JUDGMENT OF THE COURT
11 DECEMBER 1984 [1]

Commission of the European Communities v Italian Republic

(Transport authorizations — Community quota)

Case 113/83

Transport — Road transport — Community quota for carriage of goods between Member States — Transport authorizations issued as part of the quota — Coupled vehicles — Requirement of two authorizations — Prohibition
(Council Regulation No 3164/76, Art. 2 (1) and (3))

Under the Community quota system provided for by Regulation No 3164/76, a Member State may not require two transport authorizations when a coupled combination of vehicles, consisting of parts registered in two different Member States, effects international carriage by road.

In Case 113/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giuliano Marenco, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Service, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Arnaldo Squillante, Divisional President of the State Council, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Ignazio Francesco Caramazza, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.

APPLICATION for a declaration under the second paragraph of Article 169 of the EEC Treaty that, in requiring two transport authorizations under the Community quota system when a coupled combination of vehicles, consisting of parts registered in two different Member States, effects international carriage by road, the Italian Republic has failed to fulfil its obligations under Council Regulation (EEC) No 3164/76 on the Community quota for the carriage of goods by road between Member States,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and C. Kakouris (Presidents of Chambers), A. O'Keeffe, U. Everling, Y. Galmot and R. Joliet, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

1. The Commission found that the Italian authorities required two transport authorizations when a coupled combination of vehicles, consisting of parts registered in two different Member States, effected international carriage by road, commencing in, with its destination in or in transit through Italy. It took the view that that requirement was incompatible with the Community provisions on the subject and, by letter dated 4 November 1981, invited the Italian Government to submit its observations.

2. In its letter the Commission explained that pursuant to Article 2 (1) of

Council Regulation (EEC) No 3164/76 of 16 December 1976 (Official Journal L 357, 29. 12. 1976, p. 1) Community authorizations entitled their holders to effect the carriage of goods by road as specified therein and that Article 2 (3) of that regulation stated that Community authorizations were to be made out in the name of a carrier, they could not be transferred by the carrier to third parties, each authorization could be used for only one vehicle at a time, it was to be carried on the vehicle and "vehicle" meant a single vehicle or a coupled combination of vehicles. Since the regulation made no distinction in relation to the State where the vehicles or the parts of a coupled combination of vehicles were registered, the Commission took the view that Council Regulation No 3164/76 provided no basis for requiring two transport authorizations when a coupled combination of vehicles, consisting of parts registered in different Member States effected international carriage by road.

In its letter the Commission also maintained that the practice was incompatible with 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 (Official Journal, English Special Edition 1965-1966, p. 64), other than Community authorizations.

3. In its answer of 27 January 1982 the Italian Government challenged the Commission's view. It explained that the national provision which the Commission was contesting constituted a derogation from a much stricter rule applying to Italian domestic traffic to the effect that a towing vehicle registered in the name of one undertaking could not be coupled to a trailer or semi-trailer belonging to another undertaking and that the provision had been adopted to facilitate international traffic. Finally the Italian Government maintained that Regulation No 3164/76 and Directive 65/269, in providing for the use of a single transport authorization even for carriage effected by a coupled combination of vehicles were obviously based on the assumption that the parts making up the combination all belonged to the undertaking holding the authorization.

4. The Commission considered that those observations were not capable of affecting its view for the following reasons:

The fact that the Italian provisions were adopted to facilitate international traffic and that they thus constituted a derogation from a stricter rule applying to domestic traffic could not justify disregard of the Community provisions.

The view that Regulation No 3164/76 was based on the assumption that the parts making up a combination of coupled vehicles all belonged to the undertaking holding the authorization had to be rejected because, although it was true that an authorization was made out in the name of a carrier and could not be transferred, the Community rules in no way specified that the vehicle or all the parts thereof had to belong to the carrier holding the authorization.

The contested Italian rule did not provide that the parts of a coupled

combination of vehicles had to belong to the carrier holding the authorization but that the authorization was valid only if the two parts were registered in the same Member State, whereas Regulation No 3164/76 did not provide that the authorization was valid only for the carriage by a vehicle registered in the carrier's State of residence or that the parts of a coupled combination of vehicles had to be registered in the same State.

On the basis of those considerations the Commission concluded that the aforesaid requirement of the Italian Government was incompatible with the right of the holder of the Community authorization to effect the carriage of goods in so far as it imposed additional conditions which were not provided for and that the requirement of two authorizations was moreover contrary to the objectives of the Community regulation in so far as it reduced the value of the Community authorization.

