OPINION OF ADVOCATE GENERAL SAGGIO

delivered on 21 September 2000 [1]

1. By order received on 6 August 1999, the Nottingham Magistrates' Court referred to the Court of Justice for a preliminary ruling — in proceedings brought by the Vehicle Inspectorate, an executive agency of the United Kingdom Ministry of Transport, against a passenger road transport company and a number of drivers employed by it — a complex question concerning the interpretation of certain provisions of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport. [2]

The relevant Community legislation

2. According to the original wording of Article 75 of the EEC Treaty, before the entry into force of the Single European Act, the Treaty on European Union and the Treaty of Amsterdam (pursuant to which it has become Article 71 EC), the Council was entitled to adopt — on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament — measures concerning 'common rules applicable to international transport' and 'the conditions under which non-resident carriers may operate transport services within a Member State', and, under paragraph 1(c) of that article, 'any other appropriate provisions'. That wording allowed the Council to bring into being provisions of a social nature or in any event relating to public safety in the transport sector, in order to pursue the objectives of the EEC Treaty — set out in the same Article 75 — in accordance with principles of a general character which can be inferred, *inter alia*, from what was then Article 118 of the EEC Treaty (which became, after the entry into force of the Treaty on European Union, Article 118 of the EC Treaty and then, after the entry into force of the Treaty of Amsterdam, was moved to the section comprising Articles 136 EC to 143 EC). That possibility, already inherent in the system, was expressly recognised in the wording given to Article 75(1)(c) of the EC Treaty by the Treaty on European Union, which provided that the Council could adopt 'measures to improve transport safety'.

3. On the basis of the original wording of Article 75 of the EEC Treaty, various regulations were adopted as from the end of the 1960s containing provisions of a social or protective nature in the field of transport, which were subsequently brought together in a single text by Council Regulation (EEC) No 3820/85 of

1 — Original language: Italian.

2 — OJ 1985 L 370, p. 8.

20 December 1985 on the harmonisation of certain social legislation relating to road transport.[3] That regulation, which is applicable to the carriage by road of passengers and of goods,[4] purports both to ensure *adequate social protection of drivers* and to guarantee a *high level of road safety,*[5] but without adversely affecting the management of transport undertakings.[6] The attainment in practice of the two objectives just mentioned — which are particularly important in passenger transport — is entrusted by the regulation in question to a set of provisions relating to, among other things, driving periods, breaks and rest periods for drivers (Articles 6 to 9 of Regulation No 3820/85).

4. Under Article 6 of Regulation No 3820/85, the daily driving period — defined as the total driving period between two rest periods — must not, as a rule, exceed 9 hours, and, over a period of two consecutive weeks, the total driving period should never exceed 90 hours. Article 7 goes on to provide that the daily driving period must be interrupted by a break — not forming part of any daily rest period — which, as a rule, must last at least 45 minutes, during which drivers may not carry out any other work. It should be noted, however, that under paragraph 4 of that article, waiting time and time not devoted to driving spent in a vehicle in motion, a ferry, or a train, is not to be regarded as 'other work'.

5. Article 1(5) of Regulation No 3820/85 defines rest as 'any uninterrupted period of at least one hour during which the driver may freely dispose of his time'. Under Article 8 of the same regulation, the *daily* rest period must as a rule last for at least 11 consecutive hours in each period of 24 hours, whilst the *weekly* rest period must normally last for at least 45 consecutive hours in each working week. Daily rest may be interrupted, within the limits and under the conditions laid down in Article 9 of the regulation, where a driver accompanies a vehicle which is transported by a ferryboat or train.

6. In order to ensure due compliance with the above social provisions, the Community legislation provides, as a rule, for the use of special recording equipment for road transport, at present covered by Regulation No 3821/85, which brought together in a single measure all the earlier provisions in that field. The equipment in question (commonly known as a 'tachograph') must — pursuant to Article 3 of Regulation No 3821/85 — be installed and operated in all vehicles used for the carriage of passengers or goods by road which are

3 — OJ 1985 L 370, p. 1.

4 — This can be easily inferred from Article 1(1) according to which 'carriage by road' includes 'any journey made on roads open to the public of a vehicle, whether laden or not, used for the carriage of passengers or goods'.

5 — That twofold objective, which is not set out expressly in the wording of Regulation No 3820/85, is clear enough from a reading of the 14th, 19th, 21st and 22nd recitals in its preamble, where there are references to 'social protection' and 'road safety'.

