

JUDGMENT OF THE COURT (First Chamber)

9 September 2004^{*}

In Joined Cases C-184/02 and C-223/02,

ACTIONS for annulment under Article 230 EC

brought on 16 May and 12 June 2002,

Kingdom of Spain, represented initially by R. Silva de Lapuerta and subsequently by N. Díaz Abad, acting as Agents, with an address for service in Luxembourg,

applicant in Case C-184/02,

and

Republic of Finland, represented by T. Pynnä, acting as Agent, with an address for service in Luxembourg,

applicant in Case C-223/02,

^{*} Languages of the case: Spanish and Finnish.

v

European Parliament, represented by M. Gómez-Leal and C. Pennera (C-184/02) and by H. von Herten and G. Ricci (C-223/02), acting as Agents, with an address for service in Luxembourg,

and

Council of the European Union, represented by A. Lopes Sabino and G.-L. Ramos Ruano (C-184/02) and by A. Lopes Sabino and H. Erno (C-223/02), acting as Agents,

defendants,

supported by

Commission of the European Communities, represented by F. Castillo de la Torre and W. Wils (C-184/02) and by M. Huttunen and W. Wils (C-223/02), acting as Agents, with an address for service in Luxembourg,

intervener,

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr, K. Lenaerts (Rapporteur) and K. Schieman, Judges,

Advocate General: C. Stix-Hackl,
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 February 2004,

after considering the observations submitted by the parties,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2004,

gives the following

Judgment

1 By its application the Kingdom of Spain (C-184/02) seeks the annulment of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35, 'the contested directive'). A correction to that application was made on 3 June 2002.

2 By its application the Republic of Finland (C-223/02) seeks the annulment of the contested directive in so far as it concerns self-employed drivers.

- 3 By orders of the President of the Court of 4 October and 7 November 2002 respectively the Commission of the European Communities was granted leave to intervene in support of the forms of order sought by the Parliament and the Council.
- 4 In view of the connection between the two cases, the President of the First Chamber of the Court, by order of 7 January 2004, decided to join Cases C-184/02 and C-223/02 for the purposes of the oral procedure and the judgment, in accordance with Article 43 of the Court's Rules of Procedure.

Legal background

- 5 On 20 December 1985 the Council adopted Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1). That regulation, applicable to employed and self-employed drivers, essentially regulates driving time and rest periods in road transport.
- 6 On 23 November 1993 the Council adopted Directive 93/104/EC concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18). That directive regulates minimum periods of daily rest, weekly rest and annual leave, breaks and maximum weekly working time, and certain aspects of night work, shift work and patterns of work.

- 7 The road transport sector, which was originally excluded from the scope of Directive 93/104, was brought within that scope by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive (OJ 2000 L 195, p. 41). Under that amending directive, the provisions of Directive 93/104 on daily and weekly rest periods, breaks and the duration of night work do not, however, apply to mobile workers.
- 8 In 2002 the contested directive was adopted. According to Article 1, its purpose is 'to establish minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons performing mobile road transport activities and to improve road safety and align conditions of competition'.
- 9 Article 2 of the contested directive, on its scope, provides as follows in paragraph 1:

'This Directive shall apply to mobile workers employed by undertakings established in a Member State, participating in road transport activities covered by Regulation (EEC) No 3820/85 or, failing that, by the AETR Agreement.

Without prejudice to the provisions of [the] following subparagraph, this Directive shall apply to self-employed drivers from 23 March 2009.

At the latest two years before this date, the Commission shall present a report to the European Parliament and the Council. This report shall analyse the consequences of the exclusion of self-employed drivers from the scope of the Directive in respect of road safety, conditions of competition, the structure of the profession as well as social aspects. The circumstances in each Member State relating to the structure of the transport industry and to the working environment of the road transport profession shall be taken into account. On the basis of this report, the Commission shall submit a proposal, the aim of which may be either, as appropriate

— to set out the modalities for the inclusion of the self-employed drivers within the scope of the Directive in respect of certain self-employed drivers who are not participating in road transport activities in other Member States and who are subject to local constraints for objective reasons, such as peripheral location, long internal distances and a particular competitive environment, or

— not to include self-employed drivers within the scope of the Directive.’

¹⁰ Article 3 of the contested directive defines the terms ‘working time’, ‘periods of availability’, ‘workstation’, ‘mobile worker’, ‘self-employed driver’, ‘person performing mobile road transport activities’, ‘week’, ‘night time’ and ‘night work’.

