



JUDGMENT OF THE COURT

4 May 2020

(Regulation (EC) No 561/2006 – Article 13(1)(m) – Specialised vehicles transporting money and/or valuables – Empty journeys – Escort vehicles)

In Case E-6/19,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Princely Court of Appeal (*Fürstliches Obergericht*), in criminal proceedings against

H and I

concerning the interpretation 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,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen (Judge-Rapporteur) and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- the Government of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, and Thomas Bischof, Deputy Director, EEA Coordination Unit, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Erlend Møinichen Leonhardsen, Michael Sánchez Rydelski and Carsten Zatschler, members of its Department of Legal & Executive Affairs, acting as Agents; and
- the European Commission (“the Commission”), represented by Cécile Vrignon and Nicola Yerrell, members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the Government of Liechtenstein, represented by Thomas Bischof; ESA, represented by Erlend Møinichen Leonhardsen; and the Commission, represented by Nicola Yerrell, at the hearing on 29 January 2020,

gives the following

Judgment

I Legal background

EEA law

1 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), as corrected by OJ 2016 L 195, p. 83, (“the Regulation”) was incorporated into the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) by Decision of the EEA Joint Committee No 154/2006 of 8 December 2006 (OJ 2007 L 89, p. 27), inserting it as point 24e of Annex XIII (Transport). Constitutional requirements were indicated by Norway. The requirements were fulfilled on 14 March 2008, and the decision entered into force on 1 May 2008.

2 Recital 17 of the Regulation reads:

This Regulation aims to improve social conditions for employees who are covered by it, as well as to improve general road safety. It does so mainly by means of the provisions pertaining to maximum driving times per day, per week and per period of two consecutive weeks, the provision which obliges drivers to take a regular weekly rest period at least once per two consecutive weeks and the provisions which prescribe that under no circumstances should a daily rest period be less than an uninterrupted period of nine hours. Since those provisions guarantee adequate rest, and also taking into account experience with enforcement practices during the past years, a system of compensation for reduced daily rest periods is no longer necessary.

3 Article 1 of the Regulation reads:

This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This

Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.

4 Article 2(1) and (2) of the Regulation reads:

1. This Regulation shall apply to carriage by road:

(a) of goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3.5 tonnes, or

(b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

2. This Regulation shall apply, irrespective of the country of registration of the vehicle, to carriage by road undertaken:

(a) exclusively within the Community; or

(b) between the Community, Switzerland and the countries party to the Agreement on the European Economic Area.

5 Article 4 of the Regulation reads, in extract:

For the purposes of this Regulation the following definitions shall apply:

(a) 'carriage by road' means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods;

...

(c) 'driver' means any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary;

...

(e) 'other work' means all activities which are defined as working time in Article 3(a) of Directive 2002/15/EC except 'driving', including any work for the same or another employer, within or outside of the transport sector;

...

(o) 'multi-manning' means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;

...

6 Chapter II of the Regulation, which contains Articles 5 to 9, is entitled "crews, driving times, breaks and rest periods".

7 Article 5 of the Regulation reads:

1. The minimum age for conductors shall be 18 years.

2. The minimum age for drivers' mates shall be 18 years. However, Member States may reduce the minimum age for drivers' mates to 16 years, provided that:

(a) the carriage by road is carried out within one Member State within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centre of which is situated within that radius;

(b) the reduction is for the purposes of vocational training; and

(c) there is compliance with the limits imposed by the Member State's national rules on employment matters.

8 Article 6 of the Regulation reads:

1. The daily driving time shall not exceed nine hours.

However, the daily driving time may be extended to at most 10 hours not more than twice during the week.

2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.

3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.

4. Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country.

5. A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 15(3)(c) of Regulation (EEC) No 3821/85, since his last daily or weekly rest period. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.

9 Article 7 of the Regulation reads:

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period.

This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

10 Article 8 of the Regulation reads, in extract:

1. A driver shall take daily and weekly rest periods.

2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.

If the portion of the daily rest period which falls within that 24 hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.

3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.

4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.

5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least nine hours.

6. In any two consecutive weeks a driver shall take at least:

— two regular weekly rest periods, or

— one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

...

7. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine hours.

8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

9. A weekly rest period that falls in two weeks may be counted in either week, but not in both.

11 Article 9 of the Regulation reads:

1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period the driver shall have access to a bunk or couchette.

2. Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette.

