# OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 4 OCTOBER 1984 [1]

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*Mr President,*
*Members of the Court,*

A — The proceedings in which I am giving my opinion today and which the Commission has brought against the Italian Republic are concerned with the question whether the practice of the Italian authorities in applying Council Regulation No 3164/76 on the Community quota for the carriage of goods by road between Member States (Official Journal 1976, L 357, p. 1) is compatible with that regulation.

I should like to make the following remarks by way of introduction:

1. Article 61 of the EEC Treaty provides that freedom to provide services in the field of transport is to be governed by the provisions of the Title relating to transport, that is Article 74 *et seq.* Article 75 (1) (a) provides that the Council is to lay down "common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States"; that was to be done according to Article 75 (2) during the transitional period.

Since, when the Treaty entered into force, the international carriage of goods by road was not free of restrictions and

1 — Translated from the German.

access to the territory of a Member State for transport undertakings of other Member States was possible only as a result of bilateral agreements which laid down quotas, in 1963 the Commission proposed that such quotas agreed bilaterally should progressively be abolished and replaced by a Community quota system under which vehicles with an appropriate authorization should be entitled to carry goods between *all* Member States.

The Council did not adopt that proposal. On the one hand it allowed the system of bilateral quotas to continue to exist (the system being the subject of a directive of 13 May 1965 — Directive 65/269/EEC, Official Journal, English Special Edition 1965-1966, p. 64 — and a decision of 20 December 1979 — Decision 80/48/EEC, Official Journal 1980, L 18, p. 21) and on the other it introduced in addition a system of Community quotas. The first regulation on the subject was Regulation No 1018/68; at present the relevant provision is Regulation No 3164/76, which was mentioned at the outset and which was most recently amended by Regulation No 3515/82. Each year the Council determines the Community quota and allocates it to the various Member States. Within the limits of the total number of authorizations allocated to each Member State, the competent national authorities issue Communiy authorizations to carriers established in their territory. The authorizations entitle the holder to effect, over all transport links between Member States, the carriage of goods by road for hire or reward for one year. Article 2 (3) of Regulation No 3164/76 states that Community authorizations are to be made out in the name of a carrier and may not be transferred by the carrier to third parties. The second and third subparagraphs read:

"Each authorization may be used for only one vehicle at a time. It shall be carried on the vehicle and produced at the request of any authorized inspecting officer.

'Vehicle' means a single vehicle or a coupled combination of vehicles."

2. As far as the Italian legal position is concerned, it is necessary to know that under authorizations issued to Italian undertakings a towing vehicle may not be coupled to a trailer belonging to another undertaking. Further, when checking authorizations issued in *other* Member States (and this relates both to Community quotas and bilateral quotas) in cases in which the vehicle is a coupled combination of two parts which are registered in different Member States, the authorities require the production of *two* authorizations.

3. In the Commission's view that practice is incompatible with both Article 2 (3) of Regulation No 3164/76 and Article 3 (2) of Directive 65/269 which is to the same effect and applies to bilateral quotas. Accordingly, by letter dated 4 November 1981, it initiated the procedure under Article 169 of the EEC Treaty with a view to obtaining a declaration that the Italian Republic had infringed the EEC Treaty.

The defendant, as is apparent from its observations of 27 January 1982, did not share the Commission's view. First it contended that the practice at issue represented a derogation from the stricter provisions applying to national transport (under which the towing vehicle and trailer had to belong to the

same undertaking) and thus served to facilitate international transport. Further it contended, in support of its view, that the Community rules (because they provided for the use of *one* authorization to cover a coupled combination of vehicles) assumed that the parts of such a vehicle belonged to the holder of the authorization and it was only if it was interpreted in that way that the provision that the Community authorization was to be made out in the name of a carrier and not transferred to third parties had any meaning. Further, it referred to Article 1 of Directive 65/269 (to the effect that authorizations were to be issued by the competent authorities of the Member State in which the vehicle to be used for carriage was *registered)* and drew the conclusion that all parts of a coupled combination of vehicles had to be registered in a *single* Member State for otherwise the directive would have laid down detailed rules for authorizations where parts of a vehicle were registered in various Member States.

The Commission did not agree and therefore continued the procedure delivering a reasoned opinion on 27 October 1982; because the structure of the said directive differs from that of Regulation No 3164/76, the Commission confined itself to the incompatibility of the Italian practice with the said regulation and left open the question whether there was any incompatibility with the directive which applied to bilateral quotas. In the reasoned opinion it stressed that the fact that the practice objected to might be less severe than the law applicable to national transport could not be regarded as any justification under Community law. It further emphasized that there was nothing to suggest that Regulation No 3164/76 presupposed that the various parts of a combination of vehicles belonged to the holder of the authorization. Further, it observed that the regulation prescribed neither that the vehicle used had to be registered in the country of the holder of the authorization nor that all parts of a combination of vehicles had to be registered in the one Member State. The regulation thus provided no basis for requiring two authorizations if the parts of a combination of vehicles were registered in different Member States.

