Provisional text

JUDGMENT OF THE COURT (First Chamber)

8 July 2021 (*)

(Reference for a preliminary ruling – Directive 96/71/EEC – Article 1(1) and Articles 3 and 5 – Posting of workers in the framework of the provision of services – Drivers working in international road transport – Compliance with the minimum rates of pay of the country of posting – Daily allowance – Regulation (EC) No 561/2006 – Article 10 – Remuneration paid to employees according to fuel consumption)

In Case C-428/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Gyulai Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Gyula, Hungary), made by decision of 20 May 2019, received at the Court on 4 June 2019, in the proceedings

OL,

PM,

RO

v

Rapidsped Fuvarozási és Szállítmányosi Zrt.,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen (Rapporteur), C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– OL, PM and RO, by Gy. Lupkovics, ügyvéd,

– Rapidsped Fuvarozási és Szállítmányozási Zrt., by D. Kaszás, ügyvéd,

– the Hungarian Government, by M.Z. Fehér, G. Koós and M.M. Tátrai, acting as Agents,

– the French Government, by A.-L. Desjonquières and C. Mosser, acting as Agents,

– the Netherlands Government, by M. Bulterman and P. Huurnink, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, initially by W. Mölls, B.-R. Killmann and L. Havas, and subsequently by B.-R. Killmann and L. Havas, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1) and Articles 3 and 5 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1), and Article 10 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 between, on the one hand, OL, PM and RO and, on the other, Rapidsped Fuvarozási és Szállítmányozási Zrt. ('Rapidsped'), concerning a request by the former, in their capacity as drivers working in international road transport, for payment on the part of Rapidsped, their employer, of a wage taking into account the French minimum wage in respect of time worked in France.

Legal context

EU law

Directive 96/71

3 Article 1 of Directive 96/71, entitled 'Scope', provides:

'1. This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.

2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.

3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

(a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; …

…'

4 Article 2 of that directive, entitled 'Definition', is worded as follows:

'1. For the purposes of this Directive, "posted worker" means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.

2. For the purposes of this Directive, the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.'

5 Article 3 of that directive, entitled 'Terms and conditions of employment', provides:

'1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1(1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

– by law, regulation or administrative provision, and/or

– by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:

…

(c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

…

For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1(c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

…

7. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

…'

6 Article 5 of that directive, entitled 'Measures', provides:

'Member States shall take appropriate measures in the event of failure to comply with this Directive.

They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive.'

7 Under Article 6 of Directive 96/61, entitled 'Jurisdiction':

'In order to enforce the right to the terms and conditions of employment guaranteed in Article 3, judicial proceedings may be instituted in the Member State in whose territory the worker is or was posted, without prejudice, where applicable, to the right, under existing international conventions on jurisdiction, to institute proceedings in another State.'

Directive 2003/59/EC

8 Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ 2003 L 226, p. 4), states in recital 10 thereof that the development of defensive driving, which goes hand in hand with rational fuel consumption, will have a positive impact both on society and on the road transport sector itself.

9 Article 1 of that directive, entitled ‘Scope’, is worded as follows:

‘This Directive shall apply to the activity of driving carried out by:

(a) nationals of a Member State; and

(b) nationals of third countries who are employed or used by an undertaking established in a Member State;

hereinafter referred to as “drivers”, engaged in road transport within the Community, on roads open to the public, using:

– vehicles for which a driving licence of category C1, C1+E, C or C+E, as defined in [Council] Directive 91/439/EEC [of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1)], or a driving licence recognised as equivalent, is required,

…’

10 Annex I to that directive is entitled ‘Minimum qualification and training requirements’. Under point 1.3 of Section 1 thereof, the knowledge to be taken into account by Member States when establishing the driver’s initial qualification and periodic training must include, inter alia, knowledge on the optimisation of fuel consumption in connection with the licences C, C+E, C1, C1+E.

Directive 2006/126/EC

11 Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18) repealed and replaced Directive 91/439 with effect from 19 January 2013. It follows from Article 4 of Directive 2006/126, read in conjunction with the correspondence table set out in Annex III to Directive 2003/59, that the licences C, C+E, C1, C1+E covered by the latter directive concern vehicles used, inter alia, for carrying goods by road, the maximum authorised mass of which exceeds 3.5 tonnes.

