty, in particular Articles 5 and 189, and with the Act of Accession, the United Kingdom is bound to adopt in good time all the necessary measures of application after consultation with the Commission.

The Commission feels that in many respects the Community legislature has taken into consideration the needs of the United Kingdom (in particular the provision made in Point 4 of Part Three of Annex VII to the Act of Accession). Moreover the United Kingdom had ample opportunity during the subsequent adoption of amending regulations to make clear its opposition by arguing that tachographs were unnecessary for domestic transport. The Community however has not accepted that case.

In these circumstances, any practical difficulties of implementation of Regulation No 1463/70 by the United Kingdom cannot be accepted as a justification.

In its defence the *United Kingdom Government* denies that it failed to consult the Commission before introducing the measures adopted in application of Regulation No 1463/70.

On 2 September 1975 the United Kingdom submitted to the Commission a memorandum on the serious obstacles to the compulsory introduction of tachographs under Regulation No 1463/70 and sought the Commission's views thereon.

Moreover the Commission itself has stated in its application that the Permanent Representative of the United Kingdom sent to the Commission on 25 February 1976 the measures proposed by the United Kingdom. The Commission gave its opinion thereon and asked the United Kingdom to send it an amended draft of the measures proposed.

In concluding that in the United Kingdom the objectives of the Treaty and of Regulations Nos 543/69 and 1463/70 were more likely to be furthered in the form proposed by the United Kingdom than in the form sought by the Commission, the British Government appreciated that that decision was not acceptable to the Commission.

However, in these circumstances it cannot accept that it came to that decision without consultation with the Commission. The practical consequences of attempting to enforce compulsory measures when important sections of the industry concerned are demonstrating a deep-seated resentment against the

measures proposed cannot be ignored. The United Kingdom believes that there is a serious risk that labour would be withdrawn from a critical sector of the national economy and that the stability of the economy would or at least might well be jeopardized.

In fact some operators were forced to remove a considerable number of tachographs from their vehicles. Such circumstances would place the law-enforcement agencies in an impossible position and would lead inevitably to a situation in which respect for the law would be undermined. The far-reaching consequences would be out of all proportion to any advantage which might be gained by the implementation of the obligation.

The general use of tachographs is more likely to be achieved without major disruption in the light of experience with the equipment on a voluntary basis.

The United Kingdom feels that in practice the objectives of Regulation No 1463/70 have substantially been achieved in relation to the United Kingdom, in particular for vehicles travelling between Member States.

In comparison with standards of road safety in the other Member States those in the United Kingdom are more severe both for international and domestic journeys.

According to the United Kingdom it is not easy to see in these circumstances how other Member States or the Community as a whole could be prejudiced by the fact that on certain domestic journeys the introduction of recording equipment is not compulsory.

In its reply the *Commission* observes that it has never claimed that the United Kingdom has failed to consult it at all. It points out however that in application of Article 23 of Regulation No 1463/70 (as amended), the Commission has been consulted only on *partial* measures of application. It follows that the United Kingdom has failed to consult the Commission on all the measures necessary for the implementation of the regulation.

The Commission denies that the objectives of Regulation No 1463/70 can be achieved by means other than those determined by the specific provisions of the regulation in question.

Member States are not free to set aside certain provisions of a regulation — provisions which are binding in their entirety and directly applicable in all Member States (Article 189 of the EEC Treaty) — if they consider that domestic difficulties are too great to permit of the application of the regulation (judgment of 11 April 1978, Case 100/77 *Commission* v *Italian Republic*, paragraph 21, [1978] ECR 887).

The Commission emphasizes that in giving an opinion on the measures of application proposed it acted in accordance with Article 155 of the EEC Treaty.

It is no defence to a charge of not having taken the necessary measures to implement a regulation to claim that as a result of its non-application no particular prejudice has ensued to other Member States or the Community. That would amount to saying that Member States retain a residual discretion as to whether to implement their obligations under the Treaty.

The Treaty contains no provision making it possible to support a thesis of this kind. Otherwise no Member State could rely on legal undertakings solemnly arrived at, often with the

greatest of difficulty, being applied in practice by its partners. The Commission refers to the case-law of the Court of Justice, in particular Case 95/77 *(Commission* v *Kingdom of the Netherlands,* judgment of 11 April 1978 [1978] ECR 863) and to the opinion of Mr Advocate General Reischl in that case.

The Commission maintains that the incomplete application of Regulation No 1463/70 is by its nature conducive to causing prejudice. Indeed the open defiance by a Member State of its obligation to apply fully an important regulation is far from being conducive to the well-being of the Community. Moreover on the commercial level prejudice is evident.

Finally the Commission states its views on the request of the defendant that the Court should refrain from making a declaration pursuant to Article 169 of the EEC Treaty (see Point II above, conclusions of the parties). It observes that it is not aware of the existence of such a power of dispensation. Moreover, even assuming the existence of such a power, the Commission takes the view that the letters sent by the defendant and the utterances of the Minister responsible do not make it possible to conclude that a serious effort has been made to fulfil the legal obligations of the United Kingdom in this respect.

IV — Oral Procedure

The parties presented oral argument at the hearing on 6 December 1978.

The Advocate General delivered his opinion at the hearing on 18 January 1979.

Decision

1 By application dated 7 June 1978 the Commission applied to the Court for a declaration under Article 169 of the Treaty that the United Kingdom had failed to fulfil its obligations under the Treaty by failing to adopt in good time the measures which remain to be taken to implement Regulation No 1463/70 of the Council of 20 July 1970 on the introduction of recording equipment in road transport (Official Journal, English Special Edition 1970 (II), p. 482), and by failing to consult previously with the Commission as provided for by the said regulation.

