Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2021 *

[Text rectified by order of 15 March 2022]

(Reference for a preliminary ruling – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Legal nature and effects – Binding on Romania – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Fight against corruption – Protection of the European Union's financial interests – Article 325(1) TFEU – 'PFI' Convention – Criminal proceedings – Decisions of the Curtea Constituțională (Constitutional Court, Romania) concerning the legality of the taking of certain evidence and the composition of judicial panels in cases of serious corruption – Duty on national courts to give full effect to the decisions of the Curtea Constituțională (Constitutional Court) – Disciplinary liability of judges in case of non-compliance with such decisions – Power to disapply decisions of the Curtea Constituțională (Constitutional Court) that conflict with EU law – Principle of primacy of EU law)

In Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19,

FIVE REQUESTS for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decisions of 6 May 2019 (C-357/19), 13 May 2019 (C-547/19), 31 October 2019 (C-811/19) and 19 November 2019 (C-840/19), received at the Court, respectively, on 6 May, 15 July, 4 November and 19 November 2019, and from the Tribunalul Bihor (Regional Court, Bihor, Romania), made by decision of 14 May 2019, received at the Court on 14 May 2019 (C-379/19),

in the criminal proceedings against

PM (C-357/19),

RO (C-357/19),

SP (C-357/19),

TQ (C-357/19),

KI (C-379/19),

LJ (C-379/19),

* Language of the case: Romanian.

JH (C-379/19),

IG (C-379/19),

FQ (C-811/19),

GP (C-811/19),

HO (C-811/19),

IN (C-811/19),

NC (C-840/19),

interested parties:

Ministerul Public – Parchetul de pe lângă Înalta Curte de Casație și Justiție – Direcția Națională Anticorupție (C-357/19, C-811/19 and C-840/19),

QN (C-357/19),

UR (C-357/19),

VS (C-357/19),

WT (C-357/19),

Autoritatea Națională pentru Turism (C-357/19),

Agenția Națională de Administrare Fiscală (C-357/19),

SC Euro Box Promotion SRL (C-357/19),

Direcția Națională Anticorupție – Serviciul Teritorial Oradea (C-379/19),

JM (C-811/19),

and in the proceedings

CY,

Asociația 'Forumul Judecătorilor din România'

v

Inspecția Judiciară,

Consiliul Superior al Magistraturii,

Înalta Curte de Casație și Justiție (C-547/19),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, S. Rodin, Presidents of Chambers, M. Ilešič, T. von Danwitz (Rapporteur), M. Safjan, F. Biltgen and N. Piçarra, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PM, by V. Rădulescu and V. Tobă, avocați,

– RO, by M.O. Țopa and R. Chiriță, avocați,

– TQ, by M. Mareş, avocat,

– KI and LJ, by R. Chiriță, F. Mircea and O. Chiriță, avocați,

– CY, by P. Rusu, avocat, and by C. Bogdan,

– the Asociația 'Forumul Judecătorilor din România', by D. Călin and L. Zaharia,

– FQ, by A. Georgescu, avocat,

– NC, by D. Lupaşcu and G. Thuan Dit Dieudonné, avocats,

– the Ministerul Public – Parchetul de pe lângă Înalta Curte de Casație și Justiție – Direcția Națională Anticorupție, by C. Nistor and D. Ana, acting as Agents,

– the Direcția Națională Anticorupție – Serviciul Teritorial Oradea, by D. Ana, acting as Agent,

– the Inspecția Judiciară, by L. Netejoru, acting as Agent,

– the Consiliul Superior al Magistraturii, by L. Savonea, acting as Agent,

– the Romanian Government, initially by C.-R. Canțăr, S.-A. Purza, E. Gane, R.I. Hațieganu and L. Lițu, and subsequently by S.-A. Purza, E. Gane, R.I. Hațieganu and L. Lițu, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, initially by J. Baquero Cruz, I. Rogalski, P. Van Nuffel, M. Wasmeier and H. Krämer, and subsequently by J. Baquero Cruz, I. Rogalski, P. Van Nuffel and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2021,

gives the following

Judgment

1 These requests for a preliminary ruling concern, in essence, the interpretation of Article 2 TEU and the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), Article 1(1) and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995 (OJ 1995 C 316, p. 48; 'the PFI Convention'), Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56) and the principle of primacy of EU law.

2 The requests have been made in:

– criminal proceedings against PM, RO, TQ and SP (C-357/19), KI, LJ, JH and IG (C-379/19), FQ, GP, HO and IN (C-811/19), and NC (C-840/19) for offences inter alia of corruption and of tax fraud related to value added tax (VAT);

– proceedings between CY and the Asociația 'Forumul Judecătorilor din România' ('the Romanian Judges' Forum'), of the one part, and the Inspecția Judiciară (Judicial Inspection, Romania), the Consiliul Superior al Magistraturii (Superior Council of Magistracy, Romania) and the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) concerning the imposition of a disciplinary penalty on CY (C-547/19).

Legal context

European Union law

The PFI Convention

3 Article 1(1) of the PFI Convention reads as follows:

'For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

(a) in respect of expenditure, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

– non-disclosure of information in violation of a specific obligation, with the same effect,

– the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

…'

4 Article 2(1) of that convention provides:

'Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1(1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in case of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding [EUR] 50 000.'

5 By act of 27 September 1996, the Council drew up the Protocol to the Convention on the protection of the European Communities' financial interests (OJ 1996 C 313, p. 1). Pursuant to Articles 2 and 3 thereof, that protocol covers acts of passive and active corruption.

The Treaty of Accession

6 Article 2 of the Treaty between the Member States of the European Union and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union (OJ 2005 L 157, p. 11; 'the Treaty of Accession'), which entered into force on 1 January 2007, provides, in paragraphs 2 and 3 thereof:

'2. The conditions of admission and the adjustments to the Treaties on which the Union is founded, entailed by such admission, which will apply from the date of accession until the date of entry into force of the Treaty establishing a Constitution for Europe, are set out in the Act annexed to this Treaty. The provisions of that Act shall form an integral part of this Treaty.

3. …

Acts adopted prior to the entry into force of the Protocol referred to in Article 1(3) on the basis of this Treaty or the Act referred to in paragraph 2 shall remain in force and their legal effects shall be preserved until those acts are amended or repealed.'

The Act of Accession

7 Article 2 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203; 'the Act of Accession'), which entered into force on 1 January 2007, provides:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

8 Article 37 of that act reads as follows:

'If Bulgaria or Romania has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach the Commission may, until the end of a period of up to three years after accession, upon motivated request of a Member State or on its own initiative, take appropriate measures.

Measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.'

9 Article 38 of the Act of Accession provides:

'If there are serious shortcomings or any imminent risks of such shortcomings in Bulgaria or Romania in the transposition, state of implementation, or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty and Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty, the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, take appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between Bulgaria or Romania and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first

paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.'

10 Article 39(1) to (3) of the Act of Accession provides:

'1. If, on the basis of the Commission's continuous monitoring of commitments undertaken by Bulgaria and Romania in the context of the accession negotiations and in particular the Commission's monitoring reports, there is clear evidence that the state of preparations for adoption and implementation of the acquis in Bulgaria or Romania is such that there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008.

2. Notwithstanding paragraph 1, the Council may, acting by qualified majority on the basis of a Commission recommendation, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfilment by Romania of one or more of the commitments and requirements listed in Annex IX, point I.

3. Notwithstanding paragraph 1, and without prejudice to Article 37, the Council may, acting by qualified majority on the basis of a Commission recommendation and after a detailed assessment to be made in the autumn of 2005 of the progress made by Romania in the area of competition policy, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfilment by Romania of the obligations undertaken under the Europe Agreement or of one or more of the commitments and requirements listed in Annex IX, point II.'

11 Annex IX to the Act of Accession, entitled 'Specific commitments undertaken, and requirements accepted, by Romania at the conclusion of the accession negotiations on 14 December 2004 (referred to in Article 39 of the Act of Accession)', contains, in point I thereof, the following passage:

'In relation to Article 39(2)

…

(4) To considerably step up the fight against corruption and in particular against high-level corruption by ensuring a rigorous enforcement of the anti-corruption legislation and the effective independence of the National Anti-Corruption Prosecutors' Office (NAPO) and by submitting on a yearly basis as of November 2005 a convincing track-record of the activities of NAPO in the fight against high-level corruption. NAPO must be given the staff, financial and training resources, as well as equipment necessary for it to fulfil its vital function.

(5) … [The National Anti-Corruption Strategy] must include the commitment to revise the protracted criminal procedure by the end of 2005 to ensure that corruption cases are dealt with in a swift and transparent manner, in order to guarantee adequate sanctions that have a deterrent effect; …

…’

Decision 2006/928

12 Decision 2006/928 was adopted, in the context of the planned accession of Romania to the European Union on 1 January 2007, on the basis, in particular, of Articles 37 and 38 of the Act of Accession. Recitals 1 to 6 and 9 of that decision read as follows:

‘(1) The European Union is founded on the rule of law, a principle common to all Member States.

(2) The area of freedom, security and justice and the internal market, created by the Treaty on European Union and the Treaty establishing the European Community, are based on the mutual confidence that the administrative and judicial decisions and practices of all Member States fully respect the rule of law.

(3) This implies for all Member States the existence of an impartial, independent and effective judicial and administrative system properly equipped, *inter alia*, to fight corruption.

(4) On 1 January 2007, Romania will become a Member of the European Union. The Commission, whilst noting the considerable efforts to complete Romania’s preparations for membership, has identified remaining issues in its Report of 26 September 2006, in particular in the accountability and efficiency of the judicial system and law enforcement bodies, where further progress is still necessary to ensure their capacity to implement and apply the measures adopted to establish the internal market and the area of freedom, security and justice.

(5) Article 37 of the Act of Accession empowers the Commission to take appropriate measures in case of imminent risk that Romania would cause a breach in the functioning of the internal market by a failure to implement the commitments it has undertaken. Article 38 of the Act of Accession empowers the Commission to take appropriate measures in case of imminent risk of serious shortcomings in Romania in the transposition, state of implementation, or application of acts adopted under Title VI of the EU Treaty and of acts adopted under Title IV of the EC Treaty.

(6) The remaining issues in the accountability and efficiency of the judicial system and law enforcement bodies warrant the establishment of a mechanism for cooperation and verification of the progress of Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption.

…

(9) The present Decision should be amended if the Commission’s assessment points at a need to adjust the benchmarks. The present Decision should be repealed when all the benchmarks have been satisfactorily fulfilled.’

13 Article 1 of Decision 2006/928 provides:

‘Romania shall, by 31 March of each year, and for the first time by 31 March 2007, report to the Commission on the progress made in addressing each of the benchmarks provided for in the Annex.

The Commission may, at any time, provide technical assistance through different activities or gather and exchange information on the benchmarks. In addition, the Commission may, at any time, organise expert missions to Romania for this purpose. The Romanian authorities shall give the necessary support in this context.'

14 Article 2 of that decision provides:

'The Commission will communicate to the European Parliament and the Council its own comments and findings on Romania's report for the first time in June 2007.

The Commission will report again thereafter as and when required and at least every six months.'

15 Article 4 of the decision states:

'This Decision is addressed to all Member States.'

16 The annex to the same decision is worded as follows:

'Benchmarks to be addressed by Romania, referred to in Article 1:

1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.

2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.

3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.

4. Take further measures to prevent and fight against corruption, in particular within the local government.'

Romanian law

The Romanian Constitution

17 Title III of the Constituția României (Romanian Constitution), entitled 'Public authorities', includes, inter alia, a Chapter VI on the 'judiciary', which includes Article 126 of that constitution. That article provides:

'(1) Justice shall be administered by the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] and by the other judicial bodies established by law.

…

(3) The Înalta Curte de Casație şi Justiție [(High Court of Cassation and Justice)] shall guarantee the uniform interpretation and application of the law by the other courts, in accordance with its jurisdiction.

(4) The composition of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] and its rules of procedure shall be established by an organic law.

…

(6) Judicial review of the administrative acts of the public authorities by means of administrative proceedings shall be guaranteed, with the exception of acts concerning relations with the Parliament and military command acts. The administrative courts shall have jurisdiction to hear and determine actions brought by persons injured, as the case may be, by ordinances or provisions of ordinances declared unconstitutional.'

18 Title V of the Romanian Constitution, which concerns the Curtea Constituțională (Constitutional Court, Romania), contains Articles 142 to 147 of the Constitution. Article 142, which is entitled 'Structure', provides, in paragraphs 1 to 3 thereof:

'(1) The Curtea Constituțională [(Constitutional Court)] is the guarantor of the primacy of the Constitution.

(2) The Curtea Constituțională [(Constitutional Court)] shall consist of nine judges, appointed for a term of office of nine years, which may not be extended or renewed.

(3) Three judges shall be appointed by the Camera Deputaților [(Chamber of Deputies)], three by the Senat [(Senate)] and three by the Preşedintele României [(President of Romania)].'

19 Article 143 of the Romanian Constitution reads as follows:

'The judges of the Curtea Constituțională [(Constitutional Court)] must have excellent legal qualifications, a high level of professional competence and at least 18 years' experience of legal work or in higher legal education.'

20 Article 144 of the Romanian Constitution provides:

'The office of judge of the Curtea Constituțională [(Constitutional Court)] shall be incompatible with any other public or private office, with the exception of teaching duties in higher legal education.'

21 Under Article 145 of the Romanian Constitution:

'The judges of the Curtea Constituțională [(Constitutional Court)] shall be independent in the exercise of their office and shall be irremovable throughout that term of office.'

22 Article 146 of the Romanian Constitution provides:

'The Curtea Constituțională [(Constitutional Court)] shall have the following duties:

…

(d) ruling on pleas of the unconstitutionality of laws and ordinances raised before judicial or commercial arbitration bodies; a plea of unconstitutionality may be raised directly by the People's Advocate;

(e) resolving legal conflicts of a constitutional nature between public authorities, at the request of the President of Romania, one of the presidents of the two houses of the Parliament of Romania, the primului-ministru [(Prime Minister)] or the President of the [Superior Council of Magistracy];

…'

23 Article 147 of the Romanian Constitution states, in paragraph 4 thereof:

'The decisions of the Curtea Constituțională [(Constitutional Court)] shall be published in the *Monitorul Oficial al României* [(Official Gazette of Romania)]. As from the date of publication, those decisions shall be generally binding and have legal effect only for the future.'