6 — See, to that effect, the 15th recital.

registered in a Member State, subject to the exceptions and derogations provided for and particularised in Articles 4(1), 13 and 14(1) of Regulation No 3820/85. In particular, under Article 4(3) of that regulation, the Community social provisions do not apply to 'vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres'.

7. Articles 13 to 16 of Regulation No 3821/85 govern use of the recording equipment. According to Article 13, 'The employer and drivers shall be responsible for seeing that the equipment functions correctly'. To that end, Articles 14 and 15 thereof provide that the employer is to issue to drivers record sheets which are to be used in the equipment installed in the vehicle and that drivers are to use those sheets 'every day on which they are driving, starting from the moment they take over the vehicle', without withdrawing them 'before the end of the daily working period' (Article 15(2)). For the purposes of this case, it is relevant to note that the second indent of Article 15(3) of Regulation No 3821/85 provides that drivers are under an obligation to record 'separately and distinctly' on the appropriate sheets, using the equipment or manually, the following periods of time: [7]

(a) 'driving time';

(b) 'all other periods of work';

(c) 'other periods of availability'; [8]

(d) 'breaks in work and daily rest periods'.

Drivers must keep on board the vehicle — and produce to any inspecting officer — the record sheets for the current working week, after which the sheets are to be given to the employer, who must keep them in good order for at least a year after their use, producing them at the request of any authorised inspecting officer (Articles 14(2) and 15(7) of Regulation No 3821/85).

8. Article 17(1) of Regulation No 3820/85 and Article 19(1) of Regulation No 3821/85 provide that the Member States are to adopt the provisions necessary to give effect to the two regulations, imposing penalties in the event of non-compliance. In the case of the United Kingdom — the Member State in which this case arose — the provisions in question are contained in section 97 of the Transport Act 1968, which deals with the penalties to be applied for non-observance of the conditions applicable to the use of the recording equipment covered by Articles 13 to 16 of Regulation No 3821/85.

7 — Defined in Regulation No 3820/85.

8 — 'Periods of availability' include: waiting time, namely the time when drivers are required to stay at their place of work; time spent beside a driver whilst the vehicle is in motion; time spent on a bunk while the vehicle is in motion.

The facts of the main proceedings

9. The English company Skills Motor Coaches Ltd (hereinafter 'Skills'), established in Nottingham, is a passenger coach operator providing regular services and charter services. For that purpose, it uses drivers who live in various parts of the United Kingdom and asks them to take over coaches at places other than where they live and other than the headquarters of the company, in order to relieve drivers who have completed their daily or weekly driving periods. To that end, Skills specifies the place where each driver's driving duties are to commence and the place where they are to finish, and drivers may freely choose how they reach the place where they take over the coach: if a driver lives near the pick-up point he may use a vehicle owned by Skills for the night or day before, or alternatively use his own car, possibly coming to an arrangement with the driver he is relieving, or spend the night at the pick-up point under arrangements made by his employer with a hotel. In general, Skills drivers choose how they are to reach the pick-up point according to their social and family requirements and depending on how far the locations in question are from where they live. Their only obligation is to be physically able to pick up the coach at the place and time specified by Skills.

10. Skills's coaches are fitted with the recording equipment prescribed by Regulation No 3821/85 and the record sheets are kept systematically. Moreover, Skills keeps duty rosters on which all working activities of drivers are entered.

11. Skills's record sheets and duty rosters were subjected to a comparative examination by the Vehicle Inspectorate, an executive agency of the United Kingdom Department of Transport, which noted therein a number of irregularities in relation to the drivers B.J. Farmer, C.J. Burley and B. Denman in September and December 1997. Those irregularities may be divided into two groups: the first involves Messrs Farmer and Burley and relates to the commencement of their working time, whilst the second involves Mr Denman and relates to the classification assigned to the work done by him.