5. On 27 October 1982 the Commission therefore delivered a reasoned opinion which left aside the question of the compatibility of the Italian practice with Directive 65/629 and restricted the failure with which the Italian Republic was charged to the incompatibility of the national practice with Regulation No 3164/76 and in particular Article 2 (1) and (3) thereof and requested the Italian Government to take the measures necessary to comply with the opinion within a period of two months.

6. Since the Italian Government did not adopt the appropriate measures within the period so prescribed, the Commission brought the present action registered at the Court Registry on 17 June 1983.

The written procedure followed the normal course.

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. It did, however, invite the Italian Government to supply information concerning its national rules and the Commission of the European Communities to answer a question concerning the position adopted in the present case.

II — Conclusions of the parties

1. The *Government of the Italian Republic* contends that the Court should dismiss the action and make all consequent ancillary orders since the Italian Republic has not failed to fulfil its obligations under Regulation No 3164/76.

2. The *Commission of the European Communities* claims that the Court should:

Declare 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 Regu-

lation (EEC) No 3164/76 and in particular Article 2 (1) and (3) thereof;

Order the Italian Republic to pay the costs.

III — Submissions and arguments of the parties

1. The *Commission* in its application puts forward the following arguments and submissions:

A — It starts by outlining the system established by Regulation No 3164/76 and the system of which those provisions form part.

(a) It emphasizes that the Treaty separated the free movement of services in transport from that of other services by providing that it should be governed by the provisions of the title relating to transport (Article 61 (1)) and that Article 75 (1) (a) provides for the adoption of "common rules applicable to international transport to or from the territory of a Member State".

(b) It observes that the Council did not follow all the Commission's proposals for the gradual abolition of existing bilateral quotas and the creation of a Community quota for road transport during the transitional period, but had confined itself to providing for the creation of a Community quota alongside the bilateral quotas drawn up between the Member States. That system was set up by Regulation (EEC) No 1018/68 of the Council of 19 July 1968 (Journal Officiel L 175, 23. 7. 1968, p. 13) and is at present governed by Regulation (EEC) No 3164/76 of 16 December 1976 as most recently amended by Regulation (EEC) No 3515/82 of 21 December 1982 (Official Journal L 369, 29. 12. 1982, p. 2).

The Commission adds that a Council Directive of 23 July 1962 (Official Journal, English Special Edition 1959-1962, p. 267), as most recently amended on 19 January 1982 (Official Journal L 27, 4. 2. 1982, p. 22), liberalized transport effected on the carrier's own behalf and certain transport for hire or reward, and that further certain traffic is unrestricted by decision of the Member States concerned (for example between Belgium and the Netherlands).

(c) It emphasizes that the carriage of goods between Member States is still not free of restrictions. It is conducted by means of authorizations issued by each Member State as part of bilateral quotas (transport between the two Member States concerned) or as part of Community quotas (bilateral or multilateral transport between the Member States) and once the quotas are exhausted another form of transport must be chosen, such as by rail or waterway, or the owner of the goods must transport them himself since that is liberalized.

(d) The Commission states that the implementation of the Community quota system is effected by Council regulations annually fixing the amount which has steadily increased but represents only some 5% of all authorized international traffic (bilateral and Community quotas) and it is for each Member State to issue Community authorizations in accordance with its own procedure and within the limits of the total number of authorizations allocated to it for the current year (Article 2 (6) of Regulation (EEC) No 3164/76.

(e) Finally the Commission points out that although the Community institutions do not intervene in fixing and applying the bilateral quotas, the aforesaid Council Directive of 13 May 1965 standardized certain rules relating to authorizations granted thereunder and a Council Decision of 20 December 1979 fixed certain rules for determining them (Official Journal L 18, 24. 1. 1980, p. 21).

B — The Commission then analyses the practice of the Italian administration in requiring two authorizations instead of one for a vehicle composed of two parts (for example towing vehicle and trailer) registered in two different Member States.

It states that that requirement (which does not apply to authorizations issued by the Italian authorities for an even stricter rule in Italy prohibits a towing vehicle registered in the name of one undertaking from being coupled to a trailer belonging to another undertaking) applies to authorizations issued by other Member States; according to the second sentence of the second subparagraph of Article 2 (3) of Regulation No 3164/76, which provides that the authorization must be carried on the vehicle and produced at the request of any authorized inspecting officer, such authorizations are subject to inspection by the Italian authorities when the vehicles enter Italian territory.

