OPINION OF ADVOCATE GENERAL LÉGER

delivered on 25 January 1996 *

1. These two references for a preliminary ruling, although they come from different courts, essentially concern the same question, namely the interpretation of the words 'vehicles used in connection with ... refuse collection and disposal' in Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport [1] (hereinafter 'the regulation').

2. The regulation has three aims, namely road safety, the harmonization of conditions of competition and social progress. [2] To those ends, it lays down driving and rest periods (Sections IV and V) for drivers who meet the minimum age requirement (Section III) and effect carriage by road falling within its scope (Section II). It prohibits the payment of remuneration related to distances driven and/or the amount of goods carried in so far as such payments endanger road safety. It authorizes only limited derogations (Section VII), while reserving the power to apply control procedures and penalties (Section VIII).

In order to ensure adequate monitoring of compliance with the provisions on working time, Article 3(1) of Regulation (EEC) No 3821/85 [3] requires recording equipment to be installed and used '... in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Articles 4 and 14(1) of Regulation (EEC) No 3820/85'.

3. Article 4 of Regulation No 3820/85 excludes from its scope 13 categories

* Original language: French.

1 — OJ 1985 L 370, p. 1. This regulation replaces and amends Council Regulation (EEC) No 543/69 of 25 March 1969 on the harmonization of certain social legislation relating to road transport (OJ, English Special Edition 1969 (I), p. 170), which had already been amended several times by Council Regulations (EEC) Nos 514/72 of 28 February 1972 (OJ, English Special Edition 1972 (I), p. 124), 515/72 of 28 February 1972 (OJ, English Special Edition 1972 (I), p. 134), 2827/77 of 12 December 1977 (OJ 1977 L 334, p. 1) and 2829/77 of 12 December 1977 (OJ 1977 L 334, p. 11). Since the two regulations concern the same matter and pursue the same objectives, I refer in my Opinion to the case-law of the Court relating both to the regulation of 1969 and to the regulation of 1985.

2 — First recital.

3 — Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8).

of vehicle. In particular, Article 4(6) provides:

'[This regulation shall not apply to carriage by:]

(6) vehicles used in connection with the sewerage, flood protection, water, gas and electricity services, highway maintenance and control, *refuse collection and disposal*, telegraph and telephone services, carriage of postal articles, radio and television broadcasting and the detection of radio or television transmitters or receivers'. [4]

4. It is of that provision that the national courts seek an interpretation from the Court of Justice, in connection with disputes arising in the following circumstances.

Case C-335/94, Hans Walter Mrozek and Bernhard Jäger

5. Mr Mrozek and Mr Jäger, the two defendants in the main action, are employed in a managerial capacity by Rethmann Entsorgungswirtschaft GmbH&Co. KG (hereinafter 'Rethmann'), and are responsible for allocating shifts to the company's drivers.

6. Rethmann's activities include the agreement of long-term waste-disposal contracts with local authorities. Under those contracts, it is entrusted with the collection and transportation of, on the one hand, industrial waste and, on the other, special household waste (such as dry-cell batteries and chemicals) deposited by residents in containers specially placed by Rethmann in towns for that purpose.

7. Mr Jäger is responsible for organizing the journeys of the collection vehicles carrying the household waste from its collection point, where it undergoes preliminary sorting, to Rethmann's plants, where it is sorted more rigorously. Mr Mrozek is responsible for the vehicles which carry the waste from those plants to final disposal sites.

8. In connection with those journeys, company drivers were found to be in breach of driving times laid down by the Ausführungsverordnung zur Arbeitszeitordnung (Regulation implementing the German Code on

4 — Emphasis added.

Working Hours), and administrative fines were imposed on the two defendants for failing to organize the drivers' working hours in accordance with the rules.

9. In their action before the Amtsgericht Recklinghausen challenging the fines, Mr Mrozek and Mr Jäger argued that the journeys were made by 'vehicles used in connection with ... refuse collection and disposal' within the meaning of Article 4(6) of Regulation No 3820/85, so that they were exempt from the obligations imposed by the latter. They also argued that the exception laid down by the Community rules precluded the introduction of national legislation regulating rules on driving time.

