JUDGMENT OF THE COURT (FOURTH CHAMBER)
11 JULY 1984 [1]

Regina v Thomas Scott & Sons Bakers Limited and Brian Rimmer (reference for a preliminary ruling from the House of Lords)

(Social legislation relating to road transport — Specialized vehicles for door-to-door selling)

Case 133/83

Transport — Road transport — Social legislation — Derogations — Specialized vehicles for door-to-door selling — Concepts of "specialized vehicle" and "door-to-door selling"

(Regulation No 543/69 of the Council, Art. 14a (3) (a), as amended by Regulations Nos 515/72 and 2827/77)

1. The term "specialized vehicle" for certain types of transport operations within the meaning of Article 14a (3) (a) of Regulation No 543/69 of the Council on the harmonization of certain social legislation relating to road transport as amended by Regulations Nos 515/72 and 2827/77, is intended to cover exclusively vehicles whose construction, fitments or other permanent characteristics guarantee that they are used primarily for one of those operations, such as door-to-door selling.

2. The activity of "door-to door selling" within the meaning of the aforementioned Article 14a (3) (a) may consist of calls on potential wholesale customers, such as shops, works canteens, old-people's homes or supermarkets provided that the activity of selling is characterized by frequent stops by the specialized vehicle.

In Case 133/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the House of Lords for a preliminary ruling in the proceedings pending before that court between

1 — Language of the Case: English.

REGINA

and

THOMAS SCOTT & SONS BAKERS LIMITED AND BRIAN RIMMER

on the interpretation of Article 14a (3) (a) of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170), as amended by Council Regulation (EEC) No 2827/77 of 12 December 1977 (Official Journal 1977 L 334, p. 1),

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of Chamber, K. Bahlmann, P. Pescatore, A. O'Keeffe and G. Bosco, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Relevant provisions

Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the

harmonization of certain social legislation relating to road transport contains provisions concerning the manning of certain vehicles of more than 3.5 tonnes engaged in the carriage of goods by road, limiting driving periods and specifying daily and weekly rest periods for crew members. The regulation has a number of objectives including in particular the social protection of drivers, road safety and the harmonization of the conditions of competition between road hauliers.

In order to ensure compliance with those provisions, monitoring procedures are provided for; the procedures differ according to whether or not the vehicle is assigned to a regular service. In the case of a vehicle not assigned to a regular service, Article 14 provides that crew members are to carry an individual control book containing daily sheets giving details in particular of driving periods and rest periods.

The individual control book has progressively been replaced by a mechanical monitoring device known as a "tachograph", which automatically records the periods during which the vehicle is travelling or stationary, together with the speed of travel. The installation of tachographs in certain vehicles of more than 3.5 tonnes engaged in the transportation of passengers or goods was made obligatory by Regulation (EEC) No 1463/70 of the Council of 20 July 1970 on the introduction of recording equipment in road transport (Official Journal, English Special Edition 1970 (II), p. 482).

Regulation No 543/69 was amended by Regulation (EEC) No 512/72 of the Council of 28 February 1972 (Official Journal, English Special Edition 1972 (I), p. 134) which inserted into the former regulation a new Article 14a enabling the Member States, after consulting the Commission, to grant certain exemptions from the provisions of that regulation.

Regulation No 543/69 was amended once more by Council Regulation (EEC) No 2827/77 of 12 December 1977 which added further paragraphs to the aforementioned Article 14a, paragraph 3 of which provides as follows:

"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 transactions, for purposes of worship, for the lending of books, records or cassettes, for cultural events or mobile exhibitions;

(b) transport of milk from the farm to the dairy and vice versa.

..."

Article 14a (5) of Regulation No 543/69, as inserted by Regulation No 2827/77, provides:

"Where an exemption from this regulation is granted, Member States shall take appropriate measures at the same time to keep an effective check on such transport so as to ensure that standards of social protection and road safety are not impaired."

