Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

11 May 2023 *

(Reference for a preliminary ruling – Road transport – Common rules concerning the conditions to be complied with to pursue the occupation of road transport operator – Regulation (EC) No 1071/2009 – Articles 6 and 22 – National legislation permitting the transfer of criminal responsibility for serious infringements regarding the driving time and rest periods of drivers – Failure to take into account the penalties imposed for infringements when assessing the good repute of a road transport undertaking)

In Case C-155/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court, Austria), made by decision of 3 March 2022, received at the Court on 3 March 2022, in the proceedings

RE

v

Bezirkshauptmannschaft Lilienfeld,

intervening party:

Arbeitsinspektorat NÖ Wald- und Mostviertel,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún (Rapporteur), F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– RE, by A. Bajraktarevic and D. Schärmer, Rechtsanwälte,

* Language of the case: German.

– the Austrian Government, by C. Leeb, A. Posch and J. Schmoll, acting as Agents,

– the European Commission, by P. Messina and G. Wilms, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 22 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), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1) ('Regulation No 1071/2009').

2 The request has been made in proceedings between RE and Bezirkshauptmannschaft Lilienfeld (administrative authority of the district of Lilienfeld, Austria) ('the administrative authority') concerning several penalties imposed by that authority on RE for infringements of EU law rules relating, inter alia, to the driving time and rest periods of drivers.

Legal context

European Union law

3 Recitals 1, 2 and 4 of Regulation No 1071/2009 state:

'(1) The completion of an internal market in road transport with fair conditions of competition requires the uniform application of common rules on admission to the occupation of road haulage operator or road passenger transport operator (the occupation of road transport operator). Such common rules will contribute to the achievement of a higher level of professional qualification for road transport operators, the rationalisation of the market and an improved quality of service, in the interests of road transport operators, their customers and the economy as a whole, together with improvements in road safety …

(2) Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations [(OJ 1996 L 124, p. 1)] lays down minimum conditions governing admission to the occupation of road transport operator and the mutual recognition of the documents required in this connection. However, experience, an impact assessment and various studies show that that Directive is being applied inconsistently by Member States. Such disparities have several adverse consequences, in particular a distortion of competition and a lack of market transparency and of uniform monitoring, as well as the risk that undertakings

employing staff with a low level of professional qualification may be negligent in respect of, or less compliant with, the rules on road safety and social welfare, which may harm the image of the sector.

…

(4) It is therefore appropriate to modernise the existing rules on admission to the occupation of road transport operator in order to ensure that those rules are applied more uniformly and effectively. …'

4 Article 1(1) of that regulation provides:

'This Regulation governs admission to, and the pursuit of, the occupation of road transport operator.'

5 Article 2(5) of the regulation defines 'transport manager' as meaning 'a natural person employed by an undertaking or, if that undertaking is a natural person, that person or, where provided for, another natural person designated by that undertaking by means of a contract, who effectively and continuously manages the transport activities of that undertaking'.

6 Article 3 of the same regulation, entitled 'Requirements for engagement in the occupation of road transport operator', provides in paragraph 1(b) that undertakings engaged in the occupation of road transport operator must be of 'good repute'.

7 Article 6 of Regulation No 1071/2009, entitled 'Conditions relating to the requirement of good repute', provides:

'1. Subject to paragraph 2 of this Article, Member States shall determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the Member State.

The conditions referred to in the first subparagraph shall include at least the following:

…

(b) that the transport manager or the transport undertaking have not in one or more Member States been convicted of a serious criminal offence or incurred a penalty for a serious infringement of Community rules relating in particular to:
(i) The driving time and rest periods of drivers, working time and the installation and use of recording equipment;

…

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

(a) where the transport manager or the transport undertaking has in one or more Member States been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of Community rules as set out in Annex IV, the competent authority of the Member State of establishment shall carry out in an appropriate and timely manner a duly completed administrative procedure, which shall include, if appropriate, a check at the premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

…'

8 Article 12 of that regulation, under the heading 'Checks', provides in paragraph 1:

'Competent authorities shall monitor whether undertakings which they have authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3. …'

9 In accordance with Article 13(3) of that regulation:

'If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.'

