

## Excerpt from the Judgment of the Court of Justice, AETR, in Case 22/70 (31 March 1971)

**Caption:** It follows from recital 87 of this Judgment that, in a situation such as that concerning the negotiation of the European Agreement on Road Transport (AETR), 'it was for the two institutions whose powers were directly concerned, namely, the Council and the Commission, to reach agreement, in accordance with Article 15 of the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities, on the appropriate methods of cooperation with a view to ensuring most effectively the defence of the interests of the Community.'

**Source:** Reports of Cases before the Court. 1971. [s.l.]. "Judgment of 31 March 1971, Commission of the European Communities v Council of the European Communities, Case 22/70", auteur:Court of Justice of the European Communities (CJEC) , p. 263.

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**Last updated:** 26/10/2016

## Judgment of the Court of 31 March 1971 <sup>1</sup>

### Commission of the European Communities v Council of the European Communities <sup>2</sup>

#### Case 22/70

#### Summary

1. *EEC — Legal personality — External relations — Capacity of the Community to conclude agreements with third countries (EEC Treaty, Article 210)*
2. *Powers of the Community — Common policy — Implementation — Transport — Social measures — International agreements — Authority conferred by a regulation (EEC Treaty, Articles 74 and 75; Regulation No 543/69 of the Council)*
3. *Procedure — Application for annulment — Act open to judicial review — Proceedings of the Council intended to have legal effects — Admissibility of the application (EEC Treaty, Articles 164, 173 and 189)*
4. *Procedure — Legal interest — Object of the application for annulment — Effect of the annulment with regard to an act of the Council (EEC Treaty, Article 174)*
5. *International agreements — Transport — Distribution of powers amongst the institutions (EEC Treaty, Articles 75 and 228)*
6. *International agreements — Conferment of powers in the course of negotiations entered into by the Member States — Situation to be assessed by the institutions concerned — Need for agreement between the Council and the Commission — Joint action by the Member States in the interests of the Community (EEC Treaty, Article 5; Treaty establishing a Single Council and a Single Commission, Article 15)*
7. *Objectives of the Community — Attainment — Absence of necessary powers — Powers of the Council — Exercise in external relations — Optional nature (EEC Treaty, Article 235)*
8. *Measures: adopted by an institution — Category not covered by Article 189 — Statement of reasons — Absence may not be invoked by the Commission (EEC Treaty, Article 190)*

[...]

In Case 22/70

COMMISSION OF THE EUROPEAN COMMUNITIES represented by Gérard Olivier, Assistant Director-General of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by Ernst Wohlfart, Legal Adviser to the Council and Director-General of its General-Secretariat, acting as Agent, assisted by Jean-Pierre Puissochet, Director of the General-Secretariat of the Council, with an address for service in Luxembourg at the office of J. N. Van den Houten, Director of the Legal Department of the European Investment Bank, 2 place de Metz,

defendant,

Application for the annulment of the proceedings of the Council of 20 March 1970, relating to the negotiation and conclusion by the Member States of the EEC of the European Agreement concerning the

work of crews of vehicles engaged in international road transport,

## THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges,

Advocate-General: A. Dutheillet de Lamothe

Registrar: A. Van Houtte

gives the following

### JUDGMENT

#### Issues of fact and of law

[...]

#### Grounds of judgment

[...]

(a) Submission relating to infringement of Articles 75 and 228

69 The Commission claims that in view of the powers vested in the Community under Article 75, the AETR should have been negotiated and concluded by the Community in accordance with the Community procedure defined by Article 228 (1).

70 Although the Council may, by virtue of these provisions, decide in each case whether it is expedient to enter into an agreement with third countries, it does not enjoy a discretion to decide whether to proceed through intergovernmental or Community channels.

71 By deciding to proceed through inter-governmental channels it made it impossible for the Commission to perform the task which the Treaty entrusted to it in the sphere of negotiations with third countries.

72 In the absence of specific provisions in the Treaty applicable to the negotiation and implementation of the agreement under discussion, the appropriate rules must be inferred from the general tenor of those articles of the Treaty which relate to the negotiations undertaken on the AETR.

