



## Reports of Cases

### JUDGMENT OF THE COURT (Sixth Chamber)

3 October 2013\*

(Road transport — Regulation (EC) No 561/2006 — Obligation to install recording equipment — Derogations in respect of the non-commercial carriage of goods — Concept — Carriage of goods by a private individual as part of his leisure activity as an amateur rally driver, financed in part by sponsorship from third parties)

In Case C-317/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Svea hovrätt (Sweden), made by decision of 11 June 2012, received at the Court on 2 July 2012, in the criminal proceedings against

**Daniel Lundberg,**

THE COURT (Sixth Chamber),

composed of M. Berger (Rapporteur), President of the Chamber, E. Levits and J.-J. Kasel, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by J. Langer and C. Wissels, acting as Agents,
- the European Commission, by J. Hottiaux and K. Simonsson, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the concept of ‘non-commercial carriage of goods’ within the meaning of Article 3(h) 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).

\* Language of the case: Swedish.

- 2 The request has been made in criminal proceedings against Mr Lundberg for infringement of the obligation to install and use an approved tachograph in a heavy goods vehicle.

### **Legal context**

#### *European Union law*

- 3 Article 3(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8), as amended by Regulation No 561/2006 ('Regulation No 3821/85'), provides:

'Recording equipment shall 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 Article 3 of Regulation ... No 561/2006.'

- 4 Regulation No 561/2006, which repealed and replaced, with effect from 11 April 2007 Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1), states, in recital 17 in the preamble thereto, that it aims to improve social conditions for employees who are covered by it, as well as to improve general road safety.

- 5 Article 1 of Regulation No 561/2006 provides:

'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.'

- 6 Article 3 of that regulation provides:

'This Regulation shall not apply to carriage by road by:

...

- (h) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods;

...'

#### *Swedish law*

- 7 Forming part of Chapter 9 of Ordinance (2004:865) on driving and rest periods and tachographs, etc. (förrordning (2004:865) om kör och vilotider samt färdskrivare, m.m.), Paragraph 5(2) states that a driver who, deliberately or through negligence, infringes Article 3(1) of Regulation No 3821/85 is to be sentenced to a fine.

## The main proceedings and the questions referred

- 8 Mr Lundberg, who works as a consultant in the road safety field as a sole trader, competes, in his leisure time, in car rallies as an amateur rally driver. That leisure activity is financed in part by contributions (sponsorship) from undertakings which amounts to hundreds of thousands of Swedish Kronor (SEK) per year. In addition, he himself invests at least that amount of money again in his rally activities and also receives contributions from relatives and friends.
- 9 On 6 April 2011, Mr Lundberg drove his own lorry, registered in Sweden, with a trailer attached transporting his rally car in order to travel to a fair in Vimmerby (Sweden) to show his rally car. The combined weight of the vehicle combination was more than 3.5 tonnes but did not exceed 7.5 tonnes.
- 10 The participation in the fair was also paid for in part by sponsors. As a general rule, he takes part in around three such fairs each year.
- 11 Since the lorry did not have a tachograph, Mr Lundberg was prosecuted for infringing Article 3 of Regulation No 3821/85 by failing, as the driver of a heavy goods vehicle, to equip the vehicle with an approved tachograph.
- 12 By a judgment of 13 October 2011, the Nyköpings tingsrätt (Nyköping District Court) did not proceed against Mr Lundberg, accepting his argument that the carriage of goods in question could be regarded as a non-commercial carriage of goods within the meaning of Article 3 of Regulation No 561/2006.
- 13 Since the public ministry appealed against that judgment before the Svea hovrätt (Svea Court of Appeal), that court has held that the deciding question in the dispute before it is whether the obligation to use an approved tachograph applied to the carriage of goods at issue, on the ground that it was a 'non-commercial carriage of goods' within the meaning of Article 3(h) of Regulation No 561/2006.
- 14 In the absence of both a definition of that concept in European Union legislation and relevant case-law of the Court of Justice, and having regard to the need for a uniform interpretation and application of that concept in practice, the Svea hovrätt decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
1. Must the expression "non-commercial carriage of goods" in Article 3(h) of [Regulation No 561/2006] be interpreted as covering carriage of goods by a private individual as part of his hobby but which is in part financed by financial contributions (sponsorship) from external persons or undertakings?
  2. Is it relevant to the assessment of what constitutes "non-commercial carriage":
    - (a) that the driver makes the journey only for his own purposes?
    - (b) that no payment is made for the carriage per se?
    - (c) how large the financial contribution is and/or how large the financial contribution is in relation to the total cost of the hobby activity?

