Reports of Cases

ORDER OF THE VICE-PRESIDENT OF THE COURT

3 June 2022 *

(Interim measures – Article 263 TFEU – Action for annulment of an EU act – Article 278 TFEU – Application to suspend operation of that act – Transport – Regulation (EU) 2020/1055 – Obligation for an undertaking to return its vehicles to its Member State of establishment – Urgency – Deterioration of the economic and social situation of a Member State – Damage to the environment)

In Case C-547/20 R,

APPLICATION for suspension of operation under Article 278 TFEU, lodged on 5 January 2022,

Romania, represented by L.-E. Baţagoi, E. Gane, R.I. Haţieganu, L. Lițu and A. Rotăreanu, acting as Agents,

applicant,

supported by:

Republic of Estonia, represented by N. Grünberg and M. Kriisa, acting as Agents,

Republic of Latvia, represented by J. Davidoviča, K. Pommere and I. Romanovska, acting as Agents,

Republic of Lithuania, represented by K. Dieninis, R. Dzikovič and V. Kazlauskaitė-Švenčionienė, acting as Agents,

Republic of Malta, represented by A. Buhagiar, acting as Agent, and by D. Sarmiento Ramírez-Escudero, abogado,

Republic of Poland, represented by B. Majczyna, acting as Agent,

interveners,

v

European Parliament, represented by I. Anagnostopoulou, C. Ionescu Dima and R. van de Westelaken, acting as Agents,

* Language of the case: Romanian.

Council of the European Union, represented by A. Norberg, A. Vârnav and L. Vétillard, acting as Agents,

defendants,

supported by:

Kingdom of Denmark, represented by V. Pasternak Jørgensen, M. Søndahl Wolff and L. Teilgård, acting as Agents,

Federal Republic of Germany, represented by J. Möller and D. Klebs, acting as Agents,

Hellenic Republic, represented by S. Chala, acting as Agent,

French Republic, represented by A.-L. Desjonquères, A. Ferrand and N. Vincent, acting as Agents,

Italian Republic, represented by G. Palmieri, acting as Agent, and by A. Lipari, procuratore dello Stato, and G. Santini, avvocato dello Stato,

Grand Duchy of Luxembourg, represented by A. Germeaux, acting as Agent,

Kingdom of the Netherlands, represented by M.K. Bultermann and J. Langer, acting as Agents,

Republic of Austria, represented by A. Posch and J. Schmoll, acting as Agents,

Kingdom of Sweden, represented by H. Eklinder, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, acting as Agents,

interveners,

THE VICE-PRESIDENT OF THE COURT,

after hearing the Advocate General, M. Szpunar,

makes the following

Order

1 By its application for interim measures, Romania requests the Court to order the suspension of operation of Article 1(3) of 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), in so far as it provides for point (b) of Article 5(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ 2009 L 300, p. 51).

2 The application has been made after that Member State brought, on 23 October 2020, an action under Article 263 TFEU seeking that Regulation 2020/1055 be annulled in part or, if appropriate, in its entirety.

Legal context

3 Article 1(3) of Regulation 2020/1055 provides:

‘Article 5 [of Regulation No 1071/2009] is replaced by the following:

…

1. In order to satisfy the requirement laid down in point (a) of Article 3(1), in the Member State of establishment an undertaking shall:

…

(b) organise its vehicle fleet’s activity in such a way as to ensure that vehicles that are at the disposal of the undertaking and are used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it;

…’

The procedure before the Court and the forms of order sought

4 By decision of the Vice-President of the Court of 1 February 2022, the Republic of Malta and the Republic of Poland were granted leave to intervene in support of the form of order sought by Romania.

5 Romania claims that the Court should:

– order the suspension of operation of Article 1(3) of Regulation 2020/1055, in so far as it provides for point (b) of Article 5(1) of Regulation No 1071/2009; and

– order the European Parliament and the Council of the European Union to pay the costs.

6 The Parliament and the Council contend that the Court should dismiss the application for interim measures and order Romania to pay the costs.

The application for interim measures

7 Article 160(3) of the Rules of Procedure of the Court provides that applications for interim measures must state ‘the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for’.