To show the economic impact of that requirement the Commission refers to certain examples illustrating the value of the possibility of coupling vehicles to trailers or semi-trailers registered in different Member States such as in the case of undertakings established in several Member States, the case of a pool of trailers purchased by an association of carriers from different Member States or the case of transport over a particular journey having special geographical features (transport between Ireland and the United Kingdom, on the one hand, and Italy, on the other) where the profitability depends on the possibility of changing towing vehicles to avoid their immobilization (for example when they cross the Channel).

C — To demonstrate how the practice of the Italian administration is incompatible with the provisions of Regulation No 3164/76, the breach of which, according to the Commission, is the sole issue in the present proceedings, the Commission puts forward the following submissions and arguments.

(a) It emphasizes that the first sentence of the second subparagraph of Article 2 (3) of Regulation No 3164/76 provides that "Each authorization may be used for only one vehicle at a time", and that the third subparagraph states that " 'Vehicle' means a single vehicle or a coupled combination of vehicles" without any distinction being made according to whether the parts of the vehicle are registered in a single Member State or two different Member States.

That being so, the effect of the Italian requirement is to reduce the value of every authorization because it limits the possibilities that holders have in respect of a particular vehicle and at the same time reduces the total value of the Community quota.

(b) The Commission also refers to the arguments of the Italian Government to the effect that the contested measure is a derogation from the stricter rule

applying to domestic traffic and that Regulation No 3164/76 implicitly assumes that both parts of the combination belong to the undertaking which is the holder of the authorization as is apparent from Article 2 (3) which states that "Community authorizations shall be made out in the name of a carrier" and that "They may not be transferred by a carrier to third parties".

It observes first of all that quite apart from the question whether the measure applicable to carriers established in Italy or its application to carriers of other Member States is lawful under Community law, the disregard of Community provisions cannot be justified on the ground that the contested national measure constitues a derogation from a stricter rule applying to domestic traffic.

With regard to the Italian Government's second argument, the Commission observes that there is no connection between the alleged assumption by the regulation that the coupled parts must belong to the undertaking holding the authorization and the Italian measure requiring two authorizations when the coupled parts are registered in two different Member States.

Further the Commission observes that the fact that the authorization is made out in the name of a carrier and may not be transferred to third parties does not mean that all the parts of the vehicle must belong to the carrier holding the authorization and that, on the contrary, it allows the carrier holding the authorization to use for any journey either several parts belonging to himself or parts that he has hired or that he has been permitted to use by other carriers.

In the Commission's view the rule that the authorization is to be made out in the name of a carrier is intended to specify what the Member State may do with its part of the quota, that is to say issue authorizations directly to specific carriers who may not transfer them to third parties so that the rule merely confirms that trade in authorizations is prohibited.

2. In its defence the *Italian Government* puts forward the following arguments and submissions.

A — Referring to the third subparagraph of Article 2 (3) of Regulation No 3164/76, which defines a vehicles as "a single vehicle or a coupled combination of vehicles", it points out that the second subparagraph of Article 2 (3) shows that a given vehicle in the course of its journey exhausts for the time being the rights granted it since "Each authorization may be used for only one vehicle at a time" and "It shall be carried on the vehicle . . .".

Further the Italian Government observes that according to point 4 of the General Provisions in Annex II referred to in Article 4 of Regulation No 3164/76 each vehicle has a place where it "is usually based" and although the vehicle may consist of parts it has a precise identity which may not be altered during a "journey".

It maintains that it follows from those considerations that the authorization

granted to a national carrier is conditional in more than one respect not only on the identity and nationality of the vehicles used but also, clearly, on the title giving the carrier the right to use it, which is normally ownership (according to Commission Recommendation No 69/191/EEC of 9 June 1969, point (b), Journal Officiel L 165, 5. 7. 1969, p. 7), with the nationality of the carrier and of the vehicle consequently being the same.

Finally, according to the Italian Government, the quota system weighted in respect of each country pursuant to Article 3 of Regulation No 3164/76 as successively amended, presupposes not only that the carriers holding an authorization be national carriers (the aforesaid Recommendation, point (c)), but that the State of registration should coincide with the State of the carrier and the possibility that the authorization could apply to a vehicle consisting of parts registered in different Member States is out of question.