10 Article 22 of that regulation provides:

'1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation, and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the [European] Commission by 4 December 2011 at the latest and shall notify it without delay of any subsequent amendment affecting them. Member States shall ensure that all such measures are applied without discrimination as to the nationality or place of establishment of the undertaking.

2. The penalties referred to in paragraph 1 shall include, in particular, suspension of the authorisation to engage in the occupation of road transport operator, withdrawal of such authorisation and a declaration of unfitness of the transport manager.'

11 Annex IV of Regulation No 1071/2009 lists the 'most serious infringements for the purposes of Article 6(2)(a)' of that regulation.

Austrian law

12 Pursuant to the last sentence of Paragraph 9(2) of the Verwaltungsstrafgesetz (Law on administrative penalties), of 31 January 1991 (BGBl. 52/1991), in the version applicable to the facts in the main proceedings, ('the VStG'), persons authorised to represent a company vis-à-vis third parties may designate, as the agent responsible, one or several persons who are not amongst the class of persons authorised to represent it vis-à-vis third parties, who are responsible for compliance with administrative rules relating to certain aspects of the undertakings, defined territorially or substantively.

13 According to Paragraph 91(2) of the Gewerbeordnung (Code governing the exercise of artisanal, commercial and industrial occupations), of 18 March 1994 (BGBl. 194/1994), in the version applicable to the facts in the main proceedings, authorisation to engage in an occupation may be withdrawn from a legal person exercising an artisanal or industrial occupation only if the grounds for withdrawal relate to a natural person who has a significant influence on the conduct of the business and if the entity exercising the occupation has not dismissed that natural person within a period of time fixed for it in that respect by the administration.

14 In accordance with Paragraph 5(2) of the Güterbeförderungsgesetz (Law on the carriage of goods by road), of 31 August 1995 (BGBl. 593/1995), in the version applicable to the facts in the main proceedings, outside the situations governed by Article 6(1) of Regulation No 1071/2009, the good repute of a transport undertaking is not established inter alia where the applicant, the holder of an authorisation to exercise an occupation or the transport manager has been definitively convicted and sentenced to a penalty involving deprivation of liberty of more than three months or a fine of more than 180 days' daily-fine or has committed serious infringements of regulations in force in the areas of salary and working conditions in the occupational sector concerned or of the transport of goods, in particular the driving time and rest periods of drivers.

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

15 RE was designated by H.Z. GmbH, a road transport undertaking operating in the field of the international transport of goods, as the responsible agent, within the meaning of the last sentence of Paragraph 9(2) of the VStG. In that capacity, RE assumed responsibility for compliance with the provisions of the Arbeitszeitgesetz (Law on working time; 'the AZG').

16 By a decision of 11 January 2019 ('the decision at issue'), the administrative authority imposed on RE, in his capacity of the responsible agent of H.Z., several fines, on the ground that the provisions of the AZG, read in conjunction with, first, 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, 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 amended by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 (OJ 2014 L, 60, p. 1) and, second, certain provisions of Regulation No 165/2014, had been infringed.

17 In particular, RE had not planned the working time of S.R., a driver employed by H.Z., in such a way as to enable him to comply with the daily driving time laid down by Regulation No 561/2006, as amended by Regulation No 165/2014. RE had also not ensured that S.R. complied with the obligations relating to the use of the tachograph laid down by Regulation No 165/2014, in

particular as regards the obligation to enter certain information onto the driver card using the manual entry facility, that breach being a very serious infringement under Annex III of Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (OJ 2006 L 102, p. 35).

18 At the date of the offences charged, H.Z. held a licence for international transport of goods by road. Its managing director, for the purposes of commercial law, was also, simultaneously, the transport manager. For his part, RE was neither a transport manager nor a person authorised to represent H.Z. vis-à-vis third parties. RE also did not have any significant influence on the management of H.Z.