8 Accordingly, the court hearing an application for interim measures may order interim relief only if it is established that such an order is justified, prime facie, in fact and in law (*fumus boni juris*) and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before judgment is given on the merits. The court hearing the application for interim relief must, where appropriate, also weigh up the interests involved. Those conditions are cumulative, so that an application for interim measures must be dismissed if one of them is not met (order of 8 April 2020, *Commission* v *Poland*, C-791/19 R, EU:C:2020:277, paragraph 51 and the case-law cited).

9 In the context of the examination of those conditions, the judge hearing the application for interim measures has a wide discretion and is free to determine, having regard to the particular circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of EU law imposing a pre-established scheme of analysis within which the need to order interim measures must be assessed (order of the Vice-President of the Court of 16 July 2021, *ACER* v *Aquind*, C-46/21 P-R, not published, EU:C:2021:633, paragraph 16).

10 In the present case, it is appropriate to begin by examining the condition relating to urgency.

Arguments

11 Romania submits that applying the obligation for an undertaking to return its vehicles to its Member State of establishment, laid down in Article 5(1)(b) of Regulation No 1071/2009, as amended by Regulation 2020/1055 ('the measure at issue'), will result in serious and irreparable damage.

12 Romania claims, in the first place, that the application of the measure at issue will lead to the disappearance of over half of the road haulage operators established in that Member State.

13 The fact that that economic development is foreseeable is demonstrated by a report commissioned by a Romanian professional road haulage organisation and delivered in October 2020 ('the first report').

14 Most road haulage operators established in Romania are small and medium-sized undertakings. Those undertakings are vulnerable from the point of view of their financial situation, owing in particular to the low margins that characterise the road haulage sector in Romania.

15 Applying the measure at issue means that the distance travelled by Romanian vehicles used for international road haulage will increase to an average of 9 800 kilometres per year. In so far as those additional journeys are made by lorries without a load ('empty runs'), each year, those empty runs will lead, in Romania, to a loss of profit of EUR 524 million and additional costs of EUR 197 million to purchase fuel and EUR 150 million to pay road taxes. Other additional costs will arise from increased congestion at border-crossing points outside the Schengen area, on account of the increase, resulting from the application of the measure at issue, in the number of journeys made by Romanian transport operators.

16 In addition, account should be taken of the costs, estimated at EUR 1 233 million per year for the Romanian transport sector, resulting from the application of other new rules relating to the transport sector, the suspension of operation of which is not sought by Romania.

17 Ultimately, 55% of the undertakings surveyed with a view to preparing the first report consider that they will have to cease operations in Romania, which would result in losses for the Romanian economy estimated at EUR 3 thousand million per year and the elimination of 26 000 jobs in that Member State.

18 In the second place, Romania claims that the increase in empty runs which will result from the application of the measure at issue is likely to harm the environment and, indirectly, human health.

19 First, the first report shows that the additional emissions of Romanian transport operators are assessed at 456 886 tonnes of carbon dioxide (CO_2), that is to say, an increase of 7.7% in emissions from the Romanian transport sector and 2.4% in that Member State's total emissions.

20 A report commissioned by the European Commission and delivered in February 2021 ('the second report') establishes, second, that, throughout the European Union, the application of the measure at issue will result in the emission of 2.9 million tonnes of CO_2, between 107 and 619 tonnes of nitrogen oxide (NO_x) and between 38 and 221 tonnes of fine particulate matter ($PM_{2.5}$). The costs of that air pollution are estimated at EUR 25.9 million.

21 The Republic of Estonia, the Republic of Malta and the Republic of Poland support Romania's line of argument relating to the risk of environmental, economic and social damage occurring. The Republic of Malta refers, in that regard, to a report concerning that Member State's situation, delivered in November 2020.

22 The Parliament and the Council contend that Romania has not demonstrated that there is a risk of serious and irreparable damage occurring prior to the delivery of the final judgment in Case C-547/20, should the measure at issue be applied.

23 First, according to the Parliament and the Council, the costs generated by the application of the measure at issue are not irreparable and are overestimated, owing to the failure to take account of the existence, in the EU legislation in force, of an obligation for the operational centre to be located in the Member State of establishment.

24 In addition, Romania failed to demonstrate that any losses of market shares by Romanian undertakings would be permanent, having regard to the characteristics of the transport sector which are apparent from the second report. It is, moreover, unlikely that drivers of heavy goods vehicles would face unemployment, since there is a significant shortage of such drivers in the European Union.