24 Article 148(2) to (4) of the Romanian Constitution provides:

'(2) Following accession, the provisions of the Treaties establishing the European Union, and other binding Community rules, shall prevail over conflicting provisions of national legislation, in accordance with the provisions of the Act of Accession.

(3) Paragraphs 1 and 2 shall apply by analogy to the accession to the acts revising the Treaties establishing the European Union.

(4) The Parliament, the President of Romania, the Government and the judiciary shall ensure that the obligations under the Act of Accession and the provisions of paragraph 2 of the present article are fulfilled.'

Criminal Code

25 Article 154(1) of the Codul penal (Criminal Code) provides:

'The limitation periods for criminal liability are as follows:

(a) 15 years, where the offence committed is punishable by law by life imprisonment or by a term of imprisonment of more than 20 years;

(b) 10 years, where the offence committed is punishable by law by a term of imprisonment of not less than 10 years and not more than 20 years;

(c) 8 years, where the offence committed is punishable by law by a term of imprisonment of not less than 5 years and not more than 10 years;

(d) 5 years, where the offence committed is punishable by law by a term of imprisonment of not less than 1 year and not more than 5 years;

(e) 3 years, where the offence committed is punishable by law by a term of imprisonment of less than 1 year or by a fine.'

26 Article 155(4) of that code provides:

'If the limitation periods laid down in Article 154 have been exceeded once again, they shall be regarded as completed regardless of the number of interruptions.'

Code of Criminal Procedure

27 Article 40(1) of the Codul de procedură penală (Code of Criminal Procedure) provides:

'The Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] shall hear and determine, at first instance, crimes of high treason and offences committed by senators, MPs and Romanian members of the European Parliament, members of the Government, judges of the Curtea Constituțională [(Constitutional Court)], members of the Superior Council of Magistracy, judges of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] and public prosecutors of the Parchetul de pe lângă Înalta Curte de Casație și Justiție [(Public Prosecutor's Office at the High Court of Cassation and Justice, Romania)].'

28 Article 142(1) of that code, in the version thereof in force prior to 14 March 2016, was worded as follows:

'The public prosecutor shall carry out technical surveillance or may order that it be carried out by the criminal investigation body, by specialised police officers, or by other specialist State bodies.'

29 Under Article 281(1) of the Code of Criminal Procedure:

'Infringement of the provisions concerning the following shall always entail nullity:

…

(b) the jurisdiction *ratione materiae* and *ratione personae* of courts, where the judgment has been delivered by a lower-ranking court than the court legally having jurisdiction;

…'

30 Article 342 of the Code of Criminal Procedure states:

'The object of the procedure before the preliminary chamber shall consist in determining, following the reference before a court, the jurisdiction and the legality of the referral to the court and determining the legality of the taking of evidence and of the completion of acts by the criminal investigation bodies.'

31 Article 426(1) of that code provides:

'An extraordinary action for annulment may be brought against final decisions in criminal proceedings in the following cases:

…

(d) where the composition of the appeal court is not in compliance with the law or where there is a case of incompatibility;

…'

32 Article 428(1) of the Code of Criminal Procedure provides:

'An action for annulment on the grounds laid down in Article 426(a) and (c) to (h) may be brought within 30 days from the date of notification of the decision of the appeal court.'

Law No 47/1992

33 Article 3 of Legea nr. 47/1992 privind organizarea și funcționarea Curții Constituționale (Law No 47/1992 on the organisation and the functioning of the Curtea Constituțională (Constitutional Court)) of 18 May 1992 (republished in the *Monitorul Oficial al României*, part I, No 807 of 3 December 2010) provides:

'1. The powers of the Curtea Constituțională [(Constitutional Court)] shall be those laid down in the Constitution and in this Law.

2. In the exercise of the powers conferred on it, the Curtea Constituțională [(Constitutional Court)] alone shall be entitled to decide on its jurisdiction.

3. The jurisdiction of the Curtea Constituțională [(Constitutional Court)], as established pursuant to paragraph 2, cannot be contested by any public authority.'

34 Article 34(1) of that law states:

'The Curtea Constituțională [(Constitutional Court)] shall rule on legal conflicts of a constitutional nature between public authorities, at the request of the President of Romania, the President of one of the two houses of the Romanian Parliament, the Prime Minister or the President of the Superior Council of Magistracy.'

Law No 78/2000

35 Article 5 of Legea nr. 78/2000 pentru prevenirea, descoperirea și sancționarea faptelor de corupție (Law No 78/2000 on the prevention, detection and punishment of acts of corruption) of 18 May 2000 (*Monitorul Oficial al României*, part I, No 219, of 18 May 2000) provides, in paragraph 1 thereof:

'For the purposes of this Law, the offences set out Articles 289 to 292 of the Criminal Code are corruption offences, including when they are committed by the persons referred to in Article 308 of the Criminal Code.'

36 The articles of the Criminal Code mentioned in Article 5(1) of Law No 78/2000 concern, respectively, the offences of passive corruption (Article 289), active corruption (Article 290), influence peddling (Article 291) and influence peddling in an active form (Article 292).

37 Article 29(1) of that law provides:

'Specialist panels shall be established to rule at first instance on the offences provided for in this Law.'

Law No 303/2004

38 Article 99 of Legea nr. 303/2004 privind statutul judecătorilor şi procurorilor (Law No 303/2004 on the rules governing judges and prosecutors) of 28 June 2004 (republished in the *Monitorul Oficial al României*, part I, No 826 of 13 September 2005), as amended by Legea nr. 24/2012 (Law No 24/2012) of 17 January 2012 (*Monitorul Oficial al României*, part I, No 51 of 23 January 2012) ('Law No 303/2004'), provides:

'The following shall constitute disciplinary offences:

…

(o) failure to comply with the provisions relating to the random allocation of cases;

…

(ș) failure to comply with the decisions of the Curtea Constituțională [(Constitutional Court)] …;

…'

39 Article 100 of that law provides, in paragraph 1 thereof:

'The disciplinary penalties that may be imposed on judges and prosecutors, in proportion to the seriousness of the offences, are:

…

(e) exclusion from the judiciary.'

40 Article 101 of the law provides:

'The disciplinary penalties provided for in Article 100 shall be imposed by the divisions of the Superior Council of Magistracy, subject to the conditions laid down in the organic law governing that body.'

Law No 304/2004

41 Legea nr. 304/2004 privind organizarea judiciară (Law No 304/2004 on the organisation of the judicial system) of 28 June 2004 (republished in the *Monitorul Oficial al României*, part I, No 827 of 13 September 2005) has been amended, inter alia, by:

– Legea nr. 202/2010 privind unele măsuri pentru accelerarea soluționării proceselor (Law No 202/2010 providing measures for the acceleration of the adjudication of proceedings) of 25 October 2010 (*Monitorul Oficial al României*, part I, No 714 of 26 October 2010);

– Legea nr. 255/2013 pentru punerea în aplicare a Legii nr. 135/2010 privind Codul de procedură penală și pentru modificarea și completarea unor acte normative care cuprind dispoziții procesual penale (Law No 255/2013 implementing Law No 135/2010 on the Code of Criminal Procedure and amending and supplementing certain normative acts adopting provisions relating to criminal procedure) of 19 July 2013 (*Monitorul Oficial al României*, part I, No 515 of 14 August 2013);

– Legea nr. 207/2018 pentru modificarea și completarea Legii nr. 304/2004 privind organizarea judiciară (Law No 207/2018 amending and supplementing Law No 304/2004 on the organisation of the judicial system) of 20 July 2018 (*Monitorul Oficial al României*, part I, No 636 of 20 July 2018).

42 Article 19(3) of Law No 304/2004, as last amended by Law No 207/2018 ('Law No 304/2004, as amended'), provides:

'At the beginning of each year, acting on a proposal from the President or the Vice-President of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], the governing council of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] may approve the establishment of specialist panels within the chambers of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], according to the number and nature of cases, the volume of activity of each chamber, the specialisation of the judges and the need to utilise their professional experience.'

43 Article 24(1) of that law provides:

'The panels of five judges shall hear and determine appeals against decisions given at first instance by the criminal division of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], rule on appeals in cassation against decisions given on appeal by panels of five judges once they have been found admissible, deal with appeals brought against decisions given in the course of trials at first instance by the criminal division of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], and rule on disciplinary cases in accordance with the law and on other cases within the scope of the powers conferred on them by law.'

44 Article 29(1) of the law reads as follows:

'The governing council of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] shall have the following powers:

(a) approval of the Regulation on the organisation and administrative functioning and of the staffing and personnel tables of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)];

…

(f) exercise of the other powers provided for in the Regulation on the organisation and administrative functioning of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)].'

45 Article 31(1) of the same law states:

'In criminal matters, the panels hearing cases shall be composed as follows:

(a) in the cases assigned, in accordance with the law, to the jurisdiction at first instance of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], the panel shall consist of three judges;

…'

46 Article 32 of Law No 304/2004, as amended, provides:

'1. At the beginning of each year, acting on a proposal from the President or the Vice-Presidents of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], the governing council shall approve the number of panels of five judges and the composition of those panels.

…

4. The judges sitting on those panels shall be selected by drawing lots, during a public hearing, by the President or, in his or her absence, by one of the two Vice-Presidents of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)]. The members of panels hearing cases may be changed only on an exceptional basis, in the light of the objective criteria established by the Regulation on the organisation and administrative functioning of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)].

5. The panels of five judges shall be chaired by the President of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], one of the Vice-Presidents, or by Presidents of Chambers if they have been appointed under paragraph 4 to sit on the panel concerned.

6. If none of the above persons has been designated to sit on a panel of five judges, each judge shall chair a panel on a rotating basis, in order of their length in the service within the judiciary.

7. Cases falling within the jurisdiction of panels of five judges shall be allocated randomly using a computerised system.'

47 Article 32 of Law No 304/2004, in the version thereof as amended by Law No 202/2010, provided:

'1. In criminal matters, two panels of five judges composed solely of members of the criminal chamber of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] shall be established at the beginning of each year.

…

4. The governing council of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] shall approve the composition of the panels of five judges. The judges sitting on those panels shall be appointed by the President or, in his or her absence, by the Vice-President of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)]. The members of panels hearing cases may be changed only on an exceptional basis, in the light of the objective criteria established by the Regulation on the organisation and administrative functioning of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)].

5. The panels of five judges shall be chaired by the President or the Vice-President of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)]. In their absence, the panel may be chaired by a President of a Chamber duly appointed by the President or, in his or her absence, by the Vice-President of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)].

6. Cases falling within the jurisdiction of the panels referred to in paragraphs 1 and 2 shall be allocated randomly using a computerised system.'

48 Article 32(1) and (6) of Law No 304/2004, in the version thereof as amended by Law No 255/2013, were worded in almost identical terms to those of the version referred to in the preceding paragraph, whereas paragraphs 4 and 5 of that article provided:

'4. The governing council of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)], acting on a proposal from the President of the Criminal Chamber, shall approve the number of panels of five judges and the composition of those panels. The judges sitting on those panels shall be selected by drawing lots, during a public hearing, by the President or, in his or her absence, by the Vice-President of the Înalta Curte de Casație şi Justiție [(High Court of Cassation and Justice)]. The members of panels hearing cases may be changed only on an exceptional basis, in the light of the objective criteria established by the Regulation on the organisation and administrative functioning of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)].

5. The panels of five judges shall be chaired by the President or the Vice-President of the Înalta Curte de Casație şi Justiție [(High Court of Cassation and Justice)]; if that person sits on the panel, in accordance with paragraph 4, the panel shall be chaired by the President of the Criminal Chamber or the eldest member, as the case may be.'

49 Article 33 of Law No 304/2004, as amended, reads:

'1. The President or, in his or her absence, one of the Vice-Presidents of the Înalta Curte de Casație şi Justiție [(High Court of Cassation and Justice)] shall chair the combined chambers, the panel with jurisdiction to hear and determine actions brought in the interests of the law and the panel with jurisdiction to rule on questions of law, the panel of five judges and any panel within the chambers, where he or she participates in the proceedings.

…

3. The Presidents of Chambers may chair any panel of the chamber, whereas other judges shall act as chair on a rotating basis.'

50 Article 33(1) of Law No 304/2004, in the version thereof as amended by Law No 202/2010, provided:

'The President or, in his or her absence, the Vice-President of the Înalta Curte de Casație şi Justiție [(High Court of Cassation and Justice)] shall chair the combined chambers, the panel of five judges and any panel within the chambers, where he or she participates in the proceedings.'

51 Under Article 33(1) of Law No 304/2004, in the version thereof as amended by Law No 255/2013:

'The President or, in his or her absence, one of the Vice-Presidents of the Înalta Curte de Casație şi Justiție [(High Court of Cassation and Justice)] shall chair the combined chambers, the panel with jurisdiction to hear and determine actions brought in the interests of the law and the panel with jurisdiction to rule on questions of law, the panel of five judges and any panel within the chambers, where he or she participates in the proceedings.'

Regulation on the organisation and administrative functioning of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)

52 Article 28 of the Regulamentul privind organizarea și funcționarea administrativă a Înaltei Curți de Casație și Justiție (Regulation on the organisation and administrative functioning of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice)) of 21 September 2004 ('the Regulation on organisation and administrative functioning'), as amended by Hotărârea nr. 3/2014 pentru modificarea și completarea Regulamentului privind organizarea și funcționarea administrativă a Înaltei Curți de Casație și Justiție (Decision No 3/2014 amending and supplementing the Regulation on organisation and administrative functioning) of 28 January 2014 (*Monitorul Oficial al României*, part I, No 75 of 30 January 2014), provided:

'1. The Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] shall include panels of five judges having jurisdiction to hear cases laid down by law.

…

4. Panels of five judges shall be chaired, as appropriate, by the President, the Vice-Presidents, the President of the Criminal Chamber or the eldest member.'

53 Article 29(1) of that regulation provided:

'With a view to establishing panels of five judges in criminal matters, the President or, in his or her absence, one of the Vice-Presidents of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] shall select annually, by drawing lots, during a public hearing, four or, where appropriate, five judges from the Criminal Chamber of the Înalta Curte de Casație și Justiție [(High Court of Cassation and Justice)] for each panel.'

