



Reports of Cases

OPINION OF ADVOCATE GENERAL
TANCHEV
delivered on 5 March 2020¹

Case C-549/18

European Commission

v

Romania

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Directive (EU) 2015/849 — Anti-money laundering — Article 260(3) TFEU — Failure to notify measures transposing a directive adopted under a legislative procedure — Financial penalties — Lump sum payment)

I. Introduction

1. In the present case, the European Commission has brought infringement proceedings against Romania under Article 258 TFEU for failing to adopt the necessary measures to transpose, by 26 June 2017, Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC² or, in any event, failing to notify those measures to the Commission.

2. Moreover, pursuant to Article 260(3) TFEU, the Commission asks the Court to impose on Romania a lump sum payment, ultimately set at EUR 4 536 667.20, for breach of its obligation to notify measures transposing Directive 2015/849. It also initially requested a daily penalty payment of EUR 21 974.40, but withdrew that request in the course of the proceedings.

3. Consequently, the present case provides the Court with the opportunity to develop its case-law on the application of Article 260(3) TFEU following from the landmark judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*.³ Article 260(3) TFEU is an important instrument introduced by the Treaty of Lisbon which allows the Commission to bring infringement proceedings before the Court pursuant to Article 258 TFEU on the grounds that a Member State has ‘failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure’, and ask the Court to impose financial penalties on that Member State at the same time.

¹ Original language: English.

² OJ 2015 L 141, p. 73.

³ C-543/17, EU:C:2019:573. There were several previous cases involving Article 260(3) TFEU, but they were withdrawn before the Court could deliver its judgment. Two of those cases were the subject of the Opinion of Advocate General Wathelet in *Commission v Poland* (C-320/13, not published, EU:C:2014:2441), and my Opinion in *Commission v Spain (Article 260(3) TFEU — Mortgage credit)* (C-569/17, EU:C:2019:271), which I address in my analysis below.

4. The present case is being heard by the Court in parallel with another case, *Commission v Ireland* (C-550/18), in which my Opinion is being delivered today. Both cases raise two key issues concerning, first, whether the Commission must give reasons for its decision to have recourse to Article 260(3) TFEU and, second, the assessment of lump sum payments under that provision. This case also raises distinct issues relating to whether measures notified in the course of the proceedings amount to the fulfilment of obligations for the purposes of Articles 258 and 260(3) TFEU.

5. In this Opinion, I shall affirm that Romania has failed to fulfil its obligations under Article 258 TFEU, and propose that the Court order it to pay a lump sum payment under Article 260(3) TFEU.

II. Legal framework

6. Article 67(1) of Directive 2015/849 provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 June 2017. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.’

7. Pursuant to Article 1(42) of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU,⁴ Article 67(1) of Directive 2015/849 was replaced by the following wording:

‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 June 2017.

Member States shall apply Article 12(3) as of 10 July 2020.

Member States shall set up the registers referred to in Article 30 by 10 January 2020 and the registers referred to in Article 31 by 10 March 2020 and the centralised automated mechanisms referred to in Article 32a by 10 September 2020.

...

Member States shall immediately communicate the text of the measures referred to in this paragraph to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.’

III. The pre-litigation procedure and the proceedings before the Court

8. Not having been notified by the deadline of 26 June 2017 of any measures transposing Directive 2015/849, the Commission sent Romania a letter of formal notice dated 18 July 2017, requesting it to take the necessary action within two months of receipt of that letter.

⁴ OJ 2018 L 156, p. 43.

9. In its response by letter dated 19 September 2017, Romania informed the Commission that the transposition measures would be adopted in December 2017.

10. By reasoned opinion dated 7 December 2017, the Commission stated that Romania had still not notified any measures transposing Directive 2015/849, and requested it to do so within a period of two months of receipt of that reasoned opinion.

11. Following rejection of its requests for an extension of the deadline for responding to that reasoned opinion, Romania submitted its reply by letter dated 8 February 2018, indicating that legislation transposing Directive 2015/849 would be adopted in May 2018.

12. Taking the view that Romania had still not transposed Directive 2015/849 or given notification of any transposition measures, the Commission decided, on 19 July 2018, to bring infringement proceedings before the Court.

13. By its application, lodged on 27 August 2018, the Commission brought the present action on the basis of Articles 258 and 260(3) TFEU, claiming that the Court should:

- first, declare that, by failing to adopt, by 26 June 2017, the measures necessary to transpose Directive 2015/849 or, in any event, by failing to notify those measures, Romania has failed to fulfil its obligations under Article 67 of that directive;
- second, order Romania to pay a penalty of EUR 21 974.40 for each day of delay in complying with its obligation to notify the measures necessary to ensure transposition of Directive 2015/849, with effect from the day on which judgment is delivered in the present case;
- third, order Romania to pay a lump sum, based on a daily amount of EUR 6 016.80, multiplied by the number of days which have elapsed from the day following the expiry of the transposition deadline laid down in the directive in question until the day on which Romania fulfils its obligations or, if it fails to fulfil those obligations, until the day on which the Court delivers its judgment, subject to exceeding a minimum lump sum of EUR 1 887 000; and
- fourth, order Romania to pay the costs.

14. In its defence, lodged on 7 November 2018, Romania claims that the Court should:

- first, dismiss the Commission’s action in part, having regard to the partial transposition of that directive by the national legislation in force;
- second, dismiss the Commission’s action in so far as it seeks to impose financial penalties on it under Article 260(3) TFEU; and
- third, in the alternative, dismiss the Commission’s application for the imposition of a lump sum and, in any event, reduce the amount of the penalties requested by the Commission to an extent reflecting the particular features of the infringement and the conduct of Romania.

15. The Commission and Romania also lodged a reply and a rejoinder on 17 December 2018 and 15 February 2019, respectively.

16. By letter dated 28 August 2019, the Commission informed the Court that it was partially withdrawing its action. It no longer requested the imposition of a daily penalty payment, since that request had become devoid of purpose following Romania's full transposition of Directive 2015/849 by national legislation notified on 18 July 2019 and which entered into force on 21 July 2019. Taking the latter date as the day on which Romania fulfilled its obligations, the Commission fixed the lump sum sought at EUR 4 536 667.20. Romania submitted its observations concerning that letter on 30 September 2019.