3. Any time spent by a driver driving a vehicle which falls outside the scope of this Regulation to or from a vehicle which falls within the scope of this Regulation, which is not at the driver's home or at the employer's operational centre where the driver is normally based, shall count as other work.

12 Article 13 of the Regulation reads, in extract:

1. Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions from Articles 5 to 9 and make such exceptions subject to individual conditions on its own territory or, with the agreement of the States concerned, on the territory of another Member State, applicable to carriage by the following:

...

(h) vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers;

...

(l) vehicles used for milk collection from farms and/or for the return to farms of milk containers or milk products intended for animal feed;

(m) specialised vehicles transporting money and/or valuables;

...

13 Article 19(1) and (2) of the Regulation reads, in extract:

1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EEC) No 3821/85 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.

2. A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.

...

14 Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8) ("Regulation 3821/85") was incorporated as point 21 of Annex XIII (Transport) by virtue of the entry into force of the EEA Agreement.

15 Article 3(2) of Regulation 3821/85, as amended by the Regulation, reads:

Member States may exempt vehicles mentioned in Articles 13(1) and (3) of Regulation (EC) No 561/2006 from application of this Regulation.

16 Regulation 3821/85 was repealed and replaced by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and the Council on the harmonisation of certain social legislation relating to road transport (OJ 2014 L 60, p. 1) (“Regulation 165/2014”). Regulation 165/2014 was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 122/2016 of 3 June 2016 (OJ 2017 L 308, p. 27), inserting it as point 21b of Annex XIII (Transport). Constitutional requirements were indicated by Norway. The requirements were fulfilled on 6 July 2018 and the decision entered into force on 1 September 2018.

17 Recital 3 of Regulation 165/2014 reads:

Certain vehicles are subject to an exemption from the provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council. In order to ensure coherence, it should also be possible to exempt such vehicles from the scope of this Regulation.

18 Article 3(2) of Regulation 165/2014 reads:

Member States may exempt from the application of this Regulation the vehicles mentioned in Article 13(1) and (3) of Regulation (EC) No 561/2006.

National law

19 The Regulation was implemented by the Government of Liechtenstein by way of Regulation of 24 May 2011 on working and driving time and rest periods for drivers of motor vehicles for the transport of goods and persons (*Regierungsverordnung vom 24.05.2011 über die Arbeits-, Lenk- und Ruhezeit der Führer von Motorfahrzeugen zum Güter- und Personentransport*) (“Liechtenstein Regulation 2011”).

20 By way of Article 3(2)(o) of the Liechtenstein Regulation 2011, the Principality of Liechtenstein has exercised the right pursuant to Article 13(1)(m) of the Regulation to grant exceptions from Articles 5 to 9 of the Regulation for road carriage by specialised vehicles transporting money and/or valuables.

21 Article 35 of the Liechtenstein Regulation 2011 states that a person shall be subject to a fine of up to CHF 20 000, or in the event of default, up to 3 months’ imprisonment, for infringement of the provisions on working and driving times and rest periods with specific reference to Articles 5 to 9 of the Regulation (Article 35(1)(a)), as well as the corresponding recording requirements (Article 35(1)(b)), including a failure to carry or to operate the recording equipment correctly and a failure to keep the tachograph active or to operate it correctly.

- 22 Article 36(1) of the Liechtenstein Regulation 2011 states that offences contrary to the Liechtenstein Regulation 2011, as well as Articles 5 to 9 of the Regulation and Regulation 165/2014, shall be punishable as an administrative offence even if the offence was not committed on the national territory but on a journey within the territorial scope of those provisions, which are defined in Article 2(2) and (3) of the Regulation. In such cases, the place on the national territory where the control took place and the offence was detected shall be treated as the place where the offence was committed. No penalty shall be applied if the administrative offence on national territory no longer persists and the driver demonstrates that he has already been subject to a penalty for this offence abroad.
- 23 Section 9(1) of the Liechtenstein Criminal Code (*Strafgesetzbuch*) states that any person who does not recognise the wrongfulness of an act because of a mistake of law shall not be deemed to act culpably if he cannot be blamed for the mistake. Nevertheless, according to Section 9(2) of the Liechtenstein Criminal Code, the perpetrator shall be blamed for the mistake of law if it was as easily recognisable for the perpetrator as for anyone else or if the perpetrator did not acquaint himself with the relevant provisions, even though he would have been required to do so in light of his profession, occupation or other circumstances.