### Consideration of the questions referred for a preliminary ruling

- 15 By its two questions, which should be examined together, the referring court asks, in essence, whether the concept of ‘non-commercial carriage of goods’ referred to in Article 3(h) of Regulation No 561/2006 must be interpreted as covering the carriage of goods by a private individual for his own purposes purely as part of his hobby where that hobby is in part financed by financial contributions from external persons or undertakings and where no payment is made for that carriage per se.
- 16 As a preliminary point, it must be noted that Regulation No 561/2006 does not contain any definition of that concept, nor of those stated in similar terms in that regulation, such as ‘the non-commercial transport of humanitarian aid’ (Article 3(d) of the regulation), ‘commercial vehicles, ... which are used for the non-commercial carriage of passengers or goods’ (Article 3(i)), or ‘vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers’ (Article 13(1)(i) of that regulation).
- 17 Similarly, although the Court of Justice has had the opportunity on a number of occasions of interpreting other derogations from the obligation to install and use a tachograph, it has not, however, ruled on the interpretation of the concept which has given rise to the dispute in the main proceedings.
- 18 In the absence of any definition of the term ‘non-commercial carriage of goods’, the meaning and scope of that term must be determined, in accordance with the settled case-law of the Court, by reference to the general context in which it is used and its usual meaning in everyday language (see, to that effect, Case C-431/04 *Massachusetts Institute of Technology* [2006] ECR I-4089, paragraph 17 and the case-law cited, and Case C-395/2011 *BLV Wohn-und Gewerbebau* [2012] ECR, paragraph 25).
- 19 Moreover, in construing a provision of European Union law, it is necessary to consider the objectives pursued by the legislation in question and its effectiveness (Case C-19/08 *Petrosian* [2009] ECR I-495, paragraph 34 and the case-law cited).
- 20 In the light of the derogations concerning use of a tachograph, the Court has held that such a derogation may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure, and the scope of the derogations which it lays down must be determined in the light of the aims pursued by the legislation at issue (see Case C-116/91 *British Gas* [1992] ECR I-4071, paragraph 12; Case C-39/95 *Goupil* [1996] ECR I-1601, paragraph 8; Case C-335/94 *Mrozek and Jäger* [1996] ECR I-1573, paragraph 9; Case C-128/04 *Raemdonck and Raemdonck-Janssens* [2005] ECR I-2445, paragraph 19; and Case C-554/09 *Seeger* [2011] ECR I-7131, paragraph 33).
- 21 It is in the light of those principles that it is necessary to reply to the questions submitted by the referring court, as reformulated in paragraph 15 of the present judgment.
- 22 The European Commission is of the opinion that the derogation laid down in Article 3(h) of Regulation No 561/2006 must be interpreted as covering the carriage of goods by a private individual as part of his hobby which is financed in part by financial contributions from external persons and undertakings, so that the vehicle used for that carriage does not have to be equipped with a tachograph.
- 23 It must be noted that that interpretation is corroborated by both the usual meaning of the concept at issue in the main proceedings and the general background of and the objectives pursued by Regulation No 561/2006 of which it forms part.
- 24 With regard, firstly, to the usual meaning of the concept of ‘non-commercial carriage of goods’, it must be noted that such a carriage occurs where there is no link with a professional or commercial activity, that is to say, where the carriage of goods is not performed with a view to earning income therefrom.

As it is usually understood, the non-commercial carriage of goods therefore designates, in particular, the carriage of goods by a private individual as part of a recreational activity outside his professional activity.