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

Factors common to the disputes in the main proceedings

54 The disputes in the main proceedings follow on from a wide-ranging reform in the field of justice and the fight against corruption in Romania. That reform has been monitored at EU level since 2007 under the cooperation and verification mechanism established by Decision 2006/928 on the occasion of Romania's accession to the European Union ('the CVM').

55 Those disputes concern criminal proceedings in connection with which the referring courts ask whether they can, pursuant to EU law, disapply certain decisions delivered by the Curtea Constituțională (Constitutional Court) between 2016 and 2019, namely Decisions No 51/2016 of 16 February 2016 (Case C-379/19), No 302/2017 of 4 May 2017 (Case C-379/19), No 685/2018 of 7 November 2018 (Cases C-357/19, C-547/19 and C-840/19), No 26/2019 of 16 January 2019 (Case C-379/19) and No 417/2019 of 3 July 2019 (Cases C-811/19 and C-840/19).

56 The referring courts point out that, under national law, the decisions of the Curtea Constituțională (Constitutional Court) are generally binding and that failure by members of the judiciary to comply with those decisions constitutes, pursuant to Article 99(ș) of Law No 303/2004, a disciplinary offence. However, as is apparent from the Romanian Constitution, the Curtea Constituțională (Constitutional Court) is not part of the Romanian judicial system

and is a politico-judicial body. In addition, in delivering the judgments at issue in the main proceedings, the referring courts state that the Curtea Constituțională (Constitutional Court) exceeded the powers afforded to it by the Romanian Constitution, encroached upon the powers of the ordinary courts and undermined the independence of the latter. Furthermore, in the view of the referring courts, Decisions No 685/2018 and No 417/2019 include a systemic risk of offences intended to counter corruption going unpunished.

57 In that context, the referring courts make reference inter alia to the Reports from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism of 27 January 2016 (COM(2016) 41 final), of 13 November 2018 (COM(2018) 851 final; 'the CVM Report of November 2018') and of 22 October 2019 (COM(2019) 499 final).

58 Finally, those courts also point to Decision No 104/2018 of the Curtea Constituțională (Constitutional Court), pursuant to which EU law does not take precedence over the Romanian constitutional order and Decision 2006/928 cannot constitute a benchmark in the context of a review of constitutionality under Article 148 of the Romanian Constitution.

Case C-357/19

59 By judgment of 28 March 2017 delivered by a criminal chamber composed of three judges, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) convicted, inter alia, PM, a minister at the time of the alleged facts, RO, TQ and SP on counts of corruption and abuse of office in connection with the management of European funds and of tax fraud related to VAT committed between 2010 and 2012. The appeals lodged against that judgment by the persons concerned and by the Ministerul Public – Parchetul de pe lângă Înalta Curte de Casație și Justiție – Direcția Națională Anticorupție (Public Prosecutor's Office – Prosecutor's Office attached to the High Court of Cassation and Justice – National Anti-Corruption Directorate, Romania) ('the DNA') were dismissed by a judgment of 5 June 2018 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), delivered by a panel of five judges. That panel of five judges was composed of the President of the Criminal Chamber and of four other judges selected by drawing lots, in accordance with the practice of the Înalta Curte de Casație şi Justiție (High Court of Cassation and Justice) over the period concerned, on the basis of the Regulation on the organisation and administrative functioning of that court. The judgment of 5 June 2018 has become final.

60 By Decision No 685/2018, delivered on 7 November 2018, the Curtea Constituțională (Constitutional Court), to which the matter had been referred by the Prime Minister pursuant to Article 146(e) of the Romanian Constitution, found, first of all, there to be a legal conflict of a constitutional nature between the Parliament and the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) triggered by the decisions taken by the governing council of that court consisting, in accordance with that practice, of selecting by the drawing of lots just four of the five members of the panels of five judges ruling on appeal and not all those members, in breach of Article 32 of Law No 304/2004, as amended; next, that the adjudication of a case on appeal by a panel thus unlawfully established entailed the absolute nullity of the decision given; and, finally, stated that, pursuant to Article 147(4) of the Romanian Constitution, that decision was applicable from the date of its publication to pending cases, cases which had been ruled upon, in so far as there was still time for individuals to exercise the appropriate extraordinary legal remedies, and future situations.

61 Following the publication of Decision No 685/2018 of the Curtea Constituțională (Constitutional Court), PM, RO, TQ, SP and the DNA introduced, under Article 426(1) of the Code of Criminal Procedure, extraordinary appeals before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), requesting that the judgment of 5 June 2018 be set aside and new appeal proceedings initiated. In support of their appeals, they argued that Decision No 685/2018 was binding and had legal effects on the judgment of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) of 5 June 2018, since the panel of five judges that had ruled on those appeals had not been composed in accordance with the law, as interpreted by the Curtea Constituțională (Constitutional Court). The referring court found those extraordinary appeals to be admissible because they had been introduced within the 30-day statutory period from the notification of that judgment, and decided to stay the execution of the penalties involving deprivation of liberty pending the outcome of those appeals.

62 That court asks inter alia whether Article 19(1) TEU, Article 325(1) TFEU and Article 1(1)(a) and (b) and Article 2(1) of the PFI Convention preclude the application of Decision No 685/2018 in the case in the main proceedings, the effect of which would be that judicial decisions that became final before the delivery of that decision would be set aside and new appeal proceedings initiated in cases of serious fraud and corruption.

63 In accordance with the case-law of the Court, it falls to the national courts, whilst ensuring the necessary observance of the fundamental rights guaranteed in the Charter and of general legal principles, to give full effect to the obligations under Article 325(1) TFEU and to disapply provisions of domestic law that preclude the application of effective penalties that act as a deterrent in matters of fraud affecting the European Union's financial interests. In the light of that case-law, the question is raised whether the obligation on Member States under Article 325(1) TFEU and Article 1(1)(a) and (b) and Article 2(1) of the PFI Convention also covers the execution of criminal penalties that have already been applied. This also gives rise to the question whether the words 'and any other illegal activities affecting the financial interests of the Union', contained in Article 325(1) TFEU, include not only acts of corruption in the literal sense, but also attempted fraud committed in the context of a fraudulently awarded public contract which was intended to be financed using European funds but which, following the refusal of funding by the authority managing those funds, was charged in full to national budget. In that context, in the present case, there was a risk of the European Union's financial interests being affected, even though such a risk did not materialise.

64 Furthermore, the referring court observes that, pursuant to Articles 2 and 19 TEU, any Member State must ensure that the judicial bodies falling within its system of remedies in the fields covered by EU law satisfy the requirements of independence with a view to guaranteeing individuals effective legal protection. In accordance with the case-law of the Court, the guarantee of independence assumes that judges can perform their judicial duties with complete autonomy, without being subject to any hierarchical relationship, in order to be protected from external interventions and pressures that may undermine their independence or influence their decisions.

65 In addition, having regard inter alia to the importance of the principle of legality, which requires that the law be foreseeable, precise and non-retroactive, the referring court asks whether the concept of a 'tribunal previously established by law', contained in second paragraph of Article 47 of the Charter precludes the interpretation of the Curtea Constituțională (Constitutional Court) that the composition of the referring court's chambers of five judges is unlawful. In accordance with the case-law of the Court established in the judgments of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105), and of 5 December 2017, *M.A.S. and M.B.* (C-42/17,

EU:C:2017:936), national courts, when they have to decide on disapplying provisions of substantive criminal law, are required to ensure that the fundamental rights of the persons accused of committing criminal offences are observed, whilst remaining free to apply national standards of protection of fundamental rights, provided that application of those standards undermines neither the level of protection provided for by the Charter, as interpreted by the Court, nor the primacy, unity and effectiveness of EU law.

66 In the present case, the referring court is of the view that EU law precludes inter alia the application of Decision No 685/2018 since that decision has the effect of setting aside final decisions of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) delivered by panels of five judges and rendering the penalties imposed in a significant number of cases of serious fraud affecting the European Union's financial interests ineffective and non-dissuasive. This creates an appearance of impunity and even entails a systemic risk of offences going unpunished because they become time-barred, given the complexity and duration of the proceedings prior to the delivery of a final judgment following the re-examination of the cases concerned. In addition, the principles of judicial independence and legal certainty preclude Decision No 685/2018 from having binding legal effects on criminal decisions that had become final on the date on which that decision was delivered, in the absence of serious grounds capable of casting doubt upon whether the right to a fair trial was respected in those cases, which is confirmed by the CVM Report of November 2018.

67 Finally, the referring court states that there is a serious risk of the answers provided by the Court to the questions submitted being rendered ineffective at domestic law level, in the light of the case-law of the Curtea Constituțională (Constitutional Court) referred to in paragraph 58 of this judgment.

68 It is in those circumstances that the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 19(1) [TEU], Article 325(1) [TFEU], Article 1(1)(a) and (b) and Article 2(1) of the [PFI Convention] and the principle of legal certainty be interpreted as precluding the adoption of a decision by a body outside the judicial system, the [Curtea Constituțională (Constitutional Court)], which adjudicates on the lawfulness of the composition of Chambers hearing the case, in that way creating the conditions for allowing extraordinary actions brought against final judgments delivered in a given period?

(2) Must [the second paragraph of Article 47] of the [Charter] be interpreted as precluding a finding by a body outside the judicial system – binding under national law – of the lack of independence and impartiality of a Chamber which includes a judge responsible for judicial administration who has not been randomly appointed, but on the basis of a transparent rule known to the parties and unchallenged by them, applicable to all the cases dealt with by that same chamber?

(3) Must the primacy of EU law be interpreted as allowing the national court to disapply a decision of the constitutional court, handed down in a case concerning a constitutional dispute, binding under national law?'

Case C-379/19

69 On 22 August 2016, the Direcția Națională Anticorupție – Serviciul Teritorial Oradea (DNA – Oradea Regional Department, Romania) brought criminal proceedings before the Tribunalul Bihor (Regional Court, Bihor, Romania) against KI, LJ, JH and IG, who were charged with offences of buying influence, influence peddling, active corruption, passive corruption and being complicit in offences of buying influence and active corruption.

70 In the context of those proceedings, KI and LJ requested, pursuant to Article 342 of the Code of Criminal Procedure, that evidence in the form of reports of recordings of wiretaps conducted by the Serviciul Român de Informații (Romanian Intelligence Service) ('the SRI') be excluded from those proceedings. In support of that request, the persons concerned relied on Decision No 51/2016, by which the Curtea Constituțională (Constitutional Court) declared Article 142(1) of the Code of Criminal Procedure unconstitutional, in so far as that provision allowed surveillance measures to be carried out, in the context of criminal proceedings, by 'other specialist State bodies' and, in particular, by the SRI.

71 By order of 27 January 2017, the pre-trial chamber of the Tribunalul Bihor (Regional Court, Bihor) rejected the requests by KI and LJ on the ground inter alia that, since Decision No 51/2016 has effect only for the future, the taking of evidence was lawful, and ordered that the case proceed to trial in respect of KI, LJ, JH and IG. The appeal lodged against that order was dismissed by the Curtea de Apel Oradea (Court of Appeal, Oradea, Romania), with that court likewise finding that Decision No 51/2016 was not applicable to the technical surveillance measures ordered in the case in question because that judgment, which had been published in the *Monitorul Oficial al României* of 14 March 2016, produced legal effect only for the future, in accordance with Article 147(4) of the Romanian Constitution.

72 In the course of the criminal trial before the referring court, IG, KI, LJ and JH essentially claimed that the reports of recordings of wiretaps should be subject to a declaration of absolute nullity if the SRI had been involved in the execution of the surveillance warrants. In addition to Decision No 51/2016, the persons concerned relied in that regard on Decisions No 302/2017 and No 26/2019, by which the Curtea Constituțională (Constitutional Court) declared Article 281(1)(b) of the Code of Criminal Procedure unconstitutional in so far as the infringement of the provisions on the jurisdiction *ratione materiae* and *ratione personae* of the criminal investigation body did not entail the absolute nullity of decisions given (Decision No 302/2017), and found there to be a legal conflict of a constitutional nature between inter alia the Parliament and the Parchetul de pe lângă Înalta Curte de Casație și Justiție (Prosecutor's Office attached to the High Court of Cassation and Justice), as a result of two cooperation protocols concluded between the DNA and the SRI over the years 2009 and 2016, in breach of the constitutional jurisdiction of the DNA, which had the effect of undermining the procedural law governing the conduct of criminal prosecutions (Decision No 26/2019).

73 Following checks conducted by the referring court with the DNA, it emerged that nine surveillance warrants had been executed with the technical support of the SRI and two, following the publication of Decision No 51/2016, without the involvement of that service.

74 The referring court observes that it is required to give a ruling, as a matter of priority, on the request for the exclusion of evidence, and it asks, in particular, whether it is required to apply Decisions No 51/2016, No 302/2017 and No 26/2019. The combined effect of those three

decisions means that it is sufficient for a court to find the SRI to have been involved in the execution of a surveillance warrant for the absolute nullity of the evidence gathering measures to be triggered and for the corresponding evidence to be excluded.

75 The referring court does, however, point out that, under the national rules still in force, the admissibility of a request for the exclusion of evidence is subject to the condition that that request was submitted before the closure of the stage before the pre-trial chamber. In addition, constitutional rules confer only *ex nunc* effect on the decisions of the Curtea Constituțională (Constitutional Court). That court therefore enshrined, by means of case-law, the application of its decisions in pending cases, thus imposing on courts the obligation to penalise all the procedural acts and evidence at issue, without there being any possibility of conducting a case-by-case assessment, even where those acts were carried out, as in the present case, on the basis of rules which at the time of their application enjoyed a presumption of constitutionality.

76 However, first, Romania is required to combat corruption and the Commission found, in the CVM Report of November 2018, that that Member State had to continue to implement the national anti-corruption strategy, in accordance with the deadlines set by the government in August 2016. Second, the Curtea Constituțională (Constitutional Court) is required, pursuant to Article 146 of the Romanian Constitution, to confine itself to a review of the compatibility of the law with the Romanian Constitution, and not to go as far as interpreting the law, applying it and introducing legal rules with retroactive effect. Moreover, the concern of the Curtea Constituțională (Constitutional Court) to guarantee directly, via the effect of its decisions, respect for the procedural rights of the parties in the context of criminal proceedings appears excessive in the light of the mechanisms available to the Romanian State to that end, such as Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which entered into force on 1 August 2018 ('ECHR'). Furthermore, in its case-law established in the judgment of 26 February 2013, *Melloni* (C-399/11, EU:C:2013:107), the Court refused to recognise a limit to the primacy of EU law over more favourable national fundamental rights.

