OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 29 MAY 1984 [1]

Mr President,
Members of the Court,

This reference to the Court for a preliminary ruling concerns the interpretation of provision in the so-called Social Regulation (Regulation No 543/69) [2] and in the so-called Tachograph Regulation (Regulation No 1463/70) [3], on exemptions from those regulations.

A — The questions referred to Court for an interpretation arose in the course of criminal proceedings against Thomas Scott & Sons Bakers Limited (hereinafter referred to as "Thomas Scott") and Brian Rimmer. Mr Rimmer is employed as a driver and salesman paid on a Commission basis by Thomas Scott, a bakery undertaking, which operates several bakery vans.

The charge against the defendants is that they maintained and used a vehicle in wich tachograph recording equipment had not been installed contrary to the relevant provisions of the Social Regulation, No 543/69, of Tachograph Regulation, No 1463/70, and of the national legislation implementing those regulations. With regard to the details of those provisions I refer the Court to the Report for the Hearing and to the facts of the decision in the *Paterson* case [4]. Mr Rimmer is also charged with failing to keep the prescribed individual control book correctly.

The defendants dispute that their conduct infringes those provisions. They rely on Regulation 4 of the Community Road Transport Rules (Exemptions) Regulations 1978 (Statutory Instrument 1978 No 1158, as amended), according to which the aforementioned regulations are not to apply to national transport operations involving "the use of specialized vehicles . . . for door-to-door selling".

That provision was adopted by way of implementation of Article 14a (3) (a) of Regulation No 543/69, which provides that: "Member States may, after authorization by the Commission, grant exemptions from this regulation for the following national transport operations and uses:

(a) use of specialized vehicles at local markets, for door-to-door selling, for mobile banking, exchange or savings transaction, for purposes of worship, for the lending of books, records or cassettes, for cultural events or mobile exhibitions."

At first instance the charges were dismissed. On appeal by way of case stated the Divisional Court allowed the appeal and ordered that the case be remitted to the court of first instance with a direction that the offences were proved and to convict accordingly. The House of Lords gave leave to appeal

1 — Translated from the German.

2 — Regulation (EEC) No 543/69 of the Council of 25. 3. 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170), as amended by Regulation (EEC) No 515/72 of the Council of 28. 2. 1972 (Official Journal, English Special Edition 1972 (I), p. 134) and by Council Regulation (EEC) No 2827/77 of 12. 12. 1977 (Official Journal 1977 L 334, p. 1)

3 — Regulation (EEC) No 1463/70 of the Council of 20. 7. 1970 on the introduction of recording equipment in road transport (Official Journal, English Special Edition 1970 (II), p. 482).

4 — Judgment of 22. 3. 1984 in Case 90/83 *Michael Paterson* v *W. Weddel and Co. Ltd. and Others* [1984] ECR 1567.

from that decision and at the same time, by order of 23 June 1983, it referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"(1) Whether, upon the true interpretation of the exemption in Article 14a (3) (a) of Regulation No 543/69 of the Council, the word 'specialized' is meant to apply to the characteristics of the particular vehicle alone, or to the activity of door-to-door selling alone, or to a combination of both: and if the latter interpretation is correct, what degree of interrelation is meant;

(2) Whether upon the true interpretation of the same exemption provisions, the activity of door-to-door selling is meant to apply only to a methodical calling at one house after another for the purpose of selling to the ultimate consumer; or whether it applies to a number of calls to potential wholesale customers, such as shops, canteens, old-people's homes, or supermarkets for the purpose of selling, and where the driver spends a significant amount of time selling or whether it may apply to a combination of both and if the latter interpretation is correct, what degree of interrelation is meant;

(3) What is the proper construction to be put upon the word 'specialized' in the context of Article 14a (3) (a) of the regulation."

Those questions are basically concerned with the interpretation of the terms 'specialized vehicle' and "door-to-door selling".

B — My views on those questions are as follows.