19 In addition, at the date on which the administrative criminal proceedings leading to the adoption of the decision at issue commenced, RE's criminal record included 113 final convictions, of which at least 65 resulted from infringements of EU law committed within H.Z., in its capacity as a road transport undertaking. The good repute of that company, as a road transport undertaking, has never been examined in the light of those infringements.

20 By a judgment of 29 May 2020, the referring court, the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court, Austria) annulled the decision at issue owing to the doubts that it had as to the compatibility of the last sentence of Paragraph 9(2) of the VStG with Regulation No 1071/2009. That court considered that the national provisions at issue before it could not serve as a legal basis for the penalties imposed on RE, since, under the administrative procedure at the end of which those penalties were imposed it was not possible for a check to be carried out on the good repute of H.Z. and, therefore, not possible to impose a penalty against it. According to it, in the event of a penalty being imposed on RE, no other person could incur a penalty for the same facts.

21 In particular, the referring court observed, first of all, that pursuant to Article 22 of Regulation No 1071/2009, the Member States must take all the necessary measures to ensure that the penalties provided for where there are infringements of the regulation, which include withdrawal of the authorisation to engage in the occupation of road transport operator in the event of loss of good repute, laid down in Article 6 of that regulation, are effective, proportionate and dissuasive. The existence of a penalty for a serious offence against the rules of EU law concerning the driving time and rest periods of drivers constitutes one of the elements that permit a finding of a loss of good repute. It follows that the criminal administrative procedure at issue is a 'measure' within the meaning of Article 22 of Regulation No 1071/2009.

22 Next, that court stated that a responsible agent, within the meaning of the last sentence of Paragraph 9(2) of the VStG is not a 'relevant person as may be determined by the Member State', within the meaning of the second subparagraph of Article 6(1) of Regulation No 1071/2009. The relevant national provisions for the purposes of such a designation, namely Paragraph 5(2) of the Law on the carriage of goods by road, in the version applicable to the facts in the main proceedings, and Paragraph 91(2) of the Code governing the exercise of artisanal, commercial and industrial occupations, in the version applicable to the facts in the main proceedings, are intended to cover, respectively, only holders of an authorisation to engage in an occupation and persons who have significant influence on the conduct of the business, namely, as regards a public limited company, such as H.Z., a managing director for the purposes of commercial law or a majority shareholding partner of the company. Thus, in application of the abovementioned

provisions of national law, the penalties imposed on the responsible agents, within the meaning of the last sentence of Paragraph 9(2) of the VStG, owing to the very serious infringements of the EU law provisions on the driving time and rest periods of drivers, such as those for which RE is criticised, are incapable of vitiating the good repute of the road transport company concerned and, consequently, such penalties cannot be taken into account in the assessment of the good repute of that company or give rise to a check on that good repute.

23 Finally, the referring court considered that the result that the application of national law led to was contrary to the objective pursued by Article 6(1) of Regulation No 1071/2009 and did not make it possible to ensure, contrary to the requirements under Article 22 of that regulation, the dissuasive effect of the national provisions concerning the checks on the good repute of the transport undertaking to which the criminal procedure relates.

24 That court found, in essence, that in the case before it the only possibility of ensuring that the criminal administrative procedure was compatible with EU law was not to impose on RE a penalty which would make it impossible to achieve that objective and, for that reason, to disapply Paragraph 9(2) of the VStG.

25 By a judgment of 21 July 2021, the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) set aside the judgment of the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court), holding that the referring court had not ascertained whether the penalty had been imposed on RE in such a manner as to give rise to a binding check on the good repute pursuant to the provisions of Regulation No 1071/2009.

26 The Verwaltungsgerichtshof (Supreme Administrative Court) held, first of all, that the referring court's finding that, as regards the infringements of the provisions of EU law on the driving time and rest periods of drivers, only the managing director for the purposes of commercial law and not the responsible agent designated in accordance with Paragraph 9(2) of the VStG could be declared criminally responsible was not clear from Regulation No 1071/2009. According to the Verwaltungsgerichtshof (Supreme Administrative Court), as regards those infringements, it was necessary to start from the principle of the criminal responsibility of the employer or of the responsible agent.