11 In Article 3(a) of the contested directive, 'working time' is defined as follows:

'1. in the case of mobile workers: the time from the beginning to the end of work, during which the mobile worker is at his workstation, at the disposal of the employer and exercising his functions or activities, that is to say:

— the time devoted to all road transport activities. These activities are, in particular, the following:

(i) driving;

(ii) loading and unloading;

(iii) assisting passengers boarding and disembarking from the vehicle;

(iv) cleaning and technical maintenance;

(v) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including

monitoring of loading and unloading, administrative formalities with police, customs, immigration officers etc.,

- the times during which he cannot dispose freely of his time and is required to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States;

2. in the case of self-employed drivers, the same definition shall apply to the time from the beginning to the end of work, during which the self employed driver is at his workstation, at the disposal of the client and exercising his functions or activities other than general administrative work that is not directly linked to the specific transport operation under way.

...'

- 12 In the first indent of Article 3(e) of the contested directive, 'self-employed driver' is defined as 'anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out the aforementioned transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customers'.

- 13 The contested directive regulates essentially the maximum weekly working time (Article 4), breaks (Article 5), rest periods for apprentices and trainees (Article 6), and night work (Article 7).

Admissibility of the application in Case C-184/02

- 14 The Parliament and the Council contest the admissibility of the application in this case. They submit that the Parliament is not designated as a defendant in the application, although the contested directive is a directive adopted by those two institutions in accordance with the procedure under Article 251 EC. They also observe that in the application costs are applied for against the Council alone.
- 15 They then say that it follows from the first paragraph of Article 21 of the EC Statute of the Court read together with Article 38(1)(b) and (7) of the Rules of Procedure that the failure to mention the Parliament as a defendant is not a mere clerical error and cannot be cured. In those circumstances, they do not accept that the letter addressed to the Court Registry by the Kingdom of Spain after the lodging of the application, adding the Parliament as a defendant, allows the action to be regarded as admissible.
- 16 It must be observed that the correction made by the Kingdom of Spain after the lodging of its application, designating the Parliament and the Council as defendants, was made within the period for bringing an action.
- 17 In any event, the identification in the original version of the application of Directive 2002/15 'of the European Parliament and of the Council' as the subject of the action for annulment amounts to the — implied but certain — designation of both the

Parliament and the Council as defendants and leaves no doubt that the applicant's intention from the outset was to bring the action against those two institutions. The correction mentioned in the preceding paragraph must, in those circumstances, be regarded as a clarification, not as an amendment or putting in order of the application relating to an element mentioned in Article 38(1) of the Rules of Procedure.

18 It follows that the application in Case C-184/02 is admissible.

Admissibility of the application in Case C-223/02

19 The Parliament and the Commission contest the admissibility of the application in this case, alleging a failure, contrary to the requirements of Article 38(1) of the Rules of Procedure, to specify the subject-matter of the proceedings and the form of order sought in the application. The Parliament points out that the Republic of Finland does not expressly identify the provisions of the contested directive which it seeks to have annulled. The Commission submits that the Republic of Finland does not state in the application whether it seeks annulment of all the provisions referred to in point 2 of the application, of some of those provisions, or of some words in those provisions.

20 However, it is clear without ambiguity from the application that the subject-matter of the action is the contested directive in so far as it concerns self-employed drivers as defined in Article 3(e) and that the form of order sought by the Republic of Finland seeks the annulment of that directive to that extent.

- 21 The list in point 2 of the application of the items in the contested directive that contain a specific allusion to self-employed drivers, namely the eighth recital in the preamble and the provisions of Article 2(1) and Article 3(a)(2), (e) and (f) of the directive, contributes to delimiting with all necessary precision the subject-matter of the present action for annulment.
- 22 It follows that the application in Case C-223/02 is admissible.

Substance

- 23 In support of their claims for annulment, the applicants put forward pleas in law some of which are common to both actions and some specific to one of them, alleging *ultra vires*, infringements of the freedom to pursue an occupation and the freedom to conduct a business, breach of the principle of proportionality, the fact that the subject-matter of the contested directive is not road safety, breaches of the principle of non-discrimination and of Article 74 EC, breach of Articles 137(2) EC and 157 EC, and failure to state reasons.

Plea of ultra vires

- 24 The Republic of Finland submits that neither Article 71 EC nor Article 137(2) EC confers power on the Community to regulate the working time of self-employed drivers.

25 As regards Article 71 EC, it claims that the contested directive regulates the use of time of self-employed drivers to an extent that goes well beyond the objectives of road safety and alignment of conditions of competition covered by that article. With respect to the objective of road safety, it submits that the contested directive regulates not only the driving time but also the total working time of self-employed drivers, although it has not been shown that transport-related activities other than driving constitute risk factors for road safety. With respect to the objective of aligning conditions of competition, it submits that that objective also cannot justify the inclusion of self-employed drivers in the scope of the contested directive, since, first, the recitals in the preamble to that directive do not make it possible to measure its actual effects on conditions of competition and, second, the provisions of that directive are liable rather to increase distortions of competition by disadvantaging small and medium-sized undertakings.

26 As regards Article 137(2) EC, the Republic of Finland submits that that provision does not authorise the Community to adopt measures concerning the working time of self-employed persons.

27 The Court notes that the contested directive is based on Articles 71 EC and 137(2) EC.

28 It is apparent from Article 71(1) EC that, for the purpose of implementing a common transport policy, and taking into account the distinctive features of transport, the Council, acting in accordance with the co-decision procedure referred to in Article 251 EC, is competent to lay down inter alia 'measures to improve transport safety' (indent (c)) and 'any other appropriate provisions' (indent (d)).

- 29 According to settled case-law, in giving the Council the task of adopting a common transport policy, the Treaty confers wide legislative powers on it as regards the adoption of appropriate common rules (Case 97/78 *Schumalla* [1978] ECR 2311, paragraph 4, and Joined Cases C-248/95 and C-249/95 *SAM Schiffahrt and Stapf* [1997] ECR I-4475, paragraph 23).
- 30 It is also apparent from the clear wording of Article 71(1)(c) EC and from the explanations given by the Court on the concept of 'other appropriate measures' in Article 71(1)(d) EC (*Schumalla*, paragraph 6) that, on the basis of Article 71 EC, the Community legislature is entitled, as the Republic of Finland moreover acknowledges, to adopt common provisions to improve road safety and eliminate national disparities liable to cause substantial distortion to conditions of competition in the transport sector.
- 31 The Republic of Finland objects, however, that the provisions of the contested directive concerning self-employed drivers, contrary to what is stated in Article 1 of the directive, do not contribute to the objectives of road safety and alignment of conditions of competition covered by Article 71 EC.
- 32 The merits of that argument must be examined.
- 33 With respect, first, to the objective of road safety, Article 3(a)(2) of the contested directive defines the periods of occupational activity to be regarded as working time in the case of self-employed drivers. Taken together with the provisions of Article 4 of that directive on maximum weekly working time, that definition places a ceiling on the number of hours a self-employed driver may devote each week to activities

directly linked to road transport. In order to ensure compliance with that weekly limit, Article 9 of the contested directive requires a record of working time to be kept. Article 5 of the directive fixes, moreover, for self-employed drivers too, the frequency and minimum length of breaks.

34 The measures set out in the preceding paragraph aim to confine within reasonable limits the weekly rhythm of work of a self-employed driver, as regards activities that may have a bearing on his driving because of their effect on his state of tiredness, and to impose on him minimum periods of rest. They thus undeniably aim to improve road safety, which, contrary to the assertions of the Republic of Finland, is liable to be jeopardised not only by periods of driving which are too long but also by an excessive accumulation of activities other than driving, such as those listed in points (ii) to (v) of the first indent of Article 3(a)(1) of the contested directive, which are directly linked to a road transport operation (see, to that effect, Case C-394/92 *Michielsen and GTS* [1994] ECR I-2497, paragraph 14, and Case C-297/99 *Skills Motor Coaches and Others* [2001] ECR I-573, paragraphs 24 and 25).

35 The contested directive also envisages, in Article 7, that self-employed drivers are to be subject to the restrictions it lays down concerning the length of night work. In view of the particular effects which night work is liable to have on the human body, the state of tiredness of the road transport worker, and hence his driving, such a measure also aims to improve road safety.

36 It must therefore be considered that the regulation of the working time of self-employed drivers envisaged by the contested directive pursues an objective of road safety. As the Parliament and the Commission rightly observe, that regulation is a useful supplement to the provisions of Regulation No 3820/85, which concern only one of the factors compromising road safety, namely the performance by the road transport worker of excessively long periods of driving.

