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Judgment of the Court in Joined Cases C-541/20 to C-555/20 | Lithuania and Others v Parliament and Council (Mobility Package)

The Court broadly confirms the validity of the Mobility Package

However, it annuls the obligation requiring vehicles to return every eight weeks to the operational centre of the transport undertaking, since the EU legislature has not established that it had sufficient information to enable it to assess the proportionality of that measure

Lithuania, Bulgaria, Romania, Cyprus, Hungary, Malta and Poland ¹ brought actions for annulment before the Court of Justice against the Mobility Package, ² adopted by the European Union legislator, that is to say the Parliament and the Council, ³ in 2020.

Those Member States dispute in particular:

1. the prohibition on drivers taking their regular ⁴ or compensatory ⁵ weekly rest period in the vehicle; ⁶
2. the obligation on transport undertakings to organise the work of their drivers in such a way that they are able to return, during working hours, ⁷ every three or four weeks ⁸ to the operational centre of the undertaking or their place of residence, to start or spend at least their regular or compensatory weekly rest period there;
3. the bringing forward ⁹ of the date of entry into force of the obligation to install second generation intelligent tachographs and, in general, the setting of the date of entry into force of the abovementioned prohibition and obligation;
4. the obligation for vehicles used for international transport to return to an operational centre situated in the Member State of establishment of the transport undertaking concerned every eight weeks;
5. the four-day waiting period during which, following a cabotage cycle ¹⁰ carried out in a host Member State, (non-resident) hauliers are not allowed to carry out cabotage operations with the same vehicle in the same Member State;
6. the classification of drivers as 'posted workers' when they carry out cabotage operations, transport operations from one Member State to another where neither is the Member State of establishment of the transport undertaking (so-called 'cross trade' operations) ¹¹ or certain combined transport operations, ¹² so that they benefit from the terms and conditions of employment in force in the host Member State, in particular as regards remuneration.¹³

By today's judgment, the Court dismisses the actions, except in so far as they are directed against the obligation relating to the return of vehicles, which it annuls. ¹⁴ The Parliament and the Council have not established that they had sufficient information at their disposal when that measure was adopted to enable them to assess its proportionality.

For the rest, the Court rejects the arguments of the applicant Member States relating in particular to the principles

of proportionality, equal treatment and non-discrimination, the common transport policy, the freedom to provide services, the freedom of establishment, the free movement of goods, the principles of legal certainty and the protection of legitimate expectations and the protection of the environment. It considers that **the EU legislature did not manifestly exceed the limits of its broad discretion in the matter.**

The Court points out that the freedom to provide services in the field of transport is subject to a special regime. **Transport undertakings have a right freely to provide services only in so far as that right has been granted to them by measures adopted by the EU legislature, such as those falling within the scope of the Mobility Package.** Moreover, this package of measures does not prohibit transport undertakings from exercising freedom of establishment by setting up subsidiaries in the Member States in which they intend to provide transport services and thus establishing themselves more closely to the actual demand for their services.

The Court also holds that, by the Mobility Package, the EU legislature sought to strike **a new balance between the various interests involved, namely, in particular, the interest of drivers in better social conditions of work and the interest of employers in carrying out their transport activities under fair commercial conditions.** The road transport sector must thus become safer, more effective and more socially responsible.

The EU legislature was entitled to consider that, in view of that necessary rebalancing, increased social protection for drivers could result in an **increase in the costs borne by certain transport undertakings.** The rules adopted for that purpose are proportionate to the objective pursued. Moreover, they apply without distinction throughout the European Union and do not discriminate against transport undertakings established in Member States allegedly situated 'on the periphery of the Union'. If those rules have a greater impact on certain undertakings, that is because they opted for an economic operating model consisting of providing most, if not all, of their services to recipients established in Member States distant from their Member State of establishment.