Since, however, the defendant did not comply with the invitation to adopt within two months from delivery of the opinion measures to end the infringement of Community law found by the Commission (the Italian Government still takes the view that it has not laid down any unlawful additional conditions in respect of authorizations for Community quotas), the Commission brought an action before the Court on 17 June 1983. According to its application a declaration is sought that in requiring two authorizations under the Community quota system when a coupled combination of vehicles, consisting of parts registered in different Member States, effects international carriage by road commencing in, with its destination in, or in transit through Italy, the Italian Republic has failed to fulfil its obligations under Regulation No 3164/76, and in particular Article 2 (1) and (3) thereof.

B — My views on that application and the issues raised by it are as follows:

1. A point to be stressed at the outset is that the proceedings are concerned with the important principle of freedom to provide services which according to the case-law of the Court is one of the fundamental principles of the Community. It is true that as far as transport is concerned it was not mandatory for any restrictions to be removed during the transitional period under Article 59 of the EEC Treaty. However, the necessary provisions pursuant to Article 75 did have to be adopted during the transitional period. As regards the carriage of goods by road, as we have seen, nothing has been achieved other than a rather modest reduction of restrictions by the Community quotas. As far as there is provision for the removal of restrictions, it should in principle, be interpreted in a manner which allows it the maximum effectiveness. It should be given a restrictive application only if there are clear and compelling grounds therefor.

It is also clear that the Italian practice of requiring two authorizations for transport by a combination of vehicles has a restrictive effect. During such a journey one authorization will, as it were, be "frozen". On the other hand it must be recognized that the combination of parts of vehicles registered in various Member States is not at all an unusual occurrence but corresponds to a genuine economic interest. The Commission has made out a convincing case for that by referring to situations where:

(i) a transport undertaking is established in several Member States and operates vehicles registered in various Member States;

(ii) undertakings from various Member States jointly acquire parts of vehicles which are registered in various Member States;

(iii) transport involves ferries (such as between Ireland and the United Kingdom on the one hand and Italy on the other). Since the immobilization of expensive towing vehicles including their drivers during a sea crossing is uneconomic, it appears reasonable that only the trailer should be loaded onto the ship and connected to a towing vehicle from another Member State in the port of arrival.

The Commission's view is supported by:

the significance of the principle in issue;

the wide sense of the term "vehicle" in the third subparagraph of Article 2 (3) of Regulation No 3164/76;

and the fact that the wording of the regulation does not imply that the parts of a combination of vehicles are registered in one State.

2. The question can therefore only be whether the defendant has adduced such clear and compelling arguments in support of its view that its restrictive interpretation of the regulation must none the less be regarded as correct. That, however, if I may anticipate the result of all my consideration of the matter, is not the case.

(a) I can deal relatively briefly with arguments which were central to the *earlier stages of the proceedings* but were no longer or at most only marginally mentioned in the pleadings, namely that the practice objected to is an alleviation of the stricter rules applying to the national traffic in Italy (according to which towing vehicle and trailer must belong to the same undertaking) and that the Community rules presuppose that the parts of a combination of vehicles *belong* to the holder of the authorization.

(aa) On the first issue the Commission has in my view rightly observed that the disregard of Comnmunity law cannot be justified by reference to stricter law applicable to national transport services. The question may therefore remain open whether it would at all be lawful to apply the strict Italian law to foreign transport undertakings and to refuse access to Italian territory if parts are used which do not belong to the undertaking (that is obviously what the defendant's argument presupposes).

(bb) As far as the other issue is concerned, it must first of all be borne in mind that under the contested Italian practice it is a question not of ownership but of the *registration* (something quite different) of transport undertakings in various Member States which certainly does not exclude the possibility of all parts of the vehicle belonging to the holder of the authorization.

Under Regulation No 3164/76 the *authorization is to be made out in the name of a carrier* established in the State issuing the authorization. That is obviously intended to explain what a Member State may do with its quota, namely issue authorizations *directly* to carriers but not delegate the selection. The stipulation that authorizations are not transferable to third parties accords with that. On the other hand there is no requirement in the regulation relating to ownership or registration. Therefore the inference may not be drawn from it that the parts of the vehicle for which the authorization is used must belong to the holder of the authorization. Since the authorization relates to a particular undertaking and not to a particular vehicle, it is quite possible to use a different vehicle for every journey. It is also immaterial whether the holder of the authorization is the owner or only the user of the vehicle.