17. By decisions of 6 December 2018 and 7 January 2019, Belgium, Estonia, France, Ireland and Poland were granted leave to intervene in support of the form of order sought by Romania. On 14 February 2019, Ireland withdrew its application to intervene in the present case. The Commission submitted observations on the statements in intervention submitted by Belgium, Estonia, France and Poland on 11 June 2019.

18. A hearing was held on 10 December 2019 at which the Commission, Estonia and Romania presented oral argument.

IV. Summary of the arguments of the parties

A. The failure to fulfil obligations under Article 258 TFEU

19. The Commission submits that Romania failed to adopt by the deadline of 26 June 2017 set in Article 67 of Directive 2015/849 the necessary transposition measures or to notify it of those measures.

20. The Commission further contends that the 40 national measures notified in October 2018, after the lodging of the present action, and mentioned by Romania in its defence ('the notified measures') do not ensure partial transposition of Directive 2015/849. Those measures, which transpose previous directives repealed by Directive 2015/849,⁵ are not sufficient to transpose Directive 2015/849, since there are significant differences between those directives, and Directive 2015/849 introduces many new elements. None of the notified measures refers to Directive 2015/849 — 37 of which were adopted before the adoption of that directive — and Romania has not provided any document explaining the relationship between the provisions of Directive 2015/849 and the corresponding provisions of those national measures in accordance with recital 67 thereof. As it emphasised at the hearing, an annex to the defence should not be considered proper notification of such an explanatory document.⁶

21. Romania states that, in order to ensure full transposition of Directive 2015/849, it endeavoured to ensure the timely adoption of national legislation incorporating the provisions of that directive into a single act, but internal procedures exceeded the prescribed deadlines.

22. Romania claims that it has not totally failed in its obligation to transpose Directive 2015/849, since the notified measures transpose the previous directives repealed by Directive 2015/849 and, thus, to the extent that the provisions of those directives were incorporated into Directive 2015/849, those measures ensure partial transposition of that directive. The fact that those measures do not refer to Directive 2015/849 does not prevent them from being transposition measures, since they enable the objectives pursued by Directive 2015/849 to be attained. It provided information concerning the relationship between those measures and Directive 2015/849 in an annex to the defence.

⁵ Namely, Directives 2005/60 and 2006/70; see point 1 of this Opinion.

⁶ The Commission refers to the judgment of 28 June 2005, *Dansk Rørindustri and Others v Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 99).

B. The application of Article 260(3) TFEU

23. The Commission submits, based on its Communication on the implementation of Article 260(3) TFEU,⁷ that Romania's failure to fulfil its obligation to notify transposition measures under Article 67 of Directive 2015/849 falls within the scope of Article 260(3) TFEU. As indicated in a subsequent Communication,⁸ its adjusted practice of generally requesting a lump sum and a penalty payment applies to the present case.

24. The Commission argues that its decision to request systematically the imposition of financial penalties pursuant to Article 260(3) TFEU does not constitute a failure to exercise its discretion. Article 260(3) TFEU confers on it wide discretionary powers, analogous to the discretion whether to initiate proceedings under Article 258 TFEU.⁹ Thus, it is not required to set out specific reasons for its decision to have recourse to Article 260(3) TFEU. It also asserts that delays in the transposition of directives are serious enough to justify the imposition of lump sum payments.

25. Regarding the determination of financial penalties, the Commission contends that the method of calculating financial penalties under Article 260(3) TFEU should be the same as that applied under Article 260(2) TFEU.¹⁰ On that basis, the Commission proposes a lump sum of EUR 4 536 667.20, to take effect on the date of delivery of the Court's judgment. That amount is based on a daily amount of EUR 6 016.80, multiplied by the number of days (754) that the infringement persisted,¹¹ comprising the period between the day after the time limit for transposition set in Directive 2015/849 expired (27 July 2017) and the day before the infringement came to an end (20 July 2019), taking into account that Romania fully transposed, since 21 July 2019, Directive 2015/849.¹² The Commission emphasises that the duration of the infringement is an important element in determining the appropriate penalty, and should be calculated from the date of expiry of the transposition deadline, since it is on that date that the Member State's failure to notify the transposition measures arises, and not on the date of expiry of the deadline set in the reasoned opinion.¹³

26. Furthermore, in calculating the daily amount of EUR 6 016.80 for the lump sum, which is based on the standard flat rate multiplied by the seriousness coefficient and the 'n' factor,¹⁴ the Commission proposes a coefficient of 8, on a scale of 1 to 20, for the seriousness of the infringement. This is based on the established parameters relating to, first, the importance of Directive 2015/849 as a key instrument to ensure effective protection of the European financial market against threats posed by money laundering and terrorist financing and, second, the effects on public and private interests by virtue of the impact of Romania's failure to transpose that directive on the European financial market, investors and citizens. It also considers the extension of the transposition deadline set in Directive 2018/843 for establishing the central registers under Articles 30 and 31 of Directive 2015/849 as a mitigating factor, underlining that the deadline for transposing the other obligations laid down in Directive 2015/849 remains unchanged.

⁷ Communication from the Commission — Implementation of Article 260(3) of the Treaty (OJ 2011 C 12, p. 1; 'the 2011 Communication'), in particular, points 7, 19 and 21.

⁸ Communication from the Commission, EU Law: Better results through better application (OJ 2017 C 18, p. 10; 'the 2017 Communication'), in particular, pp. 15-16.

⁹ The 2011 Communication, in particular, points 16 and 17.

¹⁰ The 2011 Communication, in particular, points 23 and 28; the 2017 Communication, p. 15.

¹¹ The 2011 Communication, point 28 (referring to Communication from the Commission — Application of Article 228 of the EC Treaty (OJ 2007 C 126, p. 15; 'the 2005 Communication'), points 19 to 24).

¹² See point 16 of this Opinion. The Commission had also proposed a daily penalty payment, but withdrew that claim. Thus, I will not discuss that calculation further.

¹³ The Commission refers, in particular, to the judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 88).

¹⁴ See the 2005 Communication, in particular, point 24. The Commission relies on the figures set out in its Communication on Updating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings (C(2017)8720 final) (OJ 2017 C 431, p. 3).

27. Romania, supported by Belgium, Estonia and France, submits that, since Romanian law provides for partial transposition of Directive 2015/849, Article 260(3) TFEU does not apply. In the alternative, the financial penalties proposed by the Commission must be adapted to the circumstances of the present case.

