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

In Case C-394/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Politierechtbank te Hasselt (Belgium) for a preliminary ruling in the criminal proceedings pending before that court against

Marc Michielsen and

Geybels Transport Service NV (GTS)

on the interpretation of Articles 6 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, and Article 15(2) to (4) inclusive of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, pp. 1 and 8 respectively),

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,

* Language of the case: Dutch.

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

after considering the written observations submitted on behalf of:

— the Belgium Government, by J. Devadder, Director of Administration 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 Thomas van Rijn and Vittorio Di Bucci, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the United Kingdom, represented by D. Bethlehem, Barrister, and of the Commission 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 order of 9 November 1992, received at the Court on 13 November 1992, the Politierechtbank te Hasselt (Local Criminal Court, Hasselt, Belgium) referred to

the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Articles 6 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, and of Article 15(2) to (4) inclusive of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, pp. 1 and 8 respectively).

2 Those questions were raised in criminal proceedings against Marc Michielsen (hereinafter 'the defendant') and the Geybels Transport Service (hereinafter 'Geybels Transport') as the party liable at civil law.

3 On 12 August 1991 the defendant, who was driving a truck and trailer for Geybels Transport, was the subject of an inspection carried out in Antwerp in accordance with the aforementioned Regulations Nos 3820/85 and 3821/85. The inspection disclosed that he had committed several breaches of those regulations.

4 The documents before the Court show that he had failed on two different days to observe the rest and driving periods and, moreover, on the day of the inspection, he had used two record sheets in the tachograph on his vehicle. The only point of difficulty still to be resolved by the national court, and for which an interpretation of the relevant Community provisions has been shown to be necessary, concerns the question of the defendant's fraudulent use of the record sheets.

5 The defendant claimed before the Politierechtbank te Hasselt that the use of a second record sheet was quite in order, since, having completed his daily working period and left the company's premises, he was undertaking a new assignment.

6 The national court considered that the interpretation of certain concepts in Regulations Nos 3820/85 and 3821/85 was not clear and decided to refer to the Court the following questions for a preliminary ruling:

'(1) Period of work

Is the period of work each period during which the driver of a vehicle subject to Regulations (EEC) Nos 3820/85 and 3821/85 cannot freely dispose of his time?

Does the period of work comprise driving periods, breaks in driving and time devoted to other activities?

Is that definition sufficiently correct or must it be qualified or replaced by another definition?

(2) Day

Is a day a period of 24 hours and when does a day commence for the purposes of interpreting Regulations (EEC) Nos 3820/85 and 3821/85: at 00.00 hours of the calendar day or at the moment when the driver concerned first takes over a vehicle subject to those regulations?

Can the day commence at a different time?

(3) End of the working period

Is the end of the working period the moment at which the driver concerned is no longer accountable for the use of his time to the management of the transport company, and at which he regains the right freely to dispose of his time?

Is another definition possible?'

The first and third questions

7 In its first and third questions the national court seeks to ascertain the meaning of the expressions 'period of work' and 'end of the working period' for the purposes of Regulations Nos 3820/85 and 3821/85, but does not mention any specific provisions of those regulations.

8 With respect to the first question, it should be noted that the expression 'period of work' is to be found in various provisions of Regulation No 3821/85, and specifically in Article 15(3) and Sections I(a), [1] II(4) and IV(b)(1) of Annex I. However, no definition of that term is provided, either in that regulation or in Regulation No 3820/85.

9 According to the Belgian Government and the Commission no definition should be adopted which is derived from Regulations Nos 3820/85 and 3821/85, since those two measures only partially harmonize social legislation in the road transport sector.

1 — Translator's note: The term used here is 'working period'. In the other provisions cited the term 'period of work' is used.

10 The United Kingdom, for its part, considers that the two regulations form a complete system. Consequently, the definitions requested may be deduced from the provisions of those regulations, and in particular from the term 'rest', as defined in Article 1(5) of Regulation No 3820/85. It therefore considers that 'period of work', for the purposes of Article 15(2) of Regulation No 3821/85, should be taken to mean the 'daily working period', since that concept covers the periods during which the driver cannot dispose freely of his time. The 'end of the working period' is thus determined by the start of a sufficient daily or weekly rest period.

11 For the purpose of giving a helpful reply to the first question put by the national court, it should be noted at the outset that the terms 'period of work' and 'daily working period' may not be regarded as synonymous in the context of Regulations Nos 3820/85 and 3821/85. The differences between the two terms emerge from Article 15(2) and Article 15(3) of Regulation No 3821/85.

12 The first subparagraph of Article 15(2) of that regulation provides that 'the record sheet shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorized'.

13 However, according to the second indent of Article 15(3), the tachograph must enable 'the following periods of time to be recorded separately and distinctly: (a) ... driving time; (b) ... all other periods of work; (c) ... other periods of availability ...; (d) ... breaks in work and daily rest periods'.

14 It follows from those provisions that the concept of'daily working period' in Article 15(2) is wider than that of 'period of work' in Article 15(3). The former refers to the entire working day in the sense of an uninterrupted span of time, whereas the latter only covers the times at which the driver is actually engaged in activities

having a bearing on driving, including the driving time. Consequently, 'periods of availability', 'breaks in work and daily rest periods', as mentioned in Article 15(3) of Regulation No 3821/85, do not fall within the concept 'period of work', since the fact that those terms are preceded by the term 'all other periods of work' precludes their being regarded as forming part of the 'period of work'.

15 On the other hand, it is not possible to preclude, without further consideration, the possibility that those 'periods of availability' and 'breaks in work and daily rest periods' fall within the 'daily working period' since, according to Article 15(2), they must appear on the record sheet, which may not be withdrawn during the daily working period.