12 Under the third paragraph of Article 17 of Directive 2006/126, references made to the repealed Directive 91/439 are to be construed as being made to Directive 2006/126.

Regulation No 561/2006

13 Pursuant to Article 2(1)(a) of Regulation No 561/2006, that regulation is to apply to the carriage by road, inter alia, of goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3.5 tonnes.

14 Article 10(1) of that regulation provides:

‘A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages

infringement of this Regulation.’

Regulation (EC) No 44/2001

15 Article 68 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) provided, in paragraph 1 thereof, that that regulation was to supersede, as between the Member States, the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by subsequent conventions relating to the accession of new Member States to that convention (‘the Brussels Convention’), except as regards certain territories of the Member States, and, in paragraph 2 thereof, that, in so far as that regulation replaced the provisions of the Brussels Convention between Member States, any reference to that convention was to be understood as a reference to that regulation.

Regulation (EU) No 1215/2012

16 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1) states, in recital 8 thereof:

‘On 22 December 2000, the Council adopted [Regulation No 44/2001], which replaces the [Brussels Convention] with regard to the territories of the Member States covered by the TFEU, as between the Member States except Denmark. By Council Decision 2006/325/EC [of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2006 L 120, p. 22)], the Community concluded an agreement with Denmark ensuring the application of the provisions of [Regulation No 44/2001] in Denmark. …’

17 Under Article 21(1)(a) of that regulation, an employer domiciled in a Member State may be sued in the courts of the Member State in which he or she is domiciled.

18 According to Article 62(1) of that regulation, in order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court is to apply its internal law.

19 Under Article 80 of Regulation No 1215/2012, that regulation is to repeal Regulation No 44/2001. References to the repealed regulation are be construed as references to Regulation No 1215/2012.

Hungarian law

20 Article 3(2) of the Munka Törvénykönyvéről szóló 2012. évi I. törvény (Law No I of 2012 establishing the Labour Code; ‘the Labour Code’) states that, unless otherwise provided for, the latter is to apply where the worker normally works in Hungary.

21 Article 285 of the Labour Code is worded as follows:

‘1. Workers and employers may bring before a court actions arising from the employment relationship or from this Law, while trade unions and works councils may bring before a court actions arising from this Law, a collective agreement or a works agreement.

…

4. In accordance with Article 295, workers may also bring before the Hungarian courts actions in connection with the period of their employment in Hungary.’

22 Article 295(1) of that code provides:

‘If, on the basis of an agreement with a third party, a foreign employer employs a worker in the territory of Hungary and thereby establishes an employment relationship to which this Law is not applicable, in accordance with Article 3(2) hereof, that employment relationship shall be subject, without prejudice to the provisions of paragraph 4, to Hungarian legislation and to the provisions of the relevant collective agreement, so far as concerns:

(a) maximum working time and minimum rest periods;

(b) the minimum annual paid leave entitlement;

(c) the amount of the minimum wage;

(d) the conditions laid down in Articles 214 to 222 with respect to temporary employment agencies;

(e) the conditions governing safety at work;

(f) the conditions governing the employment and occupation of pregnant women and women with young children and young workers; and

(g) equal treatment obligations.’

23 In accordance with Article 299 of that code, it is intended to transpose, inter alia, Directive 96/71 into national law.

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

24 OL, PM and RO (‘the drivers in question in the main proceedings’) each concluded, on 12 June 2015, 7 July 2016 and 26 August 2016, respectively, a contract for employment as a lorry driver with Rapidsped, a company established in Hungary.

25 Those contracts, which are drafted uniformly, stipulate that, although the worker has the task of performing, in addition to international carriage of goods, national carriage of goods, he or she must usually perform his or her work in places which are frequently and principally situated abroad, without, however, the work carried out abroad being permanent.