77 With regard to the case in the main proceedings, the referring court takes the view that it has a sufficiently close connection with EU law, since the case concerns the exercise of its jurisdiction, in accordance with the principles of the rule of law and judicial independence, and that it raises questions relating to the nature and the effects of the CVM as well as to the primacy of EU law over the case-law of the Curtea Constituțională (Constitutional Court). The Curtea Constituțională (Constitutional Court) restricted the jurisdiction, arising from the Romanian Constitution and from EU law, of the Romanian courts to administer justice by holding, in Decision No 104/2018, referred to in paragraph 58 of this judgment, that Decision 2006/928 cannot constitute a benchmark in the context of a review of constitutionality under Article 148 of the Romanian Constitution.

78 Accordingly, it is necessary for the Court to clarify whether the CVM is binding in nature and, if so, whether that binding effect must be afforded not only to the measures expressly recommended in the reports drawn up in the context of that mechanism but also to all the findings contained in those reports, in particular those concerning national measures that are contrary to the recommendations of the European Commission for Democracy through Law (the Venice Commission) and the Group of States Against Corruption (GRECO). In addition, in the light of the principles of the rule of law and judicial independence, the question arises whether a national

court can, without risk of being subject to disciplinary penalties expressly laid down by law, disregard, in the exercise of its jurisdiction, the effects of the decisions of the Curtea Constituțională (Constitutional Court) where the latter exceeds the limits of its powers.

79 In those circumstances, the Tribunalul Bihor (Regional Court, Bihor) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the [CVM], established by [Decision 2006/928], and the requirements laid down in reports prepared in accordance with that mechanism binding on Romania?

(2) Is Article 2 [TEU], in conjunction with Article 4(3) [TEU], to be interpreted as meaning that the obligation on Romania to comply with the requirements laid down in reports prepared in accordance with the [CVM], established by [Decision 2006/928], forms part of the Member State's obligation to comply with the principles of the rule of law, including in so far as concerns a constitutional court (a politico-judicial institution) refraining from intervening in order to interpret the law and to establish the specific and mandatory rules for the application of the law by judicial bodies, a task which falls within the exclusive jurisdiction of the judicial authorities, and in order to introduce new legislative measures, a task which falls within the exclusive competence of the legislative authorities? Does EU law require that the effects of any such decision, adopted by a constitutional court, should be disregarded? Does EU law preclude a provision of national law which governs the liability to disciplinary action of the judge who disapplied the decision of the Curtea Constituțională (Constitutional Court), in the context of the question referred?

(3) Does the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU and in Article 47 of the [Charter], as interpreted by the [Court] (… judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117), preclude the competences of courts being replaced by decisions of the Curtea Constituțională (Constitutional Court) ([Decisions No 51/2016, No 302/2017 and No 26/2019]), the result of which is that criminal proceedings are unforeseeable (retroactive application) and that it is impossible to interpret the law and apply it in the case under consideration? Does EU law preclude a provision of national law which governs the liability to disciplinary action of the judge who disapplied the decision of the Curtea Constituțională (Constitutional Court), in the context of the question referred?'

80 By letter of 27 June 2019, received at the Court on 10 July 2019, the Tribunalul Bihor (Regional Court, Bihor) informed the Court that, by order of 18 June 2019, the Curtea de Apel de Oradea (Court of Appeal, Oradea, Romania) had, at the DNA's request, set aside the decision to stay the proceedings and ordered that the case proceed to trial in relation to the issues other than those referred to in the request for a preliminary ruling. In response to a question put by the Court, the Tribunalul Bihor (Regional Court, Bihor) explained, by letter of 26 July 2019, received at the Court on 7 August 2019, that the Court's answers to the questions submitted were still necessary. The proceedings before it were continued without it being possible to adduce the evidence obtained through the surveillance warrants mentioned in the requests for a preliminary ruling. In addition, the Tribunalul Bihor (Regional Court, Bihor) observed that the Judicial Inspection had initiated a disciplinary investigation against the referring judge for failing to comply with the decisions of the Curtea Constituțională (Constitutional Court) mentioned in the questions referred for a preliminary ruling.

Case C-547/19

81 The Judicial Inspection initiated disciplinary proceedings against CY, a judge at the Curtea de Apel București (Court of Appeal, Bucharest, Romania), before the Chamber for Judges hearing disciplinary matters of the Superior Council of Magistracy on the ground that CY had committed the disciplinary offence provided for in Article 99(o) of Law No 303/2004.

82 By order of 28 March 2018, the Chamber for Judges hearing disciplinary matters of the Superior Council of Magistracy rejected as inadmissible an application to intervene in an ancillary capacity in support of CY submitted by the Romanian Judges' Forum. That association and CY lodged an appeal against that order before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice).

83 By decision of 2 April 2018, the Chamber for Judges hearing disciplinary matters of the Superior Council of Magistracy imposed on CY the disciplinary penalty of exclusion from the judiciary, as provided for in Article 100(e) of Law No 303/2004. CY lodged an appeal against that decision before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice).

84 Those two cases were allocated at random to a panel of five judges of that court and then joined on account of their connection. The composition of that panel had been determined by way of drawing lots on 30 October 2017.

85 On 8 November 2018, following the delivery of Decision No 685/2018 referred to in paragraph 60 above, the governing council of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) adopted a decision on the drawing of lots for members of the panels of five judges. In December 2018, the Superior Council of Magistracy adopted two decisions establishing rules for ensuring its compliance with the requirements laid down in Decision No 685/2018. In order to comply with those decisions, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) conducted anew the process of drawing lots for new panels for the year 2018, including for already allocated cases in which measures had not been ordered up until the end of that year, which included the joined cases at issue in the main proceedings.

86 Before the new panel, CY, inter alia, raised a plea of illegality with regard to the composition of that panel, challenging, in particular, the compatibility with Article 2 TEU of Decision No 685/2018 and of the subsequent decisions of the Superior Council of Magistracy. In that regard, CY observed that the Curtea Constituțională (Constitutional Court) and the Superior Council of Magistracy had exceeded their powers and added that, if those two authorities had not intervened in the activity of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), the principle of the continuity of the panel hearing the case would not have been infringed and the case would have been correctly assigned to one of the five-judge panels.

87 In order to be able to rule on the plea of illegality raised by CY, the referring court wishes to ask the Court whether an intervention by the Curtea Constituțională (Constitutional Court) in the course of justice, as it follows from Decision No 685/2018, is compatible with the rule of law, as referred to in Article 2 TEU, and with judicial independence, as guaranteed in Article 19 TEU and in Article 47 of the Charter.

88 In that connection, the referring court points, in the first place, to the political dimension of the appointment of the members of the Curtea Constituțională (Constitutional Court) and the latter's particular position in the State authorities' architecture.

89 In the second place, the procedure for finding there to be a legal conflict of a constitutional nature between the public authorities, as provided for in Article 146(e) of the Romanian Constitution, is in itself problematic since, under that same provision, political bodies are empowered to initiate that procedure. In addition, there is a particularly fine line between the unlawfulness of an act and the existence of a legal conflict of a constitutional nature, and a limited category of legal persons or entities can exercise legal remedies mirroring those available before the ordinary courts. That fact, combined with the political dimension of the appointment of the members of the Curtea Constituțională (Constitutional Court), allows that court to intervene in the course of justice for political purposes or in the interests of politically influential persons.

90 In the third place, the referring court takes the view that the finding made by the Curtea Constituțională (Constitutional Court) in Decision No 685/2018 as to the existence of a legal conflict of a constitutional nature between the judiciary and the legislature is problematic. In that decision, the Curtea Constituțională (Constitutional Court) put forward its own interpretation of ambiguous provisions of an infra-constitutional nature, namely Articles 32 and 33 of Law No 304/2004, as amended, in opposition to that adopted by the Înalta Curte de Casație şi Justiție (High Court of Cassation and Justice) in the exercise of its jurisdiction, and accused the latter court of a systematic disregard for the will of the legislature, with a view to being able to find that such a legal conflict of a constitutional nature exists.

91 In the view of the referring court, the question thus arises whether Article 2 TEU, Article 19 TEU and Article 47 of the Charter preclude, in a situation such as that at issue in the main proceedings, the case-law of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) from being reviewed and sanctioned by an intervention of the Curtea Constituțională (Constitutional Court). The referring court is of the opinion that an arbitrary intervention by the Curtea Constituțională (Constitutional Court), in the form of a review of the legality of the activity of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), which replaces lawful judicial procedures, such as administrative proceedings or procedural objections raised in legal actions, may have a negative impact on judicial independence and on the very foundations of the rule of law, as referred to in Article 2 TEU, since the Curtea Constituțională (Constitutional Court) is not part of the judicial system and is not afforded powers of adjudication.

92 In those circumstances, the Înalta Curte de Casație şi Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 2 [TEU], Article 19(1) [TEU] and Article 47 of the [Charter] be interpreted as precluding the intervention of a constitutional court (a body which is not, under national law, a judicial institution) as regards the way in which a supreme court has interpreted and applied infra-constitutional legislation in the activity of establishing panels hearing cases?’

Case C-811/19

93 By a judgment of 8 February 2018 delivered at first instance by a panel of three judges, the Criminal Chamber of the Înalta Curte de Casație şi Justiție (High Court of Cassation and Justice) sentenced FQ, GP, HO, IN and JM to terms of imprisonment of between two and eight years for offences of corruption and money laundering as well as for offences akin to offences of corruption, committed between 2009 and 2013, in connection with public contracts awarded under a project

mainly funded by non-refundable EU funds. Four of the defendants, who include a person who had been successively a mayor, a senator and a minister, and the DNA lodged an appeal against that judgment.

94 In the course of the appeal proceedings, the appellants requested that the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) declare the judgment of 8 February 2018 null and void on the ground that it had been delivered by a panel that was not, contrary to the legal requirements, specialised in matters of corruption.

95 The appellants relied in that regard on Decision No 417/2019, delivered on 3 July 2019 on referral by the President of the Chamber of Deputies, who, at that time, was himself the subject of criminal proceedings in relation to acts falling within the scope of Law No 78/2000 before a panel of five judges of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) operating as a court of appeal. By that decision, the Curtea Constituțională (Constitutional Court) had, first of all, found there to be a legal conflict of a constitutional nature between the Parliament and the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), triggered by the fact that the latter had not established specialised panels to hear cases at first instance relating to the offences provided for in Article 29(1) of Law No 78/2000; next, found that the adjudication of a case by a non-specialised panel entailed the absolute nullity of the decision delivered; and, finally, ordered that all cases which had been decided by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) at first instance prior to 23 January 2019 and which had not become final be re-examined by specialist panels established in accordance with that provision. In that decision, the Curtea Constituțională (Constitutional Court) considered that although, on 23 January 2019, the governing council of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) had adopted a decision to the effect that all panels of three judges of that court had to be regarded as specialised in hearing and determining corruption cases, that decision could prevent unconstitutionality only with effect from the date of its adoption and not in relation to the past.

96 In support of its request for a preliminary ruling, the referring court states that the offences at issue in the main proceedings, such as the offences of corruption committed in connection with procedures for the award of public contracts financed mainly by European funds, as well as offences of money laundering, affect or are liable to affect the European Union's financial interests.

97 According to that court, in the first place, the question arises whether Article 19(1) TEU, Article 325(1) TFEU, Article 4 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29) and Article 58 of 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/EC (OJ 2015 L 141, p. 73) are to be interpreted as precluding a national court from applying a decision delivered by an authority which is not part of the judicial system, such as Decision No 417/2019 of the Curtea Constituțională (Constitutional Court), which ruled on the merits of an ordinary appeal by requiring the referral of the cases, with the result that the criminal proceedings are called into question by initiating a retrial at first instance. It argues that the Member States are required to adopt effective deterrent measures to combat illegal activities affecting the European Union's financial interests.

98 In that context, it is likewise necessary to establish whether the words 'and any other illegal activities affecting the financial interests of the Union' contained in Article 325(1) TFEU cover corruption offences themselves, in so far in particular as Article 4 of Directive 2017/1371 defines the offences of 'passive corruption' and 'active corruption'. That clarification is essential because one of the defendants in the case in the main proceedings is said to have used his influence, in his capacity as a senator and minister, over public officials, encouraged them to act in breach of their duties and obtained a significant percentage of the value of the public contracts financed mainly from European funds.

99 According to the referring court, just like in Case C-357/19, *Eurobox Promotion and Others*, the question also arises whether the principle of the rule of law enshrined in Article 2 TEU, as interpreted in the light of Article 47 of the Charter, precludes the course of justice being affected by an intervention such as that which follows from Decision No 417/2019. By that decision, the Curtea Constituțională (Constitutional Court) introduced, despite lacking jurisdiction, binding measures that entail the initiation of retrials on account of the alleged lack of specialisation in corruption offences of the panels of the Criminal Chamber of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), even though all judges of that criminal chamber satisfy that condition of specialisation by virtue of their very capacity as judges of that court.

100 In the second place, it is necessary, in the light of the case-law of the Court and of the significance of the principle of legality, to clarify the meaning of the concept of a 'tribunal previously established by law' contained in the second paragraph of Article 47 of the Charter, in order to determine whether that provision precludes the interpretation provided by the Curtea Constituțională (Constitutional Court) concerning the unlawful nature of the court's composition.

101 In the third place, the referring court asks whether a national court is required to disapply Decision No 417/2019 in order to ensure that full effect is given to EU rules. More generally, it is also necessary to determine whether the effects of the decisions of the Curtea Constituțională (Constitutional Court) that undermine the principle of judicial independence should be disregarded in cases governed exclusively by national law. Those questions are raised in particular because the Romanian disciplinary rules provide for the application of a disciplinary penalty to a judge if that judge disregards the effects of the decisions of the Curtea Constituțională (Constitutional Court).