Regulation No 1463/70 was amended by Council Regulation (EEC) No 2828/77 of 12 December 1977 (Official Journal 1977, L 334, p. 5), which *inter alia* added to Article 3 of the former regulation, paragraph 3 according to which

"Member States may, after authorization from the Commission, exempt from the application of this vehicles regulation mentioned in Article 14a (3) (a) of Regulation (EEC) No 543/69".

The provisions of Regulations Nos 543/69 and 1463/70 were incorporated into the law of the United Kingdom, in particular by Sections 97 and 98 of the Transport Act 1968, as amended by the European Communities Act 1972 and by the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979. Provision is made for fines of up to £200 for breach of the legislation.

The United Kingdom availed itself of the possibility of derogating from the aforementioned Community regulations when it introduced the Community Road Transport Rules (Exemptions) Regulations 1978, as amended by the Community Road Traffic Rules (Exemption) (Amendment) Regulations 1980, of which Regulation No 4 provides in particular that the provisions of Regulations Nos 543/69 and 1463/70 are not to apply to national transport operations involving:

"the use of specialized vehicles ... for door-to-door selling".

Outline of the facts

On 26 September 1981 Brian Rimmer, who is employed by Thomas Scott & Sons Bakers Limited (hereinafter referred to as "Thomas Scott"), was stopped by police on a motorway while driving a van belonging to his employers and carrying bread and cakes. No tachographic recording equipment was installed in that van although it was required in view of the van's permissible maximum weight. It was also discovered that the driver had not completed the individual control book correctly since he had entered information concerning his work in advance.

Thomas Scott and Brian Rimmer were charged with using a vehicle in which recording equipment had not been installed; Brian Rimmer was also charged with failing to keep the individual control book correctly.

Before the court of first instance the parties were agreed that the issue was whether or not the van in question and its use on the occasion in question fell within the exemption laid down by the aforementioned national legislation for transport involving the use of specialized vehicles for door-to-door selling.

Having regard to the order of the House of Lords, the way in which the van was fitted out and the manner in which it was used may be summarized as follows:

In the rear of the van there was a large quantity of bread and cakes which the driver was hoping to sell to his employer's customers. He was employed by them as a driver/salesman and was paid on a commission basis. His round covered several miles and consisted in general of 10 calls to supermarkets, shops, works canteens and an old-people's home. However, on the day in question, which was a Saturday, his round consisted of only five calls since the works canteens were closed. His

method of work was to order his stock on a weekly basis, one week in advance, based on his experience of his normal order. He hoped to sell his entire stock but that depended upon the customers' requirements when he called. He was paid in cash by the small shops but the supermarkets, works canteens and old-people's home paid through an office account. Nothing turns on the method of payment since it is accepted that the fact that no cash was collected from account customers did not prevent the transaction from being one of sale.

The bread and cakes were carried in plastic baskets or trays, specially designed for stacking one on top of the other so that they interlock when so stacked. In order that those trays were held firmly in the vehicle there were clips which moved up and down metal rods fitted to the vehicle's sides. Those clips were designed to fit over the topmost tray, thus holding the entire stack against the sides of the van. As a further method of ensuring the stability of the stacks, the centre of the floor had been raised so that the tray at the bottom of the stack butted up against the raised part of the floor. Beading had been fixed on the floor to facilitate pushing trays in and out of the van and the sides of the vehicle were sealed to prevent the accumulation of crumbs and dust.

On the basis of those facts the court of first instance acquitted the defendants of the charges but the High Court allowed an appeal against that decision. Subsequently the House of Lords gave leave to appeal against the judgment of the High Court; at the same time, by order of 23 June 1983, it made an order referring 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."