II Facts and procedure

- 24 H and I are both employees of the Liechtenstein company X, which provides various services within the security sector. The company specialises in the transport of valuables and money.
- 25 On 15 June 2018, the Liechtenstein national police carried out checks on company X in Liechtenstein in relation to the months of March and April 2018. The Liechtenstein national police identified infringements of the provisions on rest periods and of the control provisions. The Liechtenstein Public Prosecutor's Office then brought criminal proceedings before the Princely Court of Liechtenstein (*Fürstliches Landgericht*) against H and I.
- 26 H was accused of having infringed the provisions of the Liechtenstein Regulation 2011 and the control provisions in Liechtenstein and at other locations in the EEA in his capacity as a truck driver for company X. In particular, he had worked continuously for 49 hours between 22 and 24 April 2018 without the required rest period, and failed to record his actual working time.
- 27 The other accused, I, was also a truck driver for company X and was alleged of having infringed in Liechtenstein, Germany, France and Spain the provisions of the Liechtenstein Regulation 2011. In particular, he had worked for more than 20 hours on 20 and 21 March 2018 without the required rest period, for more than 40 hours in total on 3 and 4 April 2018 without the required rest period, and for failing to record his actual working time.

- 28 During the journeys in question both H and I had been travelling in trucks (armoured vehicles) or in escort vehicles (limousines). The journeys involved the transport of money and/or valuables. Both H and I took the view that the periods in which they were passengers and rested in the limousine did not constitute working time. Further they took the view that they did not need to register the working time and rest periods because an exception to registering and recording applied because the journey consisted of the transport of money and/or valuables.
- 29 The Princely Court of Liechtenstein acquitted both accused of the charges brought against them: in H's case by judgment of 15 April 2019 (case number 13 EU.2019.31-15); and in I's case by judgment of the same date (case number 11 EU.2019.33-20).
- 30 The Liechtenstein Public Prosecutor's Office brought an appeal against the two judgments to the Princely Court of Appeal (*Fürstliches Obergericht*). For the purpose of the appeal proceedings, the two cases were joined.
- 31 By letter of 13 August 2019, registered at the Court on 20 August 2019, the Princely Court of Appeal referred the following questions to the Court:

1. *In relation to Article 13(1)(m) of Regulation (EC) No 561/2006:*

(a) *Does this provision also apply to "empty journeys" by the specialised vehicles transporting money and/or valuables mentioned therein, in other words, to journeys by those vehicles for the purpose of collecting money or valuables and to return journeys after the delivery of money or valuables?*

(b) *Does this provision also apply to vehicles escorting specialised vehicles transporting money and/or valuables?*

2. *Is it necessary or proportionate, by reason of Article 19(1) of Regulation (EC) No 561/2006, for a Member State to impose penalties for infringements of this Regulation where the journeys at issue were effected by specialised vehicles transporting money or valuables on the territory of other Member States and those Member States have exercised the exception provided for in Article 13(1)(m) of this Regulation such that under the relevant national law of the Member States concerned no infringement exists?*

3. *Must Article 6(5) of Regulation (EC) No 561/2006 be interpreted as meaning that even where a Member State has exercised the exception provided for in Article 13(1)(m) of this Regulation, any time spent as described in Article 4(e) of this Regulation and time spent driving vehicles (in each case in relation to journeys involving specialised vehicles transporting money and/or valuables) must be recorded as "other work" in accordance with Article 6(5) of the Regulation mentioned?*

If the answer to the question is in the affirmative, must Article 6(5) of Regulation (EC) No 561/2006 be applied also where the relevant Member State has exempted the vehicles concerned in accordance with Article 3(2) of Regulation (EEC) No 3821/85 (now Article 3(2) of Regulation (EU) No 165/2014)?

32 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts and procedure, as well as for summary of the written observations submitted to the Court. The observations are mentioned or discussed only insofar it is necessary for the reasoning of the Court.

III Answers of the Court

Question 1(a) – empty journeys

33 By this question, the referring court asks in essence whether the exception for carriage by specialised vehicles transporting money and/or valuables under Article 13(1)(m) of the Regulation also applies to empty journeys. The referring court explains that empty journeys refer to journeys undertaken before the loading and after the unloading of the vehicle.