27 Next, that court held that the assessment by the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court) – according to which penalising the responsible agent alone made it impossible to withdraw the authorisation to engage in the occupation of road transport operator from the road transport undertaking concerned by way of an effective penalty for the purposes of Article 22 of Regulation No 1071/2009 – was irrelevant for the purposes of the procedure at issue, because that procedure did not concern such a withdrawal.

28 Finally, the Verwaltungsgerichtshof (Supreme Administrative Court) added that the second subparagraph of Article 6(1) of Regulation No 1071/2009 not only excluded but appeared on the contrary to suggest that, in the context of such a withdrawal procedure, it would also be necessary to take into account the penalties imposed against a responsible agents as 'relevant person[s] as may be determined by the Member State', in this case by Paragraph 9 of the VStG.

29 Giving a ruling on the criminal administrative procedure at issue, following the setting aside of its judgment of 29 May 2020 by the Verwaltungsgerichtshof (Supreme Administrative Court), the referring court, to which the case was referred back, continues to have the same doubts as it expressed in that judgment as to the compatibility of the last sentence of Paragraph 9(2) of the VStG with Regulation No 1071/2009.

30 In those circumstances, the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is EU law to be interpreted as being compatible with a national provision that allows persons who are criminally liable for a transport undertaking to transfer their liability for very serious infringements of Community provisions on driving time and rest periods for drivers to a natural person by mutually acceptable agreement, if such transfer precludes the assessment of good repute within the meaning of [Regulation No 1071/2009], which is provided for under national law only when a punishment is being imposed on the persons transferring criminal liability?'

Admissibility of the request for a preliminary ruling

31 All parties to the proceedings that lodged written observations with the Court contest the admissibility of the request for a preliminary ruling.

32 First of all, all of those parties submit that the criminal administrative procedure is not a procedure covered by Article 6(2)(a) of Regulation No 1071/2009 since its purpose is not to review the good repute of H.Z. but to review the legality of a decision imposing fines on RE for infringements of the AZG. The interpretation of Regulation No 1071/2009 sought by the referring court thus bears no relation to the actual facts or purpose of the dispute in the main proceedings or concerns a hypothetical problem.

33 According to RE, the hypothetical nature of the question asked by the referring court is also shown by the fact that the infringements alleged against him are not amongst those in the list of most serious infringements for the purpose of Article 6(2)(a) of Regulation No 1071/2009 listed in Annex IV thereto, so that the condition to which the commencement by the national authorities of the procedure allowing a check of whether the loss of good repute constitutes a disproportionate measure is subject, laid down in that provision, is, in any event, clearly not met.

34 Next, the Austrian Government contests the interpretation of national law by the referring court, according to which the responsible persons, within meaning of the last sentence of Paragraph 9(2) of the VStG are not amongst the class of person whose conduct is capable of detracting from the good repute of the undertaking. That interpretation, on which the question referred is based, is contrary to the case-law of the Verwaltungsgerichtshof (Supreme Administrative Court), which makes it clear that responsible agents are the 'relevant person[s] as may be determined by the Member State', within the meaning of the second subparagraph of Article 6(1) of Regulation No 1071/2009 and is therefore incorrect.

35 Finally, the Commission invokes the ambiguous nature of the request for a preliminary ruling and the failure to comply with the requirements concerning the content of such a request laid down in Article 94 of the Rules of Procedure of the Court.

36 As a preliminary point it should be noted that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the main proceedings have been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 50 and the case-law cited).

37 Such questions in fact enjoy a presumption of relevance. The Court may refuse to give a ruling on those questions only where, for instance, the requirements concerning the content of a request for a preliminary ruling, set out in Article 94 of the Rules of Procedure, are not satisfied or where it is quite obvious that the interpretation of a provision of EU law, or the assessment of its validity, which is sought by the national court, bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical (judgment of 22 September 2022, *Vicente (Action for the recovery of lawyers' fees)*, C-335/21, EU:C:2022:720, paragraph 46 and the case-law cited).