28. Regarding the imposition of financial penalties, Romania, supported by Belgium, Estonia, France and Poland, argues that the Commission's systematic practice of requesting financial penalties under Article 260(3) TFEU is erroneous. The Commission must give reasons, in light of the factual and legal circumstances of each case, for its decision to have recourse to Article 260(3) TFEU. Having regard to the circumstances of this case — including, inter alia, the extremely short pre-litigation stage, the complexity of Directive 2015/849, Romania's collaborative efforts and its partial transposition of Directive 2015/849 — and that the Commission did not give reasons for its decision to request financial penalties, those penalties are not justified.

29. Romania further asserts that the imposition of a lump sum is unjustified and disproportionate. As recognised in the case-law on Article 260(2) TFEU,¹⁵ a lump sum is imposed in exceptional situations and is not automatic. It also exceeds what is necessary for Romania to comply with its obligations, taking into account in particular that it fulfilled its obligations, the impact on public and private interests is overstated, and Romania has never been condemned by the Court for failure to transpose a directive on time. As it emphasised at the hearing, and as indicated in France's submissions, if a Member State complies with its obligations in the course of the proceedings, a lump sum is not justified, since it does not further the objectives of Article 260(3) TFEU to encourage transposition of directives and facilitate the imposition of financial penalties.¹⁶

30. Regarding the determination of financial penalties, Romania, supported by Belgium, France and Poland, argues that the method for calculating penalties under Article 260(2) and (3) TFEU should not be the same, and the criteria should be adapted to the type of infringement referred to in Article 260(3) TFEU. In the present case, Romania considers that the seriousness coefficient is excessive, since it concerns partial transposition, and Romania cooperated throughout the procedure. It is also inappropriate to take account of the duration of the infringement under Article 260(3) TFEU and, in the alternative, the date set in the reasoned opinion should be used, since that is when the Court assesses whether the Member State has fulfilled obligations.¹⁷ In consequence, should the Court impose a lump sum, the amount should be considerably reduced and, moreover, reflect the circumstances of the present case and Romania's conduct.

V. Analysis

A. *The failure to fulfil obligations under Article 258 TFEU*

31. It should be recalled that, in proceedings under Article 258 TFEU, the notification carried out by the Member States, in accordance with the principle of sincere cooperation under Article 4(3) TEU, must contain sufficiently clear and precise information on the substance of the national rules transposing a directive. Therefore, notification, to which a correlation table may be added, must indicate unequivocally the laws, regulations and administrative provisions by means of which the

¹⁵ Romania refers, in particular, to the judgment of 9 December 2008, *Commission v France* (C-121/07, EU:C:2008:695, paragraphs 62, 63 and 69).

¹⁶ Romania refers to the judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 52).

¹⁷ Romania refers, in particular, to the judgment of 6 October 2009, *Commission v Spain* (C-562/07, EU:C:2009:614, paragraph 23 and the case-law cited).

Member State considers that it has satisfied the various requirements imposed on it by that directive. A Member State's failure to fulfil that obligation, whether by providing no information at all, partial information or insufficiently clear and precise information, may of itself justify recourse to Article 258 TFEU.¹⁸

32. In particular, the Court has held that, although the transposition of a directive may be carried out by means of domestic rules in force, a Member State is not absolved from the formal obligation to notify, even if that Member State already notified those rules in the context of the transposition of previous directives.¹⁹ Additionally, where a directive provides that the measures transposing it must contain a reference to it or be accompanied by such a reference on their official publication, it is necessary to adopt specific transposition measures.²⁰

33. It is also settled that, in an action based on Article 258 TFEU, the question whether a Member State has failed to fulfil its obligations is determined by reference to the situation prevailing in the Member State at the end of the period set in the reasoned opinion, and the Court cannot take account of any subsequent changes.²¹

34. In the present case, Romania acknowledges that it failed to adopt the measures necessary to transpose Directive 2015/849 and to notify those measures by the expiry of the period set in the reasoned opinion, namely 8 February 2018.²² It is common ground that such measures were adopted and notified after that date (see point 16 of this Opinion), and thus cannot be taken into consideration.

35. Regarding the notified measures which were in force in Romania at the expiry of the transposition deadline of 26 June 2017, I am not persuaded by the arguments put forward by Romania before the Court that those measures may be taken into account in the assessment of the failure to fulfil obligations in the present case. Given that Article 67(1) of Directive 2015/849 requires the Member States to ensure that their measures transposing that directive contain a reference to it or that such a reference is made when they are officially published (see points 6 and 7 of this Opinion), it is necessary for Romania to adopt specific transposition measures. Romania does not claim that the notified measures fulfil that condition. In any event, Romania does not dispute that those measures did not fully transpose Directive 2015/849, and that they were notified in October 2018, that is, after the expiry of the transposition deadline of Directive 2015/849 and the period set in the reasoned opinion.²³ I will return to this later in my analysis (see point 68 of this Opinion).

36. I therefore propose that the Court declare that, by failing to adopt within the prescribed period all the measures necessary to transpose Directive 2015/849 or, in any event, by failing to notify those measures, Romania failed to fulfil its obligations under Article 67 of that directive.

18 See judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 51).

19 See judgment of 16 July 2009, *Commission v Ireland* (C-427/07, EU:C:2009:457, paragraphs 108 and 109).

20 See judgment of 4 October 2018, *Commission v Spain* (C-599/17, not published, EU:C:2018:813, paragraph 21).

21 See judgment of 18 October 2018, *Commission v Romania* (C-301/17, not published, EU:C:2018:846, paragraph 42).

22 In this case, the reference date is two months from Romania's receipt of the reasoned opinion (see point 10 of this Opinion), which was 8 December 2017.

23 See, in particular, judgment of 30 November 2006, *Commission v Luxembourg* (C-32/05, EU:C:2006:749, paragraph 25) (upholding a Member State's failure to fulfil its obligation to notify transposition measures contained in an annex to the defence and thus submitted after the date set in the reasoned opinion).

B. The application of Article 260(3) TFEU

37. The central issues in this case concern, first, the Commission's justification of its decision to request financial penalties under Article 260(3) TFEU and, second, the proportionality of the lump sum payment which, in turn, raises some general questions relating in particular to the method for calculating lump sum payments and the applicability of the case-law on Article 260(2) TFEU. The parties also dispute whether Article 260(3) TFEU applies to this case, namely, whether it extends to a Member State's partial failure to notify transposition measures.