34 As stated in Article 1, the Regulation is intended to harmonise conditions of competition and improve working conditions and road safety. For those purposes it lays down rules, inter alia, on work, driving and rest periods for drivers engaged in the carriage of goods and passengers by road. Articles 5 to 9 of the Regulation specify, in particular, the requirements for drivers, maximum daily driving time, breaks and rest periods.

35 However, under Article 13(1) of the Regulation, an EEA State may grant exceptions from Articles 5 to 9 of the Regulation for certain types of transport on its own territory, or on the territory of another Member State with its agreement. Under Article 13(1)(m), an EEA State may exempt carriage by “specialised vehicles transporting money and/or valuables” from Articles 5 to 9.

36 In that regard, as exceptions to Articles 5 to 9 of the Regulation, the conditions for applying the exceptions in Article 13(1) are to be interpreted strictly (compare the judgment in *NK*, C-231/18, EU:C:2019:103, paragraph 21, regarding Article 13(1)(p)). A broad interpretation would lead to drivers being deprived of the protection of their working conditions ensured by the Regulation, and accordingly undermine its objectives (compare the judgment in *Seeger*, C-554/09, EU:C:2011:523, paragraphs 35 and 36, regarding Article 13(1)(d)). The scope of the exception laid down in Article 13(1)(m) of the Regulation must also be determined in the light of the aims pursued by the Regulation (compare the judgment in *A. Karuse*, C-222/12, EU:C:2014:142, paragraph 42, regarding Article 13(1)(h)).

37 The wording is silent as to whether the exception in Article 13(1)(m) of the Regulation applies only while a specialised vehicle is transporting money and/or valuables or whether

it also applies to ‘empty journeys’ that is, prior to loading or after unloading the vehicle. In this connection, it must be noted that according to Article 4(a), any journey by vehicles used for the carriage of passengers or of goods are considered as “carriage by road”, irrespective of whether the vehicle is “laden or not”. However, this does not entail that the exceptions under Article 13(1) in all cases must be understood as applying to both laden and empty journeys. Rather, this question must be assessed independently for each specific exception under Article 13(1).

- 38 The Court observes that Article 13(1)(h) of the Regulation refers to “vehicles used in connection with” certain disparate tasks, including sewerage and radio and television broadcasting, and that Article 13(1)(l) expressly includes “the return to farms of milk containers or milk products intended for animal feed”. However, that does not entail that the lack of an explicit reference to empty journeys in Article 13(1)(m) precludes such journeys from coming within the scope of the exception contained in that article. The Court of Justice of the European Union has interpreted Article 13(1)(h) to the effect that empty vehicles used in connection with road maintenance and when preparing to carry out such transportation also fall within the scope of that article (compare the judgment in *A. Karuse*, cited above, paragraph 47). The specific nature of the exceptions in Article 13(1) thus necessitates an assessment of the aims underlying each individual exception.
- 39 As argued by ESA and the Commission, the exception in Article 13(1)(m) of the Regulation is based on specific safety considerations underlying the transport of money and/or valuables by specialised vehicles, as well as the risk involved for the employees manning those vehicles. The road safety considerations relevant for the transport of money and/or valuables apply equally to empty journeys. In addition, a risk to the employees manning such vehicles may be assumed regardless of whether the vehicles are laden or not. Journeys before loading and after unloading must therefore be considered journeys for the purpose of this exception.
- 40 The possibility to grant exceptions under Article 13(1)(m) of the Regulation applies only in so far as the objectives set out in Article 1 are not prejudiced. One of these objectives is the elimination of disparities capable of distorting competition in the road transport sector (compare the judgment in *A. Karuse*, cited above, paragraph 37), as pointed out by the Government of Liechtenstein. Accordingly, as the exception must apply without distinction to all specialised vehicles transporting money and/or valuables, an exception must apply equally to all undertakings operating in the market for transport of money and/or valuables.
- 41 Moreover, specialised vehicles exempted under Article 13(1)(m) of the Regulation must be used wholly and exclusively for the transport for which they are intended (compare the judgments in *A. Karuse*, cited above, paragraph 35, and *British Gas*, C-116/91, EU:C:1992:227, paragraph 21).

42 Thus, in the light of the foregoing considerations, the answer to Question 1(a) must be that an exception for carriage by specialised vehicles transporting money and/or valuables under Article 13(1)(m) of the Regulation must also apply to empty journeys, meaning those journeys undertaken before the loading and after the unloading of such vehicles.

Question 1(b)

43 By Question 1(b) the referring court asks whether Article 13(1)(m) of the Regulation also applies to vehicles escorting the specialised vehicles transporting money and/or valuables.

44 As a preliminary observation, the Court notes that, according to Article 2, the Regulation applies to the “carriage by road of goods” where the “maximum permissible mass of the vehicle ... exceeds 3.5 tonnes”, and to the “carriage by road of passengers” by “vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and intended for that purpose”. The referring court must examine whether the vehicle used to escort the specialised vehicle exceeds 3.5 tonnes or is constructed or permanently adapted and intended to carry more than nine persons including the driver. If the vehicle in question falls outside the scope of the Regulation, none of the obligations under the Regulation will apply to this vehicle.

45 Regarding vehicles with a maximum permissible mass exceeding 3.5 tonnes, neither Article 13(1)(m) nor any other article of the Regulation mentions escort vehicles. At the oral hearing, the Commission raised the question of whether an escort vehicle, even if it has a maximum permissible mass exceeding 3.5 tonnes, is involved with the “carriage of by road of goods” within the meaning of Article 2, as the money and/or valuables will not be carried in that vehicle. However, as also argued by the Commission, an escort vehicle can be considered to have an indissociable role in the transport of money and/or valuables where an escort vehicle plays an integral and necessary part in the transport by the specialised vehicle. In such a case, the escort vehicle must be considered in all respects together with and in the same way as the specialised vehicle transporting money and/or valuables.

46 Similarly, when the escort vehicle plays such an indissociable role in the transport of money and/or valuables, the same specific road safety considerations involved in transport by specialised vehicles are present. The risk involved for the employees manning those vehicles applies equally to both types of vehicles. It follows that the escort vehicle is subject to the same considerations as the specialised vehicles and is, therefore, covered by the exception in Article 13(1)(m) of the Regulation.

47 It is for the referring court to assess whether the escort vehicle forms an integral and necessary part of the specialised vehicle’s transport of money and/or valuables.

48 The answer to Question 1(b) is that an escort vehicle is covered by the exception in Article 13(1)(m) of the Regulation if the escort vehicle forms an integral and necessary part of the specialised vehicle's transport of money and/or valuables.

Question 2

49 By its second question the referring court asks, in essence, whether it is necessary or proportionate under Article 19(1) of the Regulation to impose penalties for infringements of the Regulation, where the relevant journeys by specialised vehicles transporting money and/or other valuables were undertaken on the territory of an EEA State that has exercised the exception under Article 13(1)(m).

50 Under Article 19(1) of the Regulation, EEA States are required to lay down effective, proportionate, dissuasive and non-discriminatory penalties for infringements of the Regulation and Regulation 3821/85 and to take all measures necessary to ensure that they are implemented. Article 19(2) further requires that an EEA State ensure that its competent authorities are permitted to impose penalties for infringements of the Regulation detected on its own territory and for which a penalty has not already been imposed, even where the infringement has been committed on the territory of another EEA State or of a third country, having regard to Article 2(3) of the Regulation. Infringements may be detected and enforced by one State even if they have occurred in another State.

51 Article 13(1) of the Regulation provides the opportunity for an EEA State to grant exceptions from Articles 5 to 9 of the Regulation and to make such exceptions subject to individual conditions on its own territory or on the territory of another EEA State with the agreement of that State. This latter situation may be present where the first EEA State has made use of the exceptions contained in Article 13(1) but the second EEA State has not. By agreement, the first EEA State may ensure that transport undertakings established on its territory can enjoy the same derogation whilst driving through the second EEA State.

52 The Court observes that the lack of agreements with other EEA States does not seem to be at issue in the present case. In its request, the referring court points out that all the EEA States concerned have exempted carriage by specialised vehicles under Article 13(1)(m) of the Regulation. Provided that the relevant journeys took place in EEA States that have exercised the exception provided for in Article 13(1)(m), no infringement has occurred on the territory of the EEA States concerned.

53 Provided that the referring court finds that the journeys are covered by exceptions granted under Article 13(1)(m) of the Regulation in the EEA States concerned, and any individual conditions to such exceptions are complied with, no infringement exists and no penalties may be imposed under Article 19. Under these circumstances, what is considered "necessary or proportionate" is not relevant for the assessment.