73 The distribution of powers between the Community institutions to negotiate and implement the AETR must be determined with due regard both to the provisions relating to the common transport policy and to those governing the conclusion of agreements by the Community.

74 By the terms of Article 75 (1), it is a matter for the Council, acting on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly, to lay down the appropriate provisions, whether by regulation or otherwise, for the purpose of implementing the common transport policy.

75 According to Article 228 (1), where agreements have to be concluded with one or more third countries or an international organization, such agreements are to be negotiated by the Commission and concluded by the Council, subject to any more extensive powers which may have been vested in the Commission.

76 As a subsidiary point, since the negotiations took place under the auspices of the United Nations Economic Commission for Europe, the first paragraph of Article 116 has also to be taken into account. By

the terms of that paragraph, from the end of the transitional period onwards, Member States shall 'proceed within the framework of international organizations of an economic character only by common action', the implementation of such common action being within the powers of the Council, basing its decisions on proposals submitted by the Commission.

77 If these various provisions are read in conjunction, it is clear that wherever a matter forms the subject of a common policy, the Member States are bound in every case to act jointly in defence of the interests of the Community.

78 This requirement of joint action was in fact respected by the proceedings of 20 March 1970, which cannot give rise to any criticism in this respect.

79 Moreover, it follows from these provisions taken as a whole, and particularly from Article 228 (1), that the right to conclude the agreement was vested in the Council.

80 The Commission for its part was required to act in two ways, first by exercising its right to make proposals, which arises from Article 75 (1) and the first paragraph of Article 116, and, secondly, in its capacity as negotiator by the terms of the first subparagraph of Article 228 (1).

81 However, this distribution of powers between institutions would only have been required where negotiations were undertaken at a time when the vesting of powers in the Community had taken effect, either by virtue of the Treaty itself or by virtue of measures taken by the institutions.

82 In this connexion it must be borne in mind that an earlier version of the AETR had been drawn up in 1962, at a period when, because the common transport policy was not yet sufficiently developed, power to conclude this agreement was vested in the Member States.

83 The stage of negotiations of which the proceedings in question formed part was not aimed at working out a new agreement, but simply at introducing into the version drawn up in 1962 such modifications as were necessary to enable all the contracting parties to ratify it.

84 The negotiations on the AETR are thus characterized by the fact that their origin and a considerable part of the work carried out under the auspices of the Economic Commission for Europe took place before powers were conferred on the Community as a result of Regulation No 543/69.

85 It appears therefore that on 20 March 1970 the Council acted in a situation where it no longer enjoyed complete freedom of action in its relations with the third countries taking part in the same negotiations.

86 At that stage of the negotiations, to have suggested to the third countries concerned that there was now a new distribution of powers within the Community might well have jeopardized the successful outcome of the negotiations, as was indeed recognized by the Commission's representative in the course of the Council's deliberations.

87 In such a situation it was for the two institutions whose powers were directly concerned, namely, the Council and the Commission, to reach agreement, in accordance with Article 15 of the Treaty of April 1965 establishing a Single Council and a Single Commission of the European Communities, on the appropriate methods of cooperation with a view to ensuring most effectively the defence of the interests of the Community.

88 It is clear from the minutes of the meeting of 20 March 1970 that the Commission made no formal use of the right to submit proposals open to it under Articles 75 and 116.

89 Nor did it demand the simple application of Article 228 (1) in regard to its right of negotiation.

90 It may therefore be accepted that, in carrying on the negotiations and concluding the agreement

simultaneously in the manner decided on by the Council, the Member States acted, and continue to act, in the interest and on behalf of the Community in accordance with their obligations under Article 5 of the Treaty.

91 Hence, in deciding in these circumstances on joint action by the Member States, the Council has not failed in its obligations arising from Articles 75 and 228.

92 For these reasons, the submission must be rejected.

[...]

On those grounds,

[...]

THE COURT

hereby:

**1. Dismisses the application;**

**2. Orders the parties to bear their own costs.**

Lecourt  
Donner  
Trabucchi  
Monaco  
Mertens de Wilmars  
Pescatore  
Kutscher

Delivered in open court in Luxembourg on 31 March 1971.

A. Van Houtte  
Registrar  
R. Lecourt  
President

1 — Language of the Case: French.

2 — CMLR.