Procedure

The order making the reference was registered at the Court on 11 July 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the defendants in the main action, Thomas Scott and Brian Rimmer, represented by D. Vaughan and

R. Gray, barristers-at-law, of London, instructed by McKenna & Co., solicitors; by the United Kingdom, represented for the purpose of these proceedings by G. Dagtoglou, Treasury Solicitor's Department, acting as Agent; by the Government of the French Republic, represented by the Secretary General of the Interministerial Committee for European Economic Cooperation, in the person of J.-P. Costes; and by the Commission of the European Communities, represented by its Principal Legal Adviser, G. Close, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. By order of 18 January 1984 the Court assigned the case to the Fourth Chamber pursuant to Article 95 (1) of the Rules of Procedure of the Court.

II — Written observations submitted to the Court

With regard to the first question *Thomas Scott* and *Brian Rimmer* maintain that the word "specialized" in Article 14a (3) (a) of Regulation No 543/69 ("specialized vehicles ... for door-to-door selling") relates to the characteristics of the vehicle and not to the use to which it is put.

In support of that submission they contend that in the English language version of the aforementioned exemption ("use of specialized vehicles ... for door-to-door selling") the adjective "specialized" is descriptive of the vehicle. That appears even more clearly in the Danish and German language versions of the exemption.

The defendants in the main action go on to note that if the Community legislature had meant "specialized" to qualify the vehicle's use, that could readily have been done by providing, for example, that the exemption in question applied to "the use of vehicles specialized (or specially made or adapted) for door-to-door selling". Moreover, if the adjective "specialized" had been meant to qualify both the vehicle and the use to which it is put, it would have been possible to use words such as "the use of vehicles specialized (or specially made or adapted) for their particular operation and for door-to-door selling".

It follows that when applying the relevant text to a particular case it is necessary to consider first the type of national transport operation in question (in the present case: the transportation of bakery products) and whether the vehicle is specialized for that type of transport. Only after those questions have been considered is it necessary to check whether the specialized vehicle was used for door-to-door selling. That is a completely separate question; the provision in question is in fact based upon a clear distinction between the nature of the vehicle and the use to which it is put.

With regard to the second question relating to the meaning of the term "door-to-door selling", various factors point to that term being given a wide interpretation.

In that respect the defendants in the main action rely first on the wording of a guide issued by the Department of Transport in the United Kingdom in 1979 to assist British transport operators ("A guide to goods vehicles drivers' hours") (annexed to their submissions). In the guide door-to-door selling was

interpreted as involving "multipe stops at shops or households where the driver spends a significant amount of time selling". Such an interpretation does not necessarily limit the concept of door-to-door selling to calls made methodically at one house after another for the purpose of selling to the ultimate customer. Next the defendants in the main action note that the exemptions from the Community regulations were introduced in part to provide a degree of flexibility in the application thereof without jeopardizing their objectives. But if the concept of door-to-door selling is limited to operations which consist solely of methodical calls from one customer to another, the exemption in question will seldom apply to any transport operation within the Member States since vehicles of less than 3.5 tonnes, to which Regulations Nos 543/69 and 1463/70 do not apply, are almost always used for such methodical selling to domestic customers.

For those reasons the defendants in the main action take the view that the exemption in question also relates to the type of operation in which the driver makes a series of calls within a relatively small locality to potential customers, whether wholesale or domestic, such as shops, canteens, old-people's homes, supermarkets or houses, for the purpose of selling the goods of the undertaking concerned and where the driver spends a significant part of his time engaged in the selling operation. In such cirumstances the application of Article 14a (3) (a) of Regulation No 543/69 is justified since the driver spends only relatively short periods driving and each spell of driving is broken for a significant amount of time by his other activity. Equally, it is clear that such an interpretation of the exemption in question does not jeopardize the ojectives of the relevant regulations in any way.

Finally, with regard to the third question concerning the proper interpretation of the word "specialized" within the meaning of Article 14a, the defendants in the main action repeat their submissions that the word qualifies only the vehicle in question. They add that the characteristics of any particular vehicle must relate to its being specially constructed or adapted for the operation or business concerned. In this case they are, for example, the spaced racks and clips which enable the trays of bread and cakes to be stowed and secured. Moreover, it is not necessary to require that the specialization be of such a nature that the vehicle could only be used for the operation in question and no other; it is sufficient that the specialized vehicle can be distinguished from a general-purpose goods vehicle.

The *United Kingdom* states with regard to the first and third questions that in its opinion the main purpose of the exemption is to exclude from the regulations in question vehicles being used in such a manner that either:

conformity with the requirements of the regulations would be impracticable or unduly onerous; or

the manner of their use would be inherently unlikely to lead to a breach of those requirements.

If the main purpose of the exemption is indeed to exclude vehicles being used in a certain manner, the word "specialized" cannot be ignored. Thus the exemption applies to vehicles that are in some way specialized and are also being used in a specific manner, in the present case for door-to-door selling.

The United Kingdom adds that the quality or degree of specialization required need not be very great. In its opinion any vehicle which has been constructed, converted, adapted or modified for door-to-door selling should be exempt provided that it is being used solely in that manner.

With regard to the second question, the United Kingdom notes that all the various activities listed in the exemption in question other than door-to-door selling appear to have two features in common, namely:

1. The vehicle is left immobile for long periods or for a frequent number of short periods, which in either case may well exceed those during which it travels;

2. Members of the public attend at or approach the vehicle.

Taking those factors into account in the interpretation of the term "door-to-door selling", the United Kingdom contends that the term includes the activity of a door-to-door salesman as well as use of a mobile shop. Although the latter does not call at any doors but, as a general rule, passively waits for customers, use as a mobile shop appears ideally suited to the general purpose of the exemption in question. According to the United Kingdom, it is to be concluded that "door-to-door selling" must include use of any itinerant vehicle which stops frequently, whether at houses, in villages or at street corners and which effects sales to members of the public.

The United Kingdom also notes that the sale does not necessarily have to be to members of the public and points out that there are roundsmen in the towns and cities of the United Kingdom who are employed by large bakeries or wholesale distributors of bread or similar perishable goods. They have no contact with members of the public and do not effect retail sales. Instead, in the course of their "rounds" they call at a large number of usually small shops and other outlets supplying whatever their customers need from the stocks in their vehicle. According to the United Kingdom, such a roundsman typically "sells" inasmuch as he often seeks to persuade the customer to increase his order or to add a new product to it. In addition, a roundsman is always on the lookout for fresh customers to add to his round even though very often the order is not received in advance but is only placed by the customer when the roundsman calls. The United Kingdom considers that the exemption in question should also cover such persons.

Accordingly the term "door-to-door selling" should be interpreted as including the use of vehicles on an itinerant basis for the purpose of selling, provided that such use involves the vehicle's being stationary either for long periods of time or for short periods of frequent occurrence and that during the stationary periods the activity of selling, whether retail or wholesale, is carried on.

The *Government of the French Republic* maintains with regard to the first and third questions that the adjective "specialized", in the sense in which it is used in the regulation in question, relates to the whole of the transport operation, that is to say, to both the equipment and the use of the vehicle. The vehicle's equipment must, moreover, be permanent so that the vehicle cannot be used for any transport operation not falling within the exemption; in this case the equipment of the vehicle in question (baskets, clips) is not permanent. In addition, the equipment must be adapted to the use in respect of which the exemption is granted. In that respect the French Government states that a vehicle is specialized for door-to-door selling if its interior is fitted out as a shop with, for example, shelving appropriate to the goods, scales, refrigerated units, counters and the like. Finally it should be noted that if a vehicle which is specially equipped is used for the transportation of goods falling outside the exemption, the exemption will cease to apply since the vehicle then becomes an ordinary transport vehicle.

With regard to the second question the French Governmant submits that the Court should adopt the definition that door-to-door selling refers to itinerant retail sales to individuals at their home and characterized by very frequent stops in the course of a round. If the Court were to give a wider definition of the concept of "door-to-door selling", it would then be easy to camouflage operations involving only transportation as door-to-door selling and thus to evade the duty to install recording equipment.