No different conclusion may be drawn from the Commission's Recommendation of 9 June 1969 on the implementation of the first regulation concerning the establishment of a Community quota for road transport. According to that Recommendation the Member States should allow the holder of a Community authorization to use both his own and rented vehicles for journeys covered by a Community authorization. It is apparent from that only that ownership is regarded as a normal element but it is obviously not obligatory since the use of rented vehicles is stated to be possible. It is not possible to infer from that or even make the assumption suggested by the defendant that the vehicles used by the holder of a Community authorization must be registered in the Member State

in which the holder of the authorization is established.

(b) The defendant attaches particular importance to the argument that according to the Community rules every Member State is given a quota in accordance with its size for undertakings established in its territory and the *balance of quotas* could be disturbed if the Commission's view were accepted and the registration of the vehicles in the various Member States were not taken as a criterion.

There can certainly be no question of that. An authorization gives its holder the possibility of effecting transport for one year with one vehicle (including a coupled combination of vehicles). Since, as has been shown, ownership of the parts of vehicles is irrelevant, an authorization covers a combination of vehicles organized by a transport undertaking, where the parts of the combination may belong to other undertakings. If that is the case, however, it is not possible to see how the balance of the quotas could be adversely affected by the use of parts of the combination from other Member States. If the defendant's view were accepted, the Community authorizations would be of less use. That would also clearly reduce the value of the Community quotas which are in any event only of limited importance for purposes of liberalizing transport.

(c) Likewise the defendant attaches special importance to the fact that the Member States issue authorizations to undertakings established in their territory, which, it submits, indicates, since an authorization can be used only for particular vehicles, the need or likelihood of the vehicles being *registered* in the Member State concerned. Further it attaches importance to arguments which it derives from Annex II to Regulation No 3164/76 prescribing the details of the book of record sheets, especially point 4 which states:

"A record sheet must be completed for each journey. A *journey* is defined as a number of successive stages travelled by a single vehicle. It normally starts and finishes at the place where the vehicle is usually based . . ."

From that the defendant concludes that it is important that the identity of a vehicle should not change during a journey and the fact that reference is made to the place where the vehicle "is usually based" clearly shows that the registration is the basis. Moreover it considers that its interpretation is confirmed by Council Directive 82/50/EEC of 19 January 1982 (Official Journal 1982, L 27, p. 22) which adds *inter alia* the following point 15 to Annex I to the Directive of 23 July 1962 (which provides for the liberalizing of certain types of carriage):

"Transit, in an unladen state, of a vehicle used for goods transport and intended to replace a vehicle which has become unserviceable in a Member State other than that in which it is registered, and the continuation, by the breakdown vehicle, of the transport under cover of an authorization issued for the vehicle which has become unserviceable."

The defendant maintains that it is thus clear that the criterion is the State of *registration* and it also follows, since a special exemption is necessary for the continuation of the transport in such a

case, that the identity of a vehicle travelling under an authorization may in principle not be altered during a journey.

On the other hand the Commission has rightly in my view stressed that while Article 2 (6) of Regulation No 3164/76 (governing responsibility for issuing authorizations) refers to the establishment of the transport undertaking, it contains nothing to suggest the requirement that the vehicles used under the authorization should be registered in the particular Member State.

As far as concerns Annex II to Regulation No 3164/76 and in particular point 4 of the General Provisions, the Commission has pertinently observed that even if some indications regarding the *identity* of a vehicle during a journey may be inferred from Annex II, it is certainly not possible to draw from it binding conclusions about the "nationality" of a vehicle; in particular there is nothing in it to support the requirement of serveral authorizations when combinations of parts of vehicles from different Member States are used. Further, the Commission has shown that the view that a vehicle may not change its identity during a journey is contradicted by the fact that according to the form printed in Annex II to Regulation No 3164/76, for each stage of a journey only the type of vehicle used need be indicated and, contrary to previous bilateral agreements, the registration number of a particular vehicle does not have to be given. It further rightly observed that although point 4 of General Provisions speaks of the place where the vehicle is "usually based", that does not entail a corresponding obligation, but merely reflects the assumption that normally every vehicle will have such a base. Further it must not be overlooked that it is mentioned only in connection with the description of a *typical* journey, as is shown by the use of the word "normally" in the relevant sentence and also the fact that in a footnote to that form reference is made to the possibility that the journey did not begin or did not end at the place where the vehicle is normally based. Finally the Commission argues, and this objection carries no weight at all, that it is also significant that the provisions of point 4 in Annex II to Regulation No 3164/76 have been deleted by Regulation No 3024/77 of 21 December 1977 for the express purpose of simplifying the record sheet. The only conclusion that may in fact be drawn from that is that arguments based on the annex to the regulation as it originally stood have only a limited value for the interpretation of the regulation.