38. Since the judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*²⁴ has particular pertinence for these issues, it is necessary, first, to provide some preliminary observations concerning that judgment (section 1), before considering the Commission's discretion to request financial penalties pursuant to Article 260(3) TFEU, the assessment of financial penalties under that provision and the imposition of a lump sum payment in the present case (sections 2, 3 and 4).

1. The judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*

39. It should be borne in mind that the judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*²⁵ mainly addressed the material scope of Article 260(3) TFEU and the assessment of penalty payments under that provision. In particular, the Court held that the expression 'obligation to notify measures transposing a directive' in Article 260(3) TFEU means that 'the Member States are required to state, for each provision of the directive, the national provision or provisions ensuring its transposition. Once notified, where relevant in addition to a correlation table, it is for the Commission to establish, for the purposes of seeking the financial penalty to be imposed on the Member State in question laid down in that provision, whether certain transposing measures are clearly lacking or do not cover all of the territory in question'.²⁶

40. The Court also held that the imposition of penalty payments under Article 260(3) TFEU is justified only if the failure continues up to the time of the Court's examination of the facts, and that the case-law relating to Article 260(2) TFEU must be applied by analogy to Article 260(3) TFEU, as penalty payments under both provisions seek to achieve the same objective. Taking account of its discretion in the matter and the criteria in the case-law on Article 260(2) TFEU, the Court imposed a daily penalty payment of EUR 5 000 on Belgium for failing to adopt and notify transposition measures relating to three articles of the directive in question in respect of one of its regions.²⁷

41. On this basis, it should be observed that, in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, the Court has interpreted the material scope of Article 260(3) TFEU to cover a Member State's failure to notify measures constituting an incomplete (partial) transposition of the directive in question.²⁸ Also, the Court has utilised the same method for assessing penalty payments under Article 260(2) and (3) TFEU, placing emphasis on its discretion and the objective sought by that type of penalty. I will come back to this later in my analysis (see points 52, 53 and 59 of this Opinion).

²⁴ C-543/17, EU:C:2019:573.

²⁵ C-543/17, EU:C:2019:573.

²⁶ Judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 59).

²⁷ See judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, in particular, paragraphs 60, 61, and 80 to 89).

²⁸ Judgment of 8 July 2019 (C-543/17, EU:C:2019:573). Compare Opinion of Advocate General Szpunar in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:322, in particular, points 58 to 81) (proposing a restrictive approach), with Opinion of Advocate General Wathelet in *Commission v Poland (C-320/13, not published, EU:C:2014:2441, points 114 to 145)*, and my Opinion in *Commission v Spain (Article 260(3) TFEU — Mortgage credit)* (C-569/17, EU:C:2019:271, points 41 to 71) (proposing a broader approach).

42. It follows from *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*²⁹ that the claim put forward by Romania, supported by Belgium, Estonia and France, that since Romania partially transposed Directive 2015/849, Article 260(3) TFEU does not apply, cannot be accepted. Article 260(3) TFEU is applicable to these proceedings,³⁰ given that the Commission established that Romania failed to fulfil its notification obligation in full. Indeed, transposition measures were clearly lacking until Romania fully transposed, since 21 July 2019, Directive 2015/849, and the pre-existing national measures did not suffice (see points 34 and 35 of this Opinion).

2. The Commission's discretion under Article 260(3) TFEU

43. In the present case, Romania, supported by Belgium, Estonia, France and Poland, argues in substance that the imposition of financial penalties is not justified, since the Commission has failed to give reasons, in light of the particular circumstances of the case, for its decision to have recourse to Article 260(3) TFEU.

44. I am in agreement with the Commission that it is not required to give reasons for its decision to request financial penalties under Article 260(3) TFEU.³¹ My reasons for reaching that conclusion are as follows.

45. First, it should be recalled that Article 260(3) TFEU allows the Commission to bring infringement proceedings pursuant to Article 258 TFEU, on the grounds that a Member State has 'failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure', and ask the Court to impose financial penalties on that Member State in the same proceedings. Here, the imposition of financial penalties no longer depends on a lengthier procedure involving a first judgment of the Court declaring the infringement under Article 258 TFEU, and then a second judgment of the Court imposing financial penalties under Article 260(2) TFEU for the Member State's non-compliance with that first judgment. In effect, the two proceedings are 'rolled into one'.

46. Consequently, it should be considered that the possibility granted to the Commission to request financial penalties under Article 260(3) TFEU is linked to the Commission's wide discretion recognised in the case-law to initiate proceedings under Article 258 TFEU.³² As the Court has held, the Commission 'is not required to justify its decision, nor will the admissibility of the action be dependent upon the circumstances dictating its choice. ... The Court of Justice need only ensure that the procedure adopted may, in principle, be employed with regard to the alleged infringement'.³³ The same should apply, in my view, to the Commission's decision to resort to Article 260(3) TFEU.

47. In that regard, it may be inferred from the wording of Article 260(3) TFEU ('may, when it deems appropriate, specify the amount of the lump sum or penalty payment'), as compared to that of Article 260(2) TFEU ('shall specify the amount of the lump sum or penalty payment') that the Commission is granted a discretion to decide whether it will ask for financial penalties pursuant to Article 260(3) TFEU in the proceedings based on Article 258 TFEU, and is not obliged to do so.³⁴

²⁹ Judgment of 8 July 2019 (C-543/17, EU:C:2019:573).

³⁰ I should note that there is no question that Directive 2015/849 is a directive adopted under a legislative procedure, namely, the ordinary legislative procedure pursuant to its legal basis of Article 114 TFEU.

³¹ It should be noted that Advocate General Wathelet took a similar position in his Opinion in *Commission v Poland* (C-320/13, not published, EU:C:2014:2441, points 104 to 113).

³² See judgment of 19 September 2017, *Commission v Ireland* (C-552/15, EU:C:2017:698, paragraph 34).

³³ Judgment of 26 June 2001, *Commission v Portugal* (C-70/99, EU:C:2001:355, paragraph 17).

³⁴ See my Opinion in *Commission v Spain (Article 260(3) TFEU — Mortgage credit)* (C-569/17, EU:C:2019:271, point 68 and citations therein).

Yet, there is nothing in that wording which would appear to require the Commission to justify its decision to have recourse to Article 260(3) TFEU where it is not required to do so under Article 258 TFEU, given that the context of Article 260(3) TFEU includes the procedure under Article 258 TFEU.³⁵

48. In any event, the Commission's decision requesting the imposition of financial penalties under Article 260(3) TFEU will have to be reasoned, in so far as it contains an individual assessment of the financial penalties sought in light of the circumstances of the case. The Commission's reasons relating to the application of the criteria used for determining the amount of the financial penalties requested may be considered sufficient to enable the Member State to understand and challenge the Commission's assessment of the financial penalties requested before the Court, as in the present case.

49. In the light of the foregoing, I take the view that the Commission is not required to give reasons when it resorts to Article 260(3) TFEU.

3. *The assessment of financial penalties under Article 260(3) TFEU*

50. On the basis that the Commission's decision to request financial penalties in the present case complies with Article 260(3) TFEU, I turn to the assessment of financial penalties under that provision.

51. First, as I proposed in my Opinion in *Commission v Spain (Article 260(3) TFEU — Mortgage credit)*,³⁶ the Commission should be entitled to use the same method to calculate the financial penalties which it proposes under Article 260(2) and (3) TFEU, given that those penalties are the same, the objectives pursued by those two provisions are similar, and this promotes a coherent approach and foreseeability for the Member States. In that regard, the fact that Article 260(2) TFEU sanctions a 'double infringement' of EU law and non-compliance with the judgment under Article 258 TFEU, whereas Article 260(3) TFEU sanctions a single infringement of EU law based on failure to fulfil the notification obligation, does not, in my view, diminish the fact that both provisions concern infringements grounded on primary Union law (see point 31 of this Opinion).

52. In any event, the Court is not bound by the Commission's proposals regarding the imposition of financial penalties or its method of calculation under Article 260(3) TFEU.³⁷ As the Court recognised in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*,³⁸ it is for the Court in each case to determine, in light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties appropriate, in particular, for preventing the recurrence of similar infringements of EU law. The Court has further held, in the context of Article 260(2) TFEU, that the Commission's suggestions and guidelines in its communications are not binding on the Court; they merely constitute a useful point of reference and ensure that the action brought is transparent, foreseeable and consistent with legal certainty.³⁹

35 See judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 57).

36 C-569/17, EU:C:2019:271, point 73. See, also, Opinions of Advocate General Wathelet in *Commission v Poland* (C-320/13, not published, EU:C:2014:2441, points 146 to 160), and of Advocate General Szpunar in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:322, point 96).

37 See my Opinion in *Commission v Spain* (C-569/17, EU:C:2019:271, point 74).

38 See judgment of 8 July 2019 (C-543/17, EU:C:2019:573, paragraph 78) (referring, by analogy, to the judgment of 2 December 2014, *Commission v Italy* (C-196/13, EU:C:2014:2407, paragraph 86 and the case-law cited)).

39 Regarding lump sums, see judgment of 19 December 2012, *Commission v Ireland* (C-279/11, not published, EU:C:2012:834, paragraph 77). Regarding penalty payments, see, also, judgment of 4 July 2018, *Commission v Slovakia* (C-626/16, EU:C:2018:525, paragraph 83).

53. Thus, it may be considered to follow from *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*⁴⁰ that the case-law on Article 260(2) TFEU should be applied by analogy to Article 260(3) TFEU, in so far as the financial penalties under both provisions seek to achieve the same objectives: the imposition of a penalty payment is particularly suited to inducing a Member State to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, whereas the imposition of a lump sum is based more on assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations.

54. Moreover, in the case-law on Article 260(2) TFEU, starting with the seminal judgment of 12 July 2005 in *Commission v France*,⁴¹ the Court has held that it may impose both a lump sum and a penalty payment,⁴² and that it may impose a financial penalty not suggested by the Commission, on the grounds that ‘the appropriateness of imposing a financial penalty and the choice of the penalty most suited to the circumstances of the case can be appraised only in the light of the findings made by the Court in the judgment to be delivered under Article [260(2) TFEU] and therefore fall outside the political sphere’.⁴³ Thus, the question arises whether the Court’s case-law on Article 260(2) TFEU is applicable by analogy to Article 260(3) TFEU in respect of the Court’s discretion to impose both a lump sum and a penalty payment or a financial penalty not suggested by the Commission.

55. In that connection, it should be pointed out that, as compared to Article 260(2) TFEU (‘If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.’), Article 260(3) TFEU provides that the Court’s imposition of financial penalties cannot exceed the amount specified by the Commission (‘If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission.’).

56. Admittedly, as submitted by Estonia, Romania and the Commission at the hearing, that limitation set out in Article 260(3) TFEU may be interpreted as restricting the Court’s discretion not only in respect of the amount, but also the choice, of the financial penalty to be imposed, so that the Court could not impose both a lump sum and a penalty payment if the Commission did not request them, nor could it impose a different financial penalty than the one suggested by the Commission.⁴⁴

57. Nevertheless, I maintain the position, as advanced in my Opinion in *Commission v Spain (Article 260(3) TFEU — Mortgage credit)*,⁴⁵ that the Court has discretion pursuant to Article 260(3) TFEU to impose both a lump sum and a penalty payment or a financial penalty not suggested by the Commission, subject to the ceiling placed on the amount of the financial penalty under that provision. In particular, it should be noted that the wording of Article 260(3) TFEU refers to the amount, and not the choice, of the financial penalty to be imposed. It may be inferred from that wording that the Court may not impose a financial penalty of a higher amount than that suggested by the Commission. However, in my view, that wording should not be interpreted as divesting the Court of its discretion to determine the appropriate financial penalty in all situations. Thus, depending on the circumstances,

⁴⁰ See judgment of 8 July 2019 (C-543/17, EU:C:2019:573, paragraph 61) (referring, by analogy, to the judgment of 12 July 2005, *Commission v France* (C-304/02, EU:C:2005:444, paragraph 81)). See, also, point 40 of this Opinion.

⁴¹ C-304/02, EU:C:2005:444.

⁴² See judgments of 12 July 2005, *Commission v France* (C-304/02, EU:C:2005:444, paragraphs 80 to 86), and of 12 November 2019, *Commission v Ireland (Derrybrien wind farm)* (C-261/18, EU:C:2019:955, paragraph 112).

⁴³ Judgment of 12 July 2005, *Commission v France* (C-304/02, EU:C:2005:444, paragraph 90). See, also, judgment of 18 July 2007, *Commission v Germany* (C-503/04, EU:C:2007:432, paragraph 22).

⁴⁴ See Opinions of Advocate General Wathelet in *Commission v Poland* (C-320/13, not published, EU:C:2014:2441, point 155), and of Advocate General Szpunar in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:322, points 97 to 100).

⁴⁵ C-569/17, EU:C:2019:271, points 76 to 78.

the Court may impose a financial penalty not suggested by the Commission, or both a lump sum and a penalty payment, at the same amount as, or at a lower amount than, the amount ‘specified by the Commission’, which does not have to be the total amount eventually imposed on the Member State concerned.

58. Moreover, such an interpretation serves the objectives of Article 260(3) TFEU, taking into account the purpose of having different financial penalties in the Treaties. As noted in point 40 of this Opinion, where a Member State fulfils its notification obligation in the course of the proceedings, and thus before the Court’s examination of the facts, a penalty payment cannot be imposed. Yet, a lump sum remains viable in order to address the impact of that infringement on public and private interests and deter that infringement from recurring. Indeed, such a situation explains the Commission’s adjusted practice of generally requesting a lump sum and a penalty payment in cases brought under Article 260(3) TFEU (see point 23 of this Opinion), as illustrated by this action. Nonetheless, were the Commission to suggest only one type of penalty, the Court’s discretion to impose a different penalty or both a lump sum and a penalty payment where necessary, subject to the ceiling set out in Article 260(3) TFEU, would ensure that that provision is not deprived of useful effect.

59. It should be added that, while the Court did not appear to take a direct position on this issue in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*,⁴⁶ it emphasised the Court’s discretion for determining the imposition of financial penalties under Article 260(3) TFEU,⁴⁷ and in particular the fact that proceedings under Article 260(3) TFEU enable the Court to carry out its ‘judicial function’ in assessing the financial penalty which ‘it considers to be the most suited to the circumstances of the case’.⁴⁸

4. The imposition of a lump sum payment in the present case

60. In light of the case-law concerning Article 260(2) TFEU,⁴⁹ the imposition of a lump sum and the fixing of that sum under Article 260(3) TFEU depend in each case on all the relevant factors relating to the characteristics of the infringement established and the conduct of the Member State concerned. In exercising its discretion, the Court decides whether to impose a lump sum and, if so, determines the amount which is appropriate to the circumstances and proportionate to the infringement. Relevant factors in that regard include the seriousness of the infringement, its duration and the Member State’s ability to pay.

61. It also follows from that case-law that a lump sum is based on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period.⁵⁰ An order to pay a lump sum cannot be made automatically, since the Court has a wide discretion to decide whether it is necessary to impose such a penalty.⁵¹

62. On this basis, it should be observed that the Court has considerable discretion under Article 260(3) TFEU to impose a lump sum, where appropriate, based on the circumstances of the case and the conduct of the Member State concerned, in order to address the effects on public and private interests of the Member State’s failure to fulfil the notification obligation. The fact that the Court has

46 See judgment of 8 July 2019 (C-543/17, EU:C:2019:573, in particular, paragraphs 81 and 83).

47 See judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, in particular, paragraphs 78, 83, 84, 89 and 92).

48 Judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 58).

49 See judgment of 12 November 2019, *Commission v Ireland (Derrybrien wind farm)* (C-261/18, EU:C:2019:955, paragraphs 113 and 114).

50 See judgment of 2 December 2014, *Commission v Greece (C-378/13, EU:C:2014:2405, paragraph 72).*

51 See judgment of 9 December 2008, *Commission v France (C-121/07, EU:C:2008:695, paragraph 63).*

considered it appropriate to impose a lump sum in the context of Article 260(2) TFEU ‘in particular where the breach has persisted for a long period’, as noted in point 61 of this Opinion, does not preclude the Court from imposing a lump sum in other situations, where necessary, for preventing the recurrence of similar infringements of EU law.

63. Also, in view of the different aims sought by penalty payments and lump sum payments (see point 53 of this Opinion), it is clear that while an order for a penalty payment, which is essentially intended to be coercive as regards the ongoing breach, is made only in so far as the breach persists, there is no requirement for the same approach to be taken with regard to the imposition of a lump sum payment.⁵² Thus, contrary to the submissions of France and Romania, the fact that a Member State may fulfil its obligations in the course of the proceedings does not deprive the lump sum of its purpose.

64. In the present case, it should be considered that the imposition of a lump sum payment is appropriate as a dissuasive measure. The total amount proposed by the Commission (EUR 4 536 667.20) can be reduced (to EUR 4 011 038.72) if the Commission’s updated figures are applied,⁵³ and possibly further if certain factors are taken into account. Consequently, in light of all the circumstances of the present case, I propose that the Court impose on Romania a lump sum payment of EUR 3 000 000.⁵⁴

65. In the first place, regarding the seriousness of the infringement, the Court has recognised in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*,⁵⁵ in the context of imposing a penalty payment under Article 260(3) TFEU, that the obligation to adopt the national measures for the purposes of ensuring that a directive is transposed in full and the obligation to notify those measures to the Commission are ‘fundamental obligations incumbent on the Member States in order to ensure optimal effectiveness of EU law and that failure to fulfil those obligations must therefore be regarded as undoubtedly serious’. This seems to me to be applicable to the present case involving the imposition of a lump sum payment.

66. Moreover, if the Court takes into account the criteria adopted by the Commission for the determination of the lump sum payment in the present case, the Commission’s assessment of seriousness does not appear to be the result of any error, having regard to the importance of the provisions of EU law infringed and the effects on public and private interests. It should be pointed out that Directive 2015/849 is a key legal instrument in the prevention of the use of the Union financial system for the purposes of money laundering and the financing of terrorism.⁵⁶ Situated in the context of establishing an effective and genuine Security Union,⁵⁷ that directive builds on previous directives and international activities in the field in order to strengthen the legal framework for combating

52 See judgment of 9 December 2008, *Commission v France* (C-121/07, EU:C:2008:695, paragraphs 19, 20, 44, 45, 56 to 58), and Opinion of Advocate General Mazák in *Commission v France* (C-121/07, EU:C:2008:320, point 80).

53 See Communication from the Commission — Updating of data used to calculate lump sum and penalty payments by the Commission to the Court of Justice of the European Union in infringement proceedings (OJ 2019 C 309, p. 1). The minimum lump sum is reduced to EUR 1 651 000. In that regard, the calculation of the lump sum would be, according to the formula mentioned in points 25 and 26 of this Opinion, as follows: the daily amount of EUR 5 319.68 ($1\,039 \times 8 \times 0.64$) x 754 days. On that basis, the total lump sum sought by the Commission would then amount to EUR 4 011 038.72.

54 It is worth noting that the amount which I propose corresponds to certain lump sums imposed under Article 260(2) TFEU for failures to transpose a directive in full. See judgments of 31 March 2011, *Commission v Greece* (C-407/09, EU:C:2011:196, paragraphs 33 to 44) (EUR 3 million), and of 30 May 2013, *Commission v Sweden* (C-270/11, EU:C:2013:339, paragraphs 43 to 60) (EUR 3 million). Compare those amounts with that imposed in judgment of 9 December 2008, *Commission v France* (C-121/07, EU:C:2008:695, paragraphs 65 to 88) (EUR 10 million) (noting, in particular, previous infringements in the field concerned).

55 Judgment of 8 July 2019 (C-543/17, EU:C:2019:573, paragraph 85).

56 See Directive 2018/843, in particular, recital 1; Directive 2015/849, in particular, Article 1(1) and recitals 1 to 3, and 64.

57 See Communication from the Commission to the European Parliament, the European Council and the Council, Twentieth Progress Report towards an effective and genuine Security Union, COM(2019)552 final, 30 October 2019, pp. 10-12.

money laundering and terrorist financing in the EU.⁵⁸ Similar to what the Court has held in respect of other internal market directives,⁵⁹ Romania's failure to adopt and notify transposition measures may be considered to impact the proper functioning of the internal market and thus has a certain degree of seriousness.⁶⁰

67. The effects of Romania's failure to transpose Directive 2015/849 on public and private interests may also be considered significant, given that, as indicated by the Commission, that failure poses risks to the integrity and functioning of the EU financial system, making it vulnerable to money laundering and terrorist financing and affecting investors and citizens. This is illustrated, for example, by the European Parliament's resolution of 19 September 2019 on the state of implementation of the Union's anti-money laundering legislation,⁶¹ which, inter alia, welcomed the Commission's initiation of infringement proceedings against the Member States which had not transposed Directive 2015/849, and urged them to do so as soon as possible.

68. Furthermore, it is appropriate to have regard to the following factors in the present case. In particular, while, as indicated by the Commission, the extent of transposition should be taken into account when determining the seriousness of the failure to notify,⁶² it should be emphasised that the present case involves a Member State's total failure to notify transposition measures. In that connection, I am not convinced by Romania's assertion that the measures notified in October 2018 partially transpose Directive 2015/849 and enable the objectives of that directive to be broadly achieved, since the Court has rejected similar arguments based on the fact that those measures did not meet the requirements of the directive concerned; otherwise, the Member State would not have been found in breach of its obligation to transpose.⁶³

69. Additionally, I am not persuaded that certain circumstances invoked by Romania should be taken into account. Regarding the alleged short duration of the pre-litigation phase, there is no question that the Commission gave Romania a reasonable period to reply to the letter of formal notice and the reasoned opinion, and to prepare its defence in accordance with the Court's case-law,⁶⁴ given that Romania had two months to respond to the letter of formal notice and the reasoned opinion, and over one year elapsed after the transposition deadline set in Directive 2015/849 (26 June 2017) before the Commission brought this action (27 August 2018). Difficulties relating to the complexity of the implementation of Directive 2015/849 cannot be accepted, given that a Member State cannot plead practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law.⁶⁵ It should be added that the fact that other Member States may have experienced problems in transposing the directive on time is equally irrelevant⁶⁶ and, in any event, as indicated by the Commission, Romania was the only Member State which failed to notify any transposition measures at the lodging of this action.⁶⁷

58 See Communication from the Commission to the European Parliament and the Council, Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework, COM(2019)360 final, 24 July 2019.

59 See footnote 30 of this Opinion.

60 See judgment of 30 May 2013, *Commission v Sweden* (C-270/11, EU:C:2013:339, paragraph 49).

61 See, in particular, recitals A, B, G and point 1.

62 See the 2011 Communication, point 25, and the 2017 Communication, p. 15. See, in that regard, judgment of 9 December 2008, *Commission v France* (C-121/07, EU:C:2008:695, paragraph 84).

63 See judgment of 30 May 2013, *Commission v Sweden* (C-270/11, EU:C:2013:339, paragraph 51). In the judgment of 8 July 2019, *Commission v Belgium* (Article 260(3) TFEU — High-speed networks) (C-543/17, EU:C:2019:573, paragraph 73), the Court did not appear to give any attention to a similar argument advanced by Belgium.

64 See judgment of 18 October 2018, *Commission v Romania* (C-301/17, not published, EU:C:2018:846, paragraph 32). The Commission has wide discretion when to initiate infringement proceedings: see point 46 of this Opinion.

65 See judgment of 12 November 2019, *Commission v Ireland (Derrybrien wind farm)* (C-261/18, EU:C:2019:955, paragraph 89).

66 See judgment of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531, paragraph 120).

67 It is worth noting that the Commission stated at the hearing in *Commission v Ireland* (C-550/18) that infringement proceedings had only been brought against Ireland and Romania, and all other Member States had notified transposition measures for Directive 2015/849.

70. Nevertheless, there are certain mitigating factors which bear on the imposition of the lump sum payment in the present case. First, Directive 2018/843 extended the deadline for the establishment of central registers for beneficial ownership information under Articles 30 and 31 of Directive 2015/849, although it did not change the transposition deadline for the other obligations under that directive (see point 7 of this Opinion). I see no reason why that extension should not be taken into account as a mitigating factor, as indicated by the Commission. Second, Romania has demonstrated that it cooperated in good faith with the Commission during the proceedings.⁶⁸ Finally, it is not disputed that Romania has not yet been condemned by the Court for failure to transpose a directive on time.⁶⁹

71. In the second place, regarding the duration of the infringement, the Commission considers that it should be calculated from the date of expiry of the transposition deadline for Directive 2015/849, whereas Romania asserts that that element should not be taken into account and, in the alternative, the date set in the reasoned opinion should be used.