The *Commission of the European Communities* states, as a preliminary point, that the exemptions set out in Article 14a (3) (a) of Regulation No 543/69 envisage certain kinds of highly specialized national transport operations which do not, by their very nature, enter into competition with other means of inland transport. Moreover the nature of the operations is such that there is little danger of the driver being at the wheel for long continuous periods. For those reasons it is neither necessary nor appropriate to to apply the Community regulations to them. Having regard to the purpose of Article 14a (3) (a) as stated above, it is a simple matter to interpret that provision.

The Commission submits that the exemption at issue in this case must be given a strict interpretation and it refers to the approach adopted by the Court in Case 47/79 (*Nehlsen* v *Bremen* [1979] ECR 3639), which was concerned with another exemption from the general rules in Regulation No 543/69. In that case the Court determined the scope of the exemption in question "with regard to the objectives of that regulation and to the legal context in which it is situated". The Court also refused to give the exemption the wide interpretation sought by the defendant in the main action on the ground that the provision at issue was insufficiently clear and precise to support such an interpretation. The Commission concludes that the exemptions from Regulation No 543/69 may be given a wide definition only if their wording is sufficiently clear and precise.

With regard to the first and third questions the Commission contends that the specialization of the vehicle in question refers to the characteristics of

the vehicle and must be related to the purpose of the exemption. It admits that most of the language versions of Article 14 a (3) (a) of Regulation No 543/69 do not establish explicitly such a relationship. Only the Dutch wording is clear in that respect, referring, literally translated, to "the use of vehicles which are specially equipped for sale to the house". According to the Commission that is the interpretation which must be given to Article 14a (3) (a). In fact it would be very difficult to check transport operations to verify whether they are limited to the types envisaged by the aforemetioned provisions. In the Commission's view, the degree of inter-relationship is very difficult to define in abstract terms, but must be sufficient to identify the vehicle as being specially suitable for the purposes of the exemption. In this case a van that is simply modified for the carrying of bread and cakes does not show the necessary degree of specialization so as to make it suitable for door-to-door selling. Furthermore, as was stated in the judgment of the High Court, the van was not equipped with a specialized engine such as that normally used on a milk float; such engines are necessary in view of the fact door-to-dorr selling involves constant stopping and starting.

With regard to the second question the Commmission contends that the concept of door-to-door selling relates solely to sales made directly to members of the public. That interpretation is once again confirmed by the Dutch language version, which refers to "sale to the house",and by general considerations. In fact, only selling from house to house is characterized by frequent stops with selling rather than driving occupying the greater part of the driver's working time. That is not necessarily the case with wholesale operations where relatively large consignments of goods are delivered to delivery points which are more widely spread. Furthermore, wholesale trading will probably involve delivery upon orders which hardly corresponds to the definition of door-to-door selling. The Commission also argues that the wording of the text in question is not sufficiently clear and precise for it to be extended to wholesale operations. For those reasons it submits that the exemption contained in Article 14a (3) (a) should be limited to sales directly to members of the public.

Finally the Commission proposes that the questions referred to the Court of Justice by the House of Lords should be answered as follows:

1. In the exemption provided by Article 14a (3) (a) with respect to the use of specialized vehicles ... for door-to-door selling, the adjective "specialized" relates to the characteristics of the vehicle and the vehicle as "specialized" must be for the purposes of the exemption. As to the degree of interrelation between the specialized characteristics of the vehicle and the purposes of the exemption, the degree of specialization required must be sufficient to identify the vehicle as being especially suited for the purpose of the exemption. More particularly the fact that a van had been modified to make it suitable for carrying bread and cakes would not make it a specialized vehicle for the purposes of door-to-door selling.

2. In the abovementioned exemption, door-to-door selling means selling to the public. The exemption would not apply to wholesale trading, nor would it apply to a combination of door-of-door selling and wholesale trading.

