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Judgment of the Court in Case C-155/22 | Bezirkshauptmannschaft Lilienfeld

### **A road transport undertaking cannot discharge its responsibility for compliance with the driving times and rest periods of drivers by transferring it to a third person.**

*EU law precludes a national law that, by allowing such a transfer of responsibility, prevents the calling into question of the undertaking's good repute and the adoption of penalties against it.*

EU law provides that road transport undertakings must meet the requirement that they are of good repute. In particular, the undertaking, its transport manager and any other 'relevant person' as determined by the Member State concerned must not have been convicted of a serious criminal offence or incurred a penalty for a serious infringement of EU law as regards the driving time and rest periods of drivers, working time and the installation and use of recording equipment. Such convictions or penalties may lead to the loss of the good repute of the undertaking and the withdrawal of the authorisation to engage in the occupation of road transport operator.

An Austrian road transport undertaking designated, in accordance with its national law, a 'responsible agent', who assumed responsibility for compliance with driving times and rest periods within that undertaking. That person was neither a transport manager nor a person authorised to represent the undertaking vis-à-vis third parties. Nor did that person have any significant influence on the management of the undertaking. That person challenged before an Austrian court several fines imposed on him by the administration for infringement of the rules on daily driving times and use of the tachograph.

According to that court, designation as the responsible agent entails the transfer to that person of criminal responsibility for the infringements at issue. Furthermore, under Austrian law, the conduct of the designated person cannot be taken into account in order to assess whether the undertaking in question meets the requirement of good repute laid down in EU law. The Austrian court has doubts as to whether, in those circumstances, such a designation is compatible with EU law.

In its judgment delivered today, the Court finds, first of all, that **a designated person such as the one in issue in the main proceedings, must be regarded as a 'relevant person' as determined by the Member State, with the result that that person's conduct must be taken into account for the purpose of assessing the good repute of the undertaking in question.**

Next, it finds that **a national law such as that at issue prevents – in breach of EU law – 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 'relevant person[s]', have committed serious infringements of the rules of EU law.**

The result is that the convictions for serious criminal offences against those persons and the penalties imposed will

never give rise to a procedure for reviewing the good repute of the undertaking concerned and will not be taken into consideration during the checks that the competent authorities are required to carry out in order to ascertain whether the undertakings authorised to engage in the occupation of road transport operator continue to meet the requirements imposed by EU law.

Thus, the commission of infringements, irrespective of their number and their seriousness, can 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.

The Court concludes that **it is contrary to EU law for an undertaking to be able to designate a person as being responsible for compliance with EU law provisions on the driving times and rest period of drivers and thus to transfer to that person criminal responsibility for infringements of those provisions, 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.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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