



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

26 September 2018*

(Reference for a preliminary ruling — Transport — Road transport — Regulation (EC) No 561/2006 — Article 19(2), first subparagraph — Administrative penalty for an infringement committed in the Member State of the seat of an undertaking imposed by the competent authorities of another Member State in which the infringement was detected)

In Case C-513/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Köln (Local Court, Cologne, Germany), made by decision of 31 July 2017, received at the Court on 22 August 2017, in the proceedings brought by

Josef Baumgartner,

other parties:

Bundesamt für Güterverkehr,

Staatsanwaltschaft Köln,

THE COURT (Seventh Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Bundesamt für Güterverkehr, by A. Marquardt, acting as Agent,
- the Greek Government, by M. Tassopoulou and D. Tsagkarakaki, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by G. Braun and J. Hottiaux, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 19(2) 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).
- 2 The request has been made in proceedings concerning an objection brought by Mr Josef Baumgartner against a penalty imposed on him, as representative of Transporte Josef Baumgartner GmbH & Co KG ('the company'), whose seat is in Austria, by the Bundesamt für Güterverkehr (Federal Office for Goods Transport, Germany) because of an infringement of Regulation No 561/2006 said to have been committed in the Member State of the seat of the company.

Legal context

EU law

- 3 According to recitals 14, 19 and 26 of Regulation No 561/2006:
 - '(14) To guarantee effective enforcement, it is essential that the competent authorities, when carrying out roadside checks, and after a transitional period, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and over the preceding 28 days.
 - ...
 - (19) In view of the increase in the cross-border carriage of goods and passengers, it is desirable, in the interests of road safety and enhanced enforcement, for roadside checks and checks at the premises of undertakings to cover driving times, rest periods and breaks undertaken within other Member States or third countries and to determine whether the relevant rules have been fully and properly observed.
 - ...
 - (26) The Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate, dissuasive and non-discriminatory. The possibility of immobilising the vehicle where serious infringements are detected should also be included within the common range of measures open to Member States. The provisions contained in this Regulation pertaining to penalties or proceedings should not affect national rules concerning the burden of proof.'

4 Article 10(5) of Regulation No 561/2006 provides:

- ‘(a) A transport undertaking which uses vehicles that are fitted with recording equipment complying with Annex IB of [Council] Regulation (EEC) No 3821/85 [of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8)] and that fall within the scope of this Regulation, shall:
- (i) ensure that all data are downloaded from the vehicle unit and driver card as regularly as is stipulated by the Member State and that relevant data are downloaded more frequently so as to ensure that all data concerning activities undertaken by or for that undertaking are downloaded;
 - (ii) ensure that all data downloaded from both the vehicle unit and driver card are kept for at least 12 months following recording and, should an inspecting officer request it, such data are accessible, either directly or remotely, from the premises of the undertaking;
- (b) for the purposes of this paragraph “downloaded” shall be interpreted in accordance with the definition laid down in Annex IB, Chapter I, point (s) of Regulation (EEC) No 3821/85;
- (c) the maximum period within which the relevant data shall be downloaded under (a)(i) shall be decided by the Commission in accordance with the procedure referred to in Article 24(2).’

5 Article 19(1) and (2) of Regulation No 561/2006 reads as follows:

‘1. Member States shall lay down rules on penalties applicable and on infringements of this Regulation and Regulation (EEC) No 3821/85 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.

2. A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.

By way of exception, where an infringement is detected:

- which was not committed on the territory of the Member State concerned, and
- which has been committed by an undertaking which is established in, or a driver whose place of employment is, in another Member State or a third country,

a Member State may, until 1 January 2009, instead of imposing a penalty, notify the facts of the infringement to the competent authority in the Member State or the third country where the undertaking is established or where the driver has his place of employment.’

6 Article 13 of Regulation No 3821/85, as amended by Commission Regulation (EU) No 1266/2009 of 16 December 2009 (OJ 2009 L 339, p. 3), provided:

‘The employer and drivers shall ensure the correct functioning and proper use of, on the one hand, the recording equipment and, on the other, the driver card where a driver is required to drive a vehicle fitted with recording equipment in conformity with Annex IB.’

7 Annex IB, Chapter I, to that regulation provided:

‘In this Annex:

(l) “company card” means: A tachograph card issued by the authorities of a Member State to the owner or holder of vehicles fitted with recording equipment;

The company card identifies the company and allows for displaying, downloading and printing of the data stored in the recording equipment which has been locked by this company or which has not been locked by any company.

...

(s) “downloading” means: Copying, together with the digital signature, of a part, or of a complete set of data files stored in the data memory of the vehicle or in the memory of the tachograph card, for which these data are necessary to establish compliance with the provisions set out in Regulation (EC) No 561/2006.

