

Action brought on 23 October 2020 – Romania v European Parliament, Council of the European Union**(Case C-547/20)***Language of the case: Romanian***Parties***Applicant:* Romania (represented by: E. Gane, R.I. Hațieganu and A. Rotăreanu, 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) 2020/1055 in part, in particular:

Article 1(3), amending Article 5(1)(b) of Regulation (EC) No 1071/2009, and

Article 2(4),(b) and (c), amending Article 8 of Regulation (EC) No 1072/2009 through the insertion of paragraph (2a), the amendment of paragraph (3) and the insertion of paragraph (4a);

in the alternative, only if the Court should find that those provisions are inextricably linked to other provisions of Regulation (EU) 2020/1055 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(3), concerning the obligation to return the vehicle to the operational centre in the Member State of establishment within eight weeks, is not necessary to consolidate the real and effective presence of the company in that Member State and is manifestly inappropriate to achieve the stated objective.

It represents an economically unjustified obligation which is burdensome for operators, which will generate pointless operational costs, and increase the number of empty runs as well as CO2 emissions.

Romania further submits that the measure governed by Article 2(4)(a), (b) and (c), providing for the additional restriction of cabotage operations, is manifestly inappropriate to achieve the stated objectives and is not necessary to resolve the problems identified concerning the failure to comply with the cabotage rules.

It represents a regression as compared to the current level of market liberalisation and is capable of creating imbalances in the organisation of the logistics chains of transport companies and of increasing the periods of inactivity and the number of empty runs. The new provisions introduced make it difficult to apply the regulations on cabotage and make the control mechanisms more complicated, adding pointless administrative burdens for operators.

Both measures are disproportionate in terms of the negative impact on transport undertakings in the EU Member States, especially those situated on the geographical periphery of the European Union.

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(3) generates significant operational costs for transport companies established in a Member State on the European Union's geographical periphery. The profitability and by implication the attractiveness of creating such a company in those States will decrease significantly. At the same time, operators already established will relocate their activities to States in Western Europe in order to reduce the negative effects entailed by the obligation to return the vehicle to the operational centre in the Member State of establishment within eight weeks.

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 providing for the vehicle's return to the operational centre in the Member State of establishment within eight weeks and the additional restrictions concerning cabotage are contrary to the European Union's convergence objectives and are protectionist, which creates a significant barrier to entry of non-resident operators to the transport markets.

Although apparently non-discriminatory, those measures will *de facto* affect Member States to different extents, in that they will have a significant and disproportionate impact on the economic activity of transport operators established in the States located on the European Union's geographical periphery.

Furthermore, the measures governed by Regulation (EU) 2020/1055, Regulation (EU) 2020/1054 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 within 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) 2020/1054 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 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).