As regards **the prohibition on taking the regular or compensatory weekly rest period in the vehicle**, that prohibition **is not new**, but already followed from the earlier legislation as interpreted by the Court.¹⁵

The obligation for transport undertakings to allow drivers to return regularly to the operational centre of the undertaking or their place of residence to start or spend at least their regular or compensatory weekly rest period does not prevent drivers from choosing for themselves the place where they wish to take their rest period. Moreover, undertakings can combine that return with a return of the vehicles to their operational centre as part of their usual activities or organise it by means of public transport, so that that obligation does not necessarily have negative consequences for the environment.

As regards **the rules on posting**, the EU legislature took into account, for each type of road transport operation, the link between the service provided and either the host Member State or the Member State of establishment, in order to strike a fair balance between the various interests involved. Those rules have not, as regards cabotage operations, been amended by the Mobility Package and already derived, in essence, from the previous regulatory framework as regards 'cross trade' operations.

Lastly, the Court notes that, by the Mobility Package, the EU legislature also struck a new balance that took into account the interests of the various transport undertakings by remedying the difficulties that arose in the application of Regulation No 1072/2009¹⁶ due to practices contrary to the temporary nature of **cabotage operations.**

Thus, as regards, more specifically, the **waiting period** for cabotage, it points out that that period is intended, in accordance with the objective already pursued by the earlier legislation, to ensure that cabotage operations are not carried out in such a way as to create a permanent or continuous activity in the host Member State. That period is limited to prohibiting cabotage operations in the same host Member State during that period, but does not prevent other transport operations, such as international carriage operations, either to the Member State of establishment or to other Member States, followed, as the case may be, by cabotage operations in those other Member States.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Belgium, Estonia and Latvia also supported one or more of those States before the Court.

² This package includes, in particular, (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, (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, and (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 .

³ Denmark, Germany, Greece, France, Italy, Luxembourg, the Netherlands, Austria and Sweden supported the Parliament and/or the Council before the Court.

⁴ Of at least 45 hours.

⁵ That is to say, more than 45 hours taken in compensation for previous reduced weekly rest periods. The taking of breaks and reduced daily (at least nine hours) and weekly (less than 45 hours, but a minimum of 24 hours) rest periods in the vehicle remain authorised.

⁶ Those rest periods are to be taken in accommodation that is appropriate for both women and men and including suitable sleeping and sanitary facilities. The employer must cover the related costs.

⁷ The transport undertaking must, in principle, organise the driver's return at its own expense, unless the driver occasionally chooses not to return.

⁸ The four-week period is reduced to three weeks if the driver has previously taken two consecutive reduced weekly rest periods.

⁹ By nine and a half years or by nine years, depending on the type of tachograph in the vehicle.

¹⁰ A cabotage operation is transport carried out within a Member State by a haulier not established in that Member State. Such transport is allowed as long as it is not carried out in a way that creates a permanent or continuous activity in that Member State.

¹¹ A driver carrying out such a 'cross trade' operation is considered to be posted, since the driver and the operation have a sufficient link with the territory of the host Member State.

¹² In other words, the transport of goods between Member States where the lorry or other means of transport of the goods linked to the lorry uses the road for the initial or final part of the journey and, for the other part, the railways, inland waterways or sea routes. A driver is not considered to be posted when he or she carries out the initial or final road leg of a combined transport operation if this road leg, taken in isolation, consists of bilateral transport operations. In the latter case, the nature of the service provided during the journey is closely linked to the Member State of establishment.

¹³ On the other hand, drivers who carry out 'bilateral' transport operations (between the Member State of establishment and another Member State) of goods or passengers respectively, or transit operations in which the driver crosses the territory of a Member State, in principle without loading or unloading goods and without picking up or setting down passengers, are not considered to be posted.

¹⁴ More specifically, the Court annulled point 3 of Article 1 of Regulation 2020/1055, which lays down this obligation.

¹⁵ Judgment of the Court of 20 December 2017, *Vaditrans*, [C-102/16](#) (see also press release [No 145/17](#)).

¹⁶ [Regulation \(EC\) No 1072/2009](#) of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market.