

Both measures are disproportionate in terms of the negative impact on transport undertakings in the EU Member States, especially those situated on the geographical periphery of the European Union.

2. The second plea in law, alleging the unjustified restriction on the right of establishment provided for in Article 49 TFEU

Romania submits that the measure established by Article 1(3) generates significant operational costs for transport companies established in a Member State on the European Union's geographical periphery. The profitability and by implication the attractiveness of creating such a company in those States will decrease significantly. At the same time, operators already established will relocate their activities to States in Western Europe in order to reduce the negative effects entailed by the obligation to return the vehicle to the operational centre in the Member State of establishment within eight weeks.

Consequently, that measure constitutes a restriction on the freedom of establishment within the meaning of Article 49 TFEU. That restriction is unjustified.

3. The third plea in law, alleging the infringement of the principle of non-discrimination on the ground of nationality, provided for in Article 18 TFEU

Romania submits that the measure providing for the vehicle's return to the operational centre in the Member State of establishment within eight weeks and the additional restrictions concerning cabotage are contrary to the European Union's convergence objectives and are protectionist, which creates a significant barrier to entry of non-resident operators to the transport markets.

Although apparently non-discriminatory, those measures will *de facto* affect Member States to different extents, in that they will have a significant and disproportionate impact on the economic activity of transport operators established in the States located on the European Union's geographical periphery.

Furthermore, the measures governed by Regulation (EU) 2020/1055, Regulation (EU) 2020/1054 ⁽¹⁾ and Directive (EU) 2020/1057 ⁽²⁾ (concerning the additional restriction of cabotage operations, the return of the vehicle to the operating centre in the Member State of establishment within eight weeks, the return of the driver every four works, the prohibition on taking the regular weekly rest period in the vehicle cabin and the posting of drivers) were designed as pillars of an integrated legislative package, a context in which only an analysis of their cumulative effects can illustrate their actual impact on the transport market.

⁽¹⁾ Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

⁽²⁾ Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49).

Action brought on 23 October 2020 — Romania v European Parliament, Council of the European Union

(Case C-548/20)

(2021/C 19/35)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: E. Gane, L. Lițu and M. Chicu, acting as Agents)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Directive (EU) 2020/1057 in part, in particular Article 1(3) to (6);

in the alternative, only if the Court should find that those provisions are inextricably linked to other provisions of Directive (EU) 2020/1057 or concern the essence of that act, annul the EU legislative act in its entirety;

— order the Parliament and the Council to pay the costs.

Pleas in law and main arguments

In support of its action, Romania relies on two pleas in law:

1. The first plea in law, alleging the infringement of the principle of proportionality, provided for in Article 5(4) TEU

Romania submits that the solution of referring to the criterion of the typology of transport operations, with a view to identifying the situations in which the rules for the posting of drivers in the road transport sector may be applied was not the subject of an impact assessment carried out by the Commission and is not substantiated on the basis of any report/study or scientific data.

The co-legislators had, in the present case, the obligation to conduct an impact assessment, since they amended the Commission's proposal substantially without having sufficient information enabling them to assess the proportionality of the new measure.

In addition, the criterion of the typology of transport operations creates uncertainty in identifying the host Member State and the legislation applicable. Consequently, referring to that criterion adversely affects legal certainty, being contrary, *inter alia*, even to the stated objectives of Directive (EU) 2020/1057.

Furthermore, applying the rules for posting drivers in the road transport sector by reference to the criterion of transport operations may affect the flexibility and rapidity specific to that sector.

2. The second plea in law, alleging the infringement of the principle of non-discrimination on the ground of nationality, provided for in Article 18 TFEU

Romania submits that, since the international transport market is objectively centralised/polarised, and the share of operators from the Member States in the European Union's peripheral areas in the international transport market is increasing, it is clear that the operators from those areas will mainly bear the administrative and financial costs relating to posting and will be deterred from carrying out operations by measures such as Article 1(3) to (6) of Directive (EU) 2020/1057.

Furthermore, the measures governed by Directive (EU) 2020/1057, Regulation (EU) 2020/1054 ⁽¹⁾ and Regulation (EU) 2020/1055 ⁽²⁾ (concerning the additional restriction of cabotage operations, the return of the vehicle to the operating centre in the Member State of establishment every eight weeks, the return of the driver every four works, the prohibition on taking the regular weekly rest period in the vehicle cabin and the posting of drivers) were designed as pillars of an integrated legislative package, a context in which only an analysis of the their cumulative effects can illustrate their actual impact on the transport market.

- ⁽¹⁾ Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).
- ⁽²⁾ Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector (OJ 2020 L 249, p. 17).

Action brought on 23 October 2020 — Republic of Cyprus v European Parliament and Council of the European Union

(Case C-549/20)

(2021/C 19/36)

Language of the case: Greek

Parties

Applicant: Republic of Cyprus (represented by Eirini Neofytou)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Article 1(3) of Regulation (EU) 2020/1055055 ⁽¹⁾ of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, to the extent that that provision establishes point (b) in Article 5(1) of Regulation No 1071/2009. In the alternative, if the Court holds that that is not possible, the Court is asked to annul Article 1(3) in its entirety;
- in the alternative, if the Court holds an action seeking partial annulment of the contested regulation in terms of the above paragraph to be inadmissible, annul Regulation (EU) 2020/1055055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector;
- order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action the applicant relies on seven grounds for annulment:

First ground for annulment: The applicant submits that the defendants infringed Article 90 TFEU read in conjunction with Article 3(3) TEU, Article 11 TFEU, Article 37 of the Charter of Fundamental Rights of the European Union, Article 3(5) TEU, Articles 208(2) and 216(2) TFEU and the Paris Agreement [on climate change].

Second ground for annulment, The applicant submits that the defendants infringed the principle of proportionality, as provided for in Article 5(4) TEU and in Article 1 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the EU Treaty and to the FEU Treaty.