1. The first and third questions (Interpretation of the words "specialized vehicle")

The question to be answered by the House of Lords is whether the vehicle in question, which is described in detail in the Report for the Hearing, is to be regarded as "specialized" within the meaning of the aforementioned exemption provision. Since the first and third questions are both concerned with the nature and extent of the requirement of "specialization", I consider it appropriate to deal with those two questions together.

It must be decided first whether the word "specialized" relates exclusively to the type of vehicle, to the use to which it is put, or to a combination of both factors. The parties to the proceedings are agreed that a vehicle may be regarded as specialized only if it is specially constructed or equipped for its particular use. The parties also rightly take the view that the provision does not extend to all specialized vehicles, even when used for a purpose unconnected with the specialization, but that there must be some appropriate relationship between the specialization and the use of the vehicle.

However, opinions differ with regard to the type of use to which the vehicle's characteristics must relate. In the opinion of the defendants in the main proceedings it is sufficient if a vehicle is specialized with regard to the *type of transport operation*, for example the transportation of bakery products; only after that has been considered is it necessary to examine whether such a

specialized vehicle is also for use for door-to-door selling. The United Kingdom, the Government of the French Republic and the Commission, however, are substantially in agreement that the specialization of the vehicle must relate primarily to the *type of selling*.

(a) The *wording* itself of several of the language versions of the provision indicates that the specialization does not relate to the type of goods to be transported but to the wider use of the vehicle. In the English, French and Italian language versions of the provisions, unlike the German version, a distinction is made with regard to the exemption which may be authorized between "national *transport operations* and *uses*" ("les transports et usages nationaux", "i trasporti e le utilizzazioni nazionali"). In subparagraph (a) of the provision in those language versions, on the other hand, reference is made only to the *use of specialized vehicles* ... for door-to-door selling" ("usage ... pour les opérations de vente porte à porte", "utilizzazione ... per operazioni di vendita da porta a porta"). The Dutch language version is particularly clear in that respect since it refers to vehicles which are specially equipped for *sale to the house* ("voertuigen die speciaal zijn uitgerust ... voor de verkoop aan huis"). Finally the other ways in which a vehicle may be used listed in the provision in question (use for mobile banking, exchange or savings transactions, for purposes of worship, for the lending of books, records or cassettes, for cultural events or mobile exhibitions) indicate that the specialization relates not so much to transportation but rather to the other function of the vehicle apart from mere transportation.

(b) Furthermore a *teleological approach* also leads to the same conclusion. Since the issue concerns an exemption from the general rules in Regulation No 543/69 relating to road transport, the scope of the exemption must, as the Court has already stressed in Case 47/79 [1], be established in the light of the objectives and the legal context of that regulation.

The purpose of that regulation concerning the harmonization of certain social legislation relating to road transport is, as is clear from the preamble thereto and the preambles to Regulations Nos 515/72 and 2827/77 amending it, to further the aims of promoting social progress and improving road safety as well as harmonizing competitive conditions in the road transport sector. To that end Regulation No 543/69 laid down specific driving periods and rest periods for vehicle crews. In order to check that those provisions are being complied with, Article 14 *et seq.* of Regulation No 543/69 contain a number of provisions concerning *"control procedures and penalties"*.

The regulation does not apply to the vehicles listed in Article 4, which list was extended by Regulations Nos 515/72 and 2827/77. Included in the list are, in particular, pursuant to Article 4 (2), vehicles used for the carriage of goods, the permissible maximum weight of which, including any trailer or semi-

1 — Judgment of 6. 12. 1979 in Case 47/79 *Städtereinigung K. Nehlsen KG* v. *Freie Hansestadt Bremen* [1979] ECR 3639.