2 Regulation No 1463/70, as amended by Regulations No 1787/73 and 2828/77 of the Council of 25 June 1973 (Official Journal L 181, p. 1) and 12 December 1977 (Official Journal L 334, p. 5), is primarily intended to replace the individual control book by recording equipment, commonly called a tachograph, designed for road transport.

3 According to the recitals in the preamble to the regulation the equipment is intended to record automatically driving periods and other parameters of the vehicle's journey, such as speed and distance covered. Its installation and use have been made compulsory in order to ensure uniform and effective control of the working time of crews and to improve road safety while avoiding obstacles to the free movement of vehicles within the Community or distortion of the conditions of competition. The regulation makes the installation and use of the recording equipment compulsory at different dates for specific classes of vehicle, the most important provision being Article 4 which makes this compulsory with effect from 1 January 1975 as regards vehicles registered for the first time on or after that date and for vehicles used for the carriage of dangerous goods, whatever the date of their registration.

4 In order to ensure compliance with those obligations Article 23 (1) of the regulation provides:

"Member States shall, in good time and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this regulation.

Such measures shall cover, *inter alia,* the re-organization of, procedure for, and means of carrying out, checks on compliance and the penalties to be imposed in case of breach."

5 Point 4 of Title III (Transport) of Annex VII to the Act of Accession provides that provisions identical with those contained in Article 4 (1) of Regulation No 1463/70 shall apply in respect of Denmark, of Ireland and of the United Kingdom from 1 January 1976.

6 It is not denied that provision for the installation and use of the recording equipment has been made by the British legislation only on an optional and voluntary basis as regards both vehicles engaged in intra-Community transport and those engaged in national transport. On the other hand, the British legislation has maintained in force the obligations relating to the keeping of an individual control book which were abolished by the said regulation.

7 The defendant claims that this arrangement is sufficient to meet the objectives of promoting road safety, of social progress for workers and of the harmonization of conditions of competition. It maintains that the implementation of Regulation No 1463/70 on its territory is best achieved by the installation and use of the recording equipment on a voluntary basis, though this may be made compulsory at an appropriate time. It adds that implementation of the regulation involving compulsory measures would meet with active resistance from the sectors concerned, in particular the trade unions, which would result in strikes in the transport sector and would therefore seriously damage the whole economy of the country.

8 It contends that since, in the case of the United Kingdom, the objectives of the Community policy in this field can be achieved just as satisfactorily by the maintenance of the system of the individual control book as by the compulsory introduction of recording equipment, the alleged failure to fulfil an obligation is of a purely technical nature and, in view of the difficulties referred to, should not be taken into account. Moreover the installation and use of recording equipment is in practice already guaranteed in respect of intra-Community transport by the fact that the other Member States have made it compulsory.

9 Article 189 of the Treaty provides that a regulation shall be binding "in its entirety" in the Member States. As the Court has already stated in its judgment of 7 February 1973 (Case 39/72 *Commission* v *Italian Republic* [1973] ECR 101) it cannot therefore be accepted that a Member State should apply in an incomplete or selective manner provisions of a Community regulation so as to render abortive certain aspects of Community legislation which it has opposed or which it considers contrary to its national interests. In particular, as regards the putting into effect of a general rule intended to eliminate certain abuses to which workers are subject and which in addition involve a threat to road safety, a Member State which omits to take, within

the requisite period and simultaneously with the other Member States, the measures which it ought to take, undermines Community solidarity by imposing, in particular as regards intra-Community transport, on the other Member States the necessity of remedying the effects of its own omissions, while at the same time taking an undue advantage to the detriment of its partners.

10 As the Court said in the same judgment, practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to opt out of fulfilling its obligations. The Community institutional system provides the Member State concerned with the necessary means to ensure that its difficulties be given due consideration, subject to compliance with the principles of the common market and the legitimate interests of the other Member States.

11 In these circumstances, the possible difficulties of implementation alleged by the defendant cannot be accepted as a justification.

12 Further, as the Court said in the case mentioned above, in permitting Member States to profit from the advantages of the Community, the Treaty imposes on them also the obligation to respect its rules. For a State unilaterally to break, according to its own conception of national interest, the equilibrium between the advantages and obligations flowing from its adherence to the Community brings into question the equality of Member States before Community law and creates discrimination at the expense of their nationals. This failure in the duty of solidarity accepted by Member States by the fact of their adherence to the Community strikes at the very root of the Community legal order.

13 It appears therefore that, in deliberately refusing to give effect on its territory to the provisions of Regulation No 1463/70, the United Kingdom has markedly failed to fulfil the obligation which it has assumed by virtue of its membership of the European Economic Community.

14 The Commission has also asked that there should be a separate finding of a failure by the United Kingdom to fulfil its obligation to consult it on the national measures to be introduced in accordance with the aforementioned Article 23.

15 In the present case the failure to consult the Commission is part of the failure to fulfil the obligations under Article 23 (1), since the United Kingdom Government informed the Commission on 1 January 1976 that it did not consider itself to be in a position to introduce the provisions required by that article. In these circumstances it is not necessary to make a separate declaration in respect of the failure to consult.

Costs

16 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

17 The defendant has failed in its submissions and must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to adopt in good time the measures which remain to be taken to implement Regulation No 1463/70 of the Council of 20 July 1970 on the introduction of recording equipment in road transport, the United Kingdom has failed to fulfil its obligations under the Treaty.**

2. **Orders the defendant to pay the costs.**

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 7 February 1979.

A. Van Houtte
Registrar

H. Kutscher
President