

Action brought on 23 October 2020 – Romania v European Parliament, Council of the European Union**(Case C-546/20)***Language of the case: Romanian***Parties***Applicant:* Romania (represented by: E. Gane, L. Lițu and M. Chicu, acting as Agents)*Defendants:* European Parliament, Council of the European Union**Form of order sought**

The applicant claims that the Court should:

annul Regulation (EU) 2020/1054 in part, in particular:

Article 1(6)(c), amending Article 8(8) of Regulation (EC) No 561/2006, and

Article 1(6)(d), amending Article 8 of Regulation (EC) No 561/2006 through the insertion of new paragraph (8a);

in the alternative, only if the Court should find that those provisions are inextricably linked to other provisions of Regulation (EU) 2020/1054 or concern the essence of that act, annul the EU legislative act in its entirety;

order the Parliament and the Council to pay the costs.

Pleas in law and main arguments

In support of its action, Romania relies on three pleas in law:

1. The first plea in law, alleging the infringement of the principle of proportionality, provided for in Article 5(4) TEU

Romania submits that the measure governed by Article 1(6)(c) – consisting in the prohibition of taking in a vehicle the regular weekly rest period and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods – is inappropriate for achieving the objectives pursued, in particular improving road safety and working conditions for drivers. In addition, that measure does not eliminate the risks and impediments identified by the Commission.

Furthermore, the data and information which indicated that that measure was manifestly inappropriate were known to the co-legislators at the time it was adopted.

Romania further submits that the measure governed by Article 1(6)(d) – concerning the return of drivers every four consecutive weeks (and, respectively, before the regular weekly rest period of more than 45 hours taken in compensation, after two consecutive reduced weekly rest periods) to the employer's operational centre in the latter's EU Member State of establishment or to the driver's place of residence – is manifestly inappropriate, having regard, in particular, to the new administrative obligations established, the considerable expenditure incurred by operators, the limitation of their commercial activity and also the fact that the measure does not ensure the adequate protection of drivers.

Furthermore, the impact assessment does not seem to have considered all those aspects, a context in which the co-legislators could not take into consideration all the relevant factors and circumstances of the situation.

2. The second plea in law, alleging the unjustified restriction on the right of establishment provided for in Article 49 TFEU

Romania submits that the measure established by Article 1(6)(d) implies, for operators in States on the geographical periphery of the European Union, new administrative obligations, considerable expenditure and a limitation of commercial activity, which will lead to their relocation and will deter the creation of transport companies in such States.

Consequently, that measure constitutes a restriction on the freedom of establishment within the meaning of Article 49 TFEU. That restriction is unjustified.

3. The third plea in law, alleging the infringement of the principle of non-discrimination on the ground of nationality, provided for in Article 18 TFEU

Romania submits that the measure governed by Article 1(6)(c) creates clear disadvantages for the States on the geographical periphery of the European Union, in view, in particular, of the specific features of the parking and accommodation network.

Romania further submits that ensuring the return of drivers in accordance with Article 1(6)(d) involves significant losses for companies formed in Member States located on the European Union's periphery – in any event, losses which are clearly greater than those in Member States situated near the centre of transport in the European Union.

Furthermore, the measures governed by Regulation (EU) 2020/1054, Regulation (EU) 2020/1055 ¹ and Directive (EU) 2020/1057 ² (concerning the additional restriction of cabotage operations, the return of the vehicle to the operating centre in the Member State of establishment every eight weeks, the return of the driver every four works, the prohibition on taking the regular weekly rest period in the vehicle cabin and the posting of drivers) were designed as pillars of an integrated legislative package, a context in which only an analysis of the their cumulative effects can illustrate their actual impact on the transport market.

¹ 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).

² 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).