25 Second, the Parliament and the Council criticise the methodology followed in the preparation of the first and second reports relied on by Romania, arguing, inter alia, that those reports are based on unrealistic assumptions, in particular as regards the number of empty runs and costs incurred by undertakings engaged in various types of international road haulage services, and make extrapolations on the basis of data from unrepresentative samples. Moreover, Romania misinterpreted several of the estimates put forward in those reports.

26 Third, the Parliament and the Council submit that the estimates relating to the alleged damage to the environment are unreliable and in part contradictory, whereas the costs put forward are insignificant. In addition, according to them, Romania failed to take account of the fact that Member States are subject to obligations in respect of CO_2 emissions under Regulation

(EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26), and NO_x and $PM_{2.5}$ concentrations in the air, in accordance with Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

27 The Parliament adds that, since Regulation 2020/1055 was adopted almost two years ago, the undertakings concerned have already started to adapt and the present application for interim measures has therefore been submitted too late to prevent the measure at issue from producing its effects.

Findings

28 According to the settled case-law of the Court, the purpose of interlocutory proceedings is to guarantee the full effectiveness of the future final decision, in order to ensure that there is no lacuna in the legal protection afforded by the Court. For the purpose of attaining that objective, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim protection. It is for that party to prove that it cannot wait for the outcome of the main proceedings without suffering damage of that nature. In order to establish the existence of serious and irreparable damage, it is not necessary for the occurrence of the damage to be demonstrated with absolute certainty. It is sufficient to show that damage is foreseeable with a sufficient degree of probability (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 60 and the case-law cited).

29 In accordance with that case-law, it remains for the party seeking an interim measure to set forth and establish the likelihood of serious and irreparable damage occurring. In that regard, the judge hearing the application for interim measures must have specific and precise information, supported by detailed documents which make it possible to examine the actual consequences which would be likely to result if the measures sought were not granted (see, to that effect, order of the Vice-President of the Court of 13 April 2021, *Lithuania* v *Parliament and Council*, C-541/20 R, not published, EU:C:2021:264, paragraphs 19 and 20).

30 It is therefore for Romania, in the present case, to establish that the application of the measure at issue during the period between the signature of this order and the delivery of the final judgment in Case C-547/20 is likely to result in serious and irreparable damage that is foreseeable with a sufficient degree of probability.

31 It is apparent from the application for interim measures that that Member State invokes damage arising from the effects of the measure at issue on the economic and social situation in Romania and on the environment.

32 Those various forms of damage may legitimately be relied on by Romania with a view to obtaining interim measures, since the Member States are responsible for the interests which are regarded as general interests at national level and may defend them in proceedings for interim measures (order of the Vice-President of the Court of 13 April 2021, *Lithuania* v *Parliament and Council*, C-541/20 R, not published, EU:C:2021:264, paragraph 21).

33 Accordingly, it is necessary to determine whether the evidence adduced by Romania makes it possible to establish, first, that the occurrence of one or more of those forms of damage is foreseeable with a sufficient degree of probability and, second, that those forms of damage are serious and irreparable.

34 In that regard, it should be borne in mind that the procedure for interim relief is not designed to establish the truth of complex facts that are very much in dispute. The court hearing an application for interim measures does not have the means necessary in order to carry out such examinations and in numerous instances it would be difficult for it to manage to do so in good time (order of 20 November 2017, *Commission* v *Poland*, C-441/17 R, EU:C:2017:877, paragraph 54).

The economic and social effects of the measure at issue

35 As a preliminary point, it must be stated that the economic and social effects of the measure at issue in Member States other than Romania, relied on by the Member States which have intervened in support of the form of order sought by the applicant, cannot, in the present case, suffice to establish that it is foreseeable that serious and irreparable damage will occur.

36 First, while the Republic of Estonia and the Republic of Poland refer to the economic and social effects of the measure at issue in their respective territories, they have not adduced any evidence to demonstrate that those effects actually exist.

37 Second, as regards the Republic of Malta, the report submitted by that Member State indicates that the application of the measures referred to in that report is liable to have effects on the transport sector ranging from the creation of 51 new jobs to the elimination of 96 jobs. In addition, that application would, at most, mean that 43 lorries would cease operations.