26 Under Hungarian law, workers are entitled to a daily allowance (per diem) for work carried out abroad. It is apparent from the documents before the Court and, in particular, from an information document for workers issued by Rapidsped, that the amount of those per diems was higher the longer the period during which the worker was posted abroad, which, under the contract, could vary, in principle, from three to five weeks, at the worker’s choice. The same document stated that those per diems were intended to cover the costs incurred abroad.

27 Furthermore, the contracts of employment of the drivers in question in the main proceedings provided that those drivers, when they saved fuel, would receive a bonus, at the employer’s discretion, based on a formula relating fuel consumption to distance covered.

28 The drivers in question in the main proceedings carried out their work by travelling by minibus to France. Throughout the entire period of the posting, the allocation departments of Rapidsped set the transportation tasks to be carried out, that is to say, on what date, by means of which vehicle and by which route the goods were to be transported. Owing to the rules on cabotage, those drivers crossed

borders on several occasions.

29 At the beginning of each period of posting, Rapidsped provided the drivers in question in the main proceedings with a declaration certified by a Hungarian notary and a posting certificate from the French Ministry of Labour stating that their hourly wages amounted to EUR 10.40 per hour, that is to say, more than the French minimum hourly wage applicable to the road transport sector, which was fixed at EUR 9.76 per hour.

30 The drivers in question in the main proceedings brought an action before the referring court, the Gyulai Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Gyula, Hungary), against Rapidsped on the ground that their wages corresponding to the time worked in France did not reach the French minimum wage.

31 Under the contracts of employment of the drivers in question in the main proceedings, they actually received, in 2018, a monthly wage of EUR 545 gross, that is, EUR 3.24 per hour. As regards the difference of EUR 6.52 per hour between the French minimum wage and the hourly wage received by those drivers, Rapidsped submits before the referring court that it was covered by the amount of the daily allowance and the fuel saving bonus which were paid to them, because they were part of their wage, which is disputed by those drivers.

32 According to the referring court, assuming that Directive 96/71 applies to the international carriage of goods, the situation which is the subject of the dispute in the main proceedings falls within the scope of that directive, since the employer registered in Hungary, Rapidsped, posts Hungarian workers, the drivers in question in the main proceedings, employed under Hungarian employment law to other Member States of the European Union, on its behalf and under its direction, with a view to providing services for the carriage of goods to customers from the place of posting. During the entire period, the workers had an employment relationship with Rapidsped, which was responsible for the posting.

33 In those circumstances the Gyulai Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Gyula) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 1(1) of [Directive 96/71], in conjunction with Articles 3 and 5 thereof and Articles 285 and 299 of the [Hungarian] Labour Code, be interpreted as meaning that an infringement of that directive and of the French minimum wage legislation can be relied upon by Hungarian workers as against their Hungarian employers in proceedings instituted before the Hungarian courts?

(2) Must per diems intended to cover the costs incurred during the posting of a worker abroad be regarded as forming part of the worker’s wage?

(3) Is the practice whereby, in the event of a given economy based on the distance travelled and the fuel consumed, the employer uses a formula to pay the driver of a transport vehicle an allowance which does not form part of the wage provided for in their employment contract and on which no taxes or social security contributions are payable, contrary to Article 10 of [Regulation No 561/2006]? Notwithstanding that the fuel economy [allowance] encourages drivers of transport vehicles to drive in such a way as might endanger road safety (for example, by freewheeling for as long as possible when going downhill)?

(4) Is [Directive 96/71] applicable to the international transport of goods, account being taken in particular of the fact that the European Commission has initiated infringement proceedings against France and Germany for applying minimum wage legislation to the road transport sector?

(5) If it has not been transposed into national law, can a directive in itself create obligations incumbent on an individual and, therefore, constitute by itself the basis for an action against an individual in a dispute brought before a national court?'

The questions referred for a preliminary ruling

The fourth question

34 By its fourth question, which it is appropriate to examine in the first place, the referring court asks, in essence, whether Directive 96/71 must be interpreted as applying to the transnational provision of services in the road transport sector.

35 It should be recalled that, in paragraph 41 of the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), the Court held that that was the case.