...’

German law

8 Paragraph 2(5), second sentence, of the Verordnung zur Durchführung des Fahrpersonalgesetzes (Regulation implementing the Law on road haulage crews, ‘the Fahrpersonalverordnung’) provides in essence that, with respect to vehicles within the scope of Regulation No 561/2006, the operator must ensure that all data from driver cards is downloaded in the undertaking 28 days at the latest after recording.

9 Paragraph 5 of the Gesetz über Ordnungswidrigkeiten (Law on administrative offences, ‘the OWiG’) provides:

‘Unless otherwise provided by law, only those administrative offences may be penalised that are committed within the territorial scope of this law or outside that scope on board a vessel or aircraft that is authorised to fly the Federal flag or to bear the nationality sign of the Federal Republic of Germany.’

10 Paragraph 9 of the OWiG provides essentially that the representative of a natural or legal person may be penalised for acts constituting an administrative offence committed by the person represented.

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

11 At a roadside check in Germany on 19 November 2015 the competent authorities detected two infringements of Regulation No 561/2006 in respect of a vehicle belonging to the company.

12 First, the data from the driver card had not been downloaded within the period defined in Article 10(5)(a)(i) of Regulation No 561/2006 in conjunction with Paragraph 2(5) of the Fahrpersonalverordnung. Second, the company card had not been inserted in the vehicle’s recording equipment.

13 On 15 February 2016 Mr Baumgartner, as representative of the company, was invited to comment on the alleged infringements. When he failed to react, the Federal Office for Goods Transport decided to impose a penalty of EUR 406.25 on him for the two infringements.

- 14 Mr Baumgartner lodged an objection to that decision with the Federal Office, challenging its territorial jurisdiction to penalise the infringements detected.
- 15 Mr Baumgartner argued that, under the second sentence of Paragraph 5(2) of the Fahrpersonalverordnung, the obligation to download the data from the driver card and set the company lock exists only at the seat of the undertaking. As the company is established in Austria, Mr Baumgartner submits that the alleged infringement was committed outside the territorial scope of Paragraph 5 of the OWiG.
- 16 In the order for reference, the Amtsgericht Köln (Local Court, Cologne, Germany), which is to rule on Mr Baumgartner's objection, observes that in an order of 31 July 2017 the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany), in a similar case, accepted the interpretation of the national legislation set out in the preceding paragraph.
- 17 In that order, moreover, the Oberlandesgericht Köln (Higher Regional Court, Cologne) refused to accept that the German authorities had power to impose a penalty on the basis of Article 19(2) of Regulation No 561/2006.
- 18 While acknowledging that Regulation No 561/2006 was directly applicable and thus corresponded to the concept of 'law' for the purposes of the expression 'unless otherwise provided by law' in Paragraph 5 of the OWiG, the Oberlandesgericht Köln (Higher Regional Court, Cologne) found that Article 19(2) of that regulation was to be interpreted as meaning that the Member State which detected the infringement enabled the authorities of another Member State to penalise it, regardless of the place where it was committed, so that in the present case the Federal Office of Goods Transport had no jurisdiction itself to penalise the infringement detected.
- 19 However, in the referring court's view, the first subparagraph of Article 19(2) of Regulation No 561/2006 should be interpreted as authorising the Member States to penalise infringements of the regulation detected in their territory, even if the infringements were committed in the territory of another Member State.
- 20 The referring court takes the view that that interpretation is borne out by the second subparagraph of Article 19(2) of Regulation No 561/2006. Under that provision, where an infringement not committed in its territory was detected, a Member State could until 1 January 2009, instead of imposing a penalty, notify the competent authority of the Member State or third country in which the undertaking was established or the driver had his place of employment of the facts of the infringement.
- 21 In those circumstances, the Amtsgericht Köln (Local Court, Cologne) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is the first [subparagraph] of Article 19(2) of Regulation ... No 561/2006 to be interpreted as meaning that a penalty imposed on an undertaking or a manager of an undertaking pursuant to Paragraphs 30, 9 and 130 of the [OWiG] for an administrative offence committed at the seat of the undertaking may be imposed only by the Member State in whose territory the undertaking has its seat? Or are other Member States also authorised to impose a penalty for the administrative offence when that offence has been detected in their territory?'