III — Oral procedure

At the sitting on 28 March 1984, oral argument was presented by the defendants in the main action, Thomas Scott & Sons Bakers Ltd. and Brian Rimmer, represented by D. Vaughan, barrister-at-law, instructed by McKenna & Co., Solicitors; by the United Kingdom, represented by G. Dagtoglou, of the Treasury Solicitor's Department, acting as Agent, assisted by P. Vallance, barrister-at-law; and by the Commission of the European Communities, represented by its Principal Legal Adviser, G. Close, acting as Agent.

The Advocate General delivered his opinion at the sitting on 29 May 1984.

Decision

1 By order of 23 June 1983, which was received at the Court on 11 July 1983, the House of Lords referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty several questions relating to the interpretation of Article 14a (3) (a) of Regulation (EEC) No 543/69 of the Council of 25 March 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 February 1972 (Official Journal, English Special Edition 1969 (I), p. 170), as amended by Regulation (EEC) No 515/72 of the Council of 28 February 1972 (Official Journal, English Special Edition 1972 (I), p. 134) and by Council Regulation (EEC) No 2827/77 of 12 December 1977 (Official Journal 1977 L 334, p. 1).

2 The questions arose in criminal proceedings against Thomas Scott & Sons Bakers Limited, a bakery undertaking which owns and operates several bread delivery vans, and against one of its employees, Brian Rimmer, who were charged with using a vehicle having a permissible maximum weight exceeding 3.5 tonnes in which tachograph recording equipment had not been installed. Mr. Rimmer, who was driving the vehicle in question for the purpose of selling his employer's bakery products, was also charged with making false entries in the individual control book.

3 In connection with the harmonization of social legislation relating to road transport, Regulation No 543/69 contains provisions concerning the manning of certain vehicles of more than 3.5 tonnes used in the carriage of

goods by road (Articles 5 and 6), limiting driving periods (Articles 7 to 10) and sepecifying daily and weekly rest periods (Articles 11 and 12).

4 In order to ensure compliance with those provisions, control procedures are provided for; the procedures differ according to whether or not the vehicle is assigned to a regular service. In the case of a vehicle not assigned to a regular service, Article 14 (1) of the regulation provides that crew members are to carry an individual control book. However, the individual control book has progressively been replaced by a monitoring device known as a "tachograph", the installation of which in vehicles used in the transportation by road of passengers or goods was made obligatory by Regulation (EEC) No 1463/70 of the Council of 20 June 1970 on the introduction of recording equipment in road transport (Official Journal, English Special Edition 1970 (II). p. 482). The device automatically records the periods during which the vehicle is travelling or stationary, together with the speed of travel.

5 Regulation No 515/72 inserted into Regulation No 543/69 a new Article, 14a, to which Regulation No 2827/77 added further paragraphs; Article 14a (3) provides as follows:

"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 transactions, for purposes of worship, for the lending of books, records or cassettes, for cultural events or mobile exhibitions;

(b) transport of milk from the farm to the dairy and vice versa.

..."

6 Regulation No 1463/70 was amended by Council Regulation (EEC) No 2828/77 of 12 December 1977 (Official Journal 1977 L 334, p. 5), which *inter alia* added to Article 3 of the former regulation a third paragraph according to which "Member States may, after authorization from the Commission, exempt from the application of this regulation vehicles mentioned in Article 14a (3) (a) of Regulation (EEC) No 543/69".

7 The United Kingdom availed itself of the possibility of providing for such derogation when it introduced the Community Road Transport Rules (Exemptions) Regulations 1978, of which Regulation No 4 provides *inter alia* that Regulations Nos 543/69 and 1463/70 are not to apply to national transport operations involving "the use of specialized vehicles ... for door-to-door selling".