The Italian Government considers that that is the effect of the provision in Article 1 of the aforesaid Council Directive of 13 May 1965, to which reference is made for purposes of interpretation since it is not applicable in the present case, and which reads as follows:

"Member States shall 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."

B — Further, the Italian Government considers that the examples cited by the Commission in its application to stress the economic importance of the case do not support the Commission's argument.

It observes that in relation to the case of multinational undertakings and pools of trailers which should make it possible to couple parts of vehicles under a single authorization without regard to their registration, that argument would make it possible for multinational transport undertakings or consortiums of undertakings of various nationalities to alter the balance of the national quotas, fixed at Community level, by an appropriate redistribution of the "couplings" and thus affect the respective economic advantages from each journey.

As regards the third example cited by the Commission, namely a sea crossing during the journey with the substitution of the towing vehicle, the Italian Government considers that a change of identity of the vehicle during the "journey" would be contrary to the aforesaid point 4 of Annex II to Regulation No 3164/76.

The Italian Government thus concludes that the Commission's view is incompatible with positive law because it is contrary to the principle of functionality for if it were accepted it would allow each Member State to choose at its own discretion for which part of a coupled combination of vehicles (towing vehicle

or trailer) it would require an authorization; that would lead to various results which would be incompatible with the spirit of Community law.

Finally, according to the Italian Government, the Commission's view applies only as regards a possible alteration in the present Community legislation and not as positive law as is apparent from the fact that the Commission submitted a proposal to the Council to amend the regulation in question so that authorizations would be required only in respect of the towing vehicle (Council document No 12532/80 Official Journal C 350, 31. 12. 1980, p. 18).

3. In its reply the *Commission* observes that the Italian Government's argument is in effect as follows:

When a Member State issues authorizations which form part of its Community quota it can do so only to national carriers:

The State of registration must be the same as the carrier's State, that is to say that the authorized carrier may use his authorization only for vehicles registered in the State of which he is a national which, according to the foregoing, would be the State which issued the authorization.

Accordingly the authorization may not be granted in respect of a vehicle made up of parts registered in different Member States.

The Commission disputes that deductive reasoning with the following arguments.

A — It observes that the criterion for the power of each Member State to grant authorizations is not the nationality of the carrier but his establishment in the territory of the Member State in question.

It cites the wording of Article 2 (6) of Regulation No 3164/76 which provides that "Community authorizations shall, in accordance with the relevant national procedures, be issued by the competent authorities of the Member States, in respect of carriers established in their territory, within the limits of the total number of authorizations allocated to each Member State".

It points out that in support of the argument to the contrary the Italian Government cites the aforementioned Recommendation of 9 June 1969, point (c) of which recommends the Member States:

"If they do not allow their own carriers to use hired vehicles, to allow the holder of a Community authorization from another Member State where such authorization is allowed, to effect carriage by means of hired vehicles throughout their territory under a Community authorization."

The Commission observes that that Recommendation in no way affects the criterion for the power to issue authorizations as defined in Regulation No 3164/76, because its aim is simply to exclude generally (independently of the use of a Community authorization) the application of national provisions which deny carriers holding Community authorizations the right to use hired vehicles.

B — The Commission then observes that the central theme of the Italian Government's case is that according to Regulation No 3164/76 the authoriz-

ation is dependent on the identity of the vehicles and the idea that the nationality of the vehicles used should be the same as that of the carrier holding a Community authorization which he may use only for vehicles registered in the State of which he is a national.

(a) It observes that all the arguments put forward by the Italian Government relate to the identity and not the nationality of the vehicle. To that extent those arguments tend to establish, not so much an obligation to use the authorization for the same vehicle during the year as to use it during a single journey only in respect of one particular vehicle. It maintains that even if those arguments were well founded, they would show at most only that during a given journey the authorization should be used for one particular vehicle and do not support the view that the vehicle must be of a particular nationality.

(b) The Commission then analyses the provisions cited by the Italian Government.

I. It emphasizes that the third subparagraph of Article 2 (3) of Regulation No 3164/76, which defines a vehicle as "a single vehicle or a coupled combination of vehicles", provides no support for the view that the authorization is dependent on the identity and nationality of the vehicles used; what is more, it confirms the flexibility which the Community legislature intended to give the use of the Community authorization and unequivocally excludes the possibility of requiring two authorizations for one vehicle.

