



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

7 July 2022 *

(Reference for a preliminary ruling – Road transport – Social legislation – Regulation (EC) No 561/2006 – Exceptions – Article 13(1)(b) – Notion of ‘a radius of up to 100 kilometres (km) from the base of the undertaking’ – Vehicles effecting carriage within and also outside of that radius)

In Case C-13/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Miercurea Ciuc (Court of First Instance, Miercurea Ciuc, Romania), made by decision of 10 November 2020, received at the Court on 4 January 2021, in the proceedings

Pricoforest SRL

v

Inspectoratul de Stat pentru Controlul în Transportul Rutier (ISCTR),

THE COURT (Eighth Chamber),

composed of N. Jääskinen, President of the Chamber, N. Piçarra (Rapporteur) and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by L. Nicolae and C. Vrignon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2022,

gives the following

* Language of the case: Romanian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(1)(b) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1), as amended by Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 (OJ 2020 L 249, p. 1) ('Regulation No 561/2006').
- 2 The request has been made in proceedings between Pricoforest SRL, an undertaking operating in the forestry sector, established in Romania, and the Inspectoratul de Stat pentru Controlul în Transportul Rutier (State Road Transport Inspectorate, Romania; 'ISCTR') concerning administrative penalties imposed on that undertaking for infringements of the rules on the daily driving time and daily rest period of drivers.

Legal context

European Union law

- 3 Recital 17 of Regulation No 561/2006 states as follows:

'This Regulation aims to improve social conditions for employees who are covered by it, as well as to improve general road safety. It does so mainly by means of the provisions pertaining to maximum driving times per day, per week and per period of two consecutive weeks, the provision which obliges drivers to take a regular weekly rest period at least once per two consecutive weeks and the provisions which prescribe that under no circumstances should a daily rest period be less than an uninterrupted period of nine hours. ...'

- 4 Article 1 of that regulation provides as follows:

'This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.'

- 5 According to Article 2(1)(a) of that regulation, it is to apply, inter alia, to the carriage by road 'of goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3.5 tonnes'.

- 6 According to Article 4(e) and (g) of that regulation:

'For the purposes of [Regulation 561/2006] the following definitions shall apply

...

(e) “other work” means all activities which are defined as working time in Article 3(a) of [Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35)] except “driving”, including any work for the same or another employer, within or outside of the transport sector;

...

(g) “daily rest period” means the daily period during which a driver may freely dispose of his time and covers a “regular daily rest period” and a “reduced daily rest period”:

- “regular daily rest period” means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours,
- “reduced daily rest period” means any period of rest of at least nine hours but less than 11 hours;

7 Article 6 of Regulation No 561/2006, which sets the maximum daily and weekly driving time and the maximum driving time during any two consecutive weeks, states, in paragraph 5 thereof:

‘A driver shall record as other work any time spent as described in point (e) of Article 4 as well as any time spent driving a vehicle used for commercial operations that do not fall within the scope of this Regulation ... This record shall be entered either manually on a record sheet or printout or by use of manual input facilities on recording equipment.’

8 Article 13(1) of that regulation provides as follows:

‘Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions from Articles 5 to 9 [which set out the rules applicable to vehicle crews, driving times, breaks and rest periods] and make such exceptions subject to individual conditions on its own territory or, with the agreement of the States concerned, on the territory of another Member State, applicable to carriage by the following:

...

(b) vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 [kilometres (km)] from the base of the undertaking;

...’

Romanian law

9 Under Article 2 of the Ordonanța Guvernului nr. 37 privind stabilirea rului de aplicare a regulilor privind perioadele de conducere, pauzele și perioadele de odihnă ale conducătorilor auto și utilizarea aparatelor de înregistrare a activității acestora (Government Decree No 37 establishing

the framework for application of the rules on driving times, breaks and rest periods for drivers and on the use of devices for recording drivers' activities) of 7 August 2007 (*Monitorul Oficial al României*, No 565 of 16 August 2007):

