JUDGMENT OF THE COURT (Grand Chamber)

4 October 2024 (*)

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(Action for annulment – First package of mobility measures ('Mobility Package') – Regulation (EU) 2020/1054 – Maximum daily and weekly driving times – Minimum breaks and daily and weekly rest periods – Organisation of the work of the drivers in such a way that the drivers are able to return every three or four weeks, depending on the case, to their place of residence or to the operational centre of their employer to begin and spend their regular or compensatory weekly rest period – Prohibition on taking regular or compensatory weekly rest in the vehicle – Time limit for the installation of second generation (V2) smart tachographs – Date of entry into force – Regulation (EU) 2020/1055 – Conditions relating to the requirement of establishment – Obligation to return the vehicle to the operational centre in the Member State of establishment – Obligation concerning the number of vehicles and drivers normally based at the operational centre of the Member State of establishment – Cabotage – Cooling-off period of four days for cabotage – Derogation for cabotage as part of combined transport operations – Directive (EU) 2020/1057 – Specific rules for posting drivers in the road transport sector – Transposition period – Internal market – Specific regime applicable to the freedom to provide transport services – Common transport policy – Articles 91 and 94 TFEU – Fundamental freedoms – Principle of proportionality – Impact assessment – Principles of equal treatment and non-discrimination – Principles of legal certainty and protection of legitimate expectations – Protection of the environment – Article 11 TFEU – Consultation of the European Economic and Social Committee and the European Committee of the Regions)

In Joined Cases C-541/20 to C-555/20,

ACTIONS for annulment under Article 263 TFEU, brought on 23 October 2020, (Cases C-541/20 to C-550/20 and C-552/20) and on 26 October 2020 (Cases C-551/10 and C-553/20 to C-555/20),

Republic of Lithuania, represented by K. Dieninis, R. Dzikovič and V. Kazlauskaitė-Švenčionienė, acting as Agents, and by R. Petravičius, advokatas, A. Kisieliauskaitė and G. Taluntyté (C-541/20 and C-542/20),

Republic of Bulgaria, represented initially by M. Georgieva, T. Mitova and L. Zaharieva, and subsequently by T. Mitova and L. Zaharieva, acting as Agents (C-543/20 to C-545/20),

Romania, represented by R. Antonie, L.-E. Baţagoi, M. Chicu, E. Gane, R.-I. Haţieganu, L. Liţu and A. Rotăreanu, acting as Agents (C-546/20 to C-548/20),

Republic of Cyprus, represented by I. Neophytou, acting as Agent (C-549/20 and C-550/20),

Hungary, represented by M.Z. Fehér and K. Szíjjártó, acting as Agents (C-551/20),

Republic of Malta, represented by A. Buhagiar, acting as Agent, and by D. Sarmiento Ramírez-Escudero and J. Sedano Lorenzo, abogados (C-552/20),

Republic of Poland, represented by B. Majczyna, M. Horoszko, D. Krawczyk and D. Lutostańska, acting as Agents (C-553/20 to C-555/20),

applicants,

supported by:

Kingdom of Belgium, represented initially by S. Baeyens, P. Cottin, L. Delmotte and J.-C. Halleux, C. Pochet and B. Van Hyfte, and subsequently by S. Baeyens, P. Cottin, L. Delmotte, C. Pochet and B. Van Hyfte, acting as Agents (C-552/20),

Republic of Estonia, represented initially by N. Grünberg and M. Kriisa, and subsequently by M. Kriisa, acting as Agents (C-541/20, C-542/20, C-544/20, C-545/20, C-547/20 to C-552/20, C-554/20 and C-555/20),

Republic of Latvia, represented initially by K. Pommere, I. Romanovska and V. Soņeca, and subsequently by J. Davidoviča, K. Pommere and I. Romanovskat, acting as Agents (C-541/20 to C-555/20),

Republic of Lithuania, represented by K. Dieninis, R. Dzikovič and V. Kazlauskaitė-Švenčionienė, acting as Agents, and by R. Petravičius, advokatas, A. Kisieliauskaitė and G. Taluntyté (C-545/20, C-547/20, C-549/20, C-551/20, C-552/20 and C-554/20),

Romania, represented by R. Antonie, L.-E. Baţagoi, M. Chicu E. Gane, R.-I. Haţieganu, L. Liţu and A. Rotăreanu, acting as Agents (C-541/20 to C-545/20 and C-549/20 to C-555/20),

interveners,

v

European Parliament, represented initially by I. Anagnostopoulou, O. Denkov, C. Ionescu-Dima, A. Tamás and S. Toliušis, and subsequently by I. Anagnostopoulou, O. Denkov, C. Ionescu-Dima, W.D. Kuzmienko, B.D. Simon, S. Toliušis and R. van de Westelaken, acting as Agents,

defendant,

supported by:

Kingdom of Denmark, represented initially by J. Nymann-Lindegren, M. Søndahl Wolff and L. Teilgård, and subsequently by V. Pasternak Jørgensen, M. Søndahl Wolff and L. Teilgård, and subsequently by V. Pasternak Jørgensen and M. Søndahl Wolff, and finally by C. Maertens and M. Søndahl Wolff, acting as Agents (C-541/20 to C-555/20),

Federal Republic of Germany, represented initially by J. Möller and D. Klebs and subsequently by J. Möller, acting as Agents (C-541/20 to C-555/20),

Hellenic Republic (C-542/20, C-543/20, C-545/20 to C-547/20 and C-551/20),

French Republic, represented initially by A.-L. Desjonquères, A. Ferrand and N. Vincent, and subsequently by A.-L. Desjonquères and N. Vincent, and subsequently by R. Bénard, J.-L. Carré,

V. Depenne, A.-L. Desjonquères and B. Herbaut, and finally by R. Bénard, M. Guiresse, B. Herbaut and B. Travard, acting as Agents (C-541/20 to C-555/20),

Grand Duchy of Luxembourg, represented initially by A. Germeaux and T. Uri, and subsequently by A. Germeaux, acting as Agents (C-541/20 to C-555/20),

Kingdom of the Netherlands, represented by M.K. Bulterman and J. Langer, acting as Agents (C-541/20 to C-555/20),

Republic of Austria, represented by A. Posch and J. Schmoll, acting as Agents (C-541/20 to C-555/20),

Kingdom of Sweden, represented initially by H. Eklinder, J. Lundberg, C. Meyer-Seitz, A.M. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, and subsequently by H. Eklinder, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, acting as Agents (C-541/20 to C-555/20),

interveners,

and

Council of the European Union, represented by M. Bencze, I. Gurov, A. Norberg, K. Pavlaki, V. Sanda, A. Sikora-Kaléda, A. Vârnav and L. Vétillard, acting as Agents,

defendant,

supported by:

Kingdom of Denmark, represented initially by J. Nymann-Lindegren, M. Søndahl Wolff and L. Teilgård, and subsequently by V. Pasternak Jørgensen, M. Søndahl Wolff and L. Teilgård, and subsequently by V. Pasternak Jørgensen and M. Søndahl Wolff, and finally by C. Maertens and M. Søndahl Wolff, acting as Agents (C-541/20 to C-555/20),

Federal Republic of Germany, represented initially by J. Möller and D. Klebs, and subsequently by J. Möller, acting as Agents (C-541/20 to C-555/20),

Hellenic Republic (C-542/20, C-543/20, C-545/20 to C-547/20 and C-551/20),

French Republic, represented initially by A.-L. Desjonquères, A. Ferrand and N. Vincent, and subsequently by A.-L. Desjonquères and N. Vincent, and subsequently by A.-L. Desjonquères, R. Bénard, J.-L. Carré, V. Depenne and B. Herbaut, and finally by R. Bénard, M. Guiresse, B. Herbaut and B. Travard, acting as Agents (C-541/20 to C-555/20),

Italian Republic, represented by G. Palmieri, and subsequently by S. Fiorentino, acting as Agent, and by A. Lipari and G. Santini, avvocati dello Stato (C-541/20 to C-555/20),

Grand Duchy of Luxembourg, represented initially by A. Germeaux and T. Uri, and subsequently by A. Germeaux, acting as Agents (C-541/20 to C-555/20),

Kingdom of the Netherlands, represented by M.K. Bulterman and J. Langer, acting as Agents (C-541/20 to C-555/20),

Republic of Austria, represented by A. Posch and J. Schmoll, acting as Agents (C-541/20 to C-555/20),

Kingdom of Sweden, represented initially by H. Eklinder, J. Lundberg, C. Meyer-Seitz, A.M. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, and subsequently by H. Eklinder, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, acting as Agents (C-541/20 to C-555/20),

interveners,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, E. Regan (Rapporteur), T. von Danwitz, F. Biltgen and Z. Csehi, Presidents of Chambers, S. Rodin, A. Kumin, I. Ziemele, J. Passer, D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: G. Pitruzzella,

Registrar: R. Şereş and R. Stefanova-Kamisheva, Administrators,

having regard to the written procedure and further to the hearing on 24 and 25 April 2023,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2023,

gives the following

Judgment

1 By its applications, the Republic of Lithuania (C-541/20 and C-542/20) asks the Court to annul:

– principally, point 6(d) of Article 1 and Article 3 of Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1), or, in the alternative, the entirety of Regulation 2020/1054 (C-541/20);

– point 3 of Article 1 of Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector (OJ 2020 L 249, p. 17), in so far as it inserts paragraph 1(b) in Article 5 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 well as point 4(a) of Article 2 of Regulation 2020/1055 (C-542/20), and

– principally, Article 1(3) and (7) of Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49) or, in the alternative, Directive 2020/1057 in its entirety (C-541/20).

2 By its applications, the Republic of Bulgaria (C-543/20 to C-545/20) asks the Court to annul:

– principally, point 6(c) and (d) of Article 1 of Regulation 2020/1054 or, in the alternative, that regulation in its entirety (C-543/20);

– Directive 2020/1057 (C-544/20), and

– principally, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009 or, in the alternative, point 3 of Article 1 of Regulation 2020/1055 in its entirety, and point 4(a) of Article 2 of that regulation, or, in the alternative, point 4 of Article 2 of that regulation or, in the further alternative, the same regulation in its entirety (C-545/20).

3 By its applications, Romania (C-546/20 to C-548/20) asks the Court to annul:

– principally, point 6(c) and (d) of Article 1 of Regulation 2020/1054 or, in the alternative, that regulation in its entirety (C-546/20);

– point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and point 4(a) to (c) of Article 2 of Regulation 2020/1055 or, in the alternative, that regulation in its entirety (C-547/20), and

– principally, Article 1(3) to (6) of Directive 2020/1057 or, in the alternative, that directive in its entirety (C-548/20).

4 By its applications, the Republic of Cyprus (C-549/20 and C-550/20) asks the Court to annul:

– principally, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009 or, in the alternative, point 3 of Article 1 of Regulation 2020/1055 in its entirety, or, in the further alternative, that regulation in its entirety (C-549/20), and

– Directive 2020/1057 in its entirety (C-550/20).

5 By its application, Hungary (C-551/20) asks the Court to annul:

– point 6(c) of Article 1 and point 2 of Article 2 of Regulation 2020/1054 and, as the case may be, all the provisions of that regulation which are inseparable from them, or indeed that regulation in its entirety;

– point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009 and, where appropriate, all the provisions of Regulation 2020/1055 that are inseparable from it, and

– Article 1 of Directive 2020/1057 or, in the alternative, Article 1(6) thereof and, where appropriate, all the provisions that are inseparable from it.

6 By its application, the Republic of Malta (C-552/20) asks the Court to annul point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and point 4(a) of Article 2 of Regulation 2020/1055.

7 By its applications, the Republic of Poland (C-553/20 to C-555/20) asks the Court to annul:

– principally, point 6(d) of Article 1 of Regulation 2020/1054 or, in the alternative, the entirety of that regulation (C-553/20);

– principally, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, point 4(a) of Article 2 of Regulation 2020/1055, and point 5(b) of Article 2 of that regulation or, in the alternative, that regulation in its entirety (C-554/20), and

– principally, Article 1(3), (4), (6) and (7) and Article 9(1) of Directive 2020/1057 or, in the alternative, that directive in its entirety (C-555/20).

I. Legal context

A. International law

8 On 9 May 1992, the United Nations Framework Convention on Climate Change (*United Nations Treaty Series*, Vol. 1771, p. 107; 'the UNFCCC') was adopted in New York, the ultimate objective of which is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. On 11 December 1997, under the UNFCCC, the parties to the UNFCCC adopted the Kyoto Protocol to that framework convention.

9 In order to anticipate the end of the second commitment period of the Kyoto Protocol, which covered the period 2013-2020, the Conference of the Parties to the UNFCCC adopted, on 12 December

2015, the Paris Agreement on Climate Change, with the main aim of containing an increase in the global temperature of between 1.5 °C and 2 °C above pre-industrial levels.

10 Article 2 of that agreement provides:

‘1. This Agreement, in enhancing the implementation of the [UNFCCC], including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.’

11 Article 4 of that agreement provides, in paragraphs 1 to 3:

‘1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognising that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.’

B. European Union law

1. Legislation on working time

(a) Regulation (EC) No 561/2006

12 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) was last amended, in several of its provisions, by Regulation 2020/1054.

13 In Chapter I of Regulation No 561/2006, entitled ‘Introductory provisions’, Article 4(d) to (h) of that regulation, which was not amended by Regulation 2020/1054, provides:

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

…

(d) “break” means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;

…

(f) “rest” means any uninterrupted period during which a driver may freely dispose of his time;

(g) “daily rest period” means the daily period during which a driver may freely dispose of his time and covers a “regular daily rest period” and a “reduced daily rest period”:

– “regular daily rest period” means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least [9] hours,

– “reduced daily rest period” means any period of rest of at least [9] hours but less than 11 hours;

(h) “weekly rest period” means the weekly period during which a driver may freely dispose of his time and covers a “regular weekly rest period” and a “reduced weekly rest period”:

– “regular weekly rest period”: means any period of rest of at least 45 hours;

– “reduced weekly rest period” means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours;

…’

14 In Chapter II of Regulation No 561/2006, entitled ‘Crews, driving times, breaks and rest periods’, Article 8(6) and (8) of that regulation, in the version prior to the entry into force of Regulation 2020/1054, provided:

‘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.

…

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.’

15 In the same chapter, Article 9(2) and (3) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054, stated:

‘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.’

16 In Chapter IV of Regulation No 561/2006, entitled ‘Exceptions’, Article 14 of that regulation, in the version prior to the entry into force of Regulation 2020/1054, was worded as follows:

‘1. Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Commission, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances.

2. In urgent cases Member States may grant a temporary exception for a period not exceeding 30 days, which shall be notified immediately to the Commission.

3. The Commission shall inform the other Member States of any exception granted pursuant to this Article.’

17 Under Article 16(2) of Regulation No 561/2006, which appears in Chapter V of that regulation, entitled ‘Control procedures and sanctions’, and which was not amended by Regulation 2020/1054:

‘A service timetable and a duty roster shall be drawn up by the transport undertaking and shall show, in respect of each driver, the name, place where he is based and the schedule laid down in advance for various periods of driving, other work, breaks and availability.

Each driver assigned to a service referred to in paragraph 1 shall carry an extract from the duty roster and a copy of the service timetable.’

18 In the same chapter, Article 18 of Regulation No 561/2006, which was not amended by Regulation 2020/1054, provides:

‘Member States shall adopt such measures as may be necessary for the implementation of this Regulation.’

(b) Regulation (EU) No 165/2014

19 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 No 561/2006 (OJ 2014 L 60, p. 1) was amended, in several of its provisions, by Regulation 2020/1054.

20 In Chapter I of Regulation No 165/2014, entitled ‘Principles, scope and requirements’, Article 3 of that regulation, itself entitled ‘Scope’, in the version prior to the entry into force of Regulation 2020/1054, provided in paragraph 4:

‘15 years after newly registered vehicles are required to have a tachograph as provided in Articles 8, 9 and 10, vehicles operating in a Member State other than their Member State of registration shall be fitted with such a tachograph.’

21 In Chapter II of Regulation No 165/2014, entitled ‘Smart tachograph’, Article 11 of that regulation, itself entitled ‘Detailed provisions for smart tachographs’, in its wording prior to the entry into force of Regulation 2020/1054, provided:

‘In order to ensure that smart tachographs comply with the principles and requirements set out in this Regulation, the Commission shall, by means of implementing acts, adopt detailed provisions necessary for the uniform application of Articles 8, 9 and 10, excluding any provisions which would provide for the recording of additional data by the tachograph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

The detailed provisions referred to in the first paragraph shall:

(a) in relation to the performance of the functions of the smart tachograph as referred to in this Chapter, include the necessary requirements to guarantee the security, accuracy and reliability of data as provided to the tachograph by the satellite positioning service and the remote communication technology referred to in Articles 8 and 9;

(b) specify the various conditions and requirements for the satellite positioning service and the remote communication technology referred to in Articles 8 and 9 to be either outside or

embedded in the tachograph and, when outside, specify the conditions for the use of the satellite positioning signal as a second motion sensor;

(c) specify the necessary standards for the interface referred to in Article 10. Such standards may include a provision on the distribution of access rights for drivers, workshops and transport undertakings, and control roles for the data recorded by the tachograph, which control roles shall be based on an authentication/authorisation mechanism defined for the interface, such as a certificate for each level of access and subject to the technical feasibility thereof.'

22 In Chapter VI of Regulation No 165/2014, entitled 'Use of equipment', Article 33 of that regulation, itself entitled 'Responsibility of transport undertakings', which was not amended by Regulation 2020/1054, provides in paragraph 2:

'Transport undertakings shall keep record sheets and printouts, whenever printouts have been made to comply with Article 35, in chronological order and in a legible form, for at least a year after their use, and shall give copies to the drivers concerned who request them. Transport undertakings shall also give copies of data downloaded from driver cards to the drivers concerned who request them, together with printed paper versions of those copies. Record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised control officer.'

23 Article 1(2) of Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ 2016 L 139, p. 1), as amended by Commission Implementing Regulation (EU) 2018/502 of 28 February 2018 (OJ 2018 L 85, p. 1) ('Implementing Regulation 2016/799'), provides:

'The construction, testing, installation, inspection, operation and repair of smart tachographs and their components, shall comply with the technical requirements set out in Annex IC to this Regulation.'

24 The third paragraph of Article 6 of Implementing Regulation 2016/799 provides:

'However, Annex IC shall apply from 15 June 2019 …'

25 Annex IC concerns the requirements for the construction, testing, installation and inspection of smart tachographs.

(c) Regulation 2020/1054

26 Recitals 1, 2, 4, 6, 8, 13 to 15, 17 to 19, 23, 27, 34 and 36 of Regulation 2020/1054 are worded as follows:

'(1) Good working conditions for drivers and fair business conditions for road transport undertakings are of paramount importance to creating a safe, efficient and socially accountable road transport sector in order to ensure non-discrimination and to attract qualified workers. To facilitate that process it is essential that the Union social rules on road transport are clear, proportionate, fit for purpose, and are easy to apply and to enforce and implemented in an effective and consistent manner throughout the Union.

(2) Having evaluated the effectiveness and efficiency of the implementation of the current set of Union social rules in road transport, and in particular Regulation [No 561/2006], certain deficiencies were identified in the implementation of that legal framework. Unclear rules on weekly rest periods, resting facilities and breaks in multi-manning, as well as the absence of rules on the return of drivers to their home, have led to diverging interpretations and enforcement practices in the Member States. Several Member States have recently adopted unilateral measures further increasing legal uncertainty and the unequal treatment of drivers and operators. However, the maximum driving periods per day and per week are effective in improving the social conditions of drivers and road safety in general. Unremitting efforts are necessary to ensure compliance.

…

(4) The *ex post* evaluation of Regulation [No 561/2006] confirmed that the inconsistent and ineffective enforcement of the Union social rules was mainly due to unclear rules, to inefficient and unequal use of the control tools and to insufficient administrative cooperation between the Member States.

…

(6) Clear, suitable, proportionate and evenly enforced rules are also crucial for achieving the policy objectives of improving working conditions for drivers, and in particular ensuring undistorted and fair competition between operators and contributing to road safety for all road users.

…

(8) Drivers engaged in long-distance international transport of goods spend long periods away from their homes. The current requirements on the regular weekly rest may prolong those periods unnecessarily. It is thus desirable to adapt the provisions on the regular weekly rest periods in such a way that it is easier for drivers to carry out international transport operations in compliance with the rules and to reach their home for their regular weekly rest period, and be fully compensated for all reduced weekly rest periods. …

…

(13) In order to promote social progress, it is appropriate to specify where the weekly rest periods may be taken, ensuring that drivers enjoy adequate rest conditions. The quality of accommodation is particularly important during the regular weekly rest periods, which the driver should spend away from the vehicle's cabin in a suitable accommodation, at the cost of the transport undertaking as an employer. In order to ensure good working conditions and the safety of drivers, it is appropriate to clarify the requirement for drivers to be provided with quality and gender-friendly accommodation for their regular weekly rest periods if they are taken away from home.

(14) It is also necessary to provide for transport undertakings to organise the work of drivers in such a way that periods away from home are not excessively long and that drivers can benefit from long rest periods taken in compensation for reduced weekly rest periods. Organising the return should allow reaching an operational centre of the transport undertaking in its Member State of establishment or the driver's place of residence, and the drivers are free to choose where to spend their rest period. In order to demonstrate that the transport undertaking fulfils its obligations regarding the organisation of the regular return, the transport undertaking should be able to use tachograph records, duty rosters of the drivers or other documentation. Such evidence should be available at the transport undertaking's premises to be presented if requested by control authorities.

(15) While regular weekly rest periods and longer rest periods cannot be taken in the vehicle or in a parking area, but only in suitable accommodation, which may be adjacent to a parking area, it is of utmost importance to enable drivers to locate safe and secure parking areas that provide appropriate levels of security and appropriate facilities. The Commission has already studied how to encourage the development of high-quality parking areas, including the necessary minimum requirements. The Commission should therefore develop standards for safe and secure parking areas. Those standards should contribute to promoting high-quality parking areas. The standards may be revised in order to cater for better access to alternative fuels, in line with policies developing that infrastructure. It is also important that parking areas are being kept free from ice and snow.

…

(17) It is in the interests of road safety and enforcement that all drivers should be fully aware of the rules on driving and rest times and of the dangers of fatigue. Easily accessible information on available rest facilities is of importance in this regard. Therefore, the Commission should provide information on safe and secure parking areas through a user-friendly website. That information should be kept up to date.

(18) In order to ensure the continued safety and security of parking areas, the power to adopt acts in accordance with Article 290 [TFEU] should be delegated to the Commission in

respect of establishing standards for the level of service in safe and secure parking areas and procedures for the certification of the safety and security of parking areas. …

(19) The revised TEN-T guidelines established by Regulation (EU) No 1315/2013 of the European Parliament and of the Council [of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ 2013 L 348, p. 1) ("the TEN-T Regulation")] envisage the development of parking areas on motorways approximately every 100 km to provide commercial road users with parking space that has an appropriate level of safety and security. In order to accelerate and promote the construction of adequate parking infrastructure, it is important that sufficient opportunities for co-funding by the Union are available in accordance with current and future Union legal acts establishing the conditions for that financial support.

…

(23) Member States should take all measures necessary to ensure that national rules on penalties applicable to infringements of Regulation [No 561/2006] and Regulation [No 165/2014] are implemented in an effective, proportionate and dissuasive manner. …

…

(27) The cost-effectiveness of enforcement of the social rules, the rapid development of new technologies, the digitalisation throughout the Union economy and the need for a level playing field among companies in international road transport make it necessary to shorten the transitional period for the installation of smart tachographs in registered vehicles. Smart tachographs will contribute to simplified controls and thus facilitate the work of national authorities.

…

(34) It is important that transport undertakings established in third countries are subject to rules which are equivalent to Union rules when performing road transport operations in the territory of the Union. The Commission should assess the application of this principle at Union level and propose adequate solutions to be negotiated in the context of the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport ("AETR Agreement").

…

(36) Since the objectives of this Regulation, namely to improve road safety and working conditions for drivers within Union through the harmonisation of the rules on driving times, breaks and rest periods in road transport and the harmonisation of the rules on the use and enforcement of tachographs cannot be sufficiently achieved by the Member States, but can rather, by reason of the nature of the objectives, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.'

27 Points 6 to 8, 11, 13 and 16 of Article 1 of Regulation 2020/1054 provides:

'Regulation [No 561/2006] is amended as follows:

…

(6) Article 8 is amended as follows:

(a) paragraph 6 is replaced by the following:

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

(a) two regular weekly rest periods; or

(b) one regular weekly rest period and one reduced weekly rest period of at least 24 hours.

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.

By way of derogation from the first subparagraph, a driver engaged in international transport of goods may, outside the Member State of establishment, take two consecutive reduced weekly rest periods provided that the driver in any four consecutive weeks takes at least four weekly rest periods, of which at least two shall be regular weekly rest periods.

For the purpose of this paragraph, a driver shall be considered to be engaged in international transport where the driver starts the two consecutive reduced weekly rest periods outside the Member State of the employer's establishment and the country of the drivers' place of residence.";

…

(c) paragraph 8 is replaced by the following:

"8. The regular weekly rest periods and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods shall not be taken in a vehicle. They shall be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities.

Any costs for accommodation outside the vehicle shall be covered by the employer.";

(d) the following paragraph is inserted:

"8a. Transport undertakings shall organise the work of drivers in such a way that the drivers are able to return to the employer's operational centre where the driver is normally based and where the driver's weekly rest period begins, in the Member State of the employer's establishment, or to return to the drivers' place of residence, within each period of four consecutive weeks, in order to spend at least one regular weekly rest period or a weekly rest period of more than 45 hours taken in compensation for reduced weekly rest period.

However, where the driver has taken two consecutive reduced weekly rest periods in accordance with paragraph 6, the transport undertaking shall organise the work of the driver in such a way that the driver is able to return before the start of the regular weekly rest period of more than 45 hours taken in compensation.

The undertaking shall document how it fulfils that obligation and shall keep the documentation at its premises in order to present it at the request of control authorities."

…

(7) the following Article is inserted:

"Article 8a

1. The Commission shall ensure that information about safe and secure parking areas is easily accessible to drivers engaged in the carriage of goods and passengers by road. The Commission shall publish a list of all parking areas that have been certified, in order to provide drivers with adequate:

– intrusion detection and prevention,

– lighting and visibility,

– emergency contact points and procedures,

– gender-friendly sanitary facilities,

– food and beverage purchasing options,

– communications connections,

– power supply.

The list of such parking areas shall be made available on a single official website that is regularly updated.

2. The Commission shall adopt delegated acts in accordance with Article 23a to establish standards providing further detail concerning the level of service and security with regard to the areas listed in paragraph 1 and concerning the procedures for the certification of parking areas.

3. All parking areas that have been certified may indicate that they are certified in accordance with Union standards and procedures.

In accordance with point (c) of Article 39(2) of [the TEN-T] Regulation, Member States are to encourage the creation of parking space for commercial road users.

4. By 31 December 2024, the Commission shall present a report to the European Parliament and to the Council on the availability of suitable rest facilities for drivers and of secured parking facilities, as well as on the development of safe and secure parking areas certified in accordance with the delegated acts referred to in paragraph 2. That report may list measures to increase the number and quality of safe and secure parking areas."

(8) Article 9 is amended as follows:

…

(b) paragraph (2) is replaced by the following:

"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 sleeper cabin, bunk or couchette."

…

(11) In Article 12, the following paragraphs are added:

"Provided that road safety is not thereby jeopardised, in exceptional circumstances, the driver may also depart from Article 6(1) and (2) and Article 8(2) by exceeding the daily and weekly driving time by up to one hour in order to reach the employer's operational centre or the driver's place of residence to take a weekly rest period.

Under the same conditions, the driver may exceed the daily and weekly driving time by up to two hours, provided that an uninterrupted break of 30 minutes was taken immediately prior to the additional driving in order to reach the employer's operational centre or the driver's place of residence for taking a regular weekly rest period.

…"

…

(13) In Article 14, paragraph 2 is replaced by the following:

"2. In urgent cases Member States may grant, under exceptional circumstances, a temporary exception for a period not exceeding 30 days, which shall be duly reasoned and notified immediately to the Commission. The Commission shall immediately publish this information on a public website."

…

(16) In Article 19, paragraph 1 is replaced by the following:

"1. Member States shall lay down rules on penalties applicable to infringements of this Regulation [No 165/2014] and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective and proportionate to the gravity of the infringements … as well as dissuasive and non-discriminatory. No infringement of this Regulation and of Regulation [No 165/2014] shall be subject to more than one penalty or procedure. …"'

28 Article 2 of Regulation 2020/1054 is worded as follows:

'Regulation (EU) No 165/2014 is amended as follows:

…

(2) In Article 3, paragraph 4 is replaced by the following:

"4. No later than three years from the end of the year of entry into force of the detailed provisions referred to in the second paragraph of Article 11, the following categories of vehicles operating in a Member State other than their Member State of registration shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation:

(a) vehicles fitted with an analogue tachograph;

(b) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to [Council] Regulation (EEC) No 3821/85 [of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8)] applicable until 30 September 2011;

(c) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Regulation [No 3821/85] applicable from 1 October 2011; and

(d) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Regulation [No 3821/85] applicable from 1 October 2012.

4a. No later than four years after the entry into force of detailed provisions referred to in the second paragraph of Article 11, vehicles which are fitted with a smart tachograph complying with Annex IC to [Implementing Regulation 2016/799] operating in a Member State other than their Member State of registration shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation."

…

(8) Article 11 is amended as follows:

(a) the first paragraph is replaced by the following:

"In order to ensure that smart tachographs comply with the principles and requirements set out in this Regulation, the Commission shall, by means of implementing acts, adopt detailed provisions necessary for the uniform application of Articles 8, 9 and 10, excluding any provisions which would provide for the recording of additional data by the tachograph.

By 21 August 2021, the Commission shall adopt implementing acts laying down detailed provisions for the uniform application of the obligation to record and store data relating to any border crossing of the vehicle and activities referred to in the second and third indent of the first subparagraph of Article 8(1) and in the second subparagraph of Article 8(1).

…"'

29 The technical specifications for smart tachographs referred to in the second paragraph of Article 11 of Regulation No 165/2014, as amended by point 8(a) of Article 2 of Regulation 2020/1054, are the subject of Commission Implementing Regulation (EU) 2021/1228 of 16 July 2021 amending

Implementing Regulation 2016/799 (OJ 2021 L 273, p. 1), as amended by Commission Implementing Regulation (EU) 2023/980 of 16 May 2023, as regards a transitional smart tachograph and its use of the Galileo Open Service Navigation Message Authentication and amending Implementing Regulation (EU) 2021/1228 (OJ 2023 L 134, p. 28) ('Implementing Regulation 2021/1228'). Article 1 of Implementing Regulation 2021/1228 amends Annex IC to Implementing Regulation 2016/799 in accordance with the annex to Implementing Regulation 2021/1228.

30 Article 3, first paragraph, of Regulation 2020/1054 provides:

'This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

…'

2. Legislation relating to establishment requirements, cabotage operations and combined transport

(a) Directive 92/106/EEC

31 The third recital of Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ 1992 L 368, p. 38), is worded as follows:

'Whereas the increasing problems relating to road congestion, the environment and road safety call, in the public interest, for the further development of combined transport as an alternative to road transport;'

32 Article 1 of the directive provides:

'This Directive shall apply to combined transport operations, without prejudice to [Council] Regulation (EEC) No 881/92 [of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ 1992 L 95, p. 1)].

For the purposes of this Directive, "combined transport" means the transport of goods between Member States where the lorry, trailer, semi-trailer, with or without tractor unit, swap body or container of 20 feet or more uses the road on the initial or final leg of the journey and, on the other leg, rail or inland waterway or maritime services where this section exceeds 100 km as the crow flies and make the initial or final road transport leg of the journey;

– between the point where the goods are loaded and the nearest suitable rail loading station for the initial leg, and between the nearest suitable rail unloading station and the point where the goods are unloaded for the final leg, or;

– within a radius not exceeding 150 km as the crow flies from the inland waterway port or seaport of loading or unloading.'

33 Article 4 of the directive states:

'All hauliers established in a Member State who meet the conditions of access to the occupation and access to the market for transport of goods between Member States shall have the right to carry out, in the context of a combined transport operation between Member States, initial and/or final road haulage legs which form an integral part of the combined transport operation and which may or may not include the crossing of a frontier.'

(b) Regulation No 1071/2009

34 In Chapter I of Regulation No 1071/2009, entitled 'General provisions', Article 3 thereof, itself entitled 'Requirements for engagement in the occupation of road transport operator', in the version prior to the entry into force of Regulation 2020/1055, provided:

'1. Undertakings engaged in the occupation of road transport operator shall:

(a) have an effective and stable establishment in a Member State;

(b) be of good repute;

(c) have appropriate financial standing; and

(d) have the requisite professional competence.

2. Member States may decide to impose additional requirements, which shall be proportionate and non-discriminatory, to be satisfied by undertakings in order to engage in the occupation of road transport operator.'

35 In Chapter II of Regulation No 1071/2009, entitled 'Conditions to be met to satisfy the requirements laid down in Article 3', Article 5, itself entitled 'Conditions relating to the requirement of establishment', in the version prior to the entry into force of Regulation 2020/1055, stated:

'In order to satisfy the requirement laid down in Article 3(1)(a), an undertaking shall, in the Member State concerned:

(a) have an establishment situated in that Member State with premises in which it keeps its core business documents, in particular its accounting documents, personnel management documents, documents containing data relating to driving time and rest and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation. Member States may require that establishments on their territory also have other documents available at their premises at any time;

(b) once an authorisation is granted, have at its disposal one or more vehicles which are registered or otherwise put into circulation in conformity with the legislation of that Member State, whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract;

(c) conduct effectively and continuously with the necessary administrative equipment its operations concerning the vehicles mentioned in point (b) and with the appropriate technical equipment and facilities at an operating centre situated in that Member State.'

36 Article 6 of Regulation No 1071/2009 concerns, according to its title, the conditions relating to the requirement of good repute.

(c) Regulation (EC) No 1072/2009

37 In the words of recitals 2, 4, 5, 13 and 15 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72):

'(2) The establishment of a common transport policy entails, inter alia, laying down common rules applicable to access to the market in the international carriage of goods by road within the territory of the Community, as well as laying down the conditions under which non-resident hauliers may operate transport services within a Member State. Those rules must be laid down in such a way as to contribute to the smooth operation of the internal transport market.

…

(4) The establishment of a common transport policy implies the removal of all restrictions against the person providing transport services on the grounds of nationality or the fact that he is established in a different Member State from the one in which the services are to be provided.

(5) In order to achieve this smoothly and flexibly, provision should be made for a transitional cabotage regime as long as harmonisation of the road haulage market has not yet been completed.

…

(13) Hauliers who are holders of Community licences provided for in this Regulation and hauliers authorised to operate certain categories of international haulage service should be permitted to carry out national transport services within a Member State on a temporary basis in conformity with this Regulation, without having a registered office or other establishment therein. …

…

(15) Without prejudice to the provisions of the Treaty on the right of establishment, cabotage operations consist of the provision of services by hauliers within a Member State in which they are not established and should not be prohibited as long as they are not carried out in a way that creates a permanent or continuous activity within that Member State. To assist the enforcement of this requirement, the frequency of cabotage operations and the period in which they can be performed should be more clearly defined. In the past, such national transport services were permitted on a temporary basis. In practice, it has been difficult to ascertain which services are permitted. Clear and easily enforceable rules are thus needed.'

38 In Chapter I of Regulation No 1072/2009, entitled 'General provisions', Article 2 thereof, itself entitled 'Definitions', which was not amended by Regulation 2020/1055, states:

'For the purposes of this Regulation:

1. "vehicle" means a motor vehicle registered in a Member State, or a coupled combination of vehicles the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods;

2. "international carriage" means:

(a) a laden journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different Member States, with or without transit through one or more Member States or third countries;

(b) a laden journey undertaken by a vehicle from a Member State to a third country or vice versa, with or without transit through one or more Member States or third countries;

(c) a laden journey undertaken by a vehicle between third countries, with transit through the territory of one or more Member States; or

(d) an unladen journey in conjunction with the carriage referred to in points (a), (b) and (c);

…

6. "cabotage operations" means national carriage for hire or reward carried out on a temporary basis in a host Member State, in conformity with this Regulation;

…'

39 Chapter III of Regulation No 1072/2009, entitled 'Cabotage', consists of Articles 8 to 10 of that regulation.

40 Article 8 of that regulation, itself entitled 'General principle', in the version prior to the entry into force of Regulation 2020/1055, provided:

'1. Any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, shall be entitled, under the conditions laid down in this Chapter, to carry out cabotage operations.

2. Once the goods carried in the course of an incoming international carriage have been delivered, hauliers referred to in paragraph 1 shall be permitted to carry out, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, up to three cabotage operations following the international carriage from another Member State or from a third country to the host Member State. The last unloading in the course of a cabotage operation before leaving the host Member State shall take place within 7 days from the last unloading in the host Member State in the course of the incoming international carriage.

Within the time limit referred to in the first subparagraph, hauliers may carry out some or all of the cabotage operations permitted under that subparagraph in any Member State under the condition that they are limited to one cabotage operation per Member State within 3 days of the unladen entry into the territory of that Member State.

3. National road haulage services carried out in the host Member State by a non-resident haulier shall only be deemed to conform with this Regulation if the haulier can produce clear evidence of the incoming international carriage and of each consecutive cabotage operation carried out.

Evidence referred to in the first subparagraph shall comprise the following details for each operation:

(a) the name, address and signature of the sender;

(b) the name, address and signature of the haulier;

(c) the name and address of the consignee as well as his signature and the date of delivery once the goods have been delivered;

(d) the place and the date of taking over of the goods and the place designated for delivery;

(e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description, as well as the number of packages and their special marks and numbers;

(f) the gross mass of the goods or their quantity otherwise expressed;

(g) the number plates of the motor vehicle and trailer.

4. No additional document shall be required in order to prove that the conditions laid down in this Article have been met.

5. Any haulier entitled in the Member State of establishment, in accordance with that Member State's legislation, to carry out the road haulage operations for hire or reward specified in Article 1(5)(a), (b) and (c) shall be permitted, under the conditions set out in this Chapter, to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category.

6. Permission to carry out cabotage operations, within the framework of the types of carriage referred to in Article 1(5)(d) and (e), shall be unrestricted.'

41 Article 10 of Regulation No 1072/2009, entitled 'Safeguard procedure', in the version prior to the entry into force of Regulation 2020/1055, provided:

'1. In the event of serious disturbance of the national transport market in a given geographical area due to, or aggravated by, cabotage, any Member State may refer the matter to the Commission with a view to the adoption of safeguard measures and shall provide the Commission with the necessary information and notify it of the measures it intends to take as regards resident hauliers.

2. For the purposes of paragraph 1:

– "serious disturbance of the national transport market in a given geographical area" means the existence on the market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of hauliers,

– "geographical area" means an area covering all or part of the territory of a Member State or extending to all or part of the territory of other Member States.

3. The Commission shall examine the situation on the basis in particular of the relevant data and, after consulting the committee referred to in Article 15(1), shall decide within 1 month of receipt of the Member State's request whether or not safeguard measures are necessary and shall adopt them if they are necessary.

Such measures may involve the temporary exclusion of the area concerned from the scope of this Regulation.

Measures adopted in accordance with this Article shall remain in force for a period not exceeding 6 months, renewable once within the same limits of validity.

The Commission shall without delay notify the Member States and the Council of any decision taken pursuant to this paragraph.

4. If the Commission decides to adopt safeguard measures concerning one or more Member States, the competent authorities of the Member States involved shall be required to take measures of equivalent scope in respect of resident hauliers and shall inform the Commission thereof. Those measures shall be applied at the latest as from the same date as the safeguard measures adopted by the Commission.

5. Any Member State may refer to the Council a decision taken by the Commission pursuant to paragraph 3 within 30 days of its notification. The Council, acting by a qualified majority may, within 30 days of that referral, or, if there are referrals by several Member States, of the first referral, take a different decision.

The limits of validity laid down in the third subparagraph of paragraph 3 shall apply to the Council's decision. The competent authorities of the Member States concerned shall be required to take measures of equivalent scope in respect of resident hauliers, and shall inform the Commission thereof. If the Council takes no decision within the period referred to in the first subparagraph, the Commission decision shall become final.

6. Where the Commission considers that the measures referred to in paragraph 3 need to be prolonged, it shall submit a proposal to the Council, which shall take a decision by qualified majority.'

(d) Regulation 2020/1055

42 In the words of recitals 6, 8 and 20 to 22 of Regulation 2020/1055:

'(6) In order to combat the phenomenon of so-called "letterbox companies" and to guarantee fair competition and a level playing field in the internal market, it is necessary to ensure that road transport operators established in a Member State have a real and continuous presence in that Member State and conduct their transport business from there. Therefore, and in light of experience, it is necessary to clarify and strengthen the provisions regarding the existence of an effective and stable establishment while avoiding the imposition of a disproportionate administrative burden.

…

(8) Regulation (EC) No 1071/2009 requires undertakings to conduct effectively and continuously their operations with the appropriate technical equipment and facilities at an operating centre situated in the Member State of establishment, and it allows for additional requirements at national level, the most common of which being a requirement to have parking spaces available in the Member State of establishment. However, those, unevenly applied, requirements have not been sufficient to ensure a genuine link with that Member State in order to efficiently fight letterbox companies and to reduce the risk of systematic cabotage and nomadic drivers organised from an undertaking to which the vehicles do not return. Considering that, in order to ensure the proper functioning of the internal market in the area of transport, specific rules on the right of establishment and the provision of services may be necessary, it is appropriate to further harmonise the establishment requirements and to strengthen the requirements linked to the presence of the vehicles used by the transport operator in the Member State of establishment. Defining a clear minimum interval within which the vehicle has to return also contributes to ensuring that those vehicles can be correctly maintained with the technical equipment situated in the Member State of establishment and facilitates controls.

The cycle for such returns should be synchronised with the obligation on the transport undertaking in Regulation (EC) No 561/2006 of the European Parliament and of the Council to organise its operations in a manner that enables the driver to return home at least every four weeks, so that both obligations can be fulfilled through the return of the driver together

with the vehicle at least every second four-week cycle. This synchronisation strengthens the right of the driver to return and reduces the risk that the vehicle has to return only to fulfil this new establishment requirement. However, the requirement to return to the Member State of establishment should not require a specific number of operations to be conducted in the Member State of establishment or otherwise limit the operators' possibility to provide services throughout the internal market.

…

(20) The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ("cabotage") should be clear, simple and easy to enforce, while maintaining the level of liberalisation achieved so far.

(21) Cabotage operations should help to increase the load factor of heavy duty vehicles and reduce empty runs, and should be allowed as long as they are not carried out in a way that creates a permanent or continuous activity within the Member State concerned. To ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity, hauliers should not be allowed to carry out cabotage operations in the same Member State within a certain time after the end of a period of cabotage operations.

(22) While the further liberalisation established by Article 4 of Council Directive 92/106/EEC, compared to cabotage under Regulation (EC) No 1072/2009, has been beneficial in promoting combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that, in certain parts of the Union, that provision has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for the continuous presence of vehicles in a Member State other than that of the establishment of the undertaking. Such unfair practices risk leading to social dumping and jeopardise respect of the legal framework relating to cabotage. It should therefore be possible for Member States to derogate from Article 4 of Directive 92/106/EEC and to apply the provisions relating to cabotage in Regulation (EC) No 1072/2009 in order to address such problems by introducing a proportionate limit to the continuous presence of vehicles within their territory.'

43 Article 1 of Regulation 2020/1055 provides:

'Regulation (EC) No 1071/2009 is amended as follows:

…

(3) Article 5 is replaced by the following:

"Article 5 – Conditions relating to the requirement of establishment

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

(a) have premises at which it is able to access the originals of its core business documents, whether in electronic or any other form, in particular its transport contracts, documents relating to the vehicles at the disposal of the undertaking, accounting documents, personnel management documents, labour contracts, social security documents, documents containing data on the dispatching and posting of drivers, documents containing data relating to cabotage, driving time and rest periods, and any other document to which the competent authority must have access in order to verify the undertaking's compliance with the conditions laid down in this Regulation;

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

(c) be registered on the register of commercial companies of that Member State or on a similar register whenever required under national law;

(d) be subject to tax on revenues and, whenever required under national law, have a valid value added tax registration number;

(e) once an authorisation has been granted, have at its disposal one or more vehicles which are registered or put into circulation and authorised to be used in conformity with the legislation of that Member State, regardless of whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or under a hire or leasing contract;

(f) effectively and continuously conduct its administrative and commercial activities with the appropriate equipment and facilities at premises as referred to in point (a) situated in that Member State and manage its transport operations effectively and continuously using the vehicles referred to in point (g) with the appropriate technical equipment situated in that Member State;

(g) on an ongoing basis, have at its regular disposal a number of vehicles that comply with the conditions laid down in point (e) and drivers who are normally based at an operational centre in that Member State, in both cases proportionate to the volume of transport operations carried out by the undertaking.

…"'

44 Article 2 of Regulation 2020/1055 provides:

'Regulation (EC) No 1072/2009 is amended as follows:

…

(4) Article 8 is amended as follows:

(a) the following paragraph is inserted:

"2a. Hauliers are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, in the same Member State within four days following the end of its cabotage operation in that Member State.";

(b) in paragraph 3, the first subparagraph is replaced by the following:

"3. National road haulage services carried out in the host Member State by a non-resident haulier shall only be deemed to comply with this Regulation if the haulier can produce clear evidence of the preceding international carriage and of each consecutive cabotage operation carried out. In the event that the vehicle has been in the territory of the host Member State within the period of four days preceding the international carriage, the haulier shall also produce clear evidence of all operations that were carried out during that period.";

(c) the following paragraph is inserted:

"4a. Evidence referred to in paragraph 3 shall be presented or transmitted to the authorised inspecting officer of the host Member State on request and within the duration of the roadside check. It may be presented or transmitted electronically, using a revisable structured format which can be used directly for storage and processing by computers, such as an electronic consignment note (e-CMR) under the Additional Geneva Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the Electronic Consignment Note of 20 February 2008. During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity in order to provide, before the end of the roadside check, any evidence referred to in paragraph 3."

…

(5) Article 10 is amended as follows:

…

(b) the following paragraph is added:

"7. In addition to paragraphs 1 to 6 of this Article and by way of derogation from Article 4 of Directive 92/106/EEC, Member States may, where necessary to avoid misuse of the latter provision through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations between Member States, provide that Article 8 of this Regulation apply to hauliers when they carry out such initial and/or final road haulage legs within that Member State. With regard to such road haulage legs, Member States may provide for a longer period than the seven-day period provided for in Article 8(2) of this Regulation and may provide for a shorter period than the four-day period provided for in Article 8(2a) of this Regulation. The application of Article 8(4) of this Regulation to such transport operations shall be without prejudice to requirements following from Directive 92/106/EEC. Member States making use of the derogation provided for in this paragraph shall notify the Commission thereof before applying their relevant national measures. They shall review those measures at least every five years and shall notify the results of that review to the Commission. They shall make the rules, including the length of the respective periods, publicly available in a transparent manner."'

3. Legislation on the posting of workers

(a) Directive 96/71/EC

45 Article 1 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1), as amended by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 (OJ 2018 L 173, p. 16), entitled 'Subject matter and scope', provides:

'1. This Directive shall ensure the protection of posted workers during their posting in relation to the freedom to provide services, by laying down mandatory provisions regarding working conditions and the protection of workers' health and safety that must be respected.

…

3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

(a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;

or

(b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;

or

(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

…'

46 Article 2 of that directive, which is entitled 'Definition', provides, in paragraph 1 thereof:

'For the purposes of this Directive, "posted worker" means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.

…'

47 Article 3 of that directive, entitled ‘Terms and conditions of employment’, provides:

‘1. Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out:

– by law, regulation or administrative provision, and/or

– by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual leave;

(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination;

(h) the conditions of workers’ accommodation where provided by the employer to workers away from their regular place of work;

(i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

…

3. Member States may, after consulting employers and labour, in accordance with the traditions and practices of each Member State, decide not to apply the first subparagraph of paragraph 1(c) in the cases referred to in Article 1(3)(a) and (b) when the length of the posting does not exceed one month.

4. Member States may, in accordance with national laws and/or practices, provide that exemptions may be made from the first subparagraph of paragraph 1(c) in the cases referred to in Article 1(3)(a) and (b) and from a decision by a Member State within the meaning of paragraph 3 of this Article, by means of collective agreements within the meaning of paragraph 8 of this Article, concerning one or more sectors of activity, where the length of the posting does not exceed one month.

…’

(b) Directive 2014/67/EU

48 Article 9 of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71 and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (OJ 2014 L 159, p. 11) concerns the administrative requirements and control measures with regard to the posting of workers.

(c) Directive 2018/957

49 Pursuant to recital 15 of Directive 2018/957:

‘Because of the highly mobile nature of work in international road transport, the implementation of this Directive in that sector raises particular legal questions and difficulties, which are to be addressed, in the framework of the mobility package, through specific rules for road transport also reinforcing the combating of fraud and abuse.’

50 Article 3(3) of that directive provides:

‘This Directive shall apply to the road transport sector from the date of application of a legislative act amending 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)] as regards enforcement requirements and laying down specific rules with respect to Directive [96/71] and Directive [2014/67] for posting drivers in the road transport sector.’

(d) Directive 2020/1057

51 Recitals 1 to 4, 7 to 13, 15 and 43 of Directive 2020/1057 are worded as follows:

‘(1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable conditions for business and for fair competition for road transport operators (“operators”), on the other. Given the high degree of mobility of the workforce in the road transport sector, sector-specific rules are needed to ensure a balance between the freedom of operators to provide cross-border services, free movement of goods, adequate working conditions and social protection for drivers.

(2) In view of the inherent high degree of mobility of road transport services, particular attention needs to be paid to ensuring that drivers benefit from the rights to which they are entitled and that operators, most of which are small enterprises, are not faced with disproportionate administrative barriers or discriminatory controls which unduly restrict their freedom to provide cross-border services. For the same reason, any national rules applied to road transport must be proportionate as well as justified, taking account of the need to ensure adequate working conditions and social protection for drivers and to facilitate the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators.

(3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.

(4) Having evaluated the effectiveness and efficiency of the current Union social legislation in the road transport sector, certain loopholes in the existing provisions and deficiencies in their enforcement have been identified, such as those with regard to the use of letterbox companies. Furthermore a number of discrepancies exist between Member States in the interpretation, application and implementation of those provisions, creating a heavy administrative burden for drivers and operators. This creates legal uncertainty, which is detrimental to the social and working conditions of drivers and to the conditions for fair competition for operators in the sector.

…

(7) In order to ensure the effective and proportionate implementation of Directive [96/71] in the road transport sector, it is necessary to establish sector-specific rules reflecting the particularities of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom of operators to provide cross-border services. The provisions on the posting of workers, in Directive [96/71], and on the enforcement of those provisions, in Directive [2014/67], apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.

(8) Given the highly mobile nature of the transport sector, drivers are not generally posted to another Member State under service contracts for long periods of time, as is sometimes the

case in other sectors. It should therefore be clarified in which circumstances the rules on long-term posting in Directive [96/71] do not apply to such drivers.

(9) Balanced sector specific rules on posting should be based on the existence of a sufficient link between the driver and the service provided, and the territory of a host Member State. To facilitate enforcement of those rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State.

(10) When a driver engages in bilateral transport operations from the Member State where the undertaking is established (the "Member State of establishment") to the territory of another Member State or a third country or back to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. It is possible that a driver undertakes several bilateral transport operations during one journey. It would be a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and therefore the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.

(11) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a posting situation. Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is therefore no significant link between the driver's activities and the Member State transited. The qualification of the driver's presence in a Member State as transit is, therefore, not affected by stops, for example, for hygiene reasons.

(12) When a driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. By contrast, when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, there is a sufficient link with the territory of a host Member State and therefore the posting rules should apply.

(13) Where a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, there is a sufficient link to the territory of the host Member State. The link exists in case of cabotage operations as defined by [Regulation No 1072/2009] and [Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ 2009 L 300, p. 88)], since the entire transport operation takes place in a host Member State and the service is thus closely linked to the territory of the host Member State. A non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State of establishment of the undertaking making the posting. The services performed are therefore linked with the host Member States concerned rather than with the Member State of establishment. In those cases, sector-specific rules are only required with regard to the administrative requirements and control measures.

…

(15) Union operators face growing competition from operators based in third countries. It is therefore of the utmost importance to ensure that Union operators are not discriminated against. According to Article 1(4) of [Directive 96/71], undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State. That principle should also apply with regard to the specific rules on posting provided for in this Directive. It should, in particular, apply when third country operators perform transport operations under bilateral or multilateral agreements granting access to the Union market.

…

(43) The national measures transposing this Directive should apply from the date 18 months after the date of entry into force of this Directive. Directive [2018/957] is to apply to the road transport sector, in accordance with Article 3(3) of that Directive, from 2 February 2022'.

52 Article 1 of Directive 2020/1057, entitled ‘Specific rules on the posting of drivers’, provides:

‘1. This Article establishes specific rules as regards certain aspects of Directive [96/71] relating to the posting of drivers in the road transport sector and of Directive [2014/67] relating to administrative requirements and control measures for the posting of those drivers.

2. These specific rules apply to drivers employed by undertakings established in a Member State which take the transnational measure referred to in point (a) of Article 1(3) of Directive [96/71].

3. Notwithstanding Article 2(1) of Directive [96/71], a driver shall not be considered to be posted for the purpose of Directive [96/71] when performing bilateral transport operations in respect of goods.

For the purpose of this Directive, a bilateral transport operation in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation [No 1071/2009], to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment.

From 2 February 2022, which is the date from which drivers are required, pursuant to Article 34(7) of Regulation [No 165/2014], to record border crossing data manually, Member States shall apply the exemption for bilateral transport operations in respect of goods set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver performs one activity of loading and/or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unload them in the same Member State.

Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exemption for additional activities set out in the third subparagraph shall apply to a maximum of two additional activities of loading and/or unloading, under the conditions set out in the third subparagraph.

The exemptions for additional activities set out in the third and fourth subparagraphs of this paragraph shall apply only until the date from which smart tachographs complying with the requirement of recording border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation [No 165/2014] are required to be fitted in the vehicles registered in a Member State for the first time, under the fourth subparagraph of Article 8(1) of that Regulation. From that date the exemptions for additional activities set out in the third and fourth subparagraphs of this paragraph shall apply solely to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 of that Regulation.

4. Notwithstanding Article 2(1) of Directive [96/71], a driver shall not be considered to be posted for the purpose of Directive [96/71] when performing bilateral transport operations in respect of passengers.

For the purpose of this Directive, a bilateral transport operation in international occasional or regular carriage of passengers, within the meaning of Regulation [No 1073/2009], is when a driver performs any of the following operations:

(a) picks up passengers in the Member State of establishment and sets them down in another Member State or a third country;

(b) picks up passengers in a Member State or a third country and sets them down in the Member State of establishment; or

(c) picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation [No 1073/2009].

From 2 February 2022, which is the date from which drivers are required, pursuant to Article 34(7) of Regulation [No 165/2014], to record border crossing data manually, Member States shall apply the exemption for bilateral transport operations in respect of passengers set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver picks up passengers once and/or sets down passengers once in Member

States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

The exemption for additional activities set out in the third subparagraph of this paragraph shall apply only until the date from which smart tachographs complying with the requirement of recording of border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation [No 165/2014] are required to be fitted in the vehicles registered in a Member State for the first time, under the fourth subparagraph of Article 8(1) of that Regulation. From that date the exemption for additional activities set out in the third subparagraph of this paragraph shall apply solely to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 of that Regulation.

5. Notwithstanding Article 2(1) of Directive [96/71], a driver shall not be considered to be posted for the purpose of Directive [96/71] when the driver transits through the territory of a Member State without loading or unloading freight and without picking up or setting down passengers.

6. Notwithstanding Article 2(1) of Directive [96/71], a driver shall not be considered to be posted for the purpose of Directive [96/71] when performing the initial or final road leg of a combined transport operation as defined in Council Directive [92/106], if the road leg on its own consists of bilateral transport operations, as defined in paragraph 3 of this Article.

7. A driver performing cabotage operations as defined in Regulations [No 1072/2009 and No 1073/2009] shall be considered to be posted under Directive [96/71].

…

10. Transport undertakings established in a non-Member State shall not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multilateral agreements granting access to the Union market or parts thereof.

11. By way of derogation from Article 9(1) and (2) of Directive [2014/67], Member States may only impose the following administrative requirements and control measures with respect to the posting of drivers:

(a) an obligation for the operator established in another Member State to submit a posting declaration to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting, using a multilingual standard form of the public interface connected to the Internal Market Information System ("IMI"), established by Regulation (EU) No 1024/2012 [of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ 2012 L 316, p. 1)]. ...

…'

53 Article 9 of Directive 2020/1057, entitled 'Transposition', provides, in the first and second subparagraphs of paragraph 1 thereof:

'By 2 February 2022, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 2 February 2022.'

4. Interinstitutional Agreement

54 Points 12 to 16 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ 2016 L 123, p. 1; 'the Interinstitutional Agreement') of 13 April 2016, which are in Chapter III thereof, entitled 'Tools for better-making', state, under the heading 'Impact assessment':

'12. The three Institutions agree on the positive contribution of impact assessments in improving the quality of Union legislation.

Impact assessments are a tool to help the three Institutions reach well-informed decisions and not a substitute for political decisions within the democratic decision-making process. Impact assessments must not lead to undue delays in the law-making process or prejudice the co-legislators' capacity to propose amendments.

Impact assessments should cover the existence, scale and consequences of a problem and the question whether or not Union action is needed. They should map out alternative solutions and, where possible, potential short and long-term costs and benefits, assessing the economic, environmental and social impacts in an integrated and balanced way and using both qualitative and quantitative analyses. The principles of subsidiarity and proportionality should be fully respected, as should fundamental rights. Impact assessments should also address, whenever possible, the "cost of non-Europe" and the impact on competitiveness and the administrative burdens of the different options, having particular regard [small and medium-sized enterprises ("SMEs")] ("Think Small First"), digital aspects and territorial impact. Impact assessments should be based on accurate, objective and complete information and should be proportionate as regards their scope and focus.

13. The Commission will carry out impact assessments of its legislative and non-legislative initiatives, delegated acts and implementing measures which are expected to have significant economic, environmental or social impacts. The initiatives included in the Commission Work Programme or in the joint declaration will, as a general rule, be accompanied by an impact assessment.

    In its own impact assessment process, the Commission will consult as widely as possible. The Commission's Regulatory Scrutiny Board will carry out an objective quality check of its impact assessments. The final results of the impact assessments will be made available to the European Parliament, the Council and national Parliaments, and will be made public along with the opinion(s) of the Regulatory Scrutiny Board at the time of adoption of the Commission initiative.

14. The European Parliament and the Council, upon considering Commission legislative proposals, will take full account of the Commission's impact assessments. To that end, impact assessments shall be presented in such a way as to facilitate the consideration by the European Parliament and the Council of the choices made by the Commission.

15. The European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission's proposal. The European Parliament and the Council will, as a general rule, take the Commission's impact assessment as the starting point for their further work. The definition of a "substantial" amendment should be for the respective Institution to determine.

16. The Commission may, on its own initiative or upon invitation by the European Parliament or the Council, complement its own impact assessment or undertake other analytical work it considers necessary. When doing so, the Commission will take into account all available information, the stage reached in the legislative process and the need to avoid undue delays in that process. The co-legislators will take full account of any additional elements provided by the Commission in that context.'

55 Point 42 of that interinstitutional agreement, which appears in Chapter VII thereof, entitled 'Implementation and application of Union legislation', is worded as follows:

'The three Institutions stress the need for the swift and correct application of Union legislation in the Member States. The time limit for transposition of directives will be as short as possible and, generally, will not exceed two years.'

II. Background to the dispute

56 On 31 May 2017, the Commission adopted a number of proposals forming part of a 'first package of mobility measures' also known as the 'Mobility Package' aimed at amending certain aspects of the EU legislation applicable to the road transport sector.

57 These included, (i) the Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and

weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (COM(2017) 277 final; 'the proposal for a working time regulation'), (ii) the Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector (COM(2017) 281 final; 'the proposal for an establishment regulation') and (iii) the Proposal for a directive of the European Parliament and of the Council amending Directive 2006/22 as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector (COM(2017) 278 final; 'the proposal for a posting directive').

58 Those proposals were accompanied by two impact assessments, one concerning the first and the third of those proposals (SWD(2017) 186 final; 'the Impact assessment – social section'), and the other concerning the second proposal (SWD(2017) 194 final; 'the Impact assessment – establishment section').

59 On 18 January 2018, the European Economic and Social Committee (EESC) delivered two separate opinions concerning, respectively, the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector [COM(2017) 281 final – 2017/0123 (COD)] (OJ 2018 C 197, p. 38) and the proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector [COM(2017) 278 final –2017/0121 (COD)] and on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs [COM(2017) 277 final – 2017/0122 (COD)] (OJ 2018 C 197, p. 45). For its part, the European Committee of the Regions (CoR) delivered an opinion on those three proposals on 1 February 2018, entitled 'Europe on the Move: labour aspects of road transport' (OJ 2018 C 176, p. 57).

60 Following discussions held both within the Parliament and the Council and between those two institutions, a compromise was reached on the three Commission proposals in the course of negotiations conducted on 11 and 12 December 2019 in the framework of the interinstitutional trialogue between the Council, the Parliament and the Commission.

61 On 7 April 2020, in the vote in the Council on the adoption of the three legislative acts at issue, they received the support of a qualified majority of Member States, while nine Member States, namely the Republic of Bulgaria, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, Hungary, the Republic of Malta, the Republic of Poland and Romania were opposed to their adoption.

62 On 15 July 2020, the Parliament and the Council adopted Regulations 2020/1054 and 2020/1055 and Directive 2020/1057 (together, 'the contested acts').

III. Forms of order sought and procedure before the Court

A. Case C-541/20

63 The Republic of Lithuania claims that the Court should:

– annul, principally, Article 1(3) and (7) of Directive 2020/1057 or, in the alternative, that directive in its entirety;

– annul, principally, point 6(d) of Article 1 and Article 3 of Regulation 2020/1054 or, in the alternative, that regulation in its entirety; and

– order the Parliament and the Council to pay the costs.

64 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety; and

– order the Republic of Lithuania to pay the costs.

65 By order of 13 April 2021, *Lithuania* v *Parliament and Council* (C-541/20 R, EU:C:2021:264), the Vice-President of the Court dismissed the Republic of Lithuania's application seeking suspension of operation of point 6(d) of Article 1 and Article 3 of Regulation 2020/1054.

66 By decisions of 27 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Lithuania.

67 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

68 At the hearing on 25 April 2023, the Republic of Lithuania withdrew its application for annulment of Article 1(7) of Directive 2020/1057.

B. Case C-542/20

69 The Republic of Lithuania claims that the Court should:

– annul point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;

– annul point 4(a) of Article 2 of Regulation 2020/1055, and

– order the Parliament and the Council to pay the costs.

70 By decisions of 26 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Lithuania.

71 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

C. Case C-543/20

72 The Republic of Bulgaria claims that the Court should:

– annul, principally, point 6(c) and (d) of Article 1 of Regulation 2020/1054 or, in the alternative, that regulation in its entirety; and

– order the Parliament and the Council to pay the costs.

73 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety; and

– order the Republic of Bulgaria to pay the costs.

74 By decisions of 29 April 2021, the President of the Court granted the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Bulgaria.

75 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Grand Duchy of

Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

D. Case C-544/20

76 The Republic of Bulgaria claims that the Court should:

– annul Directive 2020/1057; and

– order the Parliament and the Council to pay the costs.

77 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety; and

– order the Republic of Bulgaria to pay the costs.

78 By decisions of 29 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Bulgaria.

79 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

E. Case C-545/20

80 The Republic of Bulgaria claims that the Court should:

– annul point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009 or, in the alternative, annul point 3 of Article 1 in its entirety;

– annul point 4(a) of Article 2 of Regulation 2020/1055 or, in the alternative, annul point 4 of Article 2 in its entirety;

– in the further alternative, annul that regulation in its entirety; and

– order the Parliament and the Council to pay the costs.

81 By decisions of 29 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania and Romania leave to intervene in support of the form of order sought by the Republic of Bulgaria.

82 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

83 By order of 3 June 2022, *Bulgaria* v *Parliament and Council* (C-545/20 R, EU:C:2022:445), the Vice-President of the Court dismissed the Republic of Bulgaria's application seeking suspension of operation, principally, of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, or, in the alternative, of point 3 of Article 1 in its entirety or, in the further alternative, of Regulation 2020/1055 in its entirety.

F. Case C-546/20

84 Romania claims that the Court should:

– annul, principally, point 6(c) and (d) of Article 1 of Regulation 2020/1054 or, in the alternative, the entirety of that regulation; and

– order the Parliament and the Council to pay the costs.

85 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety; and

– order Romania to pay the costs.

86 By decisions of 21 April 2021, the President of the Court granted the Republic of Latvia leave to intervene in support of the form of order sought by Rome.

87 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

G. Case C-547/20

88 Romania claims that the Court should:

– annul point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;

– annul point 4(a) to (c) of Article 2 of Regulation 2020/1055;

– in the alternative, annul that regulation in its entirety, and

– order the Parliament and the Council to pay the costs.

89 By decisions of 22 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania leave to intervene in support of the form of order sought by Romania.

90 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

91 By order of 3 June 2022, *Romania* v *Parliament and Council* (C-547/20 R, EU:C:2022:446), the Vice-President of the Court dismissed Romania's application seeking suspension of operation of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009.

H. Case C-548/20

92 Romania claims that the Court should:

– annul, principally, Article 1(3) to (6) of Directive 2020/1057 or, in the alternative, that directive in its entirety; and

– order the Parliament and the Council to pay the costs.

93 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety, and

– order Romania to pay the costs.

94 By decisions of 22 April 2021, the President of the Court granted the Republic of Estonia and the Republic of Latvia leave to intervene in support of the form of order sought by Romania.

95 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

I. Case C-549/20

96 The Republic of Cyprus claims that the Court should:

– annul point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009 or, in the alternative, annul point 3 of Article 1 in its entirety;

– in the further alternative, annul Regulation 2020/1055 in its entirety, and

– order the Parliament and the Council to pay the costs.

97 By decisions of 12 May 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania and Romania leave to intervene in support of the form of order sought by the Republic of Cyprus.

98 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

J. Case C-550/20

99 The Republic of Cyprus claims that the Court should:

– annul Directive 2020/1057; and

– order the Parliament and the Council to pay the costs.

100 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety; and

– order the Republic of Cyprus to pay the costs.

101 By decisions of 29 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Cyprus.

102 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

K. Case C-551/20

103 Hungary claims that the Court should:

– annul point 6(c) of Article 1 and point 2 of Article 2 of Regulation 2020/1054 and, as the case may be, the provisions of that regulation which are inseparable from them, or indeed that regulation in its entirety;

– annul point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009 and, where appropriate, the provisions of Regulation 2020/1055 that are inseparable from it;

– annul, principally, Article 1 of Directive 2020/1057 or, in the alternative, point 6 of Article 1 thereof, and, where appropriate, the provisions of that directive which are inseparable from it; and

– order the Parliament and the Council to pay the costs.

104 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety, and

– order Hungary to pay the costs.

105 By decisions of 13 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania and Romania leave to intervene in support of the form of order sought by Hungary.

106 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

L. Case C-552/20

107 The Republic of Malta claims that the Court should:

– annul point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;

– annul point 4(a) of Article 2 of Regulation 2020/1055, and

– order the Parliament and the Council to pay the costs.

108 By decisions of 22 April 2021, the President of the Court granted the Kingdom of Belgium, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania and Romania leave to intervene in support of the form of order sought by the Republic of Malta.

109 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

M. Case C-553/20

110 The Republic of Poland claims that the Court should:

– annul, principally, point 6(d) of Article 1 of Regulation 2020/1054 or, in the alternative, that regulation in its entirety; and

– order the Parliament and the Council to pay the costs.

111 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety, and

– order the Republic of Poland to pay the costs.

112 By decisions of 27 April 2021, the President of the Court granted the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Poland.

113 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

N. Case C-554/20

114 The Republic of Poland claims that the Court should:

– annul point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;

– annul point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009;

– annul point 4(a) of Article 2 of Regulation 2020/1055;

– annul point 5(b) of Article 2 of that regulation;

– in the alternative, annul that regulation in its entirety; and

– order the Parliament and the Council to pay the costs.

115 By decisions of 27 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania and Romania leave to intervene in support of the form of order sought by the Republic of Poland.

116 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

O. Case C-555/20

117 The Republic of Poland claims that the Court should:

– annul Article 1(3), (4), (6) and (7) and Article 9(1) of Directive 2020/1057, or, in the alternative, that directive in its entirety; and

– order the Parliament and the Council to pay the costs.

118 The Parliament and the Council contend that the Court should:

– dismiss the action in its entirety, and

– order the Republic of Poland to pay the costs.

119 By decisions of 27 April 2021, the President of the Court granted the Republic of Estonia, the Republic of Latvia and Romania leave to intervene in support of the form of order sought by the Republic of Poland.

120 By decisions of the same date, the President of the Court granted the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden leave to intervene in support of the forms of order sought by the Parliament and the Council and granted the Italian Republic leave to intervene in support of the form of order sought by the Council.

P. The joinder of Cases C-541/20 to C-555/20

121 By decision of 13 October 2023, the President of the Court decided, in accordance with Article 54(2) of the Rules of Procedure of the Court of Justice, to join Cases C-541/20 to C-555/20 for the purposes of both the oral part of the procedure, in so far as that part of the procedure had not yet been closed, and the decision closing the proceedings.

IV. The actions

A. Regulation 2020/1054

122 The Republic of Lithuania (Case C-541/20), the Republic of Bulgaria (Case C-543/20), Romania (Case C-546/20), Hungary (Case C-551/20) and the Republic of Poland (Case C-553/20) seek the annulment of several provisions of Regulation 2020/1054 or, in the alternative, of that regulation in its entirety.

123 In the first place, the actions brought by the Republic of Bulgaria, Romania and Hungary seek the annulment of point 6(c) of Article 1 of Regulation 2020/1054, which replaced Article 8(8) of Regulation No 561/2006 with a new paragraph 8, which essentially prohibits drivers from taking their regular weekly rest periods or weekly rest periods of more than 45 hours in a vehicle, where this is taken in compensation for the reduction of a previous weekly rest period ('the prohibition of regular or compensatory weekly rest in the vehicle').

124 In the second place, the actions brought by the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland seek the annulment of point 6(d) of Article 1 of Regulation 2020/1054, which inserted paragraph 8a in Article 8 of Regulation No 561/2006, which lays down an obligation on transport undertakings to organise drivers' work in such a way that they are able to return every three or four weeks, depending on whether or not they have previously taken two consecutive reduced weekly rest periods, to the operational centre of that employer or to their place of residence, respectively, in order to begin or spend at least one regular or compensatory weekly rest period there ('the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054').

125 In the third place, the action brought by Hungary also seeks the annulment of point 2 of Article 2 of Regulation 2020/1054, which replaced Article 3(4) of Regulation No 165/2014 with a new paragraph 4 and a new paragraph 4a, which brought forward the date of entry into force of the obligation to install second-generation smart tachographs ('V2 tachographs').

126 In the fourth and last place, the action brought by the Republic of Lithuania also seeks the annulment of Article 3 of Regulation 2020/1054, in so far as that article sets, in its first paragraph, the date of entry into force of that regulation as the twentieth day following that of its publication in the *Official Journal of the European Union*.

1. Overview of the pleas in law

127 In support of the form of order sought in its action (Case C-541/20) seeking annulment of point 6(d) of Article 1 of Regulation 2020/1054, the Republic of Lithuania raises four pleas in law, alleging infringement (i) of Article 45 TFEU, (ii) of Article 26 TFEU (first part) and of the general principle of non-discrimination (second part), (iii) of Article 3(3) TEU, Articles 11 and 191 TFEU and of EU environmental and climate change policy and (iv) of the principle of proportionality. In support of the form of order sought in that action for annulment of Article 3 of Regulation 2020/1054, that Member State raises three pleas in law, alleging infringement (i) of the principle of proportionality, (ii) of the

obligation to state reasons, laid down in Article 296 TFEU, and (iii) of the principle of sincere cooperation, enshrined in Article 4(3) TEU.

128 In support of its action (Case C-543/20) seeking annulment of point 6(c) of Article 1 and point 6(d) of Article 1 of Regulation 2020/1054, the Republic of Bulgaria relies on five pleas in law. The first to third pleas, directed against point 6(d) of Article 1 of that regulation, allege infringement (i) of Article 45 TFEU (first part) and of Article 21(1) TFEU and Article 45(1) of the Charter of Fundamental Rights of the European Union ('the Charter') (second part), (ii) of the principle of proportionality, enshrined in Article 5(4) TEU and Article 1 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the TEU and to the TFEU ('the Protocol on the principles of subsidiarity and proportionality), and (iii) of the principle of legal certainty. The fourth plea, directed against point 6(c) of Article 1 of Regulation 2020/1054, alleges infringement of the principle of proportionality, enshrined in Article 5(4) TEU and Article 1 of that protocol. The fifth plea in law, directed against point 6(c) and (d) of Article 1 of that regulation, alleges infringement of the principles of equal treatment and non-discrimination, laid down in Article 18 TFEU and in Articles 20 and 21 of the Charter, of the principle of equality of Member States before the Treaties, laid down in Article 4(2) TEU, and, 'in so far as the Court considers it necessary', of Article 95(1) TFEU.

129 In support of its action (Case C-546/20) for annulment of point 6(c) of Article 1 and point 6(d) of Article 1 of Regulation 2020/1054, Romania relies on three pleas in law. The first plea, directed against those two provisions, alleges infringement of the principle of proportionality, laid down in Article 5(4) TEU. The second plea, directed against point 6(d) of Article 1 of that regulation, alleges infringement of the freedom of establishment, provided for in Article 49 TFEU. The third plea, divided into two parts, directed against point 6(c) and (d) of Article 1 of that regulation, alleges infringement of the principle of non-discrimination on grounds of nationality, laid down in Article 18 TFEU.

130 In support of the form of order sought in its action (Case C-551/20) seeking annulment of point 6(c) of Article 1 of Regulation 2020/1054, Hungary relies on a single plea in law, alleging a manifest error of assessment and infringement of the principle of proportionality. In support of the form of order sought in that action for annulment of point 2 of Article 2 of that regulation, that Member State raises three pleas in law, alleging (i) a manifest error of assessment and infringement of the principle of proportionality, (ii) infringement of the principles of legal certainty and the protection of legitimate expectations and (iii) breach of the obligation to maintain the competitiveness of the European Union economy, laid down in the second paragraph of Article 151 TFEU.

131 In support of its action (Case C-553/20) seeking annulment of point 6(d) of Article 1 of Regulation 2020/1054, the Republic of Poland puts forward five pleas in law, alleging (i) infringement of the principle of proportionality, enshrined in Article 5(4) TEU, (ii) infringement of the principle of legal certainty, (iii) infringement of Article 91(2) TFEU, (iv) of Article 94 TFEU and (v) infringement of Article 11 TFEU and of Article 37 of the Charter.

132 The forms of order sought in the actions for annulment of point 6(d) of Article 1, point 6(c) of Article 1, point 2 of Article 2 and Article 3 of Regulation 2020/1054 must be considered in turn.

2. Point 6(d) of Article 1 of Regulation 2020/1054

133 In support of their respective actions for annulment of point 6(d) of Article 1 of Regulation 2020/1054, the Republic of Lithuania (Case C-541/20), the Republic of Bulgaria (Case C-543/20), Romania (Case C-546/20) and the Republic of Poland (Case C-553/20) allege, as the case may be, infringement, in essence:

– of the principle of proportionality (the first to third parts of the fourth plea of the Republic of Lithuania, second plea of the Republic of Bulgaria, the second part of the first plea of Romania and first plea of the Republic of Poland);

– of the principles of equal treatment and non-discrimination (the second part of the second plea of the Republic of Lithuania, the first part of the fifth plea of the Republic of Bulgaria and the second part of the third plea of Romania);

– of the principle of legal certainty (the fourth part of the fourth plea of the Republic of Lithuania, the third plea of the Republic of Bulgaria and the second plea of the Republic of Poland);

– of the free movement of EU citizens, laid down in Article 21(1) TFEU and Article 45 of the Charter (the second part of the first plea of the Republic of Bulgaria);

– of the functioning of the internal market, laid down in Article 26 TFEU (the first part of the second plea of the Republic of Lithuania);

– of the freedom of movement for workers, laid down in Article 45 TFEU (the first plea of the Republic of Lithuania and the first part of the first plea of the Republic of Bulgaria);

– of the freedom of establishment, laid down in Article 49 TFEU (the second plea of Romania);

– of the rules of EU law on the common transport policy laid down in Article 91(2) TFEU (the second part of the first plea of Romania, alleging infringement of the principle of proportionality, and third plea of the Republic of Poland) and Article 94 TFEU (the second part of the first plea of Romania, alleging infringement of the principle of proportionality, and the fourth plea of the Republic of Poland), and

– of the rules of EU law on environmental protection (the third plea of the Republic of Lithuania and fifth plea of the Republic of Poland).

(a) Admissibility

(1) Arguments of the parties

134 In Case C-543/20, the Council expresses doubts as to the admissibility of the form of order sought in the Republic of Bulgaria's action for annulment of point 6(d) of Article 1 of Regulation 2020/1054, since the purpose of that form of order is not to call into question the validity of that provision but to obtain clarification of its interpretation.

135 The Council recalls in this regard that a provision of secondary EU legislation must be interpreted, as far as possible, in a manner consistent with the provisions of the Treaties. It notes that, in the present case, according to the Republic of Bulgaria, point 6(d) of Article 1 of Regulation 2020/1054 could be interpreted in conformity with EU law, with the result, if that were the case, that the Court would not have to examine the pleas relied on in support of the form of order sought by it. Therefore, either the interpretation favoured by that Member State is correct, in which case it would not call into question the validity of that provision, or that interpretation is erroneous because there is another interpretation in conformity with the Treaties, in which case all the pleas relied on would have to be rejected as unfounded.

136 It would not be acceptable for a Member State to use its privileged position under Article 263 TFEU to challenge the legality of legislative acts of EU law for the sole purpose of seeking to clarify their meaning by submitting different interpretations to the Court and requesting it to disregard some of them. Like Article 267 TFEU, Article 263 TFEU cannot be used to refer hypothetical questions to the Court.

137 The Republic of Bulgaria considers that the form of order sought in its action for annulment of point 6(d) of Article 1 of Regulation 2020/1054 is admissible.

(2) Findings of the Court

138 It is apparent from a combined reading of Articles 263 and 264 TFEU that an action brought on the basis of the first of those provisions seeking the annulment of one of the acts mentioned in the first paragraph of that article must seek the annulment of that act. It follows that an action whose form of order seeks from the Court an interpretation of such an act has no basis in Article 263 TFEU and must be dismissed as inadmissible.

139 Nevertheless, where a party seeks, on the basis of Article 263 TFEU, the annulment of an EU act and states in its application, as required by the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 120(c) of the Rules of Procedure, the pleas and arguments relied on in support of its application and a summary of those pleas, the Court must necessarily, and independently of any application to that effect by the applicant, verify the merits of the interpretation of the contested measure that is the premiss of those pleas and arguments. If the

Court were to adopt a different interpretation of that measure, that may be sufficient to justify the rejection of the latter as unfounded.

140 In the present case, the application lodged by the Republic of Bulgaria in Case C-543/20 sets out clearly and precisely the pleas in law and arguments relied on in support of the form of order sought in its action for annulment of point 6(d) of Article 1 of Regulation 2020/1054 and a summary of those pleas. It is thus apparent from that application that the purpose of the action brought in that case is to challenge the legality of that provision under Article 263 TFEU with due regard to the requirements laid down in the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and in Article 120(c) of the Rules of Procedure.

141 Furthermore, it is apparent from a reading of that application that the pleas and arguments relied on by the Republic of Bulgaria start from the premiss that point 6(d) of Article 1 of Regulation 2020/1054 must be interpreted as meaning that that provision requires drivers, in order to take their regular or compensatory weekly rest period, to return, as the case may be, every three or four weeks, either to the operational centre of the employer or to their place of residence, without providing for the possibility for drivers to choose for themselves the place where they wish to spend that rest period.

142 The examination of those pleas and arguments therefore requires the Court to determine whether the interpretation of point 6(d) of Article 1 of Regulation 2020/1054, referred to in the preceding paragraph, which constitutes the premiss thereof, is correct.

143 Admittedly, the Republic of Bulgaria itself acknowledges, in a preliminary part of its application, first, that it is also possible to interpret that provision as meaning that it does not impose such an obligation on drivers to return to one of the two places specified therein, those drivers then remaining free to choose to take their regular or compensatory weekly rest period at the place where they so wish and, secondly, that, if the Court were to adopt such an interpretation, there would be no need to examine the pleas in law and arguments relied on in support of its action, alleging infringement of the fundamental freedoms of movement for EU workers and citizens, and of the principles of proportionality, equal treatment and non-discrimination. However, such a circumstance does not justify dismissing that action as inadmissible. In any event, the Court is obliged to determine whether the interpretation of that provision, which constitutes the premiss of those pleas and arguments, is well founded.

144 The plea of inadmissibility raised by the Council against the form of order sought in the action brought by the Republic of Bulgaria seeking annulment of point 6(d) of Article 1 of Regulation 2020/1054 must therefore be rejected.

(b) Substance

145 It is apparent from the arguments put forward by the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland in support of their respective actions for annulment of point 6(d) of Article 1 of Regulation 2020/1054 that the pleas relied on by those Member States, alleging infringement of the principle of proportionality, the principles of equal treatment and non-discrimination, the fundamental freedoms guaranteed by the FEU Treaty and the provisions of the FEU Treaty relating to environmental protection, are based on the premiss that that provision must be interpreted in the sense indicated in paragraph 141 above, namely as requiring drivers to return, as the case may be, every three or four weeks, to their employer's operational centre or to their place of residence, thereby depriving them of the possibility of choosing for themselves the place where they wish to spend their regular or compensatory weekly rest period.

146 Since the Republic of Lithuania, the Republic of Bulgaria and the Republic of Poland complain, in that regard, that the EU legislature infringed the principle of legal certainty, on the ground that point 6(d) of Article 1 of Regulation 2020/1054 lacks sufficient clarity, it is therefore appropriate to examine, in the first place, the pleas and arguments alleging infringement of that principle.

(1) Infringement of the principle of legal certainty

(i) Arguments of the parties

147 The Republic of Lithuania, in the context of its fourth plea in law, alleging infringement of the principle of proportionality, set out in its fourth part, the Republic of Bulgaria, by its third plea, and

the Republic of Poland, by its second plea, claim that point 6(d) of Article 1 of Regulation 2020/1054 does not comply with the requirements stemming from the principle of legal certainty on account of the lack of clarity as to its precise scope.

148 The principle of legal certainty requires that rules of law be clear, precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. While it may be permissible for legislation to be vague, to contain abstract terms or to confer a margin of discretion, that would nevertheless be on condition that it does not lead to arbitrariness and that it can be clarified by case-law, which is not the case here.

149 In the first place, the Republic of Bulgaria and the Republic of Poland submit that the very nature of the obligations incumbent on drivers or transport undertakings is not clearly defined. The wording of point 6(d) of Article 1 of Regulation 2020/1054 leaves considerable doubt as to whether drivers may choose to take their weekly rest period at a place other than the two places indicated in that provision, whether compliance with the obligation arising from that provision is incumbent on drivers or on transport undertakings and, in the latter case, whether those undertakings are only required to grant the driver free time and to provide him or her with a mode of transport so that he or she can take his or her rest period at one of the two places indicated or whether it is also for them to ensure that the driver actually goes to one of those places, which is what recital 14 of that regulation would suggest, which refers to the fulfilment by the transport undertaking of its obligations 'regarding the organisation of the regular return'.

150 The Republic of Lithuania and the Republic of Bulgaria take the view that the only interpretation of point 6(d) of Article 1 of Regulation 2020/1054 which is consistent with the fundamental freedoms of drivers and the objective of improving working conditions is to consider that that provision does not require the driver to return to his or her place of residence or to the Member State of establishment of his or her employer, but that the transport undertaking must organise the driver's work in such a way as not to compromise the latter's freedom to choose to take his or her regular or compensatory weekly rest period at the place where he or she wishes to do so. According to the Republic of Bulgaria, however, even if that provision has such a scope, the employer should be bound by such an obligation only if the driver expresses a wish to return to one of those two places.

151 In the second place, the Republic of Lithuania and the Republic of Poland consider that it is very difficult to determine how the transport undertaking must actually fulfil the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054. The Republic of Lithuania submits, in that regard, that the EU legislature has not specified how that obligation is to be complied with in practice. Thus, neither the rules applicable to the driver's return, such as the costs and proof of that return, nor those applicable to a refusal to return and the consequences of such a refusal in terms of penalties for the employer and, where appropriate, for the worker are specified. Likewise, the expression 'place of residence' of the driver is not clearly defined. In particular, it is not clear whether a driver from a third country must return to that country or to the temporary place of residence in the Member State concerned and, more generally, it is uncertain whether that expression refers to the Member State concerned or to a specific address of the place of residence. All of those uncertainties make a uniform application of Regulation 2020/1054 impossible. The Republic of Poland submits that that regulation does not make it possible to identify the way in which the transport undertaking must oblige the driver to make use of the return option it offers. Similarly, it is unclear which vehicle must be used for that purpose. Point 6(d) of Article 1 of that regulation could thus impose obligations on transport undertakings that they are wholly unable to fulfil without infringing the fundamental right of workers to individual freedom.

152 In the third place, the Republic of Poland claims that the question whether return to the place of residence must not be preceded by a return to the employer's operational centre also raises important doubts. In the light of the wording of point 6(d) of Article 1 of Regulation 2020/1054, it is not clear whether, by allowing drivers to return directly to their place of residence, a transport undertaking would fulfil its obligation to guarantee a rest period, since drivers 'begin their weekly rest period' at the employer's operational centre. That lack of precision could prompt transport undertakings to provide drivers with a means of transport to the employer's operational centre, and only then to their place of residence, which, for drivers residing far from that operational centre, would result in a lower quality of rest.

153 In the fourth place, the Republic of Poland considers that it is not clear whether the tachograph, the records of which constitute the evidence required by the third subparagraph of Article 8(8a) of Regulation No 561/2006, as inserted into that regulation by point 6(d) of Article 1 of Regulation 2020/1054, is that of the vehicle by means of which the driver returns to the employer's operational centre or to his or her place of residence or that of the vehicle generally used by the driver. In

accordance with Article 33(2) of Regulation No 165/2014, data recorded by means of tachographs should be kept for at least one year. However, under recital 14 of Regulation 2020/1054, the transport undertaking could also use other documents to demonstrate compliance with the obligation laid down in point 6(d) of Article 1 of that regulation, without, however, Article 8(8a) of Regulation No 561/2006 specifying the period for which those documents are to be kept.

154 While it is true that Member States may, under certain conditions, adopt measures implementing EU law, regulations should nevertheless determine with sufficient precision the content of those national measures. That is not the case with the provisions of point 6(d) of Article 1 of Regulation 2020/1054, which grant the competent national authorities too broad a margin of discretion or allow an excessively wide range of heterogeneous national solutions. However, that regulation is specifically intended to increase legal certainty as regards the obligations incumbent on transport undertakings. Those obligations should therefore be defined exhaustively and indisputably in a directly applicable EU act in order to ensure the uniform application of EU law in the internal market. The clarifications made to the provisions of that regulation by the various Member States would, on the contrary, lead to divergent applications within those Member States, thereby increasing legal uncertainty.

155 In the fifth place, the Republic of Bulgaria considers that the legal uncertainty to which point 6(d) of Article 1 of Regulation 2020/1054 gives rise is demonstrated by the contradictory interpretations which emerge both from the statement of reasons submitted by the Council at first reading during the legislative procedure and from the explanations provided by the Parliament during that procedure concerning an amendment that was ultimately not adopted. It is also confirmed by the statements made by the Commission in response to requests for clarification from representatives of the transport sector and in the 'Questions and Answers' documents relating, in particular, to Regulation 2020/1054 ('Mobility Package I – Social rules, Driving and rest times, Questions and Answers, Parts 1 and 2', 25 November 2020 and 21 April 2021), which contain guidelines that are not, in any event, binding.

156 In the sixth place, the Republic of Bulgaria states that, in the absence of legal certainty, it cannot be ruled out that point 6(d) of Article 1 of Regulation 2020/1054 may be interpreted by local authorities or EU citizens as requiring drivers to return every three or four weeks to their place of residence or to the Member State in which their employer is established. Thus, it is apparent from a report by the Belgian police that a fine was imposed on a transport undertaking on the sole ground that the driver who was checked had not returned after 13 weeks, without any assessment having been made as to the place where that driver had chosen to take his regular or compensatory weekly rest period, even though the driver had the opportunity to return to his place of residence or to the Member State in which his employer is established.

157 The Parliament and the Council contend that those pleas and arguments are unfounded.

(ii) Findings of the Court

158 It follows from the settled case-law of the Court that the principle of legal certainty requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular, where they may have adverse consequences. That principle requires, inter alia, that legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps accordingly (judgment of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 223 and the case-law cited).

159 However, those requirements cannot be interpreted as precluding the EU legislature from having recourse, in a norm that it adopts, to an abstract legal notion, nor as requiring that such an abstract norm refer to the various specific hypotheses in which it applies, given that all those hypotheses could not be determined in advance by the legislature (judgment of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 224 and the case-law cited).

160 Thus, it is not necessary for a legislative act itself to provide details of a technical nature, since it is open to the EU legislature to have recourse to a general legal framework which is, if necessary, to be made more precise at a later date (judgment of 30 January 2019, *Planta Tabak*, C-220/17, EU:C:2019:76, paragraph 32 and the case-law cited).

161 Consequently, the fact that a law confers a discretion on the authorities responsible for implementing it is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient precision, having regard to the legitimate aim pursued, to give adequate protection against arbitrary interference (judgment of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 225 and the case-law cited).

162 Similarly, the principle of legal certainty does not include an obligation to maintain the legal order unchanged over time, since the EU legislature remains free, within the limits of its discretion, to alter the existing legislative situation (see, to that effect, judgment of 3 June 2021, *Jumbocarry Trading*, C-39/20, EU:C:2021:435, paragraph 50).

163 It is in the light of those considerations that the compatibility of point 6(d) of Article 1 of Regulation 2020/1054 with the principle of legal certainty must be assessed.

164 In that regard, it should be recalled that that provision inserts in Article 8 of Regulation No 561/2006 a paragraph 8a, which comprises three subparagraphs.

165 According to the first subparagraph, transport undertakings are to organise the work of drivers in such a way that drivers are able, during each period of four consecutive weeks, to return to the employer's operational centre or to the driver's place of residence in order, respectively, to begin or spend their regular or compensatory weekly rest period there, as the case may be.

166 The second subparagraph provides that, where a driver has taken two consecutive reduced weekly rest periods, in accordance with Article 8(6) of Regulation No 561/2006, as amended by point 6(a) of Article 1 of Regulation 2020/1054, the transport undertaking is to organise the work of the driver in such a way that the driver is able to return during the third week in order to take his or her regular or compensatory weekly rest period.

167 Finally, under the terms of the third paragraph, the transport undertaking is to document how it fulfils that obligation and is to keep the documentation at its premises in order to present it at the request of control authorities.

168 As regards, in the first place, the argument of the Republic of Lithuania, the Republic of Bulgaria and the Republic of Poland that Article 8(8a) of Regulation No 561/2006, as inserted by point 6(d) of Article 1 of Regulation 2020/1054, does not make it possible to understand, first, whether the obligation laid down in that provision is imposed on drivers or transport undertakings and, secondly, whether drivers are free to choose a location different from the employer's operational centre or their place of residence, in order to begin or spend their regular or compensatory weekly rest period, it should be noted that, as is clear from the wording of Article 8(8a), in particular from the words 'transport undertakings shall organise' in its first two subparagraphs, and 'the undertaking shall document how it fulfils that obligation' in its third subparagraph, the provisions of Article 8(8a) are addressed not to drivers but to transport undertakings, by imposing on those transport undertakings an obligation to organise the work of drivers so that they, as is clear from the words 'are able' used in the first two subparagraphs, have the opportunity, as the case may be, every three or four weeks, to return either to the employer's operational centre or to their place of residence in order, respectively, to begin or spend their regular or compensatory weekly rest period there.

169 As the Advocate General observed in point 126 of his Opinion, point 6(d) of Article 1 of Regulation 2020/1054 thus imposes on transport undertakings an obligation to organise the work of drivers, in the sense that those undertakings must, in their capacity as employer, make possible, using all the means at their disposal in the context of the employment relationship established with their drivers, the return of those drivers during their working time to one of the two places specified in that provision, namely the employer's operational centre or the driver's place of residence, that obligation being, moreover, limited to one of those two places only and therefore not extending to other places.

170 The obligation referred to in the preceding paragraph is, however, without prejudice to the driver's freedom to choose to take his or her regular or compensatory weekly rest period at the place where he or she wishes to do so.

171 Point 6(d) of Article 1 of Regulation 2020/1054 does not impose any obligation on drivers as regards the place where their regular or compensatory weekly rest period is taken. In particular, although,

as recital 8 of Regulation 2020/1055 confirms, that provision guarantees drivers the 'right' to return to one of the two specific places referred to therein in order to begin or spend that rest period, it does not impose any obligation on them in that regard. It does not therefore provide that drivers are required, in all circumstances, to return to the employer's operational centre or to their place of residence, leaving them free to choose to take their regular or compensatory weekly rest period at the place where they so wish.

172 The scope to be attributed to the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 is, moreover, confirmed by recital 14 of that regulation, which states that, in order to prevent drivers from remaining away from their place of residence for an excessively long period, transport undertakings must organise drivers' work in such a way as to 'enable' them to reach the employer's operational centre or their place of residence, as the case may be, every three or four weeks, while expressly stating that drivers are 'free to choose where to spend their rest period'.

173 It thus follows that, although point 6(d) of Article 1 of Regulation 2020/1054 preserves the freedom of drivers as to the choice of the place where they wish to begin or take their regular or compensatory weekly rest period, the EU legislature has primarily, and more fundamentally, ensured that no pressure is exerted on drivers to ostensibly choose not to return to their employer's operational centre or to their place of residence. In that regard, the Impact assessment – social section (Part 1/2, p. 49) noted the difficulty for drivers to prove the free nature of their choice when deciding to take their rest periods in the vehicle.

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175 Thus, point 6(d) of Article 1 of Regulation 2020/1054 cannot be interpreted, contrary to what is suggested by the Republic of Bulgaria, as allowing an employer to exempt itself from the obligation to organise the work of its drivers in order to make it possible for them to return on the ground that they have waived, in advance and in general, the right conferred on them by that provision to take their regular or compensatory weekly rest period at the place where they so wish.

176 As the Council has rightly pointed out, point 6(d) of Article 1 of Regulation 2020/1054 thus supplements Article 9(2) and (3) of Regulation No 561/2006, the content of which has not, in essence, been amended by point 8(b) of Article 1 of Regulation 2020/1054, and from which it follows that, where the driver leaves the vehicle at a place other than his or her place of residence or the employer's operational centre, the time spent travelling to and from the vehicle is not, in principle, regarded as forming part of the rest period. In that context, point 6(d) of Article 1 of Regulation 2020/1054 thus now guarantees drivers the right, underlying Article 9(2) and (3) of Regulation No 561/2006, to go to one of those two places to begin or spend their regular or compensatory weekly rest period there. As the time required for that return is not rest time but working time, it is the employer's responsibility to cover any costs associated with that return.

177 It follows that point 6(d) of Article 1 of Regulation 2020/1054 requires transport undertakings to organise the work of their drivers in such a way as to enable them to return, as the case may be, every three or four weeks, to the operational centre of the undertaking or to their place of residence in order to begin or spend their regular or compensatory weekly rest period there.

178 In order not to impair the effectiveness of the driver's right to return to one of the places referred to in the preceding paragraph, that provision also imposes, in principle, an obligation on the transport undertaking to organise at its own expense the return of that driver, unless the driver chooses not to return there, in order to begin or spend his or her regular or compensatory weekly rest period. Therefore, a transport undertaking is not required to take the necessary steps to organise the return of a particular driver if he or she has informed that undertaking that he or she does not to wish to return to one of those places.

179 Nor, therefore, contrary to what the Republic of Poland suggests, does point 6(d) of Article 1 of Regulation 2020/1054 require transport undertakings to compel drivers actually to take their regular or compensatory weekly rest period at their own place of residence, since an employer cannot impose the place where its worker is going to take that rest period or, a fortiori, control the activities carried out by a driver when he or she is not working.

180 It also follows that, contrary to what is suggested by the Republic of Lithuania, no penalty can be imposed either on the driver, if he or she refuses to take his or her regular or compensatory weekly rest period at his or her place of residence, or on the transport undertaking, where the driver does not return to one of the places specified in that provision, provided that that undertaking is able to

establish that the driver has freely chosen not to make use of the possibility of return which it intended to organise.

181 As regards, in the second place, the arguments put forward by the Republic of Lithuania and the Republic of Poland, alleging the absence of detail, in Regulation 2020/1054, concerning the practical implementation of the obligation laid down in point 6(d) of Article 1 of that regulation, in order to enable drivers to return, in particular the organisation of any such return by transport undertakings, it should be noted that, in accordance with the case-law referred to in paragraph 159 above, the principle of legal certainty does not preclude the EU legislature from having recourse, in a norm that it adopts, to an abstract legal concept and does not require such an abstract norm to refer to the various specific hypotheses in which it is capable of applying, in so far as all those hypotheses cannot be determined in advance by that legislature.

182 Observance of the principle of legal certainty does not therefore require the EU legislature either to define all the specific arrangements for implementing the provisions of a legislative act or to consider all the specific situations to which those provisions may apply, since that legislature is entitled, as is apparent from the case-law referred to in paragraph 160 of the present judgment, to have recourse, in the interests of flexibility and in order to act in compliance with the principle of proportionality, to a general legal framework which may be specified at a later stage.

183 The EU legislature cannot therefore be criticised for not having specified, in a provision of general application such as point 6(d) of Article 1 of Regulation 2020/1054, all the practical arrangements for the organisation of work as regards the possible return of drivers, in particular those concerning the means of transport that they may use to carry out that return. Such clarification would have undermined the flexibility that the EU legislature intended to allow transport undertakings, in their capacity as employers, to decide themselves, in the context of the employment relationship entered into with their drivers, the specific arrangements for the exercise of the corresponding rights conferred on those drivers, according to each particular situation. If that requirement of flexibility is not to be disregarded, the EU legislature cannot be criticised for not having explained, in such a provision of general application, the manner in which transport undertakings must reconcile the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 with respect for drivers' freedom to choose where they wish to take their regular or compensatory weekly rest periods, such rules being dependent on each individual case.

184 Similarly, the argument of the Republic of Lithuania that the expression 'place of residence' is not clearly defined must be rejected. Having regard to the usual meaning of those words and to the settled case-law of the Court, according to which the place of residence corresponds to the place where the habitual centre of interests of the person concerned is situated (see, to that effect, judgments of 11 November 2004, *Adanez-Vega*, C-372/02, EU:C:2004:705, paragraph 37, and of 11 September 2014, *B.*, C-394/13, EU:C:2014:2199, paragraph 26 and the case-law cited), it must be held that that concept refers, clearly and precisely, to a specific place and not to the territory of a Member State as a whole, as envisaged by the Republic of Lithuania.

185 Nor, as regards the specific situation of third-country drivers, can it be argued that the fact that point 6(d) of Article 1 of Regulation 2020/1054 does not explicitly regulate that situation entails an infringement of the principle of legal certainty, since, according to that provision, transport undertakings must make it possible for such drivers to return during their working time either to their place of residence, as the case may be, located in a third country, or to the employer's operational centre, located in the territory of the European Union.

186 As regards, in the third place, the more specific argument put forward by the Republic of Poland in that context, according to which point 6(d) of Article 1 of Regulation 2020/1054 appears to impose on transport undertakings the obligation to ensure that drivers will be able to return first to the employer's operational centre before then being able to return to their own place of residence, thus depriving them of the possibility of returning directly to that place, it cannot be accepted. It is apparent from the very wording of that provision, read in the light of recital 14 of that regulation, that drivers must be able to return to the first 'or' to the second of those two specific places in order to begin or spend their regular or compensatory weekly rest period there. The alleged practical complications involved in requiring a driver first to return to the employer's operational centre before being able to return to his or her place of residence are therefore the result of a misreading of that provision by that Member State.

187 Furthermore, while it is true that point 6(d) of Article 1 of Regulation 2020/1054 does not require drivers to return first to the operational centre of the employer, before returning, in accordance with their wishes, to their place of residence, it does not prohibit a transport undertaking, in its capacity

as employer, from requiring the drivers it employs, provided that that obligation is imposed during working time, to return first to that operational centre, since such an obligation relates to working time governed by the law applicable to the employment relationship between that undertaking and its drivers.

188 Furthermore, any such obligation to return first to the employer's operational centre does not in any way deprive the drivers concerned of the right to choose the place where they wish to take their regular or compensatory weekly rest periods, after having, where appropriate, complied with the instructions of their employer to return to that operational centre and having thus fulfilled an obligation incumbent on them under the employment relationship established with the latter.

189 As regards, in the fourth place, the Republic of Poland's argument that the third subparagraph of Article 8(8a) of Regulation No 561/2006, inserted into the latter by point 6(d) of Article 1 of Regulation 2020/1054, lacks clarity as regards the manner in which transport undertakings must document compliance with the obligation laid down in that provision, it should be noted that, according to recital 14 of that regulation, that evidential obligation may be fulfilled both by means of tachograph records and by means of drivers' duty rosters or by any other document.

190 It follows that, as the Advocate General observed in point 140 of his Opinion, the EU legislature intended to offer transport undertakings a certain flexibility by giving them the opportunity to prove, by using any relevant documentation for that purpose, both compliance with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 and the manner in which that obligation has, where appropriate, been reconciled, in a given case, with the driver's decision to take his or her regular or compensatory weekly rest period elsewhere than at his or her place of residence. Such flexibility is, moreover, consistent with that offered by the EU legislature to transport undertakings as regards the actual organisation of the driver's return.

191 In that regard, the fact that the third subparagraph of Article 8(8a) of Regulation No 561/2006, inserted into that regulation by point 6(d) of Article 1 of Regulation 2020/1054, does not identify more precisely how, and in particular by means of which documents, transport undertakings can demonstrate that they fulfil the obligation laid down in that provision, does not mean that that provision infringes the principle of legal certainty.

192 First of all, the requirements stemming from the principle of legal certainty cannot be understood, as is apparent from the case-law referred to in paragraph 159 above, as requiring a rule to mention the various specific hypotheses in which it may apply, in so far as not all those situations can be determined in advance by the EU legislature. Therefore, a provision such as that laid down in the third subparagraph of Article 8(8a) of Regulation No 561/2006, inserted by point 6(d) of Article 1 of Regulation 2020/1054, which applies to a multitude of different situations, must neither specify nor govern in detail all the situations to which it is intended to apply.

193 Next, it should be borne in mind that, as regards tachograph records, which recital 14 of Regulation 2020/1054 states may constitute relevant evidence, Regulation No 165/2014, as amended by Article 2 of Regulation 2020/1054, itself contains a set of specific provisions intended to ensure compliance with the provisions of Regulation No 561/2006, the Commission being responsible, under point 8(a) of Article 2 of Regulation 2020/1054, for adopting detailed provisions for the uniform application of the obligation to record and retain certain data relating to working time.

194 Furthermore, in so far as it proves necessary to further specify certain practical arrangements for the implementation, by transport undertakings, of their obligations under point 6(d) of Article 1 of Regulation 2020/1054, such as those relating to proof of compliance with that provision, it should be noted that Article 18 of Regulation No 561/2006, which was not amended by Regulation 2020/1054, expressly authorises the Member States, in accordance with Article 291(1) TFEU, to adopt the measures necessary for the application of Regulation No 561/2006. It is settled case-law that Member States may adopt rules for the application of a regulation provided that they do not thereby obstruct its direct applicability or conceal its nature as an act of EU law; that they specify that they are acting in the exercise of a discretion conferred on them under that regulation; and that they adhere to the parameters laid down thereunder (judgment of 12 April 2018, *Commission* v *Denmark*, C-541/16, EU:C:2018:251, paragraph 28 and the case-law cited).

195 Lastly, in the absence of specific rules at EU or national level relating to the manner in which transport undertakings must demonstrate that they fulfil their obligation under point 6(d) of Article 1 of Regulation 2020/1054, it is for those undertakings themselves, in their capacity as employers, to choose, within the framework of the flexibility offered by the EU legislature, a reliable and effective

method, using all the means at their disposal in the context of the employment relationship with their drivers, capable of ensuring compliance with the requirement of proof relating to that obligation (see, by analogy, judgment of 30 January 2019, *Planta Tabak*, C-220/17, EU:C:2019:76, paragraph 33 and the case-law cited).

196 As regards, in the fifth place, the argument put forward by the Republic of Bulgaria, based on certain indications from the legislative procedure, it is sufficient to note that neither the explanations provided by the Parliament concerning amendments rejected during that procedure nor those set out during that procedure by the Council in its explanatory memorandum on the proposal for a working time regulation, which constitute intermediate acts adopted by the EU institutions in order to prepare for the adoption of a legislative act without definitively laying down their position, can affect the interpretation of point 6(d) of Article 1 of Regulation 2020/1054, as is apparent from the wording of the final version of that provision adopted by the EU legislature. It follows that such documents cannot give rise to legal uncertainty.

197 The same applies to statements made by the Commission after the adoption of Regulation 2020/1054, such as those contained in the 'Questions and Answers' documents relating to that regulation, referred to in paragraph 155 above, since those documents, which are not, moreover, unusual, have no binding legal force (see, by analogy, judgment of 12 April 2018, *Commission* v *Denmark*, C-541/16, EU:C:2018:251, paragraph 47). Those statements cannot therefore demonstrate that point 6(d) of Article 1 of that regulation infringes the principle of legal certainty.

198 Finally, in the sixth place, the fact alleged by the Republic of Bulgaria that a fine was imposed by the Belgian police on the sole ground that the driver who was checked had not returned home after 13 weeks, without any assessment having been made as to where he had chosen to take his regular or compensatory weekly rest period, even though that driver had the opportunity to return to his place of residence or to the Member State in which his employer is established, cannot, even if it were established, prove that point 6(d) of Article 1 of Regulation 2020/1054 infringes the principle of legal certainty. Such an infringement cannot reasonably be inferred from the manner in which the national authorities applied that provision in a particular case.

199 Consequently, the fourth part of the fourth plea in law relied on by the Republic of Lithuania, the third plea in law relied on by the Republic of Bulgaria and the second plea in law relied on by the Republic of Poland must be rejected as unfounded.

200 It follows that the other pleas and arguments put forward by the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland in support of their claims for annulment of point 6(d) of Article 1 of Regulation 2020/1054 must, as the first two Member States themselves expressly acknowledged in their action and at the hearing, be rejected in so far as they are based on the incorrect premiss that that provision requires drivers to return to their employer's operational centre or to their place of residence, as the case may be, every three or four weeks, without allowing them to choose for themselves where they wish to take their regular or compensatory weekly rest periods.

(2) The infringement of the principle of proportionality

(i) Arguments of the parties

201 The Republic of Lithuania, by its fourth plea in law in the first to third parts, the Republic of Bulgaria, by its second plea in law, Romania, by its first plea in law in the second part, and the Republic of Poland, by its first plea in law, submit that point 6(d) of Article 1 of Regulation 2020/1054 does not comply with the requirements arising from the principle of proportionality.

202 In the first place, those four Member States dispute the proportionality as such of the obligation laid down in that provision.

203 First, according to the Republic of Bulgaria, Romania and the Republic of Poland, that obligation does not comply with the principle of proportionality because of its negative consequences for transport undertakings, in particular as regards the considerable financial costs generated for them.

204 On the one hand, that obligation gives rise to operating costs associated with organising the driver's return to the Member State of establishment, and also losses in revenue connected with the time

spent in relation to that return, during which the drivers, travelling in empty vehicles, carry out no profitable activity, which limits commercial activity and reduces revenues. On the other hand, the requirement imposed on transport undertakings by the third subparagraph of Article 8(8a) of Regulation No 561/2006, as inserted by point 6(d) of Article 1 of Regulation 2020/1054, to document the manner in which they fulfil the obligation laid down in that provision also gives rise to significant additional burdens.

205 Transport undertakings are for the most part SMEs, for which all of those burdens are particularly heavy. In that regard, the EESC stressed the need to limit those burdens and, likewise, the CoR indicated that Member States on the periphery of the EU face greater difficulties in attempting to reach the core of the internal market. In addition, the provision at issue was adopted in a period of economic crisis triggered by the COVID-19 pandemic, which amplifies its negative effects.

206 Secondly, the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 does not comply with the principle of proportionality because of its negative consequences for drivers.

207 First of all, according to the Republic of Lithuania and the Republic of Bulgaria, that obligation infringes that principle in that, by restricting the right of drivers to choose for themselves where they intend to spend their rest periods and thereby affecting their freedom of movement, it constitutes a manifestly inappropriate measure going beyond what is necessary to achieve the objective of improving workers' rest conditions. In that context, the Republic of Poland maintains that that obligation is thus contrary to Article 4(f) of Regulation No 561/2006, according to which the concept of 'rest' includes any uninterrupted period during which a driver may freely dispose of his or her time. That Member State also submits that the EU legislature arbitrarily determined, in point 6(d) of Article 1 of Regulation 2020/1054, the places where drivers are required to take their rest.

208 Next, the Republic of Lithuania, Romania, the Republic of Bulgaria and the Republic of Poland claim that the higher number of journeys brought about by the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 will cause additional fatigue for them, in particular for those required to return to Member States located on the periphery of the European Union. The imbalance for those drivers created by that obligation affects their health and their capacity for work, having regard to the exhaustion caused by the intensive pace of returns. That situation also has negative consequences for road safety. Thus, the measure at issue is not appropriate for attaining the objective pursued by that regulation, consisting of improving the working conditions of drivers in the European Union as well road safety.

209 Finally, Romania claims that, although one of the objectives of Regulation 2020/1054 is, as is apparent from recital 1, to attract qualified workers in the field of road transport, the forced relocation of transport undertakings that will give rise to costs associated with that new obligation will expose a significant number of drivers to the risk of losing their jobs or having to move to another Member State in order to be able to continue to exercise the activity for which they are qualified. Thus, according to the information available to Romania, more than 45% of transport undertakings established in that Member State envisage setting up companies and subsidiaries, or relocating their activities in other Member States of Western Europe in order to attenuate the negative effects of the measures making up the Mobility Package. Those negative effects are felt in a sector of critical importance for the national economy, as services consisting in the carriage of goods by road are among the sectors that generate the most important exports for Romania and make a significant contribution to the national trade balance.

210 Thirdly, according to the Republic of Bulgaria, Romania and the Republic of Poland, the obligation laid down in point 6(c) and (d) of Article 1 of Regulation 2020/1054 does not comply with the principle of proportionality because of its negative consequences on the environment. That obligation means planning additional trips for the departure and return of thousands of drivers per day. In particular, drivers who come from Member States located on the periphery of the European Union are objectively required to travel over very long distances, much greater than those covered by their counterparts in Central and Western Europe, where most transport within the European Union takes place. In addition, the returns in all likelihood take place with a reduced load or even unladen, thus forcing thousands of vehicles to travel empty. That significant increase in the number of journeys entails an increase in carbon dioxide (CO_2) emissions and has a significant impact on the environment.

211 Fourthly, the Republic of Bulgaria, Romania and the Republic of Poland claim that less onerous solutions for drivers and transport undertakings existed. The freedom of drivers could have been preserved by imposing an obligation on transport undertakings to organise return only in cases in which drivers wish to return. Thus, transport undertakings should not have to bear excessive

additional costs. That solution guarantees greater flexibility and, accordingly, an appropriate protection of drivers' rights. Moreover, the Republic of Poland points out that a measure to that effect had been proposed by the Parliament's Committee on Employment and Social Affairs during the legislative procedure.

212 In the second place, Romania and the Republic of Poland dispute the examination carried out by the EU legislature of the proportionality of the measure laid down in point 6(d) of Article 1 of Regulation 2020/1054 and, in particular, complain of the lack of an impact assessment, in breach of the Interinstitutional Agreement, in particular points 12 to 15 thereof, relating to the final version of that provision. The EU legislature thus failed to analyse a number of circumstances relevant to the situation which that provision seeks to govern.

213 First, the Republic of Poland claims that the EU legislature did not assess whether compliance with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 would contribute to an increase in traffic. However, in practice, and since that obligation is fulfilled by means of road transport, compliance with that obligation would give rise to 8 880 000 return trips over a year. Nor did the EU legislature take into account the considerable distances that drivers employed in Member States that are situated in the periphery of the European Union will have to cover for the purpose of complying with that obligation.

214 Secondly, the Republic of Poland claims that the EU legislature did not carry out an appropriate assessment of the impact of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 on driver safety. It maintains that that legislature ignored an opinion of the EESC relating to the proposed working time regulation in which that committee had regretted the fact that the proposed amendments were not accompanied by a detailed assessment of driver, passenger or road safety in relation to driver fatigue. Romania maintains that the impact on drivers of long trips repeated over short periods was not taken into account when that provision was adopted.

215 Thirdly, the Republic of Poland claims that, unlike its initial version, the final text of point 6(d) of Article 1 of Regulation 2020/1054, requires transport undertakings, without an impact assessment having been carried out, to document how they fulfil the obligation laid down therein and to keep that documentation in order to be able to present it in the event of a control. According to that Member State, an obligation of that nature should have been preceded by an exhaustive analysis of its effects, taking into account the fact that most transport undertakings are SMEs.

216 The Parliament and the Council contend that those arguments are unfounded.

(ii) Findings of the Court

217 By their arguments, the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland call into question the compliance of point 6(d) of Article 1 of Regulation 2020/1054 with the principle of proportionality. Since Romania and the Republic of Poland dispute, moreover, that the EU legislature even examined the proportional nature of that provision, it is appropriate to examine the latter line of argument first.

– *Whether the EU legislature has examined the proportionality of point 6(d) of Article 1 of Regulation 2020/1054*

218 It is settled case-law of the Court that the EU legislature must be able to establish before the Court that it adopted the act at issue having exercised its discretion correctly. To that end, it must, at the very least, be able to produce and set out clearly and unequivocally the basic data on the basis of which this act was adopted and on which the exercise of its discretion depended (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 116 and the case-law cited).

219 That being so, the EU legislature enjoys a broad discretion not only as regards the nature and scope of the provisions to be taken, but also as regards the relevance of those basic data (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 114 and the case-law cited).

220 In that regard, it is settled case-law that the form in which those basic data are recorded is irrelevant. The EU legislature may take into account not only the impact assessment but also any

other source of information (judgment of 13 March 2019, *Poland* v *Parliament and Council*, C-128/17, EU:C:2019:194, paragraph 31 and the case-law cited).

221 Thus, the Court stated that the obligation to carry out an impact assessment in every circumstance does not follow from the terms of points 12 to 15 of the Interinstitutional Agreement (judgment of 3 December 2019, *Czech Republic* v *Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 82).

222 Although point 14 of the Interinstitutional Agreement provides that, upon considering Commission legislative proposals, the Parliament and the Council must take full account of the Commission's impact assessments, that agreement states, in point 12, that such assessments 'are a tool to help the three Institutions reach well-informed decisions and not a substitute for political decisions within the democratic decision-making process'. Therefore, while the Parliament and the Council are required to take account of the Commission's impact assessments, the content of such assessments is not binding on them, in particular as regards the evaluations contained therein (judgment of 21 March 2024, *Landeshauptstadt Wiesbaden*, C-61/22, EU:C:2024:251, paragraph 101 and the case-law cited).

223 Accordingly, the mere fact that the EU legislature adopted a different and, as the case may be, more onerous measure than that recommended following the impact assessment is not such as to demonstrate that it exceeded the limits of what was necessary in order to attain the stated objective (judgment of 21 March 2024, *Landeshauptstadt Wiesbaden*, C-61/22, EU:C:2024:251, paragraph 102 and the case-law cited).

224 Similarly, it is apparent from the case-law of the Court that, where the EU legislature amends substantial elements of the proposal submitted by the Commission, point 15 of the Interinstitutional Agreement does not impose any firm obligation on that legislature to carry out an update of the Commission's impact assessment, since that point provides only for the possibility of such an update where the Parliament and the Council 'consider this to be appropriate and necessary for the legislative process' (see, to that effect, judgment of 13 March 2019, *Poland* v *Parliament and Council*, C-128/17, EU:C:2019:194, paragraph 43).

225 It follows that, although the preparation of impact assessments is a step in the legislative process that, as a rule, must take place if a legislative initiative is liable to have a significant economic, environmental or social impact, the omission of such an impact assessment cannot, however, be classified as an infringement of the principle of proportionality where the EU legislature is in a particular situation requiring that an impact assessment be dispensed with and has sufficient information enabling it to assess the proportionality of an adopted measure (see, to that effect, judgment of 3 December 2019, *Czech Republic* v *Parliament and Council*, C-482/17, EU:C:2019:1035, paragraphs 84 and 85).

226 In that regard, in order to exercise its discretion correctly, the EU legislature may also be required to take into account, during the legislative procedure, the available scientific data and other findings that became available, including scientific documents used by the Member States during Council meetings that the Council itself does not have (see, to that effect, judgment of 3 December 2019, *Czech Republic* v *Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 86 and the case-law cited). The EU legislature may also take into account information which is in the public domain and which is accessible to any individual or undertaking concerned (see, to that effect, judgment of 8 July 2010, *Afton Chemical*, C-343/09, EU:C:2010:419, paragraph 39).

227 In the present case, it is common ground that the EU legislature had, when it adopted Regulation 2020/1054, an impact assessment at its disposal and that that impact assessment related, inter alia, to the obligation laid down in point 6(d) of Article 1 of that regulation. After noting the negative effects on the health of drivers, in terms of stress and fatigue, resulting from long periods spent far away from their place of residence, the Impact assessment – social section (Part 1/2, p. 20), accompanying the proposal for a working time regulation, examined in detail the impact of a measure facilitating the taking by drivers of their weekly rest period at their place of residence (Part 1/2, pp. 41, 55 and 63).

228 In that context, point 5(c) of Article 1 of that proposal provided for the insertion of paragraph 8b in Article 8 of Regulation No 561/2006 stating that the transport undertaking must organise the work of its drivers in such a way that they are able to spend at least one regular or compensatory weekly rest period in each period of three consecutive weeks at their place of residence.

229 It is true, as the Republic of Poland rightly points out in support of its argument, that the final version of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, as adopted by the EU legislature, was not the subject of a supplementary impact assessment, even though it differs from point 5(c) of Article 1 of the proposal for a working time regulation.

230 It should, however, be borne in mind that, in accordance with the case-law referred to in paragraphs 220 to 226 above, not only is the EU legislature not required to have an impact assessment in all circumstances, but, moreover, such an impact assessment is not binding on it, and the EU legislature therefore remains free to adopt measures other than those which were the subject of it. Therefore, the mere fact that, in the present case, the EU legislature adopted, in Regulation 2020/1054, a provision different from that which had been proposed by the Commission on the basis of the Impact assessment – social section cannot suffice to show that that legislature did not examine the proportionality of point 6(d) of Article 1 of Regulation 2020/1054.

231 Contrary to what the Republic of Poland suggests, those considerations are in no way called into question by the Interinstitutional Agreement, in particular by point 15 thereof. While it is true that that provision states that 'the … Parliament and the Council will … carry out impact assessments in relation to their substantial amendments to the Commission's proposal', the fact remains that, as noted in paragraph 224 above, point 15 does not contain any firm obligation on those institutions, since it provides only for the option of carrying out such an impact assessment when, in its express terms, the Parliament and the Council 'consider this to be appropriate and necessary for the legislative process'.

232 In any event, it should be noted, first, that point 6(d) of Article 1 of Regulation 2020/1054 restricts the rule that drivers must return every three weeks, as envisaged by the Commission in its proposal for a working time regulation, to the situation where the driver has taken, in accordance with the derogation provided for in the third subparagraph of Article 8(6) of Regulation No 561/2006, as inserted by point 6(a) of Article 1 of Regulation 2020/1054, two consecutive reduced weekly rest periods. Under point 6(d) of Article 1 of that regulation, the return of drivers every four weeks is thus the general rule.

233 Secondly, point 6(d) of Article 1 of Regulation 2020/1054 provides that the transport undertaking may also organise the work of drivers in such a way that they can return either to their place of residence or to the employer's operational centre. The latter option should, as the Council has pointed out, facilitate compliance with the obligation laid down in that provision, in particular where, as referred to in paragraph 185 above, the driver resides in a third country or in a place away from the employer's operational centre.

234 It follows that an obligation to carry out an additional impact assessment was all the more necessary in the present case since the provision ultimately adopted by the EU legislature in point 6(d) of Article 1 of Regulation 2020/1054 is more flexible for transport undertakings than that proposed by the Commission, with the result that its impact on them is less significant.

235 None of the arguments put forward by Romania and the Republic of Poland is such as to establish that the EU legislature was required to have such an additional impact assessment concerning the obligation laid down in that provision.

236 As regards, in the first place, the arguments of Romania and the Republic of Poland alleging that the EU legislature failed to examine the impact of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, on the volume of traffic, by reason of the additional journeys which it would entail, it is apparent from the Impact assessment – social section (Part 1/2, pp. 20 and 21) that, even before the entry into force of that provision, and even if there were certain differences depending on whether drivers were employed in a Member State that joined the European Union on or before 1 May 2004, most drivers, regardless of the Member State in which their employer was established, returned to their place of residence at least every four weeks. In particular, that impact assessment notes in that regard that, while an increasing number of drivers, mainly employed in a Member State which acceded to the European Union on or after 1 May 2004, spend long periods away from home, even those drivers generally only spend between two and four consecutive weeks on the road before returning to their place of residence, whereas drivers employed in a Member State which acceded to the European Union before that date generally do not stay away from their place of residence for more than one to two weeks. It follows that the EU legislature therefore had sufficient information to assess the impact of point 6(d) of Article 1 on the volume of traffic.

237 As regards, in the second place, the Republic of Poland's argument that the EU legislature did not carry out an appropriate analysis of the impact of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 on the safety of drivers, it must be rejected for the same reason as that set out in the preceding paragraph.

238 As regards, in the third place, that Member State's argument that there was no impact assessment relating to the measure provided for in the third subparagraph of Article 8(8a) of Regulation No 561/2006, as inserted by point 6(d) of Article 1 of Regulation 2020/1054, according to which transport undertakings must document how they fulfil the obligation laid down in that provision, it suffices to note that that measure, which is intended to address one of the main problems identified in the Impact assessment – social section, namely the difficulty of enforcing EU legislation, in particular in the social field (Part 1/2, pp. 14 to 17) is intrinsically linked to that obligation, which has been the subject of an impact assessment and is intended to ensure compliance with it. Furthermore, as is apparent from recital 14 of that regulation, and as has been pointed out in paragraph 189 above, the evidential obligation laid down by that measure may be satisfied by any document, the EU legislature not having laid down any particular procedure in that regard.

239 The arguments of Romania and the Republic of Poland alleging that the EU legislature has failed to examine the effects of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 must therefore be rejected.

– *The proportionality of point 6(d) of Article 1 of Regulation 2020/1054*

240 It is settled case-law of the Court that the principle of proportionality, which is one of the general principles of EU law, requires that acts adopted by the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 340 and the case-law cited).

241 That principle is also set out in Article 5(4) TEU and in Article 1 of the Protocol on the principles of subsidiarity and proportionality.

242 With regard to judicial review of compliance with the requirements flowing from the principle of proportionality, the Court has accepted that, in the exercise of the powers conferred on it, the EU legislature must be allowed a broad discretion in areas in which its action involves political, economic or social choices and in which it is called upon to undertake complex assessments and evaluations. Thus, it is not a question of knowing whether a measure adopted in such an area was the only or the best possible measure, as only the manifestly inappropriate nature of that measure by reference to the objective that the EU legislature intends to pursue can affect the legality of that measure (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 112 and the case-law cited).

243 However, even where it has broad discretion, the EU legislature must base its choice on objective criteria and examine whether the aims pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators. Under Article 5 of the Protocol on the principles of subsidiarity and proportionality, draft legislative acts must take account of the need for any burden falling upon economic operators to be minimised and commensurate with the objective to be achieved (judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 115 and the case-law cited).

244 It is for the EU legislature, where the act at issue is challenged before the courts, to establish before the Court that, for the purposes of adopting that act, it correctly exercised its discretion, taking into consideration all the relevant factors and circumstances of the situation the act was intended to regulate. It follows that, as is already apparent from paragraph 218 above, that legislature must at the very least be able to produce and set out clearly and unequivocally the basic facts that had to be taken into account as the basis of the contested measures of that act and on which the exercise of its discretion depended.

245 In that regard, it is for the applicant to put forward the reasons why the disadvantages resulting from the legislative choice made by the EU legislature are disproportionate when compared with the advantages that it otherwise offers (see, to that effect, judgment of 21 June

2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 177 and the case-law cited).

246 It should also be pointed out that, where the EU measure concerned has consequences in all Member States and requires that a balance between the different interests involved is ensured, taking into account the objectives of that measure, the attempt to strike such a balance, taking into account the particular situation of all Member States, cannot, in itself, be regarded as contrary to the principle of proportionality (judgments of 21 June 2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 167, and of 13 March 2019, *Poland* v *Parliament and Council*, C-128/17, EU:C:2019:194, paragraph 106).

247 The principles deriving from the case-law referred to in paragraphs 240 to 246 of this judgment fully apply to measures adopted in the field of the common transport policy, such as those provided for by Regulation 2020/1054, which, adopted on the basis of Article 91(1) TFEU, involves political choices and complex assessments of their economic and social impacts (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraphs 112 and 113). Thus, according to the Court's settled case-law, by giving the Parliament and the Council the task of establishing a common transport policy, the FEU Treaty conferred on them a wide discretion as to the adoption of appropriate common rules (see, to that effect, judgment of 9 September 2004, *Spain and Finland* v *Parliament and Council*, C-184/02 and C-223/02, EU:C:2004:497, paragraphs 29 and 56 and the case-law cited).

248 It is in the light of those considerations that it is necessary to examine whether the EU legislature infringed the principle of proportionality when it adopted point 6(d) of Article 1 of Regulation 2020/1054.

249 The objective pursued by that provision, in the light of which its proportionality must be examined, is to improve, as is apparent, inter alia, from recitals 1, 2, 6, 8, 14 and 36 of that regulation, the working conditions and road safety of drivers within the European Union, by ensuring that they can reach their place of residence at regular intervals in order to take their regular or compensatory weekly rest period, so that the period spent by drivers carrying out international transport operations away from that place of residence is not excessively long. The purpose of that provision is thus to remedy the absence of clear rules on weekly rest periods and the return of drivers to their place of residence.

250 That objective forms part of the more general objective pursued by Regulation 2020/1054, which is, as stated in recital 1, to ensure fair business conditions between transport undertakings in order to ensure that the road transport sector is safe, efficient and socially accountable, in order to ensure non-discrimination and to attract qualified workers. From that point of view, that regulation seeks to establish EU social rules on road transport that are clear, proportionate, fit for purpose, and are easy to apply and to enforce and implemented in an effective and consistent manner throughout the European Union.

251 The Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland, which do not dispute the legitimacy of those various objectives, submit that point 6(d) of Article 1 of Regulation 2020/1054, in itself, fails to comply with the requirements arising from the principle of proportionality.

252 In order to determine whether that provision complies with that principle, it is necessary to examine whether the obligation it lays down is appropriate for achieving the objective pursued by that provision, which is to improve the working conditions and road safety of drivers by ensuring that the time spent by drivers carrying out international transport operations away from their place of residence is not excessively long, and whether it does not manifestly go beyond what is necessary to attain that objective and whether it is proportionate in the light of that objective.

The appropriateness of point 6(d) of Article 1 of Regulation 2020/1054 to achieve the objective pursued

253 As regards, in the first place, the appropriateness of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 for achieving the objective pursued, it suffices to note that a measure which obliges transport undertakings to allow drivers to return, as the case may be, every three or four weeks to the employer's operational centre or to their place of residence in order, respectively, to begin or spend their regular or compensatory weekly rest period there, is capable of ensuring that those drivers do not stay away from their place of residence for long periods, since it gives

them the opportunity, if they so wish, of returning there, at regular intervals not exceeding four weeks, after having returned, where appropriate, depending on the specific arrangements for implementing that obligation, to the employer's operational centre, in accordance with the options offered in that regard to transport undertakings, referred to in paragraphs 186 to 188 and 233 above.

254 Admittedly, it is apparent from the Impact assessment – social section (Part 1/2, pp. 20 and 21) that, even before the adoption of point 6(d) of Article 1 of Regulation 2020/1054, many drivers, regardless of the Member State in which their employer was established, were already returning to their place of residence every two to four weeks, so that the obligation laid down in that provision should have only a limited impact on transport undertakings.

255 However, contrary to what is claimed by the Republic of Poland, it cannot be inferred from this that that obligation is inappropriate for attaining the objective pursued.

256 Even if a significant number of drivers employed in the European Union returned to their place of residence at least every four weeks before the adoption of Regulation 2020/1054, that was not the case for all of those drivers. In addition, the Impact assessment – social section (Part 1/2, p. 20) noted, as did the study carried out by the Commission on the social legislation applicable to the transport sector prior to the adoption of that regulation ('Ex-post evaluation of social legislation in road transport and its enforcement, Final report', June 2016 ('the *ex post* evaluation relating to social legislation'), p. 24), referred to in recital 4 of that regulation, that the periods spent by drivers employed in the European Union away from their place of residence have increased significantly over the last 10 years. Thus, point 6(d) of Article 1 of that regulation specifically guarantees the drivers concerned increased social protection, while ensuring, through the application of a mandatory and uniform rule in the European Union, more fair competition between transport undertakings and improving road safety throughout the European Union.

257 In those circumstances, the EU legislature was entitled to take the view that that provision is appropriate for attaining the objective pursued by it.

The necessary nature of point 6(d) of Article 1 of Regulation 2020/1054

258 As regards, in the second place, the necessity of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, this is disputed by the Republic of Bulgaria, Romania and the Republic of Poland on the ground that there are less restrictive alternative measures.

259 In that regard, it is true that the possibility of limiting that obligation to cases in which drivers choose to return was considered during the legislative procedure, as is apparent from the opinion of the Parliament's Committee on Employment and Social Affairs, mentioned by the Republic of Poland.

260 However, that alternative was not adopted by the EU legislature. Since, as has already been pointed out in paragraph 174 above, the driver is the weaker party to the contractual relationship with his or her employer, there would have been a risk that such an option would have led to the driver's choice not being completely free, since he or she would have been susceptible to pressure to make a choice that was favourable to the employer's interests. The Impact assessment – social section (Part 1/2, p. 49) has specifically highlighted, as regards the taking of weekly rest periods, the difficulty of demonstrating the existence of actual freedom of choice on the part of drivers.

261 In those circumstances, the EU legislature could legitimately consider that the alternative measure envisaged by the Republic of Bulgaria, Romania and the Republic of Poland would not achieve the same result as point 6(d) of Article 1 of Regulation 2020/1054.

The proportionality of point 6(d) of Article 1 of Regulation 2020/1054

262 As regards, in the third place, the proportionality of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, it is necessary to determine whether, as the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland submit, that provision imposes, having regard to the objective pursued by it, an excessive burden in view of the negative repercussions which it would have, respectively, on transport undertakings, on drivers and on the environment.

263 As regards the objective of general interest referred to in point 6(d) of Article 1 of Regulation 2020/1054, it must be recalled that, as is apparent from Article 3(3) TEU, the European Union is to

establish not only an internal market but also work for the sustainable development of Europe based, inter alia, on a highly competitive social market economy, aiming at full employment and social progress, and it is to promote, inter alia, social protection. The European Union therefore has not only an economic purpose, but also a social objective (see, to that effect, judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraphs 76 and 77 and the case-law cited). According to the preamble to the TFEU, the constant improvement of living and working conditions is an 'essential objective' of the European Union.

264 In that regard, it should be recalled that Article 90 TFEU provides that the objectives of the Treaties are to be pursued within the framework of the common transport policy. Furthermore, Article 9 TFEU states, specifically with regard to social policy objectives, that the European Union is to take into account requirements linked to those objectives in defining and implementing its policies and activities. Thus, the EU legislature is required to take full account of those objectives, which include, according to the first paragraph of Article 151 TFEU, inter alia, the promotion of a high level of employment, improved living and working conditions, ensuring proper social protection and a high level of human health protection.

265 The importance of those objectives may justify even substantial negative economic consequences for certain economic operators (see, by analogy, judgments of 23 October 2012, *Nelson and Others* C-581/10 and C-629/10, EU:C:2012:657, paragraph 81, and of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 98).

266 In that context, it should also be emphasised that, according to the case-law of the Court, where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature cannot be denied the possibility of adapting that act to any change in circumstances or any development of knowledge, having regard to its task of ensuring the protection of the general interests recognised by the FEU Treaty and taking into account the overarching objectives of the European Union enshrined in Article 9 of that Treaty, which include the requirements linked with promoting a high level of employment and guaranteeing adequate social protection. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives only if has the freedom to amend the relevant EU legislation so as to take account of such changes or advances (judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraphs 41 and 42 and the case-law cited).

267 In particular, the Court noted in that regard that, in the light of the significant developments which have affected the internal market, the EU legislature is entitled to amend a legislative act in order to rebalance the interests involved in order to increase the social protection of the workers concerned and to make competition within that market fairer by altering the conditions under which the freedom to provide services is exercised (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraphs 62 and 64).

268 In the Impact assessment – social section accompanying the proposal for a working time regulation, the Commission found not only that long periods spent away from their place of residence are likely to have negative effects on drivers' health in terms of stress and fatigue, but also that the periods spent by drivers employed in the European Union away from their place of residence appear to have increased significantly over the last 10 years because of the internationalisation of the transport market, while pointing out that the shortage of drivers was partly caused by the deterioration in working conditions which harms the image and attractiveness of the profession (Part 1/2, pp. 9 and 20).

269 It is in the light of those considerations that it is appropriate to examine, first, the arguments relating to the negative consequences for transport undertakings resulting from the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, put forward by the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland.

270 In that regard, it should be noted at the outset that the EU legislature took care to ensure a certain degree of flexibility for those undertakings, in order to mitigate such consequences.

271 First of all, point 6(d) of Article 1 of Regulation 2020/1054 does not concern all weekly rest periods, but only those taken by drivers during each four-week period, that period being reduced to three weeks only when they have previously taken two consecutive reduced weekly rest periods.

272 Next, by failing to specify precisely the manner in which the obligation laid down in that provision is to be performed, the EU legislature leaves the transport undertakings room for manoeuvre by allowing them to choose the manner in which they consider it most appropriate to perform that obligation.

273 Furthermore, as has already been stated in paragraphs 186 and 233 above, that provision enables the employer to organise the return of drivers, if they so wish, either to their place of residence or to the employer's operational centre, whereas the Commission, following a more radical approach, envisaged, in point 5(c) of Article 1 of its proposal for a working time regulation, an obligation on the employer to organise that return solely to the driver's place of residence.

274 Finally, Article 12 of Regulation No 561/2006, as amended by point 11 of Article 1 of Regulation 2020/1054, provides additional elements of flexibility as regards the return of drivers. Point 11 of Article 1 allows drivers, by way of derogation, to exceed the daily and weekly driving time by up to 1 hour in order to reach the employer's operational centre or their own place of residence in order to begin or spend a regular or compensatory weekly rest period, respectively, or even by a maximum of 2 hours, provided that he or she has taken an uninterrupted break of 30 minutes immediately before the additional driving, provided that this is offset by an equivalent rest period, taken en bloc with any rest period, no later than the end of the third week following the week in question. It follows from the Impact assessment – social section (Part 1/2, p. 51) that that amendment seeks to allow drivers, in particular those engaged in long international trips, to reach their place of residence or the employer's operational centre to take a regular or compensatory weekly rest period at the place of residence or in another private place of their choice.

275 As regards, more specifically, the arguments relating to the costs which point 6(d) of Article 1 of Regulation 2020/1054 entails for transport undertakings, it should be noted that the strengthening by the EU legislature of the social protection of certain categories of workers, in the present case through the obligation laid down in that provision, which seeks to improve their working conditions by ensuring that the time spent away from their place of residence is not excessively long, may entail additional costs for employers who are required to ensure compliance with it. The fact that an obligation imposed by the EU legislature may entail certain costs for the transport undertakings responsible for that obligation does not therefore, in itself constitute a breach of the principle of proportionality, unless those costs are clearly disproportionate having regard to the objective pursued.

276 In that regard, as regards, first of all, the arguments of the Republic of Bulgaria, Romania and the Republic of Poland that point 6(d) of Article 1 of Regulation 2020/1054 gives rise to significant additional costs for undertakings which are often SMEs, owing to the need to organise the return of drivers, a significant proportion of which are carried out by using unladen vehicles, it suffices to note that those Member States merely refer, in a general and abstract manner, to such an impact on the costs of transport undertakings, without putting forward any specific evidence to show how that impact is excessive in relation to the objective pursued. The Republic of Poland itself points out, moreover, that the costs arising from a return to the employer's operational centre or to the driver's place of residence are 'difficult to assess' and that it is 'difficult to produce the calculation of the costs'.

277 As is apparent from the Impact assessment – social section (Part 1/2, pp. 20 and 21), even before the entry into force of point 6(d) of Article 1 of Regulation 2020/1054, most drivers, irrespective of the Member State in which their employer was established, returned at least every four weeks to their place of residence.

278 As regards, next, the argument by which Romania and the Republic of Poland submit that that provision imposes particularly heavy burdens on transport undertakings established in Member States described as 'Member States situated on the periphery of the European Union', as compared with another group of Member States described, as the case may be, as 'Member States situated at the centre of the European Union' or 'Member States situated in the western part of the European Union', it should be noted that the costs associated with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 are likely to be greater for transport undertakings, regardless of the Member State in which they are established, that have opted for a business model consisting in providing most, if not all, of their services to recipients established in Member States distant from the first Member State and whose drivers thus carry out their transport operations away from their place of residence.

279 However, as the Council has rightly pointed out, it is precisely the drivers employed by transport undertakings that have opted for such a business model who are most in need of the protection

afforded by the harmonisation rule laid down in point 6(d) of Article 1 of Regulation 2020/1054, which confirms the proportionate nature of that provision in achieving the objective of improving working conditions which it pursues.

280 Furthermore, in so far as the business model in question is essentially adopted by transport undertakings established in certain Member States, it follows from the case-law of the Court, referred to in paragraph 246 above, that, where the EU act concerned has consequences in all the Member States and requires a balance to be struck between the various interests involved, having regard to the objectives pursued by that act, the pursuit of such a balance, taking into account the situation of all the Member States, cannot, in itself, be regarded as being contrary to the principle of proportionality.

281 Furthermore, it is apparent from settled case-law, referred to in paragraphs 266 and 267 above, that the EU legislature, in the light of significant developments which have affected the internal market, is entitled to amend a legislative act in order to rebalance the interests involved with a view to increasing the social protection of drivers by changing the conditions under which the freedom to provide services is exercised and to guarantee fair competition.

282 In the present case, it appears that the EU legislature specifically sought, by amending EU legislation on the working time of drivers, to strike a new balance, as is apparent from recital 1 of Regulation 2020/1054, taking into account, on the one hand, the interest of drivers in enjoying better working conditions and greater road safety and, on the other hand, the interest of employers in carrying on their transport activities under fair commercial conditions.

283 In weighing up the various interests at stake, the EU legislature was entitled to take the view, in the context of its wide discretion in relation to the common transport policy, that the significant increase, over the last 10 years, in periods spent by drivers employed in the European Union away from their place of residence made it necessary to introduce a specific measure aimed at improving the working conditions of the drivers concerned and that the negative effects on their health of long periods spent away from their place of residence were more serious than the negative consequences, particularly in terms of costs, for a number of undertakings which provide services on a more or less permanent basis in Member States other than those in which they are established. Such a rebalancing is consistent with the social ambitions of the European Union set out, inter alia, in Article 9 TFEU.

284 Thus, while it cannot be ruled out that point 6(d) of Article 1 of Regulation 2020/1054 may have different effects on transport undertakings depending on the Member State in which they are established, the fact remains that any negative effects that may result in terms of charges for certain employers must be weighed against the positive effects which will result in terms of social protection for all drivers employed in the European Union. The fact that the effects of that provision are not identical in all the Member States does not therefore demonstrate that the EU legislature adopted a manifestly disproportionate measure.

285 As regards, moreover, the Republic of Poland's argument relating to the costs arising from the obligation to provide documentation laid down in the third subparagraph of Article 8(8a) of Regulation No 561/2006, as inserted by point 6(d) of Article 1 of Regulation 2020/1054, it should be noted that that obligation to provide documentation is intended to remedy one of the main problems identified by the Impact assessment – social section, namely the difficulty of ensuring compliance with EU legislation (Part 1/2, pp. 14 to 17). Furthermore, compliance with the obligation laid down in the latter provision may, as has already been stated, inter alia, in paragraph 189 above, be proved by any document and therefore, in particular, by tachograph records and drivers' duty rosters, which is likely to limit the costs of the documentation thus required. In accordance with Article 16(2) of Regulation No 561/2006 and Article 33(2) of Regulation No 165/2014, in the version applicable before the entry into force of Regulation 2020/1054, transport undertakings were already required to keep and retain, for at least one year, the latter two types of documents.

286 Finally, as regards the argument relating to the COVID-19 pandemic, it suffices to note that it was not for the EU legislature to remedy the effects of that pandemic in the context of Regulation 2020/1054, which is intended to improve the working conditions of drivers, particularly since other specific EU legislative acts had such an objective, such as, in the field of transport, Regulation (EU) 2020/698 of the European Parliament and of the Council of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation (OJ 2020 L 165, p. 10). The effects of the COVID-19 pandemic are therefore irrelevant for the purposes of assessing whether point 6(d) of

Article 1 of Regulation 2020/1054 complies with the requirements arising from the principle of proportionality.

287 In any event, Article 14(2) of Regulation No 561/2006, as amended by point 13 of Article 1 of Regulation 2020/1054, allows Member States, in cases of urgency, to grant, in exceptional circumstances, a temporary derogation from the application of the provisions of Regulation No 561/2006 concerning, inter alia, driving time and rest periods, for a period not exceeding 30 days, which they must duly justify and immediately notify to the Commission.

288 As regards, secondly, the arguments relating to the negative consequences for drivers resulting from the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, relied on by the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland, it is necessary, first of all, to reject as unfounded the argument by which those Member States maintain that that provision restricts the right of drivers to choose where they wish to spend their regular or compensatory weekly rest period. That line of argument is based on the incorrect premiss, as is apparent from paragraphs 168 to 180 above, that that provision deprives drivers of the possibility of freely choosing another place to take that rest period. That argument must therefore, as stated in paragraph 200 above, be rejected on that ground alone.

289 The argument put forward in that context by the Republic of Poland, based on the arbitrary nature of the places where, according to that Member State, drivers are required, under point 6(d) of Article 1 of Regulation 2020/1054, to begin or take their regular or compensatory weekly rest period, as the case may be, every three or four weeks, must be rejected. In addition to what has been stated in the preceding paragraph, it cannot seriously be disputed that the employer's operational centre and the driver's place of residence, which objectively constitute places where a driver is likely, depending on the case, to begin or spend his or her weekly rest period, have, as the Advocate General observed in points 211 and 212 of his Opinion, a genuine link with that driver.

290 In that regard, it should be recalled, first, that the Court has already held that the operating centre to which a driver is normally attached should correspond to the place of departure from which he or she regularly carries out his or her service in order to pick up and drive a vehicle fitted with recording equipment and to which he returns at the end of his or her service in the normal course of his or her duties (see, to that effect, judgment of 29 April 2010, *Smit Reizen*, C-124/09, EU:C:2010:238, paragraphs 27 and 31).

291 Secondly, as has already been stated in paragraph 184 above, it is clear from settled case-law that the State in which the persons concerned habitually reside corresponds to that in which the habitual centre of their interests is also to be found.

292 As regards, next, the argument of the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland that point 6(d) of Article 1 of Regulation 2020/1054 would lead to increased fatigue for drivers as a result of long-distance return journeys cannot succeed. In accordance with Article 9(2) and (3) of Regulation No 561/2006, the content of which was not, in essence, amended by point 8(b) of Article 1 of Regulation 2020/1054, the time spent by a driver returning to his or her employer's operational centre or place of residence constitutes working time. As the Council has rightly pointed out, those Member States do not explain why the working time devoted to such a return journey would be more tiring than the working time relating to any other journey made in the context of a transport operation entrusted by the employer. In fact, it is clear both from the *ex post* evaluation relating to social legislation (p. 24) and from the Impact assessment – social section (Part 1/2, p. 20) that the long periods spent by drivers away from their place of residence are specifically a source of fatigue and stress, which, moreover, none of those four Member States disputes.

293 Finally, Romania's argument that point 6(d) of Article 1 of Regulation 2020/1054 is detrimental to the interests of drivers because of the risk of job losses resulting from bankruptcies and relocations of transport undertakings is speculative, in the absence of any factual evidence to support it.

294 As regards, thirdly, the arguments relating to the negative consequences on the environment resulting from the obligation laid down in point 6(d) of Article 1, the Republic of Bulgaria, Romania and the Republic of Poland claim, in particular, that that obligation will involve planning a multitude of additional journeys over long distances. However, as has been stated, inter alia, in paragraph 236 above, the Impact assessment – social section has shown that most drivers, including those employed in the Member States which acceded to the European Union on 1 May

2004, returned to their place of residence at regular intervals of less than four weeks, even before the adoption of that provision.

295 Furthermore, contrary to what is suggested by the Republic of Bulgaria, Romania and the Republic of Poland, it is by no means inevitable that drivers will use empty vehicles in order to exercise the right granted to them under point 6(d) of Article 1 of Regulation 2020/1054. First, in the context of the flexibility which that provision allows transport undertakings in order to comply with the obligation which it lays down, they may have recourse to other means of transport, such as public transport, the use of which does not necessarily appear to entail additional emissions linked to compliance with that obligation as such. Secondly, it is conceivable that the return to one of the two places referred to in that provision could be coupled with a return of the transport undertaking's vehicles to its operational centre as part of the usual transport activities.

296 In those circumstances, the alleged impact of point 6(d) of Article 1 of Regulation 2020/1054 on the environment, in particular in the form of a possible increase in pollutant emissions, is not directly linked to that provision but depends on the organisational choices made by transport undertakings for the implementation of the obligation laid down by that provision.

297 Accordingly, it must be held that point 6(d) of Article 1 of Regulation 2020/1054 does not entail disadvantages which are manifestly disproportionate to the objective pursued by that provision.

298 In the light of the foregoing, it cannot be considered that the EU legislature, when it adopted that provision, exceeded the limits of its discretion.

299 Therefore, the arguments of the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland calling into question the proportionality of point 6(d) of Article 1 of Regulation 2020/1054 must be rejected.

300 Consequently, the first to third parts of the fourth plea raised by the Republic of Lithuania, the second plea raised by the Republic of Bulgaria, the second part of the first plea raised by Romania and the first plea raised by the Republic of Poland must be rejected as unfounded.

(3) Breach of the principle of equal treatment and of non-discrimination

(i) Arguments of the parties

301 The Republic of Lithuania, by the second part of its second plea in law, the Republic of Bulgaria, by the first part of its fifth plea in law, and Romania, by the second part of its third plea in law, claim that point 6(d) of Article 1 of Regulation 2020/1054 does not comply with the requirements flowing from the principle of non-discrimination, as laid down in Article 18 TFEU. The Republic of Bulgaria also alleges infringement of Articles 20 and 21 of the Charter and breach of the principle of equality of the Member States, enshrined in Article 4(2) TEU and Article 95(1) TFEU, 'in so far as the Court considers it necessary'.

302 In the first place, those three Member States submit that point 6(d) of Article 1 of Regulation 2020/1054 breaches the principles of equal treatment and non-discrimination, in that it leads to discrimination between transport undertakings established in Member States on the periphery of the European Union and those established in Member States at the centre of the European Union. Organising the work of drivers of heavy goods vehicles in such a way that they are able to return to their place of residence or to their employer's operational centre at least every four weeks is substantially less onerous for transport undertakings established in Member States with a large domestic market, whose drivers provide transport in the Member State of the transport undertaking's establishment, close to their place of residence, than for transport undertakings established in Member States on the periphery of the European Union, whose domestic market is limited and which concentrate on international transport. In particular, Romania submits that the obligation laid down in point 6(d) of Article 1 is liable to result in significant losses for transport undertakings established in Member States on the periphery of the European Union, losses which are, in any event, substantially greater than those suffered by transport undertakings established in Member States of Central or Western Europe. Furthermore, the assessment of the effects on the transport market of Regulation 2020/1054 and, in particular, of the obligation laid down in point 6(d) of Article 1 thereof, should take into account the other elements of the first package of mobility measures. An overall assessment of those measures demonstrates their overall discriminatory nature for transport undertakings established in Member States on the periphery of the European Union.

303 The Republic of Lithuania claims, moreover, that the discrimination brought about by point 6(d) of Article 1 of Regulation 2020/1054 against transport undertakings established in Member States on the periphery of the European Union impedes the exercise of the freedoms characteristic of the internal market, since those undertakings are in a disadvantageous position by comparison with transport undertakings established in Member States at the centre of the European Union and the surrounding regions. That provision thus constitutes a protectionist measure whereby the transport undertakings established in Member States on the periphery of the European Union are forced out of the transport market of a part of the EU territory and which is intended to reduce the volume of those undertakings' activities. Those undertakings must not only offer drivers working conditions which restrict their freedom of movement but also organise their activity in such a way that a proportion of the journeys made by the vehicles is unprofitable or that the vehicles remain empty, while waiting for the drivers to be replaced or for them to return, after their rest period, from the employer's operational centre or their place of residence.

304 In the second place, the Republic of Lithuania and the Republic of Bulgaria claim that point 6(d) of Article 1 of Regulation 2020/1054 leads to discrimination between drivers employed by transport undertakings established in Member States on the periphery of the European Union and those employed by transport undertakings established in Member States at the centre of the European Union, since returning to the Member State of residence requires long-distance journeys during short rest periods, which is not necessarily something that drivers wish to do. Within the same Member State, the obligation at issue also gives rise to discrimination between local drivers and those of other Member States. In addition, workers employed in Member States on the periphery of the European Union are placed in an objectively more complicated situation, in that, in order to exercise their right to a regular or compensatory weekly rest period, they will have to travel longer distances and waste more time than workers employed in regions around the centre of the European Union.

305 In the third place, the Republic of Bulgaria submits that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 also breaches the principle of equality of the Member States, owing to the substantially less favourable situation of the Member States on the periphery of the European Union.

306 The Parliament and the Council consider that those pleas and arguments are unfounded.

(ii) Findings of the Court

307 As a preliminary point, it is necessary to reject the Republic of Bulgaria's claim alleging infringement of Article 95(1) TFEU, since, in breach of the requirements flowing from the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 120(c) of its Rules of Procedure, recalled in paragraph 139 above, that Member State invokes that infringement without providing any specific arguments in support of its claim, merely referring to Article 95(1) TFEU 'in so far as the Court considers it necessary'.

308 That said, it should be recalled that the principle of equal treatment is a general principle of EU law, enshrined in Article 20 of the Charter, of which the principle of non-discrimination set out in Article 21(1) thereof is a specific expression, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, to that effect, judgments of 24 February 2022, *Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto'*, C-262/20, EU:C:2022:117, paragraph 58, and of 14 July 2022, *Commission* v *VW and Others*, C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P, EU:C:2022:557, paragraphs 95 and 140 and the case-law cited).

309 The comparability of the respective situations must be assessed not in a global and abstract manner, but in a specific and concrete manner having regard to all the elements which characterise them. Those elements must, in particular, be determined and assessed in the light of the subject matter and purpose of the EU act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (see, to that effect, judgments of 26 June 2018, *MB (Change of gender and retirement pension)*, C-451/16, EU:C:2018:492, paragraph 42, and of 10 February 2022, *OE (Habitual residence of a spouse – Nationality criterion)*, C-522/20, EU:C:2022:87, paragraph 20 and the case-law cited).

310 A difference in treatment of comparable situations is justified if it is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment (judgments of

16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 47, and of 27 January 2022, *Fondul Proprietatea*, C-179/20, EU:C:2022:58, paragraph 72 and the case-law cited).

311 As regards, more specifically, the principle of non-discrimination on grounds of nationality, while Article 21(2) of the Charter sets out that principle, Article 52(2) thereof provides that rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. In that vein, Article 21(2) of the Charter corresponds to the first paragraph of Article 18 TFEU, as confirmed by the explanations on the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) relating to that provision, and must be applied in accordance with that article (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 18 and the case-law cited).

312 In that regard, Article 18 TFEU, which lays down a general principle prohibiting all discrimination on grounds of nationality, prohibits not only direct discrimination on grounds of nationality but also all indirect forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (see, to that effect, judgment of 4 October 2012, *Commission* v *Austria*, C-75/11, EU:C:2012:605, paragraph 49 and the case-law cited).

313 Moreover, as regards judicial review of whether the EU legislature has observed the principles of equal treatment and non-discrimination, the Court has held that that legislature has, in the exercise of the powers conferred on it, a broad discretion where it intervenes in a field involving political, economic and social choices and where it is called on to undertake complex assessments and evaluations. Thus, only if a measure adopted in this field is manifestly inappropriate in relation to the objectives which the EU legislature is seeking to pursue can the lawfulness of such a measure be affected (see, to that effect, judgment of 10 February 2022, *OE (Habitual residence of a spouse – Nationality criterion)*, C-522/20, EU:C:2022:87, paragraph 21 and the case-law cited). However, even where it has such a discretion, the EU legislature is obliged to base its choice on objective criteria appropriate to the aim pursued by the legislation in question, taking into account all the facts and the technical and scientific data available at the time of adoption of the act in question (see, to that effect, judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 58).

314 When exercising its discretion, the EU legislature must, in addition to the objective pursued, fully take into account all the interests involved. In examining the burdens associated with various possible measures, it must be considered that, even if the importance of the objectives pursued is such as to justify even substantial negative economic consequences for certain operators, the EU legislature's exercise of its discretion must not produce results that are manifestly less appropriate than those that would be produced by other measures that were also suitable for those objectives (judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 59 and the case-law cited).

315 In the present case, it is common ground that the rule laid down in point 6(d) of Article 1 of Regulation 2020/1054, in so far as it requires transport undertakings to organise the work of drivers so that they are able to return, as the case may be, every three or four weeks, to the employer's operational centre or to their place of residence, applies without distinction to all transport undertakings concerned, irrespective of the Member State in which they are established, to all drivers, irrespective of their nationality and the Member State in which their employer is established, and to all Member States, with the result that it does not involve direct discrimination prohibited by EU law.

316 It is therefore necessary to examine, in accordance with the case-law referred to in paragraphs 308 to 310 above, whether that provision unjustifiably applies an identical rule to different situations, in the light, in particular, of the objective pursued by that provision, and therefore constitutes indirect discrimination prohibited by EU law, in that, as the applicant Member States, in essence, claim, it is, by its very nature, liable to have a greater impact on transport undertakings established in Member States situated, in their view, on the 'periphery of the European Union', drivers employed by those undertakings and that group of Member States.

317 In that regard, it should be borne in mind that, as has been noted in paragraphs 249 and 250 above, that provision seeks to improve the working conditions and road safety of drivers within the European Union, by ensuring that it is possible for them not to spend an excessively long period of time away from their place of residence, and also to ensure fair and undistorted competition between transport undertakings within the territory of the European Union.

318 As regards, in the first place, the existence of alleged discrimination between transport undertakings established in the European Union, it cannot be ruled out, even if point 6(d) of Article 1 of Regulation 2020/1054 applies without distinction to all those undertakings, that that provision may, as has been pointed out in paragraph 278 above, have a greater impact on transport undertakings, regardless of the Member State in which they are established, which have opted for a business model consisting in providing most, if not all, of their services to recipients established in Member States distant from the first Member State.

319 However, as has been noted in paragraph 236 above, it is apparent from the Impact assessment – social section that a significant proportion of those transport undertakings, including those belonging to a Member State which acceded to the European Union with effect from 1 May 2004, were already carrying on their activities in a manner compatible with the obligation now laid down in point 6(d) of Article 1 of Regulation 2020/1054.

320 In that context, far from giving rise to discrimination between transport undertakings, that provision is, on the contrary, intended, as is clear from the Impact assessment – social section (Part 1/2, pp. 17 and 18) and recital 1 of Regulation 2020/1054, to remedy the conditions of unfair competition for transport undertakings which, owing to the absence of clear rules on the return of drivers, the various national interpretations and practices had previously fostered, by improving the working conditions of drivers, in particular those referred to in paragraph 316 above, and thus guaranteeing both road safety and fair and undistorted competition between transport undertakings.

321 As is apparent from the case-law referred to in paragraphs 266 and 267 above, the EU legislature, in view of the significant developments which have affected the internal market, is entitled to amend a legislative act in order to rebalance the interests involved in order to increase the social protection of drivers by altering the conditions under which the freedom to provide services is exercised.

322 A provision of EU law cannot therefore be regarded as being, in itself, contrary to the principles of equal treatment and non-discrimination on the sole ground that it has different consequences for certain economic operators, where that situation is the consequence of different operating conditions in which they are placed, in particular by reason of their geographical location (see, to that effect, judgments of 21 June 1958, *Wirtschaftsvereinigung Eisen- und Stahlindustrie and Others* v *High Authority*, 13/57, EU:C:1958:10, p. 292, and of 13 November 1973, *Werhahn Hansamühle and Others* v *Council and Commission*, 63/72 to 69/72, EU:C:1973:121, paragraph 17), and not an inequality in law inherent in the contested provision.

323 In any event, even if point 6(d) of Article 1 of Regulation 2020/1054 were to result in different situations being treated in the same way, within the meaning of the case-law referred to in paragraph 308 above, that treatment would be objectively justified by the objectives pursued within the framework of the common transport policy, in accordance with Article 90 TFEU. Those objectives include, inter alia, improved working conditions, referred to in the preamble to the FEU Treaty and in the first paragraph of Article 151 TFEU, and the guarantee of adequate social protection, referred to in Article 9 and the first paragraph of Article 151 TFEU.

324 In that regard, the EU legislature did not exceed the limits of the discretion which it enjoys, in the light of the case-law referred to in paragraph 313 above, by its choice to prevent, when adopting a provision applicable without distinction to all transport undertakings established in the European Union, certain practices identified as contributing to the deterioration of working conditions for drivers, even if that choice means that certain transport undertakings will have to bear higher costs.

325 In the light of the facts and the technical and scientific data available at the time of the adoption of the provision in question, the EU legislature based that choice on criteria which were objective and appropriate to the objectives pursued, taking full account of the interests involved, within the meaning of the case-law referred to in paragraphs 313 and 314 above.

326 As regards, in the second place, the existence of alleged discrimination between drivers, invoked by the Republic of Lithuania and the Republic of Bulgaria, the arguments of those two Member States are based, essentially, if not exclusively, on the incorrect premiss that point 6(d) of Article 1 of Regulation 2020/1054 requires drivers to return to the employer's operational centre or their place of residence, without being free to choose where to take their regular or compensatory weekly rest period. To that extent, that line of argument must therefore be rejected, as has already been stated in paragraph 200 above.

327 As to the remainder, all drivers employed in the European Union are in a comparable situation as regards their right to take a regular or compensatory weekly rest period. In particular, those drivers must all be able, irrespective of their nationality and the Member State in which their employer is established, to take that rest period regularly at their place of residence if they so wish.

328 In those circumstances, as the Advocate General observed in point 342 of his Opinion, it cannot be considered that the EU legislature manifestly exceeded its broad discretion by failing to distinguish between different drivers according to the distance that they must travel in order to return to their place of residence or their employer's operational centre, when such a distinction would have had the effect of excluding certain drivers from the social protection guaranteed by the measure provided for in point 6(d) of Article 1 of Regulation 2020/1054, by reason of the business model chosen by their employer.

329 As the Council rightly submits, since all drivers in the road transport sector are in a comparable situation as regards their right to take a regular or compensatory weekly rest period, they must be granted the same rights, in particular as regards the return to their place of residence or to the employer's operational centre, despite the different costs which the exercise of those rights might entail for their respective employers according to the business model chosen by the latter.

330 In that regard, as has been pointed out in paragraph 279 above, it is precisely drivers who are employed by transport undertakings providing most, if not all, of their services to recipients established in Member States distant from the Member State in which those undertakings are established and who therefore, in principle, carry out their transport operations far from their place of residence, who most need the protection established by the harmonisation rule laid down in point 6(d) of Article 1 of Regulation 2020/1054.

331 As regards, in the third place, the existence of alleged discrimination between Member States in breach of the principle of equality of Member States before the Treaties, enshrined in Article 4(2) TEU, invoked by the Republic of Bulgaria, that Member State's line of argument is also based, essentially, if not exclusively, on the incorrect premiss that point 6(d) of Article 1 of Regulation 2020/1054 requires drivers to return to the employer's operational centre or their place of residence, without being free to choose where to take their regular or compensatory weekly rest period. To that extent, that line of argument must therefore be rejected.

332 Moreover, even if some Member States are indirectly affected more than others by that provision, notwithstanding that it applies without distinction, suffice it to recall that, according to the case-law of the Court, an EU measure which is intended to standardise rules of the Member States, provided that it is applied equally to all Member States, cannot be considered to be discriminatory, as such a harmonisation measure inevitably produces different effects depending on the prior state of the various national law and practices (see, to that effect, judgment of 13 November 1990, *Fedesa and Others*, C-331/88, EU:C:1990:391, paragraph 20).

333 Those considerations cannot be called into question by Romania's claim, based on the overall discriminatory effect resulting from all the provisions falling within the 'Mobility Package', which is the subject of the three actions brought by that Member State in Cases C-546/20 to C-548/20. Romania has not demonstrated, in Case C-546/20, that there is discrimination resulting from point 6(d) of Article 1 of Regulation 2020/1054. As to the remainder, the criticisms of that Member State concerning Regulation 2020/1055 and Directive 2020/1057 will be examined in the context of the pleas in law and arguments relied on by it in support of its actions in Cases C-547/20 and C-548/20 in support of its claims for annulment of all or part of those EU acts.

334 Consequently, the first part of the fifth plea in law relied on by the Republic of Bulgaria must be rejected as in part inadmissible and in part unfounded, and the second part of the second plea in law relied on by the Republic of Lithuania and the second part of the third plea in law relied on by Romania must be rejected.

(4) Infringement of the fundamental freedoms guaranteed by the FEU Treaty

(i) Arguments of the parties

335 In the first place, the Republic of Lithuania, by its first plea in law, and the Republic of Bulgaria, by the first part of its first plea in law, submit that point 6(d) of Article 1 of Regulation 2020/1054 infringes Article 45 TFEU, since it requires drivers to return to their place of residence or to the employer's operational centre, without providing for the possibility for drivers themselves to choose

where they wish to spend their regular or compensatory weekly rest period. Those Member States claim, moreover, that, in accordance with Article 4(f) of Regulation No 561/2006, drivers have the fundamental right to choose where to take their rest period.

336 Point 6(d) of Article 1 of Regulation 2020/1054 also deprives drivers of their right to stay in a Member State in order to work there and to remain in the territory of a Member State after having been employed in that State. Drivers cannot remain in the host Member State after carrying out transport operations there.

337 In order to be truly effective, the right of workers to be engaged and employed without discrimination must necessarily be complementary, as the Court held in the judgment of 7 May 1998, *Clean Car Autoservice* (C-350/96, EU:C:1998:205, paragraphs 20 and 21), to the right of employers to engage them in accordance with the rules governing freedom of movement for workers. By adopting point 6(d) of Article 1 of Regulation 2020/1054, the EU legislature introduced legislation which obliges transport undertakings to infringe the free movement of workers by requiring them to compel drivers to return to their place of residence or to the undertaking's operational centre against their will. That provision thus leads to discrimination against drivers active in the road transport sector compared with workers active in other transport sectors.

338 In the second place, by the first part of its second plea in law, the Republic of Lithuania claims that point 6(d) of Article 1 of Regulation 2020/1054 is not compatible with the objective of the effective and competitive functioning of the internal market set out in Article 26 TFEU. Point 6(d) of Article 1, first, impedes the free movement of workers and, secondly, treats workers employed in Member States on the periphery of the European Union in a discriminatory manner as compared with workers employed in Member States at the centre of the European Union and the surrounding regions.

339 The former are placed in an objectively more complicated situation, in that, in order to exercise their right to a regular or compensatory weekly rest period, they must travel greater distances and lose more time than the latter. Similarly, the exercise of the characteristic freedoms of the internal market is hindered for transport undertakings established in Member States on the periphery of the European Union, since they are in a less favourable position than undertakings established in Member States at the centre of the European Union. Point 6(d) of Article 1 of Regulation 2020/1054 is thus, for the same reasons as those mentioned in paragraph 303 above in the context of the line of argument alleging breach of the principle of proportionality, a protectionist measure.

340 In the third place, by the second part of its first plea in law, the Republic of Bulgaria submits that point 6(d) of Article 1 of Regulation 2020/1054 infringes Article 21(1) TFEU and Article 45 of the Charter.

341 In their capacity as citizens of the European Union, drivers have the right to move freely within the territory of the European Union during their rest periods. Requiring them to leave the territory of a Member State and to travel to a specific place in order to take their regular or compensatory weekly rest period there thus constitutes a restriction on the freedom of movement guaranteed by those provisions.

342 Furthermore, that restriction is not justified by the legitimate objective of improving working conditions.

343 First, the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 is not suitable for attaining that objective. The right of drivers to dispose freely of their rest periods should include the freedom to choose the place where they intend to spend that rest period and to decide whether or not to travel for that purpose, taking into account, in particular, the frequency of the return cycles to the State of residence and the increase in stress and fatigue involved in frequent and long journeys linked to compliance with the obligation to return. The measure at issue should provide the workers concerned with a real advantage which contributes significantly to their social protection.

344 Secondly, that obligation goes beyond what is necessary in order to achieve the aim which it pursues. The objective of ensuring a regular return of drivers to their place of residence could also be achieved just as effectively by a measure, such as that favoured by the Parliament, consisting of conferring on drivers the right to choose another place of rest, provided that that choice has been notified in writing to the employer at least one week before taking that rest period.

345 In the fourth place, Romania claims, by its second plea in law, that point 6(d) of Article 1 of Regulation 2020/1054, although applicable without distinction, unjustifiably restricts the freedom of establishment enshrined in Article 49 TFEU.

346 First, point 6(d) of Article 1 of Regulation 2020/1054 entails, for transport undertakings, new administrative obligations leading to an increase in the costs incurred. Those undertakings should be able, inter alia, to prove the organisation of the regular return of drivers by means of tachograph records, duty rosters of the drivers or other documentation. Furthermore, the setting up of a transport undertaking in a Member State on the periphery of the European Union would be less profitable in the light of the cost of travel every four weeks over thousands of additional kilometres, in order to organise the return from the Member States where demand for transport services is concentrated.

347 Secondly, point 6(d) of Article 1 of Regulation 2020/1054 entails a reduction in revenue for transport undertakings. Since most of those undertakings are SMEs, compliance with the resulting measures has repercussions on a significant part of the market, in the light, in particular, of the periods during which drivers carry out no profitable activity, and therefore has the effect of limiting the commercial activity of those undertakings. That provision therefore encourages transport undertakings established in Member States on the periphery of the European Union to set up subsidiaries or branches, or even to relocate their activities to Member States at the centre or in the western part of the European Union, while having a deterrent effect on transport undertakings established in the those Member States as regards the setting up of companies in peripheral Member States. That relocation is not the result of a genuine choice, but is the consequence of the constraints arising from the obligation to comply with the new conditions laid down in point 6(d) of Article 1 of Regulation 2020/1054.

348 In the fifth place, Romania, by the second part of its first plea in law, claims that the obligation for hauliers to organise their activity in such a way that regular or compensatory weekly rest periods are taken in accordance with the requirements flowing from point 6(d) Article 1 of Regulation 2020/1054 is capable of giving rise to unjustified restrictions on the freedom to provide services. The Republic of Bulgaria, in the context of its fifth plea in law, also alleges that that provision infringes that fundamental freedom.

349 Romania claims, in that regard, that transport undertakings must, because of point 6(d) of Article 1 of Regulation 2020/1054, organise their activities in such a way that those rest periods are taken in accordance with those requirements. However, most of those undertakings are SMEs, as is shown by the fact that, in that Member State, approximately 83% of transport undertakings have between one and five vehicles. In that context, the measures taken to comply with that provision also determine the periods during which drivers carry out no profitable activity, which is likely to lead to a fall in revenue. Since the organisation of the driver's return entails greater losses for undertakings established in Member States on the periphery of the European Union, those undertakings are forced, in order to reduce their costs, to divert their activities to Member States located in Western Europe by setting up subsidiaries or branches there, or indeed by relocating their activity to those States. The transport sector is essential for the national economy, in particular for exports.

350 The Parliament and the Council consider that those pleas and arguments are unfounded.

(ii) Findings of the Court

351 As a preliminary point, it is necessary to reject the Republic of Bulgaria's claim alleging infringement of the 'freedom to provide services', since, in disregard of the requirements flowing from the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 120(c) of its Rules of Procedure, recalled in paragraph 139 above, that Member State invokes that infringement without providing any specific arguments in support of that claim.

352 That said, it should be recalled that, in the field of transport, the freedom to provide services is governed not by Article 56 TFEU, which concerns the freedom to provide services in general, but by Article 58(1) TFEU, a specific provision under which 'freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport', namely Title VI of Part Three of the FEU Treaty, which comprises Articles 90 to 100 TFEU (see, to that effect, judgments of 22 December 2010, *Yellow Cab Verkehrsbetrieb*, C-338/09, EU:C:2010:814, paragraph 29, and of 21 December 2023, *Commission* v *Denmark (Maximum parking time)*, C-167/22, EU:C:2023:1020, paragraph 39).

353 It follows that services in the field of transport, within the meaning of Article 58(1) TFEU, are excluded from the scope of Article 56 TFEU (judgments of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 160, and of 21 December 2023, *Commission* v *Denmark (Maximum parking time)*, C-167/22, EU:C:2023:1020, paragraph 39 and the case-law cited).

354 Application of the principle of freedom to provide transport services must therefore be achieved, according to the FEU Treaty, by introducing a common transport policy, as governed by Articles 90 to 100 TFEU (see, to that effect, judgment of 22 December 2010, *Yellow Cab Verkehrsbetrieb*, C-338/09, EU:C:2010:814, paragraph 30).

355 In particular, it should be recalled in that regard, first of all, that, under Article 91(1) TFEU, the Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the EESC and the CoR, are to lay down, for the purpose of achieving that common policy and taking into account the distinctive features of transport, (i) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States, (ii) the conditions under which non-resident carriers may operate transport services within a Member State, (iii) measures to improve transport safety and (iv) any other appropriate provisions. When adopting those measures, the EU legislature must, under Article 91(2) TFEU, take account of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities. Next, according to Article 94 TFEU, any measures taken within the framework of the Treaties in respect of transport rates and conditions are to take account of the economic circumstances of carriers. Lastly, Article 95(1) TFEU prohibits discrimination, in the case of transport within the European Union, which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question.

356 The freedom to provide services as guaranteed by Article 56 TFEU can therefore be applicable to transport services only in so far as an EU act adopted on the basis of the provisions of the Treaties relating to transport has made it applicable (see, to that effect, judgments of 5 October 1994, *Commission* v *France*, C-381/93, EU:C:1994:370, paragraphs 12 and 13; of 6 February 2003, *Stylianakis*, C-92/01, EU:C:2003:72, paragraph 24; and of 21 December 2023, *Commission* v *Denmark (Maximum parking time)*, C-167/22, EU:C:2023:1020, paragraph 40).

357 By contrast, the provisions of the FEU Treaty on freedom of establishment, laid down in Articles 49 to 55 TFEU, apply directly to transport (see, to that effect, judgment of 22 December 2010, *Yellow Cab Verkehrsbetrieb*, C-338/09, EU:C:2010:814, paragraph 33).

358 It follows that, as the Advocate General observed in points 48 and 50 of his Opinion, the transport regime in EU law is characterised by the combined application, on the one hand, of a right of establishment in any Member State based on the FEU Treaty and, on the other hand, of a right for hauliers to exercise freedom to provide transport services which is guaranteed solely in so far as that right has been granted by means of measures of secondary law adopted by the EU legislature in the context of the common transport policy, provided for in Articles 90 to 100 TFEU. That special regime thus limits the possibility for nationals of the Member States to provide their road transport services temporarily in a Member State other than the Member State in which they are established, the nationals of all Member States having, by contrast, the right to establish themselves permanently in another Member State, by exercising the fundamental freedom enshrined in Articles 49 to 55 TFEU, and to pursue the occupation of transport operator there under the same conditions as the nationals of that Member State.

359 In the present case, as regards, in the first place, the alleged infringement, first, of Article 26 TFEU, relating to the functioning of the internal market, and, secondly, of Article 21(1) TFEU and Article 45(1) of the Charter, relating to the free movement of EU citizens, and of Article 45 TFEU on the free movement of workers, it must be held that the pleas and arguments put forward in that regard by the Republic of Lithuania and the Republic of Bulgaria are based exclusively on the incorrect premiss, as noted in paragraphs 168 to 180 above, that point 6(d) of Article 1 of Regulation 2020/1054 requires drivers to return to the employer's operational centre or their place of residence, without being free to choose where to take their regular or compensatory weekly rest period. Those pleas and arguments must therefore, as already stated in paragraph 200 above, be rejected on that ground alone.

360 As regards, in the second place, the alleged infringement of freedom of establishment, invoked by Romania, it should be recalled that the first paragraph of Article 49 TFEU provides that, within the framework of the provisions set out in Chapter 2 of Title IV of Part Three of the FEU Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are to be prohibited.

361 As is apparent from paragraph 357 above, those provisions of the FEU Treaty on the freedom of establishment apply directly to transport and not, unlike the freedom to provide services, by way of Title VI of Part Three of the FEU Treaty relating to the latter.

362 According to settled case-law, freedom of establishment, which Article 49 TFEU grants to nationals of the Member States and which includes the right for them to take up and pursue activities as self-employed persons and to set up and manage undertakings, under the conditions laid down for its own nationals by the law of the Member State where such establishment is effected, entails, in accordance with Article 54 TFEU, for companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union, the right to exercise their activity in the Member State concerned through a subsidiary, a branch or an agency (judgment of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 36 and the case-law cited).

363 The concept of 'establishment' within the meaning of the FEU Treaty is very broad in scope, allowing a national of a Member State to participate, on a stable and continuous basis, in the economic life of a Member State other than his or her State of origin and to profit therefrom, unlike the freedom to provide services by which such a national pursues his or her activity in another Member State on a temporary basis (see, to that effect, judgment of 30 November 1995, *Gebhard*, C-55/94, EU:C:1995:411, paragraphs 25 and 26).

364 That concept thus involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period. Consequently, it presupposes actual establishment of the operator concerned in that Member State and the pursuit of genuine economic activity there (judgment of 2 September 2021, *Institut des Experts en Automobiles*, C-502/20, EU:C:2021:678, paragraph 32 and the case-law cited).

365 According to settled case-law of the Court, any measure which prohibits, impedes or renders less attractive the exercise of the freedom guaranteed by Article 49 TFEU must be regarded as a restriction on the freedom of establishment (judgments of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 61 and the case-law cited, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 61), since that prohibition applies not only to national measures but also to those adopted by the EU institutions (see, by analogy, as regards the freedom to provide services, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 104 and the case-law cited).

366 In that regard, it should also be noted that a restriction on that fundamental freedom is, in principle, prohibited by the FEU Treaty even if it is of limited scope or minor importance (judgment of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 40 and the case-law cited).

367 According to settled case-law, a restriction on freedom of establishment is permissible only if, in the first place, it is justified by an overriding reason relating to the public interest and, in the second place, it complies with the principle of proportionality, which implies that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and that it does not go beyond what is necessary in order to attain that objective (judgments of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 65, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 64).

368 In the present case, point 6(d) of Article 1 of Regulation 2020/1054, which is applicable without distinction to all transport undertakings falling within the scope of Regulation No 561/2006, irrespective of the Member State in which they are established, does not, contrary to Romania's submissions, constitute even a minimal restriction on the freedom of establishment guaranteed by Article 49 TFEU.

369 First, point 6(d) of Article 1 of Regulation 2020/1054 does not in any way impede the right of transport undertakings established in Member States other than Romania to carry on their transport activities there by setting up a subsidiary, branch or agency.

370 Secondly, that provision does not impede the right of transport undertakings established in Romania to carry on their activities in other Member States of their choice by setting up in those Member States a subsidiary, branch or agency.

371 Those considerations are not called into question by Romania's claims relating to the costs which the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 entails for transport undertakings.

372 It is true that transport undertakings which, before the adoption of that provision, did not organise the work of their drivers in such a way that they could return, as the case may be, every three or four weeks to the Member State in which those undertakings are established or to their place of residence may have to bear additional burdens as a result of the introduction of the obligation laid down by that provision. However, such an impact affects those undertakings irrespective of the Member State in which they are established, by reason of the business model which they have adopted.

373 Furthermore, it is true that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 is likely to have a greater impact on transport undertakings whose drivers make journeys for long periods away from their employer's operational centre or their place of residence, in that it may entail certain additional costs for those undertakings as well as possible loss of revenue. However, that difference in impact, which has its origin in the business model adopted by those undertakings, does not in any way reflect the existence of a restriction on freedom of establishment, since, as has been pointed out in paragraph 370 above, that provision does not in any way restrict the freedom of transport undertakings to establish themselves in other Member States by setting up there and effectively carrying out the activity of haulier there by means of a stable establishment.

374 As regards, in the third and last place, Romania's claim that point 6(d) of Article 1 of Regulation 2020/1054 is liable to give rise to unjustified restrictions on the freedom to provide services, it is sufficient to note that, even assuming that the obligation laid down in that provision is liable to render less attractive the provision of transport services covered by the business model referred to in paragraphs 372 and 373 above, that does not mean that the rules of the FEU Treaty on the freedom to provide services have been infringed.

375 As is apparent from paragraphs 352 to 358 above, the freedom to provide services in the field of transport is governed not by Article 56 TFEU, which concerns the freedom to provide services in general, but by Article 58(1) TFEU, a specific provision according to which the freedom to provide transport services is governed by Articles 90 to 100 TFEU, which forms Title VI of Part Three of the FEU Treaty, relating to the common transport policy. Application of the principle of freedom to provide transport services must therefore be achieved, according to that Treaty, by implementing the common transport policy, which falls within the scope of the provisions adopted by the Parliament and the Council on the basis, in particular, of Article 91(1) TFEU.

376 That is precisely the purpose of Regulation 2020/1054, adopted by the EU legislature on the basis of that provision, in order to amend Regulation No 561/2006, itself adopted on the basis of Article 71 of the EC Treaty, now Article 91 TFEU, in order to harmonise certain social legislation in the field of road transport.

377 It follows that, as the Advocate General observed in point 177 of his Opinion, the EU legislature is entitled, by adapting a legislative measure in order to increase the social protection of the workers concerned, to alter the conditions in which freedom to provide services is exercised in the field of road transport, since, under Article 58(1) TFEU, the degree of liberalisation in that field is determined not directly by Article 56 TFEU but by the EU legislature itself within the framework of the implementation of the common transport policy. The measures adopted by the Council in relation to the freedom to provide transport services may therefore have the objective not only of facilitating the exercise of that freedom, but also of ensuring, when necessary, the protection of other fundamental interests recognised by the European Union which may be affected by that freedom (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 105), including the improvement of working conditions, referred to in the preamble to the FEU Treaty and in the first paragraph of Article 151 TFEU, and

the guarantee of adequate social protection within the meaning of Article 9 TFEU and the first paragraph of Article 151 TFEU.

378 Furthermore, as is apparent from Article 90 TFEU, the European Union's common transport policy must permit the pursuit of the objectives of the Treaties, which include those referred to in the preceding paragraph.

379 It follows that, in the context of the measures adopted to implement the common transport policy, such as that laid down in point 6(d) of Article 1 of Regulation 2020/1054, the EU legislature is entitled, in order to ensure that drivers employed by transport undertakings do not remain away from their place of residence for long periods, to adopt measures to improve their working conditions and to ensure that they have adequate social protection.

380 Consequently, the claim, put forward by the Republic of Bulgaria in the context of its fifth plea in law, as referred to in paragraph 351 above, of infringement of the freedom to provide services must be rejected as inadmissible. Furthermore, the first plea in law and the first part of the second plea in law relied on by the Republic of Lithuania, the first plea in law relied on by the Republic of Bulgaria, the second plea in law relied on by Romania and the arguments relating to the infringement of the rules of the FEU Treaty on the freedom to provide services put forward by that Member State in the second part of its first plea in law must be rejected as unfounded.

(5) Infringement of Article 91(2) and Article 94 TFEU

(i) Arguments of the parties

381 Romania, in the context of the line of argument put forward in support of its second part of its first plea in law, alleging breach of the principle of proportionality, and the Republic of Poland, by its third and fourth pleas in law, respectively, submit that, by adopting point 6(d) of Article 1 of Regulation 2020/1054, the EU legislature disregarded the requirements flowing from Article 91(2) and Article 94 TFEU.

382 In the first place, as regards the infringement of Article 91(2) TFEU, the Republic of Poland submits that the superficial nature of the Impact assessment – social section and the absence of an impact assessment relating to the measure ultimately adopted in point 6(d) of Article 1 of Regulation 2020/1054 do not permit the conclusion that due account was taken of the impact of that provision on the standard of living and level of employment in certain regions, and on the operation of transport facilities. Although the EU legislature enjoys a broad discretion, the obligation incumbent on it to take account of certain effects cannot simply be limited to taking cognisance of those effects, if it is not to deprive Article 91(2) TFEU of its effectiveness.

383 First, as regards the effect on the operation of transport facilities, the Republic of Poland takes the view that the Impact assessment – social section did not, in particular, take account of the consequences of the rise in the number of journeys on the principal transit routes in the European Union, which amounts, in particular, to 8 880 000 return trips over one year. According to that Member State, those additional journeys increase congestion on roads and thus further aggravate the deterioration of the road infrastructures identified by the Impact assessment – social section. In that context, account should be taken of the 'fourth power law' drawn up by the American Association of State Highway and Transportation Officials (AASHTO), an American standardisation body, demonstrating the impact of vehicles on road infrastructure, according to which the effect of the deterioration of the roads increases exponentially with the increase in the weight of the vehicle raised to the fourth power. Although heavy goods vehicles are less numerous than passenger cars, their impact on infrastructure is much greater.

384 Secondly, as regards the effect on the standard of living and level of employment, the increase in road traffic is also harmful to the quality of life in areas close to the main transport hubs. The Republic of Poland submits that the legal changes concerning road transport will lead to an increase of 19%, on average, in the rate of at-risk behaviour by drivers, linked to the temptation to infringe the legislation in order to adapt to or circumvent that new obligation, increasing, at the same time, the number of fatal accidents. Nor was account taken of the severe consequences for drivers and transport undertakings established in Member States on the periphery of the European Union, for which the average length of return trips to the employer's operational centre is considerably greater, or of the additional administrative and organisational burdens imposed on transport undertakings, more than half of which are SMEs. The result would be a probable risk of bankruptcy for many transport undertakings or their transfer to the Member States at the centre of

the European Union. Similarly, Romania submits that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 will lead to a greater increase in costs and a greater reduction in revenue for transport undertakings established in Member States on the periphery of the European Union than for transport undertakings established in Member States at the centre of the European Union, which will lead to the relocation of a significant number of them to the latter Member States.

385 In the second place, as regards the infringement of Article 94 TFEU, the Republic of Poland submits that, in adopting point 6(d) of Article 1 of Regulation 2020/1054, the EU legislature did not take account of the economic situation of transport undertakings, in particular of the SMEs which make up the majority of those undertakings in the European Union. The Impact assessment – social section carried out a superficial examination of the impact of that provision on SMEs, even though it imposes administrative and organisational burdens on them. Romania also submits that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 has, for that reason, a serious adverse effect on the situation of transport undertakings.

386 Furthermore, the Republic of Poland points out that the increase in the number of kilometres inevitably resulting from that obligation should be assessed in the overall context of the first package of mobility measures, of which Regulation 2020/1055 forms part. The application of the provisions of that regulation gives rise to journeys of 2 035 200 000 kilometres per year just for vehicles returning to operational centres in Poland. On the assumption that 60% of those journeys are made unladen, those vehicles cover 1 221 120 000 kilometres empty in a year. Among the numerous available measures to ensure that workers exercise their right to rest, the EU legislature thus chose the one that is most onerous for transport undertakings.

387 One of the effects of that situation is the withdrawal from the market of some of the transport undertakings coming from the sector of SMEs established in Member States on the periphery of the European Union, since, because they are far removed from the centre of the European Union, it is particularly difficult for those undertakings to fulfil the administrative and organisational requirements associated with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054. Some of the transport undertakings may also decide to transfer their operational centre to Member States at the centre of the European Union. The assumption that the commercial decision to relocate the undertaking cannot adversely affect it is contradicted by the fact that the transfer of an undertaking's seat is a very significant burden for the functioning of the undertaking. In addition, unlike multinationals, SMEs are linked to the place from which they provide their services.

388 According to the Republic of Poland, the fact that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 was imposed during the COVID-19 pandemic also shows that the economic situation of transport undertakings was not taken into account. The economic effects of that pandemic were particularly felt in the transport sector, which was exposed to a fall in demand and to the restrictions on crossing internal borders reintroduced by the Member States. Those effects were already present during the legislative procedure.

389 The Parliament and the Council consider that those pleas and arguments are unfounded.

(ii) Findings of the Court

390 At the outset, it must be pointed out that, as has been noted in paragraphs 352, 354 and 355 above, both Article 91(2) TFEU and Article 94 TFEU form part of Title VI of Part Three of the FEU Treaty, relating to the common transport policy.

391 As regards, in the first place, the alleged infringement of Article 91(2) TFEU, it must be borne in mind that, under that provision, the EU legislature must take account of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities when adopting measures referred to in paragraph 1 of that article, the purpose of which is to implement the common transport policy, having regard to the distinctive features of transport policy.

392 Since Regulation 2020/1054 was adopted by the EU legislature on the basis of Article 91(1) TFEU, the legal basis of which is not challenged in the present actions, it was therefore for the legislature to take account of the requirements flowing from Article 91(2) TFEU when it adopted point 6(d) of Article 1 of that regulation.

393 In that regard, Article 91(2) TFEU requires the EU legislature, when adopting measures on the basis of Article 91(1), to 'take account' of their impact on the standard of living and level of employment in certain regions and on the operation of transport facilities, which is part of the broader framework of balancing the various objectives and interests at stake. Furthermore, as the Advocate General stated in point 285 of his Opinion, the use of the word 'seriously' indicates that Article 91(2) TFEU requires a significant degree of impact of the measures at issue on those parameters and not merely an effect on them.

394 It thus follows from Article 91(2) TFEU that serious effects on the standard of living and level of employment in certain regions and on the operation of transport facilities are not absolute limits in the light of the broad discretion enjoyed by the EU legislature in the field of the common transport policy in adopting measures to that end, provided that it takes those factors into account.

395 It follows that, when assessing the effects resulting from the adoption of a measure based on Article 91(1) TFEU, the EU legislature is required to take a balanced consideration of the various interests at issue in order to attain the legitimate objectives which it pursues. Thus, the mere fact that the legislature must take into account the standard of living and level of employment in certain regions and, therefore, the economic interests of transport undertakings does not preclude those undertakings from being the subject of binding measures (see, by analogy, judgment of 9 September 2004, *Spain and Finland* v *Parliament and Council*, C-184/02 and C-223/02, EU:C:2004:497, paragraph 72 and the case-law cited).

396 It follows that Article 91(2) TFEU essentially reflects the EU legislature's obligation to act in accordance with the principle of proportionality by adopting measures which are appropriate for attaining the objective pursued and which do not manifestly go beyond what is necessary in order to achieve it.

397 Apart from the fact that the pleas and arguments raised in the context of the examination of the alleged breach of the principle of proportionality have been rejected, Romania and the Republic of Poland have not provided, in support of the present pleas and arguments alleging infringement of Article 91(2) TFEU, any additional evidence capable of substantiating their claim that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 has a serious impact on the standard of living and level of employment in certain regions and on the operation of transport facilities, which the EU legislature did not take into account when introducing that obligation, in breach of Article 91(2) TFEU.

398 Moreover, those pleas and arguments overlap, either completely in the case of Romania or largely in the case of the Republic of Poland, with those already relied on in support of the pleas alleging breach of the principle of proportionality.

399 Accordingly, as regards, first, the impact of point 6(d) of Article 1 of Regulation 2020/1054 on the operation of transport facilities, the line of argument put forward by the Republic of Poland, by which it criticises the Impact assessment – social section for not having examined the adverse effects of that provision on road infrastructure, is based entirely on the premiss that the obligation on transport undertakings to organise the work of drivers in such a way that they can return to their employer's operational centre or place of residence is the cause of a significant increase in traffic. As is apparent from paragraphs 236 and 295 above, that premiss is incorrect in that it assumes, first, that, before the adoption of that measure, a reduced number of drivers returned to one or other of those places and, secondly, that that return must necessarily be effected by means of the vehicle used by the driver.

400 Moreover, as has been pointed out in paragraph 295 above, point 6(d) of Article 1 of Regulation 2020/1054 does not prohibit the transport undertaking from making the return of the driver coincide with the performance by the driver of a transport operation to the Member State in which those places are situated in order to limit empty returns intended solely to fulfil their obligation under that provision. In that regard, the Republic of Poland does not explain how such a return would affect road infrastructure more than any other journey made by those same drivers with their vehicle as part of their employer's usual transport operations. Furthermore, nor has it been shown that a vehicle which does not return to the employer's operational centre or to the driver's place of residence would necessarily be stopped and therefore not used during the corresponding period to continue the normal operations of the transport undertaking.

401 Secondly, as regards the impact of point 6(d) of Article 1 on the quality of life in areas located near the main transport hubs and the risks created by the obligation laid down in that provision for road

safety, the line of argument put forward by the Republic of Poland is also based, in essence, on the same incorrect premiss that that provision is the source of a significant increase in traffic, which does not permit the conclusion that the EU legislature did not take that effect into account. As to the remainder, in so far as that Member State criticises the EU legislature's failure to examine the effects of that provision on drivers employed in certain Member States, on account of the considerable distances to be covered by them and the resulting increased fatigue, its line of argument must be rejected for the reasons already set out in paragraph 292 above.

402 As regards, thirdly, the impact of point 6(d) of Article 1 of Regulation 2020/1054 on employment, the Republic of Poland claims that that provision entails additional administrative and organisational burdens which 'are very likely' to result in the bankruptcy of many transport undertakings or their relocation to the Member States at the 'centre of the European Union'. However, such a claim must be regarded, in the absence of any concrete evidence to support its merits, as speculative and, in any event, insufficient to demonstrate a serious effect on employment. The same is true, as has been noted in paragraphs 276 and 293 above, of Romania's claim, which is equally general and abstract, that the obligation laid down in that provision will result in transport undertakings established in certain Member States having to relocate because of the increase in their costs and the reduction in their revenue.

403 To that extent, those arguments cannot call into question the findings made by the Commission in the Impact assessment – social section (Part 1/2, pp. 60 and 61), according to which measures relating to working time and the arrangements for weekly rest periods should have a positive impact on the attractiveness of the profession of driver and, therefore, on the supply of the labour market, that impact assessment having noted in that regard that the shortage of drivers was, in part, caused by the deterioration in working conditions which harms the image and attractiveness of the profession (Part 1/2, p. 9). As is apparent from a study relied on by the Republic of Poland ('Transport of the Future. Report on prospects for the development of road transport in Poland in 2020-2030', 2019, p. 42), it is precisely the long distances far from the place of residence that constitute one of the reasons for such a shortage.

404 In any event, it should also be pointed out that, contrary to what Romania and the Republic of Poland suggest, the mere fact that certain transport undertakings could bear greater costs and administrative burdens because of the increase in social protection guaranteed to drivers by point 6(d) of Article 1 of Regulation 2020/1054 cannot in any way be regarded as a retrograde step in the establishment of a common transport policy constituting an infringement of Article 91(2) TFEU.

405 As has been stated in paragraph 266 above, where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature cannot be denied the possibility of amending that act to any change in circumstances or development of knowledge having regard to its task of safeguarding the general interests recognised by the FEU Treaty and of taking into account the overarching objectives of the European Union laid down in Article 9 of that Treaty, which include ensuring adequate social protection. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives only if it is open to it to adapt the relevant EU legislation to take account of such changes or advances.

406 As regards, in the second place, the alleged infringement of Article 94 TFEU, it should be recalled that, under that provision, any measure 'in respect of transport rates and conditions', taken within the framework of the Treaties, must take account of the economic situation of hauliers.

407 Point 6(d) of Article 1 of Regulation 2020/1054 does not govern rates or conditions for the carriage of goods or passengers, but lays down the conditions under which drivers take their regular or compensatory weekly rest period, by providing that transport undertakings must organise the work of drivers in such a way that the drivers are able to return, as the case may be, every three or four weeks to the employer's operational centre or to their place of residence. That provision therefore has too indirect an effect on the rates and conditions for the carriage of goods or passengers to fall within the scope of Article 94 TFEU, which is sufficient to reject the arguments put forward by Romania and the Republic of Poland alleging infringement of that provision.

408 Consequently, Romania's claim in the second part of its first plea in law, concerning infringement of Article 91(2) and Article 94 TFEU, and the third and fourth pleas in law relied on by the Republic of Poland, must be rejected as unfounded.

(6) Infringement of the rules of EU law on environmental protection

(i) Arguments of the parties

409 The Republic of Lithuania, by its third plea in law, and the Republic of Poland, by its fifth plea in law, claim that, by adopting point 6(d) of Article 1 of Regulation 2020/1054, the EU legislature infringed the rules of EU law on environmental protection. In that regard, the Republic of Lithuania alleges infringement of Article 3(3) TEU, Articles 11 and 191 TFEU and the 'EU environmental and climate change policy', while the Republic of Poland alleges infringement of Article 11 TFEU and Article 37 of the Charter.

410 Those Member States emphasise that, in accordance with those provisions, the EU legislature must take account of environmental protection requirements both when determining and implementing other EU policies and in the context of other EU activities. The objective of environmental protection laid down in Article 191 TFEU cannot be taken into account or achieved solely by the measures adopted pursuant to Article 192 TFEU, within the framework of a distinct and autonomous policy. The principle of integration enshrined in Article 11 TFEU allows the objectives and requirements of environmental protection to be reconciled with the other interests and objectives pursued by the European Union.

411 According to the Republic of Poland, an interpretation according to which Article 11 TFEU concerns areas of EU law, and not specific measures, does not enable the objective pursued by that provision to be achieved. The fact that Regulation 2020/1054 belongs to a wider package aimed at reducing the pollutant emissions caused by the road transport sector does not prove that due consideration was given to the effect of that regulation on the environment, in particular on the possibility of achieving the environmental objectives set out in the documents and acts adopted by the European Union in the field of the environment. Furthermore, it is also not possible to consider that, once fixed, the targets for the reduction of greenhouse gas emissions remain invariable, irrespective of the additional emissions generated in the future as a result of the fulfilment of obligations arising from new EU legislation.

412 The Republic of Lithuania and the Republic of Poland agree with the interpretation adopted by Advocate General Geelhoed in points 59 and 60 of his Opinion in *Austria* v *Parliament and Council* (C-161/04, EU:C:2006:66), according to which, where environmental interests have clearly not been taken into account or where they have been completely disregarded, Article 11 TFEU may serve as a standard for reviewing the legality of EU legislation. Where it is established that a particular measure adopted by the EU legislature has the effect of prejudicing the achievement of the objectives laid down by that legislature in other acts of secondary legislation adopted in environmental matters, the EU legislature is required to balance the conflicting interests and, where appropriate, to make appropriate amendments to the applicable measures in the field of the environment.

413 In the present case, the EU legislature failed to fulfil that obligation in that it did not examine the effect of the implementation of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 on environmental requirements.

414 The implementation of the latter obligation gives rise to additional journeys by heavy goods vehicles, including empty runs over long distances, resulting in emissions of CO2 and air pollutants which cause numerous health problems. The environmental effects of the contested provisions of Regulation 2020/1054 should also be examined in conjunction with those resulting from Regulation 2020/1055 and Directive 2020/1057, which are also part of the 'Mobility Package', which also force drivers of heavy goods vehicles to make additional journeys.

415 The Republic of Lithuania also expresses its view that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 will inevitably reduce the effectiveness of the transport system and undermine EU environmental and climate change policy.

416 As for the Republic of Poland, it notes, more specifically, that, according to the estimates of the International Road Transport Union (IRU), as set out in its open letter of 26 October 2018, the vehicle returns required by Regulation 2020/1055 will, in themselves, generate up to 100 000 additional tonnes of CO2 emissions per year. A report drawn up by KPMG ('Impact assessment regarding provisional agreement on Mobility Package I', 20 February 2020) also shows, based on the example of Bulgarian hauliers, that the annual increase in CO2 emissions generated by those compulsory vehicle returns to Bulgaria will amount to approximately 71 000 tonnes. According to

another estimate made by the European Centre for International Political Economy (ECIPE) (M. Bauer, '4 Million Tonnes Additional CO2 due to Proposed EU Cabotage Laws in Mobility Package', January 2020) on the basis of the calculations made by KPMG for the Bulgarian international transport sector and Eurostat data, the additional CO2 emissions for the whole EU resulting from the proposed amendment to the cabotage provisions would amount to approximately four million tonnes. According to the Republic of Poland's own assessments, the additional empty runs imposed by the obligation for vehicles to return, applicable to the Polish fleet of vehicles of over 2.5 tonnes active in international transport, would generate 672 024 tonnes of CO2.

417 According to the Republic of Lithuania and the Republic of Poland, those additional CO2 emissions are liable to impede the achievement of the climatic objectives pursued by the European Union by 2050, as referred to in the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019, 'The European Green Deal' (COM(2019) 640 final) ('the Green Deal'), objectives which the European Council adopted during a meeting held on 12 December 2019. The Republic of Poland also refers to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 September 2020, entitled 'Stepping up Europe's 2030 climate ambition: Investing in a climate-neutral future for the benefit of our people' (COM(2020) 562 final, p. 26).

418 The Republic of Poland considers that those additional CO2 emissions could also call into question the achievement by the Member States of the targets set out in Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26).

419 As regards the additional emissions of air pollutants, they could, according to the Republic of Poland, significantly impede Member States' obligations under Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ 2016 L 344, p. 1). Those additional emissions could also undermine the objectives pursued by Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

420 None of the contested acts comprising the 'Mobility Package' addresses those various risks. In its Impact assessment – social section, the Commission merely states that it has not identified any effect on the environment of the options envisaged. However, that finding is neither substantiated nor credible.

421 Although some Member States and the Commission pointed out the need to take into account the impact of the proposed measures, in particular the obligation for vehicles to return and the restrictions on cabotage operations, on the increase in the number of empty runs and CO2 emissions, and stressed the need to carry out an analysis of the effects of all those measures at EU level, the EU legislature disregarded those concerns. The preparation of additional analyses before the end of 2020, announced by the Commissioner for transport, Ms Vălean, concerning the effects of the compulsory return of vehicles to the Member State of establishment every eight weeks and the restrictions applicable to combined transport operations, does not in any way remedy that failure to fulfil obligations, instead confirming the merits of the present pleas and arguments, alleging infringement of the rules of EU law on environmental protection.

422 The Parliament and the Council consider that those pleas and arguments are unfounded.

(ii) Findings of the Court

423 As regards, in the first place, Article 3(3) TEU, relied on by the Republic of Lithuania, as the Advocate General observed in point 566 of his Opinion, that provision sets out various essential objectives pursued by the European Union, without establishing a hierarchy between them, so that the implementation of those objectives, which include, in the same way as environmental protection, inter alia, the implementation of sustainable development based on balanced economic growth and a social economy aiming at social progress and the promotion of social protection, must be the result of the policies and activities of the European Union and the Member States.

424 That provision cannot therefore, unlike the specific provisions of the FEU Treaty that implement the general objectives which it sets out and govern the matter in question, form part of the parameters for assessing the conformity with primary law of a provision of secondary legislation (see, to that effect, judgment of 11 March 1992, *Compagnie commerciale de l'Ouest and Others*, C-78/90 to C-83/90, EU:C:1992:118, paragraph 18 and the case-law cited).

425 As regards, in the second place, Article 191 TFEU, also relied on by the Republic of Lithuania, that article appears in Title XX of Part Three of the FEU Treaty, relating to EU policy on the environment. Regulation 2020/1054 was adopted not under that policy but under the common transport policy, which is the subject of Title VI of Part Three of the FEU Treaty, in particular on the basis of Article 91(1) TFEU, and that legal basis is not challenged in the present actions.

426 In the latter regard, it should also be recalled that a legislative act such as Regulation 2020/1054 cannot fall within the scope of EU environmental policy merely because it must take account of environmental protection requirements (see, to that effect, judgment of 15 April 2021, *Netherlands* v *Council and Parliament*, C-733/19, EU:C:2021:272, paragraph 48 and the case-law cited).

427 It follows that Article 191 TFEU on EU environmental policy is not relevant to the examination of the legality of point 6(d) of Article 1 of Regulation 2020/1054.

428 As regards, in the third place, Article 11 TFEU, which appears in Title II of Part One of that Treaty, which contains provisions of general application, that article states that environmental protection requirements must be integrated into the definition and implementation of the European Union's policies and activities, in particular with a view to promoting sustainable development.

429 As regards, in the fourth place, Article 37 of the Charter, that article provides that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the European Union and ensured in accordance with the principle of sustainable development.

430 In that regard, it is apparent from the explanations relating to the Charter that the principle laid down in that article is based, in essence, on Article 3(3) TEU and Articles 11 and 191 TFEU (see, to that effect, judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraph 62).

431 As regards, in the fifth place, the other instruments of secondary legislation relied on by the Republic of Lithuania and the Republic of Poland, it must be recalled that, as regards the various regulations and directives referred to in paragraphs 418 and 419 above, on which the Republic of Poland relies, the substantive legality of an EU act cannot be examined in the light of another EU act of the same status in the hierarchy of legal rules, unless the former has been adopted pursuant to the latter or unless it is expressly provided, in one of those two acts, that one take precedence over the other (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 119), which is not the case here.

432 The same is true, a fortiori, of the Green Deal, relied on by the Republic of Lithuania and the Republic of Poland, which, on the date of adoption of Regulation 2020/1054, constituted only a communication adopted by the Commission, and the conclusions of the meeting of the European Council of 12 December 2019, referred to in paragraph 417 above, relied on by the Republic of Lithuania, the alleged 'political' effect of which on the legislative power of the Parliament and of the Council cannot constitute a ground for annulment, by the Court, of the provisions of that regulation (see, to that effect, judgment of 21 June 2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 86).

433 In those circumstances, it is necessary only to examine whether, as argued, in essence, by the Republic of Lithuania and the Republic of Poland, the EU legislature, when it adopted point 6(d) of Article 1 of Regulation 2020/1054, infringed the requirements of environmental protection arising from Article 11 TFEU, read in conjunction with Article 37 of the Charter.

434 In that regard, it should, first, be noted that the Republic of Lithuania merely asserts, in a general and abstract manner, that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 will inevitably undermine EU policy on the environment. Its argument is based on the incorrect premiss, as is apparent from paragraphs 168 to 180 above, that drivers must necessarily return, according to the circumstances, often in empty heavy goods vehicles, to the employer's operational

centre or to their place of residence every three or four weeks. It follows that that line of argument must be rejected.

435 Secondly, the arguments put forward by the Republic of Poland relate almost exclusively not to the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, but to provisions contained in other acts forming the 'Mobility Package'. Most of the studies and other evidence on which that Member State relies in that context relate to the obligation, laid down in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, relating to the return of vehicles every eight weeks to an operational centre situated in the Member State in which the transport undertaking concerned is established. The latter provision is the subject of separate pleas in law in the actions brought against Regulation 2020/1055 in Cases C-542/20, C-545/20, C-547/20, C-549/20 to C-552/20 and C-554/20. In so far as the arguments put forward by the Republic of Poland do not relate to the provisions of Regulation 2020/1054, they must therefore be rejected as ineffective.

436 Thirdly, in so far as the Republic of Poland's arguments alleging infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, relate specifically to the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, it should be noted that Article 11 TFEU is, by its nature, horizontally applicable, which entails that the EU legislature must incorporate environmental protection requirements into the European Union's policies and activities and, in particular, in the common transport policy to which Regulation 2020/1054 relates.

437 Moreover, the review of the legality of point 6(d) of Article 1 of Regulation 2020/1054 which the Court is called upon to carry out, in the present case, in the light of Article 11 TFEU, read in conjunction with Article 37 of the Charter, concerns an EU act through which the EU legislature is required to ensure, as is apparent from paragraph 282 above, a balance between the various interests and objectives involved.

438 In those circumstances, even if the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, considered in isolation, were to have significant negative effects on the environment, it is necessary to take account of other measures undertaken by the EU legislature to limit the negative effects of road transport on the environment and to attain the overall objective of reducing polluting emissions, in order to determine whether there must be a finding that Article 11 TFEU, read in conjunction with Article 37 of the Charter, has been infringed.

439 In the present case, by its line of argument alleging infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, the Republic of Poland claims, in essence, that point 6(d) of Article 1 of Regulation 2020/1054 will cause additional emissions of CO2 and pollutants on account of the additional journeys of heavy goods vehicles, often empty, over long distances resulting from its implementation.

440 That line of argument is thus entirely based on the premiss that that provision entails a mandatory return of vehicles to the employer's operational centre or to the driver's place of residence, whereas only a small number of vehicles returned to one of those two places before the adoption of Regulation 2020/1054.

441 That premiss is incorrect, as is apparent, in particular, from paragraphs 170, 171, 236 and 295 above.

442 In those circumstances, the Impact assessment – social section (Part 1/2, p. 48) did not logically identify any environmental impact resulting from the measures envisaged by the Commission in its proposal for a working time regulation.

443 In the light of the foregoing, the arguments of the Republic of Lithuania and the Republic of Poland alleging infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, must be rejected.

444 Therefore, there is no need to examine either the arguments put forward by the Republic of Lithuania and the Republic of Poland based on other EU acts, the environmental objectives of which are allegedly compromised by the adoption of point 6(d) of Article 1 of Regulation 2020/1054, or the various measures adopted by the EU legislature in the road transport sector, relied on by the Parliament and the Council, in order to assess the extent to which that legislature took account of the overall objective of reducing polluting emissions in that sector.

445 Consequently, the third plea in law of the Republic of Lithuania and the fifth plea in law of the Republic of Poland must be rejected.

446 In the light of all the foregoing considerations, the actions brought by the Republic of Lithuania (Case C-541/20), the Republic of Bulgaria (Case C-543/20), Romania (Case C-546/20) and the Republic of Poland (Case C-553/20) must be dismissed in so far as they seek the annulment of point 6(d) of Article 1 of Regulation 2020/1054.

3. Point 6(c) of Article 1 of Regulation 2020/1054

447 In support of their respective actions seeking the annulment of point 6(c) of Article 1 of Regulation 2020/1054, the Republic of Bulgaria (Case C-543/20), Romania (Case C-546/20) and Hungary (Case C-551/20) rely, as the case may be, on breach of, in essence:

– the principle of proportionality (the fourth plea in law of the Republic of Bulgaria, the first part of the first plea in law of Romania and Hungary's single plea in law);

– the principles of equal treatment and non-discrimination (the second part of the fifth plea in law of the Republic of Bulgaria and the first part of the third plea in law of Romania);

– the provisions of the FEU Treaty relating to the freedom to provide services (the first part of the first plea in law of Romania, alleging breach of the principle of proportionality); and

– Article 91(2) and Article 94 TFEU (the first part of the first plea in law of Romania, alleging breach of the principle of proportionality).

(a) Breach of the principle of proportionality

(1) Arguments of the parties

448 The Republic of Bulgaria, by its fourth plea in law, Romania, by the first part of its first plea in law, and Hungary, by its single plea in law, claim that point 6(c) of Article 1 of Regulation 2020/1054 does not comply with the requirements flowing from the principle of proportionality. Although, by its single plea in law, Hungary also formally claims that there has been a manifest error of assessment, its arguments in the context of that plea are intended solely to demonstrate a breach of that principle.

449 In the first place, the Republic of Bulgaria, Romania and Hungary submit that point 6(c) of Article 1 of Regulation 2020/1054 breaches that principle as such, in that, because of the current state of European infrastructure, the prohibition on regular or compensatory weekly rest in a vehicle constitutes an obligation which is excessively difficult, if not impossible, to comply with. Owing to the insufficient number of secured parking areas and lack of appropriate accommodation near those parking areas, drivers and transport undertakings are frequently faced with requirements that are impossible to meet. In those circumstances, that measure cannot be implemented in such a way as to attain the objectives pursued, which shows that it is manifestly inappropriate. In addition, that measure places a manifestly disproportionate burden on drivers and transport undertakings. Consequently, by imposing such a requirement that is inapplicable in practice, the EU legislature made a manifest error of assessment.

450 The Republic of Bulgaria and Hungary observe that in the Impact assessment – social section (Part 1/2, p. 18), the Commission had already stated that the EU generally lacks appropriate rest facilities and secured parking areas. The insufficient state of the rest facilities in the European Union is also apparent from a study published by the Commission ('Study on Safe and Secure Parking Places for Trucks. Final Report', February 2019; 'the 2019 study on parking places', pp. 8 and 18 to 20). According to that study, out of 300 000 parking places for heavy goods vehicles in the European Union, only some 47 000 are partly secured and only 7 000 display a certified level of security. As the average demand for overnight parking places is estimated to be almost 400 000 places, there is a shortfall of around 100 000 places, while very few parking areas guarantee an appropriate level of safety and security. In addition, that study reveals an unequal allocation of safe and secure parking places by comparison with the European transit routes, as the 7 000 certified parking places are found only in certain Member States. Furthermore, the EESC and several Member States drew attention to that situation during the legislative procedure.

451 The question of parking areas and that of adequate accommodation, albeit different, are closely linked, in the sense that, for the driver, accommodation is only appropriate if it is close to an adequate and secure parking area capable of ensuring the protection of his or her cargo. The limited number of such parking areas further restricts the number of potential places of accommodation that the driver can use in order to take his or her weekly rest period.

452 The Republic of Bulgaria also claims that the insufficiency of the infrastructures is highlighted by the obligation incumbent upon the Commission, pursuant to point 7 of Article 1 of Regulation 2020/1054, to present, by 31 December 2024 at the latest, a report to the Parliament and to the Council on the availability of suitable rest facilities for drivers. Romania adds that that provision requires the Commission to publish a list of all parking areas. However, to date no website has been set up for that purpose.

453 Romania also claims that, in order to comply with point 6(c) of Article 1 of Regulation 2020/1054, drivers travelling on routes without safe and secure parking areas will have no choice other than to use insecure areas, where they will leave their vehicles while spending their rest time in appropriate accommodation, thus exposing the vehicle to crime. Under the Convention on the Contract for the International Carriage of Goods by Road (CMR), signed at Geneva on 19 May 1956, the haulier is responsible for the total or partial loss, or for damage, occurring between the time when it takes over the goods and the time of delivery, as well as for any delay in delivery. In the current state of European infrastructure the legislative solution adopted in that regulation therefore does not improve drivers' working conditions but, quite to the contrary, can have the effect of increasing driver fatigue and stress and also the risks for their safety, their goods and their vehicle. In a similar vein, the Republic of Bulgaria claims that the lack of secure parking areas for heavy goods vehicles in the European Union increases the risk of thefts and gives rise to insurance problems for hauliers.

454 The Republic of Bulgaria also adds that the fact that it is impossible to comply with the prohibition on taking regular or compensatory weekly rest periods in the vehicle exposes drivers and transport undertakings to the risk of being subject to penalties which can lead to loss of good repute, within the meaning of Article 6 of Regulation No 1071/2009, and, therefore, to their being denied access to the EU market for the carriage of goods by road. In that regard, it is irrelevant that the list of the most serious infringements of the EU rules does not include infringement of that prohibition.

455 In that context, Romania and Hungary refer to the TEN-T Regulation, in particular to Article 38(3) and Article 39(2)(c) thereof, and to the revised guidelines for the development of the trans-European transport network set out in that regulation and referred to in recital 19 of Regulation 2020/1054. Those provisions also prove the insufficiency of the current state of the European infrastructure.

456 Hungary observes, moreover, that Article 8a(3) and (4) of Regulation No 561/2006, as inserted by point 7 of Article 1 of Regulation 2020/1054, contains repeated calls for the creation of safe and secure parking areas. In addition, the measures for the creation of safe and secure parking areas can produce their effects only in the future, whereas no adequate transitional period was envisaged, while, moreover, the prohibition at issue is absolute. The Republic of Bulgaria also challenges the absence of a transitional period for the entry into force of the provision at issue.

457 The Republic of Bulgaria maintains, next, that the Member States are under no obligation to guarantee, at least until a particular date, sufficient suitable accommodation and secure and safe parking areas. A Member State may thus have an incentive not to increase the number of infrastructures in order to limit the provision of transport services on its territory by foreign hauliers.

458 The Republic of Bulgaria also claims that the prohibition on taking regular or compensatory weekly rest periods in the vehicle entails significant higher costs for transport undertakings, which are for the most part SMEs, since those undertakings are required to pay for appropriate accommodation for their drivers' weekly rest periods when the drivers are away from their place of residence. That also gives rise to costs for detours and any empty trips justified solely by the need to find adequate accommodation. According to a KPMG study entitled 'The Bulgarian haulage sector – Market study: An impact assessment of Mobility Package I', published on 8 October 2019 (p. 37), the costs which Bulgarian transport undertakings will have to incur as a result of the measure at issue are estimated at EUR 143 million. Romania likewise claims that the measure is manifestly inappropriate and unnecessary in having regard to the objective of reducing the administrative and financial burdens borne by transport undertakings.

459 The Republic of Bulgaria claims, moreover, that the concept of 'appropriate accommodation' is the source of legal uncertainty, which, as even the Commission admits, gives rise to problems of application. Romania maintains that the differences between Member States with regard to penalties for breach of the prohibition on taking regular or compensatory weekly rest periods in the vehicle highlighted in the Impact assessment – social section (Part 1/2, p. 18), are not resolved in Regulation 2020/1054 and that the Member States will therefore continue to impose different penalties, thus prolonging the situation of legal uncertainty for transport undertakings and drivers. The legislative solution is thus also inappropriate from that viewpoint, since it runs counter to the objective pursued by Regulation 2020/1054 of standardising the interpretation and application of the rules and facilitating the cross-border enforcement of the social legislation in a coherent manner.

460 Next, the Republic of Bulgaria, Hungary and Romania question the relevance of the judgment of 20 December 2017, *Vaditrans* (C-102/16, EU:C:2017:1012; 'the judgment in *Vaditrans*'). In particular, according to Hungary and Romania, that judgment has no bearing on the present actions, since, in the context of the court proceedings which led to that judgment, no data relating to the rest facilities available in the Member States had been produced before the Court or, for that reason, taken into consideration by it. Thus, the Court did not examine the question of proportionality and, in particular, it did not evaluate a circumstance that was relevant for the implementation of the legislation in question, namely that the prohibition on taking the regular or compensatory weekly rest period in the vehicle is frequently impossible to apply in practice because of the insufficient number of rest facilities available in the Member States. The Court answered a question of interpretation, while in this instance the issue to be determined is whether, in the light of the information available, the EU legislature exercised its discretion properly and satisfied the requirement of proportionality.

461 Romania also observes that, in the wake of the judgment in *Vaditrans*, Regulation No 561/2006 must in any event be interpreted as meaning that it prohibits the regular weekly rest period being taken in the vehicle's cabin. However, point 6(c) of Article 1 of Regulation 2020/1054 does not merely enshrine that prohibition, but provides further clarification. The Republic of Bulgaria, also, claims that that regulation is not confined to implementing the judgment in *Vaditrans*, but adds the requirement that the rest period at issue be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities.

462 Lastly, the Republic of Bulgaria and Romania maintain that alternative appropriate measures exist that would be less onerous. Thus, first, according to the opinion expressed by the Commission itself in the Impact assessment – social section (Part 1/2, p. 46), drivers should be allowed to spend their regular or compensatory weekly rest in the vehicle, provided that it is the free choice of the driver or it is justified by the circumstances. Secondly, another possible measure would be the introduction of a derogation in cases where suitable accommodation is not available within a specific radius of the driver's location. Thirdly, a possible alternative approach, as proposed by the CoR, would be for the prohibition on taking the regular or compensatory weekly rest period in the vehicle not to be applied if that rest period is spent in a place with a sufficient level of security and adequate sanitary facilities and if the driver's cabin complies with the specifications to be fixed by the Road Transport Committee. Fourthly, a transitional period could be introduced, after which the Commission would establish that there are sufficient safe and secure accommodation and parking places throughout the entire European Union. That transitional period could be accompanied by an obligation for Member States to guarantee that they will take the necessary steps to create appropriate infrastructures.

463 In the second place, Romania and Hungary call into question the examination carried out by the EU legislature of the proportionality of the prohibition on regular or compensatory weekly rest periods in the vehicle.

464 It is apparent from the information available at the time of the adoption of point 6(c) of Article 1 of Regulation 2020/1054 that the EU legislature was aware of the currently inadequate nature of the European infrastructure. The Impact assessment – social section (Part 1/2, p. 18) presents the shortage of parking areas and of appropriate accommodation as being a factor that favours the practice consisting in taking the rest period in the vehicle's cabin. That impact assessment even states that owing to that situation drivers enjoy better rest conditions in the cabin than if they have recourse to the other available solutions. In addition, the extent of that shortage was noted by the Commission in the 2019 study on parking places. Furthermore, Article 8a(3) and (4) of Regulation No 561/2006, as amended by point 7 of Article 1 of Regulation 2020/1054, contains repeated calls for the creation of safe and secure parking areas, which shows that when the EU legislature

adopted the contested requirement it was aware of the insufficient number of parking areas of appropriate quality.

465 It follows that the EU legislature committed a manifest error by failing to take into account factors essential to the adoption of the measure at issue and by failing to assess the relevant evidence.

466 The Parliament and the Council consider that those pleas and arguments are unfounded.

(2) Findings of the Court

467 By their arguments, the Republic of Bulgaria, Romania and Hungary call into question the compliance of point 6(c) of Article 1 of Regulation 2020/1054 with the principle of proportionality. Since Romania and Hungary also dispute the fact that the EU legislature even examined the proportionality of that provision, it is appropriate to consider that argument first.

(i) Whether the EU legislature has carried out an examination of the proportionality of point 6(c) of Article 1 of Regulation 2020/1054

468 It is common ground that, when it adopted Regulation 2020/1054, the EU legislature had before it an impact assessment which concerned, inter alia, the taking of the regular or compensatory weekly rest period in the vehicle. The Impact assessment – social section, which accompanied the proposal for a working time regulation, noted the divergent interpretation by the authorities of the Member States of the provisions of Regulation No 561/2006 on weekly rest periods and the disparity in national legislation and practices concerning the taking of that rest period in the vehicle (Part 1/2, pp. 21, 23, 30, 31 and 34). That impact assessment also examined in detail, with a view to the outcome of the reference for a preliminary ruling then pending before the Court in Case C-102/16, *Vaditrans*, the impact of a measure clarifying that question (Part 1/2, pp. 41, 42, 45, 47, 51, 55, 56, 61, 63, 64 and 70).

469 In that context, point 5(c) of Article 1 of that proposal provided for the insertion in Article 8 of Regulation No 561/2006 of paragraph 8a providing that regular or compensatory weekly rest periods may not be taken inside the vehicle but must be taken in suitable accommodation, with adequate sleeping and sanitary facilities, provided or paid for by the employer, or at the driver's place of residence or in another private place of his or her choice.

470 By their arguments, Romania and Hungary complain, however, that the EU legislature failed to take into account, when it introduced, in point 6(c) of Article 1 of Regulation 2020/1054, the prohibition of regular or compensatory weekly rest periods in the vehicle, the shortage of adequate accommodation infrastructure and safe and secure parking areas throughout the European Union, even though that information was essential, according to those Member States, for an examination of the proportionality of that prohibition.

471 It should be noted, however, that the EU legislature was fully informed of that shortage when it adopted the prohibition on regular or compensatory weekly rest periods in the vehicle. As Romania and Hungary point out, that shortage had been clearly identified during the legislative procedure both in the Impact assessment – social section (Part 1/2, pp. 18, 23, 31 and 34) and in the 2019 study on parking places.

472 In addition, the EU legislature took due account of that fact when it adopted point 6(c) of Article 1 of Regulation 2020/1054. First, it did not prohibit the taking of any rest periods in the vehicle; the taking of breaks and reduced daily rest periods and weekly rest periods in the vehicle remain authorised. Secondly, it considered, in accordance with the proposal for a working time regulation drawn up by the Commission on the basis of that impact assessment, that the shortage of accommodation and parking facilities did not constitute an obstacle to the prohibition of regular or compensatory weekly rest periods in the vehicle in view of the existence of alternative places in which the driver is able to take those rest periods, in particular his or her place of residence, which is one of the places to which the transport undertaking must allow the driver, if he or she so wishes, to return, as the case may be, at regular intervals of three or four weeks, in accordance with point 6(d) of Article 1 of Regulation 2020/1054.

473 In those circumstances, the EU legislature cannot be criticised for not having taken full account of a factor essential to the examination of the proportionality of the prohibition laid down in point 6(c) of Article 1 of Regulation 2020/1054.

474 It is irrelevant in that regard that the EU legislature did not draw from the various data available to it the conclusions which Romania and Hungary consider that it ought to have reached. In that regard, the complaints by which those Member States criticise the EU legislature for not having adequately remedied the shortage of accommodation and parking facilities in the context of Regulation 2020/1054 must be assessed in the context of the examination of whether point 6(c) of Article 1 of Regulation 2020/1054 complies with the requirements flowing from the principle of proportionality.

475 It is therefore necessary to reject the arguments put forward by Romania and Hungary alleging that the EU legislature failed to examine the effects arising from the prohibition on taking regular or compensatory weekly rest periods in the vehicle.

(ii) The proportionality of point 6(c) of Article 1 of Regulation 2020/1054

476 Article 8(8) of Regulation No 561/2006 provided that 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.

477 Point 6(c) of Article 1 of Regulation 2020/1054 replaced, with effect from 20 August 2020, Article 8(8) by providing that regular or compensatory weekly rest periods, namely rest periods other than those referred to in that former provision, may not be taken by drivers in a vehicle, but must be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities, it being specified that the employer must cover any costs for accommodation outside the vehicle.

478 The objective pursued by point 6(c) of Article 1 of Regulation 2020/1054, in the light of which the proportionality of that provision must be examined, is to improve, as is apparent, inter alia, from recitals 1, 2, 6, 8, 13 and 36 of that regulation, the working conditions and road safety of drivers within the European Union, by ensuring that they have high-quality accommodation for taking their regular or compensatory weekly rest period. The purpose of that provision is thus to remedy the absence of clear rules on weekly rest periods. As has already been pointed out in paragraph 250 above, that objective forms part of the more general objective pursued by that regulation, which is to ensure fair competition for road transport undertakings in order to ensure that the road transport sector is safe, efficient and socially accountable, in order to ensure non-discrimination and attract qualified workers.

479 The Republic of Bulgaria, Romania and Hungary, which do not dispute the legitimacy of those various objectives, maintain that point 6(c) of Article 1 of Regulation 2020/1054, in itself, disregards the requirements flowing from the principle of proportionality.

480 In order to determine whether the prohibition of taking regular or compensatory weekly rest periods in the vehicle, as laid down in that provision, complies with the principle of proportionality, it is necessary to examine whether that measure is appropriate for attaining the objective pursued by that provision, consisting of improving working conditions and road safety of drivers, whether it does not manifestly go beyond what is necessary to achieve that objective and whether it is proportionate in relation to that objective.

– Whether point 6(c) of Article 1 of Regulation 2020/1054 is appropriate for attaining the objective pursued

481 As regards, in the first place, whether point 6(c) of Article 1 of Regulation 2020/1054 is appropriate for attaining the objective pursued by that provision, it should be recalled at the outset that, in the judgment in *Vaditrans*, the Court held, in essence, in particular in paragraphs 31 to 33 and 48 of that judgment, that Article 8(8) of Regulation No 561/2006, in the version applicable before the entry into force of point 6(c) of that Article 1, was, in order to preserve its effectiveness, to be interpreted, also taking into account paragraph 6 of that Article 8, as meaning that it prohibited regular weekly rest periods being taken in the vehicle. According to its wording, that Article 8(8) expressly allowed, and subject to certain conditions, only daily rest periods and reduced weekly rest periods to be taken in the vehicle.

482 After stating that such an interpretation was supported by the legislative history of that latter provision and the context in which it occurred, the Court held that that interpretation was clearly intended to achieve the aims pursued by Regulation No 561/2006 of improving drivers' working conditions and road safety (judgment in *Vaditrans*, paragraph 43).

483 The Court stated that, even if vehicle design and cabin design had seen considerable improvements, the fact remained that a lorry's cabin did not appear to constitute an appropriate resting place for rest periods longer than daily rest periods and reduced weekly rest periods and that drivers should be able to spend their regular weekly rest periods in a place which offers them adequate and suitable accommodation (judgment in *Vaditrans*, paragraph 44).

484 In that context, the Court added that if Article 8(8) of Regulation No 561/2006 were to be interpreted as meaning that regular weekly rest periods may be taken by the driver in his or her vehicle, such an interpretation would imply that a driver could take all of his or her rest periods in the vehicle cabin, namely in a place which does not provide suitable accommodation, which would not be likely to contribute to furthering the objective pursued by that regulation of improving drivers' working conditions (judgment in *Vaditrans*, paragraph 45).

485 It follows that the prohibition laid down in point 6(c) of Article 1 of Regulation 2020/1054, which codifies the interpretation provided by the Court in the judgment in *Vaditrans*, is such as to contribute to furthering the objective of improving drivers' working conditions and road safety.

486 The arguments put forward by the Republic of Bulgaria, Romania and Hungary are not such as to call that finding into question.

487 First, in so far as the Republic of Bulgaria and Romania claim that point 6(c) of Article 1 of Regulation 2020/1054 contains further details as compared to Article 8(8) of Regulation No 561/2006, as interpreted by the Court in the judgment in *Vaditrans*, it must be noted that the Republic of Bulgaria merely maintains that the obligation to take the regular or compensatory weekly rest period 'in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities', laid down in point 6(c) of that Article 1, is a new requirement resulting from the adoption of Regulation 2020/1054.

488 Such an argument cannot, however, succeed.

489 First of all, the Court expressly stated, in paragraphs 44 and 45 of the judgment in *Vaditrans*, that Article 8(8) of Regulation No 561/2006, in the version applicable before the entry into force of Regulation 2020/1054, was to be interpreted as meaning that the regular weekly rest period is to be taken in adequate and suitable accommodation, which necessarily implies that the sleeping and sanitary facilities of that place are appropriate for both women and men. Moreover, the requirement of 'suitable sleeping facilities for each driver' was already expressly set out in the actual wording of that latter provision.

490 Next, the Court held, in paragraph 44 of the judgment in *Vaditrans*, that a lorry's cabin does not constitute an appropriate resting place for rest periods longer than daily rest periods and reduced weekly rest periods, referred to in that latter provision, which, under Article 4(g) and (h) of Regulation No 561/2006, concern rest periods ranging, as the case may be, between 3 hours and less than 45 hours. It necessarily follows that a weekly rest period of at least 45 hours taken in compensation for previous reduced weekly rest periods could also not, under Article 8(8) of that regulation, be taken in the vehicle.

491 Lastly, since the appropriate resting place for longer rest periods, as mentioned by the Court in paragraph 44 of the judgment in *Vaditrans*, is supposed to take the place of a lorry's cabin for regular weekly rest periods, which cabin is, in principle, made available to the driver at the cost of the employer, it follows, also logically, that any appropriate resting place which takes the place of a lorry's cabin is also to be made available by the employer.

492 It must therefore be held that the fact that the EU legislature, in adopting point 6(c) of Article 1 of Regulation 2020/1054, codified the interpretation adopted in the judgment in *Vaditrans*, while clarifying it on certain aspects, is such as to support the ability of that provision to attain the objective pursued.

493 Secondly, contrary to what is claimed by Hungary and Romania, the judgment in *Vaditrans* is relevant for the assessment of the proportionality of point 6(c) of Article 1 of Regulation 2020/1054 since, as has just been noted, it is apparent from that judgment that the prohibition on a driver taking regular or compensatory weekly rest periods in the vehicle results not from the entry into force of that latter provision, but from Article 8(8) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054. It is irrelevant in that regard that, in the judgment in *Vaditrans*, delivered on the basis of Article 267 TFEU, the Court did not, in the absence of a

request to that effect from the referring court in that case, examine the question of the proportionality of Article 8(8) of Regulation No 561/2006, in the version applicable before the entry into force of point 6(c) of Article 1 of Regulation 2020/1054.

494 If Hungary and Romania considered that the earlier version of Article 8(8) of Regulation No 561/2006 was invalid or that the validity of that provision required a different interpretation, it was open to them, in accordance with Article 23 of the Statute of the Court of Justice of the European Union, to argue this in the preliminary ruling procedure in the case that gave rise to the judgment in *Vaditrans*. Such an argument cannot, however, reasonably succeed in support of pleas seeking annulment of point 6(c) of Article 1 of Regulation 2020/1054.

495 Thirdly, as regards the arguments put forward by the Republic of Bulgaria, Romania and Hungary alleging a shortage of adequate accommodation and of safe and secure parking areas in the territory of the European Union, it should be borne in mind at the outset that, as has been noted in paragraph 471 above, that shortage was described by the Commission in its Impact assessment – social section, and then in the 2019 study on parking places. Neither the Parliament nor the Council disputes, moreover, the shortage of safe and secure parking areas.

496 However, Regulation 2020/1054 aims to increase drivers' social protection, while the improvement of road transport and parking infrastructure within the European Union is, essentially, the subject of other legislative acts adopted on the basis of separate legal provisions.

497 In particular, the TEN-T Regulation, adopted on the basis of Article 172 TFEU, which requires the approval of the Member State concerned for guidelines and projects of common interest which relate to its territory, provides, in Article 39(2)(c) thereof, for the development of rest areas on motorways approximately every 100 km in line with the needs of society, of the market and of the environment, in order to provide appropriate parking space for commercial road users with an appropriate level of safety and security.

498 In addition, it is common ground that several instruments of EU law provide for opportunities for co-funding by the EU in order to accelerate and promote the construction of adequate parking infrastructure. This is true, in particular, of Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ 2013 L 348, p. 129), and of Commission Delegated Regulation (EU) 2016/1649 of 8 July 2016 supplementing Regulation No 1316/2013 (OJ 2016 L 247, p. 1), which sets the transport funding priorities for the purpose of the multiannual and annual work programmes.

499 An examination of the appropriateness of the prohibition laid down in point 6(c) of Article 1 of Regulation 2020/1054 cannot, however, be carried out in the light of an objective which that measure does not pursue.

500 Rather, it is necessary to ascertain whether, as the Republic of Bulgaria, Romania and Hungary claim, in the light of the shortage of adequate accommodation and of safe and secure parking areas, the prohibition on taking the regular or compensatory weekly rest period in the vehicle cannot be regarded as a measure that is appropriate for attaining the objective of improving drivers' working conditions. According to those Member States, that shortage would make it excessively difficult, if not impossible, to comply with that prohibition, with the result that that prohibition would risk having the effect of undermining that objective by increasing driver fatigue and stress.

501 In that regard, it is true that the possibility of complying with the rules relating to rest periods laid down by Regulation No 561/2006 may, in general, depend, inter alia, on the availability of adequate accommodation and parking areas (see, to that effect, judgment of 21 December 2023, *Commission* v *Denmark (Maximum parking time)*, C-167/22, EU:C:2023:1020, paragraph 45).

502 However, as regards, first, the impact of the alleged shortage of adequate accommodation on the ability of point 6(c) of Article 1 of Regulation 2020/1054 to attain the social protection objective that it pursues, it should be emphasised, first of all, that, as already stated in paragraph 472 above, that provision does not prohibit drivers from taking any rest periods whatsoever in the vehicle, but applies solely to regular or compensatory weekly rest periods. Thus, the prohibition that it lays down does not apply to breaks or to daily rest periods and reduced weekly rest periods.

503 Next, those rest periods that point 6(c) of Article 1 of Regulation 2020/1054 prohibits drivers from taking in the vehicle are precisely those for which the transport undertakings are required, in accordance with point 6(d) of Article 1 of that regulation, to organise the work of drivers in such a way that the drivers are able to return, as the case may be, every three or four weeks, to the employer's operational centre or to their place of residence in order, respectively, to begin or spend their regular or compensatory weekly rest period there.

504 Thus, contrary to the assumption of the Republic of Bulgaria, Romania and Hungary, taking regular or compensatory weekly rest periods does not automatically require access to accommodation separate from the drivers' place of residence. As is apparent from recital 13 of Regulation 2020/1054, it is only when drivers do not take, as they are entitled to do, their regular or compensatory weekly rest period at their place of residence that they are, in accordance with the requirement laid down in point 6(c) of Article 1 of that regulation, to be provided with quality and gender-friendly accommodation for the purpose of taking those rest periods. It follows that that provision, read in conjunction with point 6(d) of Article 1 of that same regulation, is, in actual fact, such as to address, at least partially, the shortage of suitable accommodation, described by the Commission in its Impact assessment – social section.

505 Lastly, it is true that recital 15 of Regulation 2020/1054 states that drivers may take their regular or compensatory weekly rest period in suitable accommodation, which 'may' be adjacent to a parking area. The fact remains that, in the event that drivers decide not to return to one of the two places specified in point 6(d) of Article 1 of that regulation in order to take that rest period there, they are in no way required, contrary to what is claimed by the Republic of Bulgaria, Romania and Hungary, to choose such accommodation adjacent to a parking area. While point 6(c) of Article 1 of that regulation requires that drivers take that rest period in 'suitable … accommodation', it does not require that that place be adjacent to a parking area. In that regard, a driver cannot reasonably be expected to spend his or her weekly rest period of at least 45 hours close to such a parking area. However, none of those Member States maintains that the shortage of infrastructures identified by the Commission in its Impact assessment – social section concerns accommodation which is not adjacent to a parking area and that such accommodation is not appropriate.

506 As regards, secondly, the impact of the alleged shortage of adequate parking areas on the ability of point 6(c) of Article 1 of Regulation 2020/1054 to attain the social protection objective that it pursues, it should be noted, first of all, that that provision does not impose any obligation as to the place where the vehicle is to be parked. Thus, there is nothing to oblige the driver to leave his or her vehicle, while taking his or her regular or compensatory weekly rest period, in a parking area reserved for heavy goods vehicles.

507 Next, as the Council has rightly observed, lifting the prohibition on drivers taking their regular or compensatory weekly rest periods in the vehicle would not make it possible to address the insufficiency of safe and secure parking areas, highlighted by the Impact assessment – social section, since, in any event, a parking place would remain necessary during the period in which those rest periods would be taken. Moreover, lifting that prohibition, inasmuch as it would reduce the possibility of drivers taking those rest periods at their place of residence after parking their vehicle at the employer's operational centre, might even contribute to exacerbating the shortage complained of by the Republic of Bulgaria, Romania and Hungary, since, in such a case, drivers would occupy more of the safe and secure parking areas available.

508 Lastly, as regards the alleged risk of cargo theft, which those Member States argue makes it difficult to insure loads, it should be noted that, in accordance with Article 4(f) to (h) of Regulation No 561/2006, drivers are freely to dispose of their rest period, whether it be daily or weekly, with the result that they cannot be held responsible for the supervision of such a load when they take their rest period.

509 In any event, that risk results not from the specific measure prohibiting regular or compensatory weekly rest being taken in the vehicle, introduced by point 6(c) of Article 1 of Regulation 2020/1054, but, more generally, from the shortage of safe and secure parking areas, it being recalled, however, that drivers are authorised to take all their other rest periods in a parked vehicle.

510 Thus, while it is true that, according to the 2019 study on parking places, cargo theft in the European Union results in losses exceeding EUR 8.2 billion, it is not apparent from that study that those losses result specifically from thefts committed while drivers take their regular or compensatory weekly rest period, which Article 8(8) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054, already prohibited being taken in the vehicle.

511 In those circumstances, it cannot be held that the prohibition on taking regular or compensatory weekly rest in the vehicle is a measure that is inappropriate for attaining the objective of improving drivers' working conditions and road safety on the ground that its entry into force was not made conditional on the development of appropriate infrastructures with regard to accommodation and parking areas.

512 It should, moreover, be noted that the EU legislature inserted, by point 7 of Article 1 of Regulation 2020/1054, Article 8a in Regulation No 561/2006, an article which contains, as is apparent from recitals 15, 17 and 18 of Regulation 2020/1054, specific provisions intended to encourage the development of high-quality parking areas through the development of minimum standards and to make information on available rest facilities more accessible. Such improvements should facilitate the planning by the employer of the driver's activities so that he or she can reach a parking area corresponding to what that employer considers appropriate for the goods carried.

513 First of all, in paragraph 2 thereof, Article 8a of Regulation No 561/2006, as inserted by point 7 of Article 1 of Regulation 2020/1054, delegates to the Commission the power to develop standards providing further detail concerning the level of service and security at parking areas, inter alia with regard to gender-friendly sanitary facilities, and concerning certification procedures. In addition, in paragraph 1 thereof, that same Article 8a requires the Commission to ensure that information about safe and secure parking areas is easily accessible to drivers and to make a list of certified parking areas available on an official website that is regularly updated.

514 Although the fact alleged by Romania that the Commission did not make that list available might, as the case may be, constitute a failure to fulfil that obligation, it cannot, however, in any way demonstrate that the EU legislature, in adopting point 6(c) of Article 1 of Regulation 2020/1054, took a measure that is inappropriate for attaining the objective that it pursues.

515 Next, in accordance with Article 8a(4) of Regulation No 561/2006, the Commission is required to present to the Parliament and to the Council, by 31 December 2024, a report on the availability of suitable rest facilities for drivers and of secured parking facilities, as well as on the development of certified safe and secure parking facilities.

516 Lastly, the second subparagraph of Article 8a(3) of Regulation No 561/2006 reiterates the fact that it is for the Member States, in accordance with Article 39(2)(c) of the TEN-T Regulation, to encourage the creation of parking space for commercial road users, recital 19 of Regulation 2020/1054 recalling, in addition, the importance of sufficient opportunities for co-funding by the European Union being available in order to accelerate and promote the construction of adequate parking infrastructure.

517 Contrary to the Republic of Bulgaria's contention, those obligations, far from demonstrating the inappropriateness of point 6(c) of Article 1 of that regulation for attaining the objective pursued, show, on the contrary, that the EU legislature remains mindful of the issue of the shortage of parking areas.

518 As regards the Republic of Bulgaria's argument that, since no period was prescribed for the Member States to ensure adequate infrastructures, some of them might have an incentive not to increase the number of such infrastructures in order to limit the provision of services within their territory by transport undertakings established in other Member States, that argument must, in the absence of any probative element capable of substantiating its merits, be rejected as speculative.

519 It thus follows from all of the foregoing considerations that the fact that there is a shortage of adequate accommodation and safe and secure parking areas in the territory of the European Union is not such as to demonstrate that the prohibition on taking regular or compensatory weekly rest in the vehicle, established by point 6(c) of Article 1 of Regulation 2020/1054, is inappropriate for attaining the objective pursued by that regulation.

520 Fourthly, as regards the arguments of the Republic of Bulgaria and Romania relating to the alleged legal uncertainty surrounding the interpretation and application of point 6(c) of Article 1 of Regulation 2020/1054, it should be noted that the EU legislature intended to ensure, through that provision, the uniform application of the prohibition on taking regular or compensatory weekly rest periods in the vehicle and the corresponding obligation to take those periods in suitable accommodation. Article 8(8) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054, could have given rise to uncertainty because of the discrepancies in the

interpretation and application of that provision by the competent national authorities, which had been highlighted by the Impact assessment – social section (Part 1/2, pp. 5, 18 and 23).

521 However, contrary to what the Republic of Bulgaria maintains, the words 'suitable gender-friendly accommodation with adequate sleeping and sanitary facilities', contained in point 6(c) of Article 1 of Regulation 2020/1054, displays no ambiguity. The fact that the bounds of that expression are sufficiently flexible to include a relatively broad range of accommodation in which a driver may take his or her regular or compensatory rest period, far from calling into question the ability of that provision to attain the objective pursued by it, is, on the contrary, as the Parliament correctly contends, such as to enhance that ability. In that regard, the Republic of Bulgaria's claim that there are in all likelihood diverging interpretations between the Member States of that provision is speculative and must therefore be rejected on that ground alone.

522 As regards the risk of divergence in the penalties laid down by national laws in the event of breach of the prohibition at issue, highlighted by Romania, it is true that Regulation 2020/1054 does not harmonise the relevant rules on penalties of the Member States. However, that risk is significantly limited by the obligation of the Member States, under Article 19(1) of Regulation No 561/2006, as amended by point 16 of Article 1 of Regulation 2020/1054, to lay down, as also stated in recital 23 of that latter regulation, penalties that are effective and proportionate to the gravity of the infringement, as well as dissuasive and non-discriminatory; moreover, no infringement may be subject to more than one penalty or procedure. It cannot therefore be held that the risk of divergence in penalties renders point 6(c) of Article 1 of Regulation 2020/1054 inappropriate for attaining the objective that it pursues.

– *Whether point 6(c) of Article 1 of Regulation 2020/1054 is necessary*

523 As regards, in the second place, the necessity of point 6(c) of Article 1 of Regulation 2020/1054 and, more specifically, the argument relating to the existence of measures allegedly less onerous than that adopted in that provision, it should be observed that the Republic of Bulgaria merely refers to a series of measures most of which were discussed during the legislative procedure without, however, having been adopted by the EU legislature at the end of that procedure in the final version of the legislative act adopted.

524 However, the measures envisaged by that Member State, which all authorise, in one way or another, the regular or compensatory weekly rest period to be taken in the vehicle while leaving free choice to the drivers, would not necessarily enable the objective pursued by the EU legislature, which is to improve drivers' working conditions and road safety, to be attained, since those measures might result, if they were to be implemented, in drivers regularly taking all of their regular or compensatory weekly rest periods in the vehicle. Since the driver, as already noted in paragraph 174 above, is the weaker party in the employment relationship with his or her employer, such measures would entail the risk that the choice of the driver would not be entirely free and that he or she might be put under pressure to make a choice that would favour the interests of the employer. Similarly, the introduction of derogations would entail the risk that drivers would take their regular or compensatory weekly rest period in an inappropriate place, which would mean a reduction of their social protection.

525 Moreover, although, as the Republic of Bulgaria observed, the Commission envisaged, in the Impact assessment – social section (Part 1/2, pp. 44 to 47), the option of allowing drivers to take their regular weekly rest periods in the vehicle provided that it is the free choice of the drivers or it is justified by the circumstances, it stated, in that same Impact assessment – social section (Part 1/2, p. 49), that that option could lead, in view, in particular, of the difficulty in ascertaining whether drivers exercise a free choice, to an increase in instances of intentional abuse, in the sense that those rest periods would be taken, deliberately and consistently, in the vehicle.

526 As regards, in that context, the argument of the Republic of Bulgaria, Romania and Hungary based on vehicle comfort, it is true that the Commission noted, in its Impact assessment – social section (Part 1/2, p. 18), finalised before the judgment in *Vaditrans* was delivered, that vehicles often offer better accommodation than the available alternatives.

527 However, first, in that same Impact assessment – social section (Part 1/2, pp. 73 to 75), the Commission concluded, after weighing the advantages and disadvantages of the various options envisaged, that the prohibition on taking regular or compensatory weekly rest in the vehicle was the most appropriate option to reduce driver stress and fatigue, with the result that it laid down such a prohibition in point 5(c) of Article 1 of the proposal for a working time regulation.

528 Secondly, the EU legislature, in the exercise of its wide discretion, was entitled to take the view, as the Court did in paragraph 45 of the judgment in *Vaditrans*, that the attainment of the objective of improving drivers' working conditions precluded the possibility of all rest periods being taken in the vehicle cabin, since such a place does not provide suitable accommodation for taking the longest rest periods.

529 As regards the measure, referred to by the Republic of Bulgaria, Romania and Hungary, consisting in introducing a transitional period in order to postpone the entry into force of the prohibition on taking regular or compensatory weekly rest in the vehicle, it clearly cannot constitute a less onerous alternative. Such a prohibition was already in force at the time of the adoption of Regulation 2020/1054, since, as is apparent from paragraphs 30, 31 and 48 of the judgment in *Vaditrans*, it follows from Article 8(8) of Regulation No 561/2006, in the version applicable before the entry into force of point 6(c) of Article 1 of Regulation 2020/1054. In those circumstances, the establishment of such a transitional period would have amounted to limiting in time the scope of that judgment, when the Court did not consider it necessary to do so.

– *Whether point 6(c) of Article 1 of Regulation 2020/1054 is proportionate*

530 As regards, in the third place, the proportionality of the prohibition laid down in point 6(c) of Article 1 of Regulation 2020/1054, it is necessary to recall, first of all, the importance, according to the preamble to the FEU Treaty, of the 'essential objective' of constant improvements of the living and working conditions that the EU legislature is called upon, under Articles 9 and 90 TFEU, to take fully into account in the exercise of its competences in the field of common transport policy. However, as the Court observed, in essence, in the judgment in *Vaditrans* (paragraphs 44 and 45), a lorry's cabin does not provide suitable accommodation for rest periods longer than daily rest periods and reduced weekly rest periods. Thus, drivers cannot spend regular and compensatory weekly rest periods in such a cabin without undermining the objective of improving their working conditions.

531 Next, it should be noted that, like Article 8(8) of Regulation No 561/2006, which it amends, point 6(c) of Article 1 of Regulation 2020/1054 does not prohibit drivers, as noted in paragraphs 472 and 502 above, from taking any rest period in the vehicle, but merely precludes them from taking their regular or compensatory weekly rest periods there. Thus, drivers continue to be entitled to take all their breaks as well as their daily rest periods and reduced weekly rest periods in the vehicle.

532 Moreover, in accordance with point (b) of the first subparagraph of Article 8(6) of Regulation No 561/2006, in the version resulting from point 6(a) of Article 1 of Regulation 2020/1054, regular weekly rest periods may, as already allowed by the second indent of the first subparagraph of Article 8(6) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054, only be taken every two weeks, which is such as to limit further the scope of the prohibition on spending regular weekly rest periods in a lorry's cabin.

533 Lastly, by point 6(a) of Article 1 of Regulation 2020/1054, the EU legislature inserted a third subparagraph in Article 8(6) of Regulation No 561/2006, which now allows, by way of derogation from the general rule laid down in the first subparagraph of that Article 8(6), a driver engaged in international transport of goods, subject to compliance with certain conditions, to take, outside the Member State in which his or her employer is established, two reduced weekly rest periods, which may be taken in the vehicle since those rest periods are not covered by the prohibition laid down in point 6(c) of Article 1 of Regulation 2020/1054. By introducing that possibility, which was excluded by Article 8(6) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054, the EU legislature thus sought to offer more flexibility to drivers who travel over long distances, by allowing them to take all their rest periods in the vehicle for three consecutive weeks.

534 In those circumstances, it cannot be held that point 6(c) of Article 1 of Regulation 2020/1054 causes disadvantages which are manifestly disproportionate to the objective pursued by that provision.

535 None of the arguments put forward by the Republic of Bulgaria, Romania and Hungary is capable of calling those considerations into question.

536 First, as regards the argument based on the significant additional costs that implementation of point 6(c) of Article 1 of Regulation 2020/1054 would entail for transport undertakings, in particular for SMEs, it is sufficient to recall that the prohibition on taking regular or compensatory weekly rest in the vehicle results not from the entry into force of that provision, but, as the Court held, in essence, in paragraphs 30, 31 and 48 of the judgment in *Vaditrans*, from Article 8(8) of Regulation No 561/2006, in the version prior to the entry into force of Regulation 2020/1054. Point 6(c) of

Article 1 of that latter regulation cannot therefore in itself be the source of significant additional costs.

537 Furthermore, while it is true that point 6(c) of Article 1 of Regulation 2020/1054 now expressly requires the employer to cover any costs associated with taking a rest period outside the vehicle, the fact remains that, as is apparent from the Impact assessment – social section (Part 1/2, p. 64), many employers already covered such costs before the entry into force of that regulation. In addition, such costs are required to be covered only where the driver chooses, as he or she is entitled to do, not to make use of the possibility that his or her employer is to offer him or her, in accordance with point 6(d) of Article 1 of Regulation 2020/1054, of returning every three or four weeks, as the case may be, to that employer's operational centre or to his or her place of residence in order to begin or spend his or her regular or compensatory weekly rest period there. Lastly, that obligation to cover such costs is without prejudice to the transport undertaking's right to choose, in that latter case, the accommodation or the type of accommodation the costs of which it will cover, provided that that accommodation satisfies the requirements flowing from that provision.

538 In those circumstances, it appears that the estimate arising from KPMG's study on Bulgaria, referred to in paragraph 458 above, that the costs that Bulgarian hauliers will incur as a result of the measure laid down in point 6(c) of Article 1 of Regulation 2020/1054 will amount to EUR 143 million, cannot be regarded as probative, since it is based on the incorrect premiss that that provision imposes a new prohibition and obliges drivers to take rest periods as a matter of course outside their place of residence by parking their vehicle in safe and secure areas.

539 Secondly, as regards the argument relating to the risk of the transport undertaking incurring penalties and suffering a loss of repute, within the meaning of Article 6 of Regulation No 1071/2009, the Republic of Bulgaria cannot seek to establish that point 6(c) of Article 1 of Regulation 2020/1054 is disproportionate by speculating as to the frequency of the conduct infringing the prohibition laid down in that latter provision. In that regard, that Member State is wrong to claim, moreover, that that prohibition is impossible to comply with by relying on the incorrect premiss, noted in paragraph 505 above, that that provision requires drivers to take their regular or compensatory weekly rest period in accommodation adjacent to a parking area.

540 In the light of the foregoing considerations, it must be held that the prohibition on taking regular or compensatory weekly rest in the vehicle, laid down in point 6(c) of Article 1 of Regulation 2020/1054, does not manifestly go beyond what is necessary to attain the objective pursued by that prohibition.

541 Therefore, the fourth plea relied on by the Republic of Bulgaria, the first part of the first plea relied on by Romania and the single plea relied on by Hungary must be rejected as unfounded.

(b) Whether the principles of equal treatment and non-discrimination have been infringed

(1) Arguments of the parties

542 The Republic of Bulgaria, by the second part of its fifth plea, and Romania, by the first part of its third plea, claim that point 6(c) of Article 1 of Regulation 2020/1054 does not comply with the requirements flowing from the principle of non-discrimination laid down in Article 18 TFEU. The Republic of Bulgaria also alleges infringement of Articles 20 and 21 of the Charter, of the principle of equality of Member States, laid down in Article 4(2) TEU, and, 'in so far as the Court considers it necessary', of Article 95(1) TFEU.

543 According to those two Member States, the prohibition on taking regular or compensatory weekly rest in the vehicle infringes the principles of equal treatment and non-discrimination to the detriment of transport undertakings established in the Member States on the periphery of the European Union and drivers employed by those undertakings. It is considerably easier for transport undertakings established in the Member States at the centre of the European Union and their drivers to comply with that prohibition than for transport undertakings established in the Member States on the periphery of the European Union and their drivers. In addition, within the same Member State, the prohibition in question gives rise to discrimination between local drivers and those of other Member States. National drivers who carry out transport operations in their own Member State are not affected by the absence of appropriate accommodation and secure and safe parking areas, since they can be accommodated at home and park their heavy goods vehicles at the employer's operational centre. That is not the case for drivers employed by transport undertakings established in Member States on the periphery of the European Union, who carry out international transport

operations and who, owing to the absence of appropriate accommodation and secure and safe parking areas, are forced to disregard that prohibition, increasing the costs of the transport undertakings, most of which are SMEs.

544 In that regard, Romania adds that the fact that the Member States develop parking and accommodation infrastructures differently and that they also differ from one another depending on whether they are located on the periphery of the European Union or close to the 'nerve centre' of EU road transport makes the intervention of the EU legislature all the more disproportionate. Given that the network of parking areas is underdeveloped in the Member States of transit, the obligation laid down in point 6(c) of Article 1 of Regulation 2020/1054 primarily affects transport undertakings established in Member States on the periphery of the European Union.

545 Romania also maintains that the assessment of the effects of the provisions of Regulation 2020/1054 on the transport market cannot be carried out without taking account of Regulation 2020/1055 and Directive 2020/1057, which also form part of the Mobility Package. A global assessment of that package thus demonstrates the discriminatory nature of the legislation adopted by the EU legislature to the detriment of transport undertakings established in the Member States on the periphery of the European Union in the light of the actual possibility of providing transport services in the European Union. Given that the contested measures of the Mobility Package impose significant costs and introduce onerous obligations that affect, in particular, transport undertakings established in Member States on the periphery of the European Union, their competitiveness will de facto be eliminated. The social protection of drivers cannot be guaranteed in the absence of appropriate measures to support the exercise by transport undertakings of the freedom to provide services.

546 The Parliament and the Council consider those pleas and arguments to be unfounded.

(2) Findings of the Court

547 As a preliminary point, it is necessary to reject as inadmissible, for the same reasons as those set out in paragraph 307 above, the Republic of Bulgaria's claim concerning the infringement of Article 95(1) TFEU, since that Member State merely refers to such an infringement 'in so far as the Court considers it necessary', without providing any specific arguments in that regard.

548 That said, as regards the merits of the present pleas and arguments, it is common ground that, in the present case, the rule laid down in point 6(c) of Article 1 of Regulation 2020/1054, inasmuch as it requires transport undertakings to ensure, at their own cost, that their drivers take their regular or compensatory weekly rest periods in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities, rather than in the vehicle, applies without distinction to all the employers concerned, irrespective of the Member State in which they are established, to all the drivers concerned, irrespective of their nationality and the Member State of their residence, and to all the Member States, with the result that it does not involve direct discrimination prohibited by EU law.

549 It is therefore necessary to examine, in accordance with the case-law referred to in paragraphs 308 to 310 above, whether, by point 6(c) of Article 1 of Regulation 2020/1054, the EU legislature unjustifiably applied an identical rule to different situations in the light, in particular, of the objective pursued by that provision, which would therefore constitute indirect discrimination prohibited by EU law in that, as the applicant Member States essentially argue, it is, by its very nature, liable to have a greater effect on transport undertakings established in Member States situated, in their view, on the 'periphery of the European Union', on drivers employed by those undertakings and on that group of Member States.

550 In that regard, point 6(c) of Article 1 of Regulation 2020/1054 seeks, as has been noted in paragraph 478 above, to improve drivers' working conditions and road safety within the European Union by ensuring that drivers have quality accommodation for the purpose of taking their regular or compensatory weekly rest period in order to protect, in particular, as is apparent from recitals 8 and 13 of that regulation, drivers engaged in long-distance international transport operations who spend long periods away from their place of residence.

551 It must be stated that all drivers employed in the European Union are in a comparable situation as regards their right to take a regular or compensatory weekly rest period in quality accommodation. All of those drivers, irrespective of their nationality and the Member State in which their employer is

established, must be able to take that rest period in accommodation capable of ensuring them good working conditions and of guaranteeing road safety.

552 As regards, in the first place, the existence, claimed by the Republic of Bulgaria and Romania, of alleged discrimination between drivers engaged in international transport operations employed in certain Member States and drivers engaged in national transport operations employed in a Member State at the 'centre of the European Union', it is true that it cannot be ruled out that point 6(c) of Article 1 of Regulation 2020/1054 is liable to affect to a greater extent drivers engaged in international transport operations to Member States which are geographically distant from the Member State in which their employer is established, since those drivers might find it more difficult than local or national drivers to take their regular or compensatory weekly rest period at their place of residence and would thus be exposed to a greater extent to the current insufficiency of appropriate accommodation and parking infrastructure.

553 However, that difference in impact for drivers engaged in international transport stems from the different nature of the transport operations carried out by those drivers, which is also reflected in the provisions of Article 91(1)(a) and (b) TFEU. International transport operations are more likely than national transport operations to be carried out over distances away from the drivers' place of residence and the place in which their employer is established.

554 In that regard, as the Advocate General observed in point 433 of his Opinion, to allow, in accordance with the argument put forward by the Republic of Bulgaria and Romania, drivers engaged in international transport to take their regular or compensatory weekly rest periods in the vehicle, which is not an appropriate place for spending such long rest periods, would entail an even higher degree of discrimination as against national drivers, who may, for their part, more easily take that rest period at their place of residence.

555 As regards, in the second place, the existence, claimed by the Republic of Bulgaria and Romania, of alleged discrimination between, on the one hand, transport undertakings established in Member States on the 'periphery of the European Union' which are engaged in international transport operations, and the drivers who they employ, and, on the other hand, transport undertakings established in Member States at the 'centre of the European Union' which are engaged in such operations, and the drivers who they employ, it is true that, as is apparent from paragraph 552 above, point 6(c) of Article 1 of Regulation 2020/1054 might affect to a greater extent transport undertakings, irrespective of the Member State in which they are established, which have opted for an economic operating model consisting in providing the essential part – if not all – of their services to recipients established in Member States away from the first Member State and whose drivers thus carry out their transport operations away from their place of residence.

556 However, as already stated in paragraph 321 above, the EU legislature is entitled, in view of the significant developments which have affected the internal market, to adapt a legislative act in order to re-balance the interests involved with the aim of increasing drivers' social protection by altering the conditions in which freedom to provide services of their employers is exercised and of ensuring fair competition.

557 As noted in paragraph 322 above, a provision of EU law cannot therefore be regarded as being, in itself, contrary to the principles of equal treatment and non-discrimination on the sole ground that it involves different consequences for certain economic operators, when this is the result of their different operating conditions, in particular on account of their geographical location, and not of a legal inequality inherent in the contested provision.

558 In the present case, the EU legislature specifically sought to ensure, as already stated in paragraph 282 above, a new balance between, on the one hand, the interest of drivers in better working conditions and, on the other hand, the interest of employers in carrying out their transport activities under fair business conditions, so that the road transport sector is efficient, safe and socially accountable.

559 In that context, the prohibition laid down in point 6(c) of Article 1 of Regulation 2020/1054, far from giving rise to an uneven playing field for transport undertakings, is intended, on the contrary, as is apparent from the Impact assessment – social section (Part 1/2, pp. 17, 18 and 23), to address the inequalities of treatment which might have previously resulted, on account of the different interpretations and applications of Article 8(8) of Regulation No 561/2006 by the competent national authorities, from the application of diverging national rules on penalties in the Member States. It is for the purpose of ensuring, by means of a clearer harmonisation provision, the uniform application

of the prohibition on taking the regular or compensatory weekly rest period in the vehicle that the EU legislature codified the interpretation of that Article 8(8) given by the Court in the judgment in *Vaditrans*.

560 As the Council rightly maintained, it is precisely the drivers whose employers provide the essential part of their transport services to recipients established in Member States away from the Member State in which they are established and who therefore carry out their transport operations far from their place of residence who are in most need of the protection resulting from the harmonisation provision laid down in point 6(c) of Article 1 of Regulation 2020/1054, which makes it possible, in any event, to establish the objective and appropriate nature of the criteria on which the EU legislature based its choice for the purpose of attaining the objective of improving working conditions pursued by that provision.

561 Moreover, as stated in paragraph 533 above, the EU legislature, again in order to ensure an adequate balance between the various interests involved, while seeking to attain the social protection objective pursued, amended, by point 6(a) of Article 1 of Regulation 2020/1054, Article 8(6) of Regulation No 561/2006 in order to allow, by way of derogation and subject to compliance with certain conditions, a driver engaged in international transport of goods to take, outside the Member State in which his or her employer is established, two reduced weekly rest periods that may be taken in the vehicle.

562 Furthermore, point 6(d) of Article 1 of Regulation 2020/1054 specifically seeks to alleviate the difficulty referred to in paragraph 552 above by requiring employers to organise the work of drivers in such a way that they are able, if they so wish, to return every three or four weeks, as the case may be, to the operational centre of their employer or to their place of residence.

563 As regards, in the third place, the existence, referred to by the Republic of Bulgaria, of alleged discrimination between Member States contrary to the principle of the equality of Member States before the Treaties, enshrined in Article 4(2) TEU, that Member State's criticisms must be rejected. Even on the assumption that some Member States are indirectly affected more than others by point 6(c) of Article 1 of Regulation 2020/1054, notwithstanding the fact that it applies without distinction, an EU measure which is intended to standardise rules of the Member States, provided that it is applied equally to all Member States, cannot, in accordance with the case-law of the Court referred to in paragraph 332 above, be considered to be discriminatory, as such a harmonisation measure inevitably produces different effects depending on the prior state of the various national laws and practices.

564 In those circumstances, it cannot be held that, in adopting point 6(c) of Article 1 of Regulation 2020/1054 in order to improve drivers' working conditions and road safety within the European Union as a whole, the EU legislature exceeded, contrary to the case-law referred to in paragraphs 313 and 314 above, the limits of its wide discretion in the exercise of the powers conferred on it by the FEU Treaty.

565 Lastly, in so far as Romania, by its arguments alleging infringement of the principle of equal treatment, seeks to criticise the disproportionate impact of point 6(c) of Article 1 of Regulation 2020/1054 on transport undertakings established in Member States on the 'periphery of the European Union', its argument relates, as that Member State itself maintains, to the breach of the principle of proportionality. It must therefore be rejected on the same grounds as those stated in paragraphs 481 to 540 above.

566 Those considerations cannot be called into question, as is already apparent from paragraph 333 above, by Romania's claim concerning the overall discriminatory effect resulting from all of the provisions that form part of the Mobility Package, which are the subject of the actions brought by that Member State in Cases C-546/20 to 548/20. Romania has failed to show, in Case C-546/20, that discrimination arises from point 6(c) of Article 1 of Regulation 2020/1054. As to the remainder, the criticisms of that Member State concerning Regulation 2020/1055 and Directive 2020/1057 must be examined in the context of the pleas and arguments relied on in its actions in Cases C-547/20 and 548/20 in support of its claims for annulment of all or part of those EU acts.

567 Consequently, the second part of the fifth plea relied on by the Republic of Bulgaria must be rejected as in part inadmissible and in part unfounded, and the first part of the third plea relied on by Romania must be rejected as unfounded.

(c) Infringement of the provisions of the FEU Treaty on freedom to provide services

(1) Arguments of the parties

568 Romania claims, in the first part of its first plea, alleging breach of the principle of proportionality, that point 6(c) of Article 1 of Regulation 2020/1054 also infringes the provisions of EU law on freedom to provide transport services in the internal market. The implementation of the prohibition on taking regular or compensatory weekly rest in the vehicle results in a restriction on that freedom, within the meaning of Article 58(1) TFEU, since transport itineraries will, for an indeterminate period, be limited to trips that can be made within a period which does not require the driver to take a weekly rest period or will be determined according to the presence of safe and secure parking places. Because of that limitation, that measure entails, according to Romania, the fragmentation of the internal market and, as a consequence, a backwards step in the attainment of the objective of the sustainable development of that market, as provided for in Article 3 TEU, which is also one of the objectives defined by the Commission in its Impact assessment – social section (Part 1/2, p. 39).

569 The Parliament and the Council consider those arguments to be unfounded.

(2) Findings of the Court

570 It should be recalled that, as is apparent from paragraphs 352 to 358 above, the freedom to provide transport services is, in accordance with Article 58(1) TFEU, not covered by the general regime established by Article 56 TFEU, but by a specific regime under which transport undertakings have a right to the free provision of services solely in so far as that right has been granted to them by means of measures of secondary law adopted by the EU legislature, like Regulation 2020/1054, on the basis of the provisions of the FEU Treaty relating to the common transport policy, in particular Article 91(1) TFEU.

571 Since the sole purpose of Article 58(1) TFEU is thus to exclude the freedom to provide transport services from the general provisions of the FEU Treaty on freedom to provide services in order to subject it to the specific provisions set out in Title VI of Part Three of that Treaty, the EU legislature could not, contrary to what Romania claims, have infringed that Article 58(1) merely by having adopted, in accordance with that provision, common rules applicable to the transport sector, on the basis of those specific provisions.

572 In any event, in so far as Romania criticises the EU legislature for having, through point 6(c) of Article 1 of Regulation 2020/1054, caused a backwards step in the process of liberalisation effected by Regulation No 561/2006, its argument is unfounded. As noted, inter alia, in paragraph 493 above, the prohibition on taking regular or compensatory weekly rest in the vehicle results not from the entry into force of that provision, but from Article 8(8) of Regulation No 561/2006, in the version applicable before the entry into force of point 6(c) of that Article 1, as interpreted by the Court in the judgment in *Vaditrans*.

573 Moreover, it should be noted that, in accordance with the case-law cited in paragraph 266 above, where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature is entitled to adapt that act to any change in circumstances or advances in knowledge, having regard to its task of safeguarding the general interests recognised by the FEU Treaty and of taking into account the overarching objectives of the European Union laid down in the preamble to the FEU Treaty and in Article 9 and the first paragraph of Article 151 thereof, including the improvement of employment conditions and the guarantee of adequate social protection. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives only if it is open to it to adapt the relevant EU legislation to take account of such changes or advances.

574 It follows that, contrary to what Romania suggests, the mere fact that certain transport undertakings might be led to adapt some of their transport itineraries in order to improve drivers' employment conditions and social protection in accordance with the objective pursued by point 6(c) of Article 1 of Regulation 2020/1054 cannot in any way be regarded as a retrograde step in the establishment of a common transport policy amounting to an infringement of Article 91(2) TFEU.

575 Consequently, the arguments relating to the infringement of the provisions of the FEU Treaty on freedom to provide services raised by Romania in the context of the first part of its first plea must be rejected as unfounded.

(d) Infringement of Article 91(2) and Article 94 TFEU

(1) Arguments of the parties

576 Romania also claims, in the first part of its first plea, alleging breach of the principle of proportionality, that point 6(c) of Article 1 of Regulation 2020/1054 constitutes a serious interference with the interests of transport undertakings and drivers, in breach of the requirements flowing from Article 91(2) and Article 94 TFEU.

577 On the one hand, as regards transport undertakings, which are generally SMEs, the costs entailed for those undertakings by point 6(c) of Article 1 of Regulation 2020/1054 considerably exceed those of making accommodation available for drivers. Those costs also cover route changes dictated by the availability of appropriate accommodation and parking areas, the rise in insurance premiums owing to the increase in risks connected with the security of the goods carried as well as the need for drivers to cover extra distances to find an appropriate parking area and subsequently to reach the accommodation, which may be a considerable distance away, having regard to the situation described in the 2019 study on parking places. Furthermore, transport undertakings suffer a fall in their revenue, since the shortage of infrastructures has repercussions on the real possibility of planning longer trips and travelling on certain routes in complete security.

578 On the other hand, as regards drivers, the repercussions suffered by transport undertakings on account of the prohibition on taking regular or compensatory weekly rest in the vehicle, as laid down in point 6(c) of Article 1 of Regulation 2020/1054, lead to job losses and the need to migrate to the Member States at the centre of the European Union. In addition, owing to the lack of infrastructures, that provision has the effect of increasing driver fatigue and stress.

579 The Parliament and the Council consider those arguments to be unfounded.

(2) Findings of the Court

580 As regards, in the first place, Romania's argument that point 6(c) of Article 1 of Regulation 2020/1054 is liable to lead to job losses and the migration of drivers to Member States at the 'centre of the European Union', in breach of the requirements laid down in Article 91(2) TFEU, which imposes on the EU legislature, when adopting measures coming within the common transport policy, to take account of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities, it must be held that such an argument appears, in the absence of any specific probative element capable of substantiating its merits, to be speculative.

581 In those circumstances, that argument cannot, in particular, call into question the findings made by the Commission in its Impact assessment – social section (Part 1/2, p. 61), according to which measures relating to working time and on weekly rest arrangements should have a positive impact on the attractiveness of the driver profession and, therefore, on labour market supply.

582 In any event, as is already apparent from paragraphs 404 and 405 and 573 and 574 above, the mere fact that certain transport undertakings might bear higher costs because of the increase in the social protection guaranteed to drivers by point 6(c) of Article 1 of Regulation 2020/1054 cannot in any way be regarded as an infringement of the requirements flowing from Article 91(2) TFEU.

583 As regards, in the second place, Romania's argument that point 6(c) of Article 1 of Regulation 2020/1054 entails significant additional costs for transport undertakings in breach of the requirements referred to in Article 94 TFEU, it is sufficient to observe that that latter provision, which requires the EU legislature to take account of the economic circumstances of hauliers when it takes a measure 'in respect of transport rates and conditions', is irrelevant in the present case, since point 6(c) of Article 1 thereof does not regulate the rates or conditions of carriage of goods or passengers, but lays down the conditions under which drivers are to take their regular or compensatory weekly rest period.

584 In any event, as already noted in paragraph 536 above, that provision cannot be the cause of additional costs for transport undertakings, since it merely codifies the existing right stemming, as is apparent from paragraphs 30, 31 and 48 of the judgment in *Vaditrans*, from Article 8(8) of Regulation No 561/2006, in the version applicable before the entry into force of point 6(c) of Article 1 of Regulation 2020/1054.

585 Consequently, the arguments relating to the infringement of Article 91(2) and Article 94 TFEU, raised by Romania in the context of the first part of its first plea, alleging breach of the principle of proportionality, must be rejected as unfounded.

586 In the light of all of the foregoing, the actions brought by the Republic of Bulgaria (Case C-543/20), Romania (Case C-546/20) and Hungary (Case C-551/20) must be dismissed in so far as they seek annulment of point 6(c) of Article 1 of Regulation 2020/1054.

4. Point 2 of Article 2 of Regulation 2020/1054

587 In support of the head of claim of its action (Case C-551/20) which seeks annulment of point 2 of Article 2 of Regulation 2020/1054, Hungary raises three pleas alleging breach (i) of the principle of proportionality, (ii) of the principles of legal certainty and of protection of legitimate expectations and (iii) of the second paragraph of Article 151 TFEU.

(a) Preliminary observations

588 With a view to examining those pleas, it must be recalled that, pursuant to Article 3(4) of Regulation No 165/2014, read in conjunction with the third paragraph of Article 6 of Implementing Regulation 2016/799, newly registered vehicles operating in a Member State other than their Member State of registration were to be fitted with a smart tachograph, governed by Articles 8 to 11 of Regulation No 165/2014, within 15 years from the date of entry into force, on 15 June 2019, of the rules relating to those first-generation tachographs, laid down in Annex IC to that implementing regulation. It follows that the deadline for the installation of those tachographs was 15 June 2034.

589 By point 2 and point 8(a) of Article 2 of Regulation 2020/1054, which amend, respectively, Article 3(4) and the first paragraph of Article 11 of Regulation No 165/2014, the EU legislature introduced a gradual system for the introduction of V2 tachographs during a transitional period. Thus, first, the starting date of that transitional period depends on the date of entry into force of the specifications relating to those tachographs, laid down by the Commission in Implementing Regulation 2021/1228, which entered into force on 5 August 2021. Secondly, the duration of that transitional period depends on the type of tachograph with which the vehicle is already fitted.

590 In that regard, while vehicles fitted with an analogue or digital tachograph are to be fitted with a V2 tachograph no later than three years from the end of the year of entry into force of those specifications, that is to say, no later than 31 December 2024, vehicles fitted with a first-generation tachograph are to be fitted with a V2 tachograph no later than four years after the entry into force of those specifications, that is to say, no later than 5 August 2025.

591 It follows that the EU legislature brought forward the deadline for the installation of V2 tachographs, as the case may be, by nine and a half years or by nine years.

592 It is in the light of those preliminary considerations that the pleas put forward by Hungary must be examined.

(b) Whether there was a manifest error of assessment and a breach of the principle of proportionality

(1) Arguments of the parties

593 By its first plea, Hungary claims that, in adopting point 2 of Article 2 of Regulation 2020/1054, the EU legislature breached the principle of proportionality and made a manifest error of assessment by not assessing the economic consequences of significantly bringing forward the deadline for the installation of V2 tachographs.

594 As that provision is not in the proposal for a working time regulation, no impact assessment was carried out on that point. The amendment of the deadline for the installation of V2 tachographs was introduced into the final text of Regulation 2020/1054 following the agreement concluded between the Parliament and the Council, without any impact assessment being carried out by those institutions either. It is possible to dispense with the impact assessment only where the EU legislature has sufficient information enabling it to assess the proportionality of the adopted measure. However, Hungary is unaware of the existence of such information, or of an assessment carried out by that legislature. Although two studies carried out in February and March 2018

examined the costs of compliance with that new technology, they did not expressly address the question of their proportionality, even though the second of those studies referred to the possibility of disproportion.

595 It also follows from the above that the EU legislature infringed the Interinstitutional Agreement. Since point 2 of Article 2 of Regulation 2020/1054 constitutes a 'substantial amendment' to the Commission's proposal, within the meaning of point 15 of that agreement, there was justification for carrying out a supplementary impact assessment or for calling on the Commission to do so, in accordance with point 16 of that agreement. In that regard, Hungary maintains that, where the EU institutions establish rules the effect of which is a self-imposed limitation of their discretion, they must comply with the indicative rules which they have imposed upon themselves.

596 The Parliament and the Council consider that plea to be unfounded.

(2) Findings of the Court

597 By the present plea, Hungary complains, in essence, that the EU legislature failed to examine the proportionality of point 2 of Article 2 of Regulation 2020/1054, having brought forward the deadline for the installation of V2 tachographs without having carried out an impact assessment beforehand and without having information allowing the proportionality of that measure to be assessed.

598 In that regard, it should be noted that, as is apparent from recital 27 of that regulation, the EU legislature took the view that the cost-effectiveness of enforcement of the social rules, the rapid development of new technologies, the digitalisation throughout the EU economy and the need for a level playing field among companies in international road transport made it necessary to shorten the transitional period for the installation of smart tachographs in registered vehicles, such smart tachographs to contribute to simplified controls and thus to facilitate the work of national authorities.

599 It is common ground that the bringing forward of the deadline for the installation of smart tachographs, which was suggested, in the context of the legislative procedure, by the EESC and the CoR, was not addressed by the Impact assessment – social section and was therefore not envisaged by the Commission in its proposal for a working time regulation. In particular, the *ex post* evaluation relating to social legislation, referred to in recital 4 of Regulation 2020/1054, on the basis of which that impact assessment was carried out, did not cover Regulation No 165/2014.

600 However, it follows from the case-law referred to in paragraphs 220 to 226 above that, for the purposes of the assessment of the proportionality of the measures that it adopts, the EU legislature is entitled to take into account not only the impact assessment, but also any other source of information.

601 In those circumstances, it is appropriate to examine whether, in the present case, the Parliament and the Council had, at the time of the adoption of point 2 of Article 2 of Regulation 2020/1054, sufficient information on the basis of sources of information other than the Impact assessment – social section to assess the proportionality of bringing forward the deadline for the installation of V2 tachographs.

602 In that regard, it is apparent from the information provided to the Court that the Parliament published, in February 2018, the final report of a study (EPRS, 'Retrofitting smart tachographs by 2020: Costs and benefits', 2 February 2018) to evaluate the costs and benefits of the installation in the short term of a smart tachograph for heavy goods vehicles engaged in international transport. It is common ground that that study included, inter alia, a detailed cost-benefit analysis, in which it was concluded that the long-term benefits of retrofitting smart tachographs, which could not be carried out until after 2020, outweighed the various costs incurred in the short term by the main economic operators active on the transport market.

603 Furthermore, nor is it disputed that the Commission also published, in March 2018, the final report of another study (Directorate-General for Mobility and Transport, 'Study regarding measures fostering the implementation of the smart tachograph', Final report, March 2018) on measures fostering the implementation of the smart tachograph. It is common ground that the objective pursued by that study was to examine different strategic options in order to speed up the implementation of smart tachographs over a period between 2023 and 2027 by evaluating the economic and social impacts, as well as the impacts on road safety and on the internal market, of the adoption of policy options requiring the bringing into compliance of vehicles registered before

June 2019, with a view to identifying the most appropriate option. That study also included a detailed cost-benefit analysis of those impacts on transport undertakings and national authorities.

604 It is clear from their content that those two studies contained the basic data relating to the cost of bringing forward the deadline for the installation of V2 tachographs, which Hungary, moreover, expressly acknowledged in its reply.

605 It follows that the EU legislature, when it subsequently adopted Regulation 2020/1054 laying down that measure, had sufficient information enabling it to assess the impact of that measure on the situation of international hauliers and thus to ground its decision to bring forward that deadline in the exercise of its wide discretion.

606 Those considerations are not called into question by the fact, alleged by Hungary, that those two studies did not specifically examine whether a measure such as the bringing forward of the deadline for the installation of V2 tachographs was consistent with the principle of proportionality.

607 Those studies contained the relevant objective information on the cost of bringing forward that deadline, information that enabled the EU legislature to assess the economic consequences for the operators concerned of that measure, it being noted that it was for the Commission alone, as is apparent from the case-law referred to in paragraphs 222 and 223 above and from point 12 of the Interinstitutional Agreement, to weigh up, in the exercise of the wide discretion which it enjoys in that regard, the various interests involved.

608 Moreover, in accordance with the case-law referred to in paragraph 220 above, the form in which the basic data taken into account for the adoption of a measure are recorded is irrelevant. It cannot therefore be required that those basic data be presented in the context of an assessment of proportionality.

609 The first plea relied on by Hungary must therefore be rejected as unfounded.

(c) Breach of the principles of legal certainty and protection of legitimate expectations

(1) Arguments of the parties

610 By its second plea, Hungary maintains that the bringing forward of the deadline for the installation of V2 tachographs constitutes a breach of the legitimate expectations of economic operators and therefore of the principles of legal certainty and protection of legitimate expectations. Under Article 3(4) of Regulation No 165/2014, economic operators could legitimately think that they had a period of 15 years from the adoption of the rules for implementing that provision to fulfil their obligations concerning the installation of smart tachographs. Operators thus did not simply place their reliance on an existing situation being maintained. The EU legislature, exercising its discretion, itself set a deadline on which operators were likely to base their economic decisions. In Hungary, as a result of the deadlines being brought forward, the obligation to install V2 tachographs affects 60% of the fleet, at an estimated unitary cost of EUR 2 000.

611 As the EU legislature adopted Regulation 2020/1054 on 15 July 2020, it was from that time that the new date of the compliance obligation could be known with certainty. Consequently, only that date could mark the starting point of the period available to economic operators to adapt, not the date of publication of the studies that first examined the issue. Even if economic operators were aware of those studies, they could not know with certainty which solution would be adopted.

612 While it is true that vehicles used in international transport are renewed every three to five years, the March 2018 study, referred to in paragraph 603 above, itself states that replaced vehicles find new owners on the market for second-hand vehicles. It is possible that an international transport undertaking purchases a second-hand vehicle or does not replace its vehicles with the frequency referred to above. A significant number of SMEs operating on the international transport market may have rather limited financial resources.

613 None of the overriding reasons relating to a public interest stated in recital 27 of Regulation 2020/1054 justified the alteration of the deadlines for the introduction of V2 tachographs. As regards, first, the cost-effectiveness of the enforcement of the social rules, that was not effectively examined during the legislative process. Secondly, the rapid development of new technologies and digitalisation throughout the economy do not constitute overriding reasons relating to a public

interest capable of justifying a breach of the legitimate expectations of economic operators. In addition, V2 tachographs have not yet been developed and the date on which they will be placed on the market is not known. As regards, thirdly, the need for a level playing field among transport undertakings, it is difficult to understand why undertakings operating in international transport that are established in third countries are not subject to the obligation in question. The European Agreement concerning the work of crews of vehicles engaged in international road transport ('the AETR') requires the fitting of a digital tachograph.

614 The Parliament and the Council consider this plea to be unfounded.

(2) Findings of the Court

615 As noted in paragraph 162 above, the principle of legal certainty does not entail an obligation to maintain the legal order unchanged over time, as the EU legislature remains free, in the context of its discretion, to alter the existing legal situation.

616 As regards the principle of protection of legitimate expectations, it should be recalled that the right to rely on that principle extends, as a corollary of the principle of legal certainty, to any individual in a situation where European Union authorities have caused him or her to entertain legitimate expectations. In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources constitutes assurances capable of giving rise to such expectations. However, a person may not plead breach of the principle unless he or she has been given precise assurances by the authorities. Similarly, if a prudent and alert economic operator can foresee that the adoption of an EU measure is likely to affect his or her interests, he or she cannot plead that principle if the measure is adopted (judgment of 3 December 2019, *Czech Republic* v *Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 153 and the case-law cited).

617 Furthermore, the Court has previously held that an economic operator may not place legitimate reliance on there being no alteration of an existing situation by the EU legislature, but can call into question only the arrangements for the implementation of such an alteration (see, to that effect, judgment of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 47 and the case-law cited).

618 In addition, according to settled case-law, the scope of the principle of protection of legitimate expectations cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules (judgment of 8 September 2022, *Ministerstvo životního prostředí (Hyacinth macaws)*, C-659/20, EU:C:2022:642, paragraph 69 and the case-law cited), especially in areas the objective of which necessarily involves constant adjustment to reflect changes in economic circumstances (see, to that effect, judgment of 4 May 2023, *Kapniki A. Michailidis*, C-99/22, EU:C:2023:382, paragraph 29 and the case-law cited).

619 In the light of that case-law, it must, first of all, be noted that the mere fact that Article 3(4) and the first paragraph of Article 11 of Regulation No 165/2014, in the version applicable before the entry into force of Regulation 2020/1054, laid down, for the installation of smart tachographs, a date different from that which was ultimately adopted by point 2 and point 8(a) of Article 2 of the latter regulation is not sufficient to establish a breach of legal certainty or of legitimate expectations and, in particular, a breach of precise assurances which would have been capable of giving rise to the legitimate belief that EU legislation would remain unchanged in that regard. That is even less the case as regards a legislative act which concerns, as in the present case, the introduction of equipment likely to be affected by the rapid development of new technologies and which may therefore require constant adjustment to reflect such a development.

620 Next, the time limit of three or four years for the installation of V2 tachographs, laid down by the EU legislature in point 2 of Article 2 of Regulation 2020/1054, began to run not on the date of the entry into force of that regulation, on 20 August 2020, but, in accordance with that provision, respectively, at the end of the year of entry into force or after the entry into force of the implementing regulation that it was for the Commission to adopt, pursuant to point 8(a) of that Article 2, concerning the technical specifications, namely, in view of the entry into force, on 5 August 2021, of Implementing Regulation 2021/1228, as the case may be, from 31 December 2021 or from 5 August 2021. Accordingly, the transport undertakings concerned have, in actual fact, a longer time limit, depending on the type of tachograph with which their vehicles are fitted, in which to install V2 tachographs in accordance with those new provisions, a time limit that runs, respectively, for almost four and a half years until 31 December 2024 or for five years until 5 August 2025.

621 Furthermore, it was already apparent from the studies referred to in paragraphs 602 and 603 above, which were published in February and March 2018 by the Parliament and the Commission in the course of the legislative procedure that led to the adoption of Regulation 2020/1054, that the EU legislature envisaged bringing forward the deadline for the installation of smart tachographs. As the Advocate General observed in point 473 of his Opinion, a prudent and alert economic operator was therefore in a position to anticipate the adoption of such a measure even before the adoption of that regulation.

622 Lastly, it is apparent from Hungary's own data that the cost of installing a V2 tachograph should be around EUR 2 000 per vehicle. It must be stated that an investment of such a limited amount in relation to the purchase price of the vehicle itself, which, moreover, relates only to the part of the fleet of a transport undertaking that is devoted to international transport, can reasonably be made by a diligent and prudent economic operator within the time limit of four and a half years or five years stemming from point 2 and point 8(a) of Article 2 of Regulation 2020/1054. That is all the more so because, as stated on page 41 of the Commission's study referred to in paragraph 603 above, vehicles engaged in international transport are often replaced after three to five years, it being irrelevant, contrary to what Hungary maintains in that regard, whether, for the purpose of replacing such vehicles, the transport undertaking concerned makes use, where appropriate, of the market for second-hand vehicles. Similarly, while Hungary submits that it is possible that an international transport undertaking does not replace its vehicles with that frequency, it should be noted that such an argument does not in any way contradict the data referred to in that Commission study, which concern the general conduct of operators active in the transport services market – the only relevant factor in that context – and not the isolated acts of certain individual operators in that market.

623 None of the other arguments raised by Hungary is capable of calling those considerations into question.

624 As regards, in the first place, the argument alleging that the reasons relied on by the EU legislature in recital 27 of Regulation 2020/1054 do not justify the bringing forward of the deadline for the installation of V2 tachographs, it is sufficient to note that such a circumstance, even if it were established, is not, as such, capable of demonstrating that the EU legislature gave the operators concerned precise and unconditional assurances that were such as to give rise to the legitimate expectation that the EU rules would remain unchanged on that point for a period of 15 years.

625 Furthermore, the Court has previously held that, even if the European Union were first to have created a situation capable of giving rise to legitimate expectations, which it has not in this case, an overriding public interest may preclude transitional measures from being adopted in respect of situations which arose before the new rules came into force but which are still subject to change (judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 68 and the case-law cited).

626 However, by point 2 and point 8(a) of Article 2 of Regulation 2020/1054, the EU legislature maintained a transitional period – even though it reduced its duration – for the installation of V2 tachographs, with the result that it was in no way required to justify that measure by overriding reasons relating to the public interest.

627 In any event, as regards the justification based on the effectiveness of the enforcement of the social rules, it should be noted that that effectiveness of enforcement is an overriding reason relating to the public interest (see, to that effect, judgment of 3 December 2024, *De Clercq and Others*, C-315/13, EU:C:2014:2408, paragraphs 66 and 67; see, by analogy in fiscal matters, judgment of 12 October 2023, *BA (Inheritance – Public housing policy in the European Union)*, C-670/21, EU:C:2023:763, paragraph 78 and the case-law cited) and that, contrary to what Hungary argues, that justification was discussed during the legislative procedure, as is apparent, in particular, from the Impact assessment – social section (Part 1/2, p. 32), in which the Commission specifically examined the impact of the introduction of smart tachographs on the effectiveness of controls.

628 As regards, in the second place, the argument based on the uncertainty surrounding the date on which V2 tachographs will be placed on the market, it is apparent from the information provided by the Council, which is contained in a letter of the Commission sent to the Council on 4 October 2018 and which has not been challenged by Hungary, that the EU legislature engaged in discussions with representatives of the transport sector before the adoption of Regulation 2020/1054 in order to satisfy itself that the latest version of smart tachographs, in the present case V2 tachographs, could be installed in vehicles engaged in international transport before the end of 2024.

629 At the hearing, Hungary argued that, on the day of that hearing, V2 tachographs were still being tested, as type approval had not yet been granted for the authentication system. However, even if that were the case, it should be recalled that the legality of an EU act must be assessed in the light of the information available to the EU legislature on the date of the adoption of the rules in question (judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 67 and the case-law cited). It follows that, in the present case, the legality of point 2 of Article 2 of Regulation 2020/1054 must be assessed in the light of the information available to the EU legislature at the time of the adoption of that regulation. While any delay in the availability of V2 tachographs might require that the Commission propose to the Parliament and to the Council that the transitional period laid down in that provision be extended, it cannot affect the legality of that provision.

630 Lastly, as regards, in the third place, the argument relating to the impact of point 2 of Article 2 of Regulation 2020/1054 on the conditions of competition, it overlaps with the third plea, alleging infringement of the second paragraph of Article 151 TFEU, and must therefore be examined in that context.

631 The second plea relied on by Hungary must therefore be rejected as unfounded.

(d) Infringement of the second paragraph of Article 151 TFEU

(1) Arguments of the parties

632 By its third plea, Hungary maintains that point 2 of Article 2 of Regulation 2020/1054 infringes the obligation to maintain the competitiveness of the European Union economy, as laid down in the second paragraph of Article 151 TFEU. Even though that regulation was adopted on the legal basis of the common transport policy, it comes within social policy. An improvement of working conditions by means of the harmonisation of national laws cannot take place unless at the same time account is taken of the need to maintain the competitiveness of the EU economy. However, comparable requirements do not apply to the vehicles of transport undertakings that are not established in a Member State. Furthermore, under the AETR, the vehicles of transport undertakings established in the countries to which that agreement is applicable are only required to have a digital tachograph, which therefore confers a competitive advantage on them.

633 Although the EU legislature itself recognised the need to maintain the competitiveness of the transport undertakings of the European Union in recital 34 of Regulation 2020/1054, no provision of that regulation imposes any actual obligation on the Commission or prescribes any specific period in that respect, so that there is no guarantee that the AETR will be amended accordingly or, at least, that negotiations to that effect may be entered into in the near future. While the EU legislature is not bound by an obligation of result, it nonetheless has an obligation to exercise diligence, in the sense that it should do everything in its power to ensure that the European Union is not at a competitive disadvantage. In order to satisfy that obligation, it is not sufficient to adopt a recital that has no binding effect.

634 The Parliament and the Council contend that this plea is unfounded.

(2) Findings of the Court

635 It should be recalled that Article 151 TFEU, which comes under Title X of Part Three of the FEU Treaty, relating to EU social policy, provides, in the second paragraph thereof, that the EU legislature and the Member States must implement measures that take account, inter alia, of the need to maintain the competitiveness of the EU economy.

636 However, Regulation 2020/1054 was adopted by the EU legislature on the basis not of the provisions of the FEU Treaty relating to social policy, but of Article 91(1) TFEU, which comes under Title VI of that same Part Three of the FEU Treaty, relating to the common transport policy, which empowers the Parliament and the Council to lay down, inter alia, common rules applicable to international transport to or from a Member State or passing across the territory of one or more Member States and the conditions under which non-resident carriers may operate transport services within a Member State. It follows that the second paragraph of Article 151 TFEU is irrelevant for the purpose of assessing the legality of the provisions of Regulation 2020/1054.

637 In any event, recital 34 of Regulation 2020/1054 states that 'it is important that transport undertakings established in third countries are subject to rules which are equivalent to Union rules when performing road transport operations in the territory of the Union' and that 'the Commission should assess the application of this principle at Union level and propose adequate solutions to be negotiated in the context of the [AETR]'.

638 It cannot therefore be claimed that, when adopting Regulation 2020/1054, the EU legislature failed to take account of the competitive disadvantage resulting for transport undertakings established in the European Union from the fact that transport undertakings established in third countries are not necessarily subject to rules which are equivalent to EU rules when performing road transport operations in the territory of the European Union, that legislature having specifically entrusted the Commission with the task of proposing adequate solutions to be negotiated in the context of the AETR.

639 Consequently, the third plea relied on by Hungary must be rejected as unfounded.

640 In the light of all of the foregoing, the action brought by Hungary (Case C-551/20) must be dismissed in so far as it seeks annulment of point 2 of Article 2 of Regulation 2020/1054.

5. Article 3 of Regulation 2020/1054

641 In support of the head of claim of its action (Case C-541/20) which seeks annulment of Article 3 of Regulation 2020/1054, in so far as the first paragraph of that article sets the date of the entry into force of the provisions of point 6(c) and (d) of Article 1 of that regulation at the twentieth day following the date of publication of that regulation in the *Official Journal of the European Union*, the Republic of Lithuania relies on three pleas, which it is appropriate to examine together, alleging breach (i) of the principle of proportionality, (ii) of the obligation to state reasons laid down in Article 296 TFEU and (iii) of the principle of sincere cooperation enshrined in Article 4(3) TEU.

(a) Arguments of the parties

642 As regards, in the first place, the principle of proportionality, the Republic of Lithuania submits that the EU legislature, by setting, in the first paragraph of Article 3 of Regulation 2020/1054, the date of entry into force of the obligation laid down in point 6(d) of Article 1 of that regulation and of the prohibition on taking regular or compensatory rest in the vehicle, did not take into account the fact that, in the absence of a transitional period, the Member States and transport undertakings will not be able to adapt to that obligation and to that prohibition, no argument having been presented to justify why their entry into force is urgent.

643 In choosing an inappropriate mechanism for the implementation of Regulation 2020/1054, the EU legislature thus created legislation compliance with which is particularly difficult to ensure. In so doing, it infringed Article 5 of the Protocol on the principles of subsidiarity and proportionality, under which draft legislative acts must take account of the need for any burden falling upon economic operators to be minimised and commensurate with the objective to be achieved.

644 First, the EU legislature did not take into account the fact that at present there are not sufficient adequate and safe parking areas, in which drivers might benefit from appropriate rest conditions away from the vehicle's cabin. It follows that transport undertakings will have to take unjustified and disproportionate risks by instructing drivers to leave their lorries in parking areas where the security of the load is not ensured. In addition, in the Impact assessment – social section, the Commission itself confirmed that the implementation of the prohibition on taking regular or compensatory weekly rest in the vehicle was liable to cause difficulties on account of the insufficiency of accommodation and secure parking areas. It also stated that, for those reasons, the cabins offered better rest conditions than the other available facilities. It is incorrect to maintain that point 6(c) of Article 1 of Regulation 2020/1054 is a mere codification of the judgment in *Vaditrans*. The obligation to take the prescribed rest period in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities is a new obligation. In any event, even in the case of a codification, the EU legislature should have followed the ordinary legislative procedure, during which it should have, inter alia, assessed the proportionality of the proposed measure and ascertained whether it was easy to implement. That should have been all the more so given that, prior to the adoption of Regulation 2020/1054, there was no uniform practice on account of the absence of sufficient accommodation and parking infrastructure.

645 Secondly, it is apparent from the 2019 study on parking spaces that the available parking areas are concentrated in a few Member States only and that there is a shortfall of around 100 000 places. Furthermore, the Commission did not, either in its Impact assessment – social section or in that study, examine whether hotels and accommodation establishments close to secure parking areas could address that shortfall. Moreover, in that study, the Commission established that, in order to prepare for the implementation of the new obligations, several years and an extensive strategic approach to the development of EU infrastructure were required.

646 Thirdly, the EU legislature disregarded the difficulties in applying Regulation 2020/1054, of which it had been informed both by the EESC and by the Parliament's Committee on Employment and Social Affairs and its Committee on Transport and Tourism.

647 Fourthly, the prohibition on taking regular or compensatory weekly rest in the vehicle also raises other important legal questions, such as that concerning precautionary measures and insurance cover, since in most cases the driver will have to leave the load, unsupervised, in an insecure parking place. According to the case-law of the Lithuanian courts, leaving goods in an insecure parking area constitutes intentional fault on the part of the haulier, with the result that the insurer will refuse to cover any loss of the goods.

648 Fifthly, the unjustified nature of Article 3 of Regulation 2020/1054 is also demonstrated by the absence of any interpretative document by reference to which transport undertakings would be able to organise the drivers' return to their place of residence or to the employer's operational centre. Without such a document, the obligation laid down in point 6(d) of Article 1 of that regulation is difficult to implement, giving rise to practices that differ between Member States and between transport undertakings.

649 As regards, in the second place, the obligation to state reasons, the Republic of Lithuania submits that, when examining the proposal for a working time regulation, the EU legislature was informed, by the Impact assessment – social section and by other sources, that the prohibition on taking regular or compensatory weekly rest in the vehicle would give rise to practical problems in implementing that prohibition and that the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 – for the implementation of which there are no clear rules – would, without justification, limit freedom of movement for workers.

650 In such a context, the EU legislature ought to have put forward sound arguments to justify the absence of a transitional period or of a deferment of the entry into force of the rules at issue. While the objectives indicated in the proposal for a working time regulation, namely the improvement of drivers' working conditions and road safety and the creation of adequate rest conditions are important, they would in no way justify an entry into force of those rules without delay. The date of entry into force of a legislative act, which determines when that act becomes applicable and gives rise to corresponding obligations on the persons concerned, cannot be treated as a purely technical choice.

651 As regards, in the third place, the principle of sincere cooperation, the Republic of Lithuania maintains, first, that not only did the EU legislature fail to justify the need for the prohibition on taking regular or compensatory weekly rest in the vehicle and the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 to be brought into force without a transitional period, but, in addition, it failed to examine how it would have been possible to create the appropriate conditions, by making provision for such a transitional period, to allow the Member States and the transport undertakings to adapt to those new rules. In particular, the EU legislature did not examine whether it was possible to adopt measures which would authorise the Member States to adapt to those new rules gradually and which would ensure that the transport undertakings will not be penalised because of the insufficiency of adequate accommodation.

652 Secondly, the EU legislature failed to take into account the fact that the appropriate implementation of the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 was unclear and that, consequently, in order to ensure the coherent implementation of that obligation, it was necessary to adopt further measures.

653 Thirdly, there was also a breach of the duty of mutual assistance, since it is obvious that the Member States cannot objectively guarantee sufficient accommodation and parking infrastructure. The EU institutions are in principle required to engage with Member States and to state their reasons for rejecting the objections formulated by them.

654 The Parliament and the Council consider, in essence, these pleas and arguments to be ineffective. Even if Article 3 of Regulation 2020/1054 were annulled, the same date of entry into force would still apply in accordance with the third subparagraph of Article 297(1) TFEU. In any event, these pleas and arguments are unfounded.

(b) Findings of the Court

655 Without there being any need to rule on the merits of the objection of the Parliament and of the Council alleging that, on the ground set out in the preceding paragraph, the claim for annulment of Article 3 of Regulation 2020/1054 brought by the Republic of Lithuania is ineffective, it should be recalled, as regards the entry into force of point 6(c) of Article 1 of that regulation, that, as already noted in paragraphs 481 to 494 above, that provision, which lays down the prohibition on taking regular or compensatory weekly rest in the vehicle, codified, contrary to the Republic of Lithuania's contention, the case-law established by the Court in the judgment in *Vaditrans* regarding the interpretation of Article 8(8) of Regulation No 561/2006, in the version prior to the entry into force of point 6(c) of that Article 1.

656 In those circumstances, and as the Republic of Lithuania does not dispute, moreover, the validity of that latter provision, it must be held that the pleas and arguments by which that Member State criticises the EU legislature for not having deferred its entry into force are necessarily ineffective, since the prohibition on taking regular or compensatory weekly rest in the vehicle that it lays down already applied before the entry into force of that same provision.

657 Accordingly, all the pleas and arguments put forward by the Republic of Lithuania in support of its claim for annulment of Article 3 of Regulation 2020/1054 must be rejected as ineffective, in so far as that article sets, in the first paragraph thereof, the date of entry into force of point 6(c) of Article 1 of that regulation.

658 It is therefore necessary to examine those pleas and arguments only in so far as they are put forward in support of the claim for annulment of Article 3 of Regulation 2020/1054 as regards the entry into force of point 6(d) of Article 1 of that regulation.

659 As regards, in the first place, the plea alleging breach of the principle of proportionality, the Republic of Lithuania merely claims that Article 3 of Regulation 2020/1054 is unjustified on the ground that there is no interpretative document enabling transport undertakings to implement their obligation to organise the drivers' return to their employer's operational centre or to their place of residence. It is sufficient to recall that, as is apparent from paragraphs 168 to 199 and 269 to 274 above, point 6(d) of Article 1 of Regulation 2020/1054 meets the requirements of clarity and precision arising from the principle of legal certainty, while leaving a certain flexibility in its implementation to the transport undertakings which enables the negative consequences of that provision for them to be mitigated.

660 In those circumstances, the absence of such an interpretative document cannot in itself demonstrate that, by setting the entry into force of that obligation, in accordance with the third subparagraph of Article 297(1) TFEU, on the twentieth day following the publication of that regulation in the *Official Journal of the European Union*, the EU legislature infringed the principle of proportionality.

661 As regards, in the second place, the plea alleging infringement of the obligation to state reasons, it should be recalled that the second paragraph of Article 296 TFEU provides that legal acts of the institutions of the European Union are to state the reasons on which they are based. It is, however, clear from the Court's settled case-law that such a statement of reasons must be adapted to the nature of the legal act at issue and to the context in which it was adopted (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 104 and the case-law cited).

662 In the present case, since the EU legislature provided, in the first paragraph of Article 3 of Regulation 2020/1054, that point 6(d) of Article 1 of that regulation would enter into force on the twentieth day following the publication of that regulation in the *Official Journal of the European Union*, it was not required to state the reasons for the choice of that date of entry into force, since that date corresponded to the default date laid down by primary law, in the third subparagraph of Article 297(1) TFEU, for the entry into force of legislative acts.

663 As regards, in the third place, the breach of the obligation of sincere cooperation, it is true that, under the first subparagraph of Article 4(3) TEU, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.

664 However, in areas in which the EU legislature has a wide discretion, the Court need satisfy itself only, in accordance with the case-law referred to in paragraphs 218 and 244 above, that the EU legislature is able to show that, in adopting the act at issue, it effectively exercised its discretion and, for that purpose, is able to set out clearly and unequivocally the basic facts on the basis of which that act was adopted and on which the exercise of its discretion depended.

665 The duty of sincere cooperation cannot have a wider scope, in the sense of requiring the EU legislature, in all circumstances, to produce, at the request of a Member State, documents and information that are allegedly missing or to correct information available to it before being able to adopt an act. Such an interpretation could prevent the institutions from exercising their discretion and block the legislative process. While it is true that the duty of sincere cooperation includes the duty of mutual assistance, which entails, among other things, the exchange of relevant information between the institutions and the Member States during the legislative process, that obligation cannot provide a means for one of those States, in the event of disagreement as to the adequacy, relevance or accuracy of the available data, to challenge the lawfulness of the decision-making process on that ground alone (see, to that effect, judgment of 13 March 2019, *Poland* v *Parliament and Council*, C-128/17, EU:C:2019:194, paragraphs 74 and 75).

666 In those circumstances, the adoption of a legislative measure with due regard for the relevant provisions of the FEU Treaty, despite the opposition of several Member States, cannot constitute a breach of the duty of sincere cooperation devolving on the Parliament and the Council (see, to that effect, judgment of 13 March 2019, *Poland* v *Parliament and Council*, C-128/17, EU:C:2019:194, paragraph 76 and the case-law cited).

667 In the present case, as the Advocate General observed in point 523 of his Opinion, it is not disputed that, in accordance with the duty of mutual assistance flowing from the duty of sincere cooperation laid down in Article 4(3) TEU, the Republic of Lithuania had, during the legislative process, access to all the documents on which the EU legislature relied in order to adopt Regulation 2020/1054 and that that Member State was able to present its observations on the data contained in those documents and on the assumptions made.

668 That finding cannot be called into question by the arguments raised by the Republic of Lithuania, referred to in paragraphs 651 to 653 above. In addition to the fact that they overlap, in essence, with the arguments, rejected in paragraphs 659 to 662 above, relating to the need for the introduction of a transitional period and the adoption of an interpretative document, compliance with the obligation of mutual assistance in no way requires the EU legislature to agree with that Member State on those two points.

669 Consequently, the three pleas relied on by the Republic of Lithuania in support of its head of claim seeking annulment of Article 3 of Regulation 2020/1054, in so far as that article sets, in the first paragraph thereof, the date of entry into force of point 6(d) of Article 1 of that regulation, must be rejected as unfounded.

670 In the light of all those considerations, the action brought by the Republic of Lithuania (Case C-541/20), in so far as it seeks annulment of Article 3 of Regulation 2020/1054, must be dismissed as in part ineffective and in part unfounded.

6. Conclusion concerning Regulation 2020/1054

671 It follows from all of the foregoing that it is appropriate to dismiss in their entirety, on the one hand, the actions brought by the Republic of Lithuania (Case C-541/20) and Hungary (Case C-551/20), in so far as they concern Regulation 2020/1054, and, on the other, the actions brought by the Republic of Bulgaria (Case C-543/20), Romania (Case C-546/20) and the Republic of Poland (Case C-553/20).

B. Regulation 2020/1055

672 The Republic of Lithuania (Case C-542/20), the Republic of Bulgaria (Case C-545/20), Romania (Case C-547/20), the Republic of Cyprus (Case C-549/20), Hungary (Case C-551/20), the Republic

of Malta (Case C-552/20) and the Republic of Poland (Case C-554/20) seek annulment of several provisions of Regulation 2020/1055 or, in the alternative, of that regulation in its entirety.

673 In the first place, the actions brought by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus, Hungary, the Republic of Malta and the Republic of Poland seek annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, which lays down the obligation, for vehicles used in international carriage, to return to one of the operational centres in the Member State of establishment of the transport undertaking concerned every eight weeks ('the obligation for vehicles to return').

674 In the second place, the action brought by the Republic of Poland seeks annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, which lays down the obligation for transport undertakings to have at their regular disposal, on an ongoing basis, a number of vehicles and drivers who are normally based at an operational centre in their Member State of establishment, in both cases proportionate to the volume of transport operations that they carry out.

675 In the third place, the actions brought by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Malta and the Republic of Poland seek annulment of point 4(a) of Article 2 of Regulation 2020/1055, which inserted paragraph 2a in Article 8 of Regulation No 1072/2009, which provides that hauliers are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, in the same host Member State within four days following the end of a period of cabotage carried out in that Member State ('the waiting period').

676 In the fourth place, the action brought by Romania seeks annulment of point 4(b) of Article 2 of Regulation 2020/1055, which replaced, in paragraph 3 of Article 8 of Regulation No 1072/2009, the first subparagraph by a new subparagraph, which subjects undertakings wishing to carry out cabotage operations to the obligation to produce evidence of previous transport operations and of each cabotage operation carried out.

677 In the fifth place, the action brought by Romania seeks annulment of point 4(c) of Article 2 of Regulation 2020/1055, which inserted paragraph 4a in Article 8 of Regulation No 1072/2009, which lays down the detailed rules for presenting that evidence.

678 In the sixth and last place, the action brought by the Republic of Poland seeks annulment of point 5(b) of Article 2 of Regulation 2020/1055, which added paragraph 7 to Article 10 of Regulation No 1072/2009, which states that Member States may provide that Article 8 of Regulation No 1072/2009 is to apply to hauliers, in the host Member State, when they carry out initial or final road haulage legs, within that host Member State, that form part of combined transport operations between Member States.

1. Overview of the pleas in law

679 In support of the heads of claim of its action (Case C-542/20), which seek annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and of point 4(a) of Article 2 of Regulation 2020/1055, the Republic of Lithuania relies on five identical pleas, alleging infringement (i) of Article 3(3) TEU, Articles 11 and 191 TFEU and of EU environmental and climate change policy, (ii) of Article 26 TFEU (first part) and of the general principle of non-discrimination (second part), (iii) of Article 91(2) TFEU and of Article 94 TFEU, (iv) of the principle of 'sound legislative procedure' and (v) of the principle of proportionality.

680 In support of the heads of claim of its action (Case C-545/20) which seek annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and of point 4(a) of Article 2 of Regulation 2020/1055, the Republic of Bulgaria relies on seven pleas, five of which are common to the two contested provisions, the third and sixth pleas being raised only in support of the heads of claim seeking annulment of the first of those provisions. The first plea alleges infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU and Article 11 TFEU, and of Article 37 of the Charter (first part), and of Article 3(5) TEU, of Article 208(2) and of Article 216(2) TFEU, and of the Paris Agreement (second part). The second plea, which also contains two parts, alleges breach of the principle of proportionality, laid down in Article 5(4) TEU and in Article 1 of the Protocol on the principles of subsidiarity and proportionality. The third plea alleges infringement of the principles of equal treatment and non-

discrimination, laid down in Article 18 TFEU and in Articles 20 and 21 of the Charter, of the principle of equality of Member States before the Treaties, laid down in Article 4(2) TEU, and, 'in so far as the Court considers it necessary', of Article 95(1) TFEU. The fourth plea alleges infringement of Article 91(1) TFEU. The fifth plea alleges infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, of Article 91(2) and of Article 94 TFEU. The sixth plea alleges breach of the freedom to exercise an occupational activity, of the freedom of establishment, provided for in Article 49 TFEU, and of Articles 15 and 16 of the Charter. The seventh plea alleges infringement, principally, of Article 58(1) TFEU, read in conjunction with Article 91 TFEU, or, in the alternative, of Article 56 TFEU (first branch), and of Articles 34 and 35 TFEU (second part).

681 In support of the heads of claim of its action (Case C-547/20) which seek annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and of point 4(a) to (c) of Article 2 of Regulation 2020/1055, Romania relies on three pleas, two of which are common to the contested provisions, the second plea being raised only in support of the head of claim seeking annulment of the first of those provisions. The first plea, which contains two parts, alleges breach of the principle of proportionality, laid down in Article 5(4) TEU. The second plea alleges breach the freedom of establishment, provided for in Article 49 TFEU. The third plea alleges breach of the principle of non-discrimination on grounds of nationality, laid down in Article 18 TFEU.

682 In support of the head of claim of its action (Case C-549/20) which seeks annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the Republic of Cyprus relies on seven pleas. The first plea alleges infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU and Article 11 TFEU, and of Article 37 of the Charter (first part), and of Article 3(5) TEU, of Article 208(2) and of Article 216(2) TFEU, and of the Paris Agreement (second part). The second plea alleges breach of the principle of proportionality, laid down in Article 5(4) TEU and in Article 1 of the Protocol on the principles of subsidiarity and proportionality. The third plea alleges infringement of the principles of equal treatment and non-discrimination, laid down in Article 18 TFEU and in Articles 20 and 21 of the Charter, of the principle of equality of Member States before the Treaties, laid down in Article 4(2) TEU, and, 'in so far as the Court considers it necessary', of Article 95(1) TFEU. The fourth plea alleges infringement of Article 91(1) TFEU. The fifth plea alleges infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, of Article 91(2) and of Article 94 TFEU. The sixth plea alleges breach of the freedom to exercise an occupational activity, the freedom of establishment, provided for in Article 49 TFEU, and of Articles 15 and 16 of the Charter. The seventh plea alleges infringement, principally, of Article 58(1) TFEU, read in conjunction with Article 91 TFEU, or, in the alternative, of Article 56 TFEU (first branch), and of Articles 34 and 35 TFEU (second part).

683 In support of the head of claim of its action (Case C-551/20) which seeks annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, Hungary relies on two pleas, alleging (i) a manifest error of assessment and breach of the principle of proportionality (first part), and breach of the precautionary principle (second part), and (ii) breach of the principle of non-discrimination.

684 In support of the head of claim of its action (Case C-552/20) which seeks annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the Republic of Malta relies on two pleas, alleging infringement (i) of the essential procedural requirements of Article 91(2) TFEU, read in conjunction with Article 11 TFEU and Article 37 of the Charter, and (ii) of Article 5(4) TEU and of the principle of proportionality. In support of the head of claim of that action which seeks annulment of point 4(a) of Article 2 of Regulation 2020/1055, that Member State raises three pleas, alleging infringement (i) of Article 91(2) TFEU, (ii) of Article 5(4) TEU and of the principle of proportionality, and (iii) of Articles 20 and 21 of the Charter and of the principle of non-discrimination.

685 In support of the heads of claim of its action (Case C-554/20) which seek annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, of point 4(a) of Article 2 of Regulation 2020/1055 and of point 5(b) of Article 2 of Regulation 2020/1055, the Republic of Poland relies on three identical pleas, respectively, for each of the contested provisions, and on one plea common to all those provisions. The first plea alleges breach of the principle of proportionality, laid down in Article 5(4) TEU. The second plea alleges infringement of Article 91(2) TFEU. The third plea alleges infringement of Article 94 TFEU. The plea common to all the contested provisions of Regulation 2020/1055 alleges infringement of Article 11 TFEU and of Article 37 of the Charter. In support of its head of claim seeking annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, that Member State raises two pleas alleging, respectively, breach of the principle of

proportionality, laid down in Article 5(4) TEU, and breach of the principle of legal certainty, as well as the plea common to all the contested provisions of Regulation 2020/1055.

686 It is necessary to examine in turn the heads of claim of the actions seeking annulment, first, of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009; secondly, of point 4(a) of Article 2 of Regulation 2020/1055; thirdly, of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009; and, fourthly, of point 5(b) of Article 2 of Regulation 2020/1055.

2. Point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009

687 In support of their respective actions for annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the Republic of Lithuania (Case C-542/20), the Republic of Bulgaria (Case C-545/20), Romania (Case C-547/20), the Republic of Cyprus (Case C-550/20), Hungary (Case C-551/20), the Republic of Malta (Case C-552/20) and the Republic of Poland (Case C-554/20) allege, as the case may be, infringement, in essence:

– of the principle of proportionality (the fourth and fifth pleas of the Republic of Lithuania, the first part of the second plea of the Republic of Bulgaria, the first part of the first plea of Romania, the second plea of the Republic of Cyprus, first part of the first plea of Hungary, the second plea of the Republic of Malta and the first plea of the Republic of Poland);

– of the precautionary principle (the second part of the first plea of Hungary);

– of the principles of equal treatment and non-discrimination (the second part of the second plea of the Republic of Lithuania, the third plea of the Republic of Bulgaria, the third plea of Romania, inasmuch as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the third plea of the Republic of Cyprus and second plea of Hungary);

– of the rules of EU law on common transport policy, laid down in Article 91(1) TFEU (the fourth plea of the Republic of Bulgaria, inasmuch as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and the fourth plea of the Republic of Cyprus) and in Article 90 TFEU, read in conjunction with Article 3(3) TEU, in Article 91(2) and in Article 94 TFEU (the third plea of the Republic of Lithuania as regards Article 91(2) and Article 94 TFEU, the fifth plea of the Republic of Bulgaria, inasmuch as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the fifth plea of the Republic of Cyprus, first plea of the Republic of Malta, in that it refers to Article 91(2) TFEU, read in conjunction with Article 11 TFEU and Article 37 of the Charter, as well as the second and third pleas of the Republic of Poland as regards Article 91(2) and Article 94 TFEU);

– of the functioning of the internal market, provided for in Article 26 TFEU (the first part of the second plea of the Republic of Lithuania);

– of the freedom of establishment, provided for in Article 49 TFEU (the sixth plea of the Republic of Bulgaria, in so far as it refers to that provision, the second plea of Romania and sixth plea of the Republic of Cyprus, in so far as it refers to that provision);

– of the freedom to exercise an occupational activity and of Articles 15 and 16 of the Charter (the sixth plea of the Republic of Bulgaria and the sixth plea of the Republic of Cyprus, in so far as they refer to those provisions);

– of the freedom to provide services, laid down in Article 58(1) TFEU, read in conjunction with Article 91 TFEU, or, in the alternative, in Article 56 TFEU (the first part of the seventh plea of the Republic of Bulgaria, inasmuch as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and the first part of the seventh plea of the Republic of Cyprus);

– of the free movement of goods, laid down in Articles 34 and 35 TFEU (the second part of the seventh plea of the Republic of Bulgaria, inasmuch as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and the second part of the seventh plea of the Republic of Cyprus); and

– of the rules of EU law and of the commitments of the European Union in environmental protection matters (the first plea of the Republic of Lithuania, both parts of the first plea of the Republic of Bulgaria, inasmuch as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, both parts of the first plea of the Republic of Cyprus, the first plea of the Republic of Malta, in that it refers to those rules, and the plea of the Republic of Poland common to all the contested provisions of Regulation 2020/1055, inasmuch as it is directed against point 3 of Article 1 thereof, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009).

(a) Breach of the principle of proportionality

688 The Republic of Lithuania, by its fourth and fifth pleas, the Republic of Bulgaria, by the first part of its second plea, Romania, by the first part of its first plea, the Republic of Cyprus, by its second plea, Hungary, by the first part of its first plea, the Republic of Malta, by its second plea, and the Republic of Poland, by its first plea, claim that point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, does not comply with the requirements flowing from the principle of proportionality.

689 First, those Member States dispute that the EU legislature examined the proportionality of that provision, especially on account of the absence of an impact assessment concerning the obligation for vehicles to return laid down in that provision. In particular, although the fourth plea of the Republic of Lithuania formally alleges breach of the principle of 'sound legislative procedure' and of 'essential procedural requirements', it is apparent from the arguments put forward in support of it that that Member State seeks, in fact, to demonstrate a breach of the principle of proportionality on the ground that the effects of that obligation were not properly evaluated. Similarly, although, by the first part of its first plea, Hungary formally alleges a manifest error of assessment and a breach of the principle of proportionality, its arguments in that context are merely intended to demonstrate a breach of that latter principle.

690 Secondly, the applicant Member States dispute the proportionality as such of that obligation.

(1) Whether the EU legislature examined the proportionality of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009

(i) Arguments of the parties

691 The Republic of Lithuania, by its fourth plea, the Republic of Bulgaria, by the first part of its second plea, Romania, by the first part of its first plea, the Republic of Cyprus, by its second plea, Hungary, by the first part of its first plea, the Republic of Malta, by its second plea, and the Republic of Poland, by its first plea, dispute that the EU legislature examined the proportionality of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009.

692 In the first place, those Member States claim that there was no impact assessment concerning the obligation for vehicles to return laid down in that provision.

693 The Republic of Lithuania maintains that, under Article 11(3) TEU, the Commission has the obligation to carry out broad consultations with parties concerned in order to ensure that the European Union's actions are coherent and transparent.

694 That Member State as well as Hungary and the Republic of Malta maintain that Article 2 of the Protocol on the principles of subsidiarity and proportionality also imposes on the Commission a similar obligation to consult widely. The same is true of Article 5 of that protocol, which provides that draft legislative acts are to be justified with regard to the principles of subsidiarity and proportionality and requires that any draft legislative act contain a detailed statement making it possible to appraise compliance with those principles, from which it follows that those draft legislative acts are

to take account of the need for any burden falling upon economic operators to be minimised and commensurate with the objective to be achieved.

695 Furthermore, the Republic of Lithuania, Romania, Hungary, the Republic of Malta and the Republic of Poland submit that the Interinstitutional Agreement, in particular points 12 to 15 thereof, provides that the Commission is to carry out impact assessments of its legislative initiatives which are expected to have significant economic, environmental or social impacts. Such assessments should be based on accurate, objective and complete information and should be proportionate as regards their scope and focus.

696 Thus, the Parliament and the Council, upon considering Commission legislative proposals, should take full account of the Commission's impact assessments, which are a step in the legislative process that, as a rule, must take place if a legislative initiative is expected to have significant economic, environmental or social impacts. If, during the legislative procedure, substantial amendments are made to the Commission's proposal, the Parliament and the Council should, when they consider this to be appropriate and necessary, carry out impact assessments in relation to those amendments.

697 The Republic of Lithuania maintains that the appropriate and necessary nature of the impact assessments cannot be interpreted as coming within a purely subjective assessment, depending solely on the will of the EU legislature. On the contrary, that assessment must be based on existing objective data, since this is the only way of ensuring that that legislature does not abuse its power of assessment.

698 All the applicant Member States submit that, first, the obligation for vehicles to return was not included in the proposal for an establishment regulation and was not, therefore, the subject of the Impact assessment – establishment section. Secondly, the introduction of that obligation constitutes a substantial amendment to the initial proposal because of the significant economic and environmental impact of that obligation. Interested parties and certain Member States informed the EU legislature of that impact and repeatedly requested that it carry out an impact assessment on that subject.

699 As maintained, in particular, by the Republic of Bulgaria and Romania, the obligation for vehicles to return is not of the same kind as the other conditions envisaged by the Commission in order to ensure that the establishment is effective and stable – which conditions were covered by the Impact assessment – establishment section – such as the pursuit of an operational or transport activity in the Member State of establishment or the fact of having at least one commercial contract in that Member State. Such obligations, referred to in Measure 18 set out in that Impact assessment – establishment section (Part 1/2, pp. 30 and 31), did not require vehicles to return to the operational centre of the transport undertaking concerned. Consequently, the results set out in that impact assessment are not relevant for assessing the effects of the obligation for vehicles to return.

700 In the second place, the applicant Member States complain that the EU legislature did not have sufficient information to allow it to assess the proportionality of that obligation.

701 Those Member States recognise that the EU legislature has a wide discretion in the field of transport, which applies not only to the nature and scope of the measures to be taken but also, to some extent, to the establishment of the basic facts. Those Member States maintain, however, that that legislature must be able to show that, in order to adopt those provisions, it effectively exercised its discretion, in that it took into consideration all the relevant factors and circumstances of the situation that those provisions are intended to regulate. That legislature must therefore be able to produce and set out clearly and unequivocally the basic facts on the basis of which the contested measures were adopted and on which the exercise of its discretion depended.

702 In that regard, Romania maintains that the scientific data on which the measures adopted by the EU legislature are based constitute not only the basis of its discretion, but also the limits of that discretion.

703 However, the Parliament and the Council have not proved that that legislature had sufficient information to allow it to assess the proportionality of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009.

704 That view is confirmed by the Commission's decision to carry out an impact assessment in relation to the obligation for vehicles to return following the adoption of Regulation 2020/1055, which led to

the study entitled ‘Assessment of the impact of a provision in the context of the revision of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, Final report’, published in February 2021.

705 Moreover, the Republic of Poland submits that, in the absence of an impact assessment, the assessment criteria used by the EU legislature to determine the frequency of the return of vehicles to the operational centre in the Member State of establishment of the transport undertaking concerned are arbitrary. Consequently, it is difficult to see why a frequency of return of eight weeks permits the inference that the requirement of an effective and stable establishment in that Member State has been complied with.

706 In that regard, the Republic of Poland observes that, according to recital 8 of Regulation 2020/1055, synchronisation of the obligation for vehicles to return with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 strengthens the right of drivers to return and reduces the risk that the vehicle has to return only to fulfil that new establishment requirement. However, the measures in Regulation 2020/1055 should be justified by the objectives pursued by that regulation. Thus, the fact that the obligation for vehicles to return has been synchronised with another obligation laid down in Regulation 2020/1054 does not provide sufficient justification.

707 The Parliament and the Council consider those arguments to be unfounded.

708 Those institutions claim that the fact that no impact assessment has been carried out for a given measure, or, a fortiori, for a particular provision, does not lead to the conclusion that its adoption is contrary to the principle of proportionality. The EU legislature is not subject to an autonomous procedural obligation to carry out impact assessments. Such assessments can play an important role in the application of the principle of proportionality, but they are not the sole source of data clarifying the action of that legislature. The latter may also take into account any other source of information, including public sources.

709 Thus, in the event of amendments to the Commission’s proposal, it is for the EU legislature to determine whether an impact assessment supplementary to that accompanying that proposal should be carried out, if it considers it appropriate and necessary to carry out such a supplementary assessment. In that regard, that legislature’s wide discretion applies not only to the nature and scope of the measures to be taken but also, to some extent, to the finding of the basic facts, provided that the political choice is based on objective criteria and the aims pursued by the measure chosen are such as to justify the negative economic consequences for economic operators. Thus, that legislature is not required to rely solely on basic data that specifically relate to the provisions adopted, or to draw the same conclusions as the authors of the reports or studies to which it had recourse.

710 Not carrying out an impact assessment cannot be regarded as a breach of the principle of proportionality where the EU legislature is in a particular situation requiring it to be dispensed with and has sufficient information enabling it to assess the proportionality of the adopted measure.

711 In the present case, according to the Parliament and the Council, the EU legislature had sufficient information in order to take into consideration the impacts of the obligation for vehicles to return.

712 First, the Impact assessment – establishment section carried out a comprehensive analysis of the market concerned and the difficulties specific to it. Furthermore, that impact assessment includes, under Measure 18 (Part 1/2, pp. 30 and 31), an assessment of the social and economic impacts, including their effects on SMEs, of various premisses that are relevant for the evaluation of the model chosen by the EU legislature, namely the premiss that ‘the undertaking must carry out a significant operational or transport activity in the Member State of establishment’ or the premiss that ‘the undertaking must be bound by at least one commercial contract in the State of establishment’.

713 The Commission therefore examined the consequences of those two measures that, although worded differently to the obligation for vehicles to return, pursue the same objective as that latter obligation. Thus, the EU legislature was entitled to presume that the impacts of the measure that it adopted were of the same order as those of the measures examined by the Commission.

714 Furthermore, the EU legislature was also entitled to rely on the Commission’s impact assessments relating to the other aspects of the first package of mobility measures, which led that legislature to choose to synchronise the obligation for vehicles to return with the obligation laid down in point 6(d)

of Article 1 of Regulation 2020/1054 in order to limit the impacts of the first of those obligations on transport undertakings and on the environment.

715 Secondly, during the negotiations, the EU legislature had access to other studies and estimates some of which belong to the public domain, such as the 2017 TRT Trasporti e Territorio study, 'Research for TRAN Committee – Road Transport Hauliers in the EU: Social and Working Conditions (Update of the 2013 study), European Parliament, Policy Department for Structural and Cohesion Policies, Brussels', or the documents relating to two public hearings, one of which was organised by the Committee on Employment and Social Affairs (EMPL) and the TRAN Committee on 16 October 2017 and the other by the TRAN Committee on 22 November 2017 in order to deal with questions linked with the road transport sector and social aspects of the Mobility Package.

716 Furthermore, the EU legislature also took into account the IRU's estimates on the consequences of an obligation requiring a return of vehicles every three or four weeks, as set out in an open letter of 26 October 2018; the study, carried out on behalf of Transport i Logistyka Polska (Transport and Logistics Poland), entitled *Mobility Package I – Impact on the European road transport system*, which was highly critical of an amendment – rejected during the legislative process – proposing a return of vehicles every four weeks; or a communication of the European Transport Workers' Federation in which the consequences of a measure included in a Parliament report and consisting in an obligation for all vehicles to perform at least one loading or one unloading of goods every three weeks in the Member State of establishment were examined.

717 In addition, the applicant Member States acknowledge that they themselves provided the EU legislature, during the legislative procedure, with information relating to the obligation for vehicles to return, which information enabled that legislature to assess the impacts of that obligation. In that regard, in Cases C-542/20, C-545/20, C-549/20 and C-554/20, the Parliament and the Council refer, in particular, to some of the studies submitted by the applicant Member States in support of their actions.

(ii) Findings of the Court

718 By their arguments, the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus, Hungary, the Republic of Malta and the Republic of Poland maintain that point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, infringes the principle of proportionality, on the ground that the EU legislature did not have either an impact assessment concerning that provision or sufficient information to assess its proportionality.

719 It is common ground that that provision, which lays down the obligation for vehicles used in international carriage to return to an operational centre in the Member State of establishment of the transport undertaking concerned every eight weeks, was not the subject of the Impact assessment – establishment section.

720 It should, however, be noted that, as has been recalled in paragraphs 218 to 226 above, not only is the EU legislature not required to have at its disposal an impact assessment in every circumstance, but, in addition, such an impact assessment is not binding on it, with the result that that legislature remains free to adopt measures other than those which were the subject of it.

721 The fact remains that, as stated in paragraph 243 above, that same legislature is obliged to base its choice on objective criteria and to examine whether aims pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators.

722 Thus, in accordance with the case-law referred to in paragraphs 218 and 244 above, it is for the EU legislature, when the act at issue is the subject of judicial review, to show before the Court that, in adopting that act, it effectively exercised its discretion, in that it took into consideration all the relevant factors and circumstances of the situation the act was intended to regulate. It follows that that legislature must at the very least be able to produce and set out clearly and unequivocally the basic facts which had to be taken into account as the basis of the contested measures of the act and on which the exercise of its discretion depended.

723 Consequently, it is necessary to assess whether the information referred to by the Parliament and the Council establishes that the EU legislature had sufficient information to allow it to assess the proportionality of the obligation for vehicles to return, laid down in point 3 of Article 1 of Regulation

2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, on the date of adoption of that provision.

724 In that regard, it is necessary to examine, in the first place, whether it can be established that that legislature effectively exercised its discretion by having recourse, as the Parliament and the Council submit, to the Impact assessment – establishment section or to the impact assessments relating to the other aspects of the first package of mobility measures.

725 First, contrary to what those institutions maintain, it cannot be established that that was the case on the ground that the Impact assessment – establishment section describes the market concerned and the difficulties specific to it. The identification of the characteristics and difficulties of that market does not amount to an assessment of the consequences of the means envisaged to address them. Thus, it is true that the EU legislature was entitled to rely on that analysis as regards the state of that market. However, reliance on the information contained therein, relating to such characteristics and difficulties, does not amount to producing and setting out clearly and unequivocally the basic facts on the basis of which point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, was adopted and on which the effective exercise by that legislature of its discretion depended.

726 The same is true of the assessment of the consequences of obligations other than that for vehicles to return, set out in that same impact assessment.

727 In that regard, it should be noted that it is true that the obligation for vehicles to return pursues the same objective as Measure 18 set out in the Impact assessment – establishment section (Part 1/2, pp. 30 and 31), which measure, in order to ensure that the establishment of transport undertakings is effective and stable, envisaged, inter alia, that those transport undertakings have significant operational or transport activity in the Member State of establishment or that they have at least one commercial contract in that Member State. However, as the Advocate General observed in point 646 of his Opinion, those two measures constitute means of achieving that objective which are not comparable to the obligation for vehicles to return, in that they did not require vehicles to return to the operational centre of the transport undertaking concerned. Consequently, it cannot be presumed that the consequences of those measures are similar and that the evaluation of the impact of the measures that were the subject of the Impact assessment – establishment section can be transposed to the obligation for vehicles to return, which was not the subject of that assessment.

728 Secondly, it is also to no avail that the Parliament and the Council rely on the impact assessments relating to the other aspects of the first package of mobility measures, in particular the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, in order to demonstrate the effective exercise by the EU legislature of its discretion. As has been noted in paragraphs 220, 233 and 295 above, the obligation imposed on transport undertakings under that provision does not concern the practical arrangements for the possible return of drivers, including those concerning the means of transport that they may use to make that return. In particular, that obligation does not mean that drivers who wish to return to the employer's operational centre or to their place of residence necessarily do so by means of the vehicle used to carry out transport operations. It follows that the evaluations relating to that obligation in the Impact assessment – social section, concerning the economic and environmental impact of that obligation, were not relevant for assessing the economic and environmental consequences of the obligation for vehicles to return.

729 It is necessary to examine, in the second place, in the light of the case-law referred to in paragraph 722 above, whether the EU legislature established that, in the present case, it effectively exercised its discretion on the basis of the other basic data relied on before the Court by the Parliament and the Council.

730 First, for reasons similar to those set out in paragraphs 724 to 727 above, the 2017 TRT Trasporti e Territorio study, referred to in paragraph 715 above, and the documents relating to the two public hearings organised, respectively, in October 2017 by the EMPL and TRAN committees and in November 2017 by the TRAN Committee, must be disregarded. The information set out in those documents does not relate to the obligation for vehicles to return.

731 Secondly, it is necessary to disregard the IRU's estimates – as set out in its open letter of 26 October 2018, which was relied on by the Parliament and the Council – according to which an obligation for vehicles to return to the Member State of establishment every three or four weeks

could lead to an increase of between 80 million and 135 million in the number of kilometres travelled by vehicles each year.

732 As the Advocate General observed in point 652 of his Opinion, those estimates are presented succinctly in a letter which does not specify the calculation method followed. Therefore, those data are not presented in such a way as to establish that the basic facts which had to be taken into account by the EU legislature as the basis of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and on which the effective exercise by that legislature of its discretion depended, were produced and set out clearly and unequivocally.

733 Such considerations also apply to the communication of the European Transport Workers' Federation, to which the Council refers.

734 The same applies, thirdly, to the study carried out on behalf of Transport i Logistyka Polska (Transport and Logistics Poland) (*Mobility Package I – Impact on the European road transport system*), referred to in paragraph 716 above. It must be stated that, aside from the succinct nature of the arguments relating to the proposed obligation for vehicles to return to the Member State of establishment every four weeks, that latter study states, at pages 31 and 34, that none of the participants was able to quantify precisely the effects of such an obligation and that that study represents only a preliminary and rough estimate of such effects. In addition, that same study states that many questions remain open and that more research is needed fully to understand the social, environmental and economic impacts of the first package of mobility measures.

735 As regards, fourthly, the information allegedly provided by the applicant Member States that the EU legislature had at its disposal during the legislative procedure, it should be observed that mere reliance on the existence of studies and documents that that legislature could access is not sufficient for the view to be taken that the basic data on the basis of which the obligation for vehicles to return was adopted and on which the exercise of its discretion depended were produced and set out clearly and unequivocally.

736 Such a requirement cannot also be satisfied by the reference made, as the Parliament and the Council do in Cases C-542/20, C-545/20, C-549/20 and C-554/20, to the studies presented by the applicant Member States before the Court. In making that reference, the Parliament and the Council did not, in any event, claim that it was on the basis of those studies that the obligation for vehicles to return was adopted or specify how the basic data contained therein enabled them to assess the proportionality of that obligation, in particular in the light of its social, environmental and economic impacts.

737 In the light of the foregoing, it must be held that the Parliament and the Council, contrary to what they argue on the basis of the documents on which they rely before the Court, have not produced and set out clearly and unequivocally the basic data on the basis of which that obligation was adopted and on which the exercise of their discretion depended. They have thus failed to establish that, when Regulation 2020/1055 was adopted, they had sufficient information to enable them to assess the proportionality of the obligation for vehicles to return.

738 Consequently, it is necessary to uphold the fourth plea relied on by the Republic of Lithuania and, in so far as they allege breach of the principle of proportionality, on the ground that the EU legislature did not examine the proportionality of the obligation for vehicles to return, the first part of the second plea relied on by the Republic of Bulgaria, the first part of the first plea relied on by Romania, the second plea relied on by the Republic of Cyprus, the first part of the first plea relied on by Hungary, the second plea relied on by the Republic of Malta and the first plea relied on by the Republic of Poland. Accordingly, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, must be annulled.

(2) Whether point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, is proportionate

739 Since, as is apparent from paragraphs 718 to 738 above, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, must be annulled for breach of the principle of proportionality, on the ground that the EU legislature did not examine the proportionality of that provision, there is no need to examine the arguments of the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus, Hungary, the

Republic of Malta and the Republic of Poland, by which those Member States dispute the proportionality as such of that provision.

(b) The other pleas directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009

740 For the same reason as that referred to in the preceding paragraph, there is no need to examine the other pleas in law put forward by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus, Hungary, the Republic of Malta and the Republic of Poland in support of their claims for annulment of that provision.

3. Point 4(a) of Article 2 of Regulation 2020/1055

741 By their actions, the Republic of Lithuania (Case C-542/20), the Republic of Bulgaria (Case C-545/20), the Republic of Malta (Case C-552/20) and the Republic of Poland (Case C-554/20) seek annulment of point 4(a) of Article 2 of Regulation 2020/1055.

742 By its action, Romania (Case C-547/20) seeks annulment of point 4(a) to (c) of Article 2 of that regulation without, however, developing arguments specific to point 4(b) and (c) of that Article 2, with the result that, by its arguments, Romania seeks, in actual fact, annulment of those provisions taken together.

743 In support of their application, those Member States invoke, as the case may be, infringement, in essence:

– of the principle of proportionality (fourth and fifth pleas of the Republic of Lithuania, second part of the second plea of the Republic of Bulgaria, second part of the first plea of Romania, second plea of the Republic of Malta and first plea of the Republic of Poland);

– of the principles of equal treatment and non-discrimination (second part of the second plea of the Republic of Lithuania, third plea of Romania, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and third plea of the Republic of Malta);

– of the rules of EU law on common transport policy, laid down in Article 91(1) TFEU (the fourth plea of the Republic of Bulgaria, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055) and in Article 90 TFEU, read in conjunction with Article 3(3) TEU, in Article 91(2) and in Article 94 TFEU (the third plea of the Republic of Lithuania as regards Article 91(2) and Article 94 TFEU, the fifth plea of the Republic of Bulgaria, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, the first plea of the Republic of Malta as regards Article 91(2) TFEU, and the second and third pleas of the Republic of Poland as regards Article 91(2) and Article 94 TFEU);

– of the functioning of the internal market, laid down in Article 26 TFEU (the first part of the second plea of the Republic of Lithuania);

– of the freedom to provide services, laid down in Article 58(1) TFEU, read in conjunction with Article 91 TFEU, or, in the alternative, in Article 56 TFEU (the first part of the seventh plea of the Republic of Bulgaria, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055);

– of the free movement of goods, laid down in Articles 34 and 35 TFEU (the second part of the seventh plea of the Republic of Bulgaria, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055), and

– of the rules of EU law and of the commitments of the European Union in environmental protection matters (the first plea of the Republic of Lithuania, both parts of the first plea of the Republic of Bulgaria, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and the plea of the Republic of Poland common to all the contested provisions of Regulation 2020/1055, inasmuch as it is directed against point 4(a) of Article 2 thereof).

(a) Breach of the principle of proportionality

744 The Republic of Lithuania, by its fourth and fifth pleas, the Republic of Bulgaria, by the second part of its second plea, Romania, by the second part of its first plea, the Republic of Malta, by its second plea, and the Republic of Poland, by its first plea, claim that point 4(a) of Article 2 of Regulation 2020/1055 does not comply with the requirements flowing from the principle of proportionality.

745 First, those Member States dispute that the EU legislature carried out an examination of the proportionality of that provision, especially on account of the absence of an impact assessment concerning the waiting period. In particular, although the fourth plea of the Republic of Lithuania formally alleges breach of the principle of 'sound legislative procedure' and of 'essential procedural requirements', it is apparent from the arguments put forward in support of it that that Member State seeks, in fact, to demonstrate a breach of the principle of proportionality on the ground that the effects of that waiting period were not properly evaluated.

746 Secondly, those Member States dispute the proportionality as such of that period.

(1) Whether the EU legislature examined the proportionality of point 4(a) of Article 2 of Regulation 2020/1055

(i) Arguments of the parties

747 The Republic of Lithuania, by its fourth plea, the Republic of Bulgaria, by the second part of its second plea, Romania, by the second part of its first plea, the Republic of Malta, by its second plea, and the Republic of Poland, by its first plea, dispute that the EU legislature examined the proportionality of point 4(a) of Article 2 of Regulation 2020/1055, especially on account of the absence of an impact assessment in respect of the waiting period laid down in that provision.

748 Those Member States rely, in essence, on the same arguments as those set out in paragraphs 691 to 703 above.

749 They thus maintain that the measure introducing the four-day waiting period, laid down in point 4(a) of Article 2 of Regulation 2020/1055, did not appear in the proposal for an establishment regulation. They submit that that measure was added only during the legislative procedure, after the rejection by the Parliament and the Council of the amendment to Article 8(2) of Regulation No 1072/2009 envisaged in that proposal for a regulation, which amendment consisted in removing the reference to the maximum number of cabotage operations that may be carried out in a host Member State during the same cabotage cycle and in reducing from seven to five days the period during which those cabotage operations may be carried out in that Member State.

750 However, the measure introducing the waiting period constitutes a substantial amendment to the proposal for an establishment regulation, which should have been the subject of a supplementary impact assessment. Since the EU legislature failed to carry out such an impact assessment, it did not have sufficient information effectively to exercise its discretion.

751 Furthermore, that legislature did not put forward any objective reasons why it was not necessary to carry out a supplementary impact assessment.

752 The Parliament and the Council consider those arguments to be unfounded.

(ii) Findings of the Court

753 It should be observed that, as the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Malta and the Republic of Poland submit, in the proposal for an establishment regulation, the Commission envisaged amending Article 8(2) of Regulation No 1072/2009 by removing the reference to the maximum number of cabotage operations that may be carried out in a host Member State during the same cabotage cycle and by reducing from seven to five days the period during which those cabotage operations may be carried out in that Member State.

754 However, the EU legislature adopted a different measure from that proposed by the Commission. While maintaining the authorisation to carry out a maximum number of three cabotage operations following the international carriage from another Member State or from a third country to the host Member State within a seven-day period, and not therefore amending Article 8(2) of Regulation No 1072/2009, it introduced, by point 4(a) of Article 2 of Regulation 2020/1055, which inserts paragraph 2a in that Article 8, an additional measure in the form of the waiting period. Thus, in

accordance with that Article 8(2a), hauliers are not allowed to carry out cabotage operations with the same vehicle in the same host Member State within four days following the end of a cabotage period carried out in that Member State.

755 It should, however, be recalled that, as stated in paragraph 720 above, not only is the EU legislature not required to have at its disposal an impact assessment in every circumstance, but, in addition, such an impact assessment is not binding on it, with the result that that legislature remains free to adopt measures other than those which were the subject of it. Therefore, the mere fact that, in the present case, the EU legislature adopted, in Regulation 2020/1055, a provision different from that initially proposed by the Commission, on the basis of the Impact assessment – establishment section, is not sufficient to demonstrate that it infringed the principle of proportionality, provided that the EU legislature is able to show that it effectively exercised its discretion and that, for that purpose, it is able to produce and set out clearly and unequivocally the basic data on the basis of which the provision relating to that waiting period was adopted and on which the exercise of that discretion depended.

756 Consequently, it is necessary to assess whether the information referred to by the Parliament and the Council establishes that the EU legislature had sufficient information to allow it to assess the proportionality of the waiting period, laid down in point 4(a) of Article 2 of Regulation 2020/1055, on the date of adoption of that provision.

757 In the first place, it is apparent from the Impact assessment – establishment section (Part 2/2, pp. 41, 46 and 48) that the Commission envisaged the possibility of imposing a waiting period between two cabotage cycles. In that regard, the fact that the EU legislature adopted the measure consisting in imposing such a period even though the Commission had rejected it is not sufficient to establish that that legislature did not have sufficient information to examine the proportionality of that measure.

758 In the second place, as the Parliament and the Council maintain, the elements of assessment contained in the Impact assessment – establishment section which relate to the consequences of the measure consisting in removing the reference to the maximum number of cabotage operations that may be carried out in a host Member State during the same cabotage cycle and in reducing the period during which those cabotage operations may be carried out in that Member State, also enabled the impacts of the waiting period ultimately adopted to be assessed.

759 A reduction of the period during which a haulier may carry out cabotage operations in the same host Member State from seven days, as provided for in Article 8(2) of Regulation No 1072/2009, to four days, as that impact assessment (Part 1/2, p. 29) primarily envisioned, or from seven to five days, as proposed by the Commission, would have had the effect of interrupting at more regular intervals the performance of cabotage operations in the same host Member State.

760 It follows from those considerations that the Impact assessment – establishment section and the assessment of the consequences of the measures that were the subject of it were capable of providing the EU legislature with relevant information in order to assess the proportionality of point 4(a) of Article 2 of Regulation 2020/1055.

761 In the third place, the Impact assessment – establishment section (Part 1/2, pp. 20 to 25) contained projections of the development of the transport market drawn up on the basis of the regime applicable prior to the entry into force of Regulation 2020/1055, including as defined in Article 8(2) of Regulation No 1072/2009, in order to assess the impacts of the measures considered by that impact assessment, in particular as regards the amendments relating to the duration of cabotage periods and to the number of cabotage operations that may be carried out during those periods.

762 Since the EU legislature decided to retain, in Regulation 2020/1055, that regime in so far as it allows, in accordance with that Article 8(2), a maximum number of three consecutive cabotage operations within a seven-day period, while introducing, by point 4(a) of Article 2 of Regulation 2020/1055, an additional measure in the form of the waiting period, those projections remained relevant for the purpose of assessing the proportionality of that latter provision.

763 It follows that, contrary to what is claimed by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Malta and the Republic of Poland, the EU legislature had sufficient information to enable it to assess the proportionality of point 4(a) of Article 2 of Regulation 2020/1055.

764 Consequently, it is appropriate to reject as unfounded the fourth plea relied on by the Republic of Lithuania and, in so far as they allege breach of the principle of proportionality, on the ground that the EU legislature did not examine the proportionality of the waiting period, the second part of the second plea relied on by the Republic of Bulgaria, the second part of the first plea relied on by Romania, the second plea relied on by the Republic of Malta and the first plea relied on by the Republic of Poland.

(2) The proportionality of point 4(a) of Article 2 of Regulation 2020/1055

(i) Arguments of the parties

765 The Republic of Lithuania, by its fifth plea, the Republic of Bulgaria, by the second part of its second plea, Romania, by the second part of its first plea, the Republic of Malta, by its second plea, and the Republic of Poland, by its first plea, dispute the proportionality as such of point 4(a) of Article 2 of Regulation 2020/1055.

766 In the first place, the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland submit that the waiting period laid down in that provision is inappropriate for attaining the objectives of Regulation 2020/1055.

767 First, the Republic of Lithuania and Romania submit that that provision does not lay down rules that are clear, simple and easy to enforce, contrary to the objective set out in recital 20 of Regulation 2020/1055.

768 The Impact assessment – establishment section (Part 1/2, pp. 12 to 14) showed that the lack of clarity and precision of the rules relating to cabotage led to differences between the Member States in the enforcement of, and in the monitoring of compliance with, those rules, and to an increase in the compliance and administrative costs of transport undertakings.

769 There is nothing to justify in what respect the measure introducing the waiting period, which complicates and increases the administrative burden, is more appropriate for attaining that objective of clarity and precision than the amendment that had been proposed by the Commission.

770 Secondly, according to the Republic of Bulgaria and Romania, that measure does not maintain the level of liberalisation of the market that had previously been achieved, thus failing to have regard to the objective of maintaining that level, which is also set out in recital 20 of Regulation 2020/1055.

771 In that regard, the Commission concluded, in the proposal for an establishment regulation, that cabotage was to be liberalised by permitting an unlimited number of cabotage operations over a period of five days, instead of three cabotage operations over a seven-day period. However, the waiting period, by imposing new cabotage restrictions, represents a retrograde step in relation to the level of the liberalisation of the market.

772 Romania argues that, according to a study carried out by the ECIPE (M. Bauer, 'Discrimination, Exclusion and Environmental Harm: Why EU Lawmakers Need to Ban Freight Transport Restrictions to Save the Single Market'), which cites a report of Transport & Mobility Leuven (T. Breemersch, 'The impact of the 1st mobility package on European Road Freight Transport, with special focus on peripheral countries'), the waiting period will reduce cabotage activities by up to 31% by 2035.

773 Furthermore, the Republic of Bulgaria maintains that cabotage restrictions were lifted for air transport in 1993. The Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market (COM(2014) 222 final, p. 13) having noted an increasing convergence in drivers' remuneration in the European Union, the measures adopted by the EU legislature in Regulation 2020/1055 should have deepened liberalisation in the field of road transport, rather than imposing new restrictions, such as the waiting period, which is, in this respect, a protectionist measure.

774 In addition, Romania argues that, since the number of cabotage operations carried out in the European Union is low in relation to the number of international transport operations, legislative intervention in that area is not justified unless it supports the liberalisation of the market.

775 Thirdly, the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 is inappropriate for attaining the objectives pursued, since it does not help increase the load factor of vehicles and reduce empty runs. In so doing, it disregards the very wording of recital 21 of Regulation 2020/1055, as the Republic of Bulgaria, Romania and the Republic of Poland submit.

776 Those Member States maintain that cabotage allows hauliers to remain active and to use the same vehicle in order to carry out additional transport operations in the host Member State between two international transport operations, in particular whilst waiting to receive a load order for the return trip to the Member State of establishment.

777 However, the waiting period prevents cabotage operations from being carried out for four days, which has an effect contrary to the objective set out in recital 21 of that regulation.

778 In particular, Romania argues that the waiting period will lead to an increase of around 5% in the number of empty runs within the European Union, that percentage also including the number of trips made at a loss in order to avoid the vehicle returning empty.

779 Fourthly, the Republic of Bulgaria, Romania and the Republic of Poland doubt whether the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 is appropriate for ensuring, in accordance with the objective referred to in recital 21 of that regulation, that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the host Member State.

780 First of all, the Republic of Bulgaria submits that the arguments that support that objective concern the need for effective establishment in the Member State of origin of hauliers and not in the Member State in which cabotage operations are carried out.

781 Next, according to the Republic of Bulgaria and Romania, like the obligation for vehicles to return, the waiting period is not intended to combat fraudulent or abusive practices. As a limitation of transport activity, which is in itself mobile, that waiting period does not contribute to achieving that legitimate objective, but runs counter to the very nature of the economic reality and of the internal transport market. Cabotage operations were initially conceived as a type of operation that contributes to the development of the transport sector, to economic growth and to the efficiency of transport activity.

782 In that regard, the existence of a large number of cabotage operations in the territory of the Member States in the western part of the European Union does not constitute a negative element requiring the adoption of restrictive measures. That situation merely shows that there is strong demand for goods in those Member States, that the dynamic of international transport operations is on the rise and that the market is operating normally. The fact that a large number of cabotage operations are carried out can under no circumstances mean that that type of operation has lost its temporary nature, as long as those operations are carried out in accordance with Article 8(2) of Regulation No 1072/2009 and the restrictions that it lays down.

783 Thus, Romania maintains that systematic cabotage should be distinguished from unlawful cabotage. Even if the waiting period were intended exclusively to ensure that cabotage operations will not be carried out in a way that creates a permanent or continuous activity in the host Member State, as recital 21 of Regulation 2020/1055 states, the Commission highlighted, in particular in the study carried out in support of the Impact assessment – establishment section, entitled 'Study to support the impact assessment for the revision of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, Final Report', of April 2017 (p. 33), and in the Impact assessment – establishment section (Part 1/2. pp. 6 and 7), that the proportion of unlawful cabotage is very low, so that that state of affairs does not justify the adoption of additional restrictive measures in this area.

784 It is true that the Commission's study, entitled 'Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, Final report', of December 2015 ('the *ex post* evaluation of Regulations No 1071/2009 and No 1072/2009'), identifies, at pages 140 and 141 thereof, systematic cabotage as an unexpected consequence of the implementation of Regulation No 1072/2009. However, doubt must be cast on that finding, since it is based on the experience of a single Member State.

785 Moreover, although the Commission designated systematic cabotage as an undesired and unintended effect of the implementation of the EU rules, it did not consider the waiting period to be

appropriate, even though it had taken it into consideration in the Impact assessment – establishment section (Part 2/2, p. 41).

786 Lastly, the Republic of Bulgaria and the Republic of Poland submit that, in order to avoid creating a permanent or continuous activity in the host Member State, it is not necessary to lay down a waiting period. The requirements laid down in Article 8(2) of Regulation No 1072/2009, which limit the number of cabotage operations to three over a seven-day period, already enable that objective to be attained.

787 In the second place, according to the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Malta and the Republic of Poland, the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 is not necessary in order to attain the objectives pursued by that regulation.

788 First, the Republic of Bulgaria and Romania argue that the fact that the possibility of introducing a waiting period was briefly examined in the Impact assessment – establishment section (Part 2/2, Annex 5) does not mean that that measure is proportionate.

789 As is apparent from that impact assessment (Part 2/2, p. 48), the proposed measure that was intended to establish such a period was rejected without any additional analysis of its consequences. Apart from the fact that that measure does not actually contribute to the attainment of the objective pursued by the EU legislature, namely more effective enforcement of the relevant existing rules, it also interferes, according to the transport undertakings which participated in that impact assessment, with their operations and gives rise to significant costs, in particular on account of its negative impacts on their overhead costs. In addition, the attractiveness of systematic cabotage would, in any event, be reduced if more effective rules on the posting of drivers were adopted.

790 Secondly, according to Romania, in order to ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the host Member State, it would be sufficient to strengthen the enforcement and monitoring of the existing rules, since unlawful cabotage represents only 0.56% of overall cabotage operations in the European Union (Impact assessment – establishment section, Part 1/2, pp. 6 and 7). That Member State adds that, in order to address the problem of unlawful cabotage, the establishment of more effective monitoring and control mechanisms, such as the application of the new provisions introducing the smart tachograph, would constitute a less onerous measure.

791 Thirdly, the Republic of Malta maintains that, in any event, the measure included in the proposal for an establishment regulation, which requires cabotage operations to be carried out within a period of five days, would have enabled the objective of ensuring that those operations will not be carried out in a way that creates a permanent or continuous activity in the host Member State to be attained in a less restrictive way.

792 Maltese international hauliers carry out their transport operations on the continent on the premiss that those operations are viable only if they are not required to transport the vehicles to Malta by sea. When carrying out those operations on the continent, those hauliers make use of their freedom of movement without having a specific permanent or ongoing link with other Member States. The physical absence from Malta of the vehicles of those hauliers is solely attributable to the situation as an island of the Member State in which they are established, a particular geographic situation which, in breach of the principle of proportionality, was not taken into consideration.

793 In that regard, the measure proposed by the Commission would not have required Maltese hauliers to interrupt all of their operations, artificially and on a regular basis, without a clear and reasonable objective, during the waiting period.

794 Fourthly, according to the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland, the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 will result in a significant deterioration in the economic situation of transport undertakings established in Member States on the periphery of the European Union and in small Member States, and, in addition, in a reduction in the standard of living and level of employment in those Member States.

795 Those consequences stem from the increase in costs resulting from that waiting period, on account, in particular, of the number of operating days lost, of the increase in down time and in empty runs or

of the reduction in cabotage activities by up to 31% by 2035. Moreover, the heaviest burdens are borne by SMEs, with the latter constituting the majority of transport undertakings.

796 The Republic of Bulgaria and Romania also rely on studies that assessed the consequences of the rules introduced by the first package of mobility measures as a whole and on a study, referred to in a specialist press article entitled 'The Belgians do not like the Mobility Package. They figured that its provisions would bring losses to their companies as well', which estimated that each day of 'rest' would cost Belgian hauliers around EUR 24 million per year.

797 The Republic of Bulgaria, Romania and the Republic of Poland maintain that, owing to the increase in costs, transport undertakings established in the Member States referred to above may have to cease operations or relocate to the Member States in the central part of the European Union in order to compete. The Republic of Poland also submits that that increase in costs will in all likelihood lead to an increase in the price of goods, which could have serious repercussions for the EU economy.

798 Fifthly, according to the Republic of Lithuania, Romania and the Republic of Poland, the waiting period is incompatible with the single market for transport services, in that it fragments that market and limits the commercial opportunities for transport undertakings in other Member States, with the Member States on the periphery of the European Union and small Member States being, in that regard, more heavily affected.

799 Romania thus submits that, among the transport undertakings established in the territory of the European Union, those established in the central or eastern part of the European Union will be most affected by the measures resulting from Regulation 2020/1055, on account of the considerable importance of the transport sector for the economy and employment in those Member States, of the fact that those transport undertakings perform more than half of the cabotage operations carried out in the territory of the European Union and of the number of transport undertakings and workers of those Member States affected by those measures.

800 Sixthly, according to the Republic of Lithuania, the Republic of Bulgaria and Romania, the waiting period is contrary to EU environmental protection policy and to the Green Deal, because of the increase in empty trips and, consequently, in pollution and CO2 emissions as a result of compliance with that period. Those consequences are apparent, in particular, from the ECIPE study on discrimination, exclusion and environmental harm.

801 Seventhly, Romania argues that the impacts of the new provisions introduced by Regulation 2020/1055 on transport undertakings were undoubtedly exacerbated by the COVID-19 pandemic.

802 The Parliament and the Council consider those arguments to be unfounded.

(ii) Findings of the Court

803 The objective pursued by point 4(a) of Article 2 of Regulation 2020/1055, in the light of which the proportionality of that provision must be examined, is, as is apparent from recital 21 of that regulation, to ensure that cabotage operations will not be carried out in a way that creates a permanent or continuous activity in the host Member State.

804 The Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Malta and the Republic of Poland, which do not dispute the legitimacy of that objective, submit that point 4(a) of Article 2 of Regulation 2020/1055 does not, in itself, comply with the requirements flowing from the principle of proportionality.

805 In accordance with the case-law referred to in paragraphs 240 to 247 above, in order to determine whether the waiting period, as laid down in that provision, complies with that principle, it is necessary to examine whether that measure is appropriate for attaining the objective pursued by that provision, whether it goes manifestly beyond what is necessary to achieve that objective and whether it is proportionate in the light of that objective.

– *Whether point 4(a) of Article 2 of Regulation 2020/1055 is appropriate for attaining the objective pursued*

806 As regards whether point 4(a) of Article 2 of Regulation 2020/1055 is appropriate for attaining the objective pursued, it should be recalled that, as is apparent, in particular, from the definition of 'cabotage operations' contained in point 6 of Article 2 of Regulation No 1072/2009 and as stated in recitals 20 and 22 of Regulation 2020/1055, such a transport activity must be of a 'temporary' nature in the host Member State (see, to that effect, judgments of 12 April 2018, *Commission* v *Denmark*, C-541/16, EU:C:2018:251, paragraph 53, and of 14 September 2023, *Staatsanwaltschaft Köln and Bundesamt für Güterverkehr (Transport of empty containers)*, C-246/22, EU:C:2023:673, paragraphs 25 and 29).

807 However, as is apparent from the *ex post* evaluation of Regulations No 1071/2009 and No 1072/2009 (p. 137), the occurrence of systematic cabotage practices was the main unexpected consequence of the application of Regulation No 1072/2009.

808 In that context, the laying down, in point 4(a) of Article 2 of Regulation 2020/1055, of a waiting period during which, following a cabotage cycle carried out in a host Member State, hauliers are no longer allowed to carry out cabotage operations in that same Member State, appears appropriate for preventing such practices and thus for avoiding those operations being carried out in a way that creates a permanent or continuous activity in that Member State.

809 None of the arguments relied on by the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland, in particular on the basis of other objectives referred to in recitals 20 and 21 of Regulation 2020/1055, is such as to call that assessment into question.

810 In the first place, the argument of the Republic of Lithuania and Romania that the waiting period is inappropriate for attaining the objective, set out in recital 20 of Regulation 2020/1055, of ensuring that the rules on cabotage are clear, simple and easy to enforce, cannot succeed.

811 In that regard, it should be noted that, in order to attain such an objective, point 4(b) and (c) of Article 2 of that regulation lays down the detailed rules for proving the international carriage that preceded the cabotage operation and those for proving each cabotage operation.

812 The introduction of a waiting period, the primary objective of which, as stated in paragraph 803 above, is to ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the host Member State, cannot be regarded as undermining as such the objective set out in recital 20 of Regulation 2020/1055.

813 As regards, in the second place, the objective of maintaining the level of liberalisation of the market, which is also set out in recital 20 of Regulation 2020/1055, it should be noted that recital 2 of Regulation No 1072/2009 stated that the establishment of a common transport policy entails, inter alia, laying down the conditions under which non-resident hauliers may operate transport services within a Member State, which must be laid down in such a way as to contribute to the smooth operation of the internal transport market. In that context, as is apparent from recitals 4, 5, 13 and 15 of Regulation No 1072/2009, one of the original objectives of that regulation, in the version prior to the entry into force of Regulation 2020/1055, was, in order to achieve the establishment of a common transport policy smoothly and flexibly, to establish a transitional cabotage regime as long as harmonisation of the road haulage market had not yet been completed. For that purpose, it was provided that cabotage operations in a host Member State were allowed as long as they were not carried out in a way that created a permanent or continuous activity within that Member State.

814 Thus, by preventing the development of systematic cabotage practices, the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 is intended to address, as has been noted in paragraphs 807 and 808 above, the unexpected consequences of the application of Regulation No 1072/2009 and to attain the original objective pursued by the EU legislature, by ensuring, in accordance with the level of liberalisation laid down by that legislature in order to contribute to the smooth operation of the internal transport market, the temporary nature of cabotage.

815 In the third place, in so far as the Republic of Bulgaria, Romania and the Republic of Poland claim that the waiting period is not appropriate for attaining the objective set out in recital 21 of Regulation 2020/1055, according to which cabotage operations should help to increase the load factor of vehicles and reduce empty runs, it should be noted that recital 21 states, however, that such operations should be allowed as long as they are not carried out in a way that creates a permanent or continuous activity in the host Member State.

– *Whether point 4(a) of Article 2 of Regulation 2020/1055 is necessary*

816 As regards the necessity of the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055, that necessity is challenged by Romania and the Republic of Malta on the ground that there are alternative measures that are less onerous than that adopted in that provision.

817 As regards, in the first place, Romania's argument that the establishment of more effective monitoring and control mechanisms would have constituted an alternative, less restrictive, measure, it is sufficient to recall that, as noted in paragraph 807 above, systematic cabotage practices had developed under the rules in force prior to the adoption of Regulation 2020/1055.

818 In that regard, it should be noted that, in the Impact assessment – establishment section (Part 1/2, pp. 32 to 34 and 41 to 44), various bodies of measures were envisaged, including 'Policy package 1 – Clarification of the legal framework (P1)', 'Policy package 2 – Strengthening of enforcement (P2)' and 'Policy package 3 – Extensive revision of the Regulations (P3)', the third body of measures including the elements contained in the secondly, which itself reproduced the content of the first body of measures.

819 In accordance with its heading, the third body of measures envisaged a substantial change in the existing legal framework, including as regards the cabotage regime. It was within that body of measures that Measure 8, which provided for the removal of the maximum number of cabotage operations that could be carried out in a host Member State and for the reduction of the period laid down for carrying out such operations (Impact assessment – establishment section, Part 1/2, pp. 32 to 34), was included.

820 The impact assessment (Part 1/2, pp. 57 to 59) concluded that that third body of measures constituted the preferred option in relation solely to the measures of the second body, which measures related to the strengthening of the control and monitoring mechanisms.

821 Like Measure 8 included in that third body of measures, the waiting period, with which the EU legislature preferred to replace that measure, is intended to amend the regime applying to cabotage. Thus, it cannot be claimed that the laying down of a waiting period infringes the principle of proportionality on the ground that the mere strengthening of the control and monitoring mechanisms constitutes a measure which is less onerous than, and as effective as, such a waiting period.

822 As regards, in the second place, the argument of the Republic of Bulgaria, the Republic of Malta and Romania that the measure contained in the proposal for an establishment regulation relating to the introduction of a five-day cabotage cycle would have enabled the objective of ensuring that those operations are not carried out in a way that creates a permanent or continuous activity in the host Member State to be attained in a less restrictive way, it should be observed, first, that the estimate relating to a reduction in cabotage activities by up to 31% by 2035, on which that argument is based, is derived from the report of Transport & Mobility Leuven, entitled 'The impact of the 1st mobility package on European Road Freight Transport, with special focus on peripheral countries'. However, that estimate does not relate to the waiting period. As is apparent from page 13 of that report, that estimate is itself derived from the Impact assessment – establishment section (Part 1/2, pp. 39 and 40), and, in particular, from the assessment of the impact of reductions to four or to five days of the seven-day period, laid down in Article 8(2) of Regulation No 1072/2009, during which cabotage operations are allowed, which would lead to a drop in cabotage activities by up to 31% or by up to 20%, respectively, by 2035.

823 Secondly, it must be noted that the risk of systematic cabotage activity stems, as the Council maintains, from the lack of precision as to the frequency of the periods during which cabotage operations may be carried out in the same Member State.

824 On account of such a lack of precision, Regulation No 1072/2009, in the version prior to the entry into force of Regulation 2020/1055, allowed hauliers to carry out successive cabotage cycles in the same host Member State, subject only to the rule laid down in the last sentence of the first subparagraph of Article 8(2) of Regulation No 1072/2009. Since the measure included in the proposal for an establishment regulation did not prevent the performance in the same Member State, immediately after the performance of an international transport operation, of a new cabotage cycle in that Member State on the expiry of the preceding one, it cannot, in any event, be regarded as a measure which makes it possible to ensure, as effectively as the waiting period, that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the host Member State.

825 In the third place, contrary to what the Republic of Bulgaria and Romania maintain, point 4(a) of Article 2 of Regulation 2020/1055 cannot be regarded as having introduced a measure that is not necessary on the ground that transport undertakings were already required, under Article 3(1) of Regulation No 1071/2009, to have an effective establishment in the Member State of establishment. First of all, such a requirement is not such as to preclude the undertaking concerned from carrying out cabotage operations in a Member State other than that of establishment in a way that is not temporary.

826 Next, in so far as Romania maintains that, assuming that the waiting period is intended to ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the host Member State, the proportion of unlawful cabotage among those transport operations is very low, with the result that the introduction of restrictive measures in addition to those contained in Regulation No 1072/2009, in the version prior to the entry into force of Regulation 2020/1055, is not justified, it must be observed that, according to the Impact assessment – establishment section (Part 1/2, pp. 6 and 7), unlawful cabotage, even of a relatively low level, has significant economic impacts on the transport sector.

827 Furthermore, as regards Romania's claims that the finding relating to the emergence of systematic cabotage activity, set out in the *ex post* evaluation of Regulations No 1071/2009 and No 1072/2009, is based on the situation of a single Member State, it should be recalled that, as stated in paragraph 813 above, Regulation No 1072/2009, in the version prior to the entry into force of Regulation 2020/1055, already had the objective of preventing cabotage operations from being carried out in a way that creates a permanent or continuous activity in the host Member State.

828 That evaluation clearly demonstrates that the requirements laid down in Article 8(2) of Regulation No 1072/2009 did not, in themselves, make it possible to prevent the practice of systematic cabotage. Therefore, such claims cannot call into question the necessity of the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 for attaining that objective.

– *Whether point 4(a) of Article 2 of Regulation 2020/1055 is proportionate*

829 As regards whether the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 is proportionate, it is apparent from the case-law referred to in paragraph 266 above that, where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature cannot be denied the possibility of adapting that act to any change in circumstances or advances in knowledge, having regard to its task of safeguarding the general interests recognised by the Treaties and of taking into account the overarching objectives of the European Union laid down, inter alia, in Article 3(3) TEU. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives of the European Union recognised by the Treaties only if it is open to it to adapt the relevant EU legislation to take account of such changes or advances.

830 In those circumstances, the EU legislature was entitled to take the view, in the exercise of its discretion, that the laying down of the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055 was a proportionate measure in order to address the unexpected consequences created, under Regulation No 1072/2009, in the version prior to the entry into force of Regulation 2020/1055, by the emergence of systematic cabotage practices contrary to the necessarily temporary nature of cabotage operations.

831 In that regard, it is not possible, in the first place, to accept the arguments of the Republic of Bulgaria and Romania that that waiting period will reduce the level of liberalisation since it amounts to a rest period during which it will not be possible to carry out transport operations with the vehicle concerned for four days.

832 Point 4(a) of Article 2 of Regulation 2020/1055 merely provides that, at the end of the period during which cabotage operations may be carried out in a host Member State under the conditions laid down in Article 8(2) of Regulation No 1072/2009, which article was not amended by Regulation 2020/1055, it is not allowed to carry out cabotage operations in the same host Member State for a period of four days.

833 Consequently, as the Advocate General observed in point 765 of his Opinion, point 4(a) of Article 2 of Regulation 2020/1055 is not intended to prohibit the performance of other transport operations, such as international transport operations, either to the Member State of establishment or to other

Member States, followed, as the case may be, by cabotage operations in those other Member States. Hauliers may therefore continue to carry out such operations during the waiting period.

834 Furthermore, even though the EU legislature, by point 4(a) of Article 2 of Regulation 2020/1055, introduced an additional measure in the form of the waiting period, it decided to maintain, in accordance with Article 8(2) of Regulation No 1072/2009, which article was not amended by Regulation 2020/1055, the possibility of carrying out up to three cabotage operations following the international carriage from another Member State or from a third country to the host Member State within seven days. In accordance with that latter provision, the vehicle used for such cabotage operations must, necessarily and in any event, leave the territory of the host Member State concerned at the end of that seven-day period before, where appropriate, being able to start a new cabotage cycle in the same host Member State following an international transport operation.

835 As the Council rightly observes, a certain period of time must therefore, in practice, be devoted to international transport before a vehicle can lawfully return to the territory of the Member State concerned in order to carry out a new cabotage cycle, as stated in the Impact assessment – establishment section (Part 1/2, p. 40). As is apparent from the figures provided by the Council, the introduction of the waiting period does not result in a significant reduction in the number of cabotage periods that can be carried out in one month.

836 Although the Republic of Bulgaria submits that cabotage restrictions were lifted for air transport in 1993, it does not, however, set out the reasons why that is relevant in the present case for the road transport sector, when the situation of undertakings operating in different transport sectors is not comparable. The Court has held that the different modes of transport – having regard to the manner in which they operate, the conditions governing their accessibility and the distribution of their networks – are not interchangeable as regards the conditions of their use (judgment of 26 September 2013, *ÖBB-Personenverkehr*, C-509/11, EU:C:2013:613, paragraph 47 and the case-law cited).

837 As regards the argument that only legislative amendments along the lines of greater liberalisation are permitted, it is sufficient to observe that it is apparent from the Impact assessment – establishment section (Part 2/2, pp. 40 and 47) that the abolition of all restrictions on cabotage operations was ruled out on the ground that the social and economic differences between the Member States precluded the opening up of the cabotage markets and deprived that measure of the necessary political support.

838 As regards, in the second place, the arguments of the Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland relating to the significant deterioration of the economic situation of transport undertakings – for the most part SMEs – established in the Member States located, according to those applicant Member States, on the 'periphery of the European Union' and in small Member States on account of an increase in operating costs resulting from the waiting period, and to a consequential decrease in the standard of living and in the level of employment in those Member States, it should be stated that the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 is likely to give rise to additional costs for the transport undertakings that are required to comply with it. The fact that an obligation laid down by the EU legislature may entail certain costs for the transport undertakings on which that obligation is imposed does not, however, in itself, constitute a breach of the principle of proportionality, unless those costs are manifestly disproportionate to the objective pursued.

839 First, in so far as such consequences would result from an alleged reduction in cabotage activities by up to 31% by 2035, it should be recalled that, as stated in paragraph 822 above, that estimate relates to a measure that is intended to limit the period during which cabotage operations may be carried out, while the EU legislature, in adopting point 4(a) of Article 2 of Regulation 2020/1055, preferred an alternative measure to it.

840 Secondly, as the Republic of Bulgaria and Romania submit, it is true that the transport undertakings that participated in the impact assessment stated that the introduction of a measure such as the waiting period would give rise to significant costs for them, in particular on account of a consequent increase in their overhead costs (Impact assessment – establishment section, Part 2/2, p. 48). However, the costs associated with that measure must, at the very least, be assessed in relation to the importance of cabotage operations for hauliers and to the proportion of overhead costs in the costs borne by a transport undertaking. The study carried out in support of the Impact assessment – establishment section, entitled 'Study to support the impact assessment for the revision of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, Final Report',

states, at page 143, that cabotage represents only a small proportion of road transport activities, so that the effects of that measure on transport undertakings in general will be all the more limited.

841 Furthermore, in the context of the Impact assessment – establishment section (Part 1/2, p. 37), the view was taken that Measure 8, which consisted in removing the reference to the maximum number of cabotage operations that may be carried out in a host Member State during the same cycle and in reducing from seven to four days the period during which those cabotage operations may be carried out in that Member State, would lead to an average increase in the overhead costs of transport undertakings of 3.5%.

842 In any event, although it cannot be ruled out that point 4(a) of Article 2 of Regulation 2020/1055 might have different effects on transport undertakings depending on the Member State in which those undertakings are established, the fact remains that any negative effects which might result from it in terms of burdens for certain undertakings must be weighed against the positive effects, in terms of maintaining a level playing field, which will result from a measure intended to combat practices involving, in disregard of the temporary nature of cabotage operations, the pursuit of permanent or continuous cabotage activities in the same host Member State.

843 Thirdly, it is not appropriate to uphold the arguments relating to the costs associated with the operating days lost or with the increase in empty runs, since, as has been noted in paragraph 833 above, point 4(a) of Article 2 of Regulation 2020/1055 is not intended to prohibit the performance of any transport operation during the waiting period. Vehicles that have completed a first cabotage cycle in one Member State may carry out international transport operations during that period, either to the Member State of establishment or to other Member States, followed, as the case may be, by cabotage operations in those other Member States. It should also be noted that that provision does not require that vehicles return to the operational centre of the transport undertaking concerned during that period, which serves to refute the Republic of Malta's argument that international hauliers of that Member State are not economically viable because of the obligation allegedly imposed on them to ensure the return, during the waiting period, of their vehicles to that Member State by sea.

844 As regards the estimates relied on by Romania in relation to the consequences of the new rules introduced by the first package of mobility measures as a whole, which rules include the obligation for vehicles to return, laid down in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, they are not relevant for the purpose of assessing the specific consequences of point 4(a) of Article 2 of Regulation 2020/1055, on account of the difference in purpose of those two provisions. The same is true of the assessment relied on by the Republic of Bulgaria, according to which each day of rest could cost Belgian hauliers up to EUR 24 million per year. Apart from the fact that that assessment is based on an analysis – cited by the specialist press – that was not submitted to the Court, it is based on the incorrect premiss that the vehicle is immobilised during the waiting period, and cannot be engaged in transport operations other than cabotage operations in the same host Member State.

845 Fourthly, it is appropriate to reject, on the same grounds as those that apply to the arguments relating to the increase in the operating costs of transport undertakings, the arguments put forward by the Republic of Poland concerning the increase in the price of goods. It is true that the Impact assessment – establishment section considered it likely that the increase in operating costs would be carried over to the price of goods; however, it stated that the effects of the measures under consideration would be extremely limited, since transportation represents only a small proportion of the price of goods (Part 1/2, p. 49).

846 Fifthly, as regards the arguments based on the impact of the waiting period on employment, it is sufficient to note that the study carried out in support of the Impact assessment – establishment section, entitled 'Study to support the impact assessment for the revision of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, Final Report', states, at page 143, that the substantial decreases in cabotage activities resulting from a measure that would reduce to four or to five days the seven-day period, laid down in Article 8(2) of Regulation No 1072/2009, during which cabotage operations are allowed, should not have a significant impact on the overall level of employment in the transport sector, in particular on the ground that, as stated in paragraph 840 above, cabotage represents only a small proportion of road transport activities.

847 The Republic of Lithuania, the Republic of Bulgaria, Romania and the Republic of Poland have not put forward any arguments capable of casting doubt on the relevance of the findings of that study for the measure laid down by the EU legislature in point 4(a) of Article 2 of Regulation 2020/1055.

848 Sixthly, it is also necessary to reject the argument based on the fact that, as is apparent from the Impact assessment – establishment section (Part 2/2, p. 48), the attractiveness of systematic cabotage would, in any event, decrease if more effective rules on the posting of drivers were adopted, in the context of Directive 2020/1057. It should be noted that the objective pursued by that directive consists, as is apparent from recitals 3 and 7 thereof, in laying down specific rules for the purposes of determining which Member State's terms and conditions of employment are guaranteed to road transport drivers, rules that reflect the particularities of the highly mobile workforce in the road transport sector and which, to ensure the smooth functioning of the internal market, strike a balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between domestic and foreign transport undertakings.

849 Consequently, it cannot be maintained, on the basis solely of the indirect and limited consequences of measures pursuing other objectives, such as those pursued by Directive 2020/1057 and set out in recitals 3 and 7 thereof, that the EU legislature manifestly exceeded the wide discretion which it enjoys in the field of the common transport policy by choosing to adopt, in point 4(a) of Article 2 of Regulation 2020/1055, a measure intended to ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the host Member State.

850 As regards, in the third place, the arguments of the Republic of Lithuania, Romania and the Republic of Poland that point 4(a) of Article 2 of Regulation 2020/1055 fragments the single market and limits the commercial opportunities of transport undertakings established in Member States described as 'Member States on the periphery of the European Union' and in small Member States as compared to another group of Member States described, as the case may be, as 'Member States at or around the centre of the European Union' or 'Member States in the western part of the European Union', it should be observed that the waiting period is likely to have a more significant impact on transport undertakings, irrespective of the Member State in which they are established, which have opted for an economic operating model consisting in providing the essential part – if not all – of their services in the context of cabotage operations carried out on a permanent or continuous basis in the territory of the same host Member State, despite the necessarily temporary nature of cabotage operations.

851 First, as is apparent from paragraph 843 above, the purpose of point 4(a) of Article 2 of Regulation 2020/1055 is not to require the vehicle to return to the operational centre of the transport undertaking concerned. Consequently, the possible impacts of the waiting period do not depend on the geographical features of the Member State of establishment.

852 Secondly, as stated in paragraphs 832 and 833 above, that provision prohibits only the performance of cabotage operations in the same host Member State during the waiting period, but does not prevent the performance of other transport operations, including cabotage operations carried out in another host Member State.

853 In any event, even if the economic organisation model set out in paragraph 850 above were essentially adopted by transport undertakings established in certain Member States, it is apparent from the case-law of the Court, referred to in paragraph 246 above, that, if the EU measure concerned has an impact in all Member States and requires that a balance between the different interests involved be ensured, taking account of the objectives of that measure, the attempt to strike such a balance, taking into account the situation of all Member States, cannot, in itself, be regarded as contrary to the principle of proportionality.

854 It is also apparent from settled case-law, recalled in paragraph 267 above, that the EU legislature, taking into account the significant developments that have affected the internal market, is entitled to adapt a legislative measure in order to re-balance the interests involved with the aim, inter alia, of ensuring fair competition by amending the conditions in which freedom to provide services is exercised.

855 In the present case, the EU legislature specifically sought, by laying down the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055, to strike a new balance that takes account of the interests of the various transport undertakings by addressing, without calling into question the previous level of liberalisation of the transport market, the difficulties arising in the application of Regulation No 1072/2009 on account of practices, contrary to the necessarily temporary nature of cabotage operations, consisting in developing permanent or continuous cabotage activities in the same host Member State.

856 As regards, in the fourth place, the arguments relating to the alleged harmful effects of the waiting period on the environment, those arguments overlap with the arguments put forward by the Republic of Lithuania in its first plea, the Republic of Bulgaria in both parts of its first plea, inasmuch as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and the Republic of Poland in its plea common to all the contested provisions of that regulation, inasmuch as it is directed against point 4(a) of Article 2 thereof, with the result that they will be examined in that context.

857 In the fifth place, as regards Romania's argument based on the COVID-19 pandemic, it is sufficient to note that it was not for the EU legislature to address the effects of that pandemic in the context of Regulation 2020/1055, which seeks to adapt to developments in the road transport sector the common rules on the conditions to be complied with to pursue the occupation of road transport operator and for access to the international road haulage market, especially since other specific legislative measures had such a purpose, like, in the field of transport, Regulation 2020/698. The effects of the COVID-19 pandemic are therefore irrelevant for the purpose of assessing whether point 4(a) of Article 2 of Regulation 2020/1055 complies with the requirements flowing from the principle of proportionality.

858 In the light of all the foregoing, it must be held that the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 does not lead to disadvantages that are manifestly disproportionate to the objective pursued by that provision, which is to ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the same host Member State.

859 Consequently, the fifth plea relied on by the Republic of Lithuania, the second part of the second plea relied on by the Republic of Bulgaria, the second part of the first plea relied on by Romania, the second plea relied on by the Republic of Malta and the first plea relied on by the Republic of Poland must be rejected as unfounded.

(b) Breach of the principle of equal treatment and non-discrimination

(1) Arguments of the parties

860 The Republic of Lithuania, by the second part of its second plea in law, Romania, by its third plea in law, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and the Republic of Malta, by its third plea in law, submit that point 4(a) of Article 2 of Regulation 2020/1055 does not comply with the requirements flowing from the principle of non-discrimination, as laid down in Article 18 TFEU. The Republic of Malta also alleges infringement of Articles 20 and 21 of the Charter.

861 In the first place, those three Member States submit that the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055 breaches the principles of equal treatment and non-discrimination, in that it leads to discrimination between, on the one hand, transport undertakings established in Member States on the periphery of the European Union, small Member States or those distinguished by their island status and, on the other hand, those established in Member States situated in the central or western part of the European Union.

862 The Republic of Lithuania submits that point 4(a) of Article 2 of Regulation 2020/1055 hinders the exercise of the freedoms of the internal market, while giving rise to indirect discrimination against small Member States on the periphery of the European Union. In that regard, on account of factors specific to the central and western part of the European Union, such as a large population concentration or a more developed industrial sector, transport needs exist above all in that part of the European Union. As a result of the waiting period, undertakings established in Member States on the periphery of the European Union and in small Member States are discouraged from providing transport services on the most lucrative markets.

863 Romania claims that vehicles registered in Member States which acceded to the European Union as from 1 May 2004 are used in most international transport operations, including cabotage operations, whereas transport undertakings established in other Member States carry out predominantly national freight transport operations, so that the measure provided for in point 4(a) of Article 2 of Regulation 2020/1055 affects transport undertakings within the European Union unequally.

864 In particular, transport undertakings established in Member States situated in the central or western part of the European Union and carrying out international transport operations enjoy a geographical

advantage as a result of the shorter distances to be travelled to the Member States of loading and unloading. Consequently, those undertakings are not significantly affected by the introduction of the restrictions applicable to cabotage operations.

865 Furthermore, the assessment of the effects on the transport market of Regulation 2020/1055, in particular the waiting period, should take into account the other elements of the first package of mobility measures. An overall assessment would demonstrate the discriminatory nature of the legislation, mainly affecting hauliers established in Member States on the periphery of the European Union.

866 The Republic of Malta submits that point 4(a) of Article 2 of Regulation 2020/1055 breaches the principle of equal treatment in so far as, without any objective justification, the waiting period laid down in that provision treats different situations in the same way. In view of Malta's island status and its geographical location, Maltese transport undertakings would not consider organising the return of their vehicles to Malta after three cabotage operations in a host Member State following an international transport operation to that Member State. Accordingly, the waiting period requires them to direct their vehicles to another Member State or to suspend their activities in the host Member State until the end of that period.

867 Furthermore, the Republic of Malta points out that, admittedly, the EU legislature must enjoy a broad discretion in the exercise of its powers, when it is faced with complex economic or technical choices. However, a measure such as the waiting period is not particularly complex. It constitutes a general rule applicable to all Member States that has the effect of overlooking the specific geographical particularities of a given Member State. That rule has the effect of discriminating against a Member State which is well known to be prevented from complying with the waiting period by reason of its particular transport infrastructure, mechanisms for access to foreign goods and its unique geographical characteristics.

868 As regards the waiting period itself, the Republic of Malta submits that the health or environmental protection objectives of a legislative act should not be weighed against the socio-economic effects of that act in the various Member States, but rather the beneficial socio-economic effects that the act entails for the vast majority of Member States located on the mainland should be weighed against, on the one hand, its harmful effects on the environment for the European Union as a whole and, on the other, its socio-economic effects detrimental to the minority of Member States on the periphery of the European Union. On that basis, it is manifestly wrong to treat transport undertakings established in an island Member State in the same way as undertakings which are not dependent on a sea leg in order to carry out their transport activities.

869 According to the Republic of Lithuania and Romania, the waiting period leads to the artificial redistribution of the market for the carriage of goods by road and to limiting the commercial opportunities of hauliers in other Member States. That protectionist and restrictive measure creates a barrier to entry to external markets for non-resident hauliers, mainly from Member States on the periphery of the European Union and small Member States.

870 In the second place, the Republic of Lithuania, Romania and the Republic of Malta claim that the waiting period breaches the principle of non-discrimination and the principle of equality of the Member States on account of the significantly less favourable position of Member States on the periphery of the European Union, small Member States or those distinguished by their island status. In that regard, the Republic of Lithuania alleges, in particular, infringement of Article 4(2) TEU.

871 The Parliament and the Council consider that those arguments are unfounded.

(2) Findings of the Court

872 It is common ground, in the present case, that the measure provided for in point 4(a) of Article 2 of Regulation 2020/1055, in so far as it requires transport undertakings to observe a waiting period between two cabotage cycles in the same Member State, applies without distinction to all transport undertakings irrespective of the Member State in which they are established, so that it does not involve direct discrimination prohibited by EU law.

873 It is therefore necessary to examine, in accordance with the case-law referred to in paragraphs 308 to 310 above, whether that provision unjustifiably applies an identical rule to different situations, in the light, inter alia, of the objective pursued by that provision, and therefore constitutes indirect discrimination prohibited by EU law, in so far as, as the Republic of Lithuania, Romania and the

Republic of Malta in essence claim, it is, by its very nature, likely to have a greater effect on transport undertakings established in Member States situated, according to those applicant Member States, on the 'periphery of the European Union', small Member States or those distinguished by their island status and that particular group of Member States in relation to other transport undertakings and other Member States.

874 As regards, in the first place, the existence of alleged discrimination between transport undertakings established, on the one hand, in Member States on the 'periphery of the European Union', small Member States or those distinguished by their island status, and, on the other hand, those established in Member States situated in the 'central or western part of the European Union', it should be noted that, contrary to the premiss on which Romania's and the Republic of Malta's line of argument is based, and as is apparent from paragraphs 833 and 843 above, point 4(a) of Article 2 of Regulation 2020/1055 does not require the transport undertaking, irrespective of the Member State in which it is established, to return the vehicle to the operational centre of that undertaking during the waiting period. Furthermore, that waiting period does not deprive transport undertakings, irrespective of the Member State in which they are established, of the possibility of carrying out transport activities during that period, including cabotage activities, provided that those activities are not carried out in the same host Member State.

875 Therefore, it cannot be maintained that the effect of the waiting period is to place certain transport undertakings, on account of the geographical characteristics of the Member State in which they are established, whether in particular its location, according to the applicant Member States, on the 'periphery of the European Union', its size or its island status, in a different situation from undertakings established in Member States situated in the 'central or western part' of the European Union.

876 The alleged difference in the impact of the waiting period on transport undertakings according to their place of establishment in the European Union results not from the allegedly discriminatory nature of the rule laid down by the EU legislature in point 4(a) of Article 2 of Regulation 2020/1055, but, as has been noted in paragraph 850 above, from the business model for which transport undertakings, irrespective of the Member State in which they are established, have opted, consisting in providing most, if not all, of their services in the context of cabotage operations carried out on a permanent or continuous basis in the territory of the same host Member State.

877 Moreover, it should be added that, first, as the Advocate General observed in points 618 and 796 of his Opinion, only transport undertakings which carry out their activities in disregard of the temporary nature of cabotage operations already provided for by Regulation No 1072/2009 will be particularly affected by the waiting period. The objective pursued by point 4(a) of Article 2 of Regulation 2020/1055, as set out in recital 21 of that regulation, is precisely to ensure that cabotage operations are not carried out in such a way as to create a permanent or continuous activity within the host Member State.

878 Secondly, it is true that the consequences of point 4(a) of Article 2 of Regulation 2020/1055 on transport undertakings may differ according to the proportion of cabotage operations in those undertakings' activities as a whole and may represent a greater burden for those undertakings, regardless of the Member State in which they are established, which have opted for the business model referred to in paragraphs 850 and 876 above, than those which carry out few transport activities of that kind and for which that period has a lesser impact.

879 However, it must be borne in mind that, in accordance with the case-law referred to in paragraph 829 above, where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature is entitled to adapt that act to any change in circumstances or advances in knowledge, having regard to its task of safeguarding the general interests recognised by the Treaties and taking into account the transversal objectives of the European Union enshrined, in particular, in Article 3(3) TEU as regards the establishment of an internal market. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives only if it is open to it to adapt the relevant EU legislation to take account of such changes or advances.

880 In the present case, far from introducing discrimination between transport undertakings, the EU legislature intended, by the adoption of point 4(a) of Article 2 of Regulation 2020/1055, to remedy the unexpected consequences caused, under Regulation No 1072/2009, in the version prior to the entry into force of Regulation 2020/1055, by the introduction of systematic cabotage practices contrary to the temporary nature of cabotage operations.

881 As has been noted in paragraph 322 above, a provision of EU law cannot therefore be regarded as being, in itself, contrary to the principles of equal treatment and non-discrimination on the sole ground that it has different consequences for certain economic operators, where that situation is the result of different operating conditions in which they are placed and not of an inequality in law which is inherent in the contested provision.

882 The foregoing findings cannot be called into question, first of all, by the line of argument put forward by the Republic of Lithuania and Romania that the waiting period artificially redistributes the market for the carriage of goods by road and limits the commercial opportunities of transport undertakings established in Member States situated, according to those applicant Member States, on the 'periphery of the European Union' and in small Member States, with the result that it places those undertakings in a situation different from that of undertakings established in Member States situated in the 'central or western part of the European Union'.

883 Such a line of argument is based, in essence, on the consideration, first, that transport needs exist above all, according to those applicant Member States, in the 'central and western part of the European Union' and, secondly, that transport undertakings established in Member States on the 'periphery of the European Union' and in small Member States carry out most of the EU cabotage operations, whereas transport undertakings established in other Member States mainly carry out transport operations within their own Member State.

884 It should be noted that any difference in impact between transport undertakings depending on their Member State of establishment results, in any event, from the different nature of the operations carried out, which is reflected in Article 91(1)(b) TFEU, from which it follows that cabotage operations, namely those carried out within a Member State by a haulier not established in that Member State, must be distinguished from purely national transport operations, namely those carried out within a Member State by a haulier established in that Member State.

885 Therefore, the fact that transport operations carried out in a given Member State are subject to different rules when they are different operations, in this case according to whether they are cabotage operations or purely national transport operations, cannot breach the principles of equal treatment and non-discrimination.

886 As regards the Republic of Malta's argument that the waiting period requires Maltese hauliers, at the end of a cabotage period, to travel to another Member State or to suspend their activities during the waiting period, it should be noted that, first, the need to travel to another Member State already followed from Article 8(2) of Regulation No 1072/2009, since, under that provision, which was not amended by Regulation 2020/1055, the vehicle must leave the territory of the host Member State following a first cabotage cycle before, where appropriate, it can begin a new cabotage cycle in that Member State following a new international carriage operation to that destination.

887 Secondly, as has been pointed out in paragraph 874 above, observance of the waiting period does not require the transport undertaking concerned to suspend all transport operations. It does not prevent that undertaking from carrying out transport operations other than cabotage operations in the same host Member State following a first cabotage cycle in that Member State. Thus, the Republic of Malta's argument is in fact based on the premiss that, in the absence of a waiting period, the transport undertakings concerned would continue to carry out such cabotage operations in the same Member State. That period was specifically established to prevent those activities being carried out on a permanent or continuous basis in the same host Member State.

888 As regards, in the second place, the line of argument of the Republic of Lithuania, Romania and the Republic of Malta relating to the existence of an alleged breach of the principle of non-discrimination and of the principle of equality of the Member States, that line of argument must be rejected for the same reasons as those set out above, given that it is based, in essence, on the indirect consequences which flow from the alleged discrimination between transport undertakings established in the European Union. Furthermore, the same applies to the breach alleged by the Republic of Lithuania of the principle of equality of Member States before the Treaties, enshrined in Article 4(2) TEU, since that Member State has not put forward a separate line of argument on the basis of that provision.

889 Moreover, even if some Member States are indirectly affected more than others by that provision, notwithstanding its indistinctly applicable nature, suffice it to recall that, according to the case-law of the Court set out in paragraph 332 above, an EU measure which is intended to standardise rules of the Member States, provided that it is applied equally to all Member States, cannot be considered

to be discriminatory, as such a harmonisation measure inevitably produces different effects depending on the prior state of the various national laws and practices.

890 Those considerations cannot be called into question by Romania's claim, based on the overall discriminatory effect resulting from all the provisions falling within the 'Mobility Package', which is the subject of the three actions brought by that Member State in Cases C-546/20 to C-548/20. Romania has not demonstrated, in Case C-547/20, that a discriminatory effect stems from point 4(a) of Article 2 of Regulation 2020/1055. As to the remainder, the arguments directed against Regulation 2020/1054 and Directive 2020/1057 must be examined in the context of the pleas and arguments seeking, in the context of the actions brought in Cases C-546/20 and C-548/20, the annulment of all or some of those acts of EU law.

891 Consequently, the second part of the second plea in law relied on by the Republic of Lithuania, the third plea in law relied on by Romania, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and the third plea relied on by the Republic of Malta, must be rejected as unfounded.

(c) Infringement of Article 91(1) TFEU

(1) Arguments of the parties

892 The Republic of Bulgaria, by its fourth plea in law, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, claims that, by adopting that provision, the EU legislature infringed Article 91(1) TFEU.

893 According to that Member State, Article 91(1), which is the legal basis for that regulation, required that legislature to act in accordance with the ordinary legislative procedure and after consulting the EESC and the CoR. The waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055 did not appear in the proposal for an establishment regulation, with the result that it could not be examined by those committees before they delivered their respective opinions on 18 January and 1 February 2018. By not subsequently consulting those committees on the substantial amendment made to that proposal, the EU legislature infringed Article 91(1).

894 The Republic of Bulgaria notes that the Court ruled on the duty to consult in the context of the legislative procedure at a time when, without being co-legislator, the Parliament, like the EESC and the CoR today, had an advisory role. The Court held that the duty to consult the Parliament implied that the Parliament be reconsulted whenever the text finally adopted, viewed as a whole, departs substantially from the text on which the Parliament has already been consulted (see, to that effect, judgment of 16 July 1992, *Parliament* v *Council*, C-65/90, EU:C:1992:325, paragraph 16).

895 Since that advisory role is now always exercised by the EESC and the CoR, under Article 91(1) TFEU, the case-law referred to in the previous paragraph would apply by analogy to the duty to consult those two committees. Consequently, in the present case, they should have been reconsulted on the subject of the substantial amendment consisting of the introduction of the waiting period.

896 It is incorrect to claim, as the Parliament does, that there is no precedent for a second consultation of the committees in the context of the legislative procedure. By way of example, during the legislative procedure on the Proposal for a Regulation of the European Parliament and of the Council on health technology assessment and amending Directive 2011/24/EU (COM(2018) 51 final), an additional provision was added to the legal basis of the act concerned, which led the EU legislature to decide to consult the EESC for a second time.

897 The Parliament and the Council contend that that plea is unfounded.

(2) Findings of the Court

898 It should be recalled that Article 91(1) TFEU provides that, for the purpose of implementing Article 90 TFEU and taking into account the distinctive features of transport, the Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the EESC and the CoR, are to lay down, inter alia, the conditions under which non-resident hauliers may operate transport services within a Member State.

899 It must be stated that it is not apparent from that provision that the EESC and the CoR must be reconsulted in the event of an intended amendment to a proposal for a legislative act.

900 The Republic of Bulgaria submits, however, that the duty to consult the EESC and the CoR arises in the present case from the application by analogy of the case-law of the Court resulting from the judgment of 16 July 1992, *Parliament* v *Council* (C-65/90, EU:C:1992:325), which clarified the scope of the advisory role which the Parliament exercised, at that time, in the context of the legislative procedure.

901 According to that case-law, the duty to consult the Parliament in the course of the legislative procedure, in the cases provided for by the Treaty, includes the requirement that the Parliament be reconsulted when the text finally adopted, viewed as a whole, departs substantially from the text on which the Parliament has already been consulted, except in cases where the amendments essentially correspond to the wish of the Parliament itself (see, to that effect, judgment of 16 July 1992, *Parliament* v *Council*, C-65/90, EU:C:1992:325, paragraph 16 and the case-law cited). That requirement of due consultation of the Parliament is regarded as an essential formal requirement, failure to comply with which renders the measure concerned void (see, to that effect, judgment of 5 July 1995, *Parliament* v *Council*, C-21/94, EU:C:1995:220, paragraph 17).

902 However, without there being any need to examine whether, in so far as it introduces the waiting period, point 4(a) of Article 2 of Regulation 2020/1055 constitutes a substantial amendment to the proposal for an establishment regulation, it should be noted, as the Parliament and the Council submit, that the case-law recalled in paragraphs 900 and 901 above cannot be applied to the duty to consult the EESC and the CoR, laid down in Article 91(1) TFEU.

903 In order to classify the requirement to reconsult the Parliament as an essential formal requirement, the Court held that that requirement followed from the fact that effective participation of the Parliament in the legislative process constituted an essential factor in the institutional balance intended by the Treaty and that that function reflected the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly (see, to that effect, judgment of 10 June 1997, *Parliament* v *Council*, C-392/95, EU:C:1997:289, paragraph 14 and the case-law cited). Those considerations do not apply in the same way to the EESC and the CoR.

904 First, it should be noted that the EESC and the CoR, on the one hand, and the Parliament, on the other, occupy separate places within the institutional balance of the European Union. While the Parliament is one of the EU institutions listed in Article 13(1) TEU, those committees fall within the scope of Articles 301 to 304 TFEU and Articles 305 to 307 TFEU, respectively, which appear in Chapter 3 of Title I of Part Six of the FEU Treaty, entitled 'The Union's advisory bodies'.

905 Secondly, Article 10(1) TEU states that 'the functioning of the Union shall be founded on representative democracy'. Paragraph 2 of that article states, first, that citizens are to be directly represented, at EU level, in the Parliament and, secondly, that the Member States are to be represented in the European Council by their Head of State or Government and in the Council by their governments, who are themselves democratically accountable, either to their national parliaments or to their citizens. However, that article does not confer a democratic representation function on the EESC and the CoR.

906 It follows that the Republic of Bulgaria is not justified in relying on the case-law relating to the requirement to reconsult Parliament during the legislative procedure in order to claim that the EU legislature infringed Article 91(1) TFEU in the present case.

907 That conclusion cannot be called into question by that Member State's claim that there is a precedent relating to the legislative procedure on the Proposal for a Regulation of the European Parliament and of the Council on health technology assessment and amending Directive 2011/24/EU (COM(2018) 51 final), which attests to the existence of a requirement to reconsult the EESC and the CoR.

908 As the Council rightly submits, a distinction must be drawn, in accordance with the first paragraph of Article 304 and the first paragraph of Article 307 TFEU, between the cases, 'provided for in the Treaties', in which consultation of the EESC and the CoR is mandatory, and other cases in which such consultation is optional and left to the discretion of the Parliament, the Council or the Commission, such as the present case.

909 It follows that no requirement to reconsult those committees can be inferred from a previous procedure in which one of those EU institutions considered that it was appropriate to reconsult one of them.

910 Consequently, the fourth plea in law relied on by the Republic of Bulgaria must be rejected as unfounded in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055.

(d) Infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, Article 91(2) and Article 94 TFEU

(1) Arguments of the parties

911 The Republic of Lithuania, by its third plea in law, the Republic of Bulgaria, by its fifth plea in law, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, the Republic of Malta, by its first plea in law, and the Republic of Poland, by its second and third pleas in law, submit that, by adopting point 4(a) of Article 2 of Regulation 2020/1055, the EU legislature disregarded the requirements flowing from Article 91(2) TFEU, taken in isolation as regards the Republic of Malta, or from that provision and Article 94 TFEU. The Republic of Bulgaria also alleges infringement of Article 90 TFEU, read in the light of Article 3(3) TEU.

912 In the first place, the Republic of Bulgaria submits that point 4(a) of Article 2 of Regulation 2020/1055 infringes Article 90 TFEU, read in conjunction with Article 3(3) TEU, Article 91(2) and Article 94 TFEU, by reason of the detrimental effects on the standard of living and level of employment in Bulgaria and, in general, in Member States on the periphery of the European Union, and on the economic situation of transport undertakings.

913 Those effects are the result of the increase in the number of empty runs and the resulting costs. In that regard, the Republic of Bulgaria submits that the introduction of the waiting period will entail significant costs for hauliers not only in Bulgaria but also in all Member States whose hauliers carry out cabotage operations, that Member State relying, on the basis of the studies referred to in paragraphs 772 and 796 above, on a decrease of up to 31% by 2035 in the number of cabotage operations in the European Union and an annual cost for Belgian hauliers of up to EUR 24 million.

914 The EU legislature therefore failed to take into account the importance of economic, social and territorial cohesion or solidarity between the Member States, thus disregarding the requirements of Article 3(3) TEU.

915 Those consequences have been demonstrated by both the Republic of Bulgaria and other Member States. However, no further analysis was carried out with a view to determining how the standard of living and level of employment in certain regions and the provision of transport services in itself would be affected and no consultation was conducted with the EESC or the CoR in that regard.

916 In the second place, as regards the infringement of Article 91(2) TFEU, the Republic of Lithuania, the Republic of Malta and the Republic of Poland complain that the EU legislature failed to take into account the impact of the measure provided for in point 4(a) of Article 2 of Regulation 2020/1055 on the standard of living and level of employment in certain regions, and on the operation of transport facilities. In that regard, the Republic of Poland submits that, although the EU legislature has a broad discretion, the obligation for it to take into account certain effects of the measures which it adopts cannot simply be limited to taking note of those effects, as otherwise Article 91(2) TFEU would be deprived of its effectiveness.

917 First, according to the Republic of Lithuania, the ECIPE study on discrimination, exclusion and environmental harm states, on page 13, that the number of persons working in the transport sector is much higher in Member States on the periphery of the European Union than in Member States located in its central and western part. Therefore, the negative effects of the cabotage period provided for in point 4(a) of Article 2 of Regulation 2020/1055 on the standard of living and level of employment are greater in those first Member States and result in job losses and migration of workers.

918 In that regard, although, prior to the adoption of Regulation 2020/1055, it was possible to carry out three cabotage operations every 7 days, the effect of the introduction of that waiting period is that the same number of operations can only be carried out every 11 days. The result is a reduction in the volume of the activities of transport undertakings established in Member States on the periphery

of the European Union and, consequently, a decrease in the standard of living and level of employment in those Member States.

919 By way of example, in Lithuania, as is apparent from the specialist press article, entitled 'Lithuania challenges the Mobility Package at the EU court', up to 35 000 workers in transport undertakings were at risk of losing their jobs.

920 Secondly, the Republic of Malta submits that point 4(a) of Article 2 of Regulation 2020/1055 will have serious consequences for transport undertakings established in island Member States which, like the Republic of Malta, are heavily dependent on maritime communications and multimodal transport itineraries; consequences which the EU legislature was unable to take into account. Requiring Maltese hauliers to suspend their transport operations for four days leads to arbitrarily paralysing their transport activities, in order to comply with a rule that was designed for genuine cabotage operations, but not for hauliers established in island Member States and operating on the mainland.

921 The maritime section between Malta and the mainland is mainly covered by Ro-Ro vessels carrying semi-trailers rather than whole vehicles. Even though Maltese hauliers are not interested in conducting cabotage operations as defined in Regulation No 1072/2009, that is to say, national transport operations in another Member State, their transport operations in Italy are still technically classified as such. That regulation does not regard the carriage of goods by sea from Malta to Italy as 'international carriage' within the meaning of point 2 of Article 2 thereof, so that the carriage of a semi-trailer between an Italian port and another port in Italy is regarded as a cabotage operation.

922 By failing to take into account the specificity and singularity of island Member States, such as Malta, that definition clearly excludes Maltese hauliers from the benefit of the rights linked to the provision of international transport services.

923 As demonstrated by the study carried out by KPMG entitled 'Ministry for Transport, Infrastructure and Capital Project – Market study: An impact of Mobility Package I', the waiting period has serious repercussions on the activities of Maltese hauliers. In so far as, in particular, it increases the logistical measures of transport undertakings of an island Member State carrying out their transport activities primarily on the mainland, increases transport costs and undermines the efficiency of transport operations, that waiting period threatens the activity of the Maltese international transport sector, within the meaning of Article 91(2) TFEU.

924 Thirdly, the Republic of Poland, maintaining that point 4(a) of Article 2 of Regulation 2020/1055 will lead to a decrease in the standard of living and level of employment in certain regions of Member States on the periphery of the European Union and will affect the transport infrastructure, refers to the arguments which it put forward in support of its claim for annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, according to which the obligation for vehicles to return will lead to additional empty runs without economic justification.

925 Accordingly, the waiting period could lead to the withdrawal from the market of hauliers who would no longer be able to operate profitably. This would result in job losses in the transport sector in those Member States. In that regard, no account was taken of the fact that 90% of transport undertakings employ fewer than 10 persons and that SMEs account for 55% of persons working in the transport sector, whereas the consequences of that waiting period will be particularly negative for those transport undertakings. Furthermore, the Republic of Poland submits that the share of that sector in the economy of Member States on the periphery of the European Union is higher than in that of the other Member States, with the result that job losses will be particularly damaging in Member States on the periphery of the European Union.

926 Nor did the EU legislature take into account the increase in road traffic brought about by the measure at issue, which has the effect of increasing road congestion and aggravating the deterioration of the road infrastructure. In that context, account should be taken of the 'fourth power law', demonstrating the impact of vehicles on road infrastructure, according to which the effect of the deterioration of the roads increases exponentially with the increase in the weight of the vehicle raised to the fourth power. Although heavy goods vehicles are less numerous than passenger cars, their impact on infrastructure is much greater. Moreover, the increase in road traffic is detrimental to the quality of life in areas located near the main transport hubs.

927 In addition, the Republic of Poland submits that the legal changes concerning road transport will lead to an increase of 19%, on average, in the rate of at-risk behaviour by drivers, linked to the possibility of breaking the law.

928 In the third place, as regards the infringement of Article 94 TFEU, the Republic of Lithuania and the Republic of Poland submit that, in adopting point 4(a) of Article 2 of Regulation 2020/1055, the EU legislature did not take account of the economic situation of transport undertakings.

929 As a result of an insufficient assessment of the situation of the transport market in the European Union and the relevant geographical particularities of the Member States as regards that market, the deterioration in the economic situation of hauliers established in Member States on the periphery of the European Union and in small Member States, following the application of the waiting period laid down in that provision, was not taken into account. The applicant Member States recall, in that regard, that the share of cabotage operations in the overall transport activity of a transport undertaking is much higher for those hauliers than for those established in Member States at the centre of the European Union.

930 In order to substantiate the argument that those hauliers are being driven out of the market, which follows from point 4(a) of Article 2 of Regulation 2020/1055, the Republic of Lithuania relies, moreover, on the evidence, set out in paragraphs 772 and 796 above, based on the ECIPE study on discrimination, exclusion and environmental harm and on the study, referred to in the specialist press article, entitled 'The Belgians do not like the Mobility Package. They figured that its provisions would bring losses to their companies as well'.

931 The Republic of Poland submits that, because of its negative consequences for a large majority of transport undertakings, the waiting period will entail a probable risk of a number of those undertakings going bankrupt or them having to relocate to Member States at the centre of the European Union. Furthermore, that Member State maintains that no account has been taken of the fact that those consequences will be particularly negative for SMEs, even though those undertakings represent 90% of transport undertakings.

932 Furthermore, according to the Republic of Poland, the adoption of point 4(a) of Article 2 of Regulation 2020/1055 during the COVID-19 pandemic confirms that the economic situation of hauliers was not taken into account. The economic effects of that pandemic were particularly felt in the transport sector, which was exposed to a fall in demand and to restrictions on crossing internal borders reintroduced by the Member States. Those effects were already present during the legislative procedure.

933 The Parliament and the Council consider that those pleas are unfounded.

(2) Findings of the Court

934 In the first place, it is necessary to reject the line of argument put forward by the Republic of Bulgaria, alleging infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, since, as is apparent from paragraphs 423 and 424 above, Article 3(3) TEU is not one of the parameters for assessing whether a provision of secondary law complies with primary law. The same is true of Article 90 TFEU, according to which the objectives of the Treaties are to be pursued, in the field of transport, 'within the framework of a common transport policy'.

935 In the second place, as regards the arguments of the Republic of Lithuania, the Republic of Bulgaria, the Republic of Malta and the Republic of Poland alleging infringement of Article 91(2) TFEU, it must be recalled that, according to that provision, the EU legislature must take into account, when adopting measures referred to in paragraph 1 of that article, the purpose of which is to implement the common transport policy taking into account the distinctive features of those measures, cases where the application of those measures might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

936 Since Regulation 2020/1055 was adopted by the EU legislature on the basis of Article 91(1) TFEU, that legal basis not being challenged in the present actions, it was therefore for the legislature to take account, when it adopted the waiting period provided for in point 4(a) of Article 2 of that regulation, of the requirements flowing from Article 91(2) TFEU.

937 In that regard, as has been pointed out in paragraphs 393 to 396 above, Article 91(2) TFEU requires the EU legislature, when adopting measures on the basis of Article 91(1), to 'take account' of their impact on the standard of living and level of employment in certain regions and on the operation of transport facilities, which is part of the broader framework of balancing the various objectives and interests at stake. Furthermore, as the Advocate General stated in point 285 of his Opinion, the use of the word 'seriously' indicates that that provision requires a significant degree of impact of the measures at issue on those parameters and not merely an effect on them.

938 It thus follows from Article 91(2) TFEU that serious effects on the standard of living and level of employment in certain regions and on the operation of transport facilities are not absolute limits in the light of the broad discretion enjoyed by the EU legislature in the field of the common transport policy in adopting measures to that end, provided that it takes those factors into account.

939 It follows that, when assessing the effects resulting from the adoption of a measure based on Article 91(1) TFEU, the EU legislature is required to give balanced consideration to the various interests at issue in order to attain the legitimate objectives which it pursues. Thus, the mere fact that the legislature must take into account the standard of living and level of employment in certain regions and, therefore, the economic interests of transport undertakings does not preclude those undertakings from being the subject of binding measures (see, by analogy, judgment of 9 September 2004, *Spain and Finland* v *Parliament and Council*, C-184/02 and C-223/02, EU:C:2004:497, paragraph 72 and the case-law cited).

940 It follows that Article 91(2) TFEU essentially reflects the EU legislature's obligation to act in accordance with the principle of proportionality by adopting measures which are appropriate for attaining the objective pursued, which do not manifestly go beyond what is necessary in order to achieve it and which are proportionate in the light of that objective.

941 It has already been held, in paragraph 859 above, that the pleas and arguments put forward by the Republic of Lithuania, the Republic of Bulgaria, the Republic of Malta and the Republic of Poland, alleging breach, by point 4(a) of Article 2 of Regulation 2020/1055, of the principle of proportionality, do not permit the inference that that principle has been disregarded.

942 Furthermore, in so far as the Republic of Bulgaria complains that the EU legislature did not reconsult the EESC and the CoR before adopting the measure relating to the waiting period, those arguments must be rejected for the reasons set out in paragraphs 898 to 910 above.

943 Furthermore, apart from the fact that the arguments put forward in the context of the examination of the alleged breach of the principle of proportionality have been rejected, the Republic of Lithuania, the Republic of Bulgaria, the Republic of Malta and the Republic of Poland have not provided, in support of the present pleas and arguments by which they allege infringement of Article 91(2) TFEU, any additional evidence capable of substantiating their claims that the waiting period has a serious impact on the standard of living and level of employment in certain regions and on the operation of transport facilities, which the EU legislature allegedly failed to take into account in establishing that period, in breach of that provision.

944 First, as regards the impact of the measure provided for in point 4(a) of Article 2 of Regulation 2020/1055 on the standard of living and level of employment, the Republic of Lithuania submits that the waiting period will have a detrimental effect in Member States situated, in its view, on the 'periphery of the European Union' in that it will only allow three cabotage operations to be carried out every 11 days rather than every 7 days as provided for in the earlier legislation. However, as stated in paragraphs 832 and 833 above, that waiting period does not deprive transport undertakings of the possibility of continuing their activities in the context of transport operations other than cabotage operations in the same host Member State, in particular cabotage operations in another host Member State. Furthermore, as the Council rightly points out, and as has been pointed out in paragraphs 834 and 835 above, even before the amendments made by Regulation 2020/1055, Article 8(2) of Regulation No 1072/2009 already required that, between two cabotage cycles, a certain period of time should be devoted to the completion of an international carriage by the vehicle concerned before starting a new cabotage cycle in the same host Member State.

945 Furthermore, as regards the risk that 35 000 workers will lose their job in the Lithuanian transport sector, apart from the fact that that argument is hypothetical, it is apparent from the specialist press article from which that estimate is drawn that it is based on a statement by the Lithuanian Minister

for Transport and Communications. In any event, such a statement is not sufficient to demonstrate a serious impact on employment.

946 In addition, as regards the Republic of Poland's line of argument concerning a possible serious impact on employment by the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055, it should be noted that that Member State does not substantiate its claim that that measure could entail the withdrawal of hauliers from the market on the ground that they would no longer be able to operate profitably, with the details necessary to enable the merits of that claim to be assessed. That Member State again refers, in support of its line of argument, to the consequences of the implementation of the obligation for vehicles to return, which consist in carrying out additional empty runs, without explaining how those consequences also apply to the waiting period.

947 In that regard, it should be pointed out that compliance with that waiting period does not, as such, entail additional journeys. That period requires only that the transport undertaking concerned which does not intend to immobilise the vehicle during the waiting period carries out, during that period, only transport operations other than cabotage operations in the same host Member State that could have been carried out in the absence of that period.

948 Consequently, the Republic of Poland's line of argument relating to the impact of the waiting period on the level of employment must also be regarded, in the absence of any specific evidence capable of substantiating its merits, as speculative.

949 Secondly, as regards the effect of the measure provided for in point 4(a) of Article 2 of Regulation 2020/1055 on the operation of transport facilities and on the quality of life in the areas close to the main transport hubs, it is necessary to reject, for the same reasons as those set out in paragraph 947 above, the line of argument put forward by the Republic of Poland based on the fact that the waiting period will lead to a significant increase in road traffic. Similarly, that impact clearly cannot result from a period during which the vehicle is immobilised if it were impossible to carry out, during that waiting period, transport operations other than those consisting of cabotage operations in the same host Member State.

950 Furthermore, the arguments put forward by the Republic of Poland concerning the increase in the rate of at-risk behaviour allegedly resulting from that period are speculative, with the result that they do not serve to demonstrate an infringement of the requirements flowing from Article 91(2) TFEU.

951 Thirdly, in so far as the Republic of Malta seeks to claim that the waiting period infringes Article 91(2) TFEU, in so far as the classification of a given carriage operation as international carriage or a cabotage operation does not take into consideration the specific geographical situation of Malta, it is sufficient to observe that, as the Parliament points out and as that Member State acknowledges, such a classification follows from the definitions set out in points 2 and 6 of Article 2 of Regulation No 1072/2009, provisions which were not amended by Regulation 2020/1055 and which, in any event, are a matter separate from that of the waiting period. Accordingly, it is sufficient to note that such an argument is not capable of demonstrating an infringement of Article 91(2) TFEU by point 4(a) of Article 2 of Regulation 2020/1055.

952 In the third place, as regards the arguments of the Republic of Lithuania, the Republic of Bulgaria and the Republic of Poland, alleging infringement of Article 94 TFEU, suffice it to note that that provision, according to which any measure 'in respect of transport rates and conditions', taken within the framework of the Treaties, must take account of the economic circumstances of hauliers, is irrelevant in the present case. Indeed, point 4(a) of Article 2 of Regulation 2020/1055, in so far as it establishes a waiting period between two cabotage cycles in the same Member State, does not govern the rates or conditions for the carriage of goods or passengers, but the rules under which a haulier may, following the expiry of a first cabotage cycle in a host Member State, start a new cabotage cycle in that same host Member State.

953 Consequently, the third plea in law relied on by the Republic of Lithuania, the fifth plea in law relied on by the Republic of Bulgaria, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, the first plea in law relied on by the Republic of Malta and the second and third pleas in law relied on by the Republic of Poland, must be rejected as unfounded.

(e) Infringement of the fundamental freedoms guaranteed by the FEU Treaty

(1) Arguments of the parties

954 In the first place, the Republic of Lithuania, by the first part of its second plea in law, claims that the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 infringes Article 26 TFEU, on the ground that the first of those provisions restricts the functioning of the internal market and limits the efficiency of the supply chain.

955 The fact that the objective of achieving an internal market, set out in Article 26 TFEU, is implemented and specified in other provisions of the Treaties does not have the effect of depriving that article of relevance, as the Court recognised in the judgment of 27 April 2017, *Pinckernelle* (C-535/15, EU:C:2017:315, paragraphs 43 and 44).

956 Accordingly, although the common transport policy is specifically governed by Title VI of Part Three of the FEU Treaty, the principles of the internal market apply in principle in the field of transport, since the sole purpose of that common transport policy is to supplement and implement more effectively, in that field, the fundamental freedoms, in particular the freedom to provide services on which that common policy is based.

957 The waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055 does not enable the objective pursued by that regulation, relating to the prevention of distortions of competition, to be achieved, since it leads to restrictions on cabotage at such a level that the objective of the single market is fundamentally called into question. In that regard, the Impact assessment – establishment section (Part 2/2, p. 48) emphasised the need to maintain the level of liberalisation already achieved, stating that the objective of the amendments to be made to the legislation was not to change the existing level of liberalisation, but to improve the implementation of the relevant rules. Moreover, recital 20 of that regulation also states that the level of liberalisation achieved to date should be preserved.

958 The restriction of the provision of transport services by non-resident hauliers constitutes a fundamental obstacle to the freedom to provide services. Moreover, the Court held, in paragraph 70 of the judgment of 22 May 1985, *Parliament* v *Council* (13/83, EU:C:1985:220), that the Council had infringed the Treaties by failing to lay down the conditions under which non-resident hauliers may operate transport services within a Member State.

959 The Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17), signed by the Republic of Lithuania on 16 April 2003 and which entered into force on 1 May 2004, provided for the opening of the European Union road freight market to hauliers established in Lithuania and the abolition of all restrictions on the provision of services, by Lithuanian hauliers, in other Member States within five years, at the latest, of the date of accession. The Republic of Lithuania expects its membership of the European Union to be accompanied by legislation ensuring a free and open market. The waiting period increases the restrictions on the provision of services in the field of road transport.

960 In its White Paper, entitled 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM(2011) 144 final, pp. 12 and 21), the Commission set out the objective of 'further opening road transport markets' and, first and foremost, of pursuing 'the elimination of remaining restrictions on cabotage'.

961 Therefore, the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055 is not only incompatible with those objectives, but also constitutes a fundamental obstacle to the proper functioning of the internal market and the freedom to provide services in the transport sector, since it leads to indirect discrimination against Member States on the periphery of the European Union and small Member States.

962 Furthermore, the Republic of Lithuania submits that the freedom to provide services must not, in the absence of objective reasons, vary according to the sector of activity concerned. In the air transport sector, all restrictions on cabotage have been removed in order to stimulate the development of that

sector and improve the services offered to users. In the road transport sector, by contrast, the expected liberalisation put in place measures to close the market of the Member States to non-resident hauliers, which prevents the development of the sector and the optimisation of services.

963 In the second place, the Republic of Bulgaria, by the first part of its seventh plea in law, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, claims that that provision infringes Article 58(1) TFEU, read in conjunction with Article 91 TFEU.

964 According to that Member State, the waiting period provided for in point 4(a) of Article 2 considerably restricts the freedom to provide transport services which the common transport policy guarantees hauliers.

965 In that regard, as is apparent from paragraphs 64 and 65 of the judgment of 22 May 1985, *Parliament* v *Council* (13/83, EU:C:1985:220), first, the EU legislature is required, under Article 91(1)(a) and (b) TFEU, to establish the freedom to provide services in the field of transport and, taking into account the requirements of the freedom to provide services, to eliminate all forms of discrimination against a person providing services on grounds of his, her or its nationality or the fact that he, she or it is established in a Member State other than that in which the service is to be provided. Secondly, the EU legislature does not have, on that point, the discretion on which it may rely in other areas of the common transport policy.

966 Whereas Regulation No 1072/2009 seeks to eliminate such discrimination and the restrictions imposed on access to the markets of the Member States in the context of the gradual attainment of the single European market, the waiting period reintroduces a form of discrimination and constitutes a retrograde step in the establishment of a common transport policy. In so doing, the EU legislature failed to fulfil its obligation to ensure the application of the principles of freedom to provide services in the framework of the common transport policy.

967 Furthermore, the restriction on the freedom to provide transport services resulting from point 4(a) of Article 2 of Regulation 2020/1055 is unjustified because of the disproportionate nature of that provision.

968 Should the Court consider that that question is also governed by Article 56 TFEU, the Republic of Bulgaria states that its plea in law is also based on that article.

969 In the third place, by the second part of its seventh plea in law, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, the Republic of Bulgaria submits that that provision, because of its serious consequences for the free movement of goods, must be regarded as a measure having effects equivalent to quantitative restrictions, which is prohibited under Articles 34 and 35 TFEU.

970 That Member State recalls that, in accordance with Article 36 TFEU, such a measure can be justified only if it pursues certain objectives and does not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. Furthermore, it is settled case-law that national measures which are liable to hinder the exercise of fundamental freedoms guaranteed by the Treaties or make it less attractive may be allowed only if they pursue an objective in the public interest, are appropriate for ensuring the attainment of that objective and do not go beyond what is necessary to attain the objective pursued. For the reasons put forward in its other pleas, the Republic of Bulgaria submits that the waiting period laid down in point 4(a) of Article 2 is disproportionate and, therefore, unjustified.

971 The Parliament and the Council contend that those pleas are unfounded.

(2) Findings of the Court

972 As regards, in the first place, the infringement of Article 26 TFEU alleged by the Republic of Lithuania, it should be recalled that, in accordance with paragraph 1 of that article, ‘the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties’, while paragraph 2 thereof states that ‘the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’.

973 It follows that, as the Advocate General observed in point 678 of his Opinion, Article 26 TFEU cannot be relied on independently without disregarding the scope and effectiveness of the other relevant provisions of the FEU Treaty, in particular Article 58(1) TFEU. Such a finding is all the more compelling where the measures whose legality is being challenged, in this case point 4(a) of Article 2 of Regulation 2020/1055, relate to the freedom to provide services in the field of transport, which is governed, in the primary law, by a special legal regime (see, to that effect, judgment of 18 March 2014, *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 36).

974 As is apparent from paragraphs 352 to 358 above and as the Republic of Lithuania acknowledges, the freedom to provide services in that field is governed not by Article 56 TFEU, which concerns the freedom to provide services in general, but by Article 58(1) TFEU, a specific provision under which 'freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport', namely Title VI of Part Three of the FEU Treaty, which comprises Articles 90 to 100 TFEU. Accordingly, transport undertakings have a right to the free provision of services solely in so far as that right has been granted to them by means of secondary law adopted by the EU legislature on the basis of the provisions of the FEU Treaty relating to the common transport policy, in particular Article 91(1) TFEU.

975 That is precisely the purpose of Regulation 2020/1055, adopted by the EU legislature on the basis of Article 91(1) TFEU, which provides, in particular, in point (b) thereof, that that legislature lays down the conditions under which non-resident carriers may operate transport services within a Member State, thereby distinguishing, as stated in paragraph 884 above, cabotage transport operations from purely national transport operations.

976 It should also be noted that, in that regard, the fact, highlighted by the Republic of Lithuania, that, in the judgment of 27 April 2017, *Pinckernelle* (C-535/15, EU:C:2017:315, paragraphs 42 to 44), delivered in a case concerning the export of a chemical substance to a third country, the Court, in the light of Article 26 TFEU, interpreted the concept of 'placing on the market', within the meaning of the EU regulation concerned by that case and adopted on the basis of Article 114 TFEU, as relating to the internal market, is irrelevant.

977 As regards, in the second place, the arguments of the Republic of Lithuania and the Republic of Bulgaria alleging infringement of the freedom to provide services in the field of transport, it should be recalled, first, that, for the reasons set out in paragraphs 832 to 837 above, point 4(a) of Article 2 of Regulation 2020/1055 cannot be regarded as adversely affecting the level of liberalisation which has thus far been achieved. The EU legislature intended to maintain, by Regulation 2020/1055, the legal regime for cabotage operations previously applicable, which already required, under Article 8(2) of Regulation No 1072/2009, that, between two cabotage cycles, a certain period of time be devoted to the completion of an international carriage by the vehicle concerned before starting a new cabotage cycle in the same host Member State. The EU legislature intended to clarify that legal regime by providing for an additional measure in the form of the waiting period intended to ensure the temporary nature of cabotage operations, in accordance with the objective pursued by that legislature when adopting Regulation No 1072/2009. Consequently, it is necessary to reject the Republic of Lithuania's argument that point 4(a) of Article 2 restricts the functioning of the internal market and places restrictions on cabotage at such a level that the objective of the single market is fundamentally called into question.

978 In that regard, it should be added that, although the Republic of Lithuania also submits that point 4(a) of Article 2 of Regulation 2020/1055 limits the efficiency of the logistics chain, it does not, however, adduce any specific evidence in support of that claim, which must therefore be rejected.

979 Secondly, for the reasons set out in paragraphs 872 to 891 above, it cannot be maintained that that provision entails a restriction on the freedom to provide services which constitutes discrimination against small Member States situated, according to that applicant Member State, on the 'periphery of the European Union'.

980 Thirdly, as regards the judgment of 22 May 1985, *Parliament* v *Council* (13/83, EU:C:1985:220), referred to by the Republic of Lithuania and the Republic of Bulgaria, it should be noted that the Court held, in particular in paragraphs 67 and 70 of that judgment, that the Council, in its legislative capacity conferred on it by the EEC Treaty, infringed the Treaties by failing to exercise the power conferred on it by Article 75 of the EEC Treaty, now Article 91 TFEU, in order to lay down, inter alia, in the context of the liberalisation of the provision of services in the transport sector, the conditions under which non-resident hauliers may operate transport services within a Member State.

981 Consequently, that case-law cannot usefully be relied on in the present case in order to challenge the legality of a provision which was specifically adopted by the EU legislature in the exercise of the powers provided for in Article 91 TFEU.

982 Furthermore, in so far as the Republic of Bulgaria relies more specifically on paragraphs 64 and 65 of the judgment of 22 May 1985, *Parliament* v *Council* (13/83, EU:C:1985:220), it is sufficient to recall that the Court did indeed hold, in those two paragraphs, that the EU legislature is required, under Article 75 of the EEC Treaty, now Article 91 TFEU, to introduce freedom to provide services in the field of transport and that it does not have, in that regard, the discretion which it may rely on in other areas of transport policy. The fact remains that, when the EU legislature exercises that power to define the detailed rules for the implementation of that freedom to provide services in the field of transport, in particular for the purpose of adopting the regime applicable to cabotage operations, it enjoys in that regard, and as has been recalled in paragraphs 242 and 247 above, a broad discretion for the purpose of reconciling the various interests involved, a discretion which, as has been found in the context of the examination of pleas alleging breach of the principle of proportionality, was not exceeded when point 4(a) of Article 2 of Regulation 2020/1055 was adopted.

983 Fourthly, as regards the Republic of Lithuania's line of argument based on the Treaty relating to its accession to the European Union, it is sufficient to note that that Member State merely makes general allegations, without mentioning the provisions of that Treaty which provided for the elimination of any restriction on the provision of services by Lithuanian hauliers in other Member States, where appropriate, by granting rules derogating from the provisions adopted by the EU legislature on the basis of Article 91(1) TFEU which are applicable to road hauliers from other Member States.

984 Fifthly, as regards the argument alleging failure to comply with the objectives laid down in the White Paper, entitled 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM(2011) 144 final), it is sufficient to recall that that white paper is set out in a Commission communication and that it is therefore not binding. It follows that the legality of point 4(a) of Article 2 of Regulation 2020/1055 cannot be assessed in the light of that white paper.

985 Sixthly, the argument based on the amendment of the regime applicable to cabotage operations in the air transport sector must be rejected for the same reasons as those set out in paragraph 836 above.

986 In the third place, as regards the Republic of Bulgaria's line of argument alleging infringement of the free movement of goods, that Member State does not explain how point 4(a) of Article 2 of Regulation 2020/1055 limits that freedom or how its effects amount to an alleged quantitative restriction to which that Member State refers.

987 In particular, apart from a reminder of Articles 34 to 36 TFEU and the Court's case-law relating to the circumstances in which such a quantitative restriction may be regarded as justified under Article 36 TFEU, that Member State merely refers to the arguments put forward in the context of the second plea of its action, which has been held to be unfounded in paragraphs 859 and 891 above.

988 Consequently, the first part of the second plea in law relied on by the Republic of Lithuania and both parts of the seventh plea in law put forward by the Republic of Bulgaria, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, must be rejected as unfounded.

(f) Infringement of the rules of EU law and of the European Union's commitments in the field of environmental protection

(1) Arguments of the parties

989 The Republic of Lithuania, by its first plea in law, the Republic of Bulgaria, by both parts of its first plea in law, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and the Republic of Poland, by its plea common to all the contested provisions of that regulation, in so far as it is directed against point 4(a) of Article 2 thereof, claim that, by adopting that provision, the EU legislature infringed the rules of EU law on environmental protection. The Republic of Lithuania alleges in that regard an infringement of Article 3(3) TEU, Articles 11 and 191 TFEU and EU policy on the environment and combating climate change. The Republic of Bulgaria alleges, first, infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU and Article 11 TFEU, and

of Article 37 of the Charter and, secondly, infringement of Article 3(5) TEU, Article 208(2) and Article 216(2) TFEU and the Paris Agreement. The Republic of Poland alleges infringement of Article 11 TFEU and of Article 37 of the Charter.

990 In the first place, the Republic of Lithuania, the Republic of Bulgaria and the Republic of Poland submit that, in accordance with Article 3(3) TEU, Article 11 TFEU, Article 90 TFEU, read in conjunction with Article 3(3) TEU, Article 191 TFEU and Article 37 of the Charter, the EU legislature must take account of environmental protection requirements both when determining and implementing EU policies other than that relating to environmental protection and combating climate change and in the context of other activities of the European Union. The objective of environmental protection laid down in Article 191 TFEU cannot be taken into account or achieved solely by the measures adopted pursuant to Article 192 TFEU, within the framework of a distinct and autonomous policy. The principle of integration enshrined in Article 11 TFEU allows the objectives and requirements of environmental protection to be reconciled with the other interests and objectives pursued by the European Union.

991 According to the Republic of Poland, an interpretation according to which Article 11 TFEU concerns areas of EU law, and not specific measures, does not enable the objective pursued by that provision to be achieved. In that regard, it is also not possible to accept an interpretation of that provision which presumes that the EU legislature has taken account of acts which it has already adopted in the field of the environment when it adopts legislation in a field other than the environment. The fact that Regulation 2020/1055 belongs to a wider package aimed at decarbonising the road transport sector does not prove that due consideration was given to the impact of that regulation on the environment, in particular on the possibility of achieving the environmental objectives set out in the documents and acts adopted by the European Union in the field of the environment. Furthermore, it is also not possible to consider that, once fixed, the targets for the reduction of greenhouse gas emissions remain invariable, irrespective of the additional emissions generated in the future as a result of obligations arising from new EU legislation.

992 The Republic of Lithuania and the Republic of Poland agree with the interpretation adopted by Advocate General Geelhoed in points 59 and 60 of his Opinion in *Austria* v *Parliament and Council* (C-161/04, EU:C:2006:66), according to which, where environmental interests have clearly not been taken into account or where they have been completely disregarded, Article 11 TFEU may serve as a standard for reviewing the legality of EU legislation. Where it is established that a particular measure adopted by the EU legislature has the effect of prejudicing the achievement of the objectives laid down by that legislature in other acts of secondary legislation adopted in environmental matters, the EU legislature is required to balance the conflicting interests and, where appropriate, to make appropriate amendments to the applicable measures in the field of the environment.

993 In the present case, the EU legislature failed to fulfil that obligation by failing to examine the impact of the measures provided for in Regulation 2020/1055, in particular the waiting period, on environmental requirements.

994 The Republic of Bulgaria submits that, although the fact that a given measure does not have a positive impact on the environment does not in itself constitute an infringement of the rules of EU law on environmental protection, the measures provided for in Regulation 2020/1055, in particular that waiting period, clearly compromise them, thus making numerous other measures aimed at protecting the environment and reducing pollutant emissions futile.

995 The Republic of Lithuania and the Republic of Poland submit, in particular, that the implementation of the measures provided for in Regulation 2020/1055, in particular that waiting period, gives rise to additional journeys by heavy goods vehicles, including empty runs, resulting in CO2 emissions and air pollutants causing numerous health problems. According to the Republic of Lithuania, those disadvantages arise, inter alia, from the obligation on vehicles to leave the territory of the host Member State at the end of a cabotage cycle, because of the waiting period.

996 Those Member States submit that, according to the study carried out by ECIPE, entitled '4 Million Tonnes Additional CO2 due to Proposed EU Cabotage Laws in Mobility Package', and the ECIPE study on discrimination, exclusion and environmental harm, which were carried out on the basis of the calculations made by KPMG for the Bulgarian international transport sector and Eurostat data, the additional CO2 emissions for the entire European Union resulting from the proposed amendment to the cabotage provisions amount to approximately four million tonnes.

997 Those environmental consequences are additional to those arising from the other measures provided for in Regulation 2020/1055. Thus, according to the Republic of Poland's own assessments, the additional empty runs imposed by the obligation for vehicles to return, applicable to the Polish vehicle fleet of over 2.5 tonnes active in international transport, generate 672 024 tonnes of CO2. That Member State also submits that, according to the IRU's estimates, as set out in an open letter of 26 October 2018, the compulsory vehicle returns imposed by Regulation 2020/1055 will, in themselves, generate up to 100 000 additional tonnes of CO2 emissions per year. A report drawn up by KPMG entitled 'Impact assessment regarding provisional agreement on Mobility Package I' also shows, based on the example of Bulgarian hauliers, that the annual increase in CO2 emissions generated by those compulsory vehicle returns to Bulgaria will amount to approximately 71 000 tonnes.

998 According to the Republic of Lithuania and the Republic of Poland, those additional CO2 emissions are liable to impede the achievement of the climate objectives pursued by the European Union by 2050, as referred to by the Commission in the Green Deal; objectives which the European Council endorsed on 12 December 2019. The Republic of Poland also refers to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 September 2020, entitled 'Stepping up Europe's 2030 climate ambition. Investing in a climate-neutral future for the benefit of our people'.

999 The Republic of Poland maintains that those additional CO2 emissions could also call into question the Member States' achievement of the objectives laid down in Regulation 2018/842.

1000 As for the additional emissions of air pollutants, they could, according to the Republic of Poland, significantly impede compliance with the Member States' obligations under Directive 2016/2284. Those additional emissions could also undermine the objectives pursued by Directive 2008/50.

1001 The Republic of Lithuania submits that account should also be taken of Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ 2021 L 243, p. 1), Article 2 of which, on the objective of climate neutrality, provides that that objective must be achieved in the European Union by 2050 at the latest and that the EU institutions and the Member States must take the necessary measures, at their respective levels, in order to enable that objective to be achieved collectively, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving that objective.

1002 Although some Member States and the Commission pointed out the need to take into account the effect of the proposed measures, in particular the obligation for vehicles to return and the restrictions on cabotage operations, on the increase in the number of empty runs and CO2 emissions, and stressed the need to carry out an analysis of the effects of all those measures at EU level, the EU legislature disregarded those concerns. The preparation of additional analyses before the end of 2020, announced by the Commissioner for transport, Ms Vălean, concerning the effects of the compulsory return of vehicles to the Member State of establishment every eight weeks and the restrictions applicable to combined transport operations, does not in any way remedy that failure.

1003 On the contrary, the study, entitled 'Mobility Package 1 – Data gathering and analysis of the impacts of cabotage restrictions on combined transport road legs – Final report' of November 2020 ('the study on cabotage restrictions in combined transport') confirms the merits of the complaints made against the waiting period.

1004 In the second place, the Republic of Bulgaria submits that that waiting period fails to have regard to the requirements of environmental protection arising from the European Union's international commitments. That Member State refers to the wording of Article 208(2) TFEU, according to which 'the Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations', and the wording of Article 216(2) TFEU, which states that 'agreements concluded by the Union are binding upon the institutions of the Union and on its Member States'.

1005 Accordingly, the EU legislature should have taken account of the obligations and objectives of the Paris Agreement, adopted under the UNFCCC and approved by the European Union by Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of

the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ 2016 L 282, p. 1).

1006 The Republic of Bulgaria submits that those objectives include, in accordance with Article 4 of the Paris Agreement, '[reaching] global peaking of greenhouse gas emissions as soon as possible', '[undertaking] rapid reductions thereafter in accordance with best available science' and promoting 'environmental integrity' and, under Article 2 of that agreement, promoting 'resilience [to climate change] and low greenhouse gas emissions development'.

1007 That Member State also refers to recital 2 of Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (OJ 2019 L 198, p. 202), which states that 'in order to contribute to the objectives of the Paris Agreement, the transformation of the entire transport sector towards zero emissions needs to be accelerated' and 'emissions of air pollutants from transport that significantly harm our health, and the environment, need also to be drastically reduced without delay'. Lastly, the Republic of Bulgaria submits that the European Council, in its conclusions of 12 December 2019, stated that 'all relevant Union legislation and policies need to be consistent with, and contribute to, the fulfilment of the climate-neutrality objective while respecting a level playing field'.

1008 The measures set out in Regulation 2020/1055, in particular the waiting period, are contrary to the objectives of the Paris Agreement, which constitutes an infringement of Article 208(2) and Article 216(2) TFEU.

1009 In addition, the Republic of Bulgaria submits that, in accordance with Article 3(5) TEU, the European Union must contribute 'to the strict observance and the development of international law'. Accordingly, when adopting an act of EU law, the EU legislature is required to comply with international law in its entirety. However, Regulation 2020/1055 is not compatible with international law.

1010 The Parliament and the Council consider that those arguments are unfounded.

(2) Findings of the Court

1011 As regards, in the first place, the determination of the rules of EU law on environmental protection which may be alleged to have been infringed in the present case, it is necessary to reject, first, the line of argument put forward by the Republic of Lithuania, alleging infringement of Article 3(3) TEU, and the line of argument put forward by the Republic of Bulgaria, alleging infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, for the reasons stated in paragraphs 423, 424 and 934 above.

1012 As regards, secondly, Article 191 TFEU, relied on by the Republic of Lithuania, that article appears in Title XX of Part Three of the FEU Treaty, relating to EU policy on the environment. Regulation 2020/1055 was adopted not under that policy but under the common transport policy, which is the subject of Title VI of Part Three of the FEU Treaty, in particular on the basis of Article 91(1) TFEU, that legal basis not being challenged in the present actions.

1013 In the latter regard, it should also be recalled that a legislative act such as Regulation 2020/1055 cannot fall within the scope of EU environmental policy merely because it must take account of environmental protection requirements (see, to that effect, judgment of 15 April 2021, *Netherlands* v *Council and Parliament*, C-733/19, EU:C:2021:272, paragraph 48 and the case-law cited).

1014 It follows that Article 191 TFEU on EU environmental policy is not relevant to the examination of the legality of point 4(a) of Article 2 of Regulation 2020/1055.

1015 Thirdly, for the reasons set out in paragraphs 431 and 432 above, the same is true of the other instruments of secondary EU law, the Green Deal, the Communication from the Commission referred to in paragraph 998 above and the conclusions of the European Council of 12 December 2019, relied on by the Republic of Lithuania, the Republic of Bulgaria and the Republic of Poland.

1016 In those circumstances, and for the reasons set out in paragraphs 428 to 430 above, it is necessary only to examine whether the EU legislature, when it adopted point 4(a) of Article 2 of Regulation 2020/1055, infringed the requirements relating to environmental protection arising from Article 11 TFEU, read in conjunction with Article 37 of the Charter.

1017 In that regard, it should be noted, first, that Article 11 TFEU is by its nature horizontally applicable, which entails that the EU legislature must integrate requirements relating to environmental protection into the European Union's policies and activities and, in particular, in the common transport policy of which Regulation 2020/1055 forms part.

1018 Moreover, the review of the legality of point 4(a) of Article 2 of Regulation 2020/1055 which the Court is called upon to carry out, in the present case, in the light of Article 11 TFEU, read in conjunction with Article 37 of the Charter, concerns an EU measure in the context of which the EU legislature is required to ensure, as is apparent from paragraphs 813, 814, 854 and 855 above, a balance between the various interests and objectives involved.

1019 In those circumstances, even if the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055, considered in isolation, were to have significant negative effects on the environment, it would be necessary, in order to determine whether there has been an infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, to take account of other measures undertaken by the EU legislature to limit those effects of road transport on the environment and to attain the overall objective of reducing polluting emissions.

1020 In the present case, it must, first, be observed that the Republic of Bulgaria merely asserts, in a general and abstract manner, that the measures contained in Regulation 2020/1055, in particular the waiting period, infringe the provisions of EU law relating to the protection of the environment, without, however, substantiating its assertions with substantiating evidence.

1021 Secondly, by their line of argument, the Republic of Lithuania and the Republic of Poland submit that the waiting period will be the source of an increase in emissions of CO_2 and air pollutants, due to the additional journeys by heavy goods vehicles, often empty, which will result from its application.

1022 However, those arguments are based on an incorrect premiss. As has been pointed out in paragraph 843 above, compliance with that waiting period does not require the return of the vehicle, especially if it is empty, to the operational centre of the transport undertaking concerned. Moreover, transport operations carried out by hauliers during the waiting period, after a first cabotage cycle in a Member State, do not constitute additional journeys, but replace any cabotage operations which they may have carried out in that same Member State in the absence of that waiting period. Furthermore, if it were impossible to carry out, during that waiting period, operations other than those consisting of cabotage operations in the same host Member State, the resulting period of immobilisation of the vehicle could clearly not be regarded as being such as to give rise to an increase in emissions of air pollutants.

1023 It follows that the waiting period will not, on account of the additional journeys of vehicles which allegedly have to be organised, have significant negative effects on the environment which the EU legislature allegedly failed to assess.

1024 The arguments put forward by the Republic of Lithuania and the Republic of Poland are not such as to call that assessment into question.

1025 In so far as the Republic of Lithuania claims that the waiting period will lead to an increase in road traffic because of the obligation on those vehicles to leave the territory of the host Member State during that waiting period, it is sufficient to recall that, in accordance with Article 8(2) of Regulation No 1072/2009, which was not amended by Regulation 2020/1055, vehicles must necessarily leave the territory of the host Member State at the end of a first cabotage cycle before, where appropriate, being able to start a new cabotage cycle in the same Member State following a new international carriage.

1026 Furthermore, the arguments of the Republic of Lithuania and the Republic of Poland, based on the studies referred to in paragraphs 996 and 997 above, cannot be accepted. First, as regards the estimates put forward in ECIPE's studies on the environmental consequences of cabotage, they were extrapolated from the calculations made by KPMG for the Bulgarian transport sector. Without it being necessary to determine whether the calculations on which those studies are based also take account of the effect of the obligation for vehicles to return, it should be noted that, in any

event, those calculations relate to a change to the cabotage regime based on the assumption that cabotage operations must be carried out within three days of the last unloading in the host Member State in the course of the incoming international carriage. As acknowledged in particular in the ECIPE study on discrimination, exclusion and environmental harm (p. 19), that situation is distinct from the measure adopted in the present case by the EU legislature.

1027 Secondly, as has been stated in paragraph 844 above, estimates of the consequences of the obligation for vehicles to return, whether they be, in particular, the estimates of the Republic of Poland or those resulting from the IRU's open letter and the report drawn up by KPMG, on which that Member State relies, given that that waiting period does not require the vehicles to return to the operational centre of the transport undertaking concerned, are not relevant for the purposes of assessing the environmental impact of the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055.

1028 The same is true of the studies carried out after the adoption of Regulation 2020/1055, referred to in paragraph 1003 above, which do not relate to the waiting period and are therefore not capable of demonstrating the existence of significant negative effects on the environment resulting from that period.

1029 In the light of the foregoing, the Republic of Lithuania, the Republic of Bulgaria and the Republic of Poland have not demonstrated the existence of significant negative effects on the environment resulting from that period. Accordingly, their arguments on that point must be rejected in so far as they allege infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter.

1030 Therefore, there is no need to examine either the arguments put forward by the Republic of Lithuania and the Republic of Poland based on other EU acts, the environmental objectives of which are allegedly compromised by the adoption of point 4(a) of Article 2 of Regulation 2020/1055, or the various measures adopted by the EU legislature in the road transport sector, relied on by the Parliament and the Council, in order to assess the extent to which that legislature took account of the overall objective of reducing polluting emissions in that sector.

1031 As regards, in the second place, the requirement to protect the environment arising from the European Union's international commitments, the Republic of Bulgaria submits, first, that the waiting period infringes Article 208 TFEU. That article is in Title III of Part Five of the FEU Treaty, entitled 'The Union's external action', relating to cooperation with third countries and humanitarian aid, more specifically in Chapter 1 thereof, which concerns 'development cooperation'.

1032 In that regard, Article 208(2) TFEU provides that 'the Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations'.

1033 However, it is sufficient to note that the Republic of Bulgaria does not establish how an alleged infringement of the Paris Agreement is liable to lead the European Union to disregard its commitments in respect of development cooperation, when that agreement was approved by Decision 2016/1841 on the basis of Article 192(1) TFEU, a provision which appears in Title XX, entitled 'Environment', of Part Three of the FEU Treaty, entitled 'Union policies and internal actions', and which, as such, falls within the scope of EU policy on the environment.

1034 Secondly, as that Member State submits, it must be observed that, in accordance with Article 3(5) TEU, the European Union is to contribute 'to the strict observance and the development of international law, including respect for the principles of the United Nations Charter'. Furthermore, under Article 216(2) TFEU, 'agreements concluded by the Union are binding upon the institutions of the Union and on its Member States' and, consequently, prevail over the acts they lay down. It follows that the validity of an act of the European Union may be affected by the incompatibility of that act with such rules of international law (judgment of 16 July 2015, *ClientEarth* v *Commission*, C-612/13 P, EU:C:2015:486, paragraphs 33 and 34 and the case-law cited).

1035 In the present case, the Republic of Bulgaria alleges infringement of the Paris Agreement in support of its argument alleging infringement of the European Union's international commitments on environmental protection. Since the European Union approved that agreement by Decision 2016/1841, the provisions of that agreement form an integral part of the EU legal order from the date of its entry into force.

1036 However, it is apparent from settled case-law that the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, those provisions appear, as regards their content, to be unconditional and sufficiently precise (judgment of 13 January 2015, *Council and Commission* v *Stichting Natuur en Milieu and Pesticide Action Network Europe*, C-404/12 P and C-405/12 P, EU:C:2015:5, paragraph 46 and the case-law cited).

1037 In the present case, the Republic of Bulgaria alleges infringement of Articles 2 and 4 of the Paris Agreement.

1038 Those articles provide, in essence, that, in order to achieve the objectives pursued by that agreement and, in particular, the long-term temperature goal set out in Article 2 of that agreement, the parties to that agreement are to seek to achieve global peaking of greenhouse gas emissions as soon as possible and to undertake rapid reductions thereafter in accordance with the best available science. To that end, the contributions of the parties, determined at national level, must represent an increase compared with their previous contribution in such a way as to achieve their highest possible level of ambition, while depending on the respective capabilities of the parties and the different national circumstances.

1039 It should be noted that, like the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which entered into force on 16 February 2005, which, as is apparent from recital 4 of Decision 2016/1841, the Paris Agreement replaced, the parties to that agreement may comply with their obligations in the manner and at the speed to which they agree (see, by analogy, judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 76).

1040 Consequently, Articles 2 and 4 of the Paris Agreement do not appear, as regards their content, to be unconditional and sufficiently precise for them to be relied on by the Republic of Bulgaria in order to challenge the legality of Regulation 2020/1055, in particular point 4(a) of Article 2 thereof.

1041 Consequently, the first plea in law put forward by the Republic of Lithuania, both parts of the first plea in law put forward by the Republic of Bulgaria, in so far as it is directed against point 4(a) of Article 2 of Regulation 2020/1055, and the plea common to all the contested provisions of that regulation put forward by the Republic of Poland, in so far as it is directed against point 4(a) of Article 2 thereof, must be rejected as unfounded.

1042 In the light of all of the foregoing, the actions brought by the Republic of Lithuania (Case C-542/20), by the Republic of Bulgaria (Case C-545/20), by Romania (Case C-547/20), by the Republic of Malta (Case C-552/20) and by the Republic of Poland (Case C-554/20) must be dismissed in so far as they seek the annulment of point 4(a) of Article 2 of Regulation 2020/1055.

1043 Consequently, the action brought by Romania (Case C-547/20) must also be dismissed in so far as it seeks the annulment of points 4(b) and (c) of Article 2 of that regulation, since that application for annulment is not based on a different line of argument from that underlying the application for annulment of point 4(a) of Article 2.

4. Point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009

1044 In support of its action (Case C-554/20) seeking annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, the Republic of Poland puts forward three pleas in law, alleging (i) breach of the principle of proportionality, enshrined in Article 5(4) TEU, (ii) breach of the principle of legal certainty, and (iii) in respect of the plea common to all the contested provisions of Regulation 2020/1055 – in so far as it is directed against point 3 of Article 1 thereof, in so far as that provision inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009 – infringement of Article 11 TFEU and Article 37 of the Charter.

(a) Breach of the principle of legal certainty

(1) Arguments of the parties

1045 By its second plea, directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, the Republic of Poland claims that that provision does not comply with the requirements flowing from the principle of legal certainty.

1046 The principle of legal certainty requires that legal rules be clear and precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. The Republic of Poland submits that, although it may be accepted that legislation can be vague, contain abstract terms or confer a margin of discretion, that is nevertheless subject to the condition that it does not lead to arbitrariness and that it can be clarified by the case-law.

1047 In the present case, the use of very vague wording in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, prevents transport undertakings from determining with the requisite clarity and precision the obligation arising from that provision and the consequences of its infringement.

1048 The first criterion laid down in that provision, relating to drivers and vehicles being 'normally' based at an operational centre of the Member State of establishment, is very ambiguous. Although the obligation laid down in that provision is different from those set out, respectively, in point 6(d) of Article 1 of Regulation 2020/1054 and in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, it is, however, difficult to determine its scope.

1049 Furthermore, the second criterion laid down in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, according to which drivers and vehicles must be normally based at an operational centre of the Member State of establishment 'proportionate to the volume of transport operations carried out by the undertaking', is also very vague, so that it is impossible to determine specifically the number of vehicles and drivers required under that obligation.

1050 The Republic of Poland submits that the abstract terms used in Article 5(c) of Regulation No 1071/2009, in the version prior to the entry into force of Regulation 2020/1055, which provided that, in order to satisfy the requirement of establishment in the Member State concerned, an undertaking had to manage its activities effectively and continuously by having 'the necessary administrative equipment' and 'appropriate technical equipment and facilities', in an operational centre situated in that Member State, cannot be compared with those in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, since there is a fundamental difference between those two provisions. Whereas the concepts of 'necessary administrative equipment' and 'appropriate technical equipment and facilities' are of secondary importance to the field of activity of transport undertakings, the question of the number of vehicles and drivers is decisive for the management of those undertakings and their operating costs. It is thus essential that the provision relating to it be precise.

1051 The Parliament and the Council contend that this plea is unfounded.

(2) Findings of the Court

1052 Account must be taken of the considerations set out in paragraphs 158 to 162 above in order to assess the compatibility of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, with the principle of legal certainty.

1053 It should be noted that, according to its wording, that provision requires transport undertakings to have at their regular disposal, on an ongoing basis, a number of vehicles and drivers who are normally based at an operational centre in the Member State of establishment, proportionate to the volume of transport operations carried out by the undertaking concerned.

1054 It is thus apparent from the very wording of that provision that the purpose of that obligation is to ensure that the transport undertakings have at their disposal the material and human resources, connected with their operational centre, necessary for carrying out their transport operations.

1055 In that regard, as the Advocate General observed in point 705 of his Opinion, transport undertakings manage the flow of vehicles, on an ongoing basis, by reference to the availability of drivers and, for that reason, have a sufficiently precise idea of the number of vehicles and drivers necessary for

their activities. By not defining more strictly the obligation for transport undertakings to have at their disposal material and human resources proportionate to the number of transport operations carried out, the EU legislature intended not to deprive those undertakings of a certain margin of discretion and therefore of the necessary flexibility in the organisation of their transport activities according to the specific arrangements for them.

1056 Furthermore, the fact that the condition laid down in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, is set out in general terms which do not make it possible to determine the exact number of drivers and vehicles to which it refers but which determine a relationship of proportionality between, on the one hand, the number of drivers and vehicles and, on the other, the number of transport operations carried out by the undertaking concerned, does not breach the principle of legal certainty.

1057 In accordance with the case-law recalled in paragraph 159 above, the principle of legal certainty does not preclude the EU legislature from having recourse, in a norm that it adopts, to an abstract legal notion and does not require that such an abstract norm refer to the various specific hypotheses in which it may apply, given that not all of those hypotheses can be determined in advance by that legislature.

1058 Observance of the principle of legal certainty does not therefore require the EU legislature either to define all the specific arrangements for implementing the provisions of a legislative act or to consider all the specific situations to which those provisions may apply, since that legislature is entitled, as is apparent from the case-law referred to in paragraph 160 above, to have recourse, in the interests of flexibility and in order to act in compliance with the principle of proportionality, to a general legal framework which may be made more precise at a later date.

1059 Therefore, a provision such as that laid down in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, which applies to a multitude of different situations, need not specify in detail all the situations to which it is intended to apply.

1060 Furthermore, as the Parliament and the Council rightly point out, it is also in abstract terms that Article 5(c) of Regulation No 1071/2009, which was replaced, in essence, by point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(f) in Article 5 of Regulation No 1071/2009, provided that undertakings must have the necessary administrative equipment and appropriate technical equipment and facilities at an operating centre situated in the Member State of establishment.

1061 In that regard, the Court cannot accept the argument put forward by the Republic of Poland that it is necessary to distinguish, on the one hand, the conditions relating to ‘necessary administrative equipment’ and ‘appropriate technical equipment and facilities’ and, on the other hand, the conditions relating to the number of vehicles and drivers, on the ground that, as regards the management of transport undertakings, allegedly only the second conditions are decisive. Even if that were the case, that argument is not capable of invalidating the assessment made as to whether point 3 of Article 1 of Regulation 2020/1055 complies with the principle of legal certainty, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009.

1062 Consequently, the second plea in law relied on by the Republic of Poland must be rejected as unfounded.

(b) Breach of the principle of proportionality

(1) Arguments of the parties

1063 By its first plea, directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, the Republic of Poland claims that that provision breaches the principle of proportionality.

1064 In the first place, that Member State submits that, in the absence of a proper assessment of that provision in the Impact assessment – establishment section, the reasons underlying its introduction remain unclear, as well as the objectives which that provision is intended to pursue.

1065 In the second place, that Member State submits that, compared with the measures provided for in point 6(d) of Article 1 of Regulation 2020/1054 and point 3 of Article 1 of Regulation 2020/1055, in

so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the obligation referred to in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, consisting of having at its regular disposal, on an ongoing basis, a sufficient number of drivers and vehicles, constitutes an additional measure designed to link the drivers and vehicles as closely as possible to the operational centre of the transport undertaking concerned, which has the effect of further limiting the mobility of vehicles available to transport undertakings.

1066 Such an obligation is, moreover, arbitrary. It does not take account of the specific nature of international transport, which requires that vehicles and drivers actually carry out transport operations and do not remain available to the transport undertaking concerned, at its operational centre. That obligation does not concern the existence of an effective and stable establishment, but governs the manner in which transport activities are organised.

1067 In order to comply with that obligation, hauliers are required to increase the frequency of returns of vehicles and drivers to their operational centre or to expand their fleet and to increase the number of drivers. Both of those options give rise to significant costs for transport undertakings, leading to the bankruptcy of many of them, in particular SMEs, or oblige them to transfer their place of establishment to a Member State situated in the central part of the European Union. However, no account was taken of those serious consequences for the functioning of those undertakings in the Impact assessment – establishment section.

1068 Furthermore, the validity of an EU act must be assessed in the light of the information available to the EU legislature when the legislation at issue was adopted. Point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, was adopted in a period of economic crisis triggered by the COVID-19 pandemic, even though that legislature had data on the impact of that crisis on the transport sector.

1069 The Parliament and the Council contend that this plea is unfounded.

(2) Findings of the Court

1070 In the first place, it must be pointed out that, as the Advocate General observed in point 692 of his Opinion, the proposal for an establishment regulation contained, in point 3(d) of Article 1 thereof, a provision similar to that which establishes, in the present case, the obligation to have, on an ongoing basis, at its regular disposal a sufficient number of vehicles and drivers, in so far as it provided for the insertion of subparagraph (e) in Article 5 of Regulation No 1071/2009, under which transport undertakings would have been required to hold assets and employ staff proportionate to the activity of the establishment, requirements mentioned in the context of Measure 18 in the Impact assessment – establishment section (Part 1/2, pp. 30 and 31 and Part 2/2, p. 44). Consequently, the EU legislature cannot be criticised for having adopted point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, when it allegedly did not have the information necessary to examine the proportionality of that provision.

1071 As regards, in the second place, the proportionality as such of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, it should be pointed out that, as is apparent from recital 6 of Regulation 2020/1055, the objective of that provision, against which its proportionality must be assessed, is to combat the phenomenon of 'letterbox' companies by ensuring that road transport undertakings established in a Member State have a real and permanent presence in that Member State and carry out their transport activities from there. In so doing, that provision pursues an objective of general interest recognised by EU law, relating to the prevention of abusive practices and, in particular, conduct involving the creation of wholly artificial arrangements which do not reflect economic reality (see, to that effect, judgments of 6 April 2006, *Agip Petroli*, C-456/04, EU:C:2006:241, paragraphs 19 to 25; of 12 September 2006, *Cadbury Schweppes and Cadbury Schweppes Overseas*, C-196/04, EU:C:2006:544, paragraphs 51, 55, 57, 67 and 68; and of 26 February 2019, *X (Controlled companies established in third countries)*, C-135/17, EU:C:2019:136, paragraph 82).

1072 Although, in order to achieve that objective, that provision requires the transport undertaking to have, on an ongoing basis, at its regular disposal a number of vehicles that comply with the conditions laid down in paragraph 1(e), inserted in Article 5 of Regulation No 1071/2009 by point 3 of Article 1 of Regulation 2020/1055, and drivers who are normally based at an operational centre in the Member State of establishment, it does not require, contrary to what the Republic of Poland claims,

the continuous presence of those vehicles and drivers at that operational centre, or even in the Member State concerned.

1073 That interpretation is confirmed by the fact that point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, provides that the number of vehicles and drivers which must be based at the operational centre of the transport undertaking concerned must be proportionate to the number of transport operations carried out by that undertaking, which presupposes that those operations are carried out by those drivers and using those vehicles. It follows that the vehicles and drivers referred to in that provision must necessarily be able to move around and leave the operational centre of that transport undertaking.

1074 Moreover, and contrary to what is claimed by the Republic of Poland, compliance with the measure laid down in point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, does not, as such, require the transport undertaking concerned to organise more frequent returns of drivers and vehicles to its operational centre, those obligations arising from other provisions of EU law, namely, respectively, point 6(d) of Article 1 of Regulation 2020/1054, the legality of which has not been called into question by any of the pleas for annulment directed against it, and point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, which, as stated in paragraph 738 above, must be annulled.

1075 It follows that the obligation to have, at its regular disposal, on an ongoing basis, a number of vehicles and drivers who are normally based at an operational centre in the Member State of establishment of the transport undertaking concerned cannot be interpreted as requiring the continuous presence of those vehicles and those drivers at that operational centre.

1076 As to the remainder, it should be recalled that, for the reasons set out in paragraph 857 above, the Republic of Poland's arguments relating to the effects of the COVID-19 pandemic are irrelevant for the purposes of assessing the legality of Regulation 2020/1055.

1077 Consequently, the first plea in law relied on by the Republic of Poland must be rejected as unfounded in so far as it is directed against point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009.

(c) Infringement of Article 11 TFEU and Article 37 of the Charter

(1) Arguments of the parties

1078 By its plea common to all the contested provisions of Regulation 2020/1055, in so far as it is directed against point 3 of Article 1 of that regulation, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, the Republic of Poland submits that, by adopting that provision, the EU legislature infringed Article 11 TFEU and Article 37 of the Charter.

1079 In support of that plea, that Member State puts forward the same arguments as those set out, in essence, in paragraphs 990 to 1002 above. It submits that the EU legislature did not examine the impact of the obligation, laid down in that provision, to have at its regular disposal, on an ongoing basis, a number of vehicles and drivers who are normally based at an operational centre in the Member State of establishment, even though that would have serious environmental consequences, since it would give rise to additional journeys by heavy goods vehicles, including empty runs, resulting in an increase in emissions of CO_2 and air pollutants.

1080 The Parliament and the Council consider that this plea is unfounded.

(2) Findings of the Court

1081 Since, in the context of its plea common to all the contested provisions of Regulation 2020/1055, to the extent that it is directed against point 3 of Article 1 of that regulation, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, the Republic of Poland puts forward, with regard to that provision, the same arguments as those which it put forward against the other contested measures of Regulation 2020/1055, the considerations set out in paragraphs 1011 to 1030 above apply to the obligation laid down in that latter provision.

1082 Furthermore, contrary to what the Republic of Poland maintains, and as has been noted in paragraph 1074 above, point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, does not require the return of vehicles to the operational centre of the transport undertaking concerned. It follows that that Member State has not adduced evidence specifically to substantiate that that provision leads to significant negative effects on the environment capable of leading to an infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter.

1083 Consequently, the plea of the Republic of Poland common to all the contested provisions of Regulation 2020/1055, in so far as it is directed against point 3 of Article 1 of that regulation, in so far as it inserts paragraph 1(g) in Article 5 of Regulation No 1071/2009, must be rejected as unfounded.

1084 In the light of all the foregoing, the action brought by the Republic of Poland (Case C-554/20) must be dismissed in so far as it seeks the annulment of that provision.

5. Point 5(b) of Article 2 of Regulation 2020/1055

1085 In support of its action (Case C-554/20) seeking annulment of point 5(b) of Article 2 of Regulation 2020/1055, the Republic of Poland relies on four pleas in law, alleging (i) breach of the principle of proportionality, enshrined in Article 5(4) TEU, (ii) infringement of Article 91(2) TFEU, (iii) infringement of Article 94 TFEU and (iv) in respect of the plea common to all the contested provisions of Regulation 2020/1055, in so far as it is directed against point 5(b) of Article 2 of that regulation, infringement of Article 11 TFEU and Article 37 of the Charter.

(a) Breach of the principle of proportionality

(1) Arguments of the parties

1086 By its first plea, the Republic of Poland submits that point 5(b) of Article 2 of Regulation 2020/1055, which inserts paragraph 7 in Article 10 of Regulation No 1072/2009, does not comply with the requirements flowing from the principle of proportionality.

1087 In the first place, that Member State submits that point 5(b) of Article 2 of Regulation 2020/1055 is not governed by objective criteria. Recital 22 of that regulation justifies that provision by the desire to counter unfair practices liable to lead to ‘social dumping’ and to undermine compliance with the legal framework applicable to cabotage. However, the concept of ‘social dumping’ has not been defined and is likely to give rise to misuse. That is the case here. There is no objective factor which would allow differences in economic development between Member States and the resulting wage differences to be treated in the same way as ‘social dumping’.

1088 Furthermore, point 5(b) of Article 2 of Regulation 2020/1055 leaves the Member States considerable room for manoeuvre as regards the possibility they have to reduce the duration of the waiting period. The Member States situated in the central part of the European Union could then be led to generalise restrictions of that type and to further tighten the cabotage conditions laid down in point 4(a) of Article 2 of Regulation 2020/1055, which are already disproportionate, as is apparent from the arguments of the Republic of Poland set out, in essence, in paragraphs 765 to 801 above.

1089 In addition, point 5(b) of Article 2 of Regulation 2020/1055 was not the subject of an impact assessment. That failure by the EU legislature to examine the proportionality of that provision constitutes, for the reasons put forward by the Republic of Poland with regard to the obligation for vehicles to return, as set out, in essence, in paragraphs 691 to 706 above, a breach of the principle of proportionality.

1090 In the second place, by arbitrarily classifying the provision of services by hauliers of Member States with a lower level of economic development as ‘social dumping’, the EU legislature failed to take into account the fundamental negative consequences arising from the limitation of cabotage operations in the context of combined transport operations, whereas cabotage operations enable transport undertakings to reduce the number of empty runs and to optimise the operation of the transport fleet.

1091 In the third place, point 5(b) of Article 2 of Regulation 2020/1055 breaches the principle of proportionality in the light of the relationship between the burdens imposed on transport

undertakings and the objective pursued. The need to combat 'social dumping' does not justify restricting the freedom of transport undertakings to provide cabotage services.

1092 First of all, the EU legislature did not take account of the fact that the international road transport sector mainly includes SMEs. In that regard, the Republic of Poland relies on the arguments directed against the obligation for vehicles to return and against the waiting period. Accordingly, that Member State submits that the effect of the increase in operating costs resulting from point 5(b) of Article 2 of Regulation 2020/1055 will affect the profitability of those undertakings, which will lead to the bankruptcy of some of them. Next, that Member State maintains that that increase in operating costs will, most probably, result in an increase in the price of goods, which could have serious repercussions on the EU economy. Lastly, the Republic of Poland submits that the economic situation of hauliers established in Member States on the periphery of the European Union was not taken into account.

1093 The study on cabotage restrictions in combined transport confirms the negative effects of point 5(b) of Article 2 of Regulation 2020/1055.

1094 The Parliament and the Council consider that this plea is unfounded.

(2) Findings of the Court

1095 Article 4 of Directive 92/106 allows transport undertakings to carry out, in the context of combined transport operations between Member States, that is to say, transport that combines road and other modes of transport, such as rail, inland waterway and sea transport, initial and/or final road haulage legs forming an integral part of such an operation that are exempt from the rules on cabotage operations.

1096 Point 5(b) of Article 2 of Regulation 2020/1055 inserts, in Article 10 of Regulation No 1072/2009, paragraph 7 which states that 'Member States may, where necessary to avoid misuse of [Article 4 of Directive 92/106] through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations between Member States, provide that Article 8 of this Regulation apply to hauliers when they carry out such initial and/or final road haulage legs within that Member State'.

1097 Paragraph 7 also states that 'with regard to such road haulage legs, Member States may provide for a longer period than the seven-day period provided for in Article 8(2) of [Regulation No 1072/2009] and may provide for a shorter period than the four-day period provided for in Article 8(2a) of this Regulation'. In addition, paragraph 7 provides that 'Member States making use of the derogation provided for in this paragraph shall notify the Commission thereof before applying their relevant national measures', 'shall review those measures at least every five years', 'shall notify the results of that review to the Commission' and 'shall make the rules, including the length of the respective periods, publicly available in a transparent manner'.

1098 Point 5(b) of Article 2 of Regulation 2020/1055 thus gives Member States the option, in order to prevent misuse of the exemption provided for in Article 4 of Directive 92/106, of providing, by way of derogation from that exemption, for the application of the rules relating to cabotage operations set out in Article 8 of Regulation No 1072/2009, as amended by Regulation 2020/1055, to initial and/or final road haulage legs within their territory as part of combined transport operations, by authorising those Member States to make that application more flexible by extending the authorised cabotage period and reducing the waiting period in the context of such combined transport operations.

1099 That said, it must be observed, in the first place, that, as the Parliament and the Council have argued, without being challenged by the Republic of Poland, the impact assessment accompanying the Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (SWD(2017) 362 final, p. 25) referred to the difficulties associated with the misuse of the exemption from the cabotage rules in the context of combined transport provided for in Article 4 of Directive 92/106. In particular, it was considered that that exemption, which enabled the development of international intermodal transport, should be maintained, but that it should, however, not be used to circumvent the cabotage rules.

1100 Furthermore, it should also be noted that that impact assessment (pp. 16 and 17), in particular, took into account the repercussions which would result from the complete abolition of the exemption provided for in Article 4 of Directive 92/106.

1101 In those circumstances, the EU legislature cannot be criticised for having adopted point 5(b) of Article 2 of Regulation 2020/1055 when it allegedly did not have the information necessary to examine the proportionality of that provision.

1102 As regards, in the second place, the proportionality of point 5(b) of Article 2 of Regulation 2020/1055, it should be noted, as regards the objective pursued by that provision, in the light of which that proportionality must be examined, that, admittedly, as the Republic of Poland submits, the reference to 'social dumping' appears in recital 22 of Regulation 2020/1055, in respect of the potential consequences of unfair practices found in the combined transport sector.

1103 However, combating 'social dumping' is not the primary objective of point 5(b) of Article 2 of Regulation 2020/1055. As is apparent from the very wording of that provision, read in the light of recital 22, the purpose of that provision is to prevent misuse of Article 4 of Directive 92/106 which seeks to circumvent the temporary nature of cabotage and enable the continuous presence of vehicles in a Member State other than that of the establishment of the transport undertaking.

1104 As regards the allegedly disproportionate nature of point 5(b) of Article 2 of Regulation 2020/1055 in the light of that objective, it should be noted at the outset that the Republic of Poland has not put forward any specific arguments in support of the present plea. That Member State reiterates the arguments set out in its first plea, alleging breach of the principle of proportionality, against the obligation for vehicles to return.

1105 The Republic of Poland's line of argument that point 5(b) of Article 2 of Regulation 2020/1055 is likely to lead to an increase in empty vehicle runs and difficulties in optimising the operation of the transport vehicle fleet cannot succeed.

1106 The exercise by a Member State of the option provided for in that provision does not imply a complete prohibition on carrying out initial and/or final road haulage legs within its territory as part of combined transport operations, but a framework for those road haulage legs by the application of the rules relating to cabotage operations, with the possibility of extending the duration of the authorised cabotage period and reducing the waiting period.

1107 Point 5(b) of Article 2 of Regulation 2020/1055 also does not require, contrary to the premiss on which the Republic of Poland's line of argument is based, that the vehicle be returned to the operational centre of the transport undertaking and therefore does not preclude that undertaking, in the event of recourse by a Member State to the option provided for in that provision, from carrying out transport operations other than those referred to in that provision in order to reduce empty runs.

1108 As to the remainder, as regards the study on cabotage restrictions in combined transport, which post-dates the adoption of Regulation 2020/1055, it should be recalled that, according to the Court's settled case-law, the legality of an EU act must be assessed in the light of the information available to the EU legislature on the date of the adoption of the rules in question (judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 67 and the case-law cited).

1109 In any event, the Republic of Poland has not shown how that study, which is based on the assumption that the regime governing cabotage operations laid down in Article 8 of Regulation No 1072/2009, in particular in paragraphs 2 and 2a of that article, in all the Member States may be applied in its entirety to combined transport operations, is relevant in the present case.

1110 As the Council rightly submits, the assumption made in that study amounts to a stricter limitation of the exemption provided for in Article 4 of Directive 92/106 than the measure adopted by the EU legislature in point 5(b) of Article 2 of Regulation 2020/1055.

1111 It is important to point out, first of all, that the Member States may make use of the option provided for in that provision only 'where necessary to avoid misuse of [Article 4 of Directive 92/106] through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations'.

1112 Next, by stating that 'Member States may provide for a longer period than the seven-day period provided for in Article 8(2) of [Regulation No 1072/2009] and may provide for a shorter period than the four-day period provided for in Article 8(2a) of [that] Regulation', that option does not require the Member States to apply the cabotage transport regime laid down in Regulation No 1072/2009 in full

to combined transport operations, but allows them to have recourse to a more flexible application of that regime.

1113 In that regard, it should be noted that the Republic of Poland relies on an incorrect interpretation of point 5(b) of Article 2 of Regulation 2020/1055 when that Member State claims that the possibility available to Member States, under that provision, of setting a shorter waiting period than that of four days, provided for in Article 8(2a) of Regulation No 1072/2009, allows those Member States to regulate more strictly the conditions relating to cabotage operations, since, by reducing the waiting period between two cabotage cycles, the Member State applying the option provided for in point 5(b) of Article 2 of Regulation 2020/1055 allows hauliers to carry out cabotage operations more frequently in the context of combined transport operations within its territory, compared with the application of the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055.

1114 Lastly, the application of the option provided for in point 5(b) of Article 2 of Regulation 2020/1055 is subject to review, since Member States wishing to use it must, inter alia, inform the Commission thereof before applying the relevant national measures and review those measures at least every five years and notify the results of that review to the Commission.

1115 It follows from the foregoing considerations that the Republic of Poland has not established that point 5(b) of Article 2 of Regulation 2020/1055 is disproportionate in the light of the objective pursued by that provision.

1116 Consequently, the first plea relied on by the Republic of Poland must be rejected as unfounded.

(b) Infringement of Article 91(2) and Article 94 TFEU

(1) Arguments of the parties

1117 By its second and third pleas in law directed against point 5(b) of Article 2 of Regulation 2020/1055, which it is appropriate to examine together, the Republic of Poland claims that that provision infringes Article 91(2) and Article 94 TFEU.

1118 In that regard, that Member State reiterates the arguments directed against the obligation for vehicles to return and against the waiting period.

1119 Furthermore, that Member State submits, first, that the EU legislature infringed Article 91(2) TFEU, since, by failing to take account of the situation of hauliers established in Member States on the periphery of the European Union, the option provided for in point 5(b) of Article 2 of Regulation 2020/1055 relating to cabotage operations in the context of combined transport operations leads to a decrease in the standard of living and level of employment in certain regions.

1120 Moreover, the objective of Directive 92/106, according to the third recital thereof, is to combat road congestion and pollution linked to road transport. By limiting, by the adoption of point 5(b) of Article 2 of Regulation 2020/1055, the scope of Directive 92/106, the EU legislature also infringed Article 91(2) TFEU, in that it failed to take account of the negative impact of point 5(b) of Article 2 of Regulation 2020/1055 on the operation of transport facilities. The increase in the number of empty runs and the increased difficulties in carrying out combined transport operations inevitably leads to an increase in traffic on road infrastructure and, as a result, to the deterioration of the condition of that infrastructure.

1121 Secondly, the Republic of Poland submits that, by introducing additional restrictions on cabotage, the EU legislature infringed Article 94 TFEU by failing to take account of the situation of transport undertakings, in particular those from Member States on the periphery of the European Union, and SMEs. Nor did it take into consideration the fact that the economic crisis triggered by the COVID-19 pandemic, which had particularly negative effects on the road transport sector, made the situation of hauliers even more difficult.

1122 In addition, the reference to ‘social dumping’, in order to justify point 5(b) of Article 2 of Regulation 2020/1055, shows that the situation of transport undertakings in Member States on the periphery of the European Union was not taken into account. The desire to ensure absolute equality of conditions of competition between transport undertakings in all the Member States is contrary to the very concept of competition. Differences in productivity and economic development, which are ultimately reflected in different wages, constitute the driving force behind trade in a competitive

environment. Accordingly, the efforts to limit the participation of transport undertakings established in less developed Member States in the provision of cabotage services demonstrates the failure to take into consideration, in the light of competition law, the economic situation of those undertakings.

1123 The Parliament and the Council consider that this plea is unfounded.

(2) Findings of the Court

1124 In the first place, it should be recalled that, as stated in paragraphs 935 to 940 above, compliance with Article 91(2) TFEU, which requires the EU legislature to take account, when adopting measures such as that provided for in point 5(b) of Article 2 of Regulation 2020/1055, of serious harmful effects on the standard of living and level of employment in certain regions, and on the operation of transport facilities, reflects, in essence, the obligation for the legislature to act in accordance with the principle of proportionality by adopting measures that are appropriate for attaining the objective pursued, which do not manifestly go beyond what is necessary to achieve that objective and which are proportionate in the light of that objective.

1125 As has been found in paragraph 1116 above, the arguments put forward by the Republic of Poland alleging breach, by point 5(b) of Article 2 of Regulation 2020/1055, of the principle of proportionality, do not permit the inference that the EU legislature breached that principle.

1126 Furthermore, apart from the fact that the arguments raised in the context of the examination of the alleged breach of the principle of proportionality have been rejected, that Member State has not provided, in support of the present plea alleging infringement of Article 91(2) TFEU, any additional evidence capable of substantiating its claim that the option laid down in point 5(d) of Article 2 of Regulation 2020/1055 has a serious impact on the standard of living and level of employment in certain regions and on the operation of transport facilities, which the EU legislature allegedly did not take into account when introducing that option, in breach of Article 91(2) TFEU.

1127 First, as regards the impact on the standard of living and level of employment in certain regions, the Republic of Poland does not put forward any arguments specific to that option, but, as in the case of the complaints against the waiting period, refers to its arguments concerning the obligation for vehicles to return, which leads to additional journeys, without explaining how the consequences of the latter obligation also apply to that option.

1128 Consequently, the Republic of Poland's line of argument relating to the level of employment must be regarded, in the absence of any specific evidence capable of substantiating its merits, as speculative.

1129 Secondly, the Republic of Poland's line of argument that point 5(b) of Article 2 of Regulation 2020/1055 will lead to a deterioration in transport facilities and infrastructure due to an increase in empty runs and the substitution of exclusively road transport operations for combined transport operations cannot succeed either, for the reasons set out in paragraphs 1106 and 1107 above. Moreover, that line of argument is based, in part, on the premiss that the option provided for in that provision would be implemented simultaneously by a significant number of Member States, which cannot, however, be presumed.

1130 In the second place, as regards the line of argument alleging infringement of Article 94 TFEU, it is sufficient to recall that that provision, according to which any measure 'in respect of transport rates and conditions', taken within the framework of the Treaties, must take account of the economic circumstances of hauliers, is irrelevant in the present case. Point 5(b) of Article 2 of Regulation 2020/1055, in so far as it provides for the option of applying Article 8 of Regulation No 1072/2009 in the context of combined transport operations, does not govern rates or conditions for the carriage of goods or passengers, but provides for an option for Member States, in order to avoid abuse, to regulate the procedures whereby the initial and/or final road haulage legs forming an integral part of such combined transport operations are carried out.

1131 Consequently, the second and third pleas in law relied on by the Republic of Poland against point 5(b) of Article 2 of Regulation 2020/1055 must be rejected as unfounded.

(c) Infringement of Article 11 TFEU and Article 37 of the Charter

(1) Arguments of the parties

1132 The Republic of Poland, by its plea common to all the contested provisions of Regulation 2020/1055, in so far as it is directed against point 5(b) of Article 2 thereof, submits that, by adopting that provision, the EU legislature infringed Article 11 TFEU and Article 37 of the Charter.

1133 In the context of that plea, that Member State puts forward, in respect of point 5(b) of Article 2, the same arguments as those set out, in essence, in paragraphs 990 to 1002 above, in order to argue that the EU legislature did not carry out an appropriate analysis of the serious environmental consequences of that provision, on account of the additional journeys of heavy goods vehicles, including empty runs, which it gives rise to and which would result in an increase in emissions of CO2 and air pollutants.

1134 Furthermore, the Republic of Poland states that the study on cabotage restrictions in combined transport confirms the negative effects on the environment of the measure provided for in point 5(b) of Article 2 of Regulation 2020/1055 in the context of combined transport operations and the fact that it conflicts with the objectives of the Green Deal.

1135 The Parliament and the Council consider that those arguments are unfounded.

(2) Findings of the Court

1136 Since, in the context of its plea common to all the contested provisions of Regulation 2020/1055, in so far as it is directed against point 5(b) of Article 2 thereof, the Republic of Poland puts forward, with regard to that provision, the same arguments as those put forward by that Member State against the other contested provisions of Regulation 2020/1055, the considerations set out in paragraphs 1011 to 1030 above apply to the option provided for in that provision.

1137 As to the remainder, it is necessary to reject, for the reasons set out in paragraphs 1106, 1107 and 1129 above, the Republic of Poland's claim that that option will lead to additional journeys on such a scale that it will have significant negative effects on the environment likely to constitute an infringement of the requirements of Article 11 TFEU, read in conjunction with Article 37 of the Charter.

1138 Furthermore, as regards the study on cabotage restrictions in combined transport, that study is based, as stated in paragraphs 1110 to 1114 above, on an assumption which constitutes a stricter limitation on the application of Article 4 of Directive 92/106 than the scope of the option provided for by the EU legislature in point 5(b) of Article 2 of Regulation 2020/1055.

1139 Consequently, the plea of the Republic of Poland common to all the contested provisions of Regulation 2020/1055, in so far as it is directed against point 5(b) of Article 2 thereof, must be rejected as unfounded.

1140 In the light of all of the foregoing, the action brought by the Republic of Poland (Case C-554/20) must be dismissed in so far as it seeks the annulment of point 5(b) of Article 2 of Regulation 2020/1055.

6. Conclusion concerning Regulation 2020/1055

1141 It follows from all the foregoing considerations that it is necessary to uphold the actions of the Republic of Lithuania (Case C-542/20), the Republic of Bulgaria (Case C-545/20), Romania (Case C-547/20), the Republic of Cyprus (Case C-550/20), Hungary (Case C-551/20), the Republic of Malta (Case C-552/20) and the Republic of Poland (Case C-554/20), to the extent that they seek the annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, and to dismiss them as to the remainder.

C. Directive 2020/1057

1142 The Republic of Lithuania (Case C-541/20), Romania (Case C-548/20), Hungary (Case C-551/20) and the Republic of Poland (Case C-555/20) seek, principally, the annulment of several provisions of Directive 2020/1057 or, in the alternative, the annulment of that directive in its entirety. The Republic of Bulgaria (Case C-544/20) and the Republic of Cyprus (Case C-550/20) seek the annulment of that directive in its entirety.

1143 In the first place, the actions brought by the Republic of Lithuania, Romania, Hungary and the Republic of Poland seek the annulment of Article 1 of Directive 2020/1057 or of certain provisions of paragraphs 3 to 7 of that article ('the contested provisions of Article 1 of Directive 2020/1057'), in so far as those provisions distinguish between different types of road transport operations and exempt some of those types of operations from the application of the rules on the posting of workers laid down in Directive 96/71. As regards the actions brought by the Republic of Bulgaria and the Republic of Cyprus, although they seek the annulment of Directive 2020/1057 in its entirety, they also put forward, in support of those actions, pleas and arguments which relate only to the provisions of Article 1 of that directive and, in particular, to paragraphs 3 and 4 of that article.

1144 In the second place, the action brought by the Republic of Poland also seeks the annulment of Article 9(1) of Directive 2020/1057, in so far as it sets the deadline for the transposition of that directive.

1. Overview of the pleas in law

1145 In support of the form of order sought in its action for annulment, principally, of Article 1(3) and (7) of Directive 2020/1057 or, in the alternative, of that directive in its entirety (Case C-541/20), the Republic of Lithuania puts forward three pleas in law, alleging breach (i) of the general principle of non-discrimination, enshrined in Article 20 of the Charter, (ii) of the principle of proportionality, enshrined in Article 5(4) TEU, and (iii) of the principle of 'sound legislative procedure'. It should nevertheless be recalled that, at the hearing, as has already been stated in paragraph 68 above, that Member State withdrew its application for annulment of Article 1(7) of Directive 2020/1057 relating to cabotage operations.

1146 In support of their respective actions for annulment of Directive 2020/1057 in its entirety (Cases C-544/20 and C-550/20), the Republic of Bulgaria and the Republic of Cyprus each put forward five pleas in law which largely overlap and which relate essentially to Article 1(3) and (4) of that directive. The first pleas allege breach of the principle of proportionality, enshrined in Article 5(4) TEU and Article 1 of the Protocol on the principles of subsidiarity and proportionality. The second pleas allege breach of the principles of equal treatment and non-discrimination, enshrined in Article 18 TFEU and in Articles 20 and 21 of the Charter, of the principle of equality of Member States before the Treaties, enshrined in Article 4(2) TEU, and, 'in so far as the Court considers it necessary', of Article 95(1) TFEU. The third pleas allege infringement of Article 91(1) TFEU. The fourth pleas allege infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, Article 91(2) and Article 94 TFEU. The fifth pleas allege infringement of Articles 34 and 35 TFEU (first part) and, principally, infringement of Article 58(1) TFEU, read in conjunction with Article 91 TFEU, or, in the alternative, infringement of Article 56 TFEU (second part).

1147 In support of its action for annulment of Article 1(3) to (6) of Directive 2020/1057 or, in the alternative, of that directive in its entirety (Case C-548/20), Romania puts forward two pleas in law, alleging breach, first, of the principle of proportionality, enshrined in Article 5(4) TEU and, secondly, of the principle of non-discrimination on grounds of nationality, enshrined in Article 18 TFEU.

1148 In support of the form of order sought in its action for annulment, principally, of Article 1 of Directive 2020/1057 (Case C-551/20), Hungary puts forward a single plea in law, alleging infringement of Article 1(3)(a) of Directive 96/71. In support of the form of order sought in that action, seeking, in the alternative, annulment of Article 1(6) of Directive 2020/1057, Hungary puts forward two pleas in law, the first alleging a manifest error of assessment and breach of the principle of proportionality, and the second alleging breach of the principle of non-discrimination.

1149 In support of the form of order sought in its action for annulment of Article 1(3), (4), (6) and (7) of Directive 2020/1057 or, in the alternative, of that directive in its entirety (Case C-555/20), the Republic of Poland puts forward four pleas in law, alleging (i) breach of the principle of proportionality, enshrined in Article 5(4) TEU, (ii) infringement of Article 91(2) TFEU, (iii) infringement of Article 94 TFEU and (iv) infringement of Article 11 TFEU and of Article 37 of the Charter. In support of the form of order sought in that action for annulment of Article 9(1) of Directive 2020/1057 or, in the alternative, of that directive in its entirety, the Republic of Poland puts forward three pleas in law, alleging (i) breach of the principle of legal certainty, (ii) breach of the principle of proportionality, enshrined in Article 5(4) TEU, and (iii) infringement of Article 94 TFEU.

1150 After summarising the EU legislation applicable to the posting of drivers in the road transport sector and setting out, in that context, the various types of road transport operations referred to in Article 1

of Directive 2020/1057, it is necessary to examine in turn the claims in the actions for annulment of Article 1, or of some of its provisions, and of Article 9(1) of that directive.

2. EU legislation applicable to the posting of drivers in the road transport sector

1151 As a preliminary point, it should be recalled that, as is apparent from Article 1(1) thereof, the purpose of Directive 96/71 is to guarantee the protection of posted workers during their posting as regards the freedom to provide services by laying down mandatory provisions concerning working conditions and the protection of workers' health and safety. For the purposes of that directive, a posted worker is defined, in Article 2(1) thereof, as a worker who, for a limited period, carries out his or her work in the territory of a Member State other than the State in which he or she normally works. Article 3(1) of that directive requires Member States to ensure that the undertakings concerned guarantee workers who are posted to their territory, on the basis of equality of treatment, the terms and conditions of employment in the Member State where the work is carried out covering the matters listed in that provision, which include, respectively, in points (b) and (c) of that provision, the minimum duration of paid annual holidays and remuneration.

1152 As the Court has already held, with the exception of the provision of services involving merchant navy seagoing personnel, Directive 96/71 applies, as a rule, to any transnational provision of services involving the posting of workers, irrespective of the economic sector to which that provision of services relates, including, therefore, in the road transport sector (judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraph 33).

1153 As regards Directive 2020/1057, it relates, as is apparent from its very title, to two main subjects. First, it lays down specific rules with respect to Directive 96/71 and Directive 2014/67 regarding posting of drivers in the road transport sector. Secondly, it amends Directive 2006/22, as regards control requirements, and Regulation No 1024/2012. The applicant Member States which seek the annulment of Directive 2020/1057 or part thereof focus their actions on the first of those two subjects.

1154 In that regard, and as is apparent from the wording of paragraph 1 thereof, Article 1 of Directive 2020/1057 establishes, inter alia, specific rules relating to the posting of drivers in the road transport sector. According to recital 1 of that directive, the introduction of such specific rules is intended to ensure adequate working conditions and social protection for drivers and also suitable conditions for business and for fair competition for road transport undertakings in order to create a safe, efficient and socially responsible road transport sector. It also follows from that recital that, in view of the high degree of mobility of the workforce in the road transport sector, the EU legislature sought, by establishing such specific rules, to ensure a balance between the freedom of those undertakings to provide cross-border services, free movement of goods, adequate working conditions and social protection for drivers.

1155 As is apparent from recital 8 of Directive 2020/1057, given the highly mobile nature of the transport sector, drivers, unlike conditions in other sectors, are not generally posted to another Member State under service contracts for long periods of time. Consequently, as also stated in recitals 2 and 3 of that directive, in order to ensure, in those particular circumstances, that the freedom to provide road transport services is based on fair competition between transport undertakings and thus to ensure the proper functioning of the internal market, the sector-specific rules laid down by that directive specify the circumstances in which drivers are or are not subject to the rules on the posting of workers laid down in Directive 96/71.

1156 It is apparent from recital 9 of Directive 2020/1057 that the EU legislature decided to base those sector-specific rules on the existence of a sufficient link between the driver and the service provided in the territory of a host Member State and, in order to facilitate the enforcement of those rules, distinguish between different types of transport operations depending on the degree of connection with the territory of the host Member State.

1157 Thus, Article 1(3) to (7) of that directive, read in the light of recitals 7 to 13 thereof, draws a distinction between five types of international road transport operations, namely bilateral transport operations, non-bilateral transport operations ('cross trade operations'), transit operations, combined transport operations and cabotage operations.

1158 As regards, in the first place, bilateral transport operations, those consist, as is apparent from recital 10 of Directive 2020/1057, in transport operations from the Member State in which the transport undertaking is established to the territory of another Member State or a third country or,

conversely, transport operations from a Member State or a third country to the Member State in which the transport undertaking is established.

1159 It follows from the first subparagraph of Article 1(3) and the first subparagraph of Article 1(4) of Directive 2020/1057 that, notwithstanding Article 2(1) of Directive 96/71, when performing bilateral transport operations in respect of goods and passengers, respectively, a driver is not to be considered to be posted for the purposes of Directive 96/71. The third and fifth subparagraphs of Article 1(3) and the third and fourth subparagraphs of Article 1(4) of Directive 2020/1057 provide, moreover, exemptions for additional activities, both for bilateral transport operations in respect of goods and bilateral transport operations in respect of passengers.

1160 As regards, in the second place, cross trade operations, it is apparent from recital 13 of Directive 2020/1057 that those operations are characterised by the fact that the driver performs international transport operations outside the Member State of establishment of the undertaking making the posting. The transport operations are therefore performed from a Member State that is different from that undertaking's Member State of establishment or from a third country, to the territory of another Member State that is also different from that Member State of establishment or to the territory of a third country. As is also apparent from that recital, in those cases, sector-specific rules are required only as regards administrative requirements and control measures.

1161 As regards, in the third place, transit operations, those consist, as is apparent from recital 11 of Directive 2020/1057, in transport operations in which the driver crosses the territory of a Member State without loading or unloading freight and without picking up or setting down passengers. Article 1(5) of that directive provides that, where a driver transits through the territory of a Member State in that way, he or she is not to be regarded as being posted for the purposes of Directive 96/71.

1162 As regards, in the fourth place, combined transport operations, those are defined in the second paragraph of Article 1 of Directive 92/106, to which Directive 2020/1057 expressly refers, as the transport of goods between Member States in which the lorry or other means of transport of the goods connected with the lorry uses the road on the initial or final leg of the journey and, on the other leg, rail or inland waterway or maritime services. Article 1(6) of Directive 2020/1057 provides that, notwithstanding Article 2(1) of Directive 96/71, a driver is not to be considered to be posted when performing the initial or final road leg of a combined transport operation if that road leg on its own consists of bilateral transport operations.

1163 As regards, in the fifth place, cabotage operations, point 6 of Article 2 of Regulation No 1072/2009, read in the light of recital 15 thereof, defines them as the provision of services by a haulier in a Member State in which it is not established and states that such carriage is not prohibited as long as it is not carried out in such a way that creates a permanent or continuous activity within that Member State. Article 1(7) of Directive 2020/1057 provides that a driver performing such a transport operation is to be considered to be posted under Directive 96/71.

3. Article 1 of Directive 2020/1057

1164 In support of their respective actions for annulment of Article 1 of Directive 2020/1057 or of certain provisions of paragraphs 3 to 7 thereof, the Republic of Lithuania (Case C-541/20), the Republic of Bulgaria (Case C-544/20), Romania (Case C-548/20), the Republic of Cyprus (Case C-550/20), Hungary (Case C-551/20) and the Republic of Poland (Case C-555/20) allege, as the case may be, infringement, in essence:

– of Article 1(3)(a) of Directive 96/71 (the single plea raised by Hungary in support of its main claim);

– of the principles of equal treatment and non-discrimination (the first plea of the Republic of Lithuania, the second plea of the Republic of Bulgaria, the second plea of Romania, the second plea of the Republic of Cyprus and the second plea of Hungary raised in the alternative);

– of the principle of proportionality (the second and third pleas of the Republic of Lithuania, the first plea of the Republic of Bulgaria, the first plea of Romania, the first plea of the Republic of Cyprus, the first plea of Hungary raised in the alternative and the first plea of the Republic of Poland);

– of the rules of EU law on the common transport policy laid down in Article 91(1) TFEU (the third pleas of the Republic of Bulgaria and of the Republic of Cyprus) and, moreover, in Article 90 TFEU, read in conjunction with Article 3(3) TEU, in Article 91(2) TFEU and in Article 94 TFEU (the fourth plea of the Republic of Bulgaria, the second plea of the Republic of Poland in relation to Article 91(2) TFEU, the third plea of the Republic of Poland in relation to Article 94 TFEU, and the fourth plea of the Republic of Cyprus);

– of the free movement of goods provided for in Articles 34 and 35 TFEU (the first part of the fifth pleas of the Republic of Bulgaria and the Republic of Cyprus);

– of the freedom to provide services provided for in Article 58(1) TFEU, read in conjunction with Article 91 TFEU, or, in the alternative, in Article 56 TFEU (the second part of the fifth pleas of the Republic of Bulgaria and the Republic of Cyprus), and

– of the rules of EU law on environmental protection provided for in Article 11 TFEU and Article 37 of the Charter (fourth plea of the Republic of Poland).

1165 The pleas in law against Article 1 of Directive 2020/1057 should be examined in that order.

(a) Infringement of Article 1(3)(a) of Directive 96/71

(1) Arguments of the parties

1166 By its single main plea, Hungary submits that Article 1 of Directive 2020/1057 infringes Article 1(3)(a) of Directive 96/71, on the ground that drivers engaged in international road transport do not generally fall within the scope of that directive having regard to the particular characteristics of the activity in which they engage.

1167 In the first place, under Article 1(3)(a) of Directive 96/71, to which Directive 2020/1057 refers in Article 1(2), the applicability of the posting regime to drivers carrying out an international transport activity by road can be envisaged only where there is a contractual relationship between the transport undertaking that employs them and the person to whom the consignment is sent. Although such a contractual relationship is unusual in the context of transport contracts, Directive 2020/1057 does not require, for the purposes of the application of the rules on posting, that such a contract be concluded between the expediting undertaking and the recipient undertaking. It is sufficient for the driver to cross a national border.

1168 In the second place, posting within the meaning of Directive 96/71 is closely linked to a provision of services performed by the employer in the host Member State. However, in the context of the transport activity, the emphasis is placed not on the service provided by the driver, but on the movement of goods between Member States. There is therefore not an activity of such a kind as to justify the application of the rules on posting laid down in Directive 96/71. Furthermore, that argument is supported by the European Union's response to the crisis caused by the COVID-19 pandemic. Following the introduction by various Member States of restrictions on movement, the Commission intervened almost immediately in order to ensure that the transport of goods functioned as smoothly as possible.

1169 In the third place, due to the high mobility of workers in the international road haulage sector, drivers should not be considered as temporarily carrying out their work in another Member State, but as constantly moving between several Member States. Moreover, in the judgment of 19 December 2019, *Dobersberger* (C-16/18, EU:C:2019:1110), the Court held that a worker cannot, in the light of Directive 96/71, be regarded as being posted to the territory of a Member State if the performance of his or her work does not have a sufficient link with that territory. A short stay, even of a few hours, in another Member State cannot create a sufficient link with the territory of that Member State.

1170 The judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), does not call those considerations into question. Even if it follows from that judgment that the application of Directive 96/71 to road transport operators is not, in principle, excluded, the fact remains that, in the absence of a sufficient link with the Member States in which the drivers carry out their work, many road transport services do not meet the conditions for a posting situation falling within the scope of that directive, as interpreted by the Court in that judgment. Thus, apart from cabotage, in respect of which the Court found that there was such a

sufficient link, no categorical answer was provided by that court as regards other situations, each case having to be assessed in the light of the relevant circumstances of the case.

1171 The Parliament and the Council contend that the present plea is ineffective or unfounded.

(2) Findings of the Court

1172 As a preliminary point, it should be borne in mind that, as is clear from the case-law of the Court referred to in paragraph 431 above, the internal legality of an act of secondary legislation cannot, in principle, be examined in the light of another EU act of the same status. Consequently, Hungary cannot reasonably claim that the provisions of Article 1 of Directive 2020/1057 are invalid in the light of Article 1(3)(a) of Directive 96/71.

1173 In so far as, by its single plea, Hungary alleges inconsistency between the respective scope of Directive 96/71 and Directive 2020/1057, it should be noted that, in any event, there is no such inconsistency, irrespective of whether it would be sufficient to justify the annulment of Article 1 of the latter directive. In the first place, the Court has already held that Directive 96/71 applies to the transnational provision of services in the road transport sector (see, to that effect, judgments of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraphs 33 to 41, and of 8 July 2021, *Rapidsped*, C-428/19, EU:C:2021:548, paragraphs 34 to 36). It follows that drivers engaged in international road transport are likely to fall within the scope of Directive 96/71 on the basis of the provisions of that directive and not, as Hungary wrongly seems to suggest, because of the adoption of Directive 2020/1057.

1174 In the second place, as the Parliament rightly points out, Directive 2020/1057 constitutes a *lex specialis* in relation to Directive 96/71, since the purpose of the former directive is not to extend the scope of the latter directive, but to specify the circumstances in which drivers engaged in international road transport operations must be regarded as being posted workers within the meaning of Article 2(1) of Directive 96/71 and, therefore, as falling within the scope of the latter directive.

1175 More specifically, in so far as Hungary criticises the EU legislature for having, by adopting Article 1 of Directive 2020/1057, made the rules on posting applicable also to transport operations that do not involve one of the transnational measures referred to in Article 1(3)(a) of Directive 96/71, it should be noted that, as that Member State itself points out, Directive 2020/1057 expressly refers to the latter provision, by providing, in Article 1(2) thereof, that the specific rules relating to the posting of drivers laid down in in Article 1 thereof are to apply to drivers employed by transport undertakings established in a Member State which take the transnational measure referred to in Article 1(3)(a) of Directive 96/71, namely posting a worker on their behalf and under their direction, to the territory of another Member State under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided that there is an employment relationship between the undertaking making the posting and the worker during the period of posting. It necessarily follows that those specific rules are without prejudice to the need to fulfil the conditions laid down in Article 1(3)(a) in order for the transport operation concerned to be regarded as falling within the scope of Directive 96/71.

1176 As regards the argument put forward in that context by Hungary, referring to the European Union's reaction to the COVID-19 pandemic, it is based, as is apparent from paragraph 1173 above, on the incorrect premiss that Directive 96/71 was not applicable to transport operations before the entry into force of Directive 2020/1057. Thus, that line of argument, which is, moreover, of a general nature and does not relate specifically to the rules governing the posting of workers by EU law, must also be rejected.

1177 In the third place, the provisions of Article 1 of Directive 2020/1057 also cannot be regarded as invalid on the ground that, in the absence of a sufficient link with the Member States in which drivers carry out their work, many supplies of road transport services do not meet the conditions for a posting situation falling within the scope of Directive 96/71, as interpreted by the Court in the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976).

1178 In that regard, it should be noted, first, that, in adopting the provisions of Article 1 of Directive 2020/1057, the EU legislature adopted an approach which follows the same logic as that followed by the Court in that judgment.

1179 In particular, in paragraphs 49, 62 and 63 of that judgment, the Court held, in the context of the interpretation of Directive 96/71, that the rules on posting laid down by that directive do not apply, inter alia, to transit operations and bilateral transport operations, whereas they do apply, in principle, to cabotage operations carried out entirely within the territory of the host Member State.

1180 Similarly, Article 1(3) and (4) of Directive 2020/1057 excludes all bilateral transport operations and, in paragraph 5, all transit operations from the scope of Directive 96/71, whereas Article 1(7) of Directive 2020/1057 states that Directive 96/71 applies to cabotage operations.

1181 Furthermore, in paragraph 45 of the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), the Court held, first, that a worker cannot be regarded as being 'posted' to the territory of a Member State, within the meaning of Article 2(1) of Directive 96/71, unless the performance of his or her work has a sufficient link with that territory and, secondly, that, in order to determine whether such a link exists, it is necessary to carry out an overall assessment of all the factors characterising the activity of the worker concerned.

1182 However, as is clear from recital 9 of Directive 2020/1057, the EU legislature has adopted sectoral rules relating to the application of Directive 96/71 to the road transport sector which are also based on the existence of a sufficient link connecting the driver and the service provided to the territory of a host Member State. In that context, in order to facilitate the application of those rules, the legislature has opted for a solution that consists of specifying the circumstances in which such a link is to be regarded as existing.

1183 To that end, first, the legislature expressly stated that certain categories of operations must be exempted from the posting rules, namely, under the third to fifth subparagraphs of Article 1(3) of Directive 2020/1057, a limited number of operations linked to a bilateral transport operation and, under Article 1(6) of that directive, certain journeys comprising a combined transport operation.

1184 Secondly, as is apparent, in particular, from recital 13 of Directive 2020/1057, for operations that are not exempt under that directive, the EU legislature considered that there is a sufficient link with the territory of the host Member State and that Directive 96/71 must therefore be regarded as capable of applying.

1185 Secondly, the mere fact that the EU legislature chose to give concrete expression to the concept of 'sufficient link', on which the Court relied in its judgments of 19 December 2019, *Dobersberger* (C-16/18, EU:C:2019:1110, paragraph 31), and of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976, paragraph 45), by designating the categories of road transport operations to which the rules on posting should or should not apply, cannot render the provisions of Article 1 of Directive 2020/1057 invalid. The Court's reasoning in those judgments concerns the interpretation of the legislative framework as it was in force at the material time for the disputes which gave rise to those judgments, so that it was solely on the basis of the provisions of Directive 96/71 applicable at that time that the Court clarified what was to be understood by 'sufficient link'. Moreover, the Court in no way suggested that the interpretation which it gave, in that context, of the concept of 'sufficient link' was the only one capable of complying with the provisions of the Treaties.

1186 That being so, the foregoing considerations are without prejudice to the question, which is the subject of other pleas raised in the present actions, whether the way in which the EU legislature chose to assess the existence of such a 'sufficient link' in the case of each of the categories of transactions set out in Article 1(3) to (7) of Directive 2020/1057 is compatible with primary law.

1187 In the light of the foregoing, the single plea raised by Hungary in support of its main claim must be rejected as unfounded.

(b) Breach of the principle of equal treatment and of non-discrimination

(1) Arguments of the parties

1188 The Republic of Lithuania, by its first plea, the Republic of Bulgaria, by its second plea, Romania, by its second plea, the Republic of Cyprus, by its second plea, and Hungary, by its second plea put forward in the alternative, claim that Article 1 of Directive 2020/1057 does not comply with the requirements stemming from the principle of non-discrimination.

1189 The Republic of Bulgaria and the Republic of Cyprus submit in that regard that making the rules on posting applicable to cross trade operations, while exempting bilateral transport operations from those rules, results in different treatment of situations which are similar, or even identical, thereby infringing the principle of non-discrimination.

1190 In the first place, that difference in treatment between cross trade operations and bilateral transport operations has the effect of granting drivers social protection that is differentiated according to the nationality of their employer and the place where the operations take place. Thus, by way of illustration, for a cargo loaded in Italy bound for Frankfurt (Germany), a driver would be considered to be posted to Germany if his or her employer is Portuguese, but not if the employer is Italian. In both cases, however, the link with German territory is the same, since the unloading of the goods took place in Germany. In addition to the fact that drivers suffer different treatment depending on transport routes, there is even discrimination between drivers employed by the same carrier.

1191 In the second place, the Republic of Bulgaria and the Republic of Cyprus argue that that difference in treatment between cross trade operations and bilateral transport operations has a greater negative impact on undertakings carrying out cross trade operations than on undertakings carrying out mainly or exclusively bilateral transport operations.

1192 In the third place, that difference in treatment between cross trade operations and bilateral transport operations infringes the principle of equality between Member States, since some Member States are affected by that difference to a greater extent than others.

1193 In the fourth place, finally, because of the same difference in treatment, transport undertakings are faced with different wage and administrative costs depending on the country of loading or unloading. Those undertakings would therefore have an incentive to charge different tariffs for operations involving the same goods on the same traffic routes, depending on the country of origin or destination of the goods transported, which would be contrary to the spirit of Article 95(1) TFEU.

1194 Romania argues that it is essentially transport undertakings established in Member States located in the periphery of the European Union that will bear the administrative and financial costs associated with the posting that would be dissuaded from carrying out operations governed by Article 1(3) to (6) of Directive 2020/1057, since the competitiveness of those undertakings would de facto be reduced to zero. Moreover, social protection for drivers cannot be guaranteed if transport undertakings in the peripheral area of the European Union are excluded from the market. According to another scenario, drivers would be obliged to move to a Member State that is better located in relation to the centre of transport operations in the European Union. Thus, the question arises as to the extent to which the contested provisions of Article 1 of that directive are consistent with the objectives set out in Article 91(2) TFEU and Article 94 TFEU.

1195 Moreover, in Romania's view, it is not only the relevant provisions of Directive 2020/1057, but also those which are the subject of its actions for partial annulment of Regulations 2020/1054 and 2020/1055 (Cases C-546/20 and C-547/20) which have the effect, both taken individually and as a whole, of discriminating against transport undertakings established in Member States situated on the periphery of the European Union.

1196 According to Romania, the case-law of the Court on which the Parliament and the Council rely, resulting from the judgments of 21 June 2018, *Poland* v *Parliament and Council* (C-5/16, EU:C:2018:483, paragraph 167), and of 13 March 2019, *Poland* v *Parliament and Council* (C-128/17, EU:C:2019:194, paragraph 106), cannot be applied mutatis mutandis in the present case. As regards the contested provisions of the 'Mobility Package', it is not only the particular situation of a single Member State that has not been taken into account. On the contrary, the contested measures separate the Member States into two main categories according to their geographical location, namely, on the one hand, a favoured centre and, on the other, a disadvantaged periphery, albeit in varying proportions. The rules adopted at EU level should take account of those differences and attempt to offset them, by reducing the existing discrepancies and by aiming at a more even distribution of both the benefits and the costs of EU membership.

1197 The Council would, moreover, essentially accept that Directive 2020/1057 facilitates bilateral transport operations, but not cross trade operations and, consequently, not operations carried out by transport undertakings established in Member States situated in Eastern Europe, outside the area where international road transport in the European Union is concentrated.

1198 For its part, Hungary submits that, in practice, it is possible to distinguish two types of combined transport operations, namely, first, accompanied operations and, secondly, unaccompanied operations. If the driver accompanies the vehicle and its cargo for the entire duration of the transport operation, there is ultimately a single transport operation. Only the mode of transport varies. In that case, the combined transport operation would be, in essence, comparable to a bilateral transport operation, so that the fundamental principle of equal treatment justifies the exemption provided for in Article 1(3) of Directive 2020/1057 covering the entire operation, namely the two road legs.

1199 However, pursuant to Article 1(6) of that directive, a driver is considered not to be posted when carrying out a combined transport operation only where the road leg, taken in isolation, consists of bilateral transport operations within the meaning of Article 1(3) of that directive. The EU legislature thus artificially divided combined transport operations into two road legs, the initial leg and the final leg, one of which does not meet the conditions relating to bilateral transport operations. Thus, by not extending the benefit of the exemption provided for bilateral goods transport operations to combined transport operations, the legislature infringed the principle of equal treatment.

1200 The Parliament and the Council contend that those pleas and arguments are unfounded.

(2) Findings of the Court

(i) Preliminary observations

1201 In the first place, it should be noted that, although the Republic of Bulgaria and the Republic of Cyprus seek the annulment of Directive 2020/1057 in its entirety, it is apparent from the arguments put forward by those Member States, alleging infringement of the principles of equal treatment and non-discrimination, that they particularly call into question the distinction made in Article 1(3) and (4) of that directive, read in the light of recital 13 thereof, between cross trade operations and bilateral transport operations.

1202 In the second place, the arguments put forward by Hungary to demonstrate an infringement of those principles focus solely on Article 1(6) of Directive 2020/1057, relating to combined transport operations.

1203 Finally, in the third place, as regards the line of argument put forward by Romania, it should be noted that that Member State seeks the annulment of Article 1(3) to (6) of Directive 2020/1057, claiming that the rules laid down therein have the effect of deterring transport undertakings established on the ‘periphery of the European Union’ from carrying out the types of operations referred to in those provisions, while specifically highlighting the alleged negative effects for those undertakings resulting from the distinction between cross trade operations and bilateral transport operations.

1204 In that regard, it should be noted, however, in so far as, first, Romania alleges infringement of Article 1(5) of Directive 2020/1057, that Member State merely claims, in general terms, that Member States situated on the ‘periphery of the European Union’ suffer indirect discrimination as a result of the contested provisions of Article 1, without explaining how paragraph 5 could cause disadvantages for those Member States, even though that provision grants the carrier responsible for an operation transiting through the territory of a Member State the benefit of an exemption from the rules on posting where the conditions laid down therein are satisfied. Such an exemption is such as to limit the impact of the greater or lesser distance between the Member State in which the haulier is established and another Member State where the loading or unloading of goods, or the picking up or setting down of passengers, takes place, with regard to the question whether the road transport operation in question is subject to the rules on the posting of workers laid down in Directive 96/71.

1205 In the same way, in so far as, secondly, Romania refers to Article 1(6) of Directive 2020/1057, that Member State also does not substantiate how that provision relating to combined transport operations infringes the principles of equal treatment and non-discrimination by placing transport undertakings established in Member States situated on the ‘periphery of the European Union’ at a disadvantage. The argument put forward to demonstrate the discriminatory nature of all the provisions in Article 1(3) to (6) of Directive 2020/1057, according to which the share of the international transport market held by operators established in Member States situated on the ‘periphery of the European Union’ is increasing, does not demonstrate an infringement of those principles.

1206 In those circumstances, it remains to examine the arguments by which the EU legislature is criticised for having distinguished, in Article 1(3) and (4) of that directive, read in the light of recital 13 thereof, between cross trade operations and bilateral transport operations for the purposes of the application of the rules on posting and the specific arguments put forward by Hungary relating to the application of those rules to combined transport, as provided for in Article 1(6) of that directive.

(ii) The existence of the alleged discriminatory treatment

1207 It is common ground that the contested provisions of Article 1 of Directive 2020/1057, in so far as they establish specific rules relating to the posting of drivers in the road transport sector, apply without distinction to all transport undertakings concerned, irrespective of the Member State in which they are established, to all drivers, irrespective of their nationality and the Member State in which their employer is established, and to all Member States, so that they do not involve any direct discrimination prohibited by EU law.

1208 It is therefore necessary to examine, in accordance with the case-law referred to in paragraphs 308 to 310 above, whether those provisions, in so far as they distinguish the transactions referred to in paragraph 1206 above, unjustifiably apply different rules to comparable situations, in the light, inter alia, of the objective pursued by those rules, and therefore constitute indirect discrimination prohibited by EU law, since by their very nature they are liable to affect to a greater extent transport undertakings established in Member States situated on the 'periphery of the European Union', drivers employed by those undertakings and that group of Member States.

1209 As is apparent from the case-law referred to in the preceding paragraph, the comparability of the respective situations at issue for the purposes of reviewing compliance with the principle of equal treatment must be assessed, in particular, in the light of the subject matter and purpose of the EU act which establishes the distinction concerned.

1210 In that regard, the objective pursued by Directive 2020/1057 consists, as is apparent from recitals 3 and 7 thereof, in laying down specific rules, for the purposes of determining the Member State whose terms and conditions of employment are guaranteed for road transport drivers, which take into account the particular features of the extreme mobility of the workforce in that sector and which, for the proper functioning of the internal market, strike a balance between improving the social and working conditions of those drivers and facilitating the exercise of freedom to provide road transport services based on fair competition between transport undertakings.

1211 It is in the context of that general objective pursued by Directive 2020/1057 that, as is apparent from recital 9 of that directive, the specific objective of the provisions of Article 1 thereof, which specify the circumstances in which drivers are or are not to be subject to the rules on long-term posting laid down by Directive 96/71, is to be seen.

1212 It is therefore necessary to examine, in the light of that objective, whether the EU legislature has applied, in Article 1 of Directive 2020/1057, discriminatory treatment to cross trade operations and combined transport operations as compared with bilateral transport operations.

– *The alleged discriminatory treatment of cross trade operations as compared with bilateral transport operations*

1213 As regards, in the first place, the existence of alleged discrimination between transport undertakings and drivers employed by them according to whether they carry out cross trade operations or bilateral transport operations, it should be recalled that it follows from the provisions of Article 1 of Directive 2020/1057, in particular the first subparagraph of paragraph 3 thereof, and from the first subparagraph of paragraph 4 thereof, read in the light of recital 13 thereof, that a driver carrying out bilateral transport operations is not considered to be posted, within the meaning of Directive 96/71, whereas a driver carrying out cross trade operations is considered to be so posted. Furthermore, the third to fifth subparagraphs of Article 1(3) and the third and fourth subparagraphs of Article 1(4) of Directive 2020/1057 provide that the exemptions for bilateral transport operations provided for in those paragraphs also apply to certain additional activities linked to such operations.

1214 It follows that the difference in treatment resulting, for the purposes of the application of the rules on posting, from those provisions of Directive 2020/1057 between cross trade operations and bilateral transport operations is based on the types of transport operations concerned, which are distinguished by the link between the driver and the service provided, on the one hand, and the territory of the host Member State and that of the Member State of establishment, on the other.

Whereas, in the case of a bilateral transport operation, the nature of the service is closely linked to the Member State of establishment, that is not the case for a cross trade operation, where the driver carries out operations from one country to another, neither of which is the Member State of establishment.

1215 It follows that cross trade operations and bilateral transport operations are not comparable in the light of the objective pursued by Directive 2020/1057 and, more specifically, that pursued by the rules laid down in Article 1 of that directive, referred to in paragraphs 1210 and 1211 above. Consequently, as the Advocate General observed in point 1086 of his Opinion, neither the drivers nor the transport undertakings involved in those two categories of transport operations are in a comparable situation with regard to the latter objective.

1216 That conclusion is not called into question by the specific examples of transport operations put forward by the applicant Member States which, according to the latter, establish that work of the same nature may be carried out by two different drivers working, as the case may be, for one and the same undertaking, whereas, as a result of the contested provisions of Article 1 of Directive 2020/1057, those two drivers do not enjoy the same conditions of work and employment and, in particular, the same rate of pay.

1217 In that regard, it is sufficient to note that that line of argument is based on the incorrect premiss that the assessment of the comparability of the respective situations of those drivers in order to determine the application of the rules on posting must be carried out solely on the basis of the nature of their work, whereas, as is apparent from the foregoing considerations, it is the link between the driver concerned and the service provided to the Member State of establishment or the host Member State which, in the light of the objective pursued by the contested provisions of Article 1 of Directive 2020/1057, is relevant for the purposes of that assessment.

1218 In any event, it must be pointed out that, as is apparent from paragraph 247 above, the EU legislature has a broad discretion in defining the common transport policy, which includes the measures laid down in Directive 2020/1057. The latter, adopted on the basis of Article 91(1) TFEU, involves political choices and complex assessments of the economic and social impact of those measures.

1219 The EU legislature cannot, therefore, be accused of infringing the principles of equal treatment and non-discrimination on the sole ground that, in exercising that wide discretion, it chose to lay down general criteria for assessing whether there was a sufficient link between the transport service provided and the territory of the host Member State, rather than leaving it to the parties concerned to ascertain whether such a link exists in each specific case.

1220 As regards, in the second place, the existence of alleged discrimination between Member States in breach of the principle of equal treatment of Member States before the Treaties, enshrined in Article 4(2) TEU, it certainly cannot be ruled out that some Member States may be more affected than others by the distinction made in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, between bilateral transport operations and cross trade operations.

1221 Since it is common ground between the parties that a significant share of demand in the transport market is concentrated in the Member States located more at the ‘centre of the European Union’, it is possible that the transport undertakings which, according to the applicant Member States, are established on the ‘periphery of the European Union’ are those which carry out the greater part of cross trade operations in the European Union and which are therefore most often subject to the rules on posting, whereas their competitors who are established more at the ‘centre of the European Union’ carry out mainly or exclusively bilateral transport operations.

1222 However, it should be borne in mind, first, that, according to the case-law set out in paragraph 332 above, an EU act whose purpose is to equalise the standards of the Member States, in so far as it applies equally to all the Member States, cannot be regarded as discriminatory, since such an act of harmonisation inevitably creates divergent effects depending on the previous state of different national laws and practices.

1223 In the present case, by adopting sectoral rules on the posting of workers intended to be implemented throughout the European Union in order to ensure the proper functioning of the internal market, the EU legislature sought to achieve, as is apparent from recitals 3, 7 and 9 of Directive 2020/1057, a balance between, on the one hand, the improvement of the social and working conditions of drivers

and, on the other hand, facilitating the exercise of freedom to provide road transport services based on fair competition between transport undertakings.

1224 In that context, the approach consisting of distinguishing between different types of transport operations for the purposes of applying the rules on posting, far from undermining equality between Member States, is intended, on the contrary, as is apparent, in essence, from recital 4 of that directive, to remedy the inequalities of treatment which had arisen previously, as a result of discrepancies identified between Member States in the interpretation, application and implementation of the provisions applicable before the entry into force of that directive, discrepancies that placed a heavy administrative burden on drivers and transport undertakings.

1225 Secondly, any difference in the impact of the contested provisions of Article 1 of Directive 2020/1057 on Member States according to whether they are located at the 'centre of the European Union' or on the 'periphery of the European Union', as referred to in paragraphs 1220 and 1221 above, arises not from the allegedly discriminatory nature of the distinction made between cross trade operations and bilateral transport operations, but, essentially, from the economic operating model for which transport undertakings established in certain Member States have opted, in so far as transport operations carried out by transport undertakings which supply the bulk or all of their services in Member States distant from the Member State in which they are established, whichever that Member State may be, are more likely to be classified as cross trade operations and, therefore, to be subject to the rules on posting.

1226 It is true that the application of those rules is likely to represent a greater burden for employers providing cross trade services in Member States where the level of social protection, in particular pay, is higher than in their Member State of establishment.

1227 However, such a consequence is inherent in the objectives pursued by Directive 2020/1057, which seeks specifically to ensure fair competition between transport undertakings by guaranteeing drivers providing a transport service with a sufficient link to the territory of a host Member State the benefit of working and employment conditions equal to those applicable to other drivers also providing such services on that territory. Moreover, the mere fact that the interests of certain actors may be affected to a greater extent than others is inherent in the search for a balance between various competing interests, which is characteristic of legislative action. Thus, in the present case, such a consequence is inseparable from the objective pursued by that directive, which is to improve the social and working conditions of drivers while ensuring fair competition between transport undertakings.

1228 As has been noted in paragraph 322 above, a provision of EU law cannot be regarded as being, in itself, contrary to the principles of equal treatment and non-discrimination solely on the ground that it has different consequences for certain economic operators, where that situation is the consequence of the different operating conditions in which they are placed, in particular by reason of their geographical location, and not of any inequality in law inherent in the contested provision.

1229 In any event, even if the contested provisions of Article 1 of Directive 2020/1057 were to result in comparable situations being treated differently, within the meaning of the case-law referred to in paragraph 308 above, that treatment would be objectively justified by the objectives pursued in the context of the common transport policy, in accordance with Article 90 TFEU. Those objectives include, inter alia, improving employment conditions, as referred to in the preamble to the FEU Treaty and in the first paragraph of Article 151 TFEU, and guaranteeing adequate social protection, as referred to in Article 9 and the first paragraph of Article 151 TFEU.

1230 As regards, in the third place, the specific arguments put forward by the Republic of Bulgaria and the Republic of Cyprus, alleging infringement of Article 95(1) TFEU, it should be recalled that that provision prohibits, in respect of traffic within the European Union, 'discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question'.

1231 In so far as the Republic of Bulgaria and the Republic of Cyprus claim that hauliers will be encouraged to charge different tariffs for the same goods and for the same journeys depending on the country of origin or destination of those goods, in order to meet the different wage and administrative costs resulting from the contested provisions of Article 1 of Directive 2020/1057, it should be noted, first, that those provisions are intended to ensure satisfactory working conditions and increased social protection for drivers by laying down criteria for the application of the rules on

posting drivers in the road transport sector. Accordingly, those provisions do not in any way govern transport rates or conditions as such and cannot, therefore, be regarded as falling within the scope of the measures referred to in Article 95(1) TFEU.

1232 Secondly, as is apparent from paragraphs 1213 to 1224 above, the difference established in Article 1 of Directive 2020/1057 concerning the application of the rules on posting to bilateral transport operations and to cross trade operations is based not on the country of origin or destination of the goods in question, but on the fact that the service provided in the context of those two types of operation does not display the same link with the Member State of establishment.

1233 In the fourth place, in so far as Romania relies, in the second plea in its action, formally alleging infringement of the principle of non-discrimination, on an infringement of Article 91(2) and Article 94 TFEU, its line of argument overlaps with that put forward by the Republic of Bulgaria and the Republic of Cyprus in the context of the fourth pleas in law in their respective actions and with that put forward by the Republic of Poland in the context of the second and third pleas in law in its action. That line of argument will therefore be examined in that context.

1234 In the light of the foregoing, it cannot be held that the approach taken by the EU legislature in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, which consists, in general terms, in distinguishing between different types of transport operations on the basis of the link between the driver and the service provided, on the one hand, and the territory of the host Member State or the territory of the Member State of establishment, on the other, for the purposes of applying the rules on posting and, in particular, in making those rules applicable to cross trade operations, while exempting from those rules bilateral transport operations and certain additional related activities, infringes the principles of equal treatment and non-discrimination.

– *The alleged discriminatory treatment of combined transport operations in comparison with bilateral transport operations*

1235 In its argument relating to Article 1(6) of Directive 2020/1057, concerning combined transport, Hungary claims that, where the same driver accompanies the vehicle and its cargo for the entire duration of a combined transport operation, that operation as a whole should be treated in the same way as a bilateral transport operation, so that the two road legs can benefit from the exemption from the rules on posting, given that only the mode of transport varies between the different legs of such a combined transport operation. That argument is thus based on the premiss that such a combined transport operation, taken as a whole, is comparable to a bilateral transport operation, having regard to the objective pursued by the rules laid down in Article 1 of Directive 2020/1057.

1236 In that regard, it follows from the definition in Article 1 of Directive 92/106, to which Article 1(6) of Directive 2020/1057 refers, that combined transport operations consist of the carriage of goods between Member States where the road is used for the initial or final leg of the journey, while rail, inland waterways or maritime routes exceeding a minimum distance are used for the other leg of the journey.

1237 As is apparent from its very title, the purpose of Directive 2020/1057 is to lay down specific rules for posting drivers in the road transport sector alone. Similarly, as is apparent from paragraph 1210 above, the objective pursued by that directive, and more specifically by Article 1 thereof, is to lay down rules for the purposes of determining the Member State whose working and employment conditions are guaranteed for the drivers which take account of the particular characteristics of that sector, the application of the rules on posting to a given driver depending on the existence of a sufficient link connecting that driver and the service he or she provides to the territory of the host Member State.

1238 It is from that perspective that Article 1(6) of Directive 2020/1057, which concerns the treatment which must be granted to road legs forming part of a combined transport operation, exempts from the rules on posting the initial or final road leg of such an operation where that road leg, taken in isolation, consists of bilateral transport operations, within the meaning of Article 1(3) of that directive.

1239 It should be recalled that, as is apparent from the case-law referred to in paragraph 247 above, the EU legislature has a broad discretion in defining the common transport policy, which includes the measures provided for in Directive 2020/1057. The latter, adopted on the basis of Article 91(1) TFEU, involves political choices and complex assessments of the economic and social impact of those measures.

1240 Accordingly, and in the light of the case-law referred to in paragraph 309 above, from which it follows that the comparability of the respective situations at issue is to be assessed in the light of the subject matter and objectives of the act of EU law to be interpreted, the EU legislature cannot be criticised for having considered, in the exercise of that discretion, that only those parts of a combined transport operation which are carried out by road, and not the operation as a whole, are capable of being treated as a bilateral transport operation for the purposes of applying the rules on posting.

1241 That finding is not called into question by the argument that it would be artificial to divide a combined transport operation into two separate road legs where the transport is carried out, for the entire operation, by the same driver. The fact that the goods may be accompanied by the same driver throughout the duration of that operation is irrelevant in that regard, since it is common ground that one of the modes of transport making up the operation does not fall within the scope of Directive 2020/1057, the purpose of which is to establish specific rules for the posting of drivers in the road transport sector only.

1242 Nor is the finding set out in paragraph 1240 above called into question by the fact that, where appropriate, a combined transport operation should be regarded as a single operation pursuing purposes other than those for which the rules set out in Article 1 of Directive 2020/1057 are laid down. Even if that were the case, such a circumstance is not capable of demonstrating that, given the broad discretion which it enjoys when defining the common transport policy, the EU legislature disregarded the principles of equal treatment and non-discrimination by considering that only those parts of a combined transport operation which are carried out by road are capable of being treated in the same way as a bilateral transport operation for the purposes of the application of the rules on posting.

1243 Finally, the fact that only one of the two road legs comprising a combined transport operation is considered to fulfil the conditions laid down in Article 1(6) of Directive 2020/1057, read in conjunction with Article 1(3) of that directive, for the purposes of benefiting from an exemption under that provision, is merely the consequence of taking into account the specific characteristics of each of those journeys. As is apparent from recital 12 of that directive, where such a road leg, taken in isolation, can be assimilated to a bilateral transport operation, the nature of the service provided during that road leg is closely linked to the Member State of establishment, which justifies the extension of the exemption provided for in paragraph 3 to that road leg.

1244 In the light of the foregoing, it must be held that, by not assimilating combined transport operations, where the same driver accompanies the vehicle and its cargo, to the bilateral transport operations referred to in Article 1(3) of Directive 2020/1057, the EU legislature did not infringe the principles of equal treatment and non-discrimination.

1245 That conclusion cannot be called into question by Romania's claim, based on the overall discriminatory effect resulting from all the provisions falling within the 'Mobility Package', which is the subject of the three actions brought by that Member State in Cases C-546/20 to C-548/20. It is sufficient to note that Romania has not shown, in Case C-548/20, that any discrimination arises from Directive 2020/1057 and that that Member State's arguments in that regard against Regulations 2020/1054 and 2020/1055, which have already been examined in the actions in Cases C-546/20 and C-547/20, were rejected.

1246 The Republic of Lithuania's first plea in law, the Republic of Bulgaria's second plea in law, Romania's second plea in law, the Republic of Cyprus's second plea in law and Hungary's second plea in law put forward in the alternative must therefore be rejected as unfounded.

(c) Infringement of the principle of proportionality

1247 The Republic of Lithuania, by its second and third pleas in law, the Republic of Bulgaria, by its first plea in law, Romania, by its first plea in law, the Republic of Cyprus, by its first plea in law, Hungary, by its first plea in law put forward in the alternative, and the Republic of Poland, by its first plea in law, claim that Article 1 of Directive 2020/1057 or certain provisions thereof do not comply with the requirements stemming from the principle of proportionality.

1248 First, those Member States dispute that the EU legislature carried out an examination of the proportionality of the provisions set out in Article 1(3) to (7) of Directive 2020/1057, in particular because of the absence of an impact assessment relating to the final version of those provisions or of some of them. In particular, although the third plea in law of the Republic of Lithuania formally

alleges infringement of the principle of 'sound legislative procedure' and 'essential procedural requirements', it is apparent from the arguments put forward in support of that plea that that Member State seeks, in reality, to demonstrate an infringement of the principle of proportionality on the ground that the effects of Article 1(3) of that directive were not properly assessed. Similarly, in that regard, although, in the context of its first plea in law put forward in the alternative, Hungary formally alleges a manifest error of assessment and an infringement of the principle of proportionality, its arguments in that context seek only to demonstrate an infringement of the latter principle.

1249 Secondly, those Member States, with the exception of Hungary, dispute the proportionality as such of some or all of the criteria laid down in Article 1(3) to (7) of Directive 2020/1057 for the purposes of determining the situations in which the rules on posting are applicable to drivers in the road transport sector.

(1) Whether the EU legislature has examined the proportionality of Article 1(3) to (7) of Directive 2020/1057

(i) Arguments of the parties

1250 The Republic of Bulgaria and the Republic of Cyprus point out that the EU legislature decided to apply the rules on posting to cross trade operations, without a time threshold, while exempting bilateral transport operations from those rules. However, the Parliament and the Council did not have at their disposal any impact assessment of that legislation, even though such an assessment had been requested on several occasions by several Member States, or any other information that might have confirmed that that difference in treatment between bilateral transport operations and cross trade operations was proportionate. Indeed, the proposal for a posting directive provided for a fundamentally different approach.

1251 The Republic of Lithuania claims that the adoption of Article 1(3) and (7) of Directive 2020/1057 infringes the principle of 'sound legislative procedure' in that the effects of those provisions were not properly evaluated.

1252 That Member State states, in that regard, that, under Article 11(3) TEU, the Commission is required to carry out broad consultations with the parties concerned in order to ensure that the European Union's actions are coherent and transparent. Article 2 of the Protocol on the principles of subsidiarity and proportionality also imposes a similar obligation on the Commission to carry out broad consultations. The same is true of Article 5 of that protocol, which provides that draft legislative acts are to be justified with regard to the principles of subsidiarity and proportionality and requires any draft legislative act to contain a detailed statement making it possible to appraise compliance with those principles, from which it follows that those drafts must take account of the need to ensure that any burden falling on economic operators is minimised and commensurate with the objective to be achieved. Moreover, under the Interinstitutional Agreement, it is incumbent on the Commission to carry out an impact assessment of its legislative initiatives that are likely to have significant economic, environmental or social implications.

1253 Admittedly, it is possible that an impact assessment will not be carried out in certain cases. However, in the present case, there was no objective reason to justify the absence of an impact assessment and, moreover, the EU institutions did not give any reasons for their decision not to carry out such an assessment. The judgment of 3 December 2019, *Czech Republic* v *Parliament and Council* (C-482/17, EU:C:2019:1035), relied on by the Council, is not relevant in the present case since, in the case which gave rise to that judgment, an impact assessment was carried out, whereas, in the present case, the impact of the contested provisions was not analysed.

1254 In the Republic of Lithuania's submission, the appropriate and necessary nature of the impact assessments cannot be interpreted as coming within a purely subjective assessment, depending solely on the will of the EU legislature. On the contrary, that assessment must be based on existing objective data, since that is the only way of ensuring that the legislature does not abuse its discretion.

1255 Romania makes essentially similar criticisms of Article 1(3) to (6) of Directive 2020/1057. It claims, in particular, that the documents that exclusively analyse the need for legislative intervention in relation to posting are insufficient. The identification of the necessary and appropriate solutions for combating the deficiencies found to exist cannot be based solely on an evaluation of the pre-existing situation of the transport market. It is also necessary to carry out a genuine and exhaustive

evaluation of the expected consequences of the proposed measures. In that regard, the mere fact that, during the legislative process, the Commission indicated that the EU legislature's approach would ensure the same objective as the proposal for a posting directive does not remedy the lack of an impact assessment.

1256 The Republic of Poland claims that, in the present case, there is nothing to indicate that the Parliament and the Council had at their disposal the information necessary to assess the effects of the contested provisions of Article 1 of Directive 2020/1057 on the environment, the economic situation of individual hauliers and the sector as a whole. As regards, in particular, the economic effects, hauliers would have to bear high costs due, first, to the need to adjust the remuneration of drivers to the rates in force in the Member States crossed. According to the information in the Impact assessment – social section (Part 1/2, pp. 9 and 10), there are fundamental differences between the Member States as regards drivers' pay levels. Those burdens are disproportionate to the advantages derived by drivers and in terms of fair competition where transport operations in the Member State concerned are rare or insignificant, in particular because of their duration. On the other hand, the administrative costs of applying the national rules of the host Member State on drivers' pay could amount to up to EUR 14 000 per year for a single haulier, not counting the costs of controls and possible fines.

1257 The increased costs and difficulties associated with cross trade and cabotage operations would limit the number of such operations, which, in turn, would have an impact on the increase in empty runs and would therefore lead to a general decrease in the level of safety of road traffic on the main communication routes in the European Union and to a decline in the performance of road transport. This would also lead to an increase in polluting emissions.

1258 For reasons essentially similar to those summarised in paragraphs 1250 to 1257 above, Hungary submits that the complete absence of an impact assessment constitutes a manifest error of assessment on the part of the EU legislature and an infringement of the principle of proportionality.

1259 In particular, in a communication of 15 April 2020 (Communication from the Commission to the European Parliament pursuant to Article 294(6) [TFEU] concerning the position of the Council on the adoption of a Regulation amending Regulation No 1071/2009, Regulation No 1072/2009 and Regulation No 1024/2012 with a view to adapting them to developments in the sector, a Regulation amending Regulation No 561/2006 on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods, and Regulation No 165/2014 as regards positioning by means of tachographs and a Directive amending Directive 2006/22 as regards enforcement requirements and laying down specific rules with respect to Directive 96/71 and Directive 2014/67 for posting drivers in the road transport sector and amending Regulation No 1024/2012 (COM(2020) 151 final)), the Commission considered that the restrictions on combined transport operations would give rise to problems, in particular because those restrictions could reduce the effectiveness of support for multimodal freight transport operations.

1260 The Parliament and the Council contend that those pleas and arguments are unfounded.

(ii) Findings of the Court

1261 As regards the argument relating to the alleged absence or inadequacy of an impact assessment, it should be recalled that, in the proposal for a posting directive, the Commission had proposed a system in the context of which, proceeding from the premiss that Directive 96/71 applied to the road transport sector, two of the nine elements of the working and employment conditions of the host Member State listed in Article 3(1) of that directive, namely the minimum duration of paid annual leave and remuneration, did not apply to postings of less than three days per month where drivers carry out international transport operations within the meaning of Regulation Nos 1072/2009 and 1073/2009. Conversely, according to that proposal, if the period of posting exceeded that threshold of three days, all nine elements of those terms and conditions of employment would have been applicable to the entire period of posting during the month in question.

1262 Thus, according to that proposal, drivers engaged in international transport operations would, in all cases, have been posted and most of the terms and conditions of employment of the host Member State listed in Article 3(1) of Directive 96/71 would have been applicable to those drivers. In addition, it would have been up to employers to record the time that each driver spends each month in different Member States in order to determine whether the rules of those Member States on minimum paid annual leave and remuneration, referred to in this provision, also apply.

1263 Having considered that solution to be unsatisfactory, the EU legislature finally opted for a measure consisting of distinguishing between different types of transport operations. Thus, Article 1(3) to (7) of Directive 2020/1057, read in the light of recital 13 thereof, provides for the exemption from the rules on posting, and therefore from all the terms and conditions of employment of the host Member State, for any bilateral transport operation, for all transit operations and for certain parts of a combined transport operation, whereas, in principle, it makes both cross trade operations and cabotage operations subject to those rules.

1264 It is therefore common ground that the Impact assessment – social section did not examine the effects of the solution finally adopted and that that solution was not the subject of an additional impact assessment.

1265 It should, however, be pointed out that, in accordance with the case-law referred to in paragraphs 218 to 226 above, an impact assessment is not binding on the EU legislature, since it remains free to adopt measures other than those which were the subject of that impact assessment. It also follows from that case-law that, for the purposes of assessing the proportionality of the measures which it adopts, the EU legislature may take into account not only the impact assessment concerned, but also any other source of information, including information in the public domain.

1266 Accordingly, the mere fact that, in the present case, the EU legislature adopted, in Directive 2020/1057, provisions that are different and, moreover, in some cases, more restrictive for road transport undertakings than those initially proposed by the Commission in the proposal for a posting directive and which had been the subject of the Impact assessment – social section cannot, in itself, demonstrate that the EU legislature infringed the principle of proportionality.

1267 Contrary to what is suggested by the Republic of Lithuania and, to a lesser extent, Romania, those considerations are in no way called into question by the provisions of the Interinstitutional Agreement. While it is true that point 15 of that agreement states that 'the … Parliament and the Council will … carry out impact assessments in relation to their substantial amendments to the Commission's proposal', that point does not, as has already been indicated in paragraphs 224 and 231 above, contain any firm obligation on those institutions, since it provides only for the option of carrying out such an impact assessment when, in its express terms, the Parliament and the Council 'consider this to be appropriate and necessary for the legislative process'.

1268 Consequently, it is necessary, in the first place, to examine the other sources of information referred to by the Parliament and the Council in order to ascertain whether, as those institutions maintain, they made it possible, together with the Impact assessment – social section, to assess the effects arising from the distinction made in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, between cross trade operations and bilateral transport operations.

1269 In that regard, it should be noted that, in view of the nature of the rules laid down in Article 1 of Directive 2020/1057, the operating and compliance costs and any savings achieved for a given undertaking as a result of the implementation of those rules depend on the extent to which that undertaking carries out different types of transport operations. As the Council points out, the EU legislature had at its disposal data published by Eurostat relating to the various types of operations carried out, in particular those set out in a study relating to the 2014-2018 period ('Road freight transport by journey characteristics', pp. 3 to 5, 10 and 11) and in a table relating to 2018. Since those data made it possible to determine the volume of cross trade operations and bilateral transport operations carried out per year between a given pair of Member States, they could constitute a source of information relevant to the EU legislature in order to assess the proportionality of the distinction between cross trade operations and bilateral transport operations finally adopted in Directive 2020/1057.

1270 Furthermore, such data in turn make it possible to assess the extent to which drivers from the various Member States will be regarded as being posted to other Member States, for the purposes of the rules laid down in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof.

1271 As the Council has also argued before the Court, those data relating to the various types of transport operations, combined with the information contained in the Impact assessment – social section (Part 1/2, pp. 62 to 65) and with that in the publicly available studies on which that analysis is based, such as, in particular, the Commission's study (DG Move) entitled 'Support study for an impact assessment for the revision of the social legislation in road transport. Final report' (May

2017, pp. 62 to 76) and which relate, inter alia, to pay differences between different pairs of Member States, make it possible to estimate the costs arising from the distinction made in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, between cross trade operations and bilateral transport operations.

1272 In that regard, it must be pointed out that the applicant Member States that challenged the absence or inadequacy of an impact assessment of Directive 2020/1057 did not explain how the Council's findings, as set out in paragraphs 1269 to 1271 above, are incorrect. Nor has it been explained how the general conclusions in the Impact assessment – social section (Part 1/2, p. 60), according to which the impact on road safety and occupational health will be marginal, cannot be transposed to the model finally adopted.

1273 In those circumstances, the EU legislature had sufficient information to assess the effects of the distinction made between bilateral and cross trade operations in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof.

1274 In the second place, the EU legislature cannot be criticised for not having examined the effects arising from Article 1(5) of Directive 2020/1057, under which transit operations benefit from an exemption from the rules on posting, and from Article 1(7) of that directive, under which cabotage operations are regarded as involving a posting situation, so that those rules must be applied.

1275 In that regard, it is sufficient to note that, as is apparent from paragraph 1179 above, the Court has already held, in the context of its interpretation of Directive 96/71 as it applied before the entry into force of Directive 2020/1057, that the rules on posting laid down in Directive 96/71 did not apply to transit operations, whereas, by contrast, they did apply, in principle, to cabotage operations carried out entirely within the territory of the host Member State.

1276 Since no change to the applicable substantive rules can thus be specifically attributed to Article 1(5) and (7) of Directive 2020/1057, the argument that an additional impact assessment would have been necessary in relation to those provisions must be rejected.

1277 In the third place, in so far as Hungary complains, in essence, that the EU legislature infringed the principle of proportionality by adopting Article 1(6) of Directive 2020/1057 without having examined the effects of that provision, it should be recalled that, as is apparent from recital 12 of that directive, the EU legislature considered that the nature of the service provided during the initial or final road leg of a combined transport operation is closely linked to the Member State of establishment if that road leg, taken in isolation, is a bilateral transport operation and the existence, in such a case, of a sufficient link with the territory of a host Member State is lacking, with the result that the application of the rules on posting is not justified. By contrast, where the transport operation during the road leg is carried out in the host Member State or as a cross trade operation, there is a sufficient link with the territory of a host Member State and therefore the posting rules must apply.

1278 It is common ground that the application of the rules on posting to combined transport, as laid down in Article 1(6) of Directive 2020/1057, was also not addressed in the Impact assessment – social section. Although, as is apparent from paragraphs 1261 to 1264 above, the Commission had envisaged, in the proposal for a posting directive drawn up on the basis of that impact assessment, the adoption of a criterion relating to the duration of the transport operation in order to determine the circumstances in which those rules would apply, the EU legislature finally opted, in Directive 2020/1057, for an approach consisting of distinguishing between different categories of transport operations, including combined transport operations.

1279 It is therefore necessary to examine whether, in the present case, the information before the Parliament and the Council was sufficient to enable them to assess the proportionality of the exemption contained in Article 1(6) of Directive 2020/1057.

1280 In that regard, it is apparent from the information submitted to the Court that the EU legislature had a significant amount of information on combined transport from the preparatory work relating to the proposed amendments to Directive 92/106. That information appeared, inter alia, in the impact assessment concerning the revision of that directive (Commission Impact Assessment accompanying Proposal COM(2017) 648, SWD(2017) 362), in a document drawn up in 2015 at the request of the Commission and containing data on combined transport (KombiConsult, 'Analysis of the EU Combined Transport', 2015), in the update of those data carried out in 2017 (ISL/KombiConsult, 'Updating EU combined transport data', 2017), in a supplement dating from 2018 on the same data (TRT Trasporti e Territorio srl, 'Gathering additional data on EU combined

transport', 2017) and in a consultation commissioned by the Commission in support of the impact assessment (KombiConsult, 'Consultations and related analysis in the framework of impact assessment for the amendment of Combined Transport Directive (92/106/EEC)', 2017).

1281 In particular, the study entitled 'Analysis of the EU Combined Transport' (pp. 175 to 177) proposed a detailed examination of the market for accompanied and unaccompanied combined transport, offering, inter alia, a presentation of the services of all six undertakings providing accompanied road services in the European Union and of the largest providers of combined road/unaccompanied rail transport. That study also set out data on the distances involved in the initial or final leg of combined road/rail transport (pp. 67 to 70). Furthermore, the Commission's impact assessment accompanying the proposal for a directive amending Directive 92/106, referred to in paragraph 1280 above, presented data relating, first, to the average, median and greatest distances of road and non-road legs for combined transport and, secondly, to the type and volume of multimodal transport which falls within the concept of 'combined transport' within the meaning of Directive 92/106 and, therefore, falls within the scope of Article 1(6) of Directive 2020/1057.

1282 It is thus apparent from the information contained in the documents communicated to the Court in the present actions, the usefulness of which is not specifically disputed by Hungary, that for the purposes of the adoption of Directive 2020/1057, the EU legislature had at its disposal relevant basic data relating to the combined transport market. Those data, together with other information in the possession of the EU legislature, in particular that relating to pay differentials between different pairs of Member States, referred to in paragraph 1271 above, enabled it to assess the effect of the criteria relating to the application of the rules on posting to combined transport laid down in Article 1(6) of Directive 2020/1057. Thus, the EU legislature had in its possession sufficient information to justify the choice of those criteria in the exercise of its broad discretion.

1283 The foregoing considerations cannot be called into question by the Republic of Poland's arguments relating to the alleged failure to take into account the negative cumulative effect of the contested provisions of Directive 2020/1057 and those of Regulation 2020/1055. While, by that argument, that Member State appears to criticise the EU legislature for inconsistency in the choices underlying the contested provisions of each of those acts, it is sufficient to note in that regard that, as the Parliament submits, the 'Mobility Package' consists of several legislative acts which pursue objectives that, while complementary, are nonetheless different. It cannot, therefore, be held that that legislature infringed the principle of proportionality on the sole ground that the conditions imposed by Regulation 2020/1055 to demonstrate that an economic entity has an effective and stable establishment in a Member State are different from the criteria laid down by the provisions of Directive 2020/1057 for the purposes of the application of the rules on posting to road transport drivers.

1284 The argument that the EU legislature did not examine the proportionality of Article 1(3) to (7) of Directive 2020/1057 must therefore be rejected as unfounded.

(2) The proportionality of Article 1(3) to (7) of Directive 2020/1057

(i) Arguments of the parties

1285 According to the Republic of Bulgaria and the Republic of Cyprus, adverse effects arise from the distinction made in Directive 2020/1057 between cross trade operations and bilateral transport operations in terms of the costs of compliance with the new requirements and the costs related to the documentation of each posting and the application of the rules of the host Member State. Drivers often combine cross trade operations with bilateral transport operations. However, the exemption from the application of the rules on posting does not benefit all cross trade operations carried out at the same time as bilateral transport operations. It would therefore be very complicated for the haulier to assess when there is a posting and when there is no such posting. Directive 2020/1057 also fails to specify how to calculate the hours during which a driver must be regarded as being posted to a particular Member State. This results in a heavy burden for those hauliers, the majority of which are SMEs.

1286 The burden placed on hauliers engaged in cross trade operations, which has thus become difficult to bear, could lead to a redirection towards other types of activity, a relocation to third countries, a reduction in turnover or even the bankruptcy of hauliers. It is likely, moreover, that that burden causes inefficiencies and increases the environmental impact of road transport. It is also likely to distort competition, in so far as Directive 2020/1057 imposes no obligation and does not apply to hauliers established outside the European Union.

1287 It is possible to distinguish three legitimate objectives pursued by Directive 2020/1057, namely, (i) satisfactory working conditions and social protection for drivers, (ii) appropriate conditions for transport undertakings and the need for fair competition between them and (iii) freedom to provide cross-border services. However, not only does that directive fail to maintain a balance between those objectives, but, in addition, it does not enable any of them to be achieved.

1288 As regards the first objective, the higher remuneration that drivers might receive relates, most frequently, only to brief periods spent in the Member State of loading or unloading, so that drivers' working conditions and social protection are only very slightly improved.

1289 As regards the second objective, the fact that undertakings carrying out cross trade operations are subject to the rules on posting, while undertakings carrying out bilateral transport operations are exempt, encourages unfair competition. The comparative advantage of hauliers established in the peripheral Member States lies in their lower costs, which result, inter alia, from a lower cost of living and lower wages. As a result of the contested provisions of Article 1 of Directive 2020/1057, hauliers involved in cross trade operations are now placed in a less competitive position than hauliers carrying out bilateral transport operations. That distorts competition between the centre of the European Union, where hauliers engage primarily in bilateral transport operations, and the Member States such as the Republic of Bulgaria and the Republic of Cyprus, where hauliers mainly carry out cross trade operations.

1290 As regards the third objective, those provisions restrict the freedom to provide cross-border services because of the increase in costs that they entail.

1291 According to the Republic of Bulgaria and the Republic of Cyprus, it is neither appropriate nor necessary to distinguish between bilateral transport operations and cross trade operations for the purposes of applying the rules on posting. In neither case is there a sufficiently strong link with each of the countries through which the driver passes. Apart from the Member State of departure or destination, workers carrying out a bilateral transport operation perform the same work as drivers carrying out a cross trade operation. The Member State of departure or destination has no impact on the link between the driver and the host Member State. Conversely, there is a clear link to a territory in the context of cabotage operations.

1292 In the view of the Republic of Bulgaria and the Republic of Cyprus, the appropriate measure would be to exempt international transport entirely from the application of posting rules. Such an exemption is justified by the particular situation of international transport and its extremely mobile nature, a situation characterised by the absence of a sufficient connecting link with the territory of Member States other than the Member State of establishment. Thus, a total exemption would make it possible to achieve all the objectives pursued. As for the solution consisting of applying, with a temporal threshold, the rules on posting to the entire international transport sector, it would, admittedly, be more appropriate than the model adopted, but nonetheless poses serious problems, since its impact would still be disproportionate in terms of costs, administrative burdens imposed on SMEs and difficulties connected with the interpretation and application of the rules. An alternative approach which provides clarity would be that followed by the Court in paragraph 48 of the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), consisting of presuming the existence of a sufficient connecting link where, in the context of cross trade operations, a minimum number of specific tasks are performed, in a specific Member State and in a given month, for example work involving the loading or unloading of goods or the maintenance or cleaning of transport vehicles.

1293 The Republic of Lithuania claims that Article 1(3) of Directive 2020/1057 infringes the principle of proportionality, since the criteria laid down in that provision are manifestly inappropriate on account of the adverse economic and social consequences which it generates. The rules on posting are intended, in principle, to offset the additional costs that the worker must bear because he or she performs his or her work obligations in a Member State other than that in which he or she is habitually resident. However, in the case of short-term cabotage and cross trade, drivers usually have no link with the host Member State, generally spend only a very short time there and therefore incur only minimal costs in that State.

1294 Furthermore, the criterion based on the type of transport operations for the purposes of whether or not the posting rules apply gives rise to indirect discrimination for transport undertakings established in Member States situated on the periphery of the European Union, discourages the short-term provision of services and, in essence, restricts competition, at the expense, in particular, of SMEs which account for 99% of the road transport market in the European Union. Moreover, it is likely that those rules will have the effect of encouraging SMEs to cease carrying out cross trade

operations or to transfer their activities to Member States situated in or around the centre of the European Union. Until the adoption of Directive 2020/1057, no administrative burden existed in that regard.

1295 The Republic of Lithuania emphasises that the criterion of duration constitutes an example of an objective criterion that establishes the existence of a factual link with the Member State in which the work is actually carried out, without however rejecting the possibility of applying other criteria if those criteria are objectively justified, ensure a sufficient link with the Member State in which the work is carried out and comply with the principle of proportionality. Furthermore, when the Court assessed the temporal criterion in the case which gave rise to the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), it ruled only on cabotage operations and not on bilateral transport and cross trade operations.

1296 Romania also claims that the criterion for identifying a sufficient link with a Member State, as adopted by the EU legislature, for the application of posting rules in the field of road transport is manifestly inappropriate, since it is not capable of establishing the existence of a sufficient link between the driver and the host Member State.

1297 Furthermore, the application of that criterion would generate uncertainty in terms of identifying the host Member State and, consequently, the applicable legislation. Thus, it is not clear whether the application of that criterion presupposes the identification of a single host Member State with which the driver has a sufficient link in the general context of the transport operation concerned, or whether the legal provisions in force in all the Member States in which loading or unloading takes place are cumulatively applicable.

1298 In any event, the fact that the third and fourth subparagraphs of Article 1(3) of Directive 2020/1057 take into consideration, in order to determine the sufficient link between the driver and the territory of a host Member State, the existence of an activity of loading and/or unloading goods is not optimal. It is only occasionally, namely in 29% of cases, that drivers carry out such activities. Furthermore, regulating posting in the transport sector according to the criterion of the transport operation have direct consequences on the market, namely that both cross trade and combined transport operations are discouraged, whereas the latter are important for reducing polluting emissions from transport.

1299 As is also apparent from the Impact assessment – social section, the lack of flexibility in the social rules applicable to transport gives rise to situations of non-compliance with the legislation. Thus, in the event of a change, during the transport activity, in the number of additional activities associated with a bilateral transport operation, such as to render the rules on posting applicable, the haulier might be unable to submit a posting declaration to the competent national authorities, given that Article 1(11)(a) of Directive 2020/1057 requires the submission of such a declaration at the latest at the commencement of the posting. Compliance with that provision is therefore difficult in certain situations by reason of the contested provisions of Article 1 of that directive.

1300 In view of the problems referred to above, relating to compliance with the principle of legal certainty, Directive 2020/1057 is liable to disrupt the provision of transport services by SMEs and to impose on them obligations that are disproportionate to the benefits that it entails for drivers.

1301 In the judgment of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151, paragraphs 44 to 49), the Court found that it was necessary to refer to a combination of factors in order to identify the Member State with which the work has a significant link, where transport activities are carried out in several Member States. The use of a single criterion, like Directive 2020/1057, is insufficient and, therefore, does not prove the existence of such a link. In that regard, Romania also argues that the application of the temporal element, namely the minimum duration of the activity, should have been used as a criterion by that directive for the purposes of identifying the sufficient link with the territory of the host Member State, as regards types of operations other than cabotage. The relevance of the application of that criterion follows both from the Impact assessment – social section and from a reading of the general legal framework applicable to posting. The absence of a significant link with the territory of the host Member State in the case of an activity carried out over a short period follows, in particular, from Article 3(4) of Directive 96/71, which grants Member States the right to derogate from the obligations relating to posting where the duration of the posting does not exceed one month.

1302 The Republic of Poland submits that Article 1(3), (4), (6) and (7) of Directive 2020/1057 does not comply with the principle of proportionality in that the criteria for the application of the rules on

posting to drivers, laid down in those provisions, are not objective, do not take account of relevant factors in the situation which they are intended to regulate and give rise to disproportionate burdens on undertakings and adverse effects on the environment.

1303 Those provisions are not appropriate for attaining the stated objectives since, in particular, they have the effect of limiting the services provided by undertakings established in Member States located on the periphery of the European Union instead of ensuring fair competition. The rules on posting are applicable to cross trade operations and cabotage operations in which those undertakings play a leading role.

1304 The EU legislature omitted the other elements attesting to the existence of a link between the driver and the host Member State, in particular the duration of the driver's stay on the territory of that State, as well as the Member State of establishment. As is apparent from the Impact assessment – social section, the temporal criterion best corresponds to the mobile nature of transport services. In the judgment of 15 March 2001, *Mazzoleni and ISA* (C-165/98, EU:C:2001:162), the Court held that it was incumbent on the competent authorities of the host Member State, in order to determine whether the application of the legislation of that State imposing a minimum wage was necessary and proportionate, to evaluate all the relevant elements, including the duration of the provision of services.

1305 Under Directive 2020/1057, two drivers carrying out transport operations on the same journey receive different remuneration depending on the place of loading or unloading. Furthermore, there is no objective justification for exempting certain transport operations between third countries, provided for in Article 1(3) and (4) of that directive. Nor does the Republic of Poland see any explanation for the reservation that the exemption relating to two goods transport operations between third countries applies to the return journey following the bilateral transport operation from the Member State of establishment, but not to the journey to the host Member State.

1306 Moreover, the exemptions provided for by the contested provisions of Article 1 of Directive 2020/1057 give rise to doubts as to their interpretation. For example, consideration should be given to determining when the application of the rules of the host Member State should begin where the driver carries out an additional loading or unloading activity not covered by an exemption under Article 1(3). The interpretation of Article 1(4) of that directive gives rise to similar doubts. Moreover, there is no objective justification for the fact that two exemptions for additional activities linked to a bilateral transport operation are authorised, under that paragraph 3, in respect of the transport of goods, whereas only one exemption is provided for an additional activity in the case of the transport of passengers.

1307 The Parliament and the Council contend that those pleas and arguments are unfounded.

(ii) Findings of the Court

1308 It should be recalled that the objective pursued by Directive 2020/1057, in the light of which the proportionality of Article 1(3) to (7) of that directive must be examined, is to establish, by laying down specific rules for the purposes of determining the Member State whose working and employment conditions are guaranteed for road transport drivers, a balance between, on the one hand, improving the social and working conditions of those drivers, and, on the other hand, facilitating the exercise of freedom to provide road transport services, on the basis of fair competition between transport undertakings, such balance taking into account the particular characteristics linked to the extreme mobility of labour in that sector and aiming to ensure the proper functioning of the internal market.

1309 The Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus and the Republic of Poland do not dispute the legitimacy of that objective as such, but submit that the criteria laid down in Article 1(3) to (7) of Directive 2020/1057 or some of them infringe, in themselves, the principle of proportionality.

1310 In order to assess the merits of such complaints, it is therefore necessary to examine whether those criteria are suitable for the purpose of achieving the objective pursued, whether they do not manifestly go beyond what is necessary to achieve that objective and whether they are proportionate to that objective.

– *Whether Article 1(3) to (7) of Directive 2020/1057 is appropriate to achieve the objective pursued*

1311 As regards, in the first place, the appropriateness of Article 1(3) to (7) of Directive 2020/1057 to achieve the objective pursued, it should be recalled that those provisions lay down criteria based on the type of transport operations carried out and that, as the Advocate General pointed out in point 968 of his Opinion, each type of transport referred to in those provisions has a different link either with the territory of the haulier's Member State of establishment or with the territory of one or more host Member States.

1312 In particular, as is apparent from Article 1(3) and (4) of Directive 2020/1057, a driver carrying out bilateral transport of goods or passengers is not considered to be posted for the purposes of Directive 96/71 since, as is apparent from recital 10 of Directive 2020/1057, in such a case the nature of the service is closely linked to the Member State of establishment. On the other hand, as is apparent from recital 13 of that directive, a driver carrying out a cross trade operation is considered to be posted for those purposes, since that driver and that operation have a sufficient link with the territory of the host Member State. Furthermore, certain additional activities of loading and/or unloading goods and picking up and/or setting down passengers in the Member States or third countries through which the driver passes are exempted from the posting rules in accordance with the third to fifth subparagraphs of Article 1(3) and the third and fourth subparagraphs of Article 1(4) of that directive, on the grounds that those additional activities are linked to a bilateral transport operation, which is itself exempt on account of its link with the territory of the Member State of establishment, and that they are not of such a scope as to be capable of calling into question that link.

1313 Similarly, it is apparent from Article 1(5) of Directive 2020/1057, read in conjunction with recital 11 thereof, that a driver carrying out a transit operation consisting of crossing a Member State without loading or unloading goods and without picking up or setting down passengers is not considered to be posted. In such a case, there is no significant link between the activities of the driver and the transit Member State.

1314 By contrast, as is apparent from Article 1(7) of that directive, read in conjunction with recital 13 thereof, a driver carrying out a cabotage operation is considered to be posted since the entire transport operation takes place in a host Member State, so that the service is closely linked to the territory of the latter Member State.

1315 Finally, under Article 1(6) of Directive 2020/1057, a driver carrying out the initial or final road leg of a combined transport operation is not to be considered to be posted if that road leg, taken in isolation, consists of bilateral transport operations. In such a case, as is apparent from recital 12 of that directive, the nature of the service provided during that journey is closely linked to the Member State of establishment, whereas, where the transport operation during the road leg in question is carried out in the host Member State or as a cross trade operation, there is a sufficient link with the territory of the host Member State, with the result that the rules on posting apply.

1316 It follows that, as the Council rightly contends and as the Advocate General observed in point 969 of his Opinion, by adopting, in Article 1(3) to (7) of Directive 2020/1057, criteria based on the type of transport operations, the EU legislature did not take into consideration only the territory in which the driver is present, but compared, for each type of service provided, the link between him or her and the host Member State and the relationship between him or her and the Member State of establishment, in order to strike a fair balance between the various interests involved.

1317 Moreover, in its interpretation of the provisions of Directive 96/71, as they applied before the entry into force of Directive 2020/1057, the Court held that a worker must be regarded as being posted to the territory of a Member State within the meaning of Directive 96/71 if the performance of his or her work has a sufficient link with that territory (see, to that effect, judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraph 45 and the case-law cited).

1318 After noting, in that judgment, that the finding that there was a sufficient link with the territory of a host Member State required an overall assessment of all the factors that characterise the activity of the worker concerned, the Court also identified, first, certain types of road transport operations which were to be regarded as having such a link and, therefore, as involving a situation of posting and, secondly, other types of road transport operations which, on the contrary, did not have that connecting link and which were therefore to be exempted from the rules on posting. In particular, the Court found that a driver carrying out a transit operation or a bilateral transport operation could not be considered to be 'posted' for the purposes of Directive 96/71, whereas a driver carrying out a cabotage operation should, in principle, be considered to be 'posted' (see, to that effect, judgment

of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraphs 45, 49, 62, 63 and 65 and the case-law cited).

1319 In so doing, the Court implicitly but necessarily recognised the appropriateness, for the purposes of determining whether there was a sufficient link between a driver engaged in international road transport and the host Member State, justifying the application of the rules on posting to that driver, first, of the approach consisting of identifying the existence of such a link depending on the type of operation concerned and, secondly, of the relevance, in that context, of some of the specific types of operations listed in Article 1(3) to (7) of Directive 2020/1057, read in conjunction with recital 13 thereof, namely bilateral transport and transit operations, to which those rules do not apply, and cross trade and cabotage operations, to which those rules may apply.

1320 Admittedly, the arrangements for applying the rules on posting to cross trade operations under Directive 96/71, as interpreted by the Court in the case-law set out in paragraphs 1317 to 1319 above, while consistent with the same logic, are not strictly the same as those resulting from the application of the provisions of Directive 2020/1057.

1321 In particular, first, before the entry into force of Directive 2020/1057, it was necessary to carry out an overall assessment of all the factors characterising the activity of a driver engaged in cross trade operations in order to determine whether the performance of his or her work had a sufficient link with the territory of the host Member State (see, to that effect, judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraphs 45 and 51). By contrast, under Article 1(3) and (4) of that directive, read in the light of recital 13 thereof, such a link is considered to exist, in principle, where a driver carries out a cross trade operation.

1322 However, that difference does not detract from the relevance of the distinction drawn by Directive 2020/1057 between cross trade operations and bilateral transport operations for the purposes of the application of the rules on posting. On the contrary, such a difference tends rather to illustrate the increased legal certainty which results from the system deriving from the rules laid down in Article 1(3) and (4) of that directive, read in conjunction with recital 13 thereof, as compared with the system applicable before its entry into force, in that the former system clarifies the fact that cross trade operations generally involve posting of the driver since the service is provided outside the Member State of establishment.

1323 Secondly, in addition to challenging the choice of the general criterion based on the type of transport operation, Romania questions the relevance of the specific criterion relating to the place of loading or unloading of the goods, laid down in the third to fifth subparagraphs of Article 1(3) of Directive 2020/1057.

1324 In that regard, it is true that that provision, like the third and fourth subparagraphs of Article 1(4) of that directive, relating to passenger transport, differs on that point from the system applicable before the entry into force of that directive. Whereas, under those provisions, a limited number of additional loading and/or unloading activities benefit from an extension of the exemption applicable to bilateral transport operations, the Court has held, in its interpretation of Directive 96/71 as it applied before the entry into force of Directive 2020/1057, that operations involving the loading and/or unloading of goods were among the relevant factors for the purposes of assessing whether the performance of work by a driver had a sufficient link with the territory of the host Member State, with the result that the posting rules laid down in Directive 96/71 were applicable to him or her (see, to that effect, judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraph 48).

1325 However, the fact that the Court has thus recognised the relevance of such additional activities in the overall assessment of whether there is a sufficient link between the transport operation and the host Member State does not prevent the EU legislature from deciding, within the broad margin of discretion which it enjoys in that context, to make them a specific criterion. Thus, in the present case, the EU legislature did not disregard that discretion when, in order to facilitate the conduct of operations regarded as effective and, therefore, the freedom to provide services, without unduly impairing the level of social protection guaranteed for drivers carrying out bilateral transport operations, but also to enhance legal certainty, it considered that it was necessary to allow those drivers to carry out a limited number of additional activities of loading and/or unloading goods, without those activities having the effect that the service concerned is regarded as being provided in the context of a posting for the purposes of Directive 96/71.

1326 The Republic of Poland also points out that, under the third subparagraph of Article 1(3) of Directive 2020/1057, only one loading and/or unloading activity may be exempted, whereas, under the fourth subparagraph of Article 1(3) of that directive, two loading and/or unloading activities may be exempted.

1327 In that regard, it is true that, as is apparent from a combined reading of those provisions, only one additional loading and/or unloading activity may be exempted in the context of a bilateral transport operation departing from the Member State of establishment, whereas a maximum of two such activities may be exempted on the return journey, that is to say when the bilateral transport operation ends in the Member State of establishment, if no additional operations were carried out during the journey departing from that Member State.

1328 However, first, as the Advocate General observed in point 993 of his Opinion, and as is apparent, in essence, from paragraph 1324 above, the imposition of limits on the number of additional activities that may benefit from an extension of the exemption from the rules on posting laid down for bilateral transport operations reflects a political choice on the part of the EU legislature, by which it seeks to achieve a fair balance between the objective of facilitating the freedom to provide services and the objective of ensuring a certain level of social protection for drivers in the road transport sector. Moreover, such quantitative limits are also liable to enhance legal certainty compared to the rules previously in force under Directive 96/71.

1329 Secondly, although the number of additional activities which may benefit from an exemption on that basis varies according to whether the bilateral transport operation is carried out from or to the Member State of establishment, it cannot, however, be inferred from this that the EU legislature chose a measure which was inappropriate for achieving the objective pursued, having considered that such a differentiation best made it possible to ensure, as the Council maintained, effective control by the national authorities of the conditions justifying the exemptions granted on that basis. While it is impossible for these authorities to determine the number of additional operations that the driver will subsequently carry out on the return journey when the driver leaves the Member State of establishment, they are able to check the number of additional operations carried out by the driver during that return journey.

1330 Lastly, as regards combined transport operations, although in its case-law on the interpretation of Directive 96/71 as applicable before the entry into force of Directive 2020/1057, the Court did not specify the manner in which the rules on posting applied to that type of operation, the fact remains that the choice made by the EU legislature in that regard, as embodied in Article 1(6) of Directive 2020/1057, is consistent with the logic followed by the Court in the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976). Whereas, in paragraph 49 of that judgment, the Court held that bilateral transport operations should be exempt from the rules on posting, the EU legislature merely extended, in Article 1(6), the benefit of that exemption for hauliers to those parts of a combined transport operation carried out by road that can be assimilated to a bilateral transport operation.

1331 It should also be noted that, by choosing to provide such clarification with regard to combined transport, the EU legislature has enhanced legal certainty as to the manner in which the rules on posting apply to that particular type of transport and, in so doing, contrary to what Romania claims in that regard, has encouraged that type of transport operation, in accordance with the more general objective of Directive 2020/1057 of facilitating the freedom to provide services.

1332 In the light of those considerations, it cannot be held that, by opting, in Article 1(3) to (7) of Directive 2020/1057, for a criterion for the application of the rules on posting based on the various types of road transport operations, the EU legislature adopted a criterion that is inappropriate for achieving the objective pursued.

1333 None of the arguments put forward by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus and the Republic of Poland is capable of calling that conclusion into question.

1334 First, as regards the arguments put forward by Romania and the Republic of Poland concerning the alleged legal insecurity and uncertainty created by the contested provisions of Article 1 of Directive 2020/1057, it should be noted, first, that, in general, the principle of proportionality and, as is apparent from paragraph 159 above, the principle of legal certainty do not preclude the EU legislature, in the context of a provision which it adopts, from employing an abstract legal concept, nor do those principles require such an abstract provision to refer to the various specific situations

in which it may apply, in so far as not all those situations can be determined in advance by that legislature.

1335 More specifically, as regards the question of when the rules on posting under Article 1(3) of Directive 2020/1057 apply, it is sufficiently clear from that provision that, where any of the conditions laid down therein is not met, in particular where more than one additional operation is carried out during the journey from a particular bilateral operation, the exemption for bilateral operations cannot be applied.

1336 Nor can the EU legislature be criticised for having adopted an inappropriate criterion for the application of the rules on posting to cross trade operations because it failed to specify, where such an operation is carried out in several Member States, which of those Member States may have their legislation applied to the driver concerned. As is apparent from paragraphs 1321 and 1322 above, recital 13 of Directive 2020/1057 states, with regard to that type of transport, that a sufficient link between the service provided and the territory of the host Member State is considered to exist, in principle, where a driver carries out a cross trade operation and the wording of that recital reveals the possibility that the service provided may have such a link with several host Member States. Thus, it is for the transport undertakings and the competent national authorities to assess, in accordance with the specific criteria laid down in Article 1(3) to (7) of Directive 2020/1057, which Member State or Member States have such a link justifying the application of their national legislation on terms and conditions of employment.

1337 Romania also claims that the criterion based on the types of transport operation and, where applicable, the existence of an activity of loading and/or unloading goods and the picking up and/or setting down of passengers makes it difficult for transport undertakings to comply with the obligation, laid down in Article 1(11)(a) of Directive 2020/1057, to submit a posting declaration to the competent authorities at the latest at the commencement of the posting. In that regard, it suffices to note that that Member State has not explained why, in the event of an unplanned operation in a Member State for which no posting declaration has been submitted, the transport undertaking could not, as the Council suggests, submit such a declaration by reusing the data already provided and adding information on the additional Member State in which the posting will take place.

1338 Nor has Romania explained how the solution which it would have liked the EU legislature to favour, consisting of examining all the characteristics of each transaction, including its duration, in order to determine whether there is a sufficient link between the operation in question and the host Member State, would create greater legal certainty by facilitating the identification of situations in which a driver must be regarded as being ‘posted’ within the meaning of Article 2(1) of Directive 96/71.

1339 Secondly, some of the applicant Member States claim that the contested provisions of Article 1 of Directive 2020/1057 are, by reason of the inappropriate criteria adopted by the EU legislature, liable to discourage, rather than facilitate, the freedom to provide services, in particular cross trade or combined transport.

1340 However, first, it should be recalled that, as is apparent from paragraphs 1318 and 1319 above, the rules on posting applicable to cabotage operations have not changed as a result of the entry into force of Directive 2020/1057. Secondly, as regards combined transport, the EU legislature, as is apparent from paragraphs 1330 and 1331 above, has, in essence, merely specified the circumstances in which the parties involved in such an operation are to be exempted from those rules, so that the provisions of Article 1 of that directive relating thereto cannot be regarded as having the effect of discouraging that type of transport either.

1341 In any event, as the Advocate General observed, in essence, in points 995 and 996 of his Opinion, the EU legislature was entitled to take the view, in the context of its broad discretion, that, given the need to restore the balance of the interests involved, increased social protection for drivers could result in an increase in the costs borne by certain transport undertakings. In such a context, the fact that the legislature did not favour certain activities on the market in the way that certain Member States would have wished falls within that margin of discretion and does not imply that the criteria thus chosen are not appropriate for attaining the objectives pursued.

1342 In the light of the foregoing, it must be held that the criteria laid down by the contested provisions of Article 1 of Directive 2020/1057 are suitable for achieving the objective pursued by those provisions.

– *The necessity of Article 1(3) to (7) of Directive 2020/1057*

1343 As regards, in the second place, the necessity of Article 1(3) to (7) of Directive 2020/1057, that is disputed by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus and the Republic of Poland, on the ground that there are less restrictive alternative options to those provisions, namely, (i) granting international transport a general derogation from the rules on posting, (ii) introducing a duration threshold of the type set out in the proposal for a posting directive and (iii) taking account of all the factors characterising the service concerned, including the duration of the service in the host Member State.

1344 However, by excluding such options, the EU legislature did not exceed its broad discretion in setting relevant criteria for those purposes.

1345 As regards, first, the option, put forward by the Republic of Bulgaria and the Republic of Cyprus, of entirely excluding international road transport from the rules on posting, it suffices to point out that such a solution would not, by its very nature, make it possible to achieve the balance sought between the interests involved, since, in particular, it would have the effect neither of increasing the social protection of drivers nor of creating fairer conditions of competition on the market.

1346 As regards, secondly, the option of introducing a time threshold, the less restrictive nature of that option is promoted by the Republic of Lithuania and, to a lesser extent, by the Republic of Bulgaria and the Republic of Cyprus. As regards Romania, it emphasises the importance of the criterion of the duration of the journey, taken together with other factors, stressing, in particular, that the relevance of that criterion is apparent from Article 3(4) of Directive 96/71, which allows Member States to provide that certain obligations relating to posting may be derogated from where the duration of the posting does not exceed one month.

1347 However, it should be noted that Directive 2020/1057 does not preclude the option provided for in Article 3(3) and (4) of Directive 96/71, the provisions of which allow Member States to derogate from the application of certain terms and conditions of employment of the host Member State normally guaranteed in favour of a posted worker where the duration of the posting does not exceed one month. The solution of distinguishing between different types of transport operations can thus be combined, where appropriate, with national rules implementing those provisions.

1348 As to the remainder, it is apparent from the file submitted to the Court, in particular from the Impact assessment – social section (Part 1/2, p. 54), that the EU legislature ultimately ruled out the option of making the application of the rules on posting dependent on a time threshold on the ground, inter alia, of the risk of circumvention that would result from the possible rotation of drivers in order to ensure that they spend, in a particular Member State, less time than the limit imposed.

1349 As regards, thirdly, the option, supported by the Republic of Bulgaria, the Republic of Cyprus, Romania and the Republic of Poland, of requiring, for the purposes of assessing whether there is a sufficient link between the service provided and the host Member State, an overall assessment of all the elements characterising that service, it is apparent from the considerations set out in paragraphs 1311 to 1331 above that the EU legislature adopted some of the criteria applied by the Court in the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), while laying down additional criteria which follow the same logic. Thus, it cannot be held that, in so doing, the EU legislature adopted criteria that are not necessary to identify the existence of a sufficient link between the transport service and the host Member State.

1350 It follows that the EU legislature could legitimately consider that the alternative measures envisaged by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus and the Republic of Poland would not achieve the same result as the provisions of Article 1(3) to (7) of Directive 2020/1057.

– *The proportionality of Article 1(3) to (7) of Directive 2020/1057*

1351 As regards, in the third place, the proportionality of the criteria laid down in Article 1(3) to (7) of Directive 2020/1057, it is necessary to recall, first of all, the importance, according to the preamble to the FEU Treaty, of the ‘essential aim’ of constantly improving living conditions and employment which the EU legislature is called upon, under Articles 9 and 90 TFEU, to take fully into account when exercising its competences in the field of the common transport policy. Thus, the EU legislature must, in that regard, seek to ensure, in accordance with the first paragraph of Article 151 TFEU, inter alia, the promotion of a high level of employment, improved living and working

conditions, the guarantee of adequate social protection and a high level of protection of human health.

1352 As is apparent, in essence, from paragraph 1341 above, the strengthening by the EU legislature of the social protection of certain categories of workers, in the present case, through the obligation, arising from the provisions of Article 1(3) to (7) of Directive 2020/1057, to apply the rules on posting to drivers carrying out certain types of transport operations, may entail certain additional costs for employers who must ensure compliance with them. The fact that an obligation imposed by the EU legislature may entail certain costs for the transport undertakings responsible for that obligation does not however, in itself, constitute a breach of the principle of proportionality, unless those costs are manifestly disproportionate having regard to the objective pursued.

1353 First, as regards the alleged negative effects on transport undertakings in general arising from Article 1(3) to (7) of Directive 2020/1057, it should be borne in mind that, as is apparent from paragraphs 1311 to 1331 above, on the one hand, the criteria for the application of the rules on posting laid down in those provisions are consistent with the criteria applicable before the entry into force of that directive and, on the other hand, any differences between those criteria are due, in part, to the fact that the directive now lays down clear exemptions from those rules, for the benefit of hauliers, which were not specifically provided for by the legal framework previously applicable.

1354 In particular, the third to fifth subparagraphs of Article 1(3) and the third and fourth subparagraphs of Article 1(4) of Directive 2020/1057 provide that a driver carrying out a bilateral transport operation may also carry out several additional activities of loading and/or unloading goods and picking up and/or setting down passengers in the Member States or third countries through which he or she crosses, under the conditions laid down in those provisions, without the rules on posting and, consequently, the terms and conditions of employment guaranteed in the host Member State being considered applicable. That possibility contributes precisely, by virtue of the flexible approach on which it is based, to ensuring, as is apparent from recital 10 of that directive, that the application of those rules to cross trade operations does not restrict the freedom to provide cross-border road transport services beyond what is necessary. By adopting a clear rule that allows the exemption provided for bilateral transport operations to be extended, for the benefit of hauliers, to a maximum of two additional activities, the EU legislature has thus ensured that cross trade operations that have a close link with a bilateral transport operation are not subject to the rules on posting.

1355 It follows that the alleged higher costs for hauliers resulting from the contested provisions of Article 1 of Directive 2020/1057 are not, in any event, of such importance that they may be regarded as manifestly exceeding the benefits flowing from those provisions in terms of (i) a reduction in charges resulting from the existence of a uniform and clearer regulatory framework and (ii) an increase in the social protection guaranteed to drivers combined with healthier competition on the market.

1356 As is apparent from paragraphs 1334 to 1338 above, since the alleged uncertainty concerning the interpretation of the contested provisions of Article 1 of Directive 2020/1057 and the existence of practical difficulties in the implementation of those provisions has not been demonstrated either, the possible negative effects for hauliers in general caused by those provisions are not manifestly disproportionate in relation to the objectives pursued.

1357 Secondly, as regards the argument that the application of the rules on posting to cross trade and cabotage operations is likely to have a greater impact on Member States situated on the ‘periphery of the European Union’, in which undertakings mainly carry out those types of transport operations, it is apparent from the considerations set out in paragraphs 1318 to 1329 above that those rules already applied to cabotage operations and that the contested provisions of Article 1 of Directive 2020/1057 have limited effects on cross trade operations. In addition, reference should be made to the case-law referred to in paragraphs 247 and 332 above, relating to the principle of equal treatment of Member States.

1358 Furthermore, while it is true that competition on cost is part of the dynamics underlying the internal market, the fact remains that Directive 2020/1057 has neither the object nor the effect of eliminating all competition based on costs, but aims to ensure the freedom to provide transport services on a fair basis – that is, in the context of competition that does not depend on excessive differences in terms and conditions of employment applied, in the same Member State, to transport undertakings of different Member States – while offering greater protection to posted drivers.

1359 Furthermore, as pointed out in paragraphs 266 and 573 above, the EU legislature cannot be deprived of the possibility of adapting a legislative act to any change in circumstances or any development of knowledge, having regard to its task of safeguarding the general interests recognised by the TFEU and of taking into account the overarching objectives of the European Union enshrined in the preamble, in Article 9 and in the first paragraph of Article 151 TFEU, in particular, the improvement of conditions of employment and the guarantee of adequate social protection.

1360 In particular, in accordance with the case-law referred to in paragraph 267 above, in view of the significant developments that have affected the internal market in the road transport sector, the EU legislature was entitled to adapt Directive 96/71 in order to restore the balance of the interests involved with a view to increasing the social protection of drivers by altering the conditions under which freedom to provide services is exercised and ensuring fair competition. In that regard, the Court has already specifically observed that the need to adapt the balance on which that directive was based in order best to achieve the objective of fairer competition in an evolving context resulted, inter alia, from structural differentiation in the rules on pay and other terms and conditions of employment applicable in the Member States (see, to that effect, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 63).

1361 In the present case, by amending the EU legislation on the applicability of the rules on posting to drivers in the road transport sector, the EU legislature specifically sought to achieve, as is apparent from recitals 1, 3 and 7 of Directive 2020/1057, a new balance between the freedom to provide services, the free movement of goods, the improvement of the social and working conditions of drivers and the guarantee of more fair competition on the market between transport undertakings.

1362 The EU legislature was entitled to take the view, in the exercise of its broad discretion in that regard, that drivers involved in transport services having a link with the territory of a host Member State should be able to benefit from the same terms and conditions of employment as drivers employed by transport undertakings established in that State.

1363 Consequently, even if they were established, the negative effects which would result for certain Member States, for the transport undertakings established there and for the drivers employed by them, from the application of the rules on posting to cross trade operations, as they result from Article 1(3) and (4) of Directive 2020/1057, read in the light of recital 13 thereof, are not, in any event, manifestly disproportionate to the objectives pursued.

1364 Thirdly, as regards the argument put forward by the Republic of Bulgaria and the Republic of Cyprus that the distinction drawn between cross trade operations and bilateral transport operations is liable to distort competition, in so far as Directive 2020/1057 does not impose any obligation and does not apply to hauliers from countries which are not members of the European Union, it should be noted that, as the Council submitted during the written procedure and at the hearing, transport undertakings established in third countries do not enjoy the same access to the internal market, with the result that their situation is not comparable to that of transport undertakings established in the European Union (see, by analogy, judgment of 17 July 1997, *SAM Schiffahrt and Stapf*, C-248/95 and C-249/95, EU:C:1997:377, paragraph 64).

1365 Furthermore, as follows from Article 1(10) of Directive 2020/1057 and Article 1(4) of Directive 96/71, to which recital 15 of the first of those directives refers, transport undertakings established in third countries must not be given more favourable treatment than those established in the European Union, including as regards the specific rules on posting laid down in Directive 2020/1057.

1366 Fourthly, as regards the arguments relating to the alleged adverse effects on the environment arising from the contested provisions of Article 1 of Directive 2020/1057, those arguments overlap with the arguments put forward by the Republic of Poland in its fourth plea in law, so that they will be considered in that context.

1367 Accordingly, the provisions of Article 1(3) to (7) of Directive 2020/1057 do not entail disadvantages that are manifestly disproportionate to the objective pursued by those provisions.

1368 Consequently, the second and third pleas in law of the Republic of Lithuania, the Republic of Bulgaria's first plea in law, Romania's first plea in law, the first plea in law of the Republic of Cyprus, Hungary's first plea in law in the alternative and the Republic of Poland's first plea in law must be rejected as unfounded.

(d) Infringement of Article 91(1) TFEU

(1) Arguments of the parties

1369 By the third plea in law in their respective actions, the Republic of Bulgaria and the Republic of Cyprus submit that, by adopting Directive 2020/1057, the EU legislature infringed Article 91(1) TFEU.

1370 According to those Member States, Article 91(1), which is the legal basis for that directive, required that legislature to act in accordance with the ordinary legislative procedure and after consulting the EESC and the CoR. The distinction, for the purposes of the application of the rules on posting, between bilateral transport operations and cross trade operations was not included in the proposal for a posting directive, so that it could not have been examined by those committees before they delivered their respective opinions. By failing subsequently to consult those committees on the substantial amendment made to that proposal, that legislature infringed Article 91(1).

1371 The Republic of Bulgaria and the Republic of Cyprus observe that the Court had ruled on the obligation to consult in the context of the legislative procedure at a time when, although it was not a co-legislator, the Parliament, like the EESC and the CoR today, it had a consultative role. It held that the requirement to consult the Parliament implied that it should consult the Parliament again whenever the text finally adopted, taken as a whole, departed in essence from the text on which the Parliament had already been consulted (see, to that effect, judgment of 16 July 1992, *Parliament* v *Council*, C-65/90, EU:C:1992:325, paragraph 16).

1372 Since that consultative role is now exercised by the EESC and the CoR under Article 91(1) TFEU, the case-law referred to in the previous paragraph applies by analogy to the obligation to consult those two committees. Consequently, in the present case, the latter should have been consulted again on the substantial amendment consisting in introducing a distinction between bilateral transport operations and cross trade operations for the purposes of applying the rules on posting.

1373 It is incorrect to claim, as Parliament does, that there is no precedent for a second consultation of those committees under the legislative procedure. By way of example, during the legislative procedure on the proposal for a regulation of the European Parliament and of the Council on health technology assessment and amending Directive 2011/24/EU (COM(2018) 51 final), an additional provision was added to the legal basis of the act concerned, which obliged the EU legislature to decide to consult the EESC for a second time.

1374 The Parliament and the Council contend that those pleas and arguments are unfounded.

(2) Findings of the Court

1375 The Republic of Bulgaria and the Republic of Cyprus rely, on the basis of infringement of Article 91(1) TFEU by the EU legislature when adopting Directive 2020/1057, on the same arguments as those put forward by the first of those Member States to challenge the legality of Article 2(4)(a) of Regulation 2020/1055 (Case C-545/20). Thus, for the reasons set out in paragraphs 898 to 909 above, those arguments cannot be accepted, since it does not follow from Article 91(1) that there is a requirement to consult the EESC and the CoR again in the event of amendment to the proposal on which those committees have already been consulted.

1376 Consequently, the third pleas in law of the Republic of Bulgaria and the Republic of Cyprus must be rejected as unfounded.

(e) Infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, Article 91(2) and Article 94 TFEU

(1) Arguments of the parties

1377 By the fourth pleas in law in their respective actions, the Republic of Bulgaria and the Republic of Cyprus claim that Article 1 of Directive 2020/1057 infringes Article 90 TFEU, read in conjunction with Article 3(3) TEU, Article 91(2) and Article 94 TFEU. For its part, the Republic of Poland, by its second and third pleas in law, claims that Article 1 infringes Article 91(2) and Article 94 TFEU. Lastly, Romania does not put forward an independent plea in law in that regard, but alleges infringement of the latter two provisions of the TFEU in the context of its second plea, alleging

infringement of the principle of non-discrimination, putting forward the arguments set out in paragraph 1194 above.

1378 In particular, the Republic of Bulgaria and the Republic of Cyprus claim that the EU legislature infringed those provisions of primary law by reason of the harmful effects resulting from the distinction made in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, on the standard of living and employment in Bulgaria and Cyprus and, in general, in the Member States situated on the periphery of the European Union, and on the economic situation of hauliers established in those Member States. The application of the rules on posting makes cross trade unworkable for those undertakings. This also has a negative impact on the environment and increases congestion. However, no impact assessment was carried with regard to that distinction and no consultation was carried out on that subject with the EESC or the CoR.

1379 The Republic of Poland submits that, by adopting an arbitrary criterion for the application of the rules on posting to transport operations, the EU legislature infringed Article 91(2) and Article 94 TFEU, since it failed to take account of the fact that that criterion is liable to have a serious effect on standard of living and employment in certain regions, the operation of transport facilities and the economic situation of hauliers. That Member State does not agree with the interpretation of those provisions as proposed by the Parliament and the Council. The fact that the EU legislature enjoys a broad discretion does not mean that its obligation to take account of certain effects is confined to taking note of them.

1380 As regards, in the first place, the infringement of Article 91(2) TFEU, no account was taken, when the contested provisions of Article 1 of Directive 2020/1057 were adopted, of the impact resulting from the increase in the number of empty runs of vehicles which would otherwise participate in cross trade operations or cabotage operations. The economic justification for using vehicles in cross trade operations lies, moreover, in the fact that hauliers can, by taking account of the geographical perspective, respond flexibly to changing transport requirements, in order to minimise the number of empty runs and avoid unnecessary waiting for orders to transport goods to the Member State of establishment. Cabotage operations have similar advantages in terms of efficiency.

1381 The application of the provisions of Regulations 2020/1054 and 2020/1055 requires undertakings established in Poland to carry out at least an additional 1 221 120 000 km per year. The changes resulting from those regulations and the additional restrictions arising from the contested provisions of Directive 2020/1057 have a significant impact on standard of living and employment in certain regions and on transport facilities.

1382 Furthermore, the restrictions on the exercise of cross trade and cabotage operations, generated by the contested provisions of Article 1 of Directive 2020/1057, could even lead to the withdrawal of hauliers from the market, since they are not in a position to carry out a profitable activity in the context of a model of transport services involving less efficient transport operations. Those consequences would be particularly felt by hauliers established in Member States located on the periphery of the European Union, whose activities are mainly based on cross trade and cabotage operations.

1383 The Impact assessment – social section is limited to a superficial assessment of the impact of those provisions on the level of employment in certain regions and relates, in any event, to the application of a temporal criterion for the purposes of the application of the rules on posting, which is different from the criterion finally adopted in Directive 2020/1057, that does not entail the same effects on the markets of the Member States situated on the periphery of the European Union. Moreover, the fact that 90% of transport undertakings employ fewer than ten people was noted in that impact assessment without it being taken into account for the purposes of assessing the impact of those provisions on the level of employment. The impact on the deterioration of transport infrastructure in the European Union was also mentioned in that impact assessment, but no assessment of that impact was carried out.

1384 The increase in road traffic also has negative consequences on standard of living in areas close to the main transport hubs. In that context, it is worth noting, in particular, the risk that the changes would entail for road safety.

1385 As is apparent from the analysis carried out by the Republic of Poland, the legal changes concerning road transport lead, on average, to an increase of 19%, within the Member States, in the level of risky behaviour by drivers, linked to the possibility of infringing the legislation in order to adapt to or

circumvent the new posting obligations, and increasing, moreover, the number of fatal accidents involving certain types of vehicles.

1386 As regards, in the second place, the infringement of Article 94 TFEU, the Impact assessment – social section did not take account of the economic situation of hauliers established in Member States located on the periphery of the European Union with a lower level of economic development, whose activity in international road transport is to a greater extent concentrated on cross trade and cabotage operations. The additional costs borne by those hauliers, arising from the application of the posting rules, place them in a less advantageous position than competing undertakings located more at the centre of the European Union.

1387 The adoption of the contested provisions of Article 1 of Directive 2020/1057 during a period of serious economic disturbances due to the COVID-19 pandemic also shows that the economic situation of the hauliers was not taken into account. The economic effects of that pandemic are particularly felt in the transport sector, which is very exposed not only to the decrease in demand in international trade but also to the restrictions on crossing internal borders put in place by the various Member States. Those effects were already present during the preparatory work for Directive 2020/1057.

1388 The Parliament and the Council contend that those pleas in law and arguments are unfounded.

(2) Findings of the Court

1389 In the first place, as regards the line of argument put forward by the Republic of Bulgaria and the Republic of Cyprus alleging infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, owing to the fact that the EU legislature failed to take account of the objective of the Treaties of ensuring a high level of protection and improvement of the quality of the environment, that line of argument overlaps with that put forward by the Republic of Poland in its fourth plea in law, alleging infringement of Article 11 TFEU and Article 37 of the Charter. That line of argument will therefore be examined in the context of this plea.

1390 In the second place, as regards the argument alleging infringement of Article 94 TFEU, it is sufficient to note that that provision, which requires the EU legislature to take account of the economic situation of hauliers when it adopts a measure 'in the field of transport rates and conditions', is irrelevant in the present case, since, as noted in paragraph 1231 above, Article 1 of Directive 2020/1057 does not govern the rates or conditions for the carriage of goods or passengers, but determines the criteria for the application of the rules on the posting of drivers in the road transport sector.

1391 In the third place, as regards the argument alleging infringement of Article 91(2) TFEU, it should be recalled that, according to that provision, the EU legislature must, when adopting measures referred to in paragraph 1 of that article, the purpose of which is to implement the common transport policy taking into account the distinctive features of transport policy, 'take into account' cases where the application of those measures might 'seriously' affect the standard of living and level of employment in certain regions and the operation of transport facilities.

1392 In that regard, since Directive 2020/1057 was adopted by the EU legislature on the basis of Article 91(1) TFEU, that legal basis not being challenged in the present actions, it was for the EU legislature, when it devised the criteria for the application of the rules on posting laid down in Article 1(3) to (7) of that directive, to take account of the requirements arising from Article 91(2) TFEU.

1393 That being so, as is apparent, in essence, from paragraphs 393 to 396 above, Article 91(2) TFEU cannot preclude the EU legislature, in the light of the broad discretion it enjoys in defining the common transport policy, from adopting binding measures that may affect the standard of living and level of employment and the operation of transport facilities in some Member States more than in others, provided that the EU legislature takes into account the serious harmful effects on those parameters in the wider context of the balancing of the various objectives and interests at stake.

1394 As regards the present actions, it should be observed, first, that the line of argument put forward by the Republic of Bulgaria, the Republic of Cyprus and the Republic of Poland is based on the premiss that the EU legislature failed to take account, in breach of Article 91(2) TFEU, of the impacts generated by Directive 2020/1057, namely that the application of the rules on posting laid

down in Article 1 of that directive will make it impracticable to carry out cross trade and cabotage operations.

1395 However, the Court has already held that Directive 96/71, in the version applicable before the entry into force of Directive 2020/1057, covered, in principle, any transnational provision of services involving the posting of workers, including in the road transport sector, and also stated that a driver carrying out cabotage transport must, in principle, be regarded as being posted, within the meaning of Article 2(1) of Directive 96/71 (see, to that effect, judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, EU:C:2020:976, paragraphs 33, 49, 62, 63 and 65).

1396 It is true, as has been pointed out in paragraph 1320 of this judgment, that the application of the rules on posting to cross trade operations, as resulting from Directive 2020/1057, even if it follows the same logic, is not strictly identical to that resulting from Directive 96/71, as interpreted by the Court.

1397 However, it is not apparent from the evidence before the Court in the present actions that any higher costs resulting from the application of the rules on posting to cross trade operations, as resulting from Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, would, even taken together, be liable to 'seriously' affect the standard of living and level of employment in certain regions, within the meaning of Article 91(2) TFEU. Indeed, any impact on the latter elements is not sufficient to show that the threshold, required to establish that there has been an infringement of the latter provision, has been reached.

1398 Furthermore, in assessing the effects resulting from the adoption of the contested provisions of Article 1 of Directive 2020/1057, the EU legislature was required to reconcile the various interests at issue in order to achieve the legitimate objectives that it pursued. Thus, as has already been pointed out in paragraph 395 above, the mere fact that the EU legislature had to take into account the standard of living and level of employment in certain regions and, therefore, the economic interests of hauliers, did not preclude those hauliers from being subject to restrictive measures and generating certain costs for them.

1399 Similarly, assuming that, as the Republic of Bulgaria, the Republic of Cyprus and the Republic of Poland claim, certain hauliers are forced to leave the market as a result of the application of the rules on posting to cross trade and cabotage operations resulting from Article 1 of Directive 2020/1057, with a risk of loss of jobs for certain drivers, such negative effects should be put into perspective, first, with the increased social protection guaranteed to a large number of drivers who will remain employed in the road transport sector and, secondly, with the fact that the freedom to provide services on the market is now based on fairer competition between transport undertakings.

1400 It must also be pointed out that, as the Council submits, in essence, Article 91(2) TFEU cannot be interpreted as imposing on the EU legislature an obligation to protect the existing market shares of certain hauliers, at the risk of preventing it from adapting the legal framework to market developments in order to ensure fair competition on that market.

1401 The arguments put forward by the Republic of Poland concerning the increase in the level of risky behaviour and fatal accidents that will result, in its view, from the implementation of the contested provisions of Article 1 of Directive 2020/1057 are not supported by reliable and consistent evidence. Those arguments are therefore speculative and do not serve to demonstrate an infringement of the requirements arising from Article 91(2) TFEU.

1402 The Republic of Poland also relies on the adverse effects on the operation of transport facilities resulting from the additional journeys caused by the contested provisions of Article 1 of Directive 2020/1057. However, that Member State does not provide sufficient evidence to support its argument that those provisions will, as it claims, lead to an 'increase in the number of additional kilometres travelled'. Moreover, the analogous argument relating to the additional kilometres brought about by the implementation of Regulations 2020/1054 and 2020/1055 was examined and rejected in the actions brought against those regulations.

1403 The other claims put forward in the context of the present pleas, which are, moreover, general and unsubstantiated, largely overlap with the arguments put forward in the context of the pleas alleging, respectively, infringement of the principle of proportionality, by reason of the alleged failure to take account of the effects of the rules laid down in Article 1(3) to (7) of Directive 2020/1057, and infringement of Article 91(1) TFEU, by reason of the failure to consult the EESC and the CoR again.

Those other claims must therefore be rejected for the same reasons as those set out in paragraphs 1311 to 1368, 1375 and 1376 above.

1404 Consequently, the fourth pleas in law of the Republic of Bulgaria and the Republic of Cyprus, the second and third pleas in law of the Republic of Poland, and the argument put forward by Romania in its second plea in law must be rejected as unfounded.

(f) Infringement of the free movement of goods and the freedom to provide services

(1) Arguments of the parties

1405 By the fifth pleas in law in their respective actions, the Republic of Bulgaria and the Republic of Cyprus submit that the approach of distinguishing between bilateral transport operations and cross trade operations for the purposes of the application of the rules on posting constitutes an unjustified restriction both on the free movement of goods (first part) and on the freedom to provide transport services (second part).

1406 First, as regards the free movement of goods, the application of the rules on posting to cross trade operations should, on account of the harmful effects resulting therefrom, be regarded as a measure having effects equivalent to quantitative restrictions, within the meaning of Articles 34 and 35 TFEU. Such a measure cannot be justified under Article 36 TFEU, since that category of international transport operation does not display a sufficient link with the Member State concerned and creates disproportionate administrative burdens preventing the proper functioning of the internal market.

1407 In a press release entitled 'Commission requests Austria to ensure its minimum wage legislation does not unduly restrict the internal market' (IP/17/1053), the Commission states that the application of national legislation to all international transport operations with loading and/or unloading on national territory constitutes a disproportionate restriction in the light, inter alia, of the free movement of goods and that the application of that measure to international transport operations which do not have a sufficient link to the Member State concerned is not justified because it is disproportionate.

1408 Secondly, as regards the freedom to provide transport services, the application of the rules on posting to cross trade operations restricts that freedom, in breach of Article 58(1) TFEU, read in conjunction with Article 91 TFEU.

1409 In that regard, as is apparent from paragraphs 64 and 65 of the judgment of 22 May 1985, *Parliament* v *Council* (13/83, EU:C:1985:220), first, the obligations imposed by Article 91(1)(a) and (b) TFEU include that of establishing freedom to provide transport services and, among the imperatives deriving from the freedom to provide those services, include the elimination of all discrimination against the provider of those services by reason of his or her nationality or the fact that he or she is established in a Member State other than that in which the service is to be provided. Secondly, the EU legislature does not have the same discretion on that point as in other areas of the common transport policy.

1410 The distinction between bilateral transport operations and cross trade operations for the purposes of the application of the rules on posting reintroduces a form of discrimination and constitutes a step backwards in the establishment of a common transport policy.

1411 In the event that the Court should consider that that question is also governed by Article 56 TFEU, the present plea in law is also be based on that provision.

1412 The Parliament and the Council contend that those pleas in law and arguments are unfounded.

(2) Findings of the Court

(i) The free movement of goods

1413 As regards the first part of the fifth plea in law in their respective actions, alleging infringement of the free movement of goods, the Republic of Bulgaria and the Republic of Cyprus do not in any way explain how Directive 2020/1057 restricts that freedom or how its effects amount to an alleged quantitative restriction to which those Member States refer.

1414 In particular, apart from a reminder of Articles 34 to 36 TFEU and the Court's case-law relating to the circumstances in which such a quantitative restriction may be regarded as justified under Article 36 TFEU, those Member States merely refer to arguments put forward in the first pleas in law in their respective actions.

1415 As is apparent, in essence, from paragraphs 1308 to 1368 above, the Republic of Bulgaria and the Republic of Cyprus have not demonstrated that the application of the rules on posting to cross trade operations would manifestly go beyond what is necessary to attain the legitimate objective pursued by the contested provisions of Article 1 of Directive 2020/1057.

1416 Consequently, in the absence of any specific arguments in support of the first parts of the fifth pleas in law, it must be held that, even if those provisions could be regarded as constituting a restriction falling within the scope of Articles 34 and 35 TFEU, that restriction would, in any event, be justified under Article 36 TFEU for the reasons on which the rejection of those first pleas in law was based.

1417 As to the remainder, as regards the press release referred to in paragraph 1407 above, which the Republic of Bulgaria and the Republic of Cyprus cite without explaining its relevance, it is sufficient to observe that such a non-binding document cannot bind the Court in its interpretation or assessment of the validity of Directive 2020/1057.

1418 In any event, while, in that press release, the Commission criticises the approach of applying the national rules of the host Member State to any international transport operation involving loading and/or unloading within the territory of that Member State, the contested provisions of Article 1(3) of Directive 2020/1057 exempt from that application both bilateral transport operations and certain additional loading and/or unloading activities linked to such operations, precisely in order to ensure the proportionality of any restriction on the free movement of goods and the freedom to provide transport services which might result from the application of the rules on posting to international road transport drivers.

1419 Consequently, the first part of the fifth pleas in law of the Republic of Bulgaria and the Republic of Cyprus must be rejected as unfounded.

(ii) The freedom to provide services

1420 As regards the second part of the fifth pleas in law of the Republic of Bulgaria and the Republic of Cyprus, alleging infringement of the rules of the TFEU relating to the freedom to provide services, it must be pointed out that, as is apparent from paragraphs 352 to 358 above, the freedom to provide services in the field of transport is governed not by Article 56 TFEU, which concerns the freedom to provide services in general, but by Article 58(1), TFEU, a specific provision under which 'freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport', namely Title VI of Part Three of the TFEU, which includes Articles 90 to 100 TFEU. Thus, transport undertakings have a right freely to provide services only in so far as that right was granted to them by means of secondary legislation adopted by the EU legislature on the basis of the provisions of the TFEU relating to the common transport policy, in particular Article 91(1) TFEU.

1421 That is precisely the purpose of Directive 2020/1057, adopted by the EU legislature on the basis of that provision, in order, inter alia, to lay down specific rules concerning Directive 96/71 and thus to harmonise certain provisions of social legislation in the field of road transport.

1422 As regards the lessons to be drawn from the judgment of 22 May 1985, *Parliament* v *Council* (13/83, EU:C:1985:220, paragraphs 64 and 65), on which the Republic of Bulgaria and the Republic of Cyprus rely, it must be recalled that, as has been stated in paragraph 982 above, the Court has indeed held that the EU legislature does not have the discretion which it may rely on in other areas of the common transport policy with regard to the introduction of freedom to provide services in the field of transport. However, that circumstance does not call into question the fact that, when the EU legislature exercises its powers in that regard, it has a broad discretion, as noted in paragraphs 242 to 247 above.

1423 In any event, in so far as the Republic of Bulgaria and the Republic of Cyprus criticise the EU legislature for having, by making the rules on posting applicable to cross trade operations, disregarded its specific obligations under Article 91 TFEU, since it reintroduced a form of discrimination against hauliers on the basis of their nationality or place of establishment, their argument overlaps with that put forward in the second pleas in law in their respective actions,

alleging breach of the principles of equal treatment and non-discrimination. It must therefore be rejected on the same grounds as those set out in paragraphs 1213 to 1234 above.

1424 Moreover, in so far as, apart from the argument rejected in the preceding paragraph, the Republic of Bulgaria and the Republic of Cyprus criticise the EU legislature for having set back the common transport policy guaranteeing the freedom to provide services, their line of argument is unfounded.

1425 As is apparent, in particular, from paragraphs 1210, 1223, 1308 and 1361 above, Article 1 of Directive 2020/1057 seeks, on the contrary, to facilitate the freedom to provide transport services by specifying the circumstances in which the rules on posting, laid down in Directive 96/71, are or are not applicable to drivers engaged in road transport operations, including those engaged in cross trade operations, while ensuring a better balance between the various interests concerned in the light of developments in the market, thereby fulfilling its obligations under Article 91 TFEU (see, by analogy, judgment of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 48).

1426 It should, moreover, be borne in mind that, as stated in paragraph 266 above, where a legislative act has already coordinated the legislation of the Member States in a given field of EU action, the EU legislature cannot be deprived of the possibility of adapting that act to any change in circumstances or advances in knowledge having regard to its task of safeguarding the general interests recognised by the TFEU and of taking into account the overarching objectives of the European Union enshrined in Article 9 of that Treaty, which include the guarantee of adequate social protection. Indeed, in such a situation, the EU legislature can properly carry out its task of safeguarding those general interests and those overarching objectives only if has the freedom to amend the relevant EU legislation so as to take account of such changes or advances.

1427 It follows that the mere fact that certain hauliers might bear higher costs on account of the improvement of employment conditions and increased social protection guaranteed to certain drivers by the contested provisions of Article 1 of Directive 2020/1057 cannot be regarded as constituting a regression in the establishment of a common transport policy, constituting an infringement of Article 91(2) TFEU.

1428 Consequently, the second part of the fifth pleas in law of the Republic of Bulgaria and the Republic of Cyprus must be rejected as unfounded and, consequently, those pleas in law must be rejected in their entirety.

(g) Infringement of Article 11 TFEU and Article 37 of the Charter

(1) Arguments of the parties

1429 By its fourth plea, the Republic of Poland submits that Article 11 TFEU and Article 37 of the Charter must be interpreted as requiring the EU institutions to take account of environmental protection requirements both when determining and implementing other EU policies and in the context of other EU actions. The objective of environmental protection laid down in Article 191 TFEU cannot be taken into account or achieved solely by the measures adopted pursuant to Article 192 TFEU, within the framework of a distinct and autonomous policy. The principle of integration enshrined in Article 11 TFEU allows the objectives and requirements of environmental protection to be reconciled with the other interests and objectives pursued by the European Union.

1430 An interpretation according to which Article 11 TFEU relates to areas of EU law, and not specific measures, does not enable the objective of that provision to be achieved. The fact that Directive 2020/1057 forms part of a wider package aimed at reducing polluting emissions from the road transport sector does not prove that due account has been taken of the impact of that regulation on the environment, in particular on the possibility of achieving the environmental objectives laid down in the documents and acts adopted by the European Union in the field of the environment. Nor is it possible to consider that, once they have been set, the targets for reducing greenhouse gas emissions remain invariable, irrespective of any additional emissions generated in the future as a result of the fulfilment of obligations arising from new EU legislation.

1431 The Republic of Poland agrees with the interpretation given by Advocate General Geelhoed in points 59 and 60 of his Opinion in *Austria* v *Parliament and Council* (C-161/04, EU:C:2006:66), according to which, where environmental interests have manifestly not been taken into account or have been completely disregarded, Article 11 TFEU may be used as a standard for reviewing the legality of EU legislation. Where it is established that a particular measure adopted by the EU

legislature has the effect of prejudicing the achievement of the objectives laid down by it in other acts of secondary legislation adopted in environmental matters, the EU legislature is required to balance the conflicting interests and, if necessary, to make appropriate amendments to the acts applicable in the field of the environment.

1432 In the present case, the EU legislature failed to fulfil that obligation in that it did not examine the impact of the implementation of the contested provisions of Article 1 of Directive 2020/1057 on environmental requirements. In particular, it failed to take account of the fact that the implementation of those provisions gives rise to additional journeys, including empty runs by heavy goods vehicles, over long distances, the result of which is, as attested by the data and studies referred to in paragraph 416 above, emissions of CO2 and atmospheric pollutants which cause numerous health problems.

1433 Whereas, in the absence of those provisions, the vehicles concerned could carry out cross trade and cabotage operations, the reduction in those two types of operation have the effect of increasing the number of bilateral transport operations, which leads to an increase in the number of empty runs. Cross trade operations are useful in that they minimise the number of such empty runs, avoid waiting for orders to transport goods to the Member State of establishment and help to meet a demand for transport that is changing geographically.

1434 The environmental effects of the contested provisions of Article 1 of Directive 2020/1057 should be examined cumulatively with those generated by Regulations 2020/1054 and 2020/1055, which are also part of the 'Mobility Package' and which also require heavy goods vehicles to carry out additional, often empty, journeys over long distances.

1435 Those additional emissions could, by reason of their scale, have a significant effect on the achievement of the environmental objectives laid down in the programming documents and acts adopted by the European Union in the field of environmental protection, referred to in paragraphs 417 to 419 above, and on compliance with the obligations imposed on the Member States by those acts. However, none of the contested acts making up the 'Mobility Package' addresses these various risks of impact. In the Impact assessment – social section, the Commission merely states that it has not identified any environmental impact of the options envisaged, but this statement is neither substantiated nor credible.

1436 Although certain Member States and the Commission have emphasised the need to take account of the impact of the measures proposed in the 'Mobility Package' on the increase in the number of empty runs and CO2 emissions, the EU legislature ignored those concerns. The preparation of additional analyses before the end of 2020, announced by the Commissioner, Ms Vălean, relating to the effects of the compulsory return of vehicles to the Member State of establishment every eight weeks and the restrictions applicable to combined transport operations, does not in any way remedy that failure, and in fact confirms the merits of the present plea.

1437 The Republic of Bulgaria and the Republic of Cyprus, for their part, reiterate the arguments set out in paragraphs 1377 and 1378 above, alleging infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, by reason of the harmful effects on the environment resulting from the distinction made in Article 1(3) and (4) of Directive 2020/1057, read in conjunction with recital 13 thereof, between cross trade and bilateral transport operations.

1438 The Parliament and the Council contend that those arguments are unfounded.

(2) Findings of the Court

1439 It is necessary to reject at the outset the arguments put forward by the Republic of Bulgaria and the Republic of Cyprus, alleging infringement of Article 90 TFEU, read in conjunction with Article 3(3) TEU, for the reasons stated in paragraphs 423, 424 and 934 above.

1440 In those circumstances, and for the reasons set out in paragraphs 428 to 430 above, it is necessary only to examine whether, as the Republic of Poland submits, the EU legislature, when it adopted the contested provisions of Article 1 of Directive 2020/1057, infringed the requirements of environmental protection stemming from Article 11 TFEU, read in conjunction with Article 37 of the Charter.

1441 In that regard, it must be observed that the arguments put forward by the Republic of Poland in its fourth plea in law relate almost exclusively not to the provisions of Directive 2020/1057 but to the provisions of the other acts forming the 'Mobility Package', in particular those of Regulation 2020/1055. Most of the studies and other evidence relied on by the Republic of Poland in that context relate to the obligation, laid down in Article 1(3) of that regulation, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, relating to the return of vehicles to an operational centre situated in the Member State in which the transport undertaking concerned is established every eight weeks. The latter provision is the subject of separate pleas in law in the actions brought against Regulation 2020/1055 in Cases C-542/20, C-545/20, C-547/20, C-549/20 to C-552/20 and C-554/20. In so far as the arguments put forward by the Republic of Poland do not relate to the provisions of Directive 2020/1057, they must be held to be ineffective.

1442 Nevertheless, in so far as the Republic of Poland's arguments alleging infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, relate specifically to the provisions of Directive 2020/1057, it should be recalled, first, that, as has been pointed out in paragraph 436 above, Article 11 TFEU is by its nature horizontally applicable, which entails that the EU legislature must incorporate requirements relating to environmental protection into the policies and activities of the European Union and, inter alia, in the common transport policy within which Directive 2020/1057 falls.

1443 Secondly, the review of legality which the Court is called upon to carry out in the present case, under Article 11 TFEU, read in conjunction with Article 37 of the Charter, concerns an EU act in the context of which the EU legislature is required to ensure, as has been emphasised, in particular in paragraphs 1210, 1223, 1308 and 1361 above, a balance between the various interests and objectives involved.

1444 In those circumstances, it should be recalled that, even if the contested provisions of Article 1 of Directive 2020/1057, considered in isolation, were to have significant negative effects on the environment, it would be necessary, in order to determine whether there has been an infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, to take account of other actions undertaken by the EU legislature to limit such effects of road transport on the environment and to achieve the overall objective of reducing pollutant emissions.

1445 In the present case, by its arguments alleging infringement of the rules of EU law on environmental protection, the Republic of Poland relies on the premiss that the criteria for the application of the rules on posting defined by the contested provisions of Article 1 of Directive 2020/1057 will have harmful effects on the environment because of the increase in polluting emissions to which the implementation of those criteria will give rise. In particular, that Member State submits that those provisions will lead to additional, often empty, journeys over long distances, since hauliers will replace cabotage operations and cross trade operations, which it claims would be more favourable for the environment, with bilateral transport operations in order to benefit from the full exemption from those rules applicable to the latter operations.

1446 In that regard, it should be recalled, first, that, as is already apparent from, inter alia, paragraphs 1318, 1321 and 1395 above, the obligation to apply, in principle, the rules on posting to drivers carrying out cross trade and cabotage operations already arose from the regulatory framework which existed before the entry into force of Directive 2020/1057, as interpreted by the Court in the judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976).

1447 Consequently, a large proportion of the alleged adverse effects on the environment that the Republic of Poland attributes to the rules set out in Article 1 of Directive 2020/1057, assuming that they are established, stem, in reality, not from that directive, but from the EU rules that were applicable before the entry into force of that directive.

1448 It should be noted, secondly and in any event, that the various types of transport operations referred to by the Republic of Poland are not necessarily substitutable. Whereas a cross trade operation and a bilateral transport operation could, in principle, as the Council points out, replace each other, a cabotage operation cannot, by its very nature, be replaced by a bilateral transport operation.

1449 Furthermore, as is apparent, in essence, from paragraph 358 above, Article 49 TFEU, as implemented in the transport sector by Regulation No 1071/2009, guarantees any undertaking the right to establish itself permanently, where necessary, by the creation of subsidiaries, in the Member State of its choice in order to organise its activities optimally, while complying with its

obligations under EU law. Thus, hauliers intending to operate national transport services in another Member State on a systematic or very regular basis may set up a subsidiary or any other fixed establishment there, which would be likely to avoid long-distance return journeys of vehicles, which the Republic of Poland claims will have adverse effects on the environment due to the increase in CO2 and atmospheric pollutant emissions.

1450 Accordingly, Article 1 of Directive 2020/1057 cannot, as such, lead to significant adverse effects on the environment, since, by being likely to encourage certain hauliers to establish themselves closer to the actual demand for transport services than was the case before its entry into force, it contributes to a tighter link between the place of establishment of the provider of those services and the place where those services are actually provided.

1451 Thirdly, in the event that, as the Republic of Poland suggests, a transport undertaking chooses to bring an unladen vehicle back into the Member State of establishment in order for the transport operation to be classified as bilateral, it must be observed that the exercise of such a choice would not, in any event, suffice for the transaction concerned to be classified as bilateral, within the meaning of Article 1(3) and (4) of Directive 2020/1057, since those provisions require the goods or passengers to be transported from or to the Member State of establishment in order for an operation to be so classified.

1452 Furthermore, as follows from paragraph 377 above, the EU legislature remains entitled, by adapting a legislative act in order to increase the social protection of the persons concerned, to alter the conditions under which the freedom to provide services is exercised and to guarantee fair competition. Under Article 58(1) TFEU, the degree of liberalisation is determined not directly by Article 56 TFEU but by the EU legislature itself in the context of the implementation of the common transport policy.

1453 As to the remainder, the arguments put forward by the Republic of Poland concerning operators who it claims would be obliged to leave the market because of the alleged increased costs resulting from the criteria for the application of the rules on posting set out in Article 1 of Directive 2020/1057, as they apply to cross trade and cabotage operations, are speculative. That is all the more so in the light of the considerations set out in paragraphs 1448 to 1450 above. In any event, that Member State has not shown that such alleged withdrawals from the market would have significant negative effects on the environment.

1454 Fourthly, as the Council contends, the Republic of Poland's arguments do not reveal any inherent difference, in terms of efficiency and environmental impact, between a cross trade operation and a bilateral transport operation where those operations are intended to meet transport demands on a more or less permanent basis in a certain part of the European Union. Moreover, as is apparent, in essence, from paragraph 1354 above, under the third to fifth subparagraphs of Article 1(3) of Directive 2020/1057, read in the light of recital 10 thereof, certain additional activities connected with bilateral transport operations benefit from an extension of the exemption from the posting rules laid down in respect of those operations, specifically in order to take account of any efficiency gains resulting from such an organisation of road transport.

1455 Finally, in so far as the Republic of Poland submits that the application of the rules on posting to combined transport operations, as provided for in Article 1(6) of Directive 2020/1057, discourages the use of such operations, whose beneficial effect on the environment is recognised, it suffices to recall the considerations set out in paragraphs 1330, 1331 and 1340 above, from which it is apparent that, compared with the system applicable before the entry into force of that directive, that provision is intended merely to specify the circumstances in which hauliers carrying out a combined transport operation may benefit from an exemption from those rules for certain parts of that operation. Thus, it has not been established that that provision has the effect of discouraging that type of operation.

1456 In any event, having regard to the nature of Directive 2020/1057, which seeks to strike a balance between the various objectives which it pursues, without itself falling within the scope of EU policy on environmental protection, an infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, cannot be established on the sole ground that, in adopting that act, the EU legislature did not favour all transport activities which might be regarded as favourable to the environment, to the detriment of increased social protection for drivers.

1457 In the light of the foregoing, in the absence of significant adverse effects on the environment resulting from the contested provisions of Article 1 of Directive 2020/1057 relating to cross trade,

combined transport or cabotage operations, the arguments put forward by the Republic of Poland, alleging infringement of Article 11 TFEU, read in conjunction with Article 37 of the Charter, must be rejected.

1458 In those circumstances, there is no need to examine either the arguments put forward by that Member State based on other EU acts, the environmental objectives of which are allegedly compromised by the adoption of Article 1 of Directive 2020/1057, or the various measures taken by the EU legislature in the road transport sector, relied on by the Parliament and the Council, in order to assess the extent to which that legislature took account of the overall objective of reducing pollutant emissions in that sector.

1459 Consequently, the fourth plea in law of the Republic of Poland must be rejected as unfounded.

1460 Having regard to all the foregoing considerations, the actions brought by the Republic of Lithuania (Case C-541/20), the Republic of Bulgaria (Case C-544/20), Romania (Case C-548/20) and the Republic of Cyprus (Case C-550/20) must be dismissed in their entirety. Similarly, the actions brought by Hungary (Case C-551/20) and the Republic of Poland (Case C-555/20) must be dismissed in so far as they seek annulment of Article 1(3) to (7) of Directive 2020/1057 or of certain of those provisions.

4. Article 9(1) of Directive 2020/1057

1461 In support of its action for annulment of Article 9(1) of Directive 2020/1057 in so far as that provision sets 2 February 2022 as the deadline for transposition of that directive, the Republic of Poland (Case C-555/20) relies on three pleas in law, which may be examined together, alleging infringement (i) of the principle of legal certainty, (ii) of the principle of proportionality and (iii) of Article 94 TFEU.

(a) Arguments of the parties

1462 As regards, in the first place, the alleged infringement of the principle of legal certainty, the Republic of Poland recalls that that principle requires that rules of law be clear, precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. That principle must be observed all the more strictly where the legislation in question is liable to entail financial consequences, as is the case with Directive 2020/1057.

1463 The contested provisions of Article 1 of that directive do not specify the obligations of hauliers. They also present problems of interpretation and practical difficulties in determining the law applicable to the terms and conditions of employment of drivers engaged in road transport operations. Clarification should be provided by national transposing acts and by the Commission's interpretation documents and guides, provided that they are adopted.

1464 Moreover, the implementation of those provisions involves lengthy legislative work at national level. Consequently, a significant part of the 18-month period for transposition of Directive 2020/1057 would be devoted to drafting and adopting national legislation. That would significantly reduce the time available to hauliers to become aware of the subject matter and scope of their obligations. In addition, the national legislation also defines the conditions of employment and work, and hauliers are required to acquaint themselves with the relevant rules laid down by more than one Member State. Finally, the absence of an obligation to set a specific transposition period cannot be equated with full discretion on the part of the EU legislature in that regard.

1465 As regards, in the second place, the alleged infringement of the principle of proportionality, the Republic of Poland submits that the setting by the EU legislature of a shortened transposition period of 18 months does not meet the requirements arising from that principle.

1466 The EU legislature has not put forward any objective reasons justifying the setting of that period, whereas the period adopted for acts of this nature is at least two years. In view of the specific nature of the road transport sector, which is characterised by a high degree of mobility and, therefore, the need to apply the rules of many Member States over a short reference period, that legislature should also have taken account of the fact that hauliers will have to prepare themselves to apply also the requirements arising from the other acts making up the 'Mobility Package'.

1467 Nor did the EU legislature take account of the dominant position held in the road transport market by SMEs, for whom adaptation to the new regulations entail specific difficulties and costs. Moreover, additional difficulties were caused by the COVID-19 pandemic. Finally, penalties, some of which are severe, are applied to hauliers that are not in a position to adapt to the new rules within the period allowed.

1468 As regards the extent to which the previous legal and factual situation of hauliers has been altered by Directive 2020/1057, the question of the application of Directive 96/71 to road transport has long been a contentious issue. Therefore, as is apparent from recital 4 of Directive 2020/1057, there are a number of divergences between the Member States as regards the interpretation, application and implementation of the provisions of Directive 96/71. The judgment of 1 December 2020, *Federatie Nederlandse Vakbeweging* (C-815/18, EU:C:2020:976), answered only a few questions concerning the detailed rules governing international transport operations.

1469 As regards, in the third place, the alleged infringement of Article 94 TFEU, the Republic of Poland submits that the transposition period laid down in Article 9(1) of Directive 2020/1057 does not take account of the economic situation of hauliers. In that context, that Member State also refers to the fact that the sector is dominated by SMEs, that the changes concerned involve considerable costs and that those changes were introduced during a period of economic crisis and disruption to the functioning of transport activity due to the COVID-19 pandemic.

1470 The Parliament and the Council contend that those arguments are unfounded.

(b) Findings of the Court

1471 For the purpose of examining the present pleas in law, it should be recalled that the first subparagraph of Article 9(1) of Directive 2020/1057 provides that Member States are to adopt and publish the national provisions necessary to comply with that directive ‘by 2 February 2022’ and adds, in its second subparagraph, that those Member States are to apply those measures from the same date.

1472 In the first place, as regards the alleged infringement of the principle of legal certainty, it should be noted that the Republic of Poland criticises the EU legislature not for having adopted an imprecise transposition period, but for having set a transposition period that was too short, in view of the uncertainty surrounding the interpretation of the rules laid down in Article 1 of Directive 2020/1057 and the practical problems concerning the application of those rules.

1473 In that regard, it should be recalled that, under the third paragraph of Article 288 TFEU, a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. Consequently, as the Parliament points out, the result to be achieved is already set out in the legal act of the European Union itself. It follows that, in the present case, hauliers had the opportunity to acquaint themselves with their future obligations under that directive, at least since 31 July 2020, the date of publication of Directive 2020/1057 in the *Official Journal of the European Union*.

1474 Furthermore, the extent to which the provisions laid down in Article 1(3) to (7) of Directive 2020/1057 create new obligations for transport undertakings is, in any event, necessarily limited by the fact that, as is apparent from paragraphs 1178 to 1182 above, the rules governing the application of the rules on posting to drivers resulting from the criteria laid down in those provisions are, to a certain extent, similar to those that existed prior to the entry into force of that directive.

1475 In so far as the Republic of Poland alleges problems of interpretation and practical difficulties raised by the determination of the law applicable, it should be noted, first, that, contrary to what that Member State suggests, the national law applicable in a given case depends not on national implementing measures but on the actual provisions of Article 1 of Directive 2020/1057, which list clearly defined types of transport operations and specify the types of transport operations to which the rules on posting, and therefore the national rules of the host Member State on terms and conditions of employment, are to be regarded as applicable.

1476 Secondly, as is apparent from recitals 4, 8 and 9 of Directive 2020/1057 and as has been set out, in essence, in paragraph 1224 above, it is precisely because of, in particular, a series of divergences which had been noted between the Member States in the interpretation, application and implementation of the provisions of EU law applicable prior to the entry into force of that directive that the EU legislature sought to adopt legislation specific to the road sector which lays down

criteria for determining the situations in which drivers are to be subject to the rules on long-term posting laid down in Directive 96/71.

1477 In so far as the Republic of Poland contends that a significant part of the period of 18-months should be devoted to the adoption of the national legislation necessary to transpose Directive 2020/1057, that Member State relies on the incorrect premiss that the obligations of hauliers with regard to the determination of the law applicable to drivers' terms and conditions of employment derive from the transposition measures adopted by the Member States, whereas, as stated in paragraph 1473 above, those obligations derive from Article 1 of that directive. It follows that the fact that, where appropriate, the national legislature in Poland was under an obligation to devote a greater or lesser amount of that period in order to adopt the necessary implementing measures in that regard does not demonstrate that the EU legislature infringed its obligations under the principle of legal certainty.

1478 The Republic of Poland also claims that hauliers will need time to acquaint themselves with the relevant rules of several Member States, not least because EU law requires not only the payment of a minimum rate of pay but also, under Directive 2020/1057, the application of the terms and conditions of employment of the host Member State. In that regard, it should be noted first that, as the Council points out, the deadline for transposition of 2 February 2022 was laid down, as is expressly stated in the second subparagraph of Article 9(1) of Directive 2020/1057, read in conjunction with recital 43 thereof, as a fixed date from which national provisions must be applied in order to avoid the creation of new barriers due to differentiated implementation by the Member States until the expiry of the prescribed transposition period. Therefore, whatever part of the 18-month transposition period a Member State devotes to transposing Directive 2020/1057, it could not, in any event, impose the new obligations arising from that directive on transport undertakings before 2 February 2022.

1479 Secondly, as the Republic of Poland itself points out, Article 3(3) of Directive 2018/957 provided that the latter directive would apply to the road transport sector from the date of application of a legislative act amending Directive 2006/22 as regards enforcement requirements and laying down specific rules with respect to Directives 96/71 and 2014/67 for posting drivers in the road transport sector. Consequently, while it is true that the conditions laid down by Directive 96/71, as amended by Directive 2018/957, became applicable from the date on which Directive 2020/1057 was to be transposed, the fact remains that transport undertakings had been informed since the adoption of Directive 2018/957, namely 28 June 2018, that a *lex specialis* in the road transport sector was envisaged by the EU legislature and that the amendments made by Directive 2020/1057 to Directive 96/71 would enter into force once that *lex specialis* was applicable.

1480 Accordingly, the Republic of Poland has not demonstrated, by the difficulties it alleges relating to the interpretation and application of Article 1 of Directive 2020/1057, that, by setting the period for transposition of that directive at 18 months, the EU legislature infringed the principle of legal certainty.

1481 In the second place, as regards the alleged infringement of the principle of proportionality, it should be noted that, in point 42 of the Interinstitutional Agreement, the Parliament, the Council and the Commission emphasised the need, as regards the ordinary legislative procedure, to provide for as short a period as possible for the transposition of directives, which, as a general rule, does not exceed two years. That approach forms part of the more general objective of ensuring swift and correct application of EU legislation in the Member States.

1482 Furthermore, the EU legislature has a margin of discretion in fixing the period within which a directive must be transposed and, contrary to what the Republic of Poland suggests, it is under no obligation to specify the reasons for fixing that period whenever it is less than two years.

1483 Nor can the Court accept the wholly general argument that taking into account the obligations arising from the other acts forming the 'Mobility Package' should have resulted in the setting of a longer transposition period as regards the provisions of Directive 2020/1057. The mere fact that different implementation deadlines are applicable to the relevant obligations of each act of that 'Mobility Package' demonstrates specifically that the EU legislature took into account the nature of the obligations and the specific circumstances of each of those acts in order to determine an appropriate transposition or application deadline.

1484 Furthermore, in its equally general argument relating to the COVID-19 pandemic, the Republic of Poland fails to demonstrate how the costs, the restrictions on the provision of services or the

changes made to the legislation of the Member States caused by that pandemic were likely to have any effect on the fixing of the time limit for transposition of Directive 2020/1057. In any event, it was not for the EU legislature to remedy the effects of that pandemic in the context of Directive 2020/1057, the objective of which is, inter alia, to improve drivers' working conditions, especially since, as is apparent from paragraph 286 above, other specific EU legislative acts had such an objective.

1485 Moreover, the Republic of Poland cannot claim to establish the disproportionate nature of the period for transposition of Directive 2020/1057 by speculating as to the frequency of conduct infringing the obligations arising from that directive in relation to the posting of workers in the road transport sector, since the possible severity of the penalties applied by the Member States in the event of non-compliance with the employment and working conditions or the related formal requirements is not in any way capable of calling into question the length of that period.

1486 Consequently, and in the light of the considerations set out in paragraphs 1473 to 1476, 1478 and 1479 above, from which it is apparent, inter alia, that the EU legislature took account of the particular features of the road transport sector, including the presence of SMEs on the market, referred to in recital 20 of Directive 2020/1057, it cannot be considered that, by setting an 18-month transposition period in the first subparagraph of Article 9(1) of that directive, that legislature manifestly went beyond what was necessary in order to achieve, in the context of the transposition of that directive, the objective of ensuring the swift and correct application of EU legislation in the Member States.

1487 In the third place, as regards the alleged infringement of Article 94 TFEU, it suffices to point out that, as is apparent from paragraph 1390 above, Article 1(3) to (7) of Directive 2020/1057 does not govern 'transport rates or conditions', within the meaning of Article 94, but merely lays down criteria for the application of the rules on posting drivers in the road transport sector. Since Article 94 is not, therefore, applicable to those paragraphs of Article 1 of that directive, the argument alleging infringement of that article on account of the length of the period prescribed for their transposition must be rejected.

1488 Since none of the pleas in law relied on by the Republic of Poland in support of its action for annulment of Article 9(1) of Directive 2020/1057 (Case C-555/20) has been upheld, those claims must be rejected and, consequently, the action must be dismissed in its entirety.

5. Conclusion on Directive 2020/1057

1489 It follows from all the foregoing that, first, the actions of the Republic of Lithuania (Case C-541/20) and Hungary (Case C-551/20), in so far as they relate to Directive 2020/1057, and, secondly, the actions brought by the Republic of Bulgaria (Case C-544/20), Romania (Case C-548/20), the Republic of Cyprus (Case C-550/20) and the Republic of Poland (Case C-555/20), must be dismissed.

D. General conclusion on the actions

1490 In the light of all the foregoing, it is appropriate to:

– annul Article 1(3) of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;

– dismiss the remainder of the actions.

V. Costs

1491 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

1492 Article 138(3) of the Rules of Procedure provides that, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

1493 Since the Parliament and the Council have applied for costs against the Republic of Lithuania (Case C-541/20), the Republic of Bulgaria (Cases C-543/20 and C-544/20), Romania (Cases C-546/20 and C-548/20), the Republic of Cyprus (Case C-550/20) and the Republic of Poland (Cases C-553/20 and C-555/20), and since those Member States have been unsuccessful, they must be ordered to pay the costs, including, as regards the Republic of Lithuania, those relating to the proceedings for interim measures (Case C-541/20 R).

1494 Since the Republic of Cyprus has applied for costs to be awarded against the Parliament and the Council (Case C-549/20) and those institutions have been unsuccessful, they must be ordered to pay the costs relating to that case.

1495 Since the Republic of Lithuania, the Republic of Bulgaria, Romania, Hungary, the Republic of Malta and the Republic of Poland have been partially unsuccessful (Cases C-542/20, C-545/20, C-547/20, C-551/20, C-552/20 and C-554/20), each of those Member States is to bear its own costs in relation to those cases, including, as regards the Republic of Bulgaria, those relating to the proceedings for interim measures (Case C-545/20 R).

1496 Pursuant to Article 140(1) of those rules, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden are to bear their own costs as interveners.

On those grounds, the Court (Grand Chamber) hereby:

1. In Case C-541/20, *Lithuania* v *Parliament and Council*:

- **Dismisses the action;**
- **Orders the Republic of Lithuania to pay the costs, including those relating to the proceedings for interim measures (Case C-541/20 R);**
- **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

2. In Case C-542/20, *Lithuania* v *Parliament and Council*:

- **Annuls point 3 of Article 1 of Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, in so far as it inserts paragraph 1(b) in Article 5 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;**
- **Dismisses the remainder of the action;**
- **Orders the parties to bear their own costs;**
- **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

3. In Case C-543/20, *Bulgaria* v *Parliament and Council*:

– **Dismisses the action;**

– **Orders the Republic of Bulgaria to pay the costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

4. **In Case C-544/20, *Bulgaria* v *Parliament and Council*:**

– **Dismisses the action;**

– **Orders the Republic of Bulgaria to pay the costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

5. **In Case C-545/20, *Bulgaria* v *Parliament and Council*:**

– **Annuls point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;**

– **Dismisses the remainder of the action;**

– **Orders the parties to bear their own costs, including those relating to the proceedings for interim measures (Case C-541/20 R);**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

6. **In Case C-546/20, *Romania* v *Parliament and Council*:**

– **Dismisses the action;**

– **Orders Romania to pay the costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden to bear their own costs.**

7. **In Case C-547/20, *Romania* v *Parliament and Council*:**

– **Annuls point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;**

– **Dismisses the remainder of the action;**

– **Orders the parties to bear their own costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of**

Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden to bear their own costs.

8. In Case C-548/20, *Romania* v *Parliament and Council*:

- **Dismisses the action;**
- **Orders Romania to pay the costs;**
- **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria and the Kingdom of Sweden to bear their own costs.**

9. In Case C-549/20, *Cyprus* v *Parliament and Council*:

- **Annuls point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;**
- **Orders the Parliament and the Council to pay the costs;**
- **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

10. In Case C-550/20, *Cyprus* v *Parliament and Council*:

- **Dismisses the action;**
- **Orders the Republic of Cyprus to pay the costs;**
- **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

11. In Case C-551/20, *Hungary* v *Parliament and Council*:

- **Annuls point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;**
- **Dismisses the remainder of the action;**
- **Orders the parties to bear their own costs;**
- **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

12. In Case C-552/20, *Malta* v *Parliament and Council*:

- **Annuls point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;**
- **Dismisses the remainder of the action;**

– **Orders the parties to bear their own costs;**

– **Orders the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

13. **In Case C-553/20, *Poland* v *Parliament and Council*:**

– **Dismisses the action;**

– **Orders the Republic of Poland to pay the costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

14. **In Case C-554/20, *Poland* v *Parliament and Council*:**

– **Annuls point 3 of Article 1 of Regulation 2020/1055 in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009;**

– **Dismisses the remainder of the action;**

– **Orders the parties to bear their own costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

15. **In Case C-555/20, *Poland* v *Parliament and Council*:**

– **Dismisses the action;**

– **Orders the Republic of Poland to pay the costs;**

– **Orders the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, Romania and the Kingdom of Sweden to bear their own costs.**

Lenaerts	Bay Larsen	Regan
von Danwitz	Biltgen	Csehi
Rodin	Kumin	Ziemele
Passer	Gratsias	Arastey Sahún
	Gavalec	

Delivered in open court in Luxembourg on 4 October 2024.

A. Calot Escobar

K. Lenaerts

Registrar

President