trailer, does not exceed 3.5 tonnes. It is therefore clear that the Council has taken the view, as is shown by the vehicles referred to in Article 4 and by the recitals in the preambles to Regulations Nos 515/72 and 2827/77, that the use of such vehicles would, on account of their construction or equipment or the purpose of their use, be less likely to jeopardize the protective scope of the regulations. With regard to the control procedures and penalties to ensure observance of the prescribed driving periods and rest periods, an Article 14a (b) was later inserted into Regulation No 543/69 by Regulation No 515/72. It provides, *inter alia*, that where vehicles are used for local transport operations the Member States may, until the installation of the tachograph recording equipment provided for in Regulation No 1463/70, grant exemption from Article 14 provided that "after consulting the Commission, [they] take appropriate measures to keep an effective check on compliance with the provisions applicable to such transport operations such as will ensure that standards of employee protection and road safety are not impaired". Article 14a was then extended by Regulation No 2827/77 inserting the provision at issue in this case, Article 14a (3). The reason for that extension, which enables the Member States to exempt the vehicles referred to therein from the otherwise compulsory requirement of installing tachograph recording equipment, is given in the fifth recital of the preamble thereto, which states that:

"it is desirable to provide by means of a Community procedure that exemptions may be made from the provisions of the regulation for certain national transport operations with special characteristics; ... in the event of exemptions Member States should be obliged to organize an effective check on the transport operations in question and to ensure that the standard of social protection and road safety is not jeopardized."

Accordingly the vehicles referred to in Article 14a (3) (a), whose permissible *maximum weight exceeds 3.5 tonnes*, should also be eligible for exemption from supervision by means of tachograph recording equipment, where the vehicle's special characteristics alone rule out the risk of the prescribed driving periods being exceeded.

With delivery vehicles that are simply specially equipped in the light of the goods to be transported, that is not necessarily the case. It may be assumed that the driving periods will be complied with, however, in the case of vehicles whose construction or equipment shows clearly that they are to be used primarily for the purposes of effecting sales involving frequents stops.

In order to provide effective supervision of transport operations and to ensure that standards of social protection and road safety are not impaired, the provision in question can therefore only be interpreted as meaning that only such vehicles as are specialized for door-to-door selling or one of the other types of use referred to in the provision fall within the exemption. In other words such vehicles must be clearly distinguished, by their construction, equipment or other characteristics, from a vehicle which is used for carrying goods of all kinds.

As to the degree of specialization, having regard to the objectives of Regulation No 543/69, it may be observed that the special characteristics of the vehicle must

be of such a nature that it is as good as impossible or, at least, made extremely difficult to divert it to other purposes. In order to allow effective supervision and to reduce the danger of abuse, I agree with the French Republic that, contrary to the view of the United Kingdom, it is necessary that the special equipment which distinguishes a particular vehicle as a specialized vehicle in comparison with other delivery vehicles should not be capable of being converted or dismantled without a certain amount of work. Otherwise it could not be said that the vehicle is "specialized", that is to say, is specifically constructed for one purpose and is less suitable for others. In this case, therefore, only vehicles that are as fitted out as *moblile sales outlets* are eligible for exemption.

Only such an interpretation of the term "specialized vehicle" takes into account the fact that the provision in question is an exception to the general rule. If the view taken by the defendants in the main proceedings that the specialization does not relate solely to the uses *listed* in the exemption provision were accepted, it would be difficult in practice to verify whether the vehicles were actually being used *only* for door-to-door selling and for that reason alone did not have to be fitted with a tachograph.

Finally, it is also not possible to object to the proposed interpretation that, when authorizing the national measures, the Commission did not specify any conditions or arrangements for their application. Since the provision in question was adopted almost word for word by the United Kingdom, there was no reason for the Commission to lay down corresponding limitations.