102 The referring court is of the view that Decision No 417/2019, which has the effect of setting aside judgments given at first instance prior to 23 January 2019 by three-judge panels of the Criminal Chamber of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), infringes the principle of the effectiveness of criminal penalties in the case of serious unlawful activities affecting the European Union's financial interests. That decision creates, first, the appearance of impunity and entails, second, a systemic risk of serious offences going unpunished on account of the national rules on the limitation on prosecutions, given the complexity and duration of the procedure leading up to the delivery of a final judgment following a re-examination of the cases concerned. Thus, in the case in the main proceedings, the judicial proceedings, given their complexity, have already been under way for around four years in respect of the first-instance stage. In addition, the referring court takes the view that the principle of judicial independence enshrined in EU law precludes the introduction, by decision of a judicial body outside the judicial system, of procedural measures requiring the re-examination at first instance of certain cases, thus calling into question the prosecution, in the absence of serious grounds capable of casting doubt on whether the defendants' right to a fair trial was respected. In the present case, the fact that the

panels of the Criminal Chamber of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) are composed of judges who, at the time of their appointment to that court, were specialised in criminal cases cannot be regarded as being prejudicial to the right to a fair trial or the right of access to justice.

103 It is in those circumstances that the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 19(1) [TEU], Article 325(1) [TFEU], Article 58 of Directive [2015/849] [and] Article 4 of Directive [2017/1371] be interpreted as precluding the adoption of a decision by a body outside the judicial system, the [Curtea Constituțională (Constitutional Court)], which adjudicates on a procedural objection alleging that the composition of the panel seised of the case is unlawful, in the light of the principle that the judges of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice …) must be specialised (not provided for in the Romanian Constitution), and which obliges a judicial body to refer cases which are at the (full-merits) appeal stage for re-examination within the first procedural cycle before the same court?

(2) Must Article 2 [TEU] and [the second paragraph of Article 47] of the [Charter] be interpreted as precluding a body outside the judicial system from declaring unlawful the composition of the panel seised of the case of a chamber of the supreme court (panel composed of judges in office who, at the time of their promotion, satisfied, inter alia, the specialisation requirement laid down for promotion to the criminal chamber of the supreme court)?

(3) Must the principle of the primacy of European Union law be interpreted as permitting a national court to disapply a decision of the constitutional court which interprets a rule of lower ranking than the Constitution, concerning the organisation of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), contained in domestic legislation on the prevention, detection and punishment of offences of corruption, a rule which has been consistently interpreted in the same way, for 16 years, by a court?

(4) On a proper interpretation of Article 47 of the [Charter][,] [d]oes the principle of unfettered access to justice encompass the specialisation of judges and the establishment of specialist panels in a supreme court?'

Case C-840/19

104 By judgment of 26 May 2017 delivered by a panel of three judges, the Criminal Chamber of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) sentenced NC, amongst others, to a term of imprisonment of four years for committing, in the context of his parliamentary and ministerial duties, the offence of peddling influence, as provided for in Article 291(1) of the Criminal Code, read in conjunction with Article 6 and Article 7(a) of Law No 78/2000, in connection with the award of a public contract largely financed by European funds. Following an appeal lodged by the DNA and NC against that judgment, the Criminal Chamber of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), by judgment of 28 June 2018 delivered by a panel of five judges, upheld the sentence and dismissed the appeal. That judgment has become final.

105 Following the publication of Decision No 685/2018, referred to in paragraph 60 of this judgment, NC and the DNA lodged extraordinary appeals seeking to have the judgment set aside, relying, in essence, on the unlawful composition of the panel of five judges of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) which ruled on the appeals brought against the judgment of 26 May 2017 because only four of the five members of that panel had been determined by the drawing of lots.

106 By judgments of 25 February and 20 May 2019, delivered by a panel of five judges, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) granted the extraordinary appeals, in the light of Decision No 685/2018, quashed NC's conviction and referred back for re-examination the appeals lodged by NC and the DNA.

107 Whilst the re-examination of the appeal proceedings was still pending before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), sitting as a five-judge panel, the Curtea Constituțională (Constitutional Court) delivered Decision No 417/2019, referred to in paragraph 95 above.

108 The referring court raises the issue of the compatibility of that decision with Article 2 TEU, Article 19(1) TEU, Article 325(1) TFEU, Article 47 of the Charter and Article 4 of Directive 2017/1371. With regard, in particular, to Article 325 TFEU, the referring court puts forward, in essence, the same grounds as those stated in Case C-811/19. That court adds that, in the case in the main proceedings, the judicial proceedings have been under way for around four years and that, as a result of the application of Decision No 685/2018, the case has reached the stage of proceedings to re-examine the appeal. The application of Decision No 417/2019 also has the effect of reopening proceedings on the merits of the case at first instance, with the result that the same trial is being held twice at first instance and three times on appeal.

109 The referring court observes that Decision No 417/2019 established binding procedural measures necessitating the opening of new proceedings due to the lack of specialisation of the panels hearing cases at first instance in relation to the offences provided for in Law No 78/2000. Accordingly, as a result of that decision, there is a risk of serious offences in a significant number of cases going unpunished. In those circumstances, the requirement of effectiveness referred to in Article 325 TFEU and the defendant's fundamental right to be tried within a reasonable period of time are undermined.

110 Similarly, the referring court considers that, as in Cases C-357/19, C-547/19 and C-811/19, the Court must be asked about the compatibility of the intervention by the Curtea Constituțională (Constitutional Court) with the principle of the rule of law. Whilst pointing to the importance of compliance with the decisions of that court, the referring court explains that its questions relate not to the case-law of the Curtea Constituțională (Constitutional Court) in general but to Decision No 417/2019 only. In that decision, the Curtea Constituțională (Constitutional Court) put forward its own interpretation in opposition to that of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) regarding the respective differing provisions contained in Law No 78/2000 and in Law No 304/2004, as amended, on the establishment of specialised panels, and interfered with the powers of the latter court by ordering the re-examination of certain cases.

111 It is in those circumstances that the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 19(1) [TEU], Article 325(1) [TFEU] and Article 4 of Directive [2017/1371], adopted pursuant to Article 83(2) [TFEU], be interpreted as precluding the adoption of a decision by a body outside the judicial system, the [Curtea Constituțională (Constitutional Court)], which requires re-examination of corruption cases decided within a specific period, and which are at the appeal stage, on grounds of failure to establish, within the supreme court, panels seised of the cases which specialise in that field, also recognising the speciality of the judges of which they were composed?

(2) Must Article 2 [TEU] and [the second paragraph of] Article 47 of the [Charter] be interpreted as precluding a body outside the judicial system from declaring unlawful the composition of the panel seised of the case of a chamber of the supreme court (panel composed of judges in office who, at the time of their promotion, satisfied, inter alia, the specialisation requirement laid down for promotion to the supreme court)?

(3) Must the primacy of Europe Union law be interpreted as permitting a national court to disapply a decision of the constitutional court delivered in a case relating to a constitutional dispute, which is binding under national law?'

Procedure before the Court

Joinder

112 By decisions of the President of the Court of 26 February 2020, Cases C-357/19 and C-547/19, on the one hand, and Cases C-811/19 and C-840/19, on the other hand, were joined for the purposes of the oral procedure and the judgment. By decision of the President of the Court of 21 May 2021, those cases and Case C-379/19 were joined for the purposes of the judgment on account of their connection.

The requests for the expedited procedure and for priority treatment

113 The referring courts in Cases C-357/19, C-379/19, C-811/19 and C-840/19 requested the Court to determine the references for a preliminary ruling in those cases under an expedited procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice.

114 In support of their requests, the referring courts argued, in essence, that the situation of the defendants in the main proceedings necessitated a response within a short time. With regard more specifically to Cases C-357/19, C-811/19 and C-840/19, they also argued that the passage of time risked undermining the possible execution of the penalty.

115 In that regard, it should be recalled that Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a

short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

116 It must be borne in mind, in that regard, that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency. Furthermore, it is also apparent from the case-law of the Court that the expedited procedure may not be applied where the sensitive and complex nature of the legal problems raised by a case does not lend itself easily to the application of such a procedure, in particular where it is not appropriate to shorten the written part of the procedure before the Court (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 32 and the case-law cited).

117 Here, as far as concerns Cases C-357/19 and C-379/19, by decisions respectively of 23 May and 17 June 2019, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, that the requests for the expedited procedure should be refused. First, the ground put forward arguing that those requests concerned criminal proceedings and, therefore, required a swift response in order to clarify the legal situation of the defendants in the main proceedings could not be sufficient in itself to justify the application of the expedited procedure referred to in Article 105(1) of the Rules of Procedure to those cases, since such circumstances are incapable of giving rise to a matter of exceptional urgency as referred to in paragraph 116 above (see, by analogy, order of the President of the Court of 20 September 2018, *Minister for Justice and Equality*, C-508/18 and C-509/18, not published, EU:C:2018:766, paragraph 11 and the case-law cited).

118 Second, while the questions submitted, which relate to fundamental provisions of EU law, are a priori likely to be of the utmost importance for the proper working of the European Union's judicial system, to which the independence of national courts is essential, the sensitive and complex nature of those questions did not lend itself easily to the application of the expedited procedure (see, by analogy, judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 105, and of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 34).

119 However, having regard to the nature of the questions referred, by decision of 18 September 2019 the President of the Court granted priority treatment to Cases C-357/19 and C-379/19, pursuant to Article 53(3) of the Rules of Procedure.

120 With regard to Cases C-811/19 and C-840/19, it should be noted that those cases, taken together with Cases C-357/19 and C-379/19, make clear that there is some uncertainty within the Romanian courts as to the interpretation and application of EU law in a large number of cases in the field of criminal law in which the expiry of the limitation period and, therefore, a risk of impunity are at issue. In those circumstances, and in the light of the progress of Cases C-357/19, C-379/19 and C-547/19, which raise similar questions of interpretation of EU law, by decision of 28 November 2019 the President of the Court decided to determine Cases C-811/19 and C-840/19 pursuant to an expedited procedure.

The request to reopen the oral procedure

121 As a result of the health crisis linked to the coronavirus pandemic, the joint hearing scheduled for the present cases was deferred on three occasions and ultimately cancelled by a decision of 3 September 2020. Pursuant to Article 61(1) of the Rules of Procedure, the Grand Chamber of the Court decided to convert into questions for a written response the questions which, for the purposes of the hearing, had been communicated to the parties and to the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union which submitted written observations. CY, PM, RO, KI, LJ, NC, FQ, the Romanian Judges' Forum, the DNA, the Oradea Regional Department of the DNA, the Romanian Government and the Commission communicated to the Court their replies to those questions within the time limits specified.

122 By document lodged at the Registry of the Court on 16 April 2021, PM requested an order that the oral part of the procedure be reopened. In support of his request, PM argued, in essence, with reference to Articles 19, 20, 31 and 32 of the Statute of the Court of Justice of the European Union and to Articles 64, 65, 80 and 81 of the Rules of Procedure, that the lack of a hearing undermines his right to a fair trial and the adversarial principle.

123 In that regard, it should be recalled that the right to be heard, enshrined in Article 47 of the Charter, does not impose an absolute obligation to hold a public hearing in all proceedings. That is true, inter alia, where the case does not raise any questions of fact or of law that cannot be adequately resolved on the basis of the documents in the file and the written observations of the parties (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 40 and the case-law cited).

124 Thus, with regard to the oral part of the procedure before the Court, Article 76(2) of the Rules of Procedure provides that the Court, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, may decide not to hold a hearing if it considers, on reading the written pleadings and observations lodged during the written part of the procedure, that it has sufficient information to give a ruling. In accordance with Article 76(3) of those rules, paragraph 2 of that article does not, however, apply where a request for a hearing, stating reasons, has been submitted by an interested party referred to in Article 23 of the Statute of the Court of Justice of the European Union who did not participate in the written part of the procedure. However, in the present case, no such request has been submitted by any such interested party.

125 In the light of the foregoing, the Court could decide, in accordance with Article 76(2) and (3) of the Rules of Procedure, without infringing the requirements under Article 47 of the Charter, not to hold a hearing in the present cases. Moreover, as has been stated in paragraph 121 of this judgment, the Court put questions for a written response to the parties and to the interested parties which submitted observations, thus allowing them to bring additional information to the attention of the Court, an option which PM, amongst others, exercised.

126 It is true that, pursuant to Article 83 of the Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties concerned.

127 However, the request to reopen the oral part of the procedure made by PM following the delivery of the Advocate General's Opinion does not point to any new fact capable of exercising an influence over the ruling which the Court is called upon to give. In addition, the Court is of the view, after hearing the Advocate General, that it has, at the end of the procedure held before it, all the information necessary for it to rule on the request for a preliminary ruling in Case C-357/19.

128 In the light of the foregoing considerations, and after hearing the Advocate General, PM's request for an order that the oral part of the procedure be reopened must be rejected.

Consideration of the questions referred

The jurisdiction of the Court

129 Certain parties to the main proceedings (PM, RO, TQ, KI, LJ and NC) and the Polish Government express doubts as to the jurisdiction of the Court to answer some of the questions submitted by the referring courts.

130 The queries raised, in that regard, by PM, RO and TQ concern the questions submitted in Case C-357/19, those raised by KI and LJ relate to the questions submitted in Case C-379/19, and those raised by NC are concerned with the questions submitted in Case C-840/19. The Polish Government questions the jurisdiction of the Court to answer the questions submitted in Cases C-357/19, C-811/19 and C-840/19 and the third question submitted in Case C-379/19.

131 Those parties to the main proceedings and the Polish Government put forward three series of arguments. First, the questions raised by the referring courts relating to the compatibility with EU law of the case-law established in the decisions of the Curtea Constituțională (Constitutional Court) at issue in the main proceedings concern the organisation of the judicial system, an area in which the European Union has no competence. Next, since EU law does not contain any rules on the scope and the effects of decisions delivered by a national constitutional court, the questions are concerned not with EU law but with national law. Finally, the referring courts are, in actual fact, asking the Court to rule on the legality of those decisions of the Curtea Constituțională (Constitutional Court) and on certain points of fact accepted by them; and such matters fall outside the jurisdiction of the Court.

132 In that regard, it must be stated that the requests for a preliminary ruling do concern the interpretation of EU law, whether provisions of primary law, inter alia Article 2 TEU and the second subparagraph of Article 19(1) TEU, Article 325 TFEU and Article 47 of the Charter, or provisions of secondary law, in particular Decision 2006/928. Those requests also relate to a convention drawn up on the basis of Article K.3 of the Treaty on European Union that the Court is competent to interpret, namely the PFI Convention.