38 First, it must be held that the referring court has set out, with a sufficient degree of clarity and precision, the factual and legal framework of the dispute in the main proceedings, which are recalled in paragraphs 15 to 29 of this judgment, and on which the question referred to the Court is based, the reasons that led it to inquire about the interpretation of Regulation No 1071/2009 and, in particular, as is clear from the order for reference, of Article 22 of that regulation read in conjunction with Article 6 thereof, and the connection that it establishes between those provisions of EU law and the last sentence of Paragraph 9(2) of the VStG which applies in the dispute in the main proceedings.

39 Therefore, the request for a preliminary ruling meets all of the requirements laid down in Article 94 of the Rules of Procedure.

40 Secondly, as regards the allegation that the question referred for a preliminary ruling is hypothetical and that there is no connection between the interpretation of Articles 6 and 22 of Regulation No 1071/2009 sought by the referring court and the actual facts or purpose of the dispute in the main proceedings, in the first place, it should be observed that Article 22(1) of that regulation requires the Member States to take all the measures necessary the ensure that infringements of the provisions of that regulation are subject to penalties that are effective, proportionate and dissuasive.

41 As stated in Article 1(1) of Regulation No 1071/2009, read in conjunction with Article 3(1) thereof, the admission of an undertaking to the occupation of road transport operator and its engagement in that occupation are subject to meeting several requirements, including that of the good repute of the undertaking. It follows that the engagement in that occupation by an undertaking which does not meet that requirement is an infringement of Regulation No 1071/2009, which Member States must penalise, in accordance with Article 22 of that regulation.

42 In addition, as follows from Article 6(1) of Regulation No 1071/2009, the elements capable of detracting from the good repute of an undertaking and leading, if appropriate, to a loss of that good repute, include convictions for serious criminal offences and penalties imposed for having seriously infringed the EU law rules referred to in Article 6(1), third subparagraph, point (b) of Regulation No 1071/2009.

43 Consequently, in order to ensure that a calling into question of the good repute of a transport undertaking that could result from a failure by it to comply with those EU law rules incurs a penalty that is effective, proportionate and dissuasive, and thus meets their obligations under Article 6(1) and Article 22 of Regulation No 1071/2009, Member States must ensure inter alia that serious infringements of those EU law rules, committed within that undertaking, are prosecuted and incur a penalty by adopting to that end the necessary provisions, such as, in particular, those concerning criminal responsibility for those infringements.

44 The last sentence of Paragraph 9(2) of the VStG which applies in the dispute in the main proceedings, is one of those provisions to the extent that, as is clear from the order for reference, first, that article allows a road transport undertaking to designate a person as the agent responsible for compliance with the EU law rules relating to the driving time and rest periods of drivers employed by that undertaking and, second, that designation involves the transfer to the agent so designated of the criminal responsibility for acts infringing those rules committed by that company.

45 In the second place, as is also clear from the order for reference, the appeal before the referring court concerns the legality of the decision at issue, in the context of which, according to that court, it must, in accordance with national law, review that decision as a whole by ruling, in particular, on whether the conduct alleged against the appellant in the main proceedings is punishable. Thus, the legality of the decision at issue depends in particular on the compatibility with Article 22 of Regulation No 1071/2009, read in conjunction with Article 6 of that regulation, of the application made in the case of the last sentence of Paragraph 9(2) of the VStG. By applying that provision of the VStG to the dispute in the main proceedings, only the appellant in the main proceedings may be held criminally liable for the infringements at issue, whilst national law would exclude the possibility of the conduct of that person from being taken into account in order to determine whether the company in question meets the requirement of good repute.

46 Therefore, the fact of applying the last sentence of Paragraph 9(2) of the VStG in this case and finding that the criminal responsibility of the appellant in the main proceedings is engaged, is liable to affect the possibility of taking into account the infringements concerned for the purpose of checking the good repute of that company, referred to in particular in Article 6(2) of Regulation No 1071/2009, and the pronouncement of possible penalties relating to a lack of good repute, referred to notably in Article 22 of that regulation.

