

Action brought on 23 October 2020 – Republic of Lithuania v European Parliament and Council of the European Union

(Case C-541/20)

Language of the case: Lithuanian

Parties

Applicant: Republic of Lithuania, represented by: K. Dieninis, V. Kazlauskaitė-Švenčionienė, R. Dzikovič, A. Kisieliauskaitė, G. Taluntytė and R. Petravičius, advokatas,

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant requests the Court of Justice to:

Annul Article 1(3) and (7) of Directive 2020/1057, [1](#) laying down the requirement to apply the rules on posting workers to international (cross-border) transport and cabotage operations for the purposes of Directive 96/71/EC. If it is not possible to annul Article 1(3) and (7) of Directive 2020/1057 without altering the substance of that directive, the Republic of Lithuania requests that Directive 2020/1057 be annulled in its entirety;

Annul Article 1(6)(d) of Regulation 2020/1054 [2](#) in so far as the obligation laid down therein requires transport undertakings to ensure that drivers return to their place of residence or to the undertaking's operational centre every four weeks. If it is not possible to annul that part of that provision, the Republic of Lithuania requests that that provision be annulled in its entirety;

Annul Article 3 of Regulation 2020/1054 in so far as it provides that the amendments made to Regulation (EC) No 561/2006 are to enter into force on the twentieth day following that of the publication of Regulation 2020/1054 (20 August 2020). If it is not possible to annul Article 3 of Regulation 2020/1054 without affecting the other provisions of that regulation, the Republic of Lithuania requests that Regulation 2020/1054 be annulled in its entirety;

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

Pleas in law and main arguments

The Republic of Lithuania bases its application on the following pleas in law:

1. In so far as it provides for a requirement for the application of the rules on the posting of workers to international non-bilateral (cross-border) and cabotage operations, **Article 1(3) and (7) of Directive 2020/1057 is contrary to:**

1.1 **The principle of equal treatment**, in that the selective allocation of transport operations lacks any basis and gives rise to double standards of remuneration for workers working in the same undertaking, even though the nature of their work is the same. Consequently, the rules governing posting were established in the absence of objective criteria, thereby infringing the principle of 'equal pay for equal work' and disregarding the principle of equal treatment enshrined in Article 20 of the Charter of Fundamental Rights of the European Union;

1.2 **The principle of proportionality**, in that the EU institutions (i) established different pay arrangements for drivers performing the same work; (ii) failed to take account of the special features of international transport operations; (iii) failed to take account of the exceptionally high level of mobility of those working in the international transport sector; (iv) imposed, by the criteria which they have laid down, an unjustifiably heavy

administrative burden on small and medium-sized undertakings, and thereby committed a manifest error and adopted a measure which is disproportionate in relation to the objective pursued;

The principles of sound legislative procedure, in that the EU institutions were required to carry out an assessment of the impact of the contested provisions or to provide justification as to why such an assessment was not necessary.

2. **Article 1(6)(d) of Regulation 2020/1054**, which imposes an obligation on transport undertakings to ensure that their drivers return to their place of residence or to the operational centre of the undertaking every four weeks, **is contrary to:**

2.1 **Article 45 TFEU**, in that the obligation imposed on drivers to return to their place of residence or to the operational centre of the undertaking, without any possibility for them to choose themselves where they wish to spend their rest time, infringes their freedom of movement as workers;

2.2 **Article 26 TFEU and the general principle of non-discrimination**, in that the free movement of workers is restricted and those working for transport undertakings in peripheral Member States are subjected to discrimination by being obliged to return to their place of residence or to the operational centre of the undertaking in order to rest, as they are thereby forced to cover considerable distances and to waste significantly more time than drivers working for transport undertakings in Member States situated at, and close to, the centre of the European Union; in order to give effect to the provision on the return of workers, transport undertakings in the peripheral Member States will find themselves in an unfavourable situation in comparison with that of other undertakings operating on the internal market;

2.3 **Article 3(3) TEU, Articles 11 and 191 TFEU and the EU policy on the environment and climate change**, in that the requirement to ensure the compulsory return of drivers every four weeks will cause an artificial increase in traffic on roads in the European Union and in the number of drivers returning with unloaded trailers, in the number of other organised transport operations, in the amount of fuel consumed and in CO₂ emissions into the environment;

2.4 **The principle of proportionality**, in that the mandatory regular return of drivers laid down by that provision is a measure which is manifestly disproportionate and inappropriate in relation to the publicly declared objective of improving the conditions under which workers can rest.

3. **Article 3 of Regulation 2020/1054**, which fixes the date on which that regulation enters into force (20 August 2020) without providing for any transitional period, particularly with regard to the fact that there is an obligation immediately to apply (i) the amendments made to Article 8(8) of Regulation No 561/2006 prohibiting rest periods from being taken in the cabin of the vehicle, and (ii) the amendments made to Article 8(8a) of Regulation No 561/2006 relating to the obligation to ensure that drivers return to their place of residence every four weeks, **is contrary to:**

3.1 **The principle of proportionality**, in that, in fixing the period up to the date of entry into force at 20 days, the EU institutions (i) failed to have regard for the fact that, for objective reasons and in the absence of a transitional period, the Member States and transporters are unable to adapt to the obligations as amended, and (ii) did not put forward any arguments to justify the urgency in bringing those new requirements into force;

3.2 **The obligation to state reasons, laid down in Article 296 TFEU**, in that the EU institutions, when examining the proposal, were aware, by reason of the impact analysis and from other sources, that (i) the prohibition on spending sleeping time in the cabin during the periods concerned would be inapplicable in practice for the majority of Member States (because of the inadequate availability of alternative accommodation) and for transport undertakings, (ii) the obligation to ensure that drivers return to their place of residence or to the operational centre of the undertaking would give rise to practical difficulties as the rules for the implementation of that obligation are not clear, with the result that the EU institutions were required to put forward arguments to justify the absence of a transitional period or the non-deferment of the entry into force of the legislation;

3.3 **The principle of sincere cooperation**, in that the EU institutions not only failed in any way to justify the need to ensure the immediate entry into force of the prohibition on spending the night in the vehicle cabin during the periods in question and of the obligation to ensure that drivers would return to their place of residence but also failed to take into account the data submitted by Member States and interested parties concerning objective obstacles and the need to provide for a transitional period which would make it possible to prepare for the amended rules.

¹ 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).

² 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).