133 In addition, the Court has previously held that although the organisation of justice in the Member States falls within the competence of those Member States, they are nonetheless required, when exercising that competence, to comply with their obligations deriving from EU law (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 111 and the case-law cited). The same applies vis-à-vis the disciplinary liability of judges for failure to comply with the decisions of the national constitutional court.

134 As regards the line of argument that the requests for a preliminary ruling essentially ask the Court to assess the scope, the effects and the legality of the decisions of the Curtea Constituțională (Constitutional Court) at issue in the main proceedings and to rule on certain points of fact accepted by that court, it should be recalled, first, that, although in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law, it is for the Court, by contrast, to provide the national court that made a reference for a preliminary ruling with guidance on the interpretation of EU law that may be necessary for the outcome of the case in the main proceedings, while taking into account the indications contained in the order for reference as to the national law applicable to that case and to the facts characterising the latter (judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 78 and the case-law cited).

135 Second, although similarly it is not for the Court, in such a preliminary-ruling procedure, to rule upon the compatibility of provisions of national law or a practice under national law with the rules of EU law, the Court does, however, have jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility for the purposes of the case before it (see, to that effect, judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 79 and the case-law cited).

136 In the light of the foregoing, the Court has jurisdiction to answer the questions referred in the present cases, including those mentioned in paragraph 130 above.

Admissibility

Case C-379/19

137 KI pleads that each of the three questions referred for a preliminary ruling in Case C-379/19 is inadmissible. With regard to the first question, he claims that the correct answer to that question is clear, pointing out that neither Decision 2006/928 nor the recommendations made in the Commission's reports adopted on the basis of that decision were relied on in the context of the main proceedings. As for the second and third questions, KI is of the view that the queries raised by them are unconnected with the subject matter of the dispute in the main proceedings, and that the referring court is, in reality, merely seeking to circumvent its obligation to apply the case-law established in the decisions of the Curtea Constituțională (Constitutional Court) at issue in the main proceedings, non-compliance with which entails the disciplinary liability of the members of the referring court.

138 In that connection, as regards the fact that the correct interpretation of EU law is so clear in the present case that it leaves no room for any reasonable doubt, it is sufficient to state that, although such a circumstance, if it is proven, may prompt the Court to rule by means of an order pursuant to Article 99 of the Rules of Procedure, that same circumstance cannot however prevent a national court from referring a question for a preliminary ruling or have the effect of rendering the question thus referred inadmissible (see, to that effect, judgment of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 96).

139 Furthermore, it is settled case-law that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 116, and of 2 September 2021, *INPS (Childbirth and maternity allowances for holders of single permits)*, C-350/20, EU:C:2021:659, paragraph 39 and the case-law cited).

140 In the present case, it is apparent from the order for reference that a request was made to the referring court, in the context of criminal proceedings relating inter alia to offences of corruption, by the defendants seeking the exclusion from the procedure, pursuant to several decisions of the Curtea Constituțională (Constitutional Court), of evidence consisting in reports of recordings of wiretaps. It is precisely because of its doubts as to the compatibility of those decisions, non-compliance with which by a national court can moreover entail the disciplinary liability of the judges involved in the decision within that court, with the requirement of judicial independence, as laid down in the second subparagraph of Article 19(1) TEU, that the referring court decided to ask the Court, in the second and third questions referred for a preliminary ruling, inter alia about the interpretation of that provision. As for Decision 2006/928, to which reference is made in the first question referred for a preliminary ruling, it should be noted that, in the light of recital 3 of that decision to which the request for a preliminary ruling refers, that requirement of independence is fleshed out by the benchmarks set out in the annex to that decision and the recommendations made in the Commission's reports adopted on the basis of the decision. The connection between the main proceedings and the three questions referred is therefore clear from the request for a preliminary ruling.

141 It follows from the foregoing that the questions referred for a preliminary ruling in Case C-379/19 are admissible.

Case C-547/19

142 The Judicial Inspection contests the admissibility of the request for a preliminary ruling on the ground that Article 2 TEU, Article 19 TEU and Article 47 of the Charter, the interpretation of which is sought by the referring court, do not apply to the case in the main proceedings.

143 In that regard, it must be observed that the dispute in the main proceedings in Case C-547/19 relates to an action brought before the referring court by a judge to challenge the disciplinary penalty of exclusion from the judiciary imposed on her, an action by which the individual concerned contests the legality of the composition of that court, established in accordance with the requirements laid down in Decision No 685/2018 of the Curtea Constituțională (Constitutional Court). Thus, the referring court is called upon to rule on that procedural plea and, in that context, to rule on the legality of its own composition, taking into account the case-law established in that decision which, in its view, may call its independence into question.

144 In addition, the referring court is a judicial body capable of ruling, as a court, on questions relating to the application or the interpretation of EU law and, therefore, falling within areas covered by EU law. In the present case, the second subparagraph of Article 19(1) TEU is thus intended to

apply in respect of the referring court, which is required to ensure, in accordance with that provision, that the disciplinary regime applicable to judges of the national courts which come within the national judicial system in the fields covered by EU law observes the principle of the independence of judges, inter alia by guaranteeing that decisions issued in the context of disciplinary proceedings initiated in respect of judges of those courts are reviewed by a body which itself meets the requirements inherent in effective judicial protection, including the requirement of independence (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 80 and the case-law cited). In interpreting that provision, account must be taken of both Article 2 TEU and Article 47 of the Charter.

145 It follows that the request for a preliminary ruling in Case C-547/19 is admissible.

Cases C-357/19, C-811/19 and C-840/19

146 With regard to Case C-357/19, PM, RO and TQ as well as the Polish Government plead that the request for a preliminary ruling is inadmissible. First, PM and RO observe that their personal legal situation has no connection with offences affecting the European Union's financial interests and, therefore, with Article 325(1) TFEU. Next, RO and TQ state that, in finding the extraordinary appeals admissible, the referring court has already ruled on the question of the applicability of Decision No 685/2018 of the Curtea Constituțională (Constitutional Court), such that, in their view, no further clarification of that question is required for the purposes of the outcome of the case in the main proceedings. Finally, the Polish Government is of the view that Case C-357/19 falls outside the scope of EU law and, therefore, the scope of the Charter.

147 As for Case C-811/19, the Polish Government likewise contests the admissibility of the request for a preliminary ruling, arguing that that case also falls outside the scope of EU law and that, therefore, the Charter is not to be applied.

148 In relation to Case C-840/19, NC claims that the request for a preliminary ruling is inadmissible. With regard to the first question, he considers that Article 325 TFEU does not apply to that case because the offence at issue in the main proceedings does not affect the European Union's financial interests. As for the third question, NC claims that, in view of the Court's case-law on the principle of primacy of EU law, the answer to that question leaves no room for any reasonable doubt. More generally, in addition to the fact that, in his view, the outcome of the case in the main proceedings is not dependent on the answers to the questions referred, NC argues that the information and assessments provided by the referring court relating to the Curtea Constituțională (Constitutional Court), in particular concerning Decision No 417/2019 of the Curtea Constituțională (Constitutional Court), are incomplete and partly inaccurate. For its part, the Polish Government considers, for the same reasons as those put forward in Case C-811/19, that the request for a preliminary ruling in Case C-840/19 is inadmissible.

149 In relation to those various points, it has already been recalled in paragraph 139 of this judgment that, in accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance.

150 With regard to Case C-357/19, it is apparent from the information provided in the request for a preliminary ruling that that request has its origin in criminal proceedings initiated against several people being prosecuted for offences of corruption related to the management of European funds and offences of tax fraud relating to VAT. As for Cases C-811/19 and C-840/19, the referring court has stated that the criminal proceedings at issue in the main proceedings concern offences of corruption relating to the award of public contracts in the context of projects financed by European funds. In the light of those factors, the accuracy of which is not a matter for the Court to determine, it appears that the main proceedings must be regarded as concerning, in part, VAT fraud likely to affect the European Union's financial interests and that they thus fall within the scope of Article 325(1) TFEU (see, to that effect, judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraphs 31 and 32 and the case-law cited). As for the offences of corruption related to the award of public contracts under projects financed by European funds, the referring courts ask inter alia whether Article 325(1) TFEU applies to such offences, and therefore whether the argument alleging that that provision may be inapplicable can call into question the admissibility of the questions referred in that regard.

151 In addition, taking the view that the case-law of the Curtea Constituțională (Constitutional Court) established in Decisions No 685/2018 and No 417/2019 could undermine judicial independence and hamper the fight against corruption, the referring court in Cases C-357/19, C-811/19 and C-840/19 asks the Court about the interpretation, inter alia, of Article 325(1) TFEU, Article 19(1) TEU and the principle of primacy of EU law in order to be able to determine whether it is required to apply or, on the contrary, to disapply those decisions. According to the information provided by the referring court, if those decisions are applicable the action will have to be upheld or proceedings on the merits of the case reopened. In those circumstances, the view cannot be taken that the interpretation sought, namely that of Article 325 TFEU, Article 19(1) TEU and Article 47 of the Charter, to which the requests for a preliminary ruling refer, appears manifestly unrelated to the examination of the actions in the main proceedings.

152 As regards the fact that the answer to the third question in Case C-840/19 leaves no room for any doubt, a fact of that kind cannot, as is made clear in paragraph 138 of this judgment, prevent a national court from referring a question to the Court for a preliminary ruling or have the effect of rendering the question referred inadmissible.

153 Accordingly, the requests for a preliminary ruling in Cases C-357/19, C-811/19 and C-840/19 are admissible.

Substance

154 By their requests for a preliminary ruling, the referring courts ask the Court about the interpretation of a number of principles and provisions of EU law, such as Article 2 TEU and the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU, the principle of primacy of EU law, Article 2 of the PFI Convention and Decision 2006/928. The questions raised by them in that regard essentially ask:

– whether Decision 2006/928 and the reports drawn up on the basis of that decision are binding on Romania (first question in Case C-379/19);

– about the compatibility with EU law, in particular with Article 325(1) TFEU read in conjunction with Article 2 of the PFI Convention, of national rules or a national practice under which judgments in matters of corruption and VAT fraud which were not delivered, at

first instance, by panels specialised in such matters or, on appeal, by panels all the members of which were selected by drawing lots, are rendered absolutely null and void, such that the cases of corruption and VAT fraud concerned must, as the case may be further to an extraordinary appeal against final judgments on appeal, be re-examined at first and/or second instance (first question in Cases C-357/19 and C-840/19 and first and fourth questions in Case C-811/19); and

– about the compliance with EU law and in particular, first, with Article 2 TEU and the second subparagraph of Article 19(1) TEU and Decision 2006/928 and, second, with the principle of primacy of EU law, of national rules or a national practice under which national ordinary courts are bound by decisions of the national constitutional court on the admissibility of certain evidence and the legality of the composition of panels ruling in matters of corruption, VAT fraud and judicial discipline, and cannot, therefore, without committing a disciplinary offence, disapply, on their own authority, the case-law established under such decisions, even though they consider that case-law to be contrary to the provisions of EU law (second and third questions in Cases C-357/19, C-379/19, C-811/19 and C-840/19 and the single question in Case C-547/19).

The first question in Case C-379/19

155 By its first question referred in Case C-379/19, the referring court seeks, in essence, to ascertain whether Decision 2006/928 and the recommendations made in the Commission's reports adopted on the basis of that decision are binding on Romania.

156 It must be recalled from the outset that Decision 2006/928 is an act adopted by an EU institution, namely the Commission, on the basis of the Act of Accession, which falls within the scope of EU primary law, and specifically constitutes a decision within the meaning of the fourth paragraph of Article 288 TFEU. As regards the Commission reports to the European Parliament and to the Council, drawn up under the CVM established by that decision, they must also be regarded as acts adopted by an EU institution, having as their legal basis EU law, namely Article 2 of that decision (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 149).

157 As is apparent from recitals 4 and 5 of Decision 2006/928, that decision was adopted in the context of Romania's accession to the European Union, which took place on 1 January 2007, on the basis of Articles 37 and 38 of the Act of Accession, which empowered the Commission to take appropriate measures in the event of, respectively, imminent risk of serious breach of the functioning of the internal market linked to Romania's failure to honour commitments undertaken in the context of the accession negotiations and imminent risk of serious shortcomings by Romania as regards compliance with EU law relating to the area of freedom, security and justice.

158 Decision 2006/928 was adopted because of the existence of imminent risks of the kind referred to in Articles 37 and 38 of the Act of Accession. As is apparent from the Commission's monitoring report of 26 September 2006 on the state of preparedness for EU membership of Bulgaria and Romania (COM(2006) 549 final), referred to in recital 4 of Decision 2006/928, the Commission noted the persistence of deficiencies in Romania, in particular in the areas of justice and the fight against corruption, and proposed that the Council should make that Member State's accession to the European Union subject to the establishment of a mechanism for cooperation and verification in order to deal with those deficiencies. To that end, Decision 2006/928, as is apparent in particular from recitals 4 and 6 thereof, established the CVM and laid down the benchmarks,

referred to in Article 1 of, and set out in the Annex to, that decision, in the areas of reform of the judicial system and the fight against corruption (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 157 and 158).

159 In that regard, as stated in recitals 2 and 3 of Decision 2006/928, the area of freedom, security and justice and the internal market are based on the mutual confidence between Member States that their administrative and judicial decisions and practices fully respect the rule of law, which requires the existence in all Member States of an impartial, independent and effective judicial and administrative system properly equipped, inter alia, to fight corruption (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 159).

160 Article 49 TEU, which provides for the possibility for any European State to apply to become a member of the European Union, states that the European Union is composed of States which have freely and voluntarily committed themselves to the common values now referred to in Article 2 TEU, which respect those values and which undertake to promote them. In particular, it follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails. In that regard, it should be noted that mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premiss that Member States share a set of common values on which the European Union is founded, as stated in that article (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 160 and the case-law cited).

161 Thus, compliance with the values referred to in Article 2 TEU constitutes a precondition for the accession to the European Union of any European State applying to become an EU member. It is in that context that the CVM was established by Decision 2006/928 in order to ensure that the value of the rule of law is complied with in Romania (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 161).

162 In addition, compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot, therefore, amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. The Member States are thus required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 162 and the case-law cited, and of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 51).