'The road transport operations referred to in Article 13(1)(a) to (d), (f) to (h) and (j) to (p) of Regulation (EC) No 561/2006 shall be exempt, on the territory of Romania, from application of the provisions of that regulation.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 10 On 2 September 2020, a motor vehicle towing a semi-trailer, used by Pricoforest for the transport of wood, was inspected by ISCTR agents in a location in Romanian territory, approximately 130 km by road from that undertaking's base.
- 11 Following verifications and analysis of data downloaded from the tachograph installed on board that vehicle, it was found, first, that between 5.15 on 17 August 2020 and 19.23 on 18 August 2020, the driver had driven for 15 hours and 56 minutes, exceeding by 5 hours and 56 minutes the maximum daily driving time of 10 hours provided for in Article 6(1) of Regulation No 561/2006. During that period of time, the driver had taken 6 hours and 48 minutes in rest periods, whereas, according to Article 4(g) of that regulation, he should have taken a daily rest period of at least 9 hours. For that infringement, Pricoforest was fined 9 000 Romanian lei (RON) (approximately EUR 1 800) or RON 4 500 (approximately EUR 900) if payment was made within 15 days.
- 12 The ISCTR agents also found that, on 25 August 2020, between 00.54 and 4.24, the driver of that vehicle had taken a rest period of 3 hours and 30 minutes, whereas, according to Article 8(2) of that regulation, that rest period should have been at least 9 hours in length. In respect of that infringement, Pricoforest was additionally fined RON 4 000 (approximately EUR 800) or RON 2 000 (approximately EUR 400) if payment was made within 15 days.
- 13 On 25 September 2020, that undertaking brought an action before the referring court asking that the report of the offence be annulled or, in the alternative, that the fines imposed be substituted for a warning. Without disputing the data downloaded from the tachograph of the vehicle that was the subject of the inspection, Pricoforest contends that the time recorded relates to the carrying of goods by a vehicle covered by Article 13(1)(b) of Regulation No 561/2006 and that, under Government Decree No 37 of 7 August 2007, such carrying is exempt from the rules on driving times, breaks and rest periods laid down by that regulation. Moreover, Pricoforest claims that the official who reported the offence incorrectly equated the notion of 'a radius of up to 100 km from the base of the undertaking', within the meaning of that provision, with the distance by road between the location in which its base is situated and that in which the vehicle was inspected.
- 14 The ISCTR, for its part, submits that the exception provided for in Article 13(1)(b) of Regulation No 561/2006 covers only the carrying of goods within a radius of up to 100 km from the base of the undertaking concerned. Since the inspection at issue in the main proceedings was carried out approximately 130 km from Pricoforest's base, the vehicle subject to that inspection was no longer covered by that exception and, therefore, the rules relating to driving times, breaks and rest periods laid down by that regulation are applicable to it.

- 15 In that context, the referring court is uncertain, in the first place, how to interpret the notion of ‘a radius of up to 100 km from the base of the undertaking’ within the meaning of Article 13(1)(b) of Regulation No 561/2006. While accepting that the term ‘radius’ corresponds to a straight line drawn on a map from the centre of the circle within which an action is carried out, that court nevertheless takes the view that the objectives pursued by that regulation, consisting of improving both the social conditions of the employees who are covered by it and road safety, would not be attained if, within such a circle, transport operations carried out over a greater distance were exempt from the application of the rules relating to driving times, breaks and rest periods laid down by that regulation.
- 16 In the second place, that court raises the question whether, where a vehicle covered by Article 13(1)(b) of Regulation No 561/2006 habitually carries goods not only within a radius of up to 100 km from the base of the undertaking concerned but also outside of that radius, that provision must be interpreted as meaning that all carriage or, at least, carriage not exceeding that radius of 100 km is exempt from the application of the rules referred to in the preceding paragraph, or whether no such carriage is exempt from the application of those rules.
- 17 In that regard, the referring court adds that the application of the rules in question solely to the carriage of goods outside of a radius of 100 km from the base of the undertaking concerned makes it impossible to verify the weekly rest periods defined by that regulation. It also observes that an interpretation of Article 13(1)(b) of Regulation No 561/2006 to the effect that all carriage by the vehicle inspected, including carriage outside of that 100 km radius, is exempt from the application of that regulation would mean that, in the case in the main proceedings, Pricoforest did not commit the offences of which it is accused.
- 18 In those circumstances, the Judecătoria Miercurea Ciuc (Court of First Instance, Miercurea-Ciuc, Romania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the concept of “radius of up to 100 km” referred to in Article 13(1)(b) of Regulation No 561/2006 to be interpreted as meaning that a straight line drawn on the map between the base of the undertaking and the destination must be less than 100 km or as meaning that the distance actually travelled by the vehicle must be less than 100 km?
- (2) Are the provisions of Article 13(1)(b) of Regulation No 561/2006 to be interpreted as meaning that the carrying out of transport operations within the scope of that provision, some of which remain within a radius of 100 km from the base of the undertaking and others of which exceed that radius, in a period of one month, in the context of the exemption of the situation referred to in Article 13(1)(b) of Regulation No 561/2006 from application of that regulation pursuant to a provision of national law, results in the exemption of all relevant transport operations from application of the regulation, or only those which [do not] ... exceed the radius of 100 km or none of them?’