47 Consequently, it does not appear to be obvious that the interpretation of EU law sought by the referring court bears no relation to the actual facts of the main action or its purpose or that the questions referred are hypothetical.

48 In that regard, the fact relied on by RE that the acts alleged against him in the main proceedings are not included in the list of infringements set out in Annex IV to Regulation No 1071/2009 is irrelevant since, as is clear from paragraphs 40 to 46 of this judgment, the connection between

Articles 22 and 6 of Regulation No 1071/2009 and the last sentence of Paragraph 9(2) of the VStG, which is applicable in the dispute in the main proceedings, does not depend on whether the infringements at issue in the main proceedings are included in that list.

49 Thirdly, it should be borne in mind that the Court, when answering questions referred for a preliminary ruling, must take account, under the division of jurisdiction between the Courts of the European Union and the national courts, of the factual and legislative context of the questions as described in the order for reference (judgment of 2 April 2020, *Coty Germany*, C-567/18, EU:C:2020:267, paragraph 21 and the case-law cited). In particular, it is not for the Court to rule on the interpretation of provisions of national law or to decide whether the referring court's interpretation of them is correct (judgment of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, paragraph 28 and the case-law cited).

50 It follows that the Court must rely on the interpretation of national law provided by the referring court as regards the absence of consideration being given, for the purposes of the second subparagraph of Article 6(1) of Regulation No 1071/2009, to infringements in respect of which responsible agents are held responsible pursuant to the last sentence of Paragraph 9(2) of the VStG, on which the question referred by that court is based.

51 The allegation made by the Austrian Government that that interpretation is incorrect therefore has no bearing on the admissibility of that question.

52 It follows from the foregoing that the request for a preliminary ruling is admissible.

Consideration of the question referred

53 By its question the referring court asks, in essence, whether Article 22 of Regulation No 1071/2009, read in conjunction with Article 6(1) of that regulation, must be interpreted as precluding a national law pursuant to which a person that incurs criminal responsibility for infringements committed within a road transport undertaking and whose conduct is taken into account for the purpose of assessing the good repute of that undertaking may designate a person as having the capacity of the agent responsible for compliance with the provisions of EU law concerning the driving time and rest periods of drivers, thereby transferring to that latter person the criminal responsibility for infringements of those provisions of EU law, where the national law does not permit the infringements imputed to that agent to be taken into account for the purpose of assessing whether that transport undertaking meets the requirement of good repute.

54 In the first place, it should be observed that, as is clear from recitals 1, 2 and 4 of Regulation No 1071/2009, the objective of that regulation is to modernise the rules on admission to the occupation of road transport operator in order to ensure that they are applied more uniformly and effectively in the Member States, with a view to achieving a higher level of professional qualification for road transport operators, a rationalisation of the market and an improved quality of service, in the interests of road transport operators, their customers and the economy as a whole, together with improvements in road safety.

55 The requirements for engaging in the occupation of road transport operator listed in Article 3 of Regulation No 1071/2009 include that of good repute, the conditions of which are specified in Article 6 of that regulation.

56 In that regard, first, it is clear from the first subparagraph of Article 6(1) of Regulation No 1071/2009 that the Member States are to determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute. However, the EU legislature laid down, in the third subparagraph of Article 6(1) of that regulation, the minimum conditions that that requirement must include, amongst which, in point (b) of that provision, is that the transport manager or the transport undertaking has not been convicted of a serious criminal offence or incurred a penalty for a serious infringement of EU law rules listed in that point, such as those relating to the driving time and rest periods of drivers.

57 Second, in accordance with the second subparagraph of Article 6(1) of Regulation No 1071/2009, in order to determine whether an undertaking meets the requirement of good repute, the Member States must consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the Member State. That provision also states that any reference, in that Article 6, to convictions, penalties or infringements includes convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the Member State.