36 In those circumstances, the answer to the fourth question is that Directive 96/71 must be interpreted as applying to the transnational provision of services in the road transport sector.

The first question

37 By its first question, the referring court asks, in essence, whether Article 1(1) of Directive 96/71, read in conjunction with Articles 3 and 5 of that directive, must be interpreted as meaning that a breach, by an employer established in one Member State, of another Member State's provisions concerning the minimum wage, may be relied on against that employer by workers posted from the first Member State, before a court of that State.

38 In that regard, it is important to recall that, in order to ensure that a nucleus of mandatory rules for minimum protection are observed, Article 3(1) of Directive 96/71 provides that Member States are to ensure that, whatever the law applicable to the employment relationship, the undertakings established in a Member State guarantee, in the framework of the transnational provision of services, workers posted to the territory of another Member State the terms and conditions of employment applicable in the territory of that Member State as regards the matters listed in that provision, and, in particular, the minimum rates of pay (see, to that effect, judgment of 12 February 2015, *Sähköalojen ammattiliitto*, C-396/13, EU:C:2015:86, paragraph 29 and the case-law cited).

39 As regards Article 5 of Directive 96/71, the second subparagraph of that provision requires Member States in particular to ensure that adequate procedures are available to posted workers for the enforcement of obligations under that directive. Accordingly, those workers must be able to rely in legal proceedings on the observance of the terms and conditions of employment referred to in Article 3(1) of that directive, such as the condition relating to the minimum rates of pay.

40 Article 6 of Directive 96/71 provides that, in addition to the right of posted workers to institute, in a Member State whose courts have jurisdiction under the existing international conventions on jurisdiction, judicial proceedings in order to enforce the right to the terms and conditions of employment guaranteed in Article 3 of that directive, those workers may also institute such proceedings before the courts having jurisdiction in the Member State in whose territory they are or were posted.

41 It follows that Article 3(1) and Articles 5 and 6 of Directive 96/71 must be interpreted as guaranteeing the posted worker, whatever the law applicable to the employment relationship, the right to rely on and enforce, before one or other of the courts having jurisdiction referred to in the preceding paragraph, the provisions of the host Member State relating to the terms and conditions of employment as regards the matters listed in that first provision and, in particular, the minimum rates of pay.

42 Lastly, it must be noted that, under Article 21(1)(a) of Regulation No 1215/2012, to which Article 6 of Directive 96/71 refers indirectly by mentioning ‘existing international conventions on jurisdiction’, an employer domiciled in a Member State may be sued in the courts of the Member State in which he or she is domiciled.

43 In addition, Article 62(1) of Regulation No 1215/2012 provides that, in order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court is to apply its internal law.

44 Thus, in the present case, it is for the referring court to determine, for the purpose of establishing whether it has jurisdiction under Regulation No 1215/2012, whether the employer of the drivers in question in the main proceedings must be regarded as domiciled in Hungary under the law of that Member State.

45 In the light of all the foregoing considerations, the answer to the first question is that Article 3(1) and Article 6 of Directive 96/71, read in conjunction with Article 5 of that directive, must be interpreted as requiring that a breach, by an employer established in one Member State, of another Member State’s provisions concerning minimum wage, may be relied on against that employer by workers posted from the first Member State, before a court of that State, if that court has jurisdiction.

The second question

46 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 3(7) of Directive 96/71 must be interpreted as meaning that a daily allowance intended to cover expenditure incurred during the posting of workers abroad must be regarded as part of the minimum wage.

47 In that regard, it must be noted that the second subparagraph of Article 3(1) of Directive 96/71 expressly refers to the national law or practice of the Member State to whose territory the worker is posted for the definition of the minimum rates of pay referred to in the first subparagraph of Article 3(1) (judgment of 12 February 2015, *Sähköalojen ammattiliitto*, C‑396/13, EU:C:2015:86, paragraph 32 and the case-law cited).

48 The second subparagraph of Article 3(7) of the directive makes clear, as regards allowances specific to the posting, the extent to which those elements of pay are regarded as being part of the minimum wage for the purposes of the terms and conditions of employment laid down in Article 3 of the directive (judgment of 12 February 2015, *Sähköalojen ammattiliitto*, C‑396/13, EU:C:2015:86, paragraph 33).