Consideration of the questions referred

The first question

- 19 By its first question, the referring court asks, in essence, whether the notion of ‘a radius of up to 100 km from the base of the undertaking’, within the meaning of Article 13(1)(b) of Regulation No 561/2006, must be understood as referring to a straight line drawn on the map between the base of the undertaking concerned and the destination of the vehicle used by it for the carriage of goods in the course of its own entrepreneurial activity, or as referring to the distance by road actually travelled by that vehicle.
- 20 It is apparent from Article 13(1)(b) of Regulation No 561/2006 that every Member State may grant exceptions from Articles 5 to 9 and make such exceptions subject to individual conditions on its own territory provided the objectives set out in Article 1 of that regulation are not prejudiced. Those exemptions and conditions are applicable to the carriage of goods by vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking.
- 21 The term ‘radius’ is not defined by Regulation No 561/2006 and Article 13(1)(b) thereof makes no express reference to the law of the Member States for the purpose of defining the meaning and scope of that term.
- 22 It follows from the requirements for uniform application of EU law and for the principle of equality that such a provision must usually be given an autonomous and uniform interpretation throughout the European Union, which must be sought taking into account not only the usual meaning of the terms of that provision in everyday language but also its context and the objective pursued by the legislation in question (see, to that effect, judgment of 16 September 2021, *The Software Incubator*, C-410/19, EU:C:2021:742, paragraph 31 and the case-law cited).
- 23 In everyday language, the word ‘radius’ refers to the straight line segment corresponding to half of the diameter of a circle linking the centre of that circle to any point of its circumference.
- 24 Furthermore, as the Advocate General observed in points 28 and 29 of his Opinion, when the EU legislature intended, in a provision of Regulation No 561/2006 other than Article 13(1)(b), to refer to a specific distance, travelled or to be travelled, by road, it provided a precise indication to that effect in the actual wording of that provision. That is the case, in particular, with regard to Article 3(a) and at the end of Article 16(1)(b) of that regulation.
- 25 It follows that the notion of a ‘radius of up to 100 km from the base of the undertaking’, within the meaning of Article 13(1)(b) of Regulation No 561/2006, must be understood as referring to a straight line not exceeding 100 km, drawn on the map from that base and joining the base to any point in a circular geographical area surrounding that same base. That notion does not therefore cover the distance by road actually travelled by the vehicle concerned.
- 26 Given that that interpretation of Article 13(1)(b) of Regulation No 561/2006 is clear from the wording of that provision and from the scheme of that regulation, the objectives pursued by it, as referred to by the referring court, which consist of improving both the social conditions of employees who are covered by that regulation and road safety, cannot call that interpretation into question.

27 In the light of the findings above, the answer to the first question is that the notion of a ‘radius of up to 100 km from the base of the undertaking’, within the meaning of Article 13(1)(b) of Regulation No 561/2006, must be understood as referring to a straight line not exceeding 100 km, drawn on the map from that base and joining the base to any point in a circular geographical area surrounding that same base.

The second question

28 By its second question, the referring court asks, in essence, whether Article 13(1)(b) of Regulation No 561/2006 must be interpreted as meaning that, where a Member State has granted, on the basis of that provision, exceptions from Articles 5 to 9 of that regulation, which are applicable to the carriage of goods by vehicles covered by that provision, and where those vehicles carry those goods not only within a radius of up to 100 km from the base of the undertaking concerned, but also outside of that radius, such use of those vehicles makes those exceptions applicable to all carriage of goods by those vehicles, whether such carriage occurs within or outside of that radius, or, on the contrary, precludes the application of those exceptions to all such carriage.