10. The Amtsgericht Recklinghausen considers that the determination of the dispute depends upon the interpretation of the relevant Community law provisions, and has therefore referred the following questions to the Court of Justice for a preliminary ruling:

'(1) How is the term "refuse collection and disposal" in Article 4(6) of Regulation (EEC) No 3820/85 to be defined?

(a) Does that term relate exclusively to the collection of refuse from private households or does it also include the transport of waste from commercial undertakings?

(b) As regards refuse from private households:

(aa) Do special types of household waste, such as batteries, paints and solvents, also come within the exception contained in Article 4(6) of Regulation (EEC) No 3820/85?

(bb) Does the exception apply only in respect of short journeys within a local authority area, in particular door-to-door transport, or are longer journeys, such as transport to a more distant waste dump, also covered?

(cc) Is the transportation of such refuse entitled to the benefit of Article 4(6) of the regulation even where the refuse is collected and disposed of by private undertakings on behalf of the local authority?

(c) If the transportation of commercial waste is also covered:

(aa) Is the transportation of every kind of commercial waste covered?

(bb) Are longer journeys, such as transport to dumps, also covered by Article 4(6) of the regulation?

(d) Does Article 4(6) also apply to journeys by empty vehicles, such as return journeys from a dump without a load?

(e) Are journeys in preparation for transportation, such as those transferring vehicles or trailers between different branches of an undertaking, also covered?

(2) What is the relationship between the derogating rule contained in Article 4(6) of Regulation (EEC) No 3820/85 and national rules on driving periods?

(a) If a journey comes within the derogating rule contained in Article 4(6) of the regulation, can a restriction on driving periods still be imposed under national rules?

or

(b) Are national rules, such as the German Code on Working Hours or the Regulation implementing the Code on Working Hours, also inapplicable to such journeys?'

Case C-39/95, Pierre Goupil

11. Mr Goupil is the chairman and general manager of a company whose activities are described in the companies register as 'cleaning, clearance, waste removal and waste treatment'. In fact the company collects

waste from undertakings and transports it to a tip or incineration plant.

12. On an inspection of one of the company's drivers when carrying two waste skips by road, the vehicle's tachograph discs were found to show that the driving time laid down by Regulation No 3820/85 had been exceeded. Mr Goupil was then prosecuted for infringement of Regulation No 3821/85 and of a French Decree.

13. At the hearing before the national court, Mr Goupil argued that he was not a carrier, but a provider of services concerning industrial and commercial waste without market value, and that he was not therefore obliged to comply with the requirements of Regulations Nos 3820/85 and 3821/85.

14. The Tribunal de Police de la Rochelle states that '... many companies with objects identical to those of the company now being prosecuted have been prosecuted before local criminal courts in France' and that 'having regard to divergences in the case-law' as to whether such undertakings are covered by the exemption in Article 4(6) of Regulation No 3820/85, the following question must be referred to the Court of Justice:

'Does Article 4 of Regulation (EEC) No 3820/85 exempt from the scope of Regulation (EEC) No 3821/85 vehicles belonging to private companies engaged in the collection and treatment of waste which transport waste skips or industrial waste, including cases where such transport is effected over long distances?'

The replies to the questions

15. I will consider first the question common to both cases, concerning the scope of the derogation in Article 4(6) of the regulation for 'vehicles used in connection with ... refuse collection and disposal', while at the same time making the various clarifications requested by the Amtsgericht Recklinghausen in its first question, before going on to answer the second question in Case C-335/94, as to whether national law may impose limits on driving hours outside the scope of the regulation.

The words 'refuse collection and disposal'

16. Article 4 excludes carriage by certain vehicles from the scope of the regulation, which is defined in Article 2 as covering carriage by road [5] within the Community. Article 4 is therefore a provision which *derogates* from the general rules contained in the regulation.

