JUDGMENT OF THE COURT (Second Chamber)
25 June 1992 *

In Case C-116/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by Petersfield Magistrates' Court for a preliminary ruling in the proceedings pending before that court between

Licensing Authority South Eastern Traffic Area

and

British Gas plc

on the interpretation of Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1) and of Article 3(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8),

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini and J. L. Murray, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

* Language of the case: English.

after considering the written observations submitted on behalf of:

British Gas plc, by David Vaughan QC and Andrew Geddes, Barrister, and C. E. H. Twiss, Solicitor,

the United Kingdom, by John E. Collins, Assistant Treasury Solicitor, acting as Agent,

the Commission of the European Communities, by A. Xavier Lewis and Lucio Gussetti, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of British Gas plc, the United Kingdom, represented by Derrick Wyatt, Barrister, and the Commission of the European Communities, at the hearing on 12 March 1992,

after hearing the Opinion of the Advocate General at the sitting on 8 April 1992,

gives the following

Judgment

1 By order of 10 January 1991, which was received at the Court on 23 April 1991, Petersfield Magistrates' Court referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the

harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1), and of Article 3(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8).

2 Those questions were raised in the course of criminal proceedings against British Gas plc (hereinafter 'British Gas') for using for the carriage of goods by road a vehicle not fitted with a tachograph, contrary to section 97(1)(a) of the Transport Act 1968, as amended. Under that provision, it is an offence to use a vehicle without complying with the conditions laid down by Community rules on recording equipment (tachographs).

3 The tachograph is an instrument which records various data relating to a vehicle's journey, making it possible to check compliance with certain provisions contained in Regulation (EEC) No 3820/85, mentioned above, with regard to driving time, breaks and rest periods for drivers of vehicles used for the carriage of passengers or goods.

4 Under Article 2(1) in conjunction with Article 1(1) of Regulation No 3820/85, that regulation applies in principle to any journey made within the Community on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods. However, Regulation No 3820/85 does not apply to carriage by the vehicles mentioned in Article 4 thereof. It is thus not applicable, under the terms of Article 4(6), to carriage by 'vehicles used in connection with the sewerage, flood protection, water, gas and electricity services, highway maintenance and control, refuse collection and disposal, telegraph and telephone services, carriage of postal articles, radio and television broadcasting and the detection of radio or television transmitters or receivers'.

5 In accordance with Article 3(1) of Regulation No 3821/85, a tachograph 'shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Article 4 ... of Regulation (EEC) No 3820/85'.

6 On 8 June 1990 a vehicle belonging to British Gas was stopped in the United Kingdom whilst carrying gas cookers, boilers, gas supply meters, gas cylinders and boxes of rubbish. The vehicle was not fitted with a tachograph.

7 British Gas essentially carries on two different types of activity. On the one hand, it engages in the construction, maintenance and operation of a fixed network for the distribution and supply of gas to the public. In that connection it has an exclusive right to supply gas through pipes to certain premises. On the other hand, British Gas also sells gas appliances (cookers, boilers etc). It carries on that activity in competition with other undertakings.

8 The majority of the vehicles belonging to British Gas are used exclusively in connection with one or the other of these activities, for the carriage of the necessary products, equipment and material for that activity (hereinafter 'engineering products' and 'marketing products'). However, a significant number of vehicles are used for the transport of both engineering products and marketing products. The vehicle stopped on 8 June 1990 fell within the latter category.

9 Before the national court, British Gas contended that the vehicle in question was a vehicle used in connection with the gas service within the meaning of Article 4(6) of Regulation No 3820/85. It was therefore exempted, by virtue of Article 4(6) of Regulation No 3820/85 in conjunction with Article 3(1) of Regulation No 3821/85, from the requirement that it be fitted with a tachograph.

10 Taking the view that the case before it raised questions relating to the interpretation of Community law, Petersfield Magistrates' Court decided to stay the proceedings pending a preliminary ruling by the Court on the following questions:

'1. Whether the exemption provisions contained in Article 3 of Regulation (EEC) No 3821/85 and Article 4(6) of Regulation (EEC) No 3820/85 in so far as they apply to vehicles used in connection with the gas service, apply to all goods vehicles over the defined weight irrespective of the nature of the load they may be carrying at the relevant time, so long as they are being used by an undertaking which has as one of its activities the provision or operation of a fixed network intended to provide a service to the public in connection with the production, transport and distribution of gas and are being used in connection with that service, including transport of the means of construction, repair, maintenance, installation or consumption of the service so provided including the provision and installation of gas-consuming appliances?