12. The first group of irregularities ('Category A') discovered by the Vehicle Inspectorate involves discrepancies between the information on the record sheets and that in the duty rosters regarding the actual commencement of work by Messrs Farmer and Burley, discovered during a check to verify compliance with the provisions of Regulation No 3820/85 concerning the maximum working time for drivers. In particular, on the tachograph record sheets for 9, 11, 12 and 14 September 1997 and 12 December 1997 there was no mention — under the heading 'other periods of work' — of periods spent by the two drivers in question in travelling from where

they lived (Littleover, near Derby, and Bulwell, near Nottingham) to the pick-up point (at Dover and Trowell Services, near Nottingham, respectively), whilst in Skills's duty rosters those periods appeared under the general description of 'feeder services' and included the time spent between the start of duty in a particular period — in practice, the time when the driver left his home — and the taking over of the tachograph coach. In Mr Farmer's case, the distance between his home (or the operating centre in Nottingham) and the point where the bus was to be picked up (Dover) was around 220 miles, and that distance was covered in about 3 1/2 hours using a vehicle made available by the company, which allowed the driver in question to start his daily driving period at some time between 16.30 and 18.55 on 9, 11, 12 and 14 September 1997. In Mr Burley's case, the distance from his home (or the operating centre in Nottingham) to the place where the bus was to be picked up (Trowell Services) was about 5 miles, and that distance was covered by the driver in question using his own private car, enabling him to start his daily driving period, as a co-driver, at 06.10 on 12 December 1997.

13. The second group of irregularities ('Category B') discovered by the Vehicle Inspectorate relates to the precise terms in which the work done by Mr Denham on 18 December 1997 was described. On that date, he was assigned to perform, between 07.15 and 09.45, a regular service — comprising the transfer of disabled children and adults over a specific route not exceeding 50 km — which was not subject to the Community rules by virtue of Article 4(3) of Regulation No 3820/85. Mr Denham then rested, and later, at 11.25, commenced a period of driving which was wholly subject to the Community legislation, which was properly recorded by the tachograph. However, the entire period from the time (07.15) when Mr Denman started driving the bus used for the regular service to the time (11.25) when he took over the tachograph coach (that is to say more than four hours) was not entered on the record sheet for that day under the heading 'other periods of work', although it was duly entered on Skills's duty roster under the heading 'Duty 8'.

14. After discovering those irregularities, the Vehicle Inspectorate prosecuted Skills and the three abovementioned drivers in the Nottingham Magistrates' Court for infringement of the relevant provisions of Regulations Nos 3820/85 and 3821/85, and section 97 of the Transport Act 1968. In its defence, Skills submitted that, as Community law stands, the drivers and their employers were not under any obligation to record, as driving time and other periods of work, periods of time spent by drivers in travelling from their homes to the point where they were to take over the tachograph coach and in carrying out regular services not subject to the Community rules.

The question referred to the Court

15. In the course of the abovementioned proceedings, Nottingham Magistrates' Court decided to refer the following question to the Court of Justice for a preliminary ruling:

'Are the requirements in Article 15(2) and (3) of Council Regulation (EEC) No 3821/85 for a driver to record "all other periods of work" and "breaks in work and daily rest periods" on the vehicle record sheet to be construed so that those terms include:

(i) a period of time spent travelling to take over a vehicle which is subject to the requirement to instal and use vehicle recording equipment in the circumstances set out in Category A above, i.e.

(a) time spent travelling pursuant to the instructions of the employer or

(b) time (forming part of the daily or weekly rest period following the last period of work) during which the employee travels at a time and in a manner of his own choosing;

(ii) a period of time spent performing driving or other duties which are exempt from the requirement to instal and use vehicle recording equipment in the circumstances set out in Category B above.'

The answer to the question

Preliminary considerations

16. In order to arrive at the correct answer to the question submitted it is necessary first of all to consider the aims pursued by Regulations Nos 3820/85 and 3821/85 in laying down precise rules on working and rest times for drivers and the requirement of proper equipment for monitoring compliance. Those aims, as I stated earlier, consist essentially in ensuring *adequate social protection for drivers* and guaranteeing a *high level of road safety*, without adversely affecting the operational requirements of transport undertakings. In its judgment in *Van Swieten*[9] the Court expressly referred to that twofold aim, making it clear that Regulation No 3820/85 'is intended in particular to

9 — Case C-313/92 [1994] ECR I-2177.

ensure road safety and to improve working conditions for drivers', [10] going on to emphasise that that regulation seeks, 'by providing that each period of 24 hours must include a minimum number of hours of rest per day, to ensure that driving times and rest periods alternate, so that drivers do not remain at the wheel of their vehicles for periods of such length as to cause tiredness and jeopardise road safety'. [11]

17. In the light of those aims, the working times and rest periods referred to by both the regulations in question are not in fact relevant as far as remuneration is concerned, in that they are not classifiable as a limit linked to the payment of wages or wage increases. [12] On the contrary, they serve, in a manner consistent with the requirement of guaranteeing safety for drivers, passengers and road traffic in general, to spread working time within drivers' working days and weeks, without the possibility of financial concerns encouraging drivers (or their employers) to drive vehicles beyond reasonable limits of human endurance. Moreover, in the order for reference the national court made it clear that all the Skills's drivers 'are paid by reference to a fixed weekly/daily rate regardless of how many or few hours are worked'. [13] In other words, in this case, and under the two regulations at issue as generally applied, working more or fewer hours does not involve greater or lesser remuneration for drivers.

The first part of the question

18. In the light of what has been said so far, it is possible to give an immediate answer to the *first part* of the question, which is concerned with the driver's obligation to record 'all other periods of work' within the meaning of Article 15(2) and (3) of Regulation No 3821/85, to the effect that that obligation extends to periods of time which the driver needs to spend in travelling to take over a vehicle which is subject to the requirement to use vehicle recording equipment and is located at a point other than where he lives or where his employer has his operating centre.

19. It must first be observed that neither Articles 6 to 9 of Regulation No 3820/85 nor Article 15 of Regulation No 3821/85 define the expression 'all other periods of work' included by the latter regulation among the periods of time covered by the

10 — *Van Swieten*, paragraph 22.

11 — Ibid., paragraph 23.

12 — This interpretation is confirmed by Article 10 of Regulation No 3820/85, according to which 'Payments to wage-earning drivers, even in the form of bonuses or wage supplements, related to distances travelled and/or the amount of goods carried shall be prohibited'.

13 — Order for reference, paragraph 8.

obligation to keep records using the recording equipment. On the other hand, there are defined with some clarity the terms 'driving time' (or 'driving period'), 'periods of availability', 'breaks in work' and 'rest periods'. It follows that, in order to ascertain whether or not a period of time is to be included under 'all other periods of work', it is necessary to interpret the two regulations *systematically* and *teleologically*, so as to arrive at criteria which make it possible, in this case, to assign a *specific* meaning to a form of words — 'all other periods of work' — which otherwise appears to be *generic*.

20. In *Van Swieten*, cited above, the Court interpreted the expression 'each period of 24 hours' in Article 8(1) of Regulation No 3820/85 ('in each period of 24 hours, the driver shall have a daily rest period of at least 11 consecutive hours...') as meaning 'any period of 24 hours commencing at the time when the driver activates the tachograph following a weekly or daily rest period'. [14] Now, since, according to Article 15(2) of Regulation No 3821/85, drivers are required to use record sheets (in other words, activate the tachograph) from the moment when they take over the vehicle and to withdraw them at the end of the daily working period, it would seem that the Court's pronouncement embodies the principle that, between periods of rest and periods of work, there can be no intermediate period that may be described in other terms, such as that used by the driver to travel from his home to the pick-up point. In other words, before activating the tachograph the driver *rests*, whereas, after having activated it, he *works*. That is in fact the approach taken in the submissions of the defendants in the main proceedings, who state that no obligation for a driver to record periods of time *before* taking over the vehicle can be inferred from Regulation No 3821/85.

21. Clarification in that regard has been provided by the judgment in *Michielsen and GTS*, [15] in which the Court, in response to a question from a Belgian court concerning the meaning and temporal limits of the term 'daily working period' used in Article 15(2) of Regulation No 3821/85, made it clear that that expression cannot be regarded as a synonym of 'other periods of work', the term used in paragraph 3 of that article. The first term 'refers to the entire working day in the sense of an uninterrupted span of time, whereas the latter only covers the time at which the driver is actually engaged in activities which may have an impact on his driving, including the driving time'. [16] Therefore, the term 'daily working period' embodies within it the more limited concept of 'all other periods of work', in addition to 'driving time' and 'periods of availability', as well as breaks in work and daily rest periods. [17] In order to determine the starting point and the end of the daily working period, thus defined, the

14 — *Van Swieten*, paragraph 27.

15 — Case C-394/92 [1994] ECR I-2497.

16 — *Michielsen and GTS*, paragraph 14.

17 — Provided that they do not exceed one hour: ibid., paragraphs 21 to 23.