- 37 The above analysis cannot be called into question by the circumstance adduced by the Kingdom of Spain that the third subparagraph of Article 2(1) of the contested directive provides that, with a view to fixing the definitive status of self-employed drivers with respect to the directive, the Commission is to present a report to the Parliament and the Council by 23 March 2007 at the latest concerning in particular the consequences for road safety of the current exclusion of self-employed drivers from the scope of that directive.
- 38 As the Parliament stated in its pleadings, and as was confirmed at the hearing by the various institutions, that provision is the result of a compromise in the Council on the Commission's proposal under which those drivers were to be subjected immediately to the contested directive 'for reasons mainly associated with road safety' (see points 4 and 5 of the communication from the Commission to the European Parliament and Council of 21 June 2000 entitled 'Towards a safer and more competitive high-quality road transport system in the Community', COM (2000) 364 final). It is not capable of rendering unfounded the considerations relating to the effects of performing excessively long periods of road transport activities and of night work on the driver's state of tiredness and hence on his driving. Consequently, it is not capable of invalidating the conclusion that the objective of road safety fully justifies the regulation of the working time of self-employed drivers envisaged by the contested directive.
- 39 With respect, next, to the objective of aligning conditions of competition, the provisions of the contested directive set out in paragraphs 33 and 35 above are intended to coordinate national laws on essential aspects of the time spent by self-employed drivers on their road transport activities. They contribute on that basis to the elimination in those respects of disparities between Member States liable to distort competition in the trade of self-employed carrier by road.

40 Moreover, it has been held that common provisions which, like those set out in paragraphs 33 and 35 above, aim to improve road safety cannot but contribute to the elimination of disparities liable to cause substantial distortion to conditions of competition in the transport sector and thus prove ‘appropriate’ within the meaning of Article 71(1)(d) EC for establishing a common transport policy (see *Schumalla*, paragraph 6).

41 In the light of the above, it must be concluded that the regulation of the working time of self-employed drivers envisaged by the contested directive is such as to contribute to realising the objectives of road safety and alignment of conditions of competition set out in Article 1 of that directive. It follows that Article 71 EC offers a legal basis which is appropriate and sufficient for the application of the contested directive to that category of carriers by road.

42 With respect to Article 137(2) EC, it must be observed that the legislative procedure provided for in that provision for the adoption of measures for the improvement of the working environment to protect workers’ health and safety is the same as that provided for in Article 71 EC.

43 Having recourse to Article 137(2) EC as a secondary legal basis of the contested directive thus, in any event, had no effect on the procedure followed for its adoption.

44 In those circumstances, there is no need to rule on whether Article 137(2) EC also provides an appropriate legal basis for the measures envisaged by the contested directive as regards self-employed drivers (see also Case C-491/01 *British American*

Tobacco (Investments) and Imperial Tobacco [2002] ECR I-11453, paragraph 98, and, *a contrario*, Case C-300/89 *Commission v Council ('Titanium dioxide')* [1991] ECR I-2867, paragraphs 18 to 21).

45 This plea in law must accordingly be rejected.

Pleas of infringement of the freedom to pursue an occupation and the freedom to conduct a business, breach of the principle of proportionality, and the fact that the subject of the contested directive is not road safety

46 The Kingdom of Spain submits, first, that the inclusion of self-employed drivers in the scope of the contested directive has the effect of preventing self-employed carriers by road from devoting all their time and effort to the prosperity of their undertaking and constitutes an impermissible infringement of their freedom to pursue an occupation and their freedom to conduct a business.

47 The Kingdom of Spain submits, second, that, contrary to what is said in the fourth and tenth recitals in the preamble to and in Article 1 of the contested directive, the objective of road safety cannot be achieved by that directive, which is social legislation whose sole object is to improve the living and working conditions of road transport workers. It submits that while there is indeed justification for regulating the working time of employees, in view of their subordinate position as regards their employer, no such need for protection exists for self-employed workers, who must remain free to organise their activities as they wish.

48 The Republic of Finland submits, first, that the inclusion of self-employed drivers in the scope of the contested directive constitutes a breach of the principle of proportionality. It submits that the objective of protection of persons is no justification for regulating the working time of those drivers; that the objective of road safety is already taken into consideration by Regulation No 3820/85 and would be served just as effectively and with less interference with the freedom to pursue an occupation by stricter supervision of compliance with that regulation; and that the contested directive does not specify to what extent it could contribute to realising the objective of aligning conditions of competition.