8 The defendants contended before the national court that the equipment of the vehicle in question was specially adapted for the transportation of bakery products and that whilst the driver did not call on customers methodically at their homes, he did call, for the purpose of selling his products, within a relatively small locality on a number of wholesale and retail customers such as supermarkets, works canteens, private houses and an old-people's home. Having regard to its special fittings and the use to which it was put in this case, the vehicle came within the exemption provided for by the aforementioned national legislation and the relevant Community rules.

9 That is the context in which the House of Lords referred the following questions to the Court for a preliminary ruling:

"(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 acitivity of door-to-door selling alone, or to a combination of both: and if the latter interpretation is correct, what degree of inter-relation 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."

The first and third questions

10 Since both the first and third questions are concerned with the interpretation of the word "specialized" in Article 14a (3) (a) of Regulation No 543/69, they may be considered together.

11 The two questions raise the issue whether the specialization referred to by that exemption relates to the characteristics of the vehicle, or to the use to which it is put or to a combination of both factors.

12 The defendants in the main proceedings, relying in particular on the English-language version of the provision at issue, maintain that in order to qualify for exemption a vehicle must be specialized with regard to a given type of transport operation, for example the transportation of bakery products, and that there is no necessity for the requirement of specialization to be linked to the use to which the vehicle in question is put. The question whether or not a vehicle that is specialized in such a manner is actually used for the purpose in respect of which exemption was granted is a completely separate question which must be considered on its own merits.

13 In that connection the United Kingdom, the Government of the French Republic and the Commission contend that the specialization of a vehicle must be linked to the use in respect of which the exemption in question is granted, that is to say in this case to door-to-door selling.

14 With regard to the degree of specialization, the United Kingdom expresses the opinion that any vehicle which has been constructed or adapted in some way in order to be used in an exempt manner qualifies for exemption provided that it is in fact used in that manner. The Government of the French Republic and the Commission, for their part, point out that the vehicle's fitments must be permanent so that the vehicle cannot be used for a transport operation not falling within the exemption. Otherwise it would be difficult to verify whether transport operations are limited to the types envisaged by Article 14a (3) (a) of Regulation No 543/69. Consequently, they argue that a vehicle which, as in this case, is merely modified, in a manner that is not permanent, for the carrying of bakery products does not

possess the necessary characteristics to be regarded as specially adapted for door-to-door selling.

15 It must be pointed out in the first place that Article 14a (3) (a) derogates from the general arrangements established by Regulation No 543/69 of the Council relating to road transport. Its scope must therefore be determined, as the Court as stated on many occasions and in particular in its judgment of 6 December 1979 (Cas 47/79 *Städtereinigung K. Nehlsen* v *Freie Hansestadt Bremen* [1979] ECR 3639), with regard to the objectives of that regulation and to the legal context in which it is situated.

16 It is apparent from the recitals in the preamble to Regulation No 543/69 and from those in the preamble to Regulations Nos 515/72 and 2827/77, which amended it, that, in the context of the harmonization of national legislation, the Community rules pursue three objectives simultaneously, namely the social protection of drivers, the improvement of road safety and the elimination of disparities liable to cause distortion in competition in the road transport sector. It was with regard to those objectives that Regulation No 543/69 laid down, in particular, rules on manning, driving-time and rest-periods and made provision for establishing a system for checking that the rules on working hours were complied with.

17 Whilst it is true that certain transport operations may be excluded from the ambit of Regulation No 543/69 and, having regard to Article 3 of Regulation No 1463/70, from that of the latter regulation, which provided for the compulsory installation of tachograph recording equipment, it is nevertheless apparent from the first and fifth recitals in the preamble to Regulation No 2827/77 that the possibility of providing for exemption from the Community rules must not jeopardize the objectives pursued in that field and that the possibility is intended to apply only to national transport operations with special charactersitics.

18 It follows from the aforementioned context and objectives of Regulation No 543/69 that Article 14a (3) (3) thereof is intended to exempt from the system for checking that the provisions on working hours are complied with vehicles whose permissible maximum weight exceeds 3.5 tonnes and whose specialization is such that the purpose of the provisions is not likely to be jeopardized.