II. As regards the second subparagraph of Article 2 (3) which provides that: "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", the Commission agrees with the Italian Government that the rights attaching to the authorization are exhausted during the journey so that the authorization may be used for only one vehicle at a time and not for several, but that does not preclude the vehicle being replaced during a journey because of changes in the load or a breakdown, for example.

III. With regard to point 4 of the General Provisions in Annex II to Regulation No 3164/76 from which the Italian Government draws the conclusion that each vehicle must have a place where it is usually based and a precise identity that cannot change during a journey, the Commission observes that although there is assumed to be a place where a vehicle is usually based, it does not constitute an obligation. Even if there were an obligation it would not be possible to infer that the vehicle had to have a precise identity because the description of a journey contained in that provision is only the description of a standard journey as is apparent from the use of the word "normally" and the note at the foot of the model record sheet contained at letter (e) of Annex II which is worded as follows:

"If the journey did not begin or end at the place where the vehicle is normally based. . ."

In the Commission's view the possibility that an authorization may cover another

vehicle during one journey is confirmed by that model record sheet from which it is apparent that

not only is identification of the vehicle by its registration number not required,

but it contains a Column 2 in which must be shown the type of vehicle used for each stage of the journey (Explanatory Notes under letter (c) of Annex II) which would have no meaning if it were not possible to use different vehicles during one journey.

The Commission thus concludes that according to Regulation No 3164/76 the use of the authorization is unrestricted, it is not dependent on the identity of the vehicle and it is not necessary that the vehicle should be the same during the whole of the journey. It stresses that none of the Italian Government's arguments based on Regulation No 3164/76 relates to the question of the nationality of the vehicle which is the only factor to be taken into account in determining whether it is lawful to require two authorizations where parts of a vehicle having different nationalities are coupled together.

(c) As regards the Italian Government's reference to the aforesaid Commission Recommendation of 9 June 1969 (point 3 (b)) to show the connection between the authorization and ownership of the vehicle as being the right to dispose of it, the Commission observes that in that provision ownership is not regarded as an obligatory factor in a legal sense but as a normal factor in statistical terms so that it is not possible to infer that the authorization covers solely the vehicle or a part thereof registered in the State of the carrier holding the authorization.

(d) As regards Article 1 of the Council Directive of 13 May 1965, also cited by the Italian Government, the Commission observes that that provision relates to bilateral quotas and corresponds to the provisions, in the field of Community quotas, of Article 2 (6) of Regulation No 3164/76.

It explains that the aim of those provisions is to specify the criterion for determining which Member State has jurisdiction to issue authorizations but the criterion is not the same in both cases because under the regulation the State in which the carrier is established is competent whereas under the directive it is the State in which the vehicle is registered. In view of the differences in scope and in the approach adopted by the Community legislature, the Commission believes that the provisions of the directive cannot be transposed to the present case.

The Commission states, however, that the problem raised by the differences between the said provisions is which of the two coupled parts, the towing vehicle or the trailer, determines the State which is competent to issue the authorization, where those parts are registered in different States. It adds that it was for the purpose of providing a uniform solution to that question, and not to amend a rule — which does not in fact exist — requiring two authorizations in the event of coupled parts registered in different Member States that it submitted the above-mentioned proposal (Official

Journal C 350, of 31. 12. 1980, p. 19) to the Council. Finally the Commission states that its proposal was intended also to amend the regulation in order to resolve the actual practical problems confronting the authorities of the Member States.

C — As regards the Italian Government's objections to the examples cited by the Commission to show the effects of the Italian measure in practice, the Commission observes that the argument that under the Commission's interpretation multinational undertakings and trailer pooling arrangements would be able to alter the equilibrium in the quotas allocated by the Council, presupposes that the problem has been resolved and that the quotas are fixed on the basis that the authorizations cover only vehicles, both parts of which are registered in the State issuing the authorization.

Furthermore, the Commission points out that the quotas are fixed on the basis not of the vehicles but of the carriers established in the territory of each State.

As to its third example of transport over a route possibly entailing a sea crossing which according to the Italian Government would be contrary to point 4 in Annex II to Regulation No 3164/76, the Commission observes that the Italian Government assumes that the same authorization is used for the duration of the carriage, but that is not the case because in the example cited for each of the two towing vehicles used in succession, there is a separate authorization and a separate record sheet must be completed for each journey effected.