17. It is important to remember the context in which Community social legislation relating to road transport was adopted. The Community legislature wished to harmonize certain provisions in that area in order to ensure the uniform application of those provisions throughout the territory of the Member States, [6] so as to enable the three aims to be achieved.

18. In order to achieve uniform application, the scope of the authorized exemptions must be strictly construed.

19. The Court of Justice has always refused, therefore, to give a broad interpretation to the exemptions in Regulations Nos 543/69 and 3820/85, [7] since 'derogations are not to be interpreted in such a way as to extend their effects beyond what is necessary to safeguard the interests which they seek to secure'. [8]

20. In particular, the exemptions in Article 4, which the Court is now being asked to interpret, are already the subject of an abundant case-law establishing the principle that that derogating provision is to be strictly construed.

21. Thus, in Case 47/79 *Nehlsen* v *Bremen* [1979] ECR 3639, [9] the Court held that the exemption in Article 4(4) of Regulation No 543/69 as amended, in favour of vehicles 'which are used by other public authorities for public services ... which are not in competition with professional road hauliers', could not apply to vehicles belonging to private persons and used for public services or on behalf of the public authorities.

5 — 'Carriage by road' is defined in Article 1(1) of the regulation as 'any journey made on roads open to the public of a vehicle, whether laden or not, used for the carriage of passengers or goods'.

6 — See the third recital in the preamble to Regulation No 543/69.

7 — See, for example, concerning the exemption from the tachograph obligation provided for by Article 14a(3)(a) of Regulation No 543/69 as amended by Regulations Nos 515/72 and 2827/77, Case 133/83 *Regina* v *Scott* [1984] ECR 2863; and, concerning Article 12 of Regulation No 3820/85, which authorizes departure from the provisions of the regulation under certain conditions, Case C-235/94 *Regina* v *Bird* [1995] ECR I-3933.

8 — See the judgment in *Regina* v *Bird*, cited above, paragraph 10, and the judgments cited by the Court therein: Case 90/83 *Paterson* v *Weddel* [1984] ECR 1567, paragraph 16, and Case C-116/91 *Licensing Authority South Eastern Traffic Area* v *British Gas* [1992] ECR I-4071, paragraph 12.

9 — Paragraph 7 of the judgment.

22. In Case 79/86 *Hamilton* v *Whitelock* [10] the Court interpreted the words 'specialized breakdown vehicle' in Article 4(9) of Regulation No 543/69, as amended by Article 1(1) of Regulation No 2827/77, [11] as referring only to vehicles adapted or suited generally only for the removal of vehicles recently involved in an accident, to the exclusion of vehicles simply used to transport other vehicles.

23. In *Licensing Authority South Eastern Traffic Area* v *British Gas*, cited above, [12] the Court held that the derogation from the obligation to install and use a tachograph for 'vehicles used in connection with ... gas ... services' in Article 4(6) of Regulation No 3820/85 applied solely to vehicles used for carriage wholly and exclusively in connection with the production, transport or distribution of gas, or the maintenance of the necessary installations for that purpose. By contrast, that derogation did not apply to vehicles used wholly or partly in connection with the carriage of domestic gas appliances.

24. Moreover, besides being construed narrowly, and in accordance with the case-law, Article 4(6) must be read in the light of the aims pursued by the regulation, [13] namely road safety, the harmonization of the conditions of competition and social progress: 'it is evident from the first recital in the preamble to that regulation that the possibility of derogating from the Community rules must not undermine the objectives pursued in that area'. [14]

25. It should also be noted that the derogations provided for by Article 4(6) are based on the consideration that the services referred to are all general services performed in the public interest:

'With regard to the interests which Article 4(6) of Regulation No 3820/85 seeks to safeguard, the derogations provided for in that provision are based on the nature of the services in connection with which the vehicles are used. In that respect it is apparent from the list in Article 4(6) that the services envisaged by that provision are all *general services performed in the public interest*.' [15]

26. In order, therefore, to determine the scope of the exemption for 'vehicles used in connection with ... refuse collection and disposal', those words need to be defined in the light of the above case-law.