163 In that context, it is important to note that, under Article 2 of the Act of Accession, the acts adopted by the EU institutions before accession, which include Decision 2006/928, are to be binding on Romania from the date of its accession to the European Union and, in accordance with

Article 2(3) of the Treaty of Accession, are to remain in force until they are repealed (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 163).

164 As regards, more specifically, the measures adopted on the basis of Articles 37 and 38 of the Act of Accession, while the first paragraph of each of those two articles authorised the Commission to adopt the measures to which those articles refer 'until the end of a period of up to three years after accession', the second paragraph of each of them nonetheless expressly provided that the measures thus adopted could be applied beyond that period as long as the relevant commitments had not been fulfilled or the shortcomings found persisted, and that the measures would be lifted only when the relevant commitment was implemented or the shortcoming at issue remedied. Indeed, Decision 2006/928 itself states, in recital 9 thereof, that it 'should be repealed when all the benchmarks have been satisfactorily fulfilled'.

165 Consequently, Decision 2006/928 continues to produce its effects beyond the date of Romania's accession to the European Union as long as it has not been repealed (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 165).

166 With regard to whether and to what extent Decision 2006/928 is binding on Romania, it must be observed that the fourth paragraph of Article 288 TFEU provides, like the fourth paragraph of Article 249 EC, that a decision 'shall be binding in its entirety' on those to whom it is addressed.

167 In accordance with Article 4 of Decision 2006/928, that decision is addressed to all Member States, which includes Romania as from its accession. The decision is, therefore, binding in its entirety on that Member State as from its accession to the European Union. Thus, Decision 2006/928 imposes on Romania the obligation to address the benchmarks set out in its annex and to report each year to the Commission, pursuant to the first paragraph of Article 1 thereof, on the progress made in that regard (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 167 and 168).

168 As regards, in particular, those benchmarks, it must be added that they were defined, as is apparent from paragraphs 157 to 162 above, on the basis of the deficiencies established by the Commission before Romania's accession to the European Union in the areas of, inter alia, judicial reforms and the fight against corruption, and that they seek to ensure that that Member State complies with the value of the rule of law set out in Article 2 TEU, which is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. In addition, those benchmarks give concrete expression to the specific commitments undertaken by Romania and the requirements accepted by it at the conclusion of the accession negotiations on 14 December 2004, set out in Annex IX to the Act of Accession, concerning, in particular, the areas of justice and the fight against corruption. Thus, as is apparent from recitals 4 and 6 of Decision 2006/928, the purpose of establishing the CVM and setting the benchmarks was to complete Romania's accession to the European Union, in order to remedy the deficiencies identified by the Commission in those areas prior to that accession (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 169 to 171).

169 It follows that the benchmarks are binding on Romania, with the result that it is subject to the specific obligation to address those benchmarks and to take appropriate measures to meet them as soon as possible. Similarly, Romania is required to refrain from implementing any measure which could jeopardise those benchmarks being met (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 172).

170 As for the reports drawn up by the Commission on the basis of Decision 2006/928, it should be borne in mind that, in order to determine whether an EU act produces binding legal effects, it is necessary to examine its substance and to assess its effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the institution which adopted the act (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 173 and the case-law cited).

171 In the present case, it is true that the reports drawn up on the basis of Decision 2006/928 are, in accordance with the first paragraph of Article 2 of that decision, addressed not to Romania but to the Parliament and the Council. Furthermore, although those reports include an analysis of the situation in Romania and formulate requirements with regard to that Member State, the conclusions set out therein address 'recommendations' to Romania on the basis of those requirements.

172 Nonetheless, as is apparent from a combined reading of Articles 1 and 2 of Decision 2006/928, the reports are intended to analyse and evaluate Romania's progress in the light of the benchmarks which Romania must address. As regards, in particular, the recommendations in those reports, they are formulated with a view to those benchmarks being met and in order to guide that Member State's reforms in that connection (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 175).

173 In that regard, it should be borne in mind that, according to settled case-law of the Court, it follows from the principle of sincere cooperation, laid down in Article 4(3) TEU, that the Member States are obliged to take all the measures necessary to guarantee the application and effectiveness of EU law and to eliminate the unlawful consequences of a breach of that law, and that such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 176 and the case-law cited).

174 In those circumstances, in order to comply with the benchmarks set out in the annex to Decision 2006/928, Romania must take due account of the requirements and recommendations formulated in the reports drawn up by the Commission under that decision. In particular, Romania cannot adopt or maintain measures in the areas covered by the benchmarks which could jeopardise the result prescribed by those requirements and recommendations. Where the Commission expresses doubts, in such a report, as to whether a national measure is compatible with one of the benchmarks, it is for Romania to cooperate in good faith with the Commission with a view to overcoming the difficulties encountered with regard to meeting the benchmarks, while at the same time fully complying with those benchmarks and the provisions of the Treaties (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 177).

175 In the light of the foregoing considerations, the first question in Case C-379/19 must be answered to the effect that Decision 2006/928 is, as long as it has not been repealed, binding in its entirety on Romania. The benchmarks in the annex to that decision are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on it, to the effect that Romania is required to take the appropriate measures to meet those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports.

The first question in Cases C-357/19 and C-840/19 and the first and fourth questions in Case C-811/19

176 By the first question in Cases C-357/19 and C-840/19 and the first and fourth questions in Case C-811/19, which should be examined jointly, the referring court seeks, in essence, to ascertain whether Article 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention, is to be interpreted as precluding national rules or a national practice under which judgments in matters of corruption and VAT fraud, which were not delivered, at first instance, by panels specialised in such matters or, on appeal, by panels all the members of which were selected by drawing lots, are rendered absolutely null and void, such that the cases of corruption and VAT fraud concerned must, as the case may be further to an extraordinary appeal against final judgments, be re-examined at first and/or second instance.

177 As a preliminary point, it must be stated that the referring court in those cases points to the significance of the effects that the case-law of the Curtea Constituțională (Constitutional Court) established in Decisions No 685/2018 and No 417/2019, which relates to the composition of the panels of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), could have on the effectiveness of the proceedings, the penalties and the enforcement of the penalties in matters of corruption and VAT fraud such as those to which the defendants are subject, defendants who include people who occupied the highest positions in the Romanian State at the time of the alleged facts. It is thus asking the Court, in essence, about the compatibility of such case-law with EU law.

178 Although the questions which it submits in that regard refer formally to Article 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention, without making reference to Decision 2006/928, that decision and the benchmarks contained in the annex thereto are relevant for the purposes of the answer to be given to those questions. By contrast, although the referring court also refers, in its questions, to the second subparagraph of Article 19(1) TEU and to Directives 2015/849 and 2017/1371, an examination focused, additionally, on the latter provisions appears unnecessary for the purposes of addressing the queries raised by those questions. As far as concerns those directives, it should, moreover, be noted that the relevant period in the cases at issue in the main proceedings predates the entry into force of the directives.

179 In those circumstances, the questions must be answered in the light both of Article 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention, and of Decision 2006/928.

180 In that regard, as recalled in paragraph 133 of this judgment, EU law does not, as it currently stands, provide for rules governing the organisation of justice in the Member States and, in particular, the composition of the panels hearing cases in matters of corruption and fraud.

Accordingly, those rules fall, in principle, within the competence of the Member States. However, those States are obliged, in the exercise of that competence, to comply with their obligations deriving from EU law.

181 With regard to the obligations under Article 325(1) TFEU, that provision requires the Member States to counter fraud and any other illegal activity affecting the financial interests of the European Union through effective deterrent measures (judgments of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 50 and the case-law cited, and of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 25).

182 In that context, in order to ensure the protection of the financial interests of the European Union, it is for the Member States, inter alia, to adopt the measures necessary to guarantee the effective and comprehensive collection of own resources, namely the revenue from the application of a uniform rate to the harmonised VAT assessment bases (see, to that effect, judgments of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraphs 31 and 32 and the case-law cited, and of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraphs 51 and 52). Similarly, Member States are required to take effective measures to recover sums wrongly paid to the beneficiary of a subsidy funded in part from the budget of the European Union (judgment of 1 October 2020, *Úrad špeciálnej prokuratúry*, C-603/19, EU:C:2020:774, paragraph 55).

183 Accordingly, as the Advocate General observed, in essence, in points 94 and 95 of his Opinion in Cases C-357/19 and C-547/19, the concept of 'financial interests' of the European Union, within the meaning of Article 325(1) TFEU, encompasses not only revenue made available to the EU budget but also expenditure covered by that budget. That interpretation is supported by the definition of the concept of 'fraud affecting the [European Union's] financial interests', which is contained in Article 1(1)(a) and (b) of the PFI Convention and covers the various intentional acts or omissions in relation both to expenditure and to revenue.

184 Furthermore, with regard to the phrase 'any other illegal activities' contained in Article 325(1) TFEU, it should be recalled that the term 'illegal activities' usually denotes unlawful behaviour, and the use of the word 'any' indicates the intention to encompass all such behaviour, without distinction. Furthermore, in view of the importance that should be accorded to protecting the financial interests of the European Union, which in itself constitutes an objective of the latter, the concept of 'illegal activities' cannot be interpreted restrictively (judgment of 2 May 2018, *Scialdone*, C-574/15, EU:C:2018:295, paragraph 45 and the case-law cited).

185 Thus, as the Advocate General noted, in essence, in point 100 of his Opinion in Cases C-357/19 and C-547/19, the concept of 'illegal activities' covers inter alia any act of corruption by public officials or abuse of office by them, which is liable to affect the European Union's financial interests, in the form, for example, of the unlawful receipt of EU funds. In that context, it is irrelevant whether the acts of corruption take the form of an act or omission by the public official concerned, given the fact that an omission may be as detrimental to the European Union's financial interests as an act and be intrinsically linked to such an act, as are, for example, a public official's failure to conduct the audits and checks required for expenditure covered by the EU budget or the authorisation of inappropriate or incorrect expenditure of EU funds.

186 The fact that Article 2(1) of the PFI Convention, read in conjunction with Article 1(1) of that convention, refers only to fraud affecting the European Union's financial interests cannot invalidate that interpretation of Article 325(1) TFEU, the wording of which refers expressly to

'fraud and any other illegal activities affecting the financial interests of the Union'. In addition, as is apparent from Article 1(a) of the Convention, the misapplication of funds from the budget of the European Union for purposes other than those for which they were originally granted constitutes fraud, even though such misapplication may also be the cause or the result of an act of corruption. This effectively shows that acts of corruption may be linked to cases of fraud and, conversely, the commission of fraud can be facilitated by acts of corruption, and therefore financial interests can, in certain cases, be affected as a result of a combination of VAT fraud and acts of corruption. As the Advocate General observed in essence in point 98 of his Opinion in Cases C-357/19 and C-547/19, the possible existence of such a link is confirmed by the Protocol to the PFI Convention, which covers, under Articles 2 and 3 thereof, acts of passive and active corruption.

187 It must also be recalled that the Court has already held that even irregularities having no specific financial impact may be seriously prejudicial to the financial interests of the European Union (judgment of 21 December 2011, *Chambre de commerce et d'industrie de l'Indre*, C-465/10, EU:C:2011:867, paragraph 47 and the case-law cited). Accordingly, as the Advocate General noted in point 103 of his Opinion in Cases C-357/19 and C-547/19, Article 325(1) TFEU could cover not only acts that actually cause a loss of own resources but also attempts to commit such acts.

188 In that context, it must be added that, as far as concerns Romania, the obligation to fight corruption affecting the European Union's financial interests, which follows from Article 325(1) TFEU, is supplemented by the specific commitments accepted by Romania when accession negotiations were completed on 14 December 2004. In accordance with point I(4) of Annex IX to the Act of Accession, Romania committed inter alia to 'considerably step up the fight against corruption and in particular against high-level corruption by ensuring a rigorous enforcement of the anti-corruption legislation'. That specific commitment was subsequently given concrete expression by the adoption of Decision 2006/928, which sets benchmarks for the purpose of addressing the shortcomings observed by the Commission prior to Romania's accession to the European Union, in particular in the area of the fight against corruption. Thus, the annex to that decision, in which those benchmarks are set out, refers, in point 3 thereof, to the objective of 'continu[ing] to conduct professional, non-partisan investigations into allegations of high-level corruption', and, in point 4 thereof, to the objective of 'tak[ing] further measures to prevent and fight against corruption, in particular within the local government'.

189 As stated in paragraph 169 above, the benchmarks that Romania thus committed to achieving are binding on it, in the sense that Romania is subject to the specific obligation to achieve those objectives and to adopt the appropriate measures with a view to achieving them as soon as possible. Similarly, Romania is required to refrain from implementing any measure that would risk undermining the attainment of those same objectives. In addition, the obligation to combat corruption and, in particular, high-level corruption effectively, which stems from the benchmarks set out in the annex to Decision 2006/928, read in conjunction with Romania's specific commitments, is not limited merely to cases of corruption affecting the European Union's financial interests.

190 Furthermore, it follows, first, from the requirements of Article 325(1) TFEU, under which fraud and any other illegal activities affecting the financial interests of the Union must be countered, and, second, from the requirements of Decision 2006/928, under which corruption must be

prevented and combatted in general, that Romania must provide for the application of penalties that are effective and that act as a deterrent in case of such offences (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 53).

191 While Romania has in that regard a freedom to choose the applicable penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two, it must nonetheless ensure, pursuant to Article 325(1) TFEU, that cases of serious fraud and corruption affecting the financial interests of the Union are punishable by criminal penalties that are effective and that act as a deterrent (see, to that effect, judgments of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 54 and the case-law cited, and of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 27). In addition, with regard to offences of corruption in general, the obligation to provide for criminal penalties that are effective and that act as a deterrent stems, in the case of Romania, from Decision 2006/928, since, as stated in paragraph 189 above, that decision requires Romania to combat corruption and, in particular, high-level corruption effectively, irrespective of any adverse effect on the European Union's financial interests.

192 In addition, it is for Romania to ensure that its rules of criminal law and of criminal procedure allow for the effective prosecution of offences of fraud affecting the financial interests of the European Union and of corruption in general. Thus, even though the penalties provided and criminal procedures initiated in order to counter such infringements fall within the competence of Romania, that competence is limited not only by the principles of proportionality and equivalence, but also by the principle of effectiveness, which requires that those penalties are effective and act as a deterrent (see, to that effect, judgments of 2 May 2018, *Scialdone*, C-574/15, EU:C:2018:295, paragraph 29, and of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraphs 29 and 30). That requirement of effectiveness necessarily covers both the prosecutions of and the penalties for offences of fraud affecting the European Union's financial interests and of corruption in general and the enforcement of the penalties imposed, since unless they are enforced effectively penalties cannot be effective and act as a deterrent.

