

2. If Question 1 is answered in the affirmative, is the refusal of the right of deduction in the case of the second purchaser limited in terms of amount to the shortfall in tax revenue caused by the evasion?
3. If Question 2 is answered in the affirmative, is the shortfall in tax revenue calculated
 - a. by comparing the tax lawfully payable in the supply chain with the tax actually assessed,
 - b. by comparing the tax lawfully payable in the supply chain with the tax actually paid, or
 - c. in another way, and, if so, what way?

(¹) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Appeal brought on 28 September 2021 by Unie van Professionele Transporteurs en Logistieke Ondernemers (UPTR) against the order of the General Court (Eighth Chamber) delivered on 28 July 2021 in Case T-634/20, UPTR v Parliament and Council

(Case C-603/21 P)

(2021/C 513/31)

Language of the case: Dutch

Parties

Appellant: Unie van Professionele Transporteurs en Logistieke Ondernemers (UPTR) (represented by: F. Vanden Bogaerde, advocaat)

Other parties to the proceedings: European Parliament, Council of the European Union

Form of order sought

- First ground: Declare the appeal admissible;
- Second ground: Annul Article 2(4) of Regulation (¹) (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. The basis for this is Article 263 of the consolidated version of the Treaty on the Functioning of the European Union, together with the grounds of appeal summarised below;
- Third ground: Reserve the costs.

Grounds of appeal and main arguments

First ground: admissibility of the initial application

The appellant's members should be able to enjoy effective legal protection. In order to be able to enjoy effective legal protection, a restrictive interpretation of the concept of 'direct and individual concern' cannot be adopted in the present case, given the specific criminal/sanctioning context, in which the appellant's members do not have a subjective right, which prevents them from having direct access to the courts.

It can hardly be regarded as effective legal protection if the appellant's members have to place themselves in an illegal situation and then depend on the supervisory authorities, which would have the option to prosecute or impose penalties, without being obliged to do so. Moreover, effective legal protection is not guaranteed, since a national court is not always required to refer a question to the Court of Justice for a preliminary ruling.

Second ground: breach of the single market

Article 3(3) of the Treaty on European Union aims to establish a European internal market. This European internal market is created on the basis of the principle of free movement of services, amongst others.

In the transport field, the free movement of services is regulated by the provisions of Title VI of the Treaty on the Functioning of the European Union.

It follows that, with regard to road transport and specifically cabotage, efforts should be made to pursue gradual liberalisation.

Historically, this liberalisation within the transport market was actually achieved. However, the liberalisation achieved in the transport market, and the removal of restrictions therein, have been scaled back. The contested provision means that the liberalisation achieved is being scaled back even further, since it contains a very far-reaching restriction, which is detrimental to hauliers which are members of the appellant.

However, the reasons which actually underlie this restriction are covered by the other legislative provisions of the Mobility Package.

The contested provision infringes Article 3(3) TEU and the principle of free movement of services under Title VI TFEU and should thus be annulled.

Third ground: breach of the principle of proportionality

The impact assessment relating to the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 1071/2009 and (EC) No 1072/2009 with a view to adapting them to developments in the road transport sector was drawn up for the purpose of the further liberalisation of cabotage operations within the European Union.

This impact assessment did not take account of a possible cooling-off period, which was presented only later in the legislative process. It can only be assumed that the introduction of a cooling-off period of four days after the completion of the last cabotage operation will have a significant impact on the number of cabotage operations within the European Union. However, the effects of this cooling-off period were not assessed in an impact assessment during the legislative process.

Given that this amendment to the rules governing cabotage operations significantly reduces the level of liberalisation already achieved, due to the introduction of a cooling-off period of four days after the last cabotage operation, it is not possible to maintain that there is no 'substantial' amendment. Consequently, an impact assessment should be considered necessary for the legislative process to continue.

The European Parliament and the Council did not consider that an update of the impact assessment was appropriate or necessary for the legislative process.

The failure to carry out an update of the impact assessment should therefore be considered a breach of the principle of proportionality by which the European Parliament and the Council are bound.

(¹) OJ 2020 L 249, p. 17.

Request for a preliminary ruling from the Městský soud v Praze (Czech Republic) lodged on 30 September 2021 — Heureka Group a.s. v Google LLC

(Case C-605/21)

(2021/C 513/32)

Language of the case: Czech

Referring court

Městský soud v Praze

Parties to the main proceedings

Applicant: Heureka Group a.s.

Defendant: Google LLC