49 The Republic of Finland argues, second, that the subjection of self-employed drivers to the contested directive breaches the principle of the freedom to pursue an occupation, under which an operator must be able to decide freely on the amount and the organisation of the working time he intends to devote to his business activities. It asserts that, as regards self-employed drivers, the directive regulates a number of activities other than driving and requires them to keep a record of working time, which constitutes an impermissible interference with their right to organise their activities freely.

50 It should be pointed out, as a preliminary point, that at the hearing the Kingdom of Spain explained that its plea, referred to in paragraph 47 above, that the contested directive does not have road safety as its object is directed against that directive's disproportionate interference with the freedom self-employed drivers must enjoy in the organisation of their occupational activities. That plea thus merges with the Kingdom of Spain's plea of breach of the freedom to pursue an occupation and the freedom to conduct a business.

51 Freedom to pursue an occupation is one of the general principles of Community law (Case C-177/90 *Kühn* [1992] ECR I-35, paragraph 16; Case C-280/93 *Germany v*

Council [1994] ECR I-4973, paragraph 78; and *SAM Schiffahrt and Stapf*, paragraph 72). The same is true of freedom to conduct a business, which coincides with freedom to pursue an occupation (Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraphs 72 to 77).

- 52 Those freedoms are not absolute rights, however, but must be considered in relation to their social function. Consequently, restrictions may be imposed on their exercise, provided that the restrictions correspond to objectives of general interest and do not constitute in relation to the aim pursued a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see inter alia Case C-200/96 *Metronome Musik* [1998] ECR I-1953, paragraph 21).
- 53 In the present case, the regulation of the working time of self-employed drivers envisaged by the contested directive is intended to improve road safety (see paragraphs 33 to 36 above) and consequently corresponds to an objective of general interest (see Case C-55/93 *Van Schaik* [1994] ECR I-4837, paragraph 19, and Case C-314/98 *Snellers* [2000] ECR I-8633, paragraph 55).
- 54 As the Advocate General observes in paragraphs 112 to 116 of her Opinion, while that regulation does interfere with the way in which the occupation of self-employed driver is pursued, it does not affect the very existence of the freedom to pursue that occupation.
- 55 Moreover, as the Parliament and the Commission point out, the contested directive draws a clear distinction, as regards self-employed drivers, between on the one hand activities directly linked to road transport, such as those listed in Article 3(a)(1) of

the directive, which are the subject of the measures of organisation of working time introduced by the directive, and on the other hand 'general administrative work that is not directly linked to the specific transport operation under way', referred to in Article 3(a)(2), which is not concerned by the directive.

- 56 In view of the wide discretion it enjoys in adopting appropriate measures for a common transport policy (see *SAM Schiffahrt and Stapf*, paragraphs 23 to 25), the Community legislature was able to consider that measures intended to lay down rules governing the time spent on activities directly linked to road transport, without encroaching on the freedom of a driver who has chosen to be self-employed to organise the general work inherent in that status as he wishes, constitute measures which are appropriate and reasonable in relation to the objective of road safety.
- 57 As to the principle of proportionality, it is settled case-law that that principle, which is one of the general principles of Community law, requires that the measures concerned should not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question, and that where there is a choice between several appropriate measures recourse must be had to the least onerous (see inter alia Case C-101/98 *UDL* [1999] ECR I-8841, paragraph 30, and Joined Cases C-27/00 and C-122/00 *Omega Air and Others* [2002] ECR I-2569, paragraph 62).
- 58 In the present case, the considerations set out in paragraphs 54 to 56 above lead to the conclusion that the provisions of the contested directive relating to self-employed drivers, which aim to ensure that they do not adopt, as regards activities directly linked to road transport, a pattern of working liable to jeopardise road safety, without interfering with their freedom to organise their general administrative work as they think most in accordance with their interests, do not infringe the principle of proportionality.

- 59 It should be added that, contrary to the submissions of the Republic of Finland, stricter enforcement of the restrictions on driving time laid down by Regulation No 3820/85 cannot be regarded as an equally effective and less restrictive solution than the provisions at issue. This would be of no assistance in confining within reasonable limits the duration of working time devoted by a self-employed driver to activities other than driving that are directly linked to road transport and are liable to have a bearing on his state of tiredness and his driving, to the detriment of road safety.
- 60 In the light of the foregoing, the regulation of the working time of self-employed drivers envisaged in the contested directive cannot be regarded as a disproportionate and intolerable interference impairing the very substance of the freedom to pursue an occupation and the freedom to conduct a business, or as a breach of the principle of proportionality.
- 61 It follows that these pleas must be rejected in their entirety.