Court refers to the criteria expounded in *Van Swieten*: that period commences at the time when, following a weekly or daily rest period, the driver activates the tachograph and ends when a new daily rest period begins. [18]

22. On the basis of a comparison of the two judgments mentioned, I believe that four criteria can be propounded, in the following terms: (a) the expression 'other periods of work' is positive in character and covers all periods when the driver is actually active, which may influence his driving; (b) that term falls within the wider concept of 'daily working period', which refers to the driver's entire working day as a continuous span of time; (c) the latter period commences when the driver activates the tachograph, after a rest period; (d) the daily working period is normally preceded and followed by rest periods. Those are the criteria which must be applied in considering the problem of how to describe periods of time spent by a driver preparatory to taking over a vehicle fitted with a tachograph, located at a place remote from his home or his employer's operating centre.

23. I consider that time spent by a driver travelling from his home to the pick-up point for a tachograph vehicle certainly cannot be brought within the scope of the term 'rest period' used in Article 8 of Regulation No 3820/85 and Article 15(3)(d) of Regulation No 3821/85. In that connection, the general definition of 'rest' contained in Article 1(5) of Regulation No 3820/85 must be regarded as applicable also in the context of Regulation No 3821/85 by virtue of the reference in Article 2 of the latter to the definitions given in the former. According to that definition, 'rest' means 'any uninterrupted period of at least one hour, during which the driver may freely dispose of his time'. Now, in the context of the provisions just considered, the journey from home to work does not appear to allow the driver freely to dispose of his time. On the contrary, that journey represents a period of time during which 'the driver is obliged to account to the company for the use of his time', [19] an obligation which clearly relates to the *result* to be achieved, consisting in ensuring that he is present at the pick-up point previously specified by the employer. The journey in question clearly has an impact on the driver's state of tiredness, subjecting him to stress which inevitably has an adverse impact on his physical and mental effectiveness at the time when he takes over the tachograph vehicle. [20] That is immediately clear where the driver uses his own vehicle — as in the case of Mr Burley in the main proceedings — in order to reach the

18 — Ibid., paragraph 25.

19 — Cited from the Opinion of Advocate General Tesauro in Case C-394/92 *Michielsen and GTS* [1994] ECR at I-2499, point 4.

20 — It will be remembered that, under Articles 7(5) and 8(7) of Regulation No 3820/85, neither breaks in driving nor time spent in the bunk in a vehicle which is in motion are regarded as 'rest'.

pick-up point, but the possibility cannot be ruled out that that is the case even where the driver uses — as in the case of Mr Farmer in the main proceedings — means of transport made available to him by his employer.

24. Classification as rest having been ruled out, the period of time spent by a driver in reaching the pick-up point for the tachograph vehicle can easily be brought into the general category of 'daily working period', as defined in *Michielsen and GTS*. Having regard to the various components of the latter, only the term 'other periods of work' is appropriate to describe the journey from home to work at issue here, since the other terms used in Article 15(3) of Regulation No 3821/85 ('driving period', 'period of availability', 'break in work', 'rest period') manifestly relate to other situations. Moreover, in the abovementioned judgment the Court gave a definition of 'other periods of work' which can without difficulty be applied to the journey at issue here: that definition — as pointed out earlier — in fact covers the 'periods when the driver is actually active, which may influence his driving'. The driver's journey from home to work, in a vehicle driven by him or by others, falls, in my opinion, within that broad definition if it is borne in mind that such a journey will inevitably have repercussions — in practice, merging with it — on the driving time spent by that driver in the tachograph vehicle.

25. The criticisms which have been or might be levelled against that interpretation of the regulations in question are without foundation. Very briefly, those criticisms turn on four points: (a) the provisions of Article 7(4) of Regulation No 3820/85; (b) the difficulty of drawing a clear distinction between the driver's journey from home to work and his daily and weekly rest periods; (c) the Court's position regarding commencement of the daily work period; (d) the importance of any instructions which an employer may give his driver regarding the itinerary to be followed and the timetables and procedures to be observed.