- 25 Secondly, with regard to the general background against which Article 3(h) of Regulation No 561/2006 is placed, it must be noted, first of all, that recital 17 in the preamble to that regulation states, in particular, that the regulation ‘aims to improve social conditions for employees who are covered by it’.
- 26 Next, under Article 1 thereof, the 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. It also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.
- 27 Finally, Article 4(c) of Regulation No 561/2006 defines the concept of ‘driver’ as ‘any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary’.
- 28 It follows from paragraphs 24 to 27 of the present judgment that, as the Commission rightly points out in its observations to the Court, the provisions of Regulation No 561/2006 apply essentially to professional drivers and not to individuals driving for private purposes.
- 29 Thus, the expressions ‘to harmonise the conditions of competition’, ‘to improve working conditions’ and ‘[the] social conditions for employees’ and ‘working practices in the road transport industry’ in recital 17 in the preamble to Regulation No 561/2006 and Article 1 thereof respectively, and the expression ‘as part of his duties’ in Article 4(c) thereof lead to the supposition that the regulation does not apply to an individual who, like Mr Lundberg, is not a professional heavy goods vehicle driver and does not supply transport services but who, in this situation, was transporting for his own purposes, solely as part of his hobby, his own rally car which he drives as an amateur rally driver, thus performing a carriage of goods such as described in paragraph 15 of the present judgment.
- 30 Thirdly, in order to interpret the derogation laid down in Article 3(h) of Regulation No 561/2006, not only the purpose of that derogation but also the objectives pursued by the regulation must be borne in mind.
- 31 With regard, on the one hand, to the latter, it is sufficient to recall that that regulation aims, as stated in paragraphs 25 to 28 of the present judgment, to harmonise the conditions of competition with regard to the road sector and to improve working conditions for the employees in that sector and road safety (see, in particular, *Goupil*, paragraph 10; *Mrozek and Jäger*, paragraph 11; *Raemdonck and Raemdonck-Janssens*, paragraph 22; and *Seeger*, paragraph 34), those objectives meaning in particular that, in principle, road transport vehicles must be equipped with an approved tachograph enabling compliance with driving times and drivers’ rest periods to be monitored.
- 32 With regard, on the other hand, to the purpose of the derogation in Article 3(h) of Regulation No 561/2006, the European Union legislature sought to exclude certain vehicles and certain types of carriage of goods using them so that the regulation does not apply to the ‘non-commercial carriage of goods’ using vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes from the scope of the regulation. The purpose of that derogation is therefore to exclude from the scope of the regulation the carriage of goods by private individuals outside any professional or commercial activity.

- 33 Having regard to the objectives thus recalled, clearly an interpretation of Article 3(h) of Regulation No 561/2006 to the effect that that provision does not cover a carriage of goods such as that described in paragraph 29 of this judgment would not be consistent with those objectives.
- 34 Such an interpretation, by extending the scope of the regulation to a category of drivers carrying goods for private and leisure purposes, would be such as to undermine the effect of the derogation laid down in Article 3(h) of that regulation.
- 35 In addition, it must be noted that a carriage of goods as described in paragraph 29 of the present judgment does not affect competition in the road transport sector since a driver such as the one in question in the main proceedings drives for private purposes and is not a professional driver.
- 36 For the same reason, that interpretation cannot in any event hinder the achievement of the objective pursued by Regulation No 561/2006 to improve working conditions in the road transport industry.
- 37 Finally, it must be stated that, since the type of carriage of goods at issue in the main proceedings appears to be relatively infrequent, an interpretation of the derogation at issue to the effect that it covers the carriage of goods carried out by a private individual as part of his hobby ought not to have significant negative effects on road safety.
- 38 It is appropriate to add that, in the light of such an interpretation, the fact that no payment is made for the carriage per se and the size of the financial contributions received, particularly in relation to the total cost of the hobby activity are irrelevant to the assessment of that concept.
- 39 Having regard to the foregoing, the answer to the questions referred is that the concept of 'non-commercial carriage of goods' laid down in Article 3(h) of Regulation No 561/2006 must be interpreted as covering the carriage of goods by a private individual for his own purposes purely as part of his hobby where that hobby is in part financed by financial contributions from external persons or undertakings and where no payment is made for that carriage per se.

### **Costs**

- 40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Sixth Chamber) hereby rules:

**The concept of 'non-commercial carriage of goods' laid down in Article 3(h) 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 must be interpreted as covering the carriage of goods by a private individual for his own purposes purely as part of his hobby where that hobby is in part financed by financial contributions from external persons or undertakings and where no payment is made for that carriage per se.**

[Signatures]