JUDGMENT OF THE COURT (Sixth Chamber)
2 June 1994 *

In Case C-313/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank, Amsterdam (Netherlands), for a preliminary ruling in the criminal proceedings pending before that court against

Van Swieten BV

on the interpretation of Articles 2(1) and 8(1) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, M. Diez de Velasco (Rapporteur), C. N. Kakouris, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: Dutch.

after considering the written observations submitted on behalf of:

— the Officier van Justitie, J. A. van Zwieteren, in person,

— the Netherlands Government, by A. Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by T. van Rijn and V. Di Bucci, of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Van Swieten BV, represented by J. B. Vallenduuk, Legal Adviser, acting as Agent, the Netherlands Government, represented by T. Heukels, Assistant Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, the United Kingdom, represented by S. Lucinda Hudson and by D. Bethlehem, Barrister, and the Commission of the European Communities at the hearing on 2 December 1993,

after hearing the Opinion of the Advocate General at the sitting on 20 January 1994,

gives the following

Judgment

1 By judgment of 16 April 1992, received at the Court on 22 July 1992, the Arrondissementsrechtbank (District Court), Amsterdam (hereinafter 'the national

court') referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 2(1) and 8(1) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1, hereinafter 'Regulation No 3820/85').

2 Those questions were raised in criminal proceedings against Van Swieten BV (hereinafter 'Van Swieten'), an international road transport company established in the Netherlands, for infringement of the provisions of Community law and Netherlands law relating to rest periods and driving times.

3 In the course of an inspection in October 1988 the Netherlands authorities discovered that 17 drivers employed by Van Swieten had failed to comply with the rules concerning rest periods and driving times while driving vehicles registered in the Netherlands. The offences in the present case concerned compliance with the minimum period of rest to be taken during each period of 24 hours, as laid down in Article 8(1) of Regulation No 3820/85. They had been committed for the most part in the course of journeys within the Community, but also, in some cases, during transport operations to destinations in Switzerland or in transit through that State. Switzerland, a non-member country, is not a party to the ERTA (European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport, hereinafter 'the ERTA').

4 In the Netherlands, driving times and rest periods for drivers of road transport vehicles are governed by the 1936 Rijtijdenwet (Law on Driving Times, hereinafter 'the 1936 Law') and by the 1977 Rijtijdenbesluit (Driving Times Order, hereinafter 'the 1977 Order') adopted pursuant to that Law.

5 Article 1a(1) of the 1936 Law provides that it 'shall apply in particular to road transport operations carried out wholly or partly abroad by undertakings established in the Netherlands and to the activities of crew members in connection

therewith'. Articles 11 to 14 of the 1977 Order govern drivers' hours of work, driving times and periods of rest. However, Article 17 of the 1977 Order provides that those articles are not to apply to transport operations carried out abroad to which Regulation No 3820/85 or the ERTA are applicable.

6 The scope of Regulation No 3820/85 is defined as follows in Article 2:

'1. This regulation applies to carriage by road, as defined in Article 1(1), within the Community.

2. The European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) shall apply instead of the present rules to international road transport operations:

— to and/or from third countries which are Contracting Parties to the Agreement, or in transit through such countries, for the whole of the journey where such operations are carried out by vehicles registered in a Member State or in one of the said third countries;

— to and/or from a third country which is not a Contracting Party to the Agreement in the case of any journey made within the Community where such operations are carried out by vehicles registered in one of those countries'.

7 Since Regulation No 3820/85 does not expressly apply to journeys made by vehicles registered in a Member State which start or finish in a third country which is not a party to the ERTA, in such situations the Netherlands authorities usually apply the Netherlands rules to the whole of the journey and do not take account of Regulation No 3820/85.

8 Article 8(1) of Regulation No 3820/85 provides:

'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'.

9 In the Netherlands, the system for monitoring compliance with the daily rest periods laid down by the regulation is based on the following principles. The point in time which is decisive for establishing the 24-hour period is determined by:

— the time of the road check;

— the beginning of the weekly rest period;

— the beginning of the (complete) daily rest period.

In addition, for the purpose of determining the 24-hour period in each particular case it is necessary, where the calculation apparently encompasses a rest period within the meaning of Article 8(1) of Regulation No 3820/85, to carry back the aforementioned point in time until a point is reached when the crew member is not free to dispose of his own time.

10 The court of first instance, the Kantonrechter (Cantonal Court), Amsterdam, convicted Van Swieten. It held that certain of its drivers had not complied, in relation to transport operations carried out within the Community, with the provisions

regarding the minimum daily rest period laid down by Article 8(1) of Regulation No 3820/85 and, in relation to transport operations to or via Switzerland, with Article 11 of the 1977 Order.

11 Van Swieten asserted before the appeal court that Regulation No 3820/85 was applicable to transport operations to or via Switzerland in respect of that part of the journey which takes place within the Community. As regards that part of the journey, the Netherlands legislation should not, therefore, have been applied.

12 In addition, Van Swieten contested the method of control adopted by the Netherlands authorities in monitoring compliance with the daily rest periods, maintaining that it is incompatible with Article 8(1) of Regulation No 3820/85. In its view, the 24-hour period referred to in that provision is a fixed period, and the first such period in a given week starts to run at the end of the weekly rest period. The company relies in support of its argument on the English version of the article, on a judgment of the High Court of Justice of 28 April 1988 (in the case of *Kelly* v *Shulman*) and on the first recital in the preamble to the regulation, which points out the need for greater flexibility in the provisions of the previous regulation, namely 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, hereinafter 'Regulation No 543/69').