2. Is the existence of those exemption provisions dependent upon the nature of the load being carried by the vehicle as referred to in question 1 at the relevant time and if so does the exemption extend to cover:

(a) vehicles used exclusively for the transport of marketing products;

(b) vehicles used for the transport of both marketing products and engineering products, and does it make any difference whether those are carried out simultaneously or consecutively;

(c) vehicles used exclusively for the transport of engineering products only?'

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant provisions, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Question 1

12 Article 4 of Regulation No 3820/85 makes provision for derogations from the general scheme laid down by that regulation. Consequently, that article may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure. Furthermore, the scope of the derogations which it lays down must be determined in the light of the aims pursued by Regulation No 3820/85. It is evident from the first recital in the preamble to that regulation that the possibility of derogating from the Community rules must not undermine the objectives pursued in that area.

13 With regard to the interests which Article 4(6) of Regulation No 3820/85 seeks to safeguard, the derogations provided for in that provision are based on the nature of the services in connection with which the vehicles are used. In that respect it is apparent from the list in Article 4(6) that the services envisaged by that provision are all general services performed in the public interest.

14 The term 'gas ... services', referring to a general service performed in the public interest, in Article 4(6) of Regulation No 3820/85 cannot be interpreted as referring to activities other than those relating to the production, transport or distribution of gas, or the maintenance of the necessary installations for that purpose. In particular, the supply of domestic gas appliances cannot be regarded as forming part of 'gas ... services', in the sense of a general service performed in the public interest.

15 Moreover, any other interpretation of the expression 'gas ... services' in Article 4(6) of Regulation No 3820/85 would undermine the objectives of that regulation.

16 As is apparent from the first recital in the preamble to Regulation No 3820/85 that regulation seeks, by harmonizing national provisions in social matters in the field of road transport, to eliminate disparities capable of distorting competition in that sector, and to improve working conditions and road safety.

17 In the event that an undertaking, such as British Gas, which is responsible for the production, transport and distribution of gas, were authorized to transport domestic gas appliances using vehicles not fitted with a tachograph, that undertaking would enjoy a competitive advantage over all the other undertakings which also supply such appliances.

18 In that regard, British Gas maintained that the applicable national rules contained provisions similar to those of Regulation No 3820/85 with regard to driving time, breaks and rest periods for the drivers of its vehicles.

19 That argument cannot be accepted. The scope of Regulation No 3820/85 cannot depend on the existence and content of national legislation. Moreover, even if the drivers of vehicles belonging to an undertaking such as British Gas are subject to national rules identical to those contained in Regulation No 3820/85, that undertaking would enjoy a competitive advantage over undertakings supplying domestic gas appliances if it were exempted from the requirement to install and use a tachograph in vehicles used for the transport of such appliances. It would thus save the cost of installing and maintaining tachographs in such vehicles which other undertakings supplying domestic gas appliances have to bear.

20 Moreover, if all undertakings supplying domestic gas appliances were exempted from the requirement to install and use a tachograph in vehicles used for the carriage of such appliances, the attainment of the two other objectives pursued by Regulation No 3820/85, namely the improvement of working conditions and of road safety, would be jeopardized.

21 Accordingly, the reply to be given to the national court's first question should be that the derogation from the requirement to install and use a tachograph in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, laid down for vehicles used in connection with the gas service under Article 3(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport in conjunction with Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, applies solely to vehicles used, at the relevant time, for carriage wholly and exclusively in connection with the production, transport or distribution of gas, or the maintenance of the necessary installations for that purpose. However, that derogation does not apply to vehicles wholly or partly used at the relevant time in connection with the carriage of domestic gas appliances.

Question 2

22 In view of the reply given to the first question, there is no need to examine the second question.

Costs

23 The costs incurred by the United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Petersfield Magistrates' Court by order of 10 January 1991, hereby rules:

The derogation from the requirement to install and use a tachograph in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, laid down for vehicles used in connection with the gas service under Article 3(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport in conjunction with Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, applies solely to vehicles used, at the relevant time, for carriage wholly and exclusively in connection with the production, transport or distribution of gas, or the maintenance of the necessary installations for that purpose. However, that derogation does not apply to vehicles wholly or partly used at the relevant time in connection with the carriage of domestic gas appliances.

Schockweiler Mancini Murray

Delivered in open court in Luxembourg on 25 June 1992.

J.-G. Giraud F. A. Schockweiler

Registrar President of the Second Chamber