Consideration of the question referred

- 22 By its question the referring court essentially asks whether the first subparagraph of Article 19(2) of Regulation No 561/2006 must be interpreted as directly authorising the competent authorities of a Member State to impose a penalty on an undertaking or a manager of the undertaking for an infringement of that regulation detected in its territory, even if the infringement was committed in the territory of another Member State in which the undertaking has its seat.
- 23 According to settled case-law of the Court, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it forms part (see, to that effect, judgment of 20 December 2017, *Vaditrans*, C-102/16, EU:C:2017:1012, paragraph 20 and the case-law cited).
- 24 In accordance with the first subparagraph of Article 19(2) of Regulation No 561/2006, each Member State is to enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of the regulation detected in its territory for which a penalty has not already been imposed, even if the infringement was committed in the territory of another Member State or a third country.
- 25 However, as the Austrian Government and the Commission have stated in their observations, the interpretations adopted by the referring court on the one hand and the applicant in the main proceedings on the other are grammatically possible, since that provision does not state unequivocally which Member State the ‘competent authorities’ are to belong to.
- 26 The Court has held that the first subparagraph of Article 19(2) of Regulation No 561/2006 expressly provides for the competent authorities of a Member State to be able to impose a penalty on an undertaking and/or a driver for an infringement of the regulation even where the infringement has been committed in the territory of another Member State or a third country (see, to that effect, judgment of 9 June 2016, *Eurospeed*, C-287/14, EU:C:2016:420, paragraph 33).
- 27 The Court has further held that, besides the improvement of the working conditions of employees in the road transport sector, Regulation No 561/2006 also pursues the objective of improving general road safety (see, to that effect, judgment of 9 June 2016, *Eurospeed*, C-287/14, EU:C:2016:420, paragraph 39).
- 28 In view of that objective, and in order to guarantee effective enforcement of Regulation No 561/2006, as recital 14 of that regulation confirms, it is essential that the competent authorities, when carrying out roadside checks, and after a transitional period, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and over the preceding 28 days.
- 29 As the Federal Office for Goods Transport noted in its observations, with a view to the effective implementation of Regulation No 561/2006 in the interests of road safety, not only is it necessary to check that the provisions of the regulation are complied with, but the Member States must also be able to impose penalties that are effective, proportionate and dissuasive when an infringement is detected, as provided by Article 19(1) of the regulation.
- 30 Furthermore, in view of the cross-border nature of road transport activities, an interpretation of the first subparagraph of Article 19(2) of Regulation No 561/2006 to the effect that the Member States are to enable their competent authorities to impose a penalty for an infringement detected in their territory even if the infringement has been committed in the territory of another Member State or a third country corresponds better to the objectives of the regulation.

- 31 By contrast, an interpretation of the first subparagraph of Article 19(2) of Regulation No 561/2006 to the effect that a Member State which has detected an infringement committed in the territory of another Member State or a third country should, by means of an authorisation, enable the competent authorities of another Member State to penalise that infringement, whatever the place where it was committed, cannot correspond to those objectives.
- 32 The Court has previously held that a Member State in whose territory an infringement of Regulation No 561/2006 has been committed is in any event entitled to penalise it (see, to that effect, judgment of 9 June 2016, *Eurospeed*, C-287/14, EU:C:2016:420, paragraph 33), so that there is no need for an authorisation to be given by a competent authority of another Member State.
- 33 The interpretation set out in paragraph 31 above would amount to authorising the competent authorities of a Member State to penalise an infringement that was neither committed nor detected in the territory of that Member State. However, it cannot be assumed that the EU legislature intended to confer that scope on the first subparagraph of Article 19(2) of Regulation No 561/2006.
- 34 Moreover, the second subparagraph of Article 19(2) of Regulation No 561/2006 provided, by way of exception, that where an infringement was detected which was not committed in the territory of the Member State concerned, and was committed by an undertaking established in, or a driver whose place of employment was in, another Member State or a third country, the Member State concerned by the infringement could notify the facts of the infringement to the competent authority in the Member State or the third country where the undertaking was established or where the driver had his place of employment. That provision is based on the premiss that the Member State concerned, which could until 1 January 2009 notify those facts ‘instead of imposing a penalty’, was the Member State in whose territory the infringement had been detected.
- 35 In the light of all the above considerations, the answer to the question is that the first subparagraph of Article 19(2) of Regulation No 561/2006 must be interpreted as directly authorising the competent authorities of a Member State to impose a penalty on an undertaking or a manager of the undertaking for an infringement of that regulation detected in its territory for which no penalty has already been imposed, even if the infringement was committed in the territory of another Member State in which the undertaking has its seat.

Costs

- 36 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 (Seventh Chamber) hereby rules:

The first subparagraph of Article 19(2) 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 directly authorising the competent authorities of a Member State to impose a penalty on an undertaking or a manager of the undertaking for an infringement of that regulation detected in its territory for which no penalty has already been imposed, even if the infringement was committed in the territory of another Member State in which the undertaking has its seat.

[Signatures]