13 The Arrondissementsrechtbank, Amsterdam, uncertain as to the interpretation to be given to the applicable provisions of Regulation No 3820/85, decided to stay the proceedings and to refer to the Court for a preliminary ruling on the following questions:

'1. In regard to Article 2(1) of Regulation (EEC) No 3820/85:

Must that article be interpreted as meaning that the regulation is (also) applicable to carriage by road within the Community, as referred to in Article 1(1),

to or from non-member countries not parties to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (ERTA), or in transit through such countries using vehicles registered in a Member State?

2. In regard to Article 8(1) of Regulation (EEC) No 3820/85:

Must the words "each period of 24 hours" be interpreted as meaning that such a period may begin at any time whatsoever depending on the beginning of the weekly and (complete) daily rest period and the time of the on-the-road check, or does the first of one or more successive periods begin at the time when the last weekly rest period ends?'

Question 1

14 Article 2(1) of Regulation No 3820/85 provides that 'This regulation applies to carriage by road, as defined in Article 1(1), within the Community'.

15 That regulation, which replaces Regulation No 543/69, provides for the harmonization of certain social legislation relating to road transport, in particular by laying down rules relating to driving times and rest periods for drivers. According to the first recital in its preamble, the regulation aims to safeguard and extend the progress made by its precursor, by making its provisions more flexible but without undermining their objectives.

16 It should be noted in that regard that one of the main objectives of Regulation No 3820/85, as in the case of Regulation No 543/69, is the improvement of road safety and working conditions for drivers.

17 The effectiveness of those rules 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.

18 It follows that Regulation No 3820/85 covers all road transport services operated within the Community by vehicles registered in a Member State, even where the carriage takes place partly in non-member States.

19 That interpretation is confirmed by the wording of Article 2 of Regulation No 543/69, according to which that regulation applied 'to carriage by road in respect of any journey or part of a journey made within the Community'. It is clear from that wording that the regulation which preceded Regulation No 3820/85 and had the same objectives as the latter related to all carriage by road within the territory of the Community, regardless of the route taken by the vehicle.

20 Lastly, the foregoing interpretation is also borne out by Article 2(2) of Regulation No 3820/85. That provision, which sets out in limitative terms the cases in which the ERTA is to apply in place of the regulation, contains no reference to any case analogous to that raised by the first question submitted for a preliminary ruling. It follows that the present case is governed neither by the ERTA nor by national law, but falls within the scope of Regulation No 3820/85.

21 The reply to the first question should therefore be that Article 2(1) of Regulation No 3820/85 must be interpreted as meaning that that regulation is 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.

Question 2

22 As regards the question of the commencement of the 'period of 24 hours' referred to in Article 8(1) of Regulation No 3820/85, it should be borne in mind that that regulation is intended in particular to ensure road safety and to improve working conditions for drivers.

23 With that in mind, Article 8(1) of Regulation No 3820/85 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 jeopardize road safety.

24 As the Advocate General has pointed out in paragraph 11 et seq. of his Opinion, it follows from that objective of Regulation No 3820/85 that the period of 24 hours referred to in Article 8(1) cannot be taken to mean an isolated period of time beginning at the same time each day, regardless of the previous daily or weekly rest period. That interpretation, known as the 'fixed start' approach, would in some cases allow drivers to remain at the wheel for an excessive period before taking their daily rest, thereby jeopardizing road safety.

25 It follows that the term 'period of 24 hours' referred to in Article 8(1) of Regulation No 3820/85 means a period whose commencement is variable, in that it begins to run at the time of the actual commencement of driving after the end of the previous daily or weekly rest period. Only by adopting that interpretation is it possible to devise a system of alternating periods of driving and rest which preserves road safety and eases drivers' working conditions.

26 Given that the second paragraph of Article 8(1) of Regulation No 3820/85 enables drivers to divide the daily rest period into two or more separate periods, it should be pointed out that the calculation of the period of 24 hours must, in such circumstances, begin at the end of the longest rest period, namely that lasting for a minimum of eight hours.

27 The reply to the second question should therefore be that the expression 'each period of 24 hours' in Article 8(1) of Regulation No 3820/85 must be interpreted as meaning any period of 24 hours commencing at the time when the driver activates the tachograph following a weekly or daily rest period. Where the daily rest is taken in two or three separate periods, the calculation must commence at the end of the period of not less than eight hours.

Costs

28 The costs incurred by the United Kingdom and the Netherlands Government and 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 proceedings, 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 (Sixth Chamber),

in answer to the questions referred to it by the Arrondissementsrechtbank, Amsterdam, by judgment of 16 April 1992, hereby rules:

1. **Article 2(1) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport must be interpreted as meaning that that regulation is 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 European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport, or in transit through such countries.**

2. **The expression 'each period of 24 hours' in Article 8(1) of Regulation (EEC) No 3820/85 must be interpreted as meaning any period of 24 hours commencing at the time when the driver activates the tachograph following a weekly or daily rest period. Where the daily rest is taken in two or three separate periods, the calculation must commence at the end of the period of not less than eight hours.**

Mancini Diez de Velasco Kakouris

Schockweiler Kapteyn

Delivered in open court in Luxembourg on 2 June 1994.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber