OPINION OF ADVOCATE GENERAL TESAURO
delivered on 20 January 1994 *

Mr President,
Members of the Court,

1. In criminal proceedings pending before it, the Politierechtbank, Hasselt (Local Criminal Court, Hasselt, Belgium) requested the Court of Justice to give a preliminary ruling on the interpretation of the terms 'working period', 'day', 'daily' and 'end of the working period' contained in Council Regulations (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, [1] and No 3821/85 on recording equipment in road transport. [2]

More particularly, the national court asks whether, in the absence of an express definition of those terms in the aforementioned regulations:

(a) the expression 'working period' may be interpreted by reference *a contrario* to the concept of rest, that is to say as the period in which the driver must answer to the transport company for the use of his time (logically the concept of 'end of the working period', which is the subject of the national court's third question, should in that case refer to the time when the driver regains the right freely to dispose of his time);

(b) the term 'day' should refer to the 24-hour period between 00.00 hours and 24.00 hours, or, on the other hand start to run from the time when a given driver first takes over a vehicle to which the regulation applies.

2. Although no reference is made in the national court's order to any specific provisions of the regulations in question, the facts of the case enable the scope of the question of interpretation to be circumscribed. Since, therefore, Mr Michielsen and his employer (the latter as the party liable at civil law) were summoned to appear for having failed to comply with the prescribed rest and driving periods, and for having used, on the day of the control, more than one record sheet in the vehicle tachograph, it is essentially Art-

* Original language: Italian.
1 — OJ 1985 L 370, p. 1.
2 — OJ 1985 L 370, p. 8.

icle 15(2) of Regulation No 3821/85 which is relevant here.

That article forms part of the chapter setting out the provisions for use of the tachograph, that is, the instrument the installation of which is intended to enable compliance with the rules relating to driver's driving and rest periods laid down in Regulation No 3820/85 to be checked. The provision in question requires drivers, in particular, to use a record sheet each day on which they drive, starting from the time when they take over the vehicle, and not to withdraw the sheet before the end of the daily working period unless its withdrawal is otherwise authorized.

3. Therefore, so far as the first question is concerned (and the third, which is closely related), the dispute in the main proceedings essentially turns on whether the driver is authorized to use a second record sheet on the same day — which he could do only if the daily working period could be considered to have ended — and it is on the expressions 'working period' and 'end of the working period' that attention should be concentrated. In this regard, the Commission and the Belgian Government argue that the aim of Regulations Nos 3820/85 and 3821/85 is not to draw up common social rules in the road transport sector, but merely to harmonize some aspects of national legislation in order to improve social protection for drivers and road safety; they further submit that the Member States retain the power to interpret concepts which, like those at issue in the present case, are not defined in the regulations. Whilst that opinion is generally speaking acceptable, I consider that Community legislation — as the United Kingdom points out — provides all the criteria needed to define the expression 'daily working period' which may be applied uniformly in the territory of the Community.

4. In that connection, it is important to note the definition of rest contained in Article 1(5) of Regulation No 3820/85, which also applies for the purposes of Regulation No 3821/85 by virtue of the general reference made in Article 2 of that regulation to the definitions set out in Regulation No 3820/85. Rest should therefore be taken as meaning 'any uninterrupted period of at least one hour during which the driver may freely dispose of his time'. It would seem correct, however, to state *a contrario* — as, moreover, has been suggested by the national court — that a working period should be considered to be that in which the driver is obliged to account to the company for the use of his time.

Although it is true that such a definition could give rise to doubts as to the possibility of including in the working period some periods during which the driver is doing work other than driving, other provisions of the regulations in question dispel any uncertainties which might arise.

5. I would refer, in the first place, to Articles 7(5) and 8(7) of Regulation No 3820/85, which provide that the breaks from driving [3] and the time spent on a bunk in the vehicle if it is in motion cannot be regarded as part of the daily rest period. Those periods, therefore, form part of the working period. It should be noted, however, that if the rest period laid down in Article 8(2) is taken in two or three separate breaks within a 24-hour period, a break from driving of at least one hour may be considered a rest within the meaning of Article 1(5). Information relevant to the interpretation requested by the national court is also to be found in Article 15(3) of Regulation No 3821/85, which provides that drivers must record separately on the tachograph: (a) driving time, (b) all other periods of work, (c) other periods of availability, namely the periods during which drivers need to remain at their posts only for the purpose of answering any calls to start or resume driving or to carry out other work, time spent beside the driver or on a bunk while the vehicle is in motion and (d) breaks in work and daily rest periods. Since under Article 15(4) the Member States may permit, for vehicles registered on their territory, the periods referred to under (b) and (c) to be recorded together, and some of the periods included under the heading 'availability' cannot be considered 'rest' under Article 8(7) of Regulation No 3820/85, it is clear from the structure of the provision that all the activities described under letters (a), (b) and (c) form part of the working period. The provision for combined recording of breaks in driving and daily rest periods does not contradict what is stated above: it is the duration of the break (whether or not it is for less than an hour) and the overall organization of the driver's day (rest taken in one or more periods) which will determine whether a particular period forms part of a working period (as a mere break in driving) or of the daily rest.

6. The outcome is the same if we apply to the various categories of activity listed in Article 15(3) the general definition of working period inferred from the concept of rest: in none of the cases listed is the driver able to dispose freely of his time. This confirms that the proposed definition is appropriate.

