REPORT FOR THE HEARING
delivered in Case 420/85 *

I — Facts and procedure

1. 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 1975, L 48, p. 31) is part of the common transport policy provided for by Articles 74 and 75 of the Treaty and is intended to free from all quantitative restrictions the international carriage of goods by road between Member States using the railway network in such a way as to reduce the road journey to a minimum. According to the second recital in the preamble to the directive, such use of the road/rail method is economically advantageous; in addition, it is intended to reduce road traffic and it also contributes to the protection of the environment.

According to Article 1, the directive applies to carriage where the road vehicle or that part of it which is intended to bear the load is 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.

Article 2 of the directive provides that the Member States are to liberalize the carriage referred to in Article 1 from all quota systems and systems of authorization.

2. Directive 75/130/EEC has most recently been amended by Council Directive 82/603/EEC of 28 July 1982. That directive introduces in substance two important innovations, namely:

(a) the extension of the system of exemption from quotas and authorizations to combined transport by inland waterway between Member States, including feeder and final delivery transport by road within a radius of up to 50 kilometres as the crow flies from the inland-waterway port of shipment or unloading;

(b) the adoption of measures reducing or reimbursing taxes applicable to road vehicles used in all combined transport. Thus, Article 1 (6) of Directive 82/603/EEC inserts in Directive 75/130/EEC as Article 8 the following provision:

'1. Member States shall take the measures necessary to ensure that, as from 1 January 1985, the taxes ... applicable to road vehicles (lorries, tractors, trailers or semi-trailers) when routed in combined transport are reduced or reimbursed either by a standard amount, or in proportion to the journeys that such vehicles undertake by rail, within limits and in accordance with conditions and rules fixed by them after consultation with the Commission.

The reductions or reimbursements referred to in the first paragraph shall be granted by the State in which the vehicles are registered, on the basis of the rail journeys effected within that State.

* Language of the Case: Italian.

Member States may, however, grant these reductions or reimbursements on the basis of the rail journeys which take place partially or wholly outside the Member State in which the vehicles are registered.'

Finally, Article 2 of Directive 82/603/EEC provides as follows:

'The Member States shall take the measures needed to comply with this directive before 1 April 1983. They shall inform the Commission thereof.'

3. By letter of 30 January 1984 to the Italian Government, the Commission drew attention to the fact that it had not received any communication concerning the measures transposing Directive 82/603/EEC into national law and, consequently, took the view that the Italian Republic had failed to fulfil its obligations under the directive. Accordingly, pursuant to Article 169 of the Treaty, the Commission requested the Italian Government to submit its observations on the matter within two months.

4. In view of the absence of any response by the Italian authorities, on 20 February 1985 the Commission delivered a reasoned opinion, under the first paragraph of Article 169 of the Treaty, in which it stated that it was obliged to conclude that the necessary provisions had not been adopted and that, in any event, the obligation to inform the Commision had not been complied with. Finally, the Commission requested the Italian Republic to adopt the measures needed to comply with the terms of the opinion within two months.

5. Since the reasoned opinion also failed to evoke any response on the part of the Italian authorities, the Commission brought this action by application lodged at the Court Registry on 13 December 1985.

6. 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. However, the Court requested the Commission to state whether it disputed the information furnished by the Italian Government to the effect that Italian railways are not yet equipped to handle the loading of tractors on to trains.

II — Conclusions of the parties

1. The *Commission* claims that the Court should:

Declare that by failing to adopt within the period prescribed the provisions needed to comply with Council Directive 82/603/EEC of 28 July 1982, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

In the alternative, declare that by failing to inform the Commission of the measures adopted to comply with Council Directive 82/603/EEC of 28 July 1982, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

Order the Italian Republic to pay the costs.

2. The *Italian Government* contends that the Court should:

Dismiss the application or declare that the proceedings have become devoid of purpose;

Order the Commission to pay the costs.

III — Submissions and arguments of the parties

1. In its application the *Commission* points out that under Article 189 of the EEC

Treaty the Member States are under an obligation to comply with Community directives within the periods expressly prescribed therein. On the basis of the information at its disposal, the Commission has come to the conclusion that the Italian Republic has not adopted any of the provisions needed to comply with Directive 82/603/EEC.

2. In its defence, the *Italian Government* explains that the innovations introduced by Directive 82/603/EEC were inapplicable to Italy and that it was therefore under no obligation to implement that directive.

Italy is not required to implement any of the provisions of the directive which extend the system of exemption from quotas and authorizations to combined transport by inland waterway since at present there is no network of inland waterways linking Italy and the other Member States. Moreover, the measures reducing or reimbursing taxes on road vehicles used in all combined transport, which are provided for in Article 1 (6) of Directive 82/603/EEC, constitute an innovation which does not impose any obligation on Italy to amend its legislation, inasmuch as the said vehicles are already taxed at a lower rate by virtue of Article 5 of Decree No 953 of 30 December 1982, enacted as Law No 53 of 28 February 1983, except in cases where the tractor itself, and not just the trailer, is also loaded on to the train, which is a form of transport known as 'rollende Landstraße' that is used only to a very limited extent by Italian transporters. For that reason the refusal to grant reimbursements in respect of such means of transport cannot constitute a breach of the Community directive.

Finally, the Italian Government emphasizes that those considerations have been relied upon on several occasions by the representatives of the Italian administration at various meetings held by the Commission and by the Working Party on Transport.

3. In its reply, the *Commission* acknowledges that the argument put forward by the Italian Government on the absence of cross-frontier inland waterways is plausible. However, it asks the Court to hold that Italy has failed to comply with its obligation to inform the Commission in accordance with Article 2 of Directive 82/603/EEC.

With regard specifically to the loading of tractors on to railway goods wagons ('rollende Landstraße'), the Commission emphasizes that the fact that this mode of transport is used to a very limited extent by Italian transporters is clearly insufficient to exclude the application of the directive, particularly as the tax reduction would have precisely the effect of encouraging the use of that mode of transport.

4. Finally, in its rejoinder, the Italian Government explains that even in the very small number of cases in which the 'rollende Landstraße' system is used by Italian transporters the rail journey does not take place through Italian territory because Italian railways are not yet equipped to handle this mode of transport. The height of certain tunnels and the lack of certain facilities prevents tractors from being loaded on to trains. Since Article 1 (6) of Directive 82/603/EEC requires the State in which the vehicles are registered to grant the tax reductions or reimbursements exclusively on the basis of the rail journeys effected within that State, whilst empowering the latter to grant reductions or reimbursements on the

basis of the rail journeys which take place outside its territory, it is clearly unnecessary to adopt complex hypothetical measures to implement a directive when they are bound to remain wholly inapplicable. Once the situation makes it possible to use what is known as the 'rollende Landstraße' method in Italy as well, the national provisions needed to give effect to the directive will be adopted in conjunction with the Commission.

IV — Reply to the question from the Court

The Commission challenges the information furnished by the Italian Government to the effect that Italian railways are not yet equipped to handle the loading of tractors on to trains.

It is clear from the information provided by Italy's Permanent Representation to the European Communities, in two memoranda of 11 March and 1 July 1985 addressed to the Commission, that three Italian railway stations are equipped to handle the 'rollende Landstraße' system, namely Milan Greco Pirelli, Ala di Trento and Verona. There are also two railway services that operate in accordance with that system, one between Milan and Freiburg i. B. (six times per week) and the other between Ala and Munich (five times per week).

O. Due
Judge-Rapporteur