16 Since the concepts 'period of work' and 'daily working period' are not synonymous in the context of Regulations Nos 3820/85 and 3821/85, it must be determined which of those concepts is referred to by the national court. As mentioned in paragraph 4, above, the only point of difficulty still to be resolved in the main proceedings concerns the lawfulness of the defendant's use of two record sheets in the course of a single day. Given that, according to Article 15(2) of Regulation No 3821/85, the record sheet may not be withdrawn before the end of the daily working period, it is the latter concept, as used in that provision, which must be interpreted in order to enable the national court to determine whether the defendant's conduct was lawful.

17 The first question must therefore be understood as referring to the term 'daily working period', and to its meaning and scope, and must consequently be considered together with the third question, which relates to the same problem.

18 It is necessary, however, to establish which, specifically, of the periods mentioned in Article 15(3) of Regulation No 3821/85 are covered by the 'daily working period'.

19 The first two temporal categories ('driving time' and 'all other periods of work') are by definition working periods.

20 In the case of the third category (the 'period of availability'), in view of the fact that, pursuant to Article 15(4), that category may, at the discretion of the Member States be recorded together with the second ('all other periods of work'), it may become impossible, at the time of inspection, to calculate it independently of the periods of actual work.

21 With regard to 'rest periods', it should be noted that Article 6(1) of Regulation No 3820/85 fixes the maximum length of the daily driving period. Similarly, the minimum length of the daily rest period is prescribed in Article 8(1) of that regulation. The second subparagraph of that article provides that when the rest is taken in two or three separate periods during the same 24-hour period, one of those periods must be of at least eight consecutive hours, in which case the minimum length of the rest is to be increased to 12 hours.

22 It should also be noted that Article 1(5) of Regulation No 3820/85 defines 'rest' as 'any uninterrupted period of at least one hour during which the driver may freely dispose of his time'. Pursuant to Article 2 of Regulation No 3821/85, that definition also applies for the purposes of that regulation.

23 It follows from the definition of 'rest' laid down in Article 1(5) of Regulation No 3820/85 that, if a driver divides his rest into two or three separate periods, any of those periods which is less than one hour in length falls within the daily working period.

24 With regard to 'breaks' in driving, Article 7(5) of Regulation No 3820/85 provides that they may not be regarded as daily rest periods. Since, by definition, they must occur between driving periods, they are not capable of being identified individually within the daily working period.

25 The starting point, for the purpose of determining when the daily working period, thus defined, begins and ends, is to be found in the judgment of the Court of 2 June 1994 in *Van Swieten* (Case C-313/92, [1994] ECR I-2177, paragraphs 22 to 27), in which the Court held that the driver's daily period of activity commences at the time when he activates the tachograph following a weekly or daily rest period. If the daily rest is taken in two or three separate periods, the period of activity begins at the end of the rest period of at least eight hours' duration. Consequently, the end of the daily working period coincides with the beginning of a daily rest period or, if the daily rest is taken in two or three separate periods, at the beginning of a rest period extending over a minimum of eight consecutive hours.

26 The reply to the first and third questions should therefore be that the 'daily working period' within the meaning of Article 15(2) of Regulation No 3821/85 comprises the driving time, all other periods of work, the period of availability, breaks in work and, where the driver divides his daily rest into two or three separate periods, such a period of rest, provided that it does not exceed one hour. The daily working period commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, where the daily rest is divided into separate periods, following the rest period of at least eight hours' duration. It ends at the beginning of a daily rest period or, in cases where the daily rest is divided into

separate periods, at the beginning of a rest period extending over a minimum of eight consecutive hours.

The second question

27 By its second question the national court asks whether the concept of 'day', within the meaning of Regulations Nos 3820/85 and 3821/85, coincides with that of the 'period of 24 hours' referred to in Article 8(1) of Regulation No 3820/85, and when it commences.

28 A reading of Article 8(1) of Regulation No 3820/85 shows that the expressions 'day' and 'period of 24 hours' are synonymous. In the first subparagraph of Article 8(1) reference is made to the 'period of 24 hours', whilst in the second the word 'day' is used, the subject of both subparagraphs being the same, namely rest periods.

29 In its judgment in *Van Swieten*, cited above, the Court defined the expression 'period of 24 hours' as meaning the period commencing at the time when the driver activates the tachograph following a weekly or daily rest period.

30 The reply to the second question should therefore be that the term 'day', within the meaning of Regulations Nos 3820/85 and 3821/85, must be understood as equivalent to the term 'period of 24 hours', which refers to any period of that duration which commences at the time when the driver activates the tachograph following a weekly or daily rest period.

Costs

31 The costs incurred by the Belgian Government and by the United Kingdom, 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 Politierechtbank te Hasselt by order of 9 November 1992, hereby rules:

1. The 'daily working period' within the meaning of Article 15(2) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, comprises the driving time, all other periods of work, the period of availability, breaks in work and, where the driver divides his daily rest into two or three separate periods, such a period, provided that it does not exceed one hour. The 'daily working period' commences at the time when the driver activates the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following the rest period of at least eight hours' duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of eight consecutive hours.

2. **The term 'day', within the meaning of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, and of Regulation No 3821/85, must be understood as equivalent to the term 'period of 24 hours', which refers to any period of that duration which commences at the time when the driver activates the tachograph following a weekly or daily rest period.**

Mancini Diez de Velasco Kakouris

Schockweiler Kapteyn

Delivered in open court in Luxembourg on 9 June 1994.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber