



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

8 March 2022*

(Reference for a preliminary ruling – Freedom to provide services – Posting of workers – Directive 2014/67/EU – Article 20 – Penalties – Proportionality – Direct effect – Principle of primacy of EU law)

In Case C-205/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria), made by decision of 27 April 2020, received at the Court on 8 May 2020, in the proceedings

NE

v

Bezirkshauptmannschaft Hartberg-Fürstenfeld,

intervener:

Finanzpolizei Team 91,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, A. Prechal, E. Regan, S. Rodin, I. Jarukaitis, N. Jääskinen and I. Ziemele, Presidents of Chambers, J.-C. Bonichot, T. von Danwitz, M. Safjan, N. Piçarra, L.S. Rossi, A. Kumin and N. Wahl, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Austrian Government, by A. Posch, J. Schmoll and C. Leeb, acting as Agents,
- the Czech Government, by M. Smolek, J. Vlácil and J. Pavliš, acting as Agents,

* Language of the case: German.

– the Polish Government, by B. Majczyna, acting as Agent,
– the European Commission, by B.-R. Killmann and L. Malferrari, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 23 September 2021,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 20 of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ 2014 L 159, p. 11).
- 2 The request has been made in proceedings between NE and the Bezirkshauptmannschaft Hartberg-Fürstenfeld (district administrative authority, Hartberg-Fürstenfeld, Austria) concerning the fine imposed on him by that authority for various infringements of provisions of Austrian employment law.

Legal context

Directive 2014/67

- 3 Article 20 of Directive 2014/67 provides:

'Member States shall lay down rules on penalties applicable in the event of infringements of national provisions adopted pursuant to this Directive and shall take all the necessary measures to ensure that they are implemented and complied with. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 18 June 2016. They shall notify without delay any subsequent amendments to them.'

Austrian law

- 4 Paragraph 52(1) and (2) of the Verwaltungsverfahrensgesetz (Law on procedure before the administrative courts, BGBl. I, 33/2013), in the version applicable to the dispute in the main proceedings, is worded as follows:
 1. Every judgment delivered by an administrative court upholding an administrative penalty order must include an order requiring the person penalised to pay a contribution to the costs of the penalty proceedings.
 2. That contribution shall be 20% of the penalty imposed in appeal proceedings or a minimum of EUR 10. If a term of imprisonment is imposed, one day's imprisonment shall be equal to EUR 100 for the purposes of calculating the costs. ...'

5 Paragraph 26(1) of the Lohn- und Sozialdumping-Bekämpfungsgesetz (Law against wage and social dumping, BGBl. I, 44/2016), in the version applicable to the case in the main proceedings ('the LSD-BG'), states:

'Anyone who, in the capacity of employer or undertaking hiring out workers for the purposes of Paragraph 19(1):

1. fails to make the declaration, including subsequent changes to the data (declaration of change) in breach of Paragraph 19, or fails to do so in due time or in a comprehensive manner, or

...

3. does not have available the required documents in breach of Paragraph 21(1) or (2), or fails to make them available to the tax authorities on the spot in electronic form,

commits an administrative offence and shall be penalised, for each worker concerned, by a fine imposed by the district administrative authority in the amount of EUR 1 000 to EUR 10 000, and, in the event of a repeat offence, EUR 2 000 to EUR 20 000.'

6 Paragraph 27(1) of the LSD-BG provides:

'Anyone who fails to transmit the required documents in breach of Paragraph 12(1)(3) commits an administrative offence and shall be penalised, for each worker concerned, by a fine imposed by the district administrative authority in the amount of EUR 500 to EUR 5 000, and, in the event of a repeat offence, EUR 1 000 to EUR 10 000. ...'

7 Paragraph 28 of the LSD-BG is worded as follows:

'Anyone who, in the capacity of

1. employer, does not have available the documents relating to wages in breach of Paragraph 22(1) or (1a), ...

...

commits an administrative offence and shall be penalised, for each worker concerned, by a fine imposed by the district administrative authority in the amount of EUR 1 000 to EUR 10 000, and, in the event of a repeat offence, EUR 2 000 to EUR 20 000; where more than three workers are concerned, that fine shall be in the amount, for each worker concerned, of EUR 2 000 to EUR 20 000 and, in the event of a repeat offence, of EUR 4 000 to EUR 50 000.'

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

8 CONVOI s. r. o., a company established in Slovakia, posted workers to Niedec Global Appliance Austria GmbH, established in Fürstenfeld (Austria).

- 9 On the basis of findings made during an inspection carried out on 24 January 2018, the administrative authority of the district of Hartberg-Fürstenfeld, by decision of 14 June 2018, imposed a fine of EUR 54 000 on NE, in his capacity as representative of CONVOI, for failure to comply with a number of obligations laid down by the LSD-BG relating, inter alia, to the declaration of posting to the competent national authority and to the retention of wage records.
- 10 NE brought an action against that decision before the referring court, the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria).
- 11 By decision of 9 October 2018, that court addressed to the Court a request for a preliminary ruling concerning the conformity with EU law and, in particular, with the principle of proportionality of penalties such as those provided for by the national legislation at issue in the main proceedings.
- 12 In its order of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-645/18, not published, EU:C:2019:1108), the Court held that Article 20 of Directive 2014/67 must be interpreted as precluding national legislation which provides, in respect of non-compliance with employment law obligations in relation to declaring workers and keeping records on wages, for the imposition of high fines:
- which may not be lower than a predefined minimum amount;
 - which apply cumulatively in respect of each worker concerned and without an upper limit; and
 - to which is added a contribution to court costs of 20% of the amount of the fines if the appeal against the decision imposing those fines is dismissed.
- 13 The referring court notes that, following that order, the national legislature did not amend the legislation at issue in the main proceedings and, having regard in particular to the considerations set out in the judgment of 4 October 2018, *Link Logistik N&N* (C-384/17, EU:C:2018:810), and to the existence of differences between the Austrian courts as to the manner in which the Court's case-law in this area is to be applied, questions whether and, if so, to what extent that legislation may be disapplied.
- 14 In particular, it is of the view that the consequences which it should draw from the said order could lead it either to disregard the elements of that legislation which preclude the imposition of proportionate penalties, or to refrain from applying, in its entirety, the rules on penalties laid down by the same legislation.
- 15 In those circumstances, the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the requirement of proportionality of penalties laid down in Article 20 of Directive [2014/67] and interpreted [in the orders of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-645/18, not published, EU:C:2019:1108), and of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-140/19, C-141/19 and C-492/19 to C-494/19, not published, EU:C:2019:1103)] a directly applicable provision of the Directive?
- (2) If Question 1 is answered in the negative:

Does the interpretation of national law in conformity with EU law permit and require the national court and administrative authority to supplement – in the absence of new legislation at national level – the domestic penal provisions applicable in the present proceedings with the criteria of the requirement of proportionality laid down in the orders [of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-645/18, not published, EU:C:2019:1108), and of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-140/19, C-141/19 and C-492/19 to C-494/19, not published, EU:C:2019:1103)]?’

Consideration of the questions referred

The first question

- 16 By its first question, the referring court asks, in essence, whether Article 20 of Directive 2014/67, in so far as it requires the penalties provided for therein to be proportionate, has direct effect and may thus be relied on by individuals before national courts against a Member State which has transposed it incorrectly.
- 17 It follows from the settled case-law of the Court that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, 684/16, EU:C:2018:874, paragraph 63 and the case-law cited).
- 18 The Court has stated that a provision of EU law is, first, unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States and, second, sufficiently precise to be relied on by an individual and applied by a court where it sets out an obligation in unequivocal terms (judgment of 14 January 2021, *RTS infra and Aannemingsbedrijf Norré-Behaegel*, C-387/19, EU:C:2021:13, paragraph 46 and the case-law cited).
- 19 Furthermore, the Court has held that, even though a directive leaves the Member States a degree of latitude when they adopt rules in order to implement it, a provision of that directive may be regarded as unconditional and precise where it imposes on Member States in unequivocal terms a precise obligation as to the result to be achieved, which is not coupled with any condition regarding application of the rule laid down by it (judgment of 14 January 2021, *RTS infra and Aannemingsbedrijf Norré-Behaegel*, C-387/19, EU:C:2021:13, paragraph 47 and the case-law cited).
- 20 In the case at hand, it is apparent from the request for a preliminary ruling that the referring court considers, in the light of the order of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-645/18, not published, EU:C:2019:1108), that, in adopting the national legislation applicable to the dispute in the main proceedings, the Austrian legislature did not correctly transpose the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67.

- 21 That provision provides that Member States are to lay down rules on penalties applicable in the event of infringements of national provisions adopted pursuant to that directive and states that the penalties provided for are to be, inter alia, proportionate.
- 22 It is important to note, in the first place, that the requirement of proportionality of penalties laid down in that provision is unconditional.
- 23 First, the wording of Article 20 of Directive 2014/67 sets out that requirement in absolute terms.
- 24 Second, the prohibition on adopting disproportionate penalties, which is the consequence of that requirement, does not require the adoption of any measure of the EU institutions and that provision does not in any way confer on Member States the right to limit the scope of that prohibition (see, by analogy, judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 62).
- 25 The fact that Article 20 of that directive needs to be transposed is not such as to call into question the unconditional nature of the requirement of proportionality of penalties laid down in that article.
- 26 It must also be added, in that regard, that an interpretation according to which the need to transpose the requirement of proportionality of penalties laid down in Article 20 of that directive is such as to divest it of its unconditional nature would amount to preventing the individuals concerned from invoking, where appropriate, the prohibition on adopting disproportionate penalties imposed by that requirement. It is incompatible with the binding effect that Article 288 TFEU ascribes to the directive to exclude, in principle, the possibility of such a prohibition being invoked by the persons concerned (see, to that effect, judgment of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraph 32 and the case-law cited).
- 27 As regards, in the second place, whether Article 20 of Directive 2014/67 is sufficiently precise, in that it lays down the requirement that penalties must be proportionate, it must be held that, although that provision leaves the Member States a certain discretion in defining the rules on penalties applicable in the event of infringements of the national provisions adopted pursuant to that directive, that discretion is limited by the prohibition, laid down by that provision in a general manner and in unequivocal terms, on imposing disproportionate penalties.
- 28 Thus, such a requirement of proportionality of penalties must, in any event, be implemented by Member States under Article 20 of that directive, and the fact that they enjoy, in that context, a margin of discretion does not, in itself, preclude judicial review from being carried out in order to verify whether the Member State concerned exceeded the limits set for that margin of discretion when it transposed that provision (see, by analogy, judgments of 24 October 1996, *Kraaijeveld and Others*, C-72/95, EU:C:1996:404, paragraph 59, and of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraph 45).
- 29 It is apparent from those considerations that, contrary to what was held in paragraph 56 of the judgment of 4 October 2018, *Link Logistik N&N* (C-384/17, EU:C:2018:810), the requirement of proportionality of penalties laid down in Article 20 of that same directive is unconditional and sufficiently precise to be capable of being invoked by an individual and applied by the national administrative authorities and courts.

- 30 In particular, where a Member State exceeds its discretion by adopting national legislation providing for disproportionate penalties in the event of infringements of the national provisions adopted pursuant to Directive 2014/67, the person concerned must be able to invoke directly the requirement of proportionality of penalties laid down in Article 20 of that directive against such legislation (see, by analogy, judgments of 28 June 2007, *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, C-363/05, EU:C:2007:391, paragraph 61, and of 28 November 2013, *MDDP*, C-319/12, EU:C:2013:778, paragraph 51).
- 31 Moreover, it should be recalled that observance of the principle of proportionality, which constitutes a general principle of EU law, is binding on Member States when they are implementing that law, including in the absence of harmonisation of EU legislation in the field of sanctions applicable (see, to that effect, judgments of 26 April 2017, *Farkas*, C-564/15, EU:C:2017:302, paragraph 59, and of 27 January 2022, *Commission v Spain (Obligation to provide tax information)*, C-788/19, EU:C:2022:55, paragraph 48). Where, in the context of such implementation, Member States adopt penalties of a particularly criminal nature, they must comply with Article 49(3) of the Charter of Fundamental Rights of the European Union ('the Charter'), according to which the severity of penalties must not be disproportionate to the offence. That principle of proportionality, which Article 20 of Directive 2014/67 merely reiterates, is imperative in nature.
- 32 In the light of all the foregoing considerations, the answer to the first question is that Article 20 of Directive 2014/67, in so far as it requires the penalties provided for therein to be proportionate, has direct effect and may thus be relied on by individuals before national courts against a Member State which has transposed it incorrectly.

The second question

- 33 As a preliminary point, it should be noted that, while the second question is formally asked in case there is a negative answer to the first question, it is apparent from the order for reference that, by its second question, the referring court seeks to ascertain, generally, whether, in the event that it is impossible for it to interpret the national legislation at issue in the main proceedings in accordance with the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67, it must disapply that legislation in its entirety or whether it may supplement so as to impose proportionate penalties.
- 34 It is therefore necessary to consider that, by its second question, the referring court asks, in essence, whether the principle of primacy of EU law must be interpreted as imposing on national authorities the obligation to disapply, in its entirety, national legislation contrary to the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67 or whether it means that those national authorities are to disapply such legislation only to the extent necessary to enable the imposition of proportionate penalties.
- 35 In that regard, it should be recalled that, in order to ensure the effectiveness of all provisions of EU law, the primacy principle requires, inter alia, national courts to interpret, to the greatest extent possible, their national law in conformity with EU law (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 57).
- 36 The obligation to interpret national law in a manner consonant with EU law cannot, however, serve as a basis for an interpretation of national law *contra legem* (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 72 and the case-law cited).

- 37 It should also be borne in mind that the principle of primacy places the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law under a duty, where it is unable to interpret national legislation in compliance with the requirements of EU law, to give full effect to the requirements of that law in the dispute before it, if necessary disapplying of its own motion any national legislation or practice, even if adopted subsequently, which is contrary to a provision of EU law with direct effect, and it is not necessary for that court to request or await the prior setting aside of such national legislation or practice by legislative or other constitutional means (see, to that effect, judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 58 and 61, and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 252).
- 38 As follows from the examination of the first question, the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67 satisfies the conditions necessary for it to have direct effect.
- 39 Consequently, where that requirement is invoked by an individual before a national court against a Member State which has transposed it incorrectly, it is for that court to ensure that it is fully effective and, if it is unable to interpret the national legislation in conformity with that requirement, to disregard, of its own motion, the national provisions which appear to be incompatible with it.
- 40 In the present case, it is apparent from paragraphs 32 to 41 of the order of 19 December 2019, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (C-645/18, not published, EU:C:2019:1108), that, although national legislation such as that at issue in the main proceedings is appropriate for attaining the legitimate objectives pursued, it goes beyond the limits of what is necessary to attain those objectives due to the combination of its various characteristics, in particular the accumulation without an upper limit of fines which may not be lower than a predefined minimum amount.
- 41 It must however be borne in mind that, taken in isolation, such characteristics do not necessarily breach that requirement. Thus, the Court held, in paragraph 35 of that order, that legislation providing for pecuniary penalties the amount of which varies according to the number of workers affected by the failure to comply with certain obligations in the field of employment law does not appear, in itself, to be disproportionate.
- 42 In order to ensure the full effectiveness of the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67, it is therefore for the national court hearing an action against a penalty imposed on the basis of the national rules applicable in the event of infringements of the national provisions adopted pursuant to that directive to disregard that part of the national legislation from which the disproportionate nature of the penalties stems in such a way as to result in the imposition of proportionate penalties, which are at the same time effective and dissuasive.
- 43 As has been recalled in paragraph 40 of the present judgment, while the Court has held that certain detailed rules for setting the amount of fines of the LSD-BG were not compatible with Article 20 of Directive 2014/67, it did not call into question the principle, provided for by that same provision, that infringements of the national provisions adopted pursuant to that directive had to be penalised, stating, in paragraph 32 of the order of 19 December 2019,

Bezirkshauptmannschaft Hartberg-Fürstenfeld (C-645/18, not published, EU:C:2019:1108), that the national legislation at issue was appropriate for the purpose of attaining the objectives pursued by the said directive.

- 44 Thus, in such a configuration, in order to ensure full application of the requirement of proportionality of penalties laid down in Article 20 of the same directive, it is sufficient to disregard national provisions only to the extent that they prevent the imposition of proportionate penalties, in order to ensure that the penalties imposed on the person concerned be in conformity with that requirement.
- 45 It must also be stated, in the light of the concerns expressed by the Czech and Polish Governments, that such an interpretation is not called into question by the principles of legal certainty, legality and proportionality of criminal offences and penalties and equal treatment.
- 46 In the first place, so far as concerns the principle of legal certainty, it requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 161 and the case-law cited).
- 47 The principle of legality and proportionality of criminal offences and penalties, enshrined in Article 49(1) of the Charter and which, according to the Court's case-law, constitutes a specific expression of the general principle of legal certainty, implies, inter alia, that legislation must clearly define offences and the penalties which they attract (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 162 and the case-law cited).
- 48 Moreover, while the principle of non-retroactivity of the criminal law, which is inherent in the principle of legality and proportionality of criminal offences and penalties, means in particular that a court cannot, in the course of criminal proceedings, aggravate the rules on criminal liability of those against whom such proceedings are brought (see, to that effect, judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 57 and the case-law cited), it does not, however, preclude the imposition of lighter penalties on them.
- 49 In the present case, it is apparent from the order for reference that the national system of penalties at issue in the main proceedings defines, in the field of employment law, offences relating to non-compliance with obligations related to declaring workers and keeping records on wages and provides for penalties for those offences.
- 50 In such a context, compliance with the requirement of proportionality laid down in Article 20 of Directive 2014/67 only has the effect of leading that court to reduce the severity of the penalties that may be imposed.
- 51 The fact that, in a case such as that at issue in the main proceedings, the penalty imposed will be less severe than the penalty provided for by the applicable national legislation, on account of its partial disapplication on the basis of that requirement, cannot be regarded as infringing the principles of legal certainty, legality and proportionality of criminal offences and penalties and non-retroactivity of the criminal law.

- 52 In any event, although, in order to ensure compliance with the requirement of proportionality of penalties applicable in the event of infringement of national provisions adopted under Directive 2014/67, a national authority may be caused, when imposing such a penalty, to disregard certain elements of the national legislation relating to those penalties, the fact remains that the penalty thus adopted will remain so under that legislation.
- 53 Therefore, even if the fact that a national authority must disregard a part of the same national regulation were liable to create some ambiguity as to the legal rules applicable to those offences, that fact does not infringe the principles of legal certainty and legality and proportionality of criminal offences and penalties.
- 54 In the second place, as is apparent from the settled case-law of the Court, equality before the law, set out in Article 20 of the Charter, is a general principle of EU law which requires that comparable situations should not be treated differently and that different situations should not be treated in the same way, unless such different treatment is objectively justified (judgment of 2 September 2021, *Belgian State (Right of residence in the case of domestic violence)*, C-930/19, EU:C:2021:657, paragraph 57 and the case-law cited).
- 55 The requirement that situations must be comparable, for the purpose of determining whether there is a breach of the principle of equal treatment, must be assessed in the light of all the elements that characterise them (judgment of 2 September 2021, *Belgian State (Right of residence in the case of domestic violence)*, C-930/19, EU:C:2021:657, paragraph 58 and the case-law cited).
- 56 Since the requirement of proportionality provided for in Article 20 of Directive 2014/67 entails a limitation of penalties which must be observed by all the national authorities called upon within the exercise of their powers to apply that requirement, while allowing those authorities to impose different penalties depending on the seriousness of the offence on the basis of the applicable national legislation, such a requirement cannot be regarded as undermining the principle of equal treatment.
- 57 In the light of all the foregoing considerations, the answer to the second question is that the principle of the primacy of EU law must be interpreted as imposing on national authorities the obligation to disapply national legislation of which a part is contrary to the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67 only to the extent necessary to enable the imposition of proportionate penalties.

Costs

- 58 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 (Grand Chamber) hereby rules:

- 1. Article 20 of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information**

System ('the IMI Regulation'), in so far as it requires the penalties provided for therein to be proportionate, has direct effect and may thus be relied on by individuals before national courts against a Member State which has transposed it incorrectly.

- 2. The principle of the primacy of EU law must be interpreted as imposing on national authorities the obligation to disapply national legislation of which a part is contrary to the requirement of proportionality of penalties laid down in Article 20 of Directive 2014/67 only to the extent necessary to enable the imposition of proportionate penalties.**

[Signatures]