10 — [1987] ECR 2363, at paragraph 10 of the judgment.

11 — The provision in question is now Article 4(10) of Regulation No 3820/85.

12 — Paragraph 21.

13 — See, for example, the judgments in *Nehlsen*, cited above (paragraph 4); *Scott*, cited above (paragraph 15); *British Gas*, cited above (paragraph 12), and in Case C-116/92 *Regina* v *Charlton and Others* [1993] ECR I-6755, paragraph 14.

14 — Judgment in *British Gas*, cited above, paragraph 12.

15 — Ibid., paragraph 13, emphasis added.

27. In that respect, the choice of words used, namely 'services', 'collection and disposal' and 'refuse' seems to me to be significant.

28. First, it is revealing that the Community legislature used the expression 'collection and disposal' ('enlèvement' in the French version, and 'Abfuhr' in German) rather than the words 'carriage' or 'transport'.

29. That choice seems to me to be intentional, since the words 'carriage' and 'transport' are used elsewhere in Article 4 to describe other exemptions. Thus, for example, the regulation does not apply to 'vehicles used for the *carriage* of goods where the maximum permissible weight [...] does not exceed 3.5 tonnes', [16] or to 'vehicles used for the *carriage* of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres', [17] or to 'vehicles *transporting* circus and funfair equipment'. [18]

30. The two terms have different meanings. 'Collection and disposal' is more restricted than 'carriage' or 'transport'. The former consists merely in picking up, collecting or finally removing an object from a place where it has been deposited, and requires movement over a limited distance and a short period of time. By contrast, 'carriage' or 'transport' may be effected over a longer distance and an extended period of time. It is in that sense that the expressions 'carriage by road' and 'road transport' are used. In my view, the legislature intended to make a clear distinction between the two concepts and to reserve the benefit of the derogation for vehicles used in connection with *collection and disposal.*

31. To allow the derogation from the very strict provisions of the Community rules, especially as regards driving and rest periods, to extend to vehicles used for the *carriage* or *transport* of refuse would be to authorize a broad interpretation of Article 4(6). Such an interpretation cannot be accepted under the case-law, as it would run counter to the aims pursued. In accordance with the spirit of the rules, driving times must be limited and controlled so as not to compromise road safety or drivers' working conditions.

32. On that point, Mr Goupil's representative argued at the hearing that the journeys are short in any event and, in accordance with national rules, cannot last more than 24 hours. That argument cannot be accepted. As the representative of the French Government asked, if the transport of refuse were to be exempted from the control measures, how, without a tachograph, would it be

16 — Article 4(1).
17 — Article 4(3).
18 — Article 4(9).

possible to ensure that abuses prejudicial both to road safety and to the social protection of drivers were not committed? The only solution is to apply the Community rules to 'carriage' and 'transport'.

33. Conversely, restricting the exemption to 'collection and disposal' vehicles only does not have the same adverse effects. Those vehicles move very slowly, within a limited area, and make frequent stops at places where refuse is deposited.

34. So far as the aims of the regulation are concerned, the method of collection and disposal, which may vary from one authority to another, is immaterial. Collection may be by the traditional door-to-door method, or be selective, from containers placed specially for public use, as tends to be the case now.

35. It is also immaterial what type of vehicle is used, or whether it is specially equipped.

36. Nor, finally, does it matter in principle whether, having collected the refuse, the vehicle takes its load to the treatment centre only, or continues to the final disposal sites, the only determining factor being that of proximity. The aims pursued will not be compromised so long as the derogation is restricted to vehicles used for transportation in the strict sense only as an ancillary to the essential activity of collection and disposal.

If, on the other hand, as is often the case, the final disposal sites are a long way from built-up areas, then transportation to those sites, which requires longer driving times, is no longer covered by the exemption.

It is for the national court to determine in any event whether the vehicle's journey to those sites is sufficiently subsidiary to collection proper for the aims pursued, especially road safety and social progress, not to be compromised.