2. The second question
(Interpretation of the words "door-to-door selling")

The second question seeks clarification of the meaning of the term "door-to-door selling" for the purposes of the provision in question. In particular the House of Lords asks whether such an activity is meant to apply only to a methodical calling at one house after another for the purpose of selling to the *ultimate consumer* or whether it includes calling on several potential *wholesale customers.*

(a) As all the parties have emphasized, an *examination of the wording* of the provision cannot furnish a categorical answer to the second question either. That is all the more so in view of the fact that different terms are used to describe the activity in the various language versions. Whilst the English, French and Italian language versions refer to "door-to-door selling" ("vente de porte à porte", "vendita da porta a porta"), the Danish language version refers to "selling at the door" ("salg ved dørene"), the Dutch version to "selling at the house" ("verkoop aan huis") and the German language version describes the activity as "itinerant selling" ("ambulanter Verkauf").

The only concurrence between all the language versions of the provision is that there must be a *selling activity* undertaken in such a way that the seller calls on potential customers in order to offer his goods to them. As a general rule such an activity will consist of *retail trading* although that is not an express requirement. It will involve *longer stationary periods* than the mere delivery

of goods. Most of the language versions of the provision also indicate that, as a rule, such a selling activity entails *frequent stops.*

In the Commission's opinion wholesale trading should at any rate be excluded from the term.

(b) *Consideration of the scheme* of the provisions shows, however, that the last criterion referred to above is not necessarily a characteristic of door-to-door selling within the meaning of the provision. If both specialized vehicles *used* "at local markets" ("Spezialfahrzeugen, die für die Belieferung örtlicher Märkte ... eingesetzt werden", "usage ... pour la desserte des marchés locaux", "utilizzazione ... per il servizio di mercati locali", "vervoer met voertuigen ... voor gebruik op plaatselijke markten", "benyttelse af special køretøjer til betjening af lokale markeder") and those used for "door-to-door selling" fall within the provision, it is only logical that, as is stressed by the United Kingdom in particular, the provision must also extend to vehicles which are used, for exemple on street corners, as mobile sales stands. Moreover such a use falls within the term "itinerant selling" ("ambulanter Verkauf") used in the German language version, which simply means that, in contrast to "stationary selling" ("stationärer Verkauf") the seller goes to the customer rather than the other way round.

If the proposal for such a narrow interpretation of the term "specialized vehicle" were accepted, there would the be no need to consider the question of "how" and "where" the goods are sold and "to whom". According to such an interpretation only vehicles whose equipment characterizes them as *mobile sales outlets* and not as delivery vehicles would fall within the exemption provision. The characteristics of such vehicles, unlike delivery vehicles, are enough to ensure that the permitted driving periods under Regulation No 543/69 will not be infringed. In that respect it is also irrelevant whether the sales take place from "door-to-door" or at a specific location. It is also irrelevant whether only certain customers are systematically called on for the purpose of effecting sales or whether an in effect unrestricted clientèle is served. If the vehicle's equipment is such as to ensure that the permitted driving times are generally not infringed, it cannot matter, finally, whether the vehicle is used in order to sell to the ultimate consumer or to wholesale traders.

(c) It is possible to narrow down the definition of the term "door-to-door selling" only by reference to the *objectives* of Regulation No 543/69. The Government of the French Republic suggests that the term sould be given a narrow meaning so as to cover only retail sales from house to house whereby individuals are approached at their home.

If the Member States, with the Commission's authorization, grant exemption from Regulation No 543/69 only in respect of the vehicles as described, that is also enough to satisfy Article 14a (5) which provides that the Member States are to take appropriate measures "to keep an effective check on such transport so as to ensure that standards of social protection and road safety are not impaired".

C — In conclusion, therefore, I propose that the questions referred to the Court should be answered as follows:

1. A vehicle is "specialized" within the meaning of Article 14a (3) (a) of Regulation No 543/69 only if its construction, equipment or other characteristics ensure that it will be used primarily for door-to-door selling.

2. "Door-to-door selling" in the context of that provision is meant to apply to calling on potential customers using mobile sales outlets. The major factor is that the amount of time spent actually driving should be less significant than the other activities involved in the selling process.