OPINION OF ADVOCATE GENERAL ALBER

delivered on 21 March 2000 *

I — Introduction

1. This reference for a preliminary ruling concerns, in essence, the question whether a professional driver engaged in the carriage of passengers is required, where he has postponed a weekly rest period to the following week pursuant to Article 8(5) of Regulation (EEC) No 3820/85, [1] to take that rest period together with the rest period in respect of the following week, and without interruption between them, or whether he is entitled to take those two rest periods on separate occasions. If the latter option is possible, it is further asked whether the second weekly rest period may in turn be postponed to the next following week.

2. The national court is uncertain as to the interpretation to be applied to the English version of the article in question, which provides: '... the weekly rest period may be postponed... *and added on* to that second week's weekly rest.' [2]

* Original language: German.

1 — Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1).

2 — Emphasis added.

II — The applicable rules

(a) Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport

3. The articles of this regulation are hereinafter cited without reference to the title of the regulation itself.

4. Before I set out the wording of the relevant provisions, it may be helpful to summarise the scheme of the regulation. Section IV deals with driving periods (Article 6), whilst Section V lays down the rules relating to breaks (Article 7) and rest periods (Articles 8 and 9).

5. As a general rule, daily driving periods may not exceed nine hours. However, they may be extended twice in any one week to ten hours (Article 6(1), first subparagraph). Article 7 requires the driver, after four and a half hours' driving, to take a break of 45 minutes, unless he commences a rest

period. That break may be replaced by several breaks of at least 15 minutes each.

6. The daily rest period must consist of at least 11 consecutive hours (Article 8(1), first subparagraph). It may be taken in the vehicle, provided that the vehicle is fitted with a bunk and is stationary (Article 8(7)).

7. After no more than six daily driving periods, a driver must take a weekly rest period (Article 6(1), second subparagraph). This extends the daily rest period from 11 hours to 45 hours. That period may be reduced, provided that it is compensated by an equivalent rest taken en bloc (Article 8(3)).

8. In the case of the international carriage of passengers, and provided that Member States so decide with respect to national passenger services within their territory, other than regular services, twelve daily driving periods may be worked, instead of six, before the driver is required to take his weekly rest period (Article 6(1), fourth and fifth subparagraphs). In such cases, the weekly rest period may be postponed, under Article 8(5), to the next following week 'and added on to that second week's weekly rest'.

9. The relevant provisions of the articles referred to are in the following terms:

'*Article 6*

1. (first subparagraph)...

A driver must, after no more than six daily driving periods, take a weekly rest period as defined in Article 8(3).

The weekly rest period may be postponed until the end of the sixth day if the total driving time over the six days does not exceed the maximum corresponding to six daily driving periods.

In the case of the international carriage of passengers, other than on regular services, the terms "six" and "sixth" in the second and third subparagraphs shall be replaced by "twelve" and "twelfth" respectively.

Member States may extend the application of the previous subparagraph to national

passenger services within their territory, other than regular services.

2....'

'*Article 8*

1. In each period of 24 hours, the driver shall have a daily rest period of at least 11 consecutive hours, which may be reduced to a minimum of nine consecutive hours not more than three times in any one week, on condition that an equivalent period of rest be granted as compensation before the end of the following week.

On days when the rest is not reduced in accordance with the first subparagraph, it may be taken in two or three separate periods during the 24-hour period, one of which must be of at least eight consecutive hours. In this case the minimum length of the rest shall be increased to 12 hours.

2....

3. In the course of each week, one of the rest periods referred to in paragraphs 1 and 2 shall be extended, by way of weekly rest, to a total of 45 consecutive hours. This rest period may be reduced to a minimum of 36 consecutive hours if taken at the place where the vehicle is normally based or where the driver is based, or to a minimum of 24 consecutive hours if taken elsewhere. Each reduction shall be compensated by an equivalent rest taken en bloc before the end of the third week following the week in question.

4....

5. In the case of the carriage of passengers to which Article 6(1), fourth or fifth subparagraph, applies, the weekly rest period may be postponed until the week following that in respect of which the rest is due and added on to that second week's weekly rest.

6. Any rest taken as compensation for the reduction of the daily and/or weekly rest periods must be attached to another rest of at least eight hours and shall be granted, at the request of the person concerned, at the vehicle's parking place or driver's base.

7....'

10. As indicated in point 9 above, the English language version of Article 8(5) reads:

'In the case of the carriage of passengers..., the weekly rest period may be postponed until the week following that in respect of which the rest is due and added on to that second week's weekly rest.'

11. The other language versions of the corresponding wording read, *inter alia*, as follows:

— 'angehängt werden'

— 'rattachée au repos'

— 'ligado ao repouso'

— 'adscribirse al descanso'

— 'collegato al riposo'

— 'läggas samman'

— 'tages sammen'

— 'worden gevoegd bij'.