37. Accordingly, and in reply in particular to Question 1(d) in Case C-335/94, journeys by empty vehicles are covered by Article 4(6) if they come within the context of the essential activity of collection and do not, by reason of their length and duration, constitute a 'transport' activity. If a vehicle leaves its

depot, collects refuse and takes it to an appropriate nearby site, the activity is one of 'collection and disposal'. The fact that the vehicle is empty at the beginning and at the end of its journey does not render Article 4(6) inapplicable.

38. To conclude, the derogation does not extend to vehicles whose essential activity is the *transport* of refuse. It applies only to vehicles used to collect refuse and take it to sorting, treatment or disposal sites, in so far as the transport aspect of their activity remains subsidiary to the collection.

39. Having thus explained the meaning of 'collection and disposal', I turn now to the word 'refuse' ('immondices' in French, and 'Müll' in German).

40. Unlike the words 'collection and disposal', the choice of the word 'refuse' does not seem to me to reveal an intention by the legislature to limit the type of waste which may be collected and disposed of by vehicles exempted under Article 4(6).

41. The word has a very wide meaning, as is apparent from the definitions in the dictionaries of Larousse ('ordures ménagères, déchets de toute sorte') and Robert ('déchets de la vie humaine et animale, résidus du commerce et de l'industrie'). In principle, the type of waste collected, whether domestic or commercial, is immaterial for the purposes of applying the exemption.

42. The definition should not be extended too far, however, since too wide an interpretation might be difficult to reconcile with other Community provisions. For example, Article 13(1)(d) of the regulation already authorizes Member States to grant exceptions for vehicles used to carry animal waste. The term 'refuse' cannot therefore include animal waste without causing duplication between Article 4(6) and Article 13(1)(d). Nor, for example, can the term cover dangerous goods, the transport of which is subject to restrictions under other Community legislation. [19]

43. The term 'refuse' must therefore be understood in its widest accepted sense, which covers both household refuse and waste produced by industry, commerce and

19 — Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ 1995 L 249, p. 35).

traditional trades, save where more specific rules for a particular type of waste apply.

44. A further limitation on the definition of the term 'refuse' may be deduced from the fact that Article 4(6) refers to 'vehicles used in connection with ... services'.

45. As noted, the judgment in *British Gas*, cited above, reveals that the common factor of the exemptions in Article 4(6) is that they constitute general services performed in the public interest. The expression 'vehicles used in connection with ... refuse collection and disposal' thus designates vehicles used for the public service of collecting and disposing of refuse, which is a service required in the interests of public health and hygiene.

46. That public service, which is required whenever any human community is formed, generally takes the form of either a door-to-door or a selective collection of waste.

47. The definition of the word 'refuse', as used in the rules, is therefore restricted by the fact that only waste or residue habitually produced by the normal activity of a human community is included. The type of waste is immaterial, since individuals may, for example, generate not only food waste but also industrial-type waste (paint residue, batteries etc.), [20] whereas, conversely, industries may discard food waste generated by the human activity which supports them in addition to the waste generated by the industry itself. Nevertheless, the collection and disposal of such waste as a whole must be carried out in pursuance of an objective which is in the *general* interest.

48. Where a vehicle is used to collect and transport refuse in the context of a service which is not a public service, and in an area of activity which is open to competition, the exemptions cease and the general rules apply. Transport for commercial purposes in a competitive area thus falls within the natural scope of the Community rules rather than of the exemptions.

49. However, although the references to services in Article 4(6) are to public services, the article does not make a distinction between services performed directly by the public authorities and services entrusted by them to a private undertaking. In my view the

20 — In Article 1(3) of both Council Directive 89/369/EEC of 8 June 1989 (OJ 1989 L 163, p. 32) and Council Directive 89/429/EEC of 21 June 1989 (OJ 1989 L 203, p. 50), which concern the prevention and reduction of air pollution from new and existing municipal waste incineration plants, 'municipal waste' is defined, for example, as 'domestic refuse, as well as commercial or trade refuse and other waste which, because of its nature or composition, is similar to domestic refuse'.

distinction is therefore not a criterion for applying the exemption.