49 As regards the question whether a daily allowance, such as that at issue in the main proceedings, is part of the minimum wage within the meaning of Article 3 of Directive 96/71, it must be recalled that, pursuant to the second subparagraph of Article 3(7) of Directive 96/71, an allowance is to be classified as an ‘allowance specific to the posting’ being part of the minimum wage where it is not paid to workers in reimbursement of expenditure actually incurred on account of the posting.

50 In the present case, even though the daily allowance at issue in the main proceedings is described, in the information note drawn up by Rapidsped for its staff, as being intended to cover the costs incurred abroad by the posted workers, the fact remains that the amount of that daily allowance differs according to whether that posting lasts three, four or five weeks, or even more. That second aspect, in particular the lump-sum and progressive nature of that allowance, seems to indicate that the purpose of that daily allowance is not so much to cover the costs incurred abroad by the workers, but rather, like the allowance at issue in the case which gave rise to the judgment of 12 February 2015, *Sähköalojen ammattiliitto* (C‑396/13, EU:C:2015:86, paragraph 48), to provide compensation for the disadvantages

entailed by the posting, as a result of the workers being removed from their usual environment.

51 Furthermore, it is not apparent from the file before the Court that that daily allowance is paid in reimbursement of expenditure actually incurred, such as expenditure on travel, board or lodging.

52 However, it must be recalled that allowances and supplements which are not defined as being constituent elements of the minimum wage by the legislation or national practice of the Member State to the territory of which the worker is posted, and which alter the relationship between the service provided by the worker, on the one hand, and the consideration which the worker receives in return, on the other, cannot, under the provisions of Directive 96/71, be treated as being elements of that kind. It is entirely normal that, if an employer requires a worker to carry out additional work or to work under particular conditions, compensation must be provided to the worker for that additional service without its being taken into account for the purpose of calculating the minimum wage (judgment of 14 April 2005, *Commission* v *Germany*, C-341/02, EU:C:2005:220, paragraphs 39 and 40).

53 In the present case, since the Court does not have all the relevant information, it is for the referring court to carry out the necessary verifications in that regard.

54 In the light of all the foregoing considerations, the answer to the second question is that the second subparagraph of Article 3(7) of Directive 96/71 must be interpreted as meaning that a daily allowance, the amount of which varies according to the duration of the worker's posting, constitutes an allowance specific to the posting and is part of the minimum wage, unless it is paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board or lodging, or unless it corresponds to an allowance which alters the relationship between the service provided by the worker, on the one hand, and the consideration which he or she receives in return, on the other.

The third question

55 By its third question, the referring court asks, in essence, whether Article 10 of Regulation No 561/2006 must be interpreted as precluding a road haulage undertaking from granting drivers a bonus calculated on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made.

56 In accordance with Article 10(1) of Regulation No 561/2006, a transport undertaking is not to give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried, if that payment is of such a kind as to endanger road safety and/or encourages infringement of that regulation.

57 Thus, the applicability of that provision presupposes that two conditions are met. First, the remuneration of drivers, even if it is granted in the form of bonuses or wage supplements, must be calculated by reference to the distance travelled and/or the amount of goods carried. Second, such remuneration must be of such a kind as to endanger road safety and/or encourage infringement of Regulation No 561/2006.

58 It may also be noted that it is apparent from Directive 2003/59, and in particular from recital 10 and Annex I, read in conjunction with Directive 2006/126, that the requirement that drivers of vehicles used for the carriage by road of goods, the mass of which exceeds 3.5 tonnes and which come within the scope of Regulation No 561/2006, are trained to optimise fuel consumption is such as to have a positive impact both on society and on the road transport sector itself.

59 Accordingly, since EU law requires that the drivers of those vehicles have the capacity to drive in a

rational and economic manner, Article 10(1) of Regulation No 561/2006 cannot be regarded as prohibiting, in principle, transport undertakings from promoting that type of driving by means of a pecuniary incentive in the form of a bonus.