(b) National law

12. Section 96(11A) of the Transport Act 1968 provides as follows:

'Where in the case of the driver of a motor vehicle, there is in Great Britain a contravention of any requirement of the applicable Community rules as to periods of driving... or periods on or off duty, then the offender... shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.'

III — Facts

13. The facts of the case are set out in the order for reference. This states that Mr Hume was employed as a coach driver. The nature of his duties was such that the fourth and fifth subparagraphs of Article 6(1) and Article 8(5) of Regulation No 3820/85 were applicable to him.

14. During the period from 09.15 hours on 16 July 1995 to 16.45 hours on 24 July 1995 his total driving time was 38 hours 30 minutes. Between 24 July 1995 and 26 July 1995 Mr Hume took a rest period of 38 hours 30 minutes.

15. On 26 July 1995 he drove for eight hours and then took a rest period of 24 hours.

16. Mr Hume worked again from 27 July 1995 to 3 August 1995, accumulating a total driving time of 41 hours 45 minutes. He then commenced a rest period of 36 hours 30 minutes away from his base.

17. On 5 January 1996 an information was laid against Mr Hume in the following terms:

'[The Defendant] on 25 July 1995 at Ferryhill in County Durham or elsewhere did drive a vehicle to which Council Regulation (EEC) No 3820/85 applies and failed after no more than twelve daily driving periods to take two weekly rest periods back to back as required by Article 6(1) as defined by Article 8(3) of the said applicable Community rules, contrary to section 96(11A) of the Transport Act 1968.'

18. In the proceedings before the national court, the prosecution took as the basis of its case the fact that, during the week commencing on 17 July 1995, Mr Hume had taken no weekly rest period. He was consequently obliged, in accordance with Article 8(5) of Regulation No 3820/85, to add the weekly rest period in respect of that week on to the weekly rest period for the week commencing 24 July 1995. However, he did not do so; instead, he merely took rest periods corresponding to his daily rest period and a period sufficient to compensate for the reduced rest period of 36 hours that he had previously taken. According to the prosecution, where a weekly rest period is postponed pursuant to Article 8(5), the postponed rest period must be 'added on' to the second week's weekly rest, that is to

say, taken together with the weekly rest prescribed in respect of that second week.

19. The prosecution states in the alternative that, if the rest period in respect of the week commencing 17 July is regarded as having been postponed to 24 July, and even if Mr Hume was not obliged to take his rest period in that week together with the postponed rest period, he was not entitled further to postpone his rest period for the week commencing 24 July, but was obliged to take two weekly rest periods in that week.

20. In his defence, Mr Hume submitted that he had taken a sufficient weekly rest during the week commencing 10 July 1995, although that rest had been shortened and therefore needed to be supplemented by a compensatory rest pursuant to Article 8(6) of Regulation No 3820/85, which was taken on 26 and 27 July. Accordingly, he took an acceptable weekly rest in respect of the week commencing 17 July on 24 and 25 July, by way of postponement pursuant to Article 8(5). He further took an acceptable weekly rest in respect of the week commencing 24 July on 4 and 5 August, by way of postponement pursuant to Article 8(5).

21. Article 8(5) does not require that, in order for a weekly rest period to be 'added to' a period in the following week, it must be taken in conjunction with that subsequent rest period as a single, uninterrupted period. By the same token, it is not necessary for both of those rest periods to be taken in the same week.

IV — The questions referred

22. The Sedgefield Magistrates' Court, United Kingdom, considers that an interpretation of Article 8 of the regulation is necessary in order to enable it to determine the case, and has consequently referred the following questions to the Court for a preliminary ruling:

(1) Where, pursuant to Article 8(5) of Council Regulation (EEC) No 3820/85, a driver who is entitled to do so elects to postpone his weekly rest period until the week following that in which it is due, must the driver take two weekly rest periods, consecutively and without break between them, in that following week?

(2) If the answer to Question (1) is in the negative, must such a driver nevertheless take two weekly rest periods in the following week, or is he permitted to

postpone, in turn, the weekly rest period for that second week to the next following week?

V — The submissions of the parties submitting observations

23. The United Kingdom Government regards it as convenient to begin with the second question, since unless Mr Hume was entitled to postpone the rest due in the second week, he contravened the regulation. It submits that Article 8(5) of the regulation can only be interpreted as meaning that the rest period in respect of the second week, to which the rest period for the previous week is to be 'added', must also be taken in that second week. That interpretation is borne out by the wording and logic of the provision, which is designed to preclude the constant rolling-over of rest periods from one week to the next.

