

# Editorial

## Lorry Drivers and Community Law

The mammoth disruption caused by the recent dispute between French lorry drivers and the French government over the introduction of a new penalty points system, a dispute in which farmers venting their spleen at common agricultural policy reform joined, raises yet again the question of State liability for obstacles to trade resulting from the failure of the public authorities to ensure that traffic may move freely. Earlier examples relate specifically to action by French farmers against imports of Italian wine, Welsh and English lamb and Spanish tomatoes. Apart from providing standard examination questions with which Professors can enliven the minds of their students, these actions raise major questions

about State responsibility. Clearly the individual lorry drivers are not liable in Community law for their actions; the liability involved is that of the State for failure to take adequate measures to ensure, in accordance with Art. 5 EEC, that the free movement of goods is maintained. In cases in which the police refuse to intervene (say to apprehend persons in the act of setting fire to a lorry load of lamb) there would appear to be State liability for the act (or inaction) of an officer. The point becomes more apparent when the "blind eye" is in pursuit of formal or informal ministerial policy. Any justification on the ground of public order would seem bound to fail. Indeed, in Case 231/83 *Cullet v Centre Leclerc Toulouse* [1985] ECR 305 at 324 the Court was unimpressed by public order and security arguments, no doubt influenced by Advocat General

VerLoren van Themaat's Opinion (*ibid.* at 312).

The failure to take immediate repressive action was politically understandable in view of the attempts to defuse confrontation. Indeed, it makes a pleasant change from the approach of sending in the CRS bullies at the drop of a hat. The fact remains, though, that distribution of goods was brought to a halt, trade between Member States was disrupted and many people suffered considerable losses.

At some point individual companies must take a test case to establish firmly the limits of State liability in such situations. Given the ruling of the Court in *Francovich*, the time may well now be ripe to test the waters (and force Professors to think of new questions).

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