

Action brought on 26 October 2020 – Hungary v European Parliament and Council of the European Union

(Case C-551/20)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M. Z. Fehér and K. Szijjártó, acting as Agents)

Defendant: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should annul:

Article 1(6)(c) and Article 2(2) of Regulation (EU) 2020/1054 ¹ and, secondly, all provisions that form an inseparable unit with those provisions;

Article 1(3) of Regulation (EU) 2020/1055, ² in so far as it amends Article 5 of Regulation (EC) No 1071/2009 by introducing a new subparagraph (b) in paragraph 1, and, secondly, all provisions that form an inseparable unit with those provisions;

Article 1 of Directive (EU) 2020/1057 ³ or, in the alternative, Article 1(6) thereof and, secondly, all provisions that form an inseparable unit with those provisions;

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

Pleas in law and main arguments

1. Pleas related to the contested provisions of Regulation 2020/1054

The provision laid down in **Article 1(6)(c)** of Regulation 2020/1054, stating that the regular weekly rest periods and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods may not be taken in a vehicle, cannot be applied in practice as there are not sufficient suitable rest facilities available. That requirement imposes a disproportionate burden on the legal subjects concerned – drivers and transport undertakings – and constitutes a manifest error of assessment by the legislators. Similarly, the fact that, in the context of the legislative procedure, the availability, amount or location of accommodation that meets the requirements contained in the contested provision was not examined at all, despite serious objections being raised in that regard, is also a manifest error of assessment.

The Hungarian Government submits that **Article 2(2)** of Regulation 2020/1054, which lays down the date by which vehicles must be fitted with a second generation (V2) smart tachograph, is unlawful. In the first place, when adopting that provision, the legislators made a manifest error of assessment and infringed the principle of proportionality by not examining the economic and social effects of bringing the date forward. In the second place, the legislators failed to meet the legitimate expectations of economic operators and infringed the principles of protection of legitimate expectations and legal certainty. In the third place, that provision does not comply with the need to maintain the competitiveness of the EU economy as laid down in the second paragraph of Article 151 TFEU, since currently vehicles of undertakings established in non-Member States are not subject to a similar requirement, and thus those undertakings have a clear competitive advantage over EU undertakings.

2. Pleas related to the contested provisions of Regulation 2020/1055

According to the Hungarian Government, the obligation to return the vehicle every eight weeks infringes the principle of proportionality and constitutes a manifest error of assessment, since the European Parliament and the Council did not carry out any type of economic, social or economic impact assessment in relation to the new requirements and therefore did not have any background information as to whether or not the new requirement is proportionate. Thus, the legislators also infringed the precautionary principle, since they did not assess the environmental effects of the measure. As a result of that measure, vehicles will have to return unloaded on many occasions, which will result in high levels of carbon dioxide emissions in the European Union.

In addition, the abovementioned requirement infringes the prohibition of discrimination, since it has different effects on carriers established in the centre of the European Union and those established in the periphery, in particular those known as ‘the EU-13 Member States’. Under Article 91(2) and Article 94 TFEU, the legislators should have taken into account the special circumstances of those countries and should have refrained from adopting legislation that has discriminatory effects.

3. Pleas related to the contested provisions of Regulation 2020/1057

Principally, the Hungarian Government seeks the annulment of Article 1 of Directive 2020/1057, which contains ‘specific rules on the posting of drivers’. It submits that those ‘specific rules’ are unlawful because drivers who carry out international transport cannot be considered to be persons taking a transnational measure within the meaning of Article 1(3)(a) of Directive 96/71/EC and, consequently, the provisions of the abovementioned directive are not applicable to them.

In the alternative, the Hungarian Government seeks the annulment of Article 1(6) of Directive 2020/1057 on the ground that the legislators did not satisfy the requirement of equal treatment, since the exemption for bilateral transport operations laid down in Article 1(3) of the directive does not cover so-called accompanied combined transport operations. As regards that provision, the Hungarian Government also relies on the fact that no impact assessment was carried out and, in that context, claims that the legislators infringed the principle of proportionality and committed a manifest error of assessment.

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).

³ 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).