Plea of breaches of the principle of non-discrimination and of Article 74 EC

- 62 The Kingdom of Spain submits that, as a result of their inclusion in the scope of the contested directive, self-employed carriers suffer unjustified discrimination in comparison with employed workers, since situations which are entirely different are treated in the same way although there is no objective justification for this. It also submits that that inclusion infringes the provisions of Article 74 EC.

63 The Kingdom of Spain adds that road safety and the ensuring of free competition do not constitute objective reasons capable of justifying self-employed drivers being treated in the same way as employed workers. In its view, first, road safety is not the objective of the contested directive and, second, the exclusion of self-employed drivers from the scope of that directive is not liable to distort competition in the transport market, in view in particular of the limits on driving time laid down by Regulation No 3820/85.

64 It is settled case-law that the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified (see inter alia *Omega Air and Others*, paragraph 79, and Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraph 126).

65 In the present case, it must be noted that, with respect to the organisation of their working time, to which the contested directive relates, self-employed and employed drivers are not in the same situation. The former must, in addition to activities directly linked to road transport, take on general administrative work which does not concern the latter.

66 A reading of the provisions of Article 3(a) of the contested directive which concern the definition of working time in the cases of employed mobile workers and self-employed drivers respectively shows that the Community legislature took account of that difference of situation. With respect to employed workers, the directive regulates the whole of their working time, namely the time devoted to road transport activities as listed in the first indent of Article 3(a)(1) and also 'the times during which [the mobile worker] cannot freely dispose of his time and is required to be at his workstation, ready to take up normal work, with certain tasks associated with

being on duty ...' (second indent of Article 3(a)(1)). With respect to self-employed drivers, it confines itself to regulating the part of their activities which they have in common with employed workers, namely the road transport activities mentioned above, while excluding from its scope the activities, peculiar to the status of self-employed worker, corresponding to the 'general administrative work that is not directly linked to the specific transport operation underway' (Article 3(a)(2)).

67 Moreover, it must be emphasised that activities linked to road transport mean the same thing for employed and self-employed drivers, and in both cases cover not only driving but also a number of other activities directly linked to road transport, such as loading and unloading, assisting passengers boarding and disembarking from the vehicle, cleaning and technical maintenance, and all work intended to ensure the safety of the vehicle, its cargo and passengers and to fulfil legal or regulatory obligations (administrative and customs formalities etc.). Consequently, the argument of the Kingdom of Spain that the contested directive obliges only self-employed drivers to count activities other than driving towards their working time, and thus places employed workers in a more favourable position than self-employed drivers as regards attribution of the permitted length of working time to the driving time allowed by Regulation No 3820/85, is unfounded.

68 Finally, while accepting that the contested directive must be regarded as a measure taken 'in respect of transport rates and conditions' within the meaning of Article 74 EC, the analysis in paragraphs 54 to 56 above and the conditions under which it is envisaged, in Article 2(1) of that directive, that self-employed drivers are to be

included within its scope mean that the Community legislature did not fail to fulfil its obligation to take into account the economic circumstances of carriers, in this case self-employed ones.

Plea of breach of Articles 137(2) EC and 157 EC

69 The Republic of Finland states that the limits on working time in the contested directive burden mainly small and medium-sized undertakings, which, unlike large undertakings, do not have the human resources needed to carry out a division of tasks which would allow drivers to make use of the entire driving time permitted by that directive while other employees took on, free of any limitations on working time under that directive, the activities other than driving vehicles. It therefore concludes that there has been a breach of Article 137(2) EC.

70 It further submits that the limitation of the working time of self-employed drivers inhibits the development of small undertakings, since to the risks inherent in any business it adds unjustified restrictions of the freedom to devote the time desired to the management of the business, which runs counter to the objective of the competitiveness of European industry stated in Article 157 EC. It asserts that application of the contested directive to self-employed drivers is likely to have the effect of strengthening the position of large transport undertakings, weakening competition and reducing the possibilities of employment in small and medium-sized undertakings.