7. The expression 'end of the daily working period'should, therefore, as a logical consequence of what has been said, be interpreted as referring to the point in time when the driver is once again able to dispose freely of his time, which coincides with the start of a daily or weekly rest period. Where the rest is taken in two or three separate periods in accordance with the second paragraph of Article 8(1) of Regulation No 3820/85 it will, however, be necessary to take account of the time at which the final part of the rest period of the day in question begins.

3 — Article 7(5) merely confirms what is already clear from the definition of rest in Article 1; since the breaks from driving required by Article 7(1) and 7(2) must be of 45 minutes duration and may in certain cases be replaced by breaks of at least 15 minutes each, distributed over the driving period or immediately after this period, they are not normally of a duration equivalent to the minimum rest period.

8. The second question, on the interpretation of the term 'day' used in Article 15(2) of Regulation No 3821/85, is not substantially different from that raised in Case C-313/92 *Officier van Justitie* v *Van Swieten* [1994] ECR I-0000 on which I am to deliver an Opinion today, and which is concerned with the interpretation of the expression 'in a period of 24 hours' contained in Article 8(1) of Regulation No 3820/85. In view of the close functional relationship between the two regulations, whereby the provisions of the first aim to guarantee effective compliance with those of the second, the term 'day' used in Regulation No 3821/85 in order to define in terms of time the obligation for the driver to use record sheets, refers necessarily to the substantive obligations (compliance with the minimum breaks from driving and the minimum rest periods) imposed on the driver by Regulation No 3820/85.

A textral, systematic and teleological interpretation of the provisions in question suggests that 'day' is to be understood as meaning a 24-hour period which does not have a predetermined beginning but starts at the end of the preceding (daily or weekly) rest period (flexible start).

In that connection, I would refer to the reasoning set out in the Opinion in Case C-313/92.

9. The proposed interpretation is, on the other hand, the only one consistent with the aims of the regulation. If the interpretation of the term 'day' as referring to fixed, consecutive periods of 24 hours were accepted, this might — as shown in Case C-313/92 — allow a driver to drive even for 10 hours or more without taking any break by concentrating rest periods into the first part and at the end of two consecutive 24-hour periods. That is clearly incompatible with the aims of improving drivers' working conditions and road safety. The particular significance of those aims was consistently stressed by the Court when Regulation (EEC) No 543/69, [4] which preceded Regulation No 3820/85, was in force, and by reference to the regulation currently in force. [5]

10. It is therefore in the light of those aims that all the provisions which fix the maximum driving periods (and, more generally, working periods), the minimum duration of breaks from driving and rest periods should

4 — Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (OJ, English Special Edition 1969 (I), p. 170). A consolidated version of that regulation, as successively amended, has been published in OJ 1979 C 73, p. 1.

5 — See, in this connection, the judgments in Case 69/74 *Auditeur de Travail* v *Cagnon and Taquet* [1975] ECR 171, in particular paragraphs 7 and 8, Case 65/76 *Derycke* [1977] ECR 29, in particular paragraphs 15 to 17, Case 47/79 *Nehlsen* v *Bremen* [1979] ECR 3639, in particular paragraphs 5 and 6, Case 133/83 *Regina* v *Scott* [1984] ECR 2863, Joined Cases 91/84 and 92/84 *DPP* v *Hackett* [1985] ECR 1139, in particular paragraphs 15 and 16, Case C-158/90 *Nijs and Transport Vanschoonbeek-Matterne* [1991] ECR I-6035, in particular paragraph 11, and in Case C-116/91 *Licensing Authority South Eastern Traffic Area* v *British Gas* [1992] ECR I-4071, in particular paragraphs 18 to 20.

be considered: [6] in other words, whenever checks are carried out, those limits must be observed in each 24-hour period.

11. That said, the obligation imposed on drivers by Article 15(2) of Regulation No 3821/85, that is to use 'the record sheets every day on which they are driving, starting from the moment they take over the vehicle', should obviously be read in the light of the term 'day' as defined in that provision, and taking account of the fact that the obligation in question is designed to ensure compliance with the provisions of Regulation No 3820/85. A separate record sheet must therefore be used for each 24-hour period which follows on from the end of a daily or weekly rest period, and which thus runs from the time when the driver takes over control of a vehicle in the course of the day.

Conclusion

12. I therefore propose that the questions referred to the Court be answered as follows:

(1) the expression 'working period' in Article 15(2) of Council Regulation (EEC) No 3821/85 is to be interpreted as referring to each period in which the driver is unable to dispose freely of his time, including breaks taken from driving in compliance with Article 7 of Council Regulation (EEC) No 3820/85;

(2) the 'end of the daily working period' within the meaning of Article 15(2) of Council Regulation (EEC) No 3821/85 is to be interpreted as meaning the time at which the driver begins his daily or weekly rest period or, where the daily rest is taken in separate periods, the time at which the final part of the rest relating to the day in question begins;

(3) the term 'day' in Article 15(2) of Council Regulation (EEC) No 3821/85 is to be interpreted as a 24-hour period starting from the end of the preceding daily or weekly rest period.

6 See Advocate General Van Gerven's Opinion in Case C-116/92, currently before the Court, in which he considers the interpretation of Articles 7(1) and (2) of Regulation No 3820/85 relating to maximum periods of driving and to breaks in driving.