As regards the Italian Government's argument that the Commission's interpretation is unreasonable inasmuch as it would allow each Member State a discretion in choosing to which of the two parts of the vehicle the authorization should attach, the Commission observes that the problem does not arise in relation to the regulation on the Community quotas because under that regulation each Member State allocates authorizations to carriers established in its territory, but the problem does arise under the aforesaid directive in relation to bilateral quotas.

It repeats that there is indeed a margin of uncertainty which gives rise to different practices which the Commission has sought to harmonize but that does not mean that it is possible to accept the interpretation proposed by the Italian Government which is contrary to the wording of the provisions.

D — Finally, the Commission emphasizes that if there is uncertainty about the interpretation which it proposes of Regulation No 3164/76, a solution should be adopted that consolidates the freedom to provide services, which is one of the foundations of the common market.

It points out that pursuant to Article 59 of the EEC Treaty restrictions on the freedom to provide services had to be abolished during the transitional period, but that Article 61 (1) states that freedom to provide services in the field of transport is to be governed by the provisions of the Title relating to transport.

It observes however that Article 75 (2) states that the provisions referred to in Article 75 (1) (a) and (b) (which concern the freedom to provide services) were to be laid down during the transitional

period and the aim of Regulation No 3164/76 was to reduce restrictions on the freedom to provide services in question.

In view of the fact that the transitional period has long since expired, any doubt about interpretation must be resolved in a way that gives the freedom to provide services as wide a range as is compatible with the provisions in force and therefore confers on the authorizations in question the widest scope possible.

4. The *Italian Government*, in its rejoinder, maintains that the basic and essentially the only problem that must be resolved for the purposes of the present case is whether the Commission's view is correct that the road transport authorization on behalf of a third party issued by a Member State as part of the Community quota puts the carrier holding the authorization in a legal position which is not dependent in any way on the nature, identity and nationality of the vehicle or whether on the contrary what the Italian Government alleges about the identity and nationality of the vehicle is correct because of the inseparable connection between the three factors: authorization, vehicle and journey.

The Italian Government maintains that there is no foundation in the Commission's arguments to the effect that the same authorization may cover, during a single journey, not only changes in the composition of the vehicle but also complete changes of vehicles and that the problem of the identity of the vehicle does not exist so that there is also no problem of its nationality.

According to the Italian Government it is apparent from the combined provisions of Article 2 (3) of Regulation No 3164/76 and point 4 in Annex II thereto that the authorization must be carried on the vehicle during the "journey".

In the Italian Government's view a "journey" can mean nothing other than the movement of a person (or thing) from a point of departure to the point of arrival. If the person (or thing) who leaves is not the same as the person (or thing) who arrives, that does not constitute a journey. It thus maintains that where a series of successive stages is effected under the same authorization by means of different vehicles, there is no journey by a vehicle but at most a journey by the authorization accompanied on the various stages by different vehicles, which is contrary not only to the spirit but also to the wording of the regulation which provides that it is for the vehicle and not the authorization to complete the journey and that it is the authorization which accompanies the vehicle and not the vehicle which accompanies the authorization.

The Italian Government therefore emphasizes that even if the "vehicle" is a composite thing *ex inter se distantibus*, it has its identity which cannot change and a connection which is necessarily only with one country because it is provided that there is a place where the "vehicle is usually based". It considers that that is a concept which with regard to a motor vehicle can mean nothing other than a place in the territory of the State where the vehicle is registered and it is not possible to object, as the Commission does, that the place where the vehicle is usually based is only "normally" required (with the result that there may be exceptions because the limiting word "normally" in point 4 of Annex II refers to the concept of "journey" and there is no ground for assuming that the concept

of "place where the vehicle is usually based" can be subject to exceptions.

The Italian Government contends that its argument is confirmed by the view expressed by the Commission when it presented to the Council the aforementioned proposal for a regulation to amend Regulation No 3164/76, Article 1 of which is worded as follows:

"Regulation (EEC) No 3164/76 is hereby amended as follows:

1. The following is added to Article 2 (3):

'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 Italian Government therefore concludes that according to the Commission's own proposal and contrary to what the latter has maintained in its application and its reply, a problem of determining which of the vehicles is accompanied by the authorization arises also with regard to the Community quota and as the provisions now stand, and that the aforesaid proposal for a regulation amending Regulation No 3164/76 constitutes cogent evidence in support of its interpretation of the proposed regulation and consequently of the existing rules.