58 It follows that compliance by a road transport undertaking in the exercise of its transport activities with the rules referred to in Article 6(1), third subparagraph, point (b) of Regulation No 1071/2009 is one of the conditions that it must meet in order to satisfy the requirement of good repute.

59 That requirement seeks to prevent road transport undertakings that are negligent as regards, in particular, road safety rules and social rules from operating in the internal market by compromising in that way the objective pursued by Regulation No 1071/2009, as stated in paragraph 54 of this judgment.

60 The good repute of a road transport undertaking depends, furthermore, on its transport manager not having been convicted of serious criminal offences and not having incurred penalties for serious infringements of the rules of EU law listed in Article 6(1), third subparagraph, point (b) of Regulation No 1071/2009.

61 That condition meets the objective pursued by the requirement of good repute and also the objective pursued by that regulation in that it is intended, in particular, to prevent persons who have been the subject of such serious criminal convictions or who have incurred such penalties from being responsible for the management of the activity of those undertakings and, in particular, the fields of activity covered by those rules of EU law, in order to reduce the risk that transport undertakings that are negligent, in the manner indicated in paragraph 59 of this judgment, engage in that occupation.

62 Finally, the good repute of a road transport undertaking also depends on any other relevant person as may be determined by the Member State not having been convicted of serious criminal offences and not having incurred penalties for serious infringements of the rules of EU law listed in Article 6(1), third subparagraph, point (b) of Regulation No 1071/2009.

63 The concept of a ‘relevant person’ as may be determined by a Member State, which appears in the second subparagraph of Article 6(1) of Regulation No 1071/2009 is neither defined in that regulation nor, indirectly, by reference to the national laws of Member States. Accordingly, that concept must be regarded as an autonomous concept of EU law, which must be interpreted in a uniform manner throughout the territory of the European Union taking into consideration not

only the wording of that provision, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 22 December 2022, *EUROAPTIEKA*, C-530/20, EU:C:2022:1014, paragraph 31 and the case-law cited).

64 In that regard, it is clear from the wording and the general scheme of Article 6(1) of Regulation No 1071/2009 that the 'relevant person' within the meaning of the second subparagraph of that provision is one of the class of persons whose conduct must be taken into account for the purpose of assessing whether a transport undertaking satisfies the requirement of good repute laid down in Article 3(1)(b) of that regulation. Consequently, convictions for serious criminal offences against, and penalties incurred by, such a person for serious infringements of the rules of EU law referred to in the third subparagraph of Article 6(1) of the regulation are capable of detracting from the good repute of that undertaking, in the same way as convictions for serious criminal offences pronounced against the undertaking itself or its transport managers and penalties that have been imposed on them for those infringements.

65 Having regard to the objective pursued by the requirement of good repute, as set out in paragraphs 59 and 61 of this judgment, it must be held that persons other than transport managers who assume responsibility for the management of the fields of activities covered by the EU law rules referred to in Article 6(1), third subparagraph, point (b) of the regulation and who must, consequently, ensure compliance with those rules in the exercise of those fields of activities and incur criminal responsibility in the event that those rules are infringed, fall within the concept of 'relevant person', within the meaning of the second subparagraph of Article 6(1) of Regulation No 1071/2009,

66 Therefore, where a Member State confers, pursuant to a national law, such as Paragraph 9(2) of the VStG, on road transport undertakings the power to designate persons other than transport managers as relevant persons for the management of fields of activities referred to in the preceding paragraph, it must be held that, in so doing, that Member State has designated that class of agent as being a 'relevant person' within the meaning of the second subparagraph of Article 6(1) of Regulation No 1071/2009, whose conduct must be taken into account for the purpose of assessing the good repute of those undertakings.

67 In the second place, as stated in paragraphs 40 and 41 of this judgment, Article 22(1) of Regulation No 1071/2009 requires Member States to adopt the measures necessary to penalise, in an effective, dissuasive, and proportionate manner, road transport undertakings which do not meet the requirement of good repute.

68 Those penalties include, in particular, as stated in paragraph 2 of that Article 22, suspension of the authorisation to engage in the occupation of road transport operator, withdrawal of such authorisation and a declaration of unfitness of the transport manager.