71 It should be observed, as regards Article 137(2) EC, that the Republic of Finland refers in particular to the provision in the second sentence of indent (b) of the first subparagraph, under which directives based on Article 137(2) and aimed at the

protection of workers' health and safety within the meaning of Article 137(1)(a) must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

72 While acknowledging that the provisions of the contested directive relating to self-employed drivers, the only ones challenged in the present case, are based on Article 137(2) EC as well as on Article 71 EC, it must be pointed out that the provision of the EC Treaty referred to in the preceding paragraph indeed means that the particular economic interests of small and medium-sized undertakings are to be taken into account when measures falling under Article 137(1)(a) EC are adopted, but does not preclude those undertakings from being the subject of binding measures (see, with respect to the second subparagraph of Article 118(2) of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 44).

73 The regulation of the working time of self-employed drivers envisaged by the contested directive expresses, as explained in paragraphs 53 to 56 above, a balanced consideration of the objective of road safety on the one hand and the particular features of the status of self-employed worker linked to the general administrative work of his business on the other. In those circumstances, it cannot be regarded as imposing constraints such as to hold back the creation and development of small and medium-sized undertakings.

74 Article 157 EC for its part provides that, to ensure that the conditions necessary for the competitiveness of the Community's industry exist, action taken by the Community as part of its industrial policy or under other provisions of the Treaty must inter alia encourage an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings.

75 In the present case, however, in addition to what has been stated in paragraph 73 above, it is clear that the Republic of Finland's argument that there has been an infringement of Article 157 EC is based in part on the premiss, which is incorrect in view of the exclusion of general administrative work from the definition of the working time of self-employed drivers, that the contested directive aims to regulate the time devoted by those drivers to the general management of the business, and in part on pure conjecture as to the supposed impact that directive may be expected to have on the respective positions of large undertakings and small and medium-sized ones.

76 This plea must accordingly be rejected.

Pleas of failure to state reasons

77 The Kingdom of Spain submits that the inclusion of self-employed drivers in the scope of the contested directive is not based on any proper justification. It complains of the lack of logic and precision in the eighth recital in the preamble to the directive and points to the absence of solid reasoning on the part of the legislature. It adds that, in view of the exceptional nature of the introduction of limits on the time devoted by a self-employed operator to the pursuit of his activities, such a measure requires a more detailed statement of reasons than the brief summary in that recital.

78 The Republic of Finland submits that the Parliament and the Council failed to comply with the requirement to give reasons, since the preamble to the contested directive does not specify the distortions of competition it purports to abolish or the means adopted for that purpose. It adds that the directive, without going so far as to

state reasons for every technical choice made by the legislature, should at least have identified, with respect to each aim pursued, the existing problems and the means envisaged for eliminating them, in view in particular of the directive's interference with the freedom to conduct a business.

79 It must be pointed out, however, that the considerations concerning the gaps in the existing legislation, set out in the first and second recitals in the preamble to the contested directive, and the general objectives of road safety and harmonisation of conditions of competition, identified in the fourth, tenth and eleventh recitals in that preamble, also concern self-employed drivers and are therefore sufficient from the point of view of the requirements defined in the case-law for measures of general application (see Case C-150/94 *United Kingdom v Council* [1998] ECR I-7235, paragraphs 25 and 26, and Case C-168/98 *Luxembourg v Parliament and Council* [2000] ECR I-9131, paragraphs 62 and 66) to justify the possible future application of the directive to that class of persons performing mobile transport activities.

80 Moreover, as the Parliament and the Commission rightly observe, the Kingdom of Spain and the Republic of Finland were, by taking part in the work of the Council, directly involved in the process of drawing up the contested directive, and are therefore aware of the reasons which formed the basis of the provisions of that directive relating to self-employed drivers (see, to that effect, Case C-54/91 *Germany v Commission* [1993] ECR I-3399, paragraph 11).

81 It follows that these pleas must be rejected.

82 In the light of the foregoing, the applications must be dismissed in their entirety.

Costs

- 83 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Kingdom of Spain and the Republic of Finland have been unsuccessful, they must be ordered, in accordance with the pleadings of the Parliament and the Council, to bear their own costs and pay those of the defendant institutions. Under Article 69(4) of the Rules of Procedure, institutions which intervene in a case are to bear their own costs. The Commission, which has intervened, must therefore bear its own costs.

On those grounds, the Court (First Chamber) hereby:

- 1. Dismisses the actions;**

- 2. Orders the applicants to bear their own costs and pay those of the defendants;**

- 3. Orders the Commission to bear its own costs.**

Signatures.