OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 30 JANUARY 1975 [1]

Mr President,
Members of the Court

In connexion with a case pending before it, the Tribunal de Police de Mons has requested the Court's interpretation of a provision of Regulation No 543/69 of the Council on the harmonization of certain legislation relating to road transport (OJ L 77/49).

The said regulation, which *inter alia* was made to implement a common transport policy on the basis of Article 75 of the EEC Treaty, provides — in so far as we are concerned here — in Article 11 (2) that every crew member engaged in the carriage of passengers shall have had, during the twenty-four-hour period preceding any time when he is performing any activity covered by Article 14 (2) (c) or (d) (that is driving or attending at work) a daily rest period of not less than ten consecutive hours, which shall not be reduced during the week. Article 14 (2) of the regulation further provides that members of the crew shall enter in the daily sheets of the individual control book details *inter alia* of breaks from work of not less than 15 minutes. It is the task of the Member States under Article 18 of the Regulation to adopt such laws, regulations or administrative provisions as may be necessary for the implementation of the regulation and such measures have to cover, *inter alia,* penalties to be imposed in case of breach.

A Royal Decree was accordingly issued on 23 March 1970 in Belgium. Article 3 thereof refers to Article 2 of the Law of 18 February 1969 (Loi relative aux mesures d'exécution des traités et actes internationaux en matière de transport par route, par chemin de fer ou par voie navigable) and declares that infringements of the said Regulation of the Council are punishable in a certain manner.

Criminal proceedings were brought against Jean-Pierre Cagnon, coach driver, and his employer, Jean-Paul Taquet, transport contractor, under the said provisions. Apart from failure to enter breaks from work of not less than 15 minutes under Article 14 (2) of the Regulation of the Council, an infringement which does not concern us further here, the former is charged with being engaged in the carriage of passengers in Germany and not having had, during the 24 hour period preceding the time when he was performing his activity, a daily rest period of not less than 10 consecutive hours. The employer, who stated that the driver had been directed to spend the night in question at the destination in Germany, was, in view of his evidence, not criminally liable. Should the driver indeed have committed an infringement in performing the work entrusted to him by the employer, the latter would, however, be jointly liable under Article 2 (4) of the said Law of 18 February 1969 for all the fines imposed on the driver, and the costs of the proceedings. This is the reason that he was not dismissed from the case.

The accused driver's main defence to the proceedings was the argument that Article 11 (2) of the said Regulation of the Council gave rise to obligations only on the part of the employer and not the crew members. He alleged that it was sufficient under this provision for the employer to see that the possibility existed of taking the daily rest period and that it was not necessary for crew

1 — Translated from the German.

members in fact to rest. If this interpretation were correct, it would obviously not be possible after the statements made in the main proceedings to impose penalties on the accused driver.

In view of these facts, which require an interpretation of Regulation No 543/69 of the Council, the Tribunal de Police de Mons considered it proper to stay the proceedings by the order of 6 September 1974 and to refer for a preliminary ruling under Article 177 of the EEC Treaty the question of how the words 'shall have had ... a ... rest period' in Article 11 (2) of Regulation No. 543/69 of the Council are to be understood.

Only the Commission of the European Communities has made observations on this question. It has recommended an interpretation according to which Article 11 of the Regulation of the Council also imposes an obligation on crew members actually to observe the daily rest periods, that is breaks from the activities referred to in Article 14 (2) (c) or (d).

I find this view and reasons convincing and propose that the Court should adopt them.

First it is important to mention that the provision requiring interpretation is part of a regulation, that is a document which under Article 189 of the EEC Treaty has general application, is binding in its entirety and directly applicable in all Member States.

The Commission is also right in stating that the wording of Article 11 (2) makes it clear that there is an obligation not only on the transport contractor to provide the possibility of having daily rest periods but also on the crew members actually to observe the provisions on daily rest periods. In fact it is stated in Article 11 (2) — so far as it concerns us here —: 'every crew member engaged in the carriage of passengers shall have had, during the twenty-four-hour preceding any time when he is performing any activity covered by Article 14 (2) (c) or (d): a daily rest period of not less than ten consecutive hours, which shall not be reduced during the week ...' This provision would certainly have been differently worded if it had been the intention of the draftsman of the Regulation simply to require the transport contractors to give their drivers the possibility of daily rest periods. Daily rest periods within the meaning of Article 11 of the Regulation of the Council — as the Commission likewise rightly stresses — must be contrasted with the driving periods and other periods of attendance at work mentioned in Article 11 by reference to Article 14. This means that crew members doubtless have a certain freedom in how they use their rest periods; what however is ruled out, in any event, is driving activity and attendance at work.

The correctness of this interpretation does not appear from Article 11 (2) alone. Support is obtained from a glance at Articles 7 and 8 of the Regulation of the Council, in which the limitation on driving periods is related to the daily rest periods. This accords with the interpretation that there is a direct and clear obligation on crew members to respect not only the driving periods but also the rest periods.

Finally, the objectives of the Regulation of the Council as expressed in its preamble must not be forgotten. The objective is the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, as is shown by the reference to the Council Decision of 13 May 1965 (OJ 88, p. 1500). Reference is made to the promotion of 'social progess' and, not least, to the improvement of road safety. It appears to me quite obvious that these objectives could not be achieved if Article 11, as the accused in the main proceedings thinks, were limited to providing the possibility of observing the rest periods. In such circumstances nothing would be done for the harmonization of the provisions affecting competition and certainly no

improvement in road safety would be achieved, nor could there be any promotion of social progress but rather regression in comparison with the previous legal situation obtaining in the Member States.

For all these reasons the question from the Tribunal de Police de Mons should be answered as follows:

Article 11 (2) of Regulation No 543/69 is to be interpreted as meaning that it also gives rise to an obligation on the part of crew members to observe the provisions on rest periods, so that during the periods provided for, the activities mentioned in Article 14 (2) (c) or (d) are not pursued.