69 Since the good repute of transport undertakings depends inter alia on the absence of criminal convictions or penalties for failure to comply, in the exercise of their transport activities, with the rules referred to in Article 6(1), third subparagraph, point (b) of Regulation No 1071/2009, in order to meet the requirements of Article 22 of that regulation, Member States must in particular ensure that the criminal responsibility for those serious infringements of those rules, committed within such an undertaking, are determined in such a way that it does not prevent the imposition of an effective, dissuasive and proportionate penalty for the loss of good repute that could result from the commission of those infringements.

70 It appears that the national law at issue in the main proceedings permits a road transport undertaking to designate a person as the responsible agent for compliance with the rules of EU law, referred to in Article 6(1), third subparagraph, point (b) of Regulation No 1071/2009, that that designation entails the transfer to that person of criminal responsibility for the infringements of those EU law rules committed in the exercise of those road transport activities by that undertaking, and that the national law precludes the conduct of the person who is designated in that way from being taken into account in order to assess whether that undertaking meets the requirement of good repute provided for in Article 3(1)(b) of Regulation No 1071/2009.

71 The consequence of that is that serious infringements of those rules committed within that undertaking after such a designation are not capable of detracting from the good repute of the undertaking concerned.

72 While the person thus designated assumes responsibility for the management of the fields of activities covered by those rules and therefore falls within the class of 'relevant person[s] as may be determined by the Member State', within the meaning of the second subparagraph of Article 6(1) of Regulation No 1071/2009, convictions for serious criminal offences and penalties incurred for those infringements will never give rise to a procedure for reviewing the good repute of the undertaking concerned, pursuant to Article 6 of that regulation, and will not be taken into consideration during the checks that the competent authorities are required to carry out, in accordance with Article 12 of that regulation, in order to ascertain whether the undertakings authorised to engage in the occupation of road transport operator continue to meet the requirements laid down in Article 3 of the regulation.

73 Thus, the commission of such infringements, irrespective of their number and their seriousness, will never lead to the loss of that good repute nor, consequently, the withdrawal or suspension of the authorisation to engage in the occupation of road transport operator.

74 Consequently, a national law such as that at issue in the main proceedings precludes – contrary to Article 22 of Regulation No 1071/2009 – the calling into question of the good repute of road transport undertakings and the imposition of penalties against them, whilst the persons who must be regarded, in relation to those undertakings, as being the 'relevant person[s]', within the meaning of the second subparagraph of Article 6(1) of that regulation, have committed serious infringements of the rules of EU law referred to in Article 6(1), third subparagraph, point (b) of that regulation.

75 In the light of the foregoing considerations, the answer to the question referred is that Article 22 of Regulation No 1071/2009, read in conjunction with Article 6(1) of that regulation, must be interpreted as precluding a national law pursuant to which a person who incurs criminal responsibility for infringements committed within a road transport undertaking and whose conduct is taken into consideration for the purpose of assessing the good repute of that undertaking, may designate a person as an agent responsible for compliance with the provisions of EU law relating to the driving time and rest periods of drivers, and thereby transfer to that latter person criminal responsibility for infringements of those provisions of EU law, where the national law does not allow the infringements thus imputed to that agent to be taken into account for the purpose of assessing whether that undertaking meets the requirement of good repute.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

Article 22 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, as amended by Council Regulation (EU) No 517/2013 of 13 May 2013, read in conjunction with Article 6(1) of Regulation No 1071/2009, as amended,

must be interpreted as precluding a national law pursuant to which a person that incurs criminal responsibility for infringements committed within a road transport undertaking and whose conduct is taken into account for the purpose of assessing the good repute of that undertaking may designate a person as an agent responsible for compliance with the provisions of EU law concerning the driving time and rest periods of drivers, thereby transferring to that person criminal responsibility for infringements of those provisions of EU law, where the national law does not permit the infringements imputed to that agent to be taken into account for the purpose of assessing whether that undertaking meets the requirement of good repute.

[Signatures]