50. That conclusion follows from a comparison between the current wording of Article 4(6) and that of the previous regulation. Article 4(4) of Regulation No 543/69, as amended by Regulation No 2827/77, excluded from the scope of the regulation 'vehicles which are used by other public authorities for public services'. [21] The changed wording in Regulation No 3820/85 shows that the legislature intended to widen the scope of the provision in accordance with the general aim, stated in the first recital of the preamble to the regulation, of making its provisions more flexible; the benefit is therefore no longer reserved solely for vehicles used by the public authorities, provided the operation in question helps to carry out a refuse collection and disposal service in the public interest.

51. Allowing the derogation to benefit private undertakings does not have the effect of conferring a competitive advantage upon one undertaking as against another. As the Commission has pointed out, [22] either the public refuse collection and disposal service is entrusted by the authorities to a single undertaking, in which case the benefit of the exemption cannot be granted to any other undertaking, or several undertakings are invited to perform the service together, in which case they all benefit equally from the derogating provision.

52. I therefore consider that the derogation may benefit both the public authorities and private undertakings which perform a general refuse collection and disposal service in the public interest.

53. In the light of that analysis of the expression 'vehicles used in connection with ... refuse collection and disposal', it may be interpreted as follows.

54. The derogation in Article 4(6) covers vehicles used for the collection of waste of all kinds which is not subject to more specific rules and for the transportation of such waste over short distances, within the context of a general service in the public interest provided directly by the public authorities or by private undertakings under their control.

21 — On the interpretation of that provision, see the judgment in *Nehlsen*, cited above.

22 — Paragraph 13 of its observations in Case C-335/94.

The limitation of driving time by national legislation

55. In Question 2 in Case C-335/94, the national court asks in effect whether national rules on driving periods may apply in areas which are excluded from the scope of the Community rules, such as those referred to in Article 4(6) of Regulation No 3820/85.

56. The eleventh recital in the preamble to the regulation [23] shows that the harmonization pursued at Community level in the area of road transport is only partial and leaves outside its scope a number of situations, such as those referred to in Article 4(6).

57. Nevertheless, such an exclusion cannot remove the legislative power of Member States in those situations. A provision which simply excludes the application of Community rules is not intended to exclude any kind of rules concerning the transport in question, nor does it have that effect.

58. Moreover, the third recital reserves generally the right to impose more stringent rules at national level in accordance with the aims pursued:

'Whereas the provisions of this regulation dealing with working conditions cannot be allowed to prejudice the right of the two sides of industry to lay down, by collective bargaining or otherwise, provisions more favourable to workers; whereas, in order not only to promote social progress but also to improve road safety, each Member State must retain the right to adopt certain appropriate measures'.

More particularly, the fourteenth recital states:

'Whereas, with regard to driving periods, it is desirable to set limits on continuous driving time and on daily driving time, but without prejudice to any national rules whereby drivers are prohibited from driving for longer than they can with complete safety'.

23 — 'Whereas certain transport operations may be exempted from the application of this regulation.'

59. Therefore, in areas outside the scope of the regulation, Member States remain competent to establish or maintain, if they deem necessary, rules compatible with Community law which pursue the same aims.

60. I therefore propose that the Court reply to the questions submitted by the national courts as follows:

In Cases C-335/94 and C-39/95:

The words 'vehicles used in connection with ... refuse collection and disposal' in Article 4(6) 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 covering vehicles used for the collection of waste of all kinds which is not subject to more specific rules and, subsidiary to such collection, for the transportation of such waste over short distances, within the context of a general service in the public interest provided directly by the public authorities or by private undertakings under their control.

In Case C-335/94:

The exemptions provided for by Article 4(6) of the regulation cited above does not preclude Member States from enacting national rules on driving time for the vehicles referred to in that provision.