72. It should be pointed out that, in the case-law on lump sum payments under Article 260(2) TFEU, the Court assesses the duration of the infringement from the date of delivery of the Court's first judgment under Article 258 TFEU to the date on which the Member State concerned has fulfilled its obligations, or failing that, on the date when the Court examines the facts in the second proceedings.⁷⁰ Consequently, for the purposes of determining lump sum payments under Article 260(3) TFEU, the present case draws attention to two main aspects.

73. First, regarding the end point of the duration of the infringement, while it is not disputed that Romania fulfilled its obligations as of 21 July 2019, it would appear necessary to elucidate the day on which the Court examines the facts in proceedings under Article 260(3) TFEU, especially in the interests of upholding legal certainty and the deterrent effect of lump sum payments. Given that proceedings under Article 260(3) TFEU may likely involve the submission of transposition measures by the Member State concerned at various stages during the course of the proceedings, there should be a fixed point in time so that the Court can carry out its judicial function.⁷¹ To that end, it seems appropriate, in my view, to specify the date of the last hearing in the case or, if there is no hearing, at the close of the written procedure (namely, on the date when the parties are notified that the case is being decided by a certain formation of the Court), since this is a final opportunity for the parties to submit observations on the degree of compliance of the Member State concerned and the financial penalties which should be imposed.⁷²

74. Second, regarding the starting point of the duration of the infringement, the date of expiry of the transposition deadline set in the directive in question appears to me to be more appropriate than the date of expiry of the deadline set in the reasoned opinion in respect of lump sum payments, since it better serves the objective of Article 260(3) TFEU, which is in part to give stronger incentive to the Member States to transpose directives on time.⁷³ On the contrary, if it is only after the date set in the reasoned opinion that the possible imposition of a lump sum under Article 260(3) TFEU arises, this would run the risk that the transposition deadline set in the directive would have no immediate effect so long as the Commission does not take action against a Member State. It should also be borne in mind that, in contrast to penalty payments which provide a means of coercing a Member State to end

68 See judgment of 17 October 2013, *Commission v Belgium* (C-533/11, EU:C:2013:659, paragraph 60).

69 See judgment of 30 May 2013, *Commission v Sweden* (C-270/11, EU:C:2013:339, paragraph 55).

70 See judgments of 25 June 2013, *Commission v Czech Republic* (C-241/11, EU:C:2013:423, paragraph 46), and of 12 November 2019, *Commission v Ireland (Derrybrien wind farm)* (C-261/18, EU:C:2019:955, paragraph 122).

71 See, in that regard, Opinion of Advocate General Ruiz-Jarabo Colomer in *Commission v Greece* (C-387/97, EU:C:1999:455, points 56 to 58).

72 See, in that regard, judgment of 17 November 2011, *Commission v Italy* (C-496/09, EU:C:2011:740, paragraph 84). See, also, regarding penalty payments, judgment of 31 May 2018, *Commission v Italy* (C-251/17, not published, EU:C:2018:358, paragraphs 64 and 65), and Opinion of Advocate General Trstenjak in *Commission v Germany* (C-503/04, EU:C:2007:190, points 62, 63 and 88).

73 See judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573, paragraph 52).

the infringement sometime in the future, lump sum payments address past conduct, and provide a means of ensuring that a Member State will not find it preferable to await the commencement of proceedings before taking measures to remedy the infringement,⁷⁴ which may indeed occur if the date set in the reasoned opinion would be used.

75. Consequently, the approach which I propose would appear to apply with greater force in respect of lump sum payments as compared to penalty payments, regarding which the Court has taken into account the date of expiry of the transposition deadline set in the directive concerned for assessing the duration of the infringement in *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*.⁷⁵ In any event, should the Court disagree with my proposal, the length of time from the date of expiry of the transposition deadline set in the directive in question may be considered as part of assessing the seriousness of the infringement, as has been done in the case-law on Article 260(2) TFEU.⁷⁶

76. In the present case, taking account of the period following the date of expiry of the transposition deadline set in Directive 2015/849 (26 June 2017) until the date on which Romania fulfilled its obligations (21 July 2019), the duration of the infringement is about 25 months which may be considered significant.⁷⁷ I should point out that the obligation for a Member State to adopt the necessary measures to transpose a directive has not in itself been considered to involve any particular difficulty.⁷⁸ Nevertheless, it should be noted that, while belated, the national legislation notified in July 2019 ensured the transposition of Directive 2015/849 in full.

77. Finally, Romania has not submitted to the Court any evidence relating to its ability to pay.

78. In view of all the circumstances of this case, I therefore propose that the Court impose on Romania a lump sum payment of EUR 3 000 000.

VI. Costs

79. Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Romania has been unsuccessful, Romania should be ordered to pay the costs. In accordance with Article 140(1) of those Rules of Procedure, under which Member States which have intervened in the proceedings are to bear their own costs, Belgium, Estonia, France and Poland should be ordered to bear their own costs.

VII. Conclusion

80. In light of the foregoing, I propose that the Court should:

- (1) Declare that, by failing to adopt, by 26 June 2017, the measures necessary to transpose Directive 2015/849 or, in any event, by failing to notify those measures, Romania has failed to fulfil its obligations under Article 67 of that directive;
- (2) Order Romania to pay a lump sum payment of EUR 3 000 000;

⁷⁴ See Opinion of Advocate General Poiares Maduro in *Commission v Italy* (C-119/04, EU:C:2006:65, point 46). See, also, point 53 of this Opinion.

⁷⁵ Judgment of 8 July 2019 (C-543/17, EU:C:2019:573, paragraph 88).

⁷⁶ See judgment of 19 December 2012, *Commission v Ireland* (C-374/11, not published, EU:C:2012:827, paragraphs 38 and 52). See, also, Opinion of Advocate General Fennelly in *Commission v Greece* (C-197/98, EU:C:1999:597, point 43).

⁷⁷ See judgments of 30 May 2013, *Commission v Sweden* (C-270/11, EU:C:2013:339, paragraphs 57 and 58) (27 months), and of 13 July 2017, *Commission v Spain* (C-388/16, not published, EU:C:2017:548, paragraph 40) (29 months).

⁷⁸ See judgment of 31 March 2011, *Commission v Greece* (C-407/09, EU:C:2011:196, paragraph 33).

- (3) Order Romania to pay the costs; and
- (4) Order Belgium, Estonia, France and Poland to bear their own costs.