24. If, in the present case, the answer to the second question is as set out above, the first question need not be considered. In so far as such consideration is nevertheless necessary, the United Kingdom Government submits that where, on account of a weekly rest period having been postponed to the following week, two rest periods must be taken in that following week, it is not necessary in every case for the two rest periods to be taken consecutively; that will only be necessary in order to ensure that two rest periods are taken in the second week. The rationale for this is to be found in the need to prevent the constant rolling postponement of rest periods and to ensure that such periods are actually taken. It cannot in any event be inferred from the regulation that the rest periods in question must always be taken without interruption. Had that been the intention of the legislature, it could have included an express provision to that effect in the regulation.

25. The French Government considers that the present case involves a problem of interpretation relating solely to the English language version of the regulation. The French text of the provisions in issue raises no difficulties of interpretation or application. It is apparent from the French wording of Article 8(5) that the postponed rest period and the rest period in respect of the second week must be taken together, that is to say, without interruption.

26. The aim of Regulation No 3820/85 is to harmonise conditions of competition and to improve working conditions and road safety. The lengthening of weekly rest periods is beneficial to social progress and to road safety. Consequently, Article 8(5) can only be interpreted as meaning that, where two rest periods are to be taken in the same week, they may not be taken independently of each other. In view of that interpretation, the second question referred by the national court does not call for a reply.

27. The Portuguese Government submits that the provisions concerning weekly rest periods contained in Article 8(5) constitute

an autonomous scheme which is intended to reconcile the rules regarding weekly rest periods with the specific conditions prevailing in the sector relating to non-regular transport services. Consequently, Article 8(5) clearly and unequivocally requires that a weekly rest period which is postponed to the following week must be taken in conjunction with the weekly rest period for that second week.

28. In the Commission's view, the English language version of Article 8(5) clearly indicates that the two weekly rest periods are to be taken together, that is to say, without interruption. This is further confirmed by the fact that the regulation contains no provision dealing with the question whether such weekly rest periods may be interrupted or postponed or, if that is possible, with the consequential effects of such interruption or postponement. Such an interpretation is, moreover, borne out by the other language versions of the regulation.

29. The spirit and purpose of the regulation include the promotion of social progress and road safety. The attainment of that objective is furthered, in particular, by the fixing of weekly rest periods, with the result that a broad interpretation cannot be applied to Article 8(5). Given the very precise and comprehensive terms in which the rules concerning the taking or postponement of weekly rest periods are framed, Article 8(5) can only be interpreted as meaning that the postponed weekly rest period and the rest period in respect of the second week are to be taken together and without interruption. Since that is the answer to be given to the first question referred by the national court, there is no need to answer the second question.

VI — Assessment

30. The first point to note is that Mr Hume is charged with having driven a vehicle on 25 July 1995 without having taken the weekly rest periods prescribed. However, the national court states that, between 24 July and 26 July 1995, Mr Hume took a rest period totalling 38 hours and 30 minutes. Since (a) it is for the court making the reference to establish the facts and chronology of the case before it and (b) the answers to the questions referred in that connection do not depend on whether Mr Hume drove a vehicle on 25 July 1995 or took a rest on that day, I do not propose to consider this point in any detail.

31. For the purposes of answering the first question, the decisive factor is the interpretation to be applied to the wording of Article 8(5), in particular the phrase 'added on to that second week's weekly rest'. [3]

3 — For the other language versions, see point 11 above.

32. The wording in the other language versions indicates that Article 8(5) is in fact to be understood as meaning that, where a postponement of a weekly rest period results in the aggregation of that period with the weekly rest period in respect of the following week, the two rest periods are to be taken together and without interruption.

33. That interpretation is supported not only by the wording in question but also by the very fact that that phrase is included in the provision. If it were possible to take the two rest periods separately, and had that been the intention of the legislature, it would have been enough to provide that the rest period in respect of the second week may be postponed.

34. Thus, the wording of Article 8(5) runs counter to the view put forward by the defendant in the main proceedings, even though the English language version is not so clear and precise as to remove all doubt concerning its interpretation.

35. The Court has consistently held that, where a provision is insufficiently clear and unequivocal, its scope must be determined in the light of the objectives of the act in which it is contained and with regard to the legal context in which it is situated. [4]

4 — See the judgments in Case 47/79 *Nehlsen* v *Bremen* [1979] ECR 3639, Case 133/83 *Regina* v *Scott* [1984] ECR 2863 and Case C-116/92 *Charlton and Others* [1993] ECR I-6755, and in Case C-6/98 *ARD* [1999] ECR I-7599.

36. As is apparent from the first recital in its preamble, the objectives of the regulation are threefold, namely: the removal of distortions of competition, the improvement of working conditions and the promotion of road safety. The regulation therefore contains detailed provisions concerning crew, driving times, breaks and rest periods, as well as rules concerning control procedures and penalties for infringements of the regulation.

37. The 17th recital shows that the regulation was enacted in order to lay down, with regard to rest periods, the minimum duration of, and other conditions governing, the daily and weekly rest periods of crew members. In adopting the regulation, the Council took the view — according to the 19th recital — that 'it is beneficial to social progress and to road safety to lengthen weekly rest periods, while enabling these periods to be shortened, provided that the driver can compensate for parts of his rest period which have not been taken in a place of his choosing within a given time.'

38. Article 8(3) therefore provides that, in principle, a weekly rest period totalling 45 consecutive hours is to be taken. According to Article 8(3), that rest period may be reduced to a minimum of 36, alternatively 24, consecutive hours. However, that

reduction must be compensated by a rest taken en bloc before the end of the third week following the week in question.

39. In the case of the carriage of passengers, Article 8(5) provides that the weekly rest period may be postponed until the week following that in respect of which the rest is due. Where that rest period is postponed, it must be *added on* to that second week's weekly rest.

40. It is apparent from those provisions that a derogation from the prescribed duration of the weekly rest period is permissible only where the reduction in that duration is compensated in the following week. Since — as shown above — the regulation lays down very detailed rules concerning the minimum duration of, and other conditions governing, the weekly rest period, a narrow interpretation is to be applied to any possible exceptions to, or derogations from, those rules.

41. However, Mr Hume's submission would result in a wide interpretation, and would run counter to the general objectives of the regulation.

42. In the context of the regulation, road safety is to be increased by imposing strict limits on driving times and by laying down the rest periods to be taken. Social progress is to be promoted by allowing driving times to be lengthened or permitting rest periods to be shortened only on condition that, in return, the driver is required to compensate for the rest time thereby lost.

43. The regulation is also specifically intended to protect the health of drivers and, at the same time, to promote road safety. Those objectives can be attained only if the additional daily driving times permitted by way of exception are followed by a longer rest period. To allow that rest period to be split, that is to say, interrupted by further driving, would plainly run counter to the attainment of both objectives. Article 8(1) to (3) consistently refers, in relation to rest periods, to consecutive hours; Article 8(6) provides that the rest must be 'attached to' another rest. However, it cannot be concluded from the absence of the word 'consecutive' in Article 8(5) that that provision permits the rest period to be split, since — having regard to the spirit and purpose of the regulation — the phrase 'added on' means exactly the same thing, merely expressing it in different terms.

44. Moreover, the attainment of the objective of removing distortions of competition is dependent on the scrupulous fulfilment by all undertakings of all of the obligations imposed on them by the regulation. To permit undertakings regularly to plan their schedules in such a way as to exceed the driving times prescribed would seriously jeopardise the attainment of the objective

pursued, since this could undermine the entire system of limited driving times.

45. Consequently, if it were possible, as Mr Hume submits in the present case, to take the two weekly rest periods separately, in such a way as to postpone the weekly rest period to be taken in a given week to the following week, this would mean that the rest periods actually prescribed would not be adhered to; instead, they could be constantly postponed, *ad infinitum*, to the next following week.

46. Such a practice would be contrary, however, both to the wording of Article 8(5) and to the spirit and purpose of the regulation. Since the regulation permits the length of the weekly rest period to be reduced only if precise conditions are fulfilled, namely that that reduction is compensated in the following week, it must be concluded, having regard to the very objectives of the regulation and to the context in which Article 8(5) is situated, that the two weekly rest periods prescribed may not be taken separately from each other.

47. Consequently, the answer to be given to the first question referred by the national court must be that where, pursuant to Article 8(5) of Regulation No 3820/85, a driver elects to postpone his weekly rest period until the week following that in which it is due, he must take two weekly rest periods consecutively and without interruption in that following week.

48. Since the national court seeks an answer to its second question only in the event that the answer to the first question is in the negative, there is no need to consider that second question in detail.

49. I would merely mention that such a further postponement would be totally contrary to the spirit and purpose of the regulation, and could not under any circumstances be regarded as an 'adding on'. The resulting free days would no longer have any connection with the lengthened driving times, and would not serve as rest days providing an opportunity for recuperation. Indeed, if shrewdly accumulated, they could even be turned into extra leave days.

VII — Costs

50. The costs incurred by the French, Portuguese and United Kingdom Governments and by 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 action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

VIII — Conclusion

51. On the basis of the foregoing, I propose that the answer to be given to the question referred should be as follows:

Where, pursuant to Article 8(5) of Regulation (EEC) No 3820/85, a driver elects to postpone his weekly rest period until the week following that in which it is due, he must take two weekly rest periods consecutively and without interruption in that following week.