IV — Oral procedure

At the sitting on 10 July 1984 the Italian Government, represented by I. F. Caramazza, Avvocato dello Stato, and the Commission of the European Communities, represented by G. Marenco, acting as Agent, presented oral argument and answered questions put by the Court.

The Advocate General delivered his opinion at the sitting on 4 October 1984.

Decision

1 By application lodged at the Court Registry on 17 June 1983, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Italian Republic has failed to fulfil its obligations under Council Regulation (EEC) No 3164/76 of 16 December 1976 on the Community quota for the carriage of goods by road between Member States (Official Journal 1976, L 357, p. 1).

2 Regulation No 3164/76 provides that the Community quota of authorizations, fixed each year by the Council, is to be allocated between the Member States. Each Member State is to issue the authorizations forming part of its share to the carriers established in its territory. Article 2 (1) of the regulation provides that the Community authorizations entitle their holders to effect, over all transport links between the Member States, the carriage of goods by road for hire or reward, with the exception of internal transport operations within the territory of a Member State, and to effect journeys unladen throughout the Community.

3 Article 2 (3) provides that Community authorizations are to be made out "in the name of a carrier", they may not be transferred by the carrier to third parties, each authorization may be used for only one vehicle at a time, it must be carried on the vehicle and produced at the request of any authorized inspecting officer and " 'vehicle' means a single vehicle or a coupled combination of vehicles".

4 Article 5 provides that the Member States are to assist one another with a view to applying the regulation and supervising its implementation.

5 In the exercise of those powers given to each Member State for the purpose of applying and supervising the regulation, when two parts of a coupled combination of vehicles effecting international carriage of goods by road to, from, or passing through Italy are registered in different Member States, the Italian authorities require two authorizations, one for the towing vehicle and one for the trailer.

6 The Commission considered that requirement incompatible with the provisions of Regulation No 3164/76. It maintained that Article 2 entitled holders of Community authorizations to effect the carriage of goods subject to certain conditions and no provision of the regulation made a distinction as to the State of registration of a single vehicle or the parts of a coupled combination of vehicles.

7 The Italian Government advocated a different interpretation of Regulation No 3164/76, arguing that, in providing for a single authorization even in

respect of carriage effected by a coupled combination of vehicles, the regulation covered only cases where the two parts making up the combination belonged to the same undertaking holding the authorization and consequently were registered in one Member State and that it thus did not cover cases where each part of the coupled combination of vehicles was registered in a different Member State. It maintained that Regulation No 3164/76 implicitly recognized a connection between each transport authorization and the State of registration of the vehicles used under that authorization. It basically contended that although the regulation did not expressly refer to registration, it did establish a connection between the authorization and, on the one hand, the identity of the vehicle and, on the other, its owner from which it was to be inferred that it established a connection with the State of registration.

8 The Italian Government admitted that the regulation did not expressly refer either to the identity of the vehicle or its owner. It nevertheless maintained that the importance of those two factors was to be inferred *inter alia* from the interpretation of certain provisions of the regulation in question and its annexes.

9 Thus, according to the Italian Government, the identity of the vehicle, as a condition for the grant of the authorization, was to be inferred from the second subparagraph of Article 2 (3) of Regulation No 3164/76 which provided that "Each authorization may be used for only one vehicle at a time" and that it must "be carried on the vehicle". The same condition was also to be inferred from point 4 of the General Provisions of Annex II referred to in Article 4 of the regulation which required a record sheet for each journey travelled by each vehicle which "starts and finishes at the place where the vehicle is usually based" and for that purpose referred precisely to the "place where the vehicle is usually based".