19 Consequently the construction, fitments or other permanent characteristics of the vehicle must ensure that it is used primarily for a transport operation falling within the exceptions laid down by the regulation. That applies both to vehicles specialized for door-to-door selling and to those specialized for mobile banking or for the lending of books or records, which are also referred to in the provision at issue.

20 To accept that, as the defendants in the main proceedings maintain, the transport operations set out in that provision may be exempted from the Community rules when they are carried out by vehicles which have merely been modified for the carriage of certain goods, would open the way for practices liable to frustrate the objectives of those rules.

21 The answer to the first and third questions should therefore be that the term "specialized vehicle" for certain types of transport operations, within the meaning of Article 14a (3) (a) of Regulation No 543/69, is intended to cover exclusively vehicles whose construction, fitments or other permanent characteristics guarantee that they are used primarily for one of those operations, such as door-to-door selling.

The second question

22 The purpose of the second question put to the Court by the House of Lords is to ascertain whether 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 also includes a selling activity characterized by frequent stops, whether at the homes of individuals or at the premises of wholesale customers such as canteens, old-people's homes or supermarkets.

23 The defendants in the main proceedings and the United Kingdom, in the observations which they have submitted to the Court, express the view that the term "door-to-door selling" should be given a wide interpretation. They contend, in effect, that the exemption in question can, without compromising the objectives of Regulation No 543/69, cover drivers who drive for only quite short periods where the time spent driving is secondary to their selling activity.

24 The French Government and the Commission propose that in order to ensure the efficacy of checks, only itinerant retail sales to individuals at their homes should be exempted and add that the wording of the contested provision is not sufficiently clear and precise to justify a wider interpretation.

25 Whilst it is true that such a conclusion seems to be supported by the wording of some language versions of Article 14a (3) (a) of Regulation No 543/69, other language versions point more to a wider interpretation.

26 It is not necessary to give the concept of door-to-door selling a strict interpretation in order to ensure the effective checking of compliance with the Community rules. It follows from the foregoing considerations that the basic guarantee of compliance with the provisions of Regulation No 543/69 is the fact that the vehicle has permanent characteristics ensuring that it will not be used other than for door-to-door selling. In such circumstances it does not matter whether such door-to-door selling is to individuals, to wholesalers or to other customers provided that the activity of selling is characterized by frequent stops.

27 The answer to the second question should therefore be that the activity of "door-to-door selling" within the meaning of Article 14a (3) (a) of Regulation No 543/69 may consist of calls on potential wholesale customers, such as shops, works canteens, old-people's homes or supermarkets provided that the activity of selling is characterized by frequent stops by the specialized vehicle.

Costs

28 The costs incurred by the Government of the French Republic, by the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the House of Lords by order of 23 June 1983, hereby rules:

1. **The term "specialized vehicle" for certain types of transport operations within the meaning of Article 14a (3) (a) of Regulation No 543/69 of the Council of 25 March 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 No 515/72 of the Council of 28 February 1972 (Official Journal, English Special Edition 1972 (I), p. 134) and by Council Regulation No 2827/77 of 12 December 1977 (Official Journal 1977, L 334, p. 1) is intended to cover exclusively vehicles whose construction, fitments or other permanent characteristics guarantee that they are used primarily for one of those operations, such as door-to-door selling.**

2. **The activity of "door-to-door selling" within the meaning of the aforementioned Article 14a (3) (a) may consist of calls on potential wholesale customers, such as shops, works canteens, old-people's homes or supermarkets provided that the activity of selling is characterized by frequent stops by the specialized vehicle.**

Koopmans Bahlmann

Pescatore O'Keeffe Bosco

Delivered in open court in Luxembourg on 11 July 1984.

P. Heim
Registrar

T. Koopmans
President of the Fourth Chamber