54 The answer to the second question referred must be that penalties under Article 19 of the Regulation may neither be imposed, nor are necessary or proportionate, if the journeys at issue were undertaken by specialised vehicles transporting money and/or valuables on the territory of other EEA States where those EEA States have granted an exception under Article 13(1)(m), and any individual conditions to such exceptions are complied with, since no infringement has taken place.

Question 3

55 By the first part of the third question, the referring court asks, in essence, whether Article 6(5) of the Regulation must be interpreted as meaning that any time spent as described in Article 4(e), and time spent driving specialised vehicles transporting money and/or valuables, must be recorded as “other work” in accordance with Article 6(5), even if an EEA State has granted the exception in Article 13(1)(m). Such other work will include, in particular, time spent as described in Article 4(e). This includes other work for the same employer and work intended to ensure the safety of the vehicle and its cargo, any time spent driving a vehicle used for commercial operations not falling within the scope of the Regulation, as well as any periods of availability.

56 The Government of Liechtenstein has argued that even though Article 6(5) of the Regulation refers expressly only to vehicles not falling within the scope of the Regulation, the preparatory works to the Regulation support an interpretation that it is meant to cover both vehicles outside the scope of the Regulation and those exempt under Article 13. Accordingly, the Government of Liechtenstein considers that Article 6(5) of the Regulation requires that even where an EEA State has exercised the exception provided for in Article 13(1)(m), any time spent as described in Article 4(e) and time spent driving specialised vehicles transporting money and/or valuables must be recorded as other work.

57 However, unless an EEA State chooses to apply an exception subject to individual conditions on its own territory, Article 13(1)(m) of the Regulation exempts carriage by vehicles falling within its scope from the obligations under Articles 5 to 9. A driver would, as such, therefore not be required to record time spent driving such a vehicle. This would apply to a specialised vehicle transporting money and/or valuables and any escort vehicle coming within the scope of Article 13(1)(m).

58 As pointed out by ESA and the Commission, time spent driving vehicles exempt under Article 13(1)(m) of the Regulation must be recorded as “other work” under Article 6(5) only if the driver is involved in driving other vehicles not exempt from Articles 5 to 9 within the same 24-hour period. Similarly, time spent driving vehicles exempt under Article 13(1)(m) must be taken into account so that the limits on driving time set out in Article 6(1) to (3) are complied with if the driver is also involved in driving other vehicles not exempt from Articles 5 to 9. Otherwise, those drivers might drive long hours without

a rest, which would undermine the objectives pursued by the Regulation (compare the judgment in *A. Karuse*, C-222/12, cited above, paragraph 41 and case law cited).

- 59 The answer to the first part of the third question must be that Article 6(5) of the Regulation does not require a driver of a specialised vehicle transporting money and/or valuables to record any time spent as described in Article 4(e) of the Regulation and time spent driving specialised vehicles transporting money and/or valuables as “other work”, where the EEA State has granted an exception under Article 13(1)(m) of the Regulation. Since the answer to the first part of the third question is in the negative, there is no need for the Court to address the second part of that question.

IV Costs

- 60 The costs incurred by the Government of Liechtenstein, ESA, and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Princely Court of Appeal (*Fürstliches Obergericht*) hereby gives the following Advisory Opinion:

- 1. a) The exception for carriage by specialised vehicles transporting money and/or valuables under Article 13(1)(m) of Regulation (EC) No 561/2006 must also apply to empty journeys, meaning those journeys undertaken before the loading and after the unloading of such vehicles.**
- b) An escort vehicle is covered by the exception in Article 13(1)(m) of Regulation (EC) No 561/2006 if the escort vehicle forms an integral and necessary part of the specialised vehicle’s transport of money and/or valuables.**
- 2. Penalties under Article 19 of Regulation (EC) No 561/2006 may neither be imposed, nor are necessary or proportionate, if the journeys at issue were undertaken by specialised vehicles transporting money and/or valuables on the territory of other EEA States where those EEA States have granted an exception under Article 13(1)(m) of Regulation (EC) No 561/2006, and**

any individual conditions to such exceptions are complied with, since no infringement has taken place.

- 3. Article 6(5) of Regulation (EC) No 561/2006 does not require a driver of a specialised vehicle transporting money and/or valuables to record any time spent as described in Article 4(e) of Regulation (EC) No 561/2006 and time spent driving as “other work”, where the EEA State has granted an exception under Article 13(1)(m) of Regulation (EC) No 561/2006.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 4 May 2020.

Birgir Hrafn Búason
Acting Registrar

Páll Hreinsson
President