26. The first criticism is based on a reading of Article 7(4) of Regulation No 3820/85. That provision, after establishing the principle that the driver may not carry out 'any other work' during breaks from driving, states that 'For the purposes of this article, the waiting time and time not devoted to driving spent in a vehicle in motion, a ferry or a train shall not be regarded as "other work"'. Can it be concluded that that provision lays down a general principle [21] whereby a driver who is travelling in a moving vehicle, but not driving it, is as a rule not working? I am inclined to say that it cannot. As worded, the provision in question relates *solely and exclusively* to breaks in driving, and is inspired by a

21 — A principle which can also be deduced from Article 9 of Regulation No 3820/85, according to which a driver's daily rest may, under certain conditions, be interrupted if he is accompanying a vehicle on a ferryboat or train, provided that the daily rest thus interrupted is increased by two hours. Interruptions on board a vessel or train therefore form part of 'daily rest'.

practical purpose, namely allowing such breaks *de facto* to take place even if the driver is on board 'a vehicle in motion, a ferry or a train'. But breaks in driving necessarily presuppose — within the general scheme of Article 7 of Regulation No 3820/85 — that driving of the tachograph vehicle has already started and is to continue. In the present case, however, the driver's journey from home to work *precedes* commencement of the driving period and cannot therefore be described as a break in driving, with the result that the abovementioned provision would not appear to be applicable. The first criticism is thus seen to be without foundation.

27. The second criticism concerns the difficulty of distinguishing between a driver's journey from home to work and his daily and weekly rest periods. The interpretation I have suggested is based on the view that the driver leaves his home and goes to the pick-up point taking the most logical route, thereby minimising travel time by using appropriate means of transport, but what is the legal position if the driver intentionally extends the normal distance or leaves his home before the specified time or, worse still, goes direct to the pick up point from a place — not his home — where he was spending holidays? I do not deny that treating as working time the time taken for a driver to travel from home to work may involve practical difficulties. However, overriding importance must be attached to the *public interest* in ensuring that the driver spends his driving time in an optimum state of fitness, so as to ensure that the stress which built up during that journey — whatever its duration and the method of travel used — does not have an adverse effect on his clarity of mind and effective performance. That view concerning the social function of the rules at issue is the basis for my opinion concerning the obligation to record the journey from home to work as 'other periods of work' using the recording apparatus. It will therefore be for the national court to identify in each individual case any failure correctly to apply the rule propounded here, which derives from a systematic and teleological interpretation of the relevant Community provisions. It follows that the second criticism is also unfounded.

28. The third criticism concerns the Court's position regarding commencement of the daily work period. It has been submitted that the *Van Swieten* and *Michielsen and GTS* judgments presuppose that any period of work of a driver — whether driving time or other work time — must commence when the driver activates the tachograph, and that before that time there can only be a (weekly or daily) rest period, with the result that the time spent by the driver in travelling from his home to the pick-up point cannot constitute working time, and that there is therefore no obligation to enter it on the tachograph record sheets. That interpretation of the two judgments in question seems to me to be unreasonably reductive. The Court, in my opinion, had in mind the normal case of a driver who lives near his workplace and therefore, in defining commencement of the work period, it

used a formula based on ordinary experience and the course of events, rather than seeking to place an insuperable barrier to the inclusion within daily working time of other periods of activity, not classifiable as rest, spent by the driver *before* taking over the vehicle. In its observations, [22] the Commission correctly interpreted Article 15(2) of Regulation No 3821/85 as not excluding the possibility of recording periods of time occurring *before* takeover of the vehicle. That interpretation — which I endorse — is also favoured, in their observations, by the United Kingdom [23] and Switzerland. [24] Accordingly, the third criticism must also be rejected.

29. The fourth — and last — criticism concerns the importance of any instructions which the employer may give the driver concerning the route to be followed and the timetable and procedures to be observed in reaching the point where the tachograph vehicle is to be picked up. The Commission observes in that connection [25] that a distinction must be drawn between a case in which a driver has received such instructions from the employer and a case in which there are no instructions at all and infers that only in the first case — that is to say, where instructions are given — can the journey from home to work be described as falling within 'other periods of work' and therefore be recorded on the tachograph, whereas in the second case — that is to say, where there are no instructions — that journey should be treated in the same way as daily rest periods. The Commission's view is based essentially on Article 1(5) of Regulation No 3820/85, which describes 'rest' as any period during which the driver 'may freely dispose of his time' and on the *a contrario* interpretation of that provision to the effect that 'a working period should be considered to be that in which a driver is obliged to account to the company for the use of his time'. [26] Although that view is ingenious, I do not think I can go along with it, in so far as it neglects the social aims of Regulations Nos 3820/85 and 3821/85. If those aims are borne in mind, it becomes entirely unimportant whether a driver, in travelling from his home to the place where he picks up the vehicle, follows instructions given to him by his employer or acts freely: what really counts is the fact that the driver should not become tired before starting a period of driving and should not put at risk the safety of himself and of his passengers

22 — Paragraphs 23 to 26 of its observations.