38 Such effects, even if they were established, would not be sufficiently extensive to be regarded as constituting serious and irreparable damage.

39 As regards the economic and social situation of Romania, the increase in costs which transport operators of that Member State would face on account of the application of the measure at issue does not, as such, constitute serious and irreparable damage.

40 The costs thus generated would constitute damage of a pecuniary nature which cannot, save in exceptional circumstances, be regarded as irreparable, since, as a general rule, pecuniary compensation is capable of restoring the aggrieved person to the situation that obtained before he or she suffered the damage (order of the Vice-President of the Court of 13 April 2021, *Lithuania* v *Parliament and Council*, C-541/20 R, not published, EU:C:2021:264, paragraph 29).

41 By contrast, those costs would be relevant, for the purposes of the present proceedings, if it were established that they were so high that they would necessarily involve a restructuring of the transport sector in Romania such as to result in a marked decline in gross domestic product or a significant increase in the unemployment rate.

42 In that regard, it must be noted, in the first place, that, with the exception of the estimates relating to congestion at border-crossing points, the data referred to by Romania in order to establish that the increase in costs for Romanian transport operators and the restructuring of the Romanian transport sector are foreseeable are taken from the first report.

43 The assessment of those costs and that restructuring carried out in that report is based on an extrapolation from survey responses of 127 Romanian undertakings, whereas it is apparent from that report that the road haulage sector in that Member State includes 33 655 undertakings and that that report makes no statement at all to the effect that the undertakings that took part in the survey constitute a representative sample of that sector.

44 In the second place, as regards, more specifically, the additional costs that Romanian transport operators would face, it is apparent from the first report that the calculation of those additional costs in that report is based on the assumption that all the journeys made by Romanian transport operators with a view to complying with the measure at issue will be empty runs.

45 Nevertheless, that assumption, which is decisive both for evaluating the loss of profit on account of the application of that measure and for determining the additional costs resulting from that application, is not in any way justified, whereas it is common ground that only a part of the journeys of Romanian transport operators to Romania are empty runs at present.

46 As regards the costs arising from congestion at border-crossing points, it must be stated, first, that those costs are not precisely assessed by Romania and, second, that it is not disputed that the alleged increase in waiting time at those crossing points would represent, at most, a limited proportion of the total journey time between Romania and the Member States in which the Romanian transport operators carry out their activities.

47 In the third place, the mere fact that many undertakings in the Romanian transport sector are small and have low profitability cannot suffice to show that they would not be capable of sustaining the costs arising from the application of the measure at issue and that they would therefore be forced to cease operations, to redirect their activities to other sectors of activity or to establish themselves in other Member States.

48 It follows from paragraphs 42 to 46 of this order that the evidence adduced by Romania does not make it possible to determine the extent of the additional costs that Romanian transport operators would face on account of the application of the measure at issue.

49 Moreover, Romania has not disputed the assertion in the second report that, even considering those additional costs, undertakings in Eastern European Member States will retain a competitive advantage in the road haulage sector.

50 In the fourth place, the estimated figures submitted by Romania as regards the risk of Romanian transport operators ceasing operations are based exclusively on the first report.

51 In that regard, in addition to the considerations set out in paragraph 43 of this order, it is important, first of all, to state that Romania misinterprets that report by stating that 55% of the undertakings surveyed with a view to preparing that report consider that they will have to cease operations in that Member State. It is apparent from that report that that estimate concerns in reality 55% of Romanian undertakings that offer cabotage and cross-trade services in other Member States, which represent 39% of the Romanian road haulage sector concerned by the survey in question.

52 Next, the first report is expressly presented as seeking to evaluate the effects of the combined application of a series of rules relating, in particular, to the regular return of drivers to the Member State of establishment, the working and rest conditions of drivers, and cabotage. As a

result, that report does not make it possible to determine to what extent the economic and social developments it describes are supposed to result from the application of the measure at issue and could be prevented in the event of suspension of that measure alone.

53 Lastly, while it is true that that report indicates that the application of the measures to which it refers will result in a far-reaching restructuring of the Romanian transport sector, it does not state the period within which that restructuring would take place.

54 In the fifth place, it is important to point out that it is apparent from the second report that the foreseeable consequences of applying the measure at issue for drivers' access to employment will necessarily be limited, owing to the insufficient number of drivers available in the European Union.