In view of all that may be clearly inferred from Regulation No 3164/76 itself on the question of the identity of vehicles, Directive 82/50/EEC of 19 January 1982, if anything, confirms the correctness of the Commission's view when it mentions the possibility of the continuation, by the breakdown vehicle, of the transport under cover of the authorization issued for the vehicle which has become unserviceable. Moreover, in view of the context in which the directive was adopted (with the aim of extending the process of liberalization) it can scarcely be accepted that when it mentions *registration* of a vehicle in a Member

State, that establishes or clarifies a requirement for which there is no clear basis in the regulation on the Community quota.

(d) Equally unconvincing are the defendant's arguments in relation to Council Directive 65/269/EEC of 13 May 1965 concerning the standardization of certain rules relating to authorizations for the carriage of goods by road between Member States and the Commission Proposal of 15 December 1980 for a regulation to amend Regulation No 3164/76 (Official Journal 1980, C 350, p. 18).

(aa) It must be borne in mind that the provision in Article 1 of Directive 65/269/EEC that the Member States are to take the necessary measures to ensure that, from 1 January 1966, authorizations required for the international carriage of goods by road to or from the territory of a Member State or passing across the territory of one or more Member States shall be issued by the competent authorities of the Member State in which the *vehicle* to be used for such carriage is *registered* applies only to bilateral quotas, which are expressly excluded from the present proceedings. For *Community quotas* on the other hand Regulation No 3164/76 lays down another criterion to determine the competent State, namely the place where the *carrier* is *established* and that, as we have seen, in fact says nothing regarding the registration of the vehicle for which an authorization may be used.

Thus in view of its different scope and provisions no conclusions can necessarily be drawn from Directive 65/269/EEC for the interpretation of Regulation No 3164/76 and it may be added, without going into it any further at present, that even as regards the scope of the said directive the defendant's view can hardly be accepted. For it can scarcely be supposed that the said Article 1 was intended to derogate from Article 3 of the directive (according to which an authorization may be used for only one vehicle at a time, on the understanding that "vehicle" means a single vehicle or a coupled combination of vehicles). In fact, in the case of a coupled combination of vehicles composed of parts registered in different Member States, the only question is which part is to determine where the authorization is to be issued. The Commission sought a solution for that in the proposal for a directive amending Directive 65/269 (Official Journal 1980, C 350, p. 19) according to which the requisite authorizations should be issued by the competent authorities of the Member State in which the towing vehicle is registered.

(bb) As far as the Commission proposal for a regulation amending Regulation No 3164/76 is concerned, the proposed addition to Article 2 (3) (which has so far not been adopted) certainly seems to support the defendant's view when it states:

"In the case of a coupled combination of vehicles, the Community authorization shall be issued in respect of the tractor; it may also be used to cover haulage of a trailer or semi-trailer which is not registered in the name of the holder of

the Community authorization or which is registered in a different Member State. Such authorization shall cover the coupled combination of vehicles."

The Commission however has convincingly explained its aim in proposing that amendment. In the case of a coupled combination of vehicles the practice of the Member States regarding which carrier is required to be the holder of the authorization is not consistent: in some States it is the undertaking to which the towing vehicle belongs and in others the undertaking to which the trailer belongs. As a result even if the individual Member State requires in such cases only one authorization (as seems to be the general rule), the production of several authorizations may be necessary on journeys through different countries with differing practices. Since that rules out the maximum use of the Community quota, the Commission considers that the position should be harmonized so that only the Community authorization issued for the towing vehicle is required.

In that connection the Commission has attempted — as it were, incidentally — to resolve the "Italian problem" by means of the second part of the first sentence of its proposal. In view of all that has already been said regarding the interpretation of the regulation, that passage is obviously not intended as an amendment of the law but simply as a clarification of a text that is perhaps not altogether unambiguous. Therefore the said phrase certainly cannot justify the conclusion that as the law now stands two authorizations may be required for a coupled combination of vehicles composed of parts registered in various Member States.

3. In short I conclude that Regulation No 3164/76 does not lay down the principle that a transport undertaking with a Community authorization may use only vehicles and parts of vehicles which are registered in the State where it is based. If however a Community authorization entitles carriers to use combinations of vehicles without it being necessary that their parts should be registered in a single Member State, the practice of the Italian authorities in requiring several authorizations if the parts of combinations of vehicles are registered in various Member States is incompatible with Community law.

C — The Commission's application must therefore be upheld and a declaration made as requested that the abovementioned Italian practice is incompatible with Community law. Further, as the Commission claims, the defendant must be ordered to pay the costs.