23 — Paragraph 3.3 of its observations.

24 — Paragraph 20 of its observations.

25 — Paragraphs 31 to 34 of its observations.

26 — See the Opinion of Advocate General Tesauro in Case C-394/94 *Michielsen and GTS*, cited in footnote 19.

and road safety in general. If that view is correct, classification of the entire journey from home to work as 'other periods of work' appears essential, without there being any need to distinguish between two different situations depending on whether or not instructions have been given by the employer. Once it has been concluded that the journey in question cannot fall within the scope of 'rest', it is inappropriate to draw further distinctions based on the driver's greater or lesser degree of freedom regarding his choice of itinerary, timetable and mode of travel. Furthermore, it is quite clear from the order for reference — as I have already pointed out — that Skills's drivers were free to choose the most appropriate means of travelling to the place where they were to pick up the tachograph coach. The fourth criticism is thus likewise unfounded.

30. I therefore consider that Article 15(2) and (3) of Regulation No 3821/85 must be interpreted as meaning that a driver's obligation to record 'all other periods of work' also covers periods of time spent by him in travelling to take over a vehicle in which recording equipment must be used and which is located at a place other than his home or his employer's operating centre, both where the employer has given instructions in that connection and where the choice of timetable and method of travel have been left to the driver.

The second part of the question

31. In the *second part* of its question, the national court asks the Court of Justice whether the driver's obligation to record 'all other periods of work' must also include periods of time spent by the driver performing transport duties which are exempt from the requirement to use vehicle recording equipment, such as, for example, regular services of the kind referred to in Article 4(3) of Regulation No 3820/85.

32. It seems to me inevitable that the question should be answered in the affirmative. Even if he is carrying out a transport service not subject to the requirement of installing and using a tachograph, it is undeniable that a driver driving a vehicle providing a regular service *is working*, engaging in a driving activity which appears entirely similar to that of driving a tachograph vehicle. [27] Such driving activity should therefore be recorded as 'other periods of work' and must be added, for

27 — Indeed, the vehicle used may be the same, since activation of the tachograph depends on the type of service being performed.

the purpose of calculating daily working periods, to the driving time governed by the ordinary Community rules. That conclusion is confirmed (indirectly) by the judgment in *Van Swieten*, in which the Court held that the Community rules are 'also applicable to carriage by road within the Community by vehicles registered in a Member State in the course of journeys to or from third countries which are not parties to the ERTA, or in transit through such countries', [28] emphasising in that connection that the effectiveness of Regulation No 3820/85 'would be compromised if the application of the Community system were dependent on the journeys made by vehicles registered in different Member States and if national laws continued to apply where the journeys were made only partly within the Community'. [29] The Court having concluded that journeys of that kind must be subject to the obligation to use the recording apparatus, it must in my opinion be concluded *a fortiori* that the obligation of recording applies to driving activities not covered by Community rules which take place *entirely* within the Community. They certainly have an impact on the driver's performance and failure to take them into consideration would undermine the social objectives of Regulations Nos 3820/85 and 3821/85.

33. The only difficulty in including driving activities not covered by the Community rules within the scope of 'other periods of work' might be perceived, if at all, in the fact that such activities occur *before* the driver activates the tachograph. But that is merely an apparent difficulty: as has been seen, Regulation No 3821/85 does not in fact exclude the recording of periods of time occurring *before* the tachograph vehicle is taken over, and the judgments in *Van Swieten* and *Michielsen and GTS* cannot be interpreted as restricting the driver's daily work period to activities carried out by him *after* activation of the tachograph.

34. I therefore consider that the driver's obligation to record 'all other periods of work' extends also to periods of time spent performing transport services which are exempt from the requirement of using vehicle recording equipment.

28 — *Van Swieten*, paragraph 21.
29 — Ibid., paragraph 17.

Conclusion

35. In view of the foregoing considerations, I suggest that the Court give the following answer to the question from the national court:

Article 15(2) and (3) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport must be interpreted as meaning that the driver's obligation to record 'all other periods of work' also includes:

(a) periods of time spent by a driver in travelling to take over a vehicle which is subject to the requirement to use vehicle recording equipment and is located at a place other than where he lives or his employer's operating centre, both where the employer has given instructions in that connection and where the choice of timetable and mode of transport are left to the driver;

(b) periods of time spent by a driver performing other transport duties not covered by the obligation to use vehicle recording equipment.