55 It follows from the foregoing that the evidence adduced by Romania is not sufficient to establish that the economic and social effects of the application of the measure at issue are such as to result in serious and irreparable damage that is foreseeable.

The environmental effects of the measure at issue

56 It appears that, in order to establish that there is a risk of environmental damage occurring, Romania refers to a risk of emissions of certain gases increasing which, in its submission, is demonstrated, in that Member State, by the information contained in the first report and, throughout the European Union, by the data set out in the second report.

57 As regards the figures put forward in the first report in order to establish the risk of damage to the environment by Romanian transport operators, it must be noted that those figures relate only to CO_2 emissions.

58 Furthermore, the methodological limitations of that report referred to in paragraphs 45 and 52 of this order do not permit its use in the assessment of the potential effects of the measure at issue on those emissions.

59 First, that report does not contain any details as regards the foreseeable contribution of each of the measures that it concerns to the increase in CO_2 emissions to which it refers. Second, as regards the effects of the measure at issue, that increase is supposed to result from a large number of empty runs. That increase is calculated on the premiss, without sufficient justification, that all the journeys made by Romanian transport operators with a view to complying with the measure at issue will be empty runs.

60 As regards the figures relied on by Romania in order to establish the risk of damage to the environment by transport operators throughout the European Union, it must be stated that that Member State relies heavily on one of the scenarios envisaged by the second report, in which undertakings in the transport sector will comply with the measure at issue without that sector undergoing any restructuring.

61 Some of the factors put forward by Romania preclude that scenario, which, moreover, the Parliament and the Council consider to be purely theoretical. In particular, with a view to establishing the economic and social damage on which it relies, that Member State submits that the transport sector has to undergo a major restructuring in the event that the measure at issue is applied.

62 It must also be noted that the assessment of the number of vehicles used in transport cycles in excess of eight weeks, which is decisive for calculating the additional emissions that could result from the application of the measure at issue, is based on an extrapolation from statements that were gathered in the context of a survey and made by a sample of transport operators described in the second report as insufficient having regard to the size of the international road haulage market.

63 In those circumstances, while it cannot be ruled out that the application of the measure at issue is liable to increase the emissions of certain gases, the documents submitted by Romania do not enable a precise evaluation of the size of that increase.

64 As regards the serious and irreparable nature of that increase, it should be noted that, as the Parliament and the Council submit, CO_2, NO_x and $PM_{2.5}$ emissions are the subject of specific rules of EU law.

65 Thus, Regulation 2018/842 establishes obligations for each Member State in relation to limiting greenhouse gas emissions, including CO_2, whereas Directive 2008/50 lays down national objectives as regards reduction of exposure to $PM_{2.5}$ and limit values for NO_x and $PM_{2.5}$.

66 It follows that, even relying on the highest figures put forward by Romania, the application of the measure at issue would entail only a moderate increase in CO_2, NO_x and $PM_{2.5}$ emissions, in respect of which it is not established that it would be such as to undermine, in the medium term, the protection of air quality and the fight against global warming (see, by analogy, order of the President of the Court of 2 October 2003, *Commission* v *Austria*, C-320/03 R, EU:C:2003:543, paragraph 98).

67 As to the remainder, the costs arising from the increase in NO_x and $PM_{2.5}$ emissions referred to by Romania cannot, having regard to their amount for the entirety of the European Union, demonstrate that the damage alleged by Romania is serious.

68 Accordingly, it must be stated that the evidence adduced by Romania is not sufficient to establish that the environmental effects of the application of the measure at issue are such as to result in serious and irreparable damage that is foreseeable.

69 In the light of all the foregoing, it appears that Romania has failed to establish that the application of the measure at issue during the period between the signature of this order and the delivery of the final judgment in Case C-547/20 is such as to result in serious and irreparable damage that is foreseeable with a sufficient degree of probability and, accordingly, that the condition relating to urgency is satisfied.

70 Having regard to the fact that the conditions for the grant of interim measures are cumulative, the application for interim measures must therefore be dismissed, without it being necessary to examine the conditions relating to a prima facie case and the weighing up of the interests.

71 In accordance with Article 137 of the Rules of Procedure, a decision as to costs is to be given in the judgment or order which closes the proceedings.

On those grounds, the Vice-President of the Court hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

[Signatures]