29 It is apparent from Article 13(1)(b) of Regulation No 561/2006 that the exceptions from Articles 5 to 9 of that regulation, which lay down the rules applicable, inter alia, to the driving time, breaks and rest periods of drivers, which Member States may grant pursuant to that provision, are applicable to the carriage of goods by the vehicles referred to therein where the conditions laid down in that provision, referred to in paragraph 20 above, are satisfied.

30 Those exceptions must be interpreted strictly and their scope must be determined having regard in particular to the aims pursued by Regulation No 561/2006 (see, by analogy, judgments of 7 February 2019, *NK*, C-231/18, EU:C:2019:103, paragraph 21, and of 21 November 2019, *Deutsche Post and Others*, C-203/18 and C-374/18, EU:C:2019:999, paragraph 50 and the case-law cited). Thus, Article 13(1)(b) of that regulation cannot be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure (see, by analogy, judgment of 13 March 2014, *A. Karuse*, C-222/12, EU:C:2014:142, paragraph 28 and the case-law cited).

31 As the Advocate General observed in points 62 and 63 of his Opinion, it follows that Article 13(1)(b) of Regulation No 561/2006 cannot be interpreted as meaning that, where the vehicles that it covers carry goods both within a radius of up to 100 km from the base of the undertaking concerned and outside of that radius, that provision applies to all carriage of goods by those vehicles, including that which occurs outside of that radius. The latter carriage therefore cannot benefit from the exceptions under Articles 5 to 9 of that regulation.

32 However, interpreting Article 13(1)(b) of Regulation No 561/2006 to the effect that, where the vehicles that it covers carry goods both within a radius of up to 100 km from the base of the undertaking concerned and outside of that radius, none of those instances of carriage qualify for exceptions from Articles 5 to 9 of that regulation would deprive that provision of its effectiveness.

33 In that regard, it should be noted that Article 6(5) of Regulation No 561/2006 requires the driver to record as ‘other work’, inter alia, ‘any time spent driving a vehicle used for commercial operations that do not fall within the scope of [that regulation]’. Periods of driving recorded, in accordance with that provision, as ‘other work’ constitute periods of actual activity of the driver, during which he or she does not freely dispose of his or her time and which, in so far as they

affect the driver's state of fatigue, are capable of influencing the latter's driving (see, by analogy, judgment of 18 January 2001, *Skills Motor Coaches and Others*, C-297/99, EU:C:2001:37, paragraphs 36 to 39).

- 34 As the Advocate General observed in point 80 of his Opinion, in instances where a vehicle covered by Article 13(1)(b) of Regulation No 561/2006 is used not only within a radius of up to 100 km from the base of the undertaking concerned but also outside of that radius, that obligation to record allows the competent national authorities to verify whether the time spent driving, which has been recorded as 'other work' in accordance with Article 6(5) of that regulation, corresponds to carriage by road that is covered by the exceptions to Articles 5 to 9 of that regulation which have been granted on the basis of Article 13(1)(b) of that regulation. Therefore, the national authorities are in a position to verify whether, as regards carriage by the vehicle inspected which is not covered by such exceptions, the rules on driving times, breaks and rest periods under Articles 5 to 9 have been complied with.
- 35 In the light of the findings above, the answer to the second question is that Article 13(1)(b) of Regulation No 561/2006 must be interpreted as meaning that, where a Member State has granted, on the basis of that provision, exceptions from Articles 5 to 9 of that regulation, which are applicable to the carriage of goods by vehicles covered by that provision, and where those vehicles carry those goods not only within a radius of up to 100 km from the base of the undertaking concerned, but also outside of that radius, those exceptions are applicable only to the carriage of goods by those vehicles which does not occur outside of that radius.

Costs

- 36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

- 1. The notion of a 'radius of up to 100 [kilometres (km)] from the base of the undertaking', within the meaning of Article 13(1)(b) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as amended by Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020, must be understood as referring to a straight line not exceeding 100 km, drawn on the map from that base and joining the base to any point in a circular geographical area surrounding that same base.**
- 2. Article 13(1)(b) of Regulation No 561/2006, as amended by Regulation 2020/1054, must be interpreted as meaning that, where a Member State has granted, on the basis of that provision, exceptions from Articles 5 to 9 of that regulation, which are applicable to the carriage of goods by vehicles covered by that provision, and where those vehicles carry those goods not only within a radius of up to 100 km from the base of the undertaking concerned, but also outside of that radius, those exceptions are applicable only to the carriage of goods by those vehicles which does not occur outside of that radius.**

[Signatures]