10 As regards the importance of the owner of the vehicle, the Italian Government maintained that authorizations were issued by each Member State to its nationals even if the wording of Article 2 (6) of the regulation in question referred only to carriers "established in their territory" and consequently concerned vehicles which they owned and which were "naturally" registered in that Member State. It also maintained that point (c) of Commission Recommendation No 69/191/EEC of 9 June 1969 (Journal Officiel 1969, L 165, p. 7) providing that the holder of the authorization could use it for vehicles of which he was the owner, or for vehicles on hire, showed the importance of ownership and consequently of the State of registration of the vehicle. It put forward an argument based on 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 (Official Journal, English Special Edition 1965-1966, p. 64), Article 1 of which provided that authorizations were to be issued by the Member State in which the vehicle was registered. It added that Council Directive 82/50/EEC of 19 January 1982 amending the first Council Directive, of 23 July 1962, on the establishment of common rules for certain types of carriage of goods by road between Member States (Official Journal 1982, L 27, p. 22) concerned cases of the replacement of a vehicle which had become "unserviceable in a Member State other than that in which it is registered".

11 Finally, the Italian Government maintained that the Commission, in its proposal of 15 December 1980 for a regulation amending Regulation No 3164/76, provided that the authorization should in future be issued in respect of the tractor and that it could also be used to cover "haulage of a trailer or semi-trailer ... registered in a different Member State", which would not have been necessary if that rule had already followed from Regulation No 3164/76.

12 The Commission refuted all those arguments. It stated that under the system established by Regulation No 3164/76 the grant of authorizations was not linked to the identity of the owner of a vehicle or the nationality of the holder. More particularly it observed that neither the second subparagraph of Article 2 (3) of the regulation nor point 4 of the General Provisions of Annex II (repealed by Regulation No 3024/77 of 21 December 1977 (Official Journal 1977, L 358, p. 4) imposed conditions for the issue of authorizations but only for their use and that the "place where the vehicle is usually based" was not necessarily the place of registration of the vehicle.

13 It further observed that according to Article 2 (6) of Regulation No 3164/76 authorizations were to be issued by each Member State not to its nationals but to carriers established in its territory. According to the Commission, Recommendation No 69/191 of 9 June 1969, apart from the fact that it concerned not the grant but the use of authorizations, showed that they could also be used for hired vehicles. It stated that Directive 65/269 of 13 May 1965 did not relate to the Community quota but to bilateral quotas

between Member States and that Council Directive 82/50 of 19 January 1982 confirmed its view.

14 Finally the Commission stated that its proposal of 15 December 1980 was intended to resolve the problem which had appeared because in the case of coupled vehicles certain Member States required an authorization issued in the name of the undertaking operating the towing vehicle, whereas others required an authorization in the name of the undertaking operating the trailer and that at the same time as resolving that problem an ancillary clause concerning the problem in the present case was added, the object of which was to clarify Regulation No 3164/76 rather than to amend it.

15 The Commission's view must be accepted. None of the arguments of the Italian Government can be upheld. As the Commission rightly observed, in the system established by Regulation No 3164/76, as is apparent from its provisions, each authorization is issued in the name of a carrier and not for a particular vehicle, so that the holder of the authorization may choose which vehicle to use to effect the carriage and is not bound by any condition as to ownership or the State of registration.

16 It should further be noted that although the second subparagraph of Article 2 (3) of Regulation No 3164/76 provides that "Each authorization may be used for only one vehicle at a time", the third subparagraph of Article 2 (3) expressly provides, without any exception or distinction on the basis of registration, that " 'Vehicle' means a single vehicle or a coupled combination of vehicles", which precludes the requirement of two authorizations for coupled vehicles. Consequently, the argument of the Italian Government based on the Commission's submission of a proposal for a regulation of 15 December 1980 cannot affect that interpretation.

17 It is true that the regulation leaves open the question for which of the two coupled parts the one authorization must be issued. However, that lacuna cannot justify the requirement by a Member State of two authorizations for a coupled combination of vehicles.

18 It is therefore necessary to declare that in requiring two transport authorizations under the Community quota system when a coupled combination of vehicles, consisting of parts registered in two different Member States, effects international carriage by road, the Italian Republic has failed to fulfil its obligations under Council Regulation No 3164/76 of 16 December 1976.

Costs

19 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for. Since the defendant has been unsuccessful it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that in requiring two transport authorizations under the Community quota system when a coupled combination of vehicles, consisting of parts registered in two different Member States, effects international carriage by road, the Italian Republic has failed to fulfil its obligations under Council Regulation No 3164/76 of 16 December 1976;**

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

Mackenzie Stuart Bosco Kakouris

O'Keeffe Everling Galmot Joliet

Delivered in open court in Luxembourg on 13 December 1984.

For the Registrar

D. Louterman
Administrator

A. J. Mackenzie Stuart
President