60 Nevertheless, such a bonus would not be compatible with that provision if, instead of being linked solely to saving fuel, it rewarded such saving on the basis of the distances travelled and/or the amount of goods carried, in such a way as to encourage the driver to act in a manner that endangers road safety and/or infringes Regulation No 561/2006.

61 It is therefore for the referring court to determine, in the light of those considerations relating to the scope of Article 10(1) of Regulation No 561/2006, the characteristics and effects of the bonus at issue in the main proceedings.

62 In so far as is relevant, it is important to note that saving fuel depends on a multitude of factors, so that the mere hypothesis that a fuel-saving bonus might encourage certain drivers to freewheel when going downhill cannot, in itself, lead to the conclusion that such a bonus infringes the prohibition laid down in Article 10(1) of Regulation No 561/2006.

63 In the light of all the foregoing considerations, the answer to the third question is that Article 10(1) of Regulation No 561/2006 must be interpreted as not precluding, in principle, a road haulage undertaking from granting drivers a bonus calculated on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made. Nevertheless, such a bonus would infringe the prohibition laid down in that provision if, instead of being linked solely to saving fuel, it rewarded such saving on the basis of the distances travelled and/or the amount of goods carried, in such a way as to encourage the driver to act in a manner that endangers road safety or infringes Regulation No 561/2006.

The fifth question

64 By its fifth question, the referring court asks, in essence, whether a directive which has not been transposed into national law may give rise to an obligation on the part of an individual which may be relied on against him or her by another individual.

65 In that regard, while it is settled case-law that, where an interpretation in conformity with national law proves impossible, even a clear, precise and unconditional provision of a directive seeking to confer rights on or impose obligations on individuals cannot of itself apply in a dispute exclusively between private persons (see, to that effect, judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraphs 41 and 43, and the case-law cited), it must be held, as the Advocate General observed in point 74 of his Opinion, that, in the present case, the referring court provided no explanation either as to why it asked that question or as to the relationship between the relevant provisions of Directive 96/71, which, furthermore, were not identified by that court, and the national legislation applicable to the dispute in the main proceedings.

66 Under Article 94(c) of the Rules of Procedure of the Court of Justice, every request for a preliminary ruling is to contain, inter alia, ‘a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings’.

67 Furthermore, according to the Court’s settled case-law, in order to enable it to fulfil its task in accordance with the Treaties in the context of a reference for a preliminary ruling, it is essential for the national courts to explain the precise reasons why they consider that an answer to their questions is necessary in order to determine the outcome of the dispute in the main proceeding (order of 14 April 2021, *Casa di Cura Città di Parma*, C-573/20, not published, EU:C:2021:307, paragraph 30 and the

case-law cited).

68 It follows that the fifth question is inadmissible.

Costs

69 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 (First Chamber) hereby rules:

1. **Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services must be interpreted as applying to the transnational provision of services in the road transport sector.**

2. **Article 3(1) and Article 6 of Directive 96/71, read in conjunction with Article 5 of that directive, must be interpreted as requiring that a breach, by an employer established in one Member State, of another Member State's provisions concerning minimum wage, may be relied on against that employer by workers posted from the first Member State, before a court of that State, if that court has jurisdiction.**

3. **The second subparagraph of Article 3(7) of Directive 96/71 must be interpreted as meaning that a daily allowance, the amount of which varies according to the duration of the worker's posting, constitutes an allowance specific to the posting and is part of the minimum wage, unless it is paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board or lodging, or unless it corresponds to an allowance which alters the relationship between the service provided by the worker, on the one hand, and the consideration which he or she receives in return, on the other.**

4. **Article 10(1) 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 not precluding, in principle, a road haulage undertaking from granting drivers a bonus calculated on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made. Nevertheless, such a bonus would infringe the prohibition laid down in that provision if, instead of being linked solely to saving fuel, it rewarded such saving on the basis of the distances travelled and/or the amount of goods carried, in such a way as to encourage the driver to act in a manner that endangers road safety or infringes Regulation No 561/2006.**

[Signatures]

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* Language of the case: Hungarian.