193 In that context, it is primarily for the national legislature to take the necessary measures. It falls to it, where required, to amend its legislation and to ensure that the procedural rules applicable to the prosecution of, and the imposition of penalties for, offences of fraud affecting the financial interests of the European Union and offences of corruption in general are not designed in such a way that there arises, for reasons inherent in those rules, a systemic risk that acts that may be categorised as such offences may go unpunished, and also to ensure that the fundamental rights of accused persons are protected (see, to that effect, judgments of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 65, and of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 31).

194 As for the national courts, it is for them to give full effect to the obligations under Article 325(1) TFEU and Decision 2006/928 and to disapply national provisions which, in connection with proceedings concerning serious fraud affecting the financial interests of the European Union or offences of corruption in general, prevent the application of effective penalties that act as a deterrent in order to counter such offences (see, to that effect, judgments of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 39 and the case-law cited; of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 32; and of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 249 and 251).

195 In the present case, it is apparent from the information provided in the requests for a preliminary ruling in Cases C-357/19, C-811/19 and C-840/19, as summarised in paragraphs 60, 95 and 107 of this judgment, that, by its Decision No 417/2019, delivered on 3 July 2019 on referral from the President of the Chamber of Deputies, the Curtea Constituțională (Constitutional Court) ordered that all cases on which the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) had ruled at first instance prior to 23 January 2019 and in which the decisions given by that court were not final on the date of that decision be re-examined by panels specialised in anti-corruption matters and established in accordance with Article 29(1) of Law No 78/2000, as interpreted by the Curtea Constituțională (Constitutional Court). According to that same information, the findings made in Decision No 417/2019 require the re-examination at first instance, inter alia, of all cases which, as at 23 January 2019, were pending on appeal or in which the judgment on appeal was, as at that same date, still open to an extraordinary appeal. It is further apparent from the information that, in its Decision No 685/2018, which was delivered on 7 November 2018 on referral from the Prime Minister, the Curtea Constituțională (Constitutional Court) found that the selection by the drawing of lots of only four of the five members of the five-judge panels of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) ruling on appeal was contrary to Article 32 of Law No 304/2004, as amended, and clarified that, with effect from the date of its publication, that decision was applicable, inter alia, to cases pending before the courts and to cases in which a ruling had been given, in so far as the individuals concerned were still within the period for the exercise of the appropriate extraordinary appeals, and that the case-law established in that decision requires that all those cases be subject to re-examination on appeal by a panel, all the members of which are selected by the drawing of lots.

196 Furthermore, as is clear from paragraph 108 of this judgment, the case-law of the Curtea Constituțională (Constitutional Court) established in the decisions mentioned in the preceding paragraph can apply successively, which may entail, in relation to a defendant in a situation such as that of NC, the need for the case to be examined twice at first instance and, potentially, a third time on appeal.

197 Thus, the need arising from that case-law of the Curtea Constituțională (Constitutional Court) to re-examine the corruption cases concerned necessarily has the effect of prolonging the duration of the corresponding criminal proceedings. In addition, aside from the fact that Romania had committed, as is clear from point I(5) of Annex IX to the Act of Accession, to 'revise the protracted criminal procedure by the end of 2005 to ensure that corruption cases are dealt with in a swift and transparent manner, in order to guarantee adequate sanctions that have a deterrent effect', the Court has held that, in view of Romania's specific obligations under Decision 2006/928 in relation to the fight against corruption, the related national rules and practice cannot result in the duration of investigations into corruption offences being extended or the fight against corruption being in any way weakened (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 214).

198 It must be added that the referring court in Cases C-357/19, C-811/19 and C-840/19 mentioned not only the complexity and duration of such a re-examination before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) but also the national rules on limitation, in particular the rule laid down in Article 155(4) of the Criminal Code, under which limitation takes effect, regardless of the number of interruptions, no later than the date on which a period of time equal to double the statutory limitation period concerned has expired. It thus considers that the application of the case-law of the Curtea Constituțională (Constitutional Court) established in

Decisions No 685/2018 and No 417/2019 could, in a significant number of cases, result in offences becoming time-barred, and therefore include a systemic risk of serious fraud affecting the European Union's financial interests or of corruption in general going unpunished.

199 Finally, according to the information contained in the requests for a preliminary ruling, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) has exclusive jurisdiction to hear and determine all offences of fraud liable to affect the European Union's financial interests and offences of corruption in general, committed by people occupying the highest positions in the Romanian State in the executive, legislature and judiciary.

200 In that regard, it must be stated that a systemic risk of offences going unpunished cannot be ruled out when the application of the case-law of the Curtea Constituțională (Constitutional Court) established in Decisions No 685/2018 and No 417/2019, in conjunction with the implementation of the national rules on limitation, has the effect of precluding the effective punishment acting as a deterrent of a quite specific category of persons, here those occupying the highest positions of the Romanian State who have been convicted for committing, in the exercise of their duties, acts of serious fraud and/or corruption by judgment delivered at first instance and/or on appeal by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), given that that judgment has nevertheless been the subject of an appeal and/or an extraordinary appeal before that same court.

201 Even though temporal limits do apply to them, those decisions of the Curtea Constituțională (Constitutional Court) may, inter alia, have a direct and general effect on that category of persons, since, by rendering such a judgment convicting an individual and delivered by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) absolutely null and void and requiring a re-examination of the cases of fraud and/or corruption concerned, those decisions may have the effect of prolonging the duration of the corresponding criminal proceedings beyond the applicable limitation periods, thus meaning that the risk of that category of persons going unpunished becomes systemic.

202 Such a risk would call into question the objective pursued both by Article 325(1) TFEU and by Decision 2006/928, namely to combat high-level corruption by means of effective penalties acting as a deterrent.

203 It follows that, if the referring court in Cases C-357/19, C-811/19 and C-840/19 were to conclude that the application of the case-law of the Curtea Constituțională (Constitutional Court) established in Decisions No 685/2018 and No 417/2019, in conjunction with the implementation of the national rules on limitation and, in particular, the absolute limitation period laid down in Article 155(4) of the Criminal Code, entails a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished, the penalties provided for in national law to counter such offences could not be regarded as effective and acting as a deterrent, which would be incompatible with Article 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention and with Decision 2006/928.

204 That being the case, since the criminal proceedings at issue in the main proceedings amount to an implementation of Article 325(1) TFEU and/or of Decision 2006/928 and, therefore, of EU law, within the meaning of Article 51(1) of the Charter, that referring court must also satisfy itself that the fundamental rights guaranteed by the Charter to the persons concerned in the main proceedings, in particular those guaranteed in Article 47 of the Charter, are respected. In criminal law, respect for those rights must be guaranteed not only during the stage of the preliminary

investigation, from the moment when the person concerned becomes an accused, but also during the criminal proceedings (see, to that effect, judgments of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraphs 68 and 71 and the case-law cited, and of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 33) and in the enforcement of the penalties.

205 In that regard, it must be recalled that the first sentence of the second paragraph of Article 47 of the Charter enshrines the entitlement of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. By requiring that the tribunal be 'previously established by law', that provision seeks to ensure that the organisation of the judicial system is regulated by law emanating from the legislature in compliance with the rules governing its jurisdiction, with a view to preventing such organisation being left to the discretion of the executive. That requirement covers not only the legal basis for the very existence of a tribunal, but also any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular, such as the provisions governing the composition of the panel hearing the case (see, by analogy, by reference to the case-law of the European Court of Human Rights on Article 6 ECHR, judgments of 26 March 2020, *Review Simpson* v *Council* and *HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 73, and of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 129).

206 It should be observed that an irregularity committed during the composition of panels entails an infringement of the first sentence of the second paragraph of Article 47 of the Charter, particularly when that irregularity is of such a kind and of such gravity as to create a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the panel composition process and thus give rise to a reasonable doubt in the minds of individuals as to the independence and the impartiality of the judge or judges concerned, which is the case when what is at issue are fundamental rules forming an integral part of the establishment and functioning of that judicial system (see, to that effect, judgments of 26 March 2020, *Review Simpson* v *Council* and *HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 75, and of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 130).

207 In the present case, although the Curtea Constituțională (Constitutional Court) found, in the decisions at issue in the main proceedings, that the earlier practice of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), based inter alia on the Regulation on organisation and administrative functioning, relating to the specialisation and the composition of the panels hearing cases related to corruption, was inconsistent with the applicable national provisions, it does not appear that that practice was vitiated by a manifest breach of a fundamental rule of Romania's judicial system, such as to call into question the fact that the panels of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) hearing cases related to corruption, such as those established in line with the practice adopted prior to those decisions of the Curtea Constituțională (Constitutional Court), constitute a tribunal 'previously established by law'.

208 In addition, as is clear from paragraph 95 of this judgment, on 23 January 2019, the governing council of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) adopted a decision to the effect that all panels of three judges of that court were specialised in hearing and determining corruption cases, a decision which, according to the Curtea Constituțională

(Constitutional Court), was capable of preventing unconstitutionality only with effect from the date of its adoption and not in relation to the past. That decision, as interpreted by the Curtea Constituțională (Constitutional Court), states that the earlier practice of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) vis-à-vis specialisation does not constitute a manifest breach of a fundamental rule of Romania's judicial system, since the requirement of specialisation stemming from Decision No 417/2019 of the Curtea Constituțională (Constitutional Court) was deemed to be met simply by the adoption of a formal act, such as the decision of 23 January 2019, which merely confirms that the judges of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) who were part of the panels hearing cases related to corruption prior to the adoption of that decision were specialised in such matters.

209 Moreover, Cases C-357/19, C-840/19 and C-811/19 must be distinguished from that which gave rise to the judgment of 5 December 2017, *M.A.S. and M.B.* (C-42/17, EU:C:2017:936), in which the Court held that, if the national court comes to the view that the obligation to disapply the national provisions at issue conflicts with the principle that offences and penalties must be defined by law, as enshrined in Article 49 of the Charter, it is not obliged to comply with that obligation (see, to that effect, judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 61). By contrast, the requirements arising from the first sentence of the second paragraph of Article 47 of the Charter do not preclude the non-application of the case-law established in Decisions No 685/2018 and No 417/2019 in Cases C-357/19, C-840/19 and C-811/19.

210 In his answer to a question put by the Court in Case C-357/19, PM argued that the requirement that judgments on appeal in corruption cases must be given by panels all the members of which are selected by the drawing of lots is a national standard of protection of fundamental rights. For their part, the Romanian Government and the Commission are, however, of the view that such a characterisation is incorrect as regards both that requirement and the requirement related to the establishment of panels specialised in relation to corruption offences.

211 In that regard, it need simply be stated that, even assuming that those requirements constitute such a national standard of protection, the fact remains that, when a court of a Member State is called upon to review the compatibility with fundamental rights of a national provision or measure which, in a situation in which the action of the Member States is not entirely determined by EU law, implements EU law for the purposes of Article 51(1) of the Charter, Article 53 of the Charter confirms that national authorities and courts are free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised (judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 29; of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 60; and of 29 July 2019, *Pelham and Others*, C-476/17, EU:C:2019:624, paragraph 80).

212 If the referring court in Cases C-357/19, C-811/19 and C-840/19 were to come to the conclusion set out in paragraph 203 above, the application of the national standard of protection relied on by PM, should it prove to be established, could compromise the primacy, unity and effectiveness of EU law, in particular Article 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention, and Decision 2006/928. In that scenario, the application of that national standard of protection would entail a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished, in breach of the requirement, arising from those provisions, that provision be made for effective deterrent penalties in order to combat offences of that kind.

213 In the light of the foregoing considerations, the first question in Cases C-357/19 and C-840/19 and the first and fourth questions in Case C-811/19 must be answered to the effect that Article 325(1) TFEU, read in conjunction with Article 2 of the PFI Convention, and Decision 2006/928 are to be interpreted as precluding national rules or a national practice under which judgments in matters of corruption and VAT fraud, which were not delivered, at first instance, by panels specialised in such matters or, on appeal, by panels all the members of which were selected by drawing lots, are rendered absolutely null and void, such that the cases of corruption and VAT fraud concerned must, as the case may be further to an extraordinary appeal against final judgments, be re-examined at first and/or second instance, where the application of those national rules or that national practice is capable of giving rise to a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished. The obligation to ensure that such offences are subject to criminal penalties that are effective and act as a deterrent does not exempt the referring court from verifying the necessary observance of the fundamental rights guaranteed in Article 47 of the Charter, but does not allow that court to apply a national standard of protection of fundamental rights entailing such a systemic risk of impunity.

The second and third questions in Cases C-357/19, C-379/19, C-811/19 and C-840/19 and the single question in Case C-547/19

214 By the second and third questions in Cases C-357/19, C-379/19, C-811/19 and C-840/19 and the single question in Case C-547/19, which should be examined jointly, the referring courts ask, in essence, whether, first, Article 2 TEU and the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Decision 2006/928, and, second, the principle of primacy of EU law in conjunction with those provisions and Article 325(1) TFEU are to be interpreted as precluding national rules or a national practice under which the ordinary courts are bound by the decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgment of the Court, that that case-law is contrary to the abovementioned provisions of EU law.

– *The guarantee of judicial independence*

215 The referring courts are of the view that the case-law of the Curtea Constituțională (Constitutional Court) established in the decisions at issue in the main proceedings is liable to call into question their independence and is, therefore, incompatible with EU law, in particular with the guarantees provided for in Article 2 TEU and the second subparagraph of Article 19(1) TEU as well as in Article 47 of the Charter and with Decision 2006/928. In that regard, they consider that the Curtea Constituțională (Constitutional Court), which is not part of the Romanian judicial system, exceeded its powers by delivering the decisions at issue in the main proceedings and encroached upon the jurisdiction of the ordinary courts, namely to interpret and apply infra-constitutional legislation. The referring courts further state that a failure to comply with the decisions of the Curtea Constituțională (Constitutional Court) constitutes, in Romanian law, a disciplinary offence, and they therefore ask, in essence, whether they can, under EU law, disapply those decisions at issue in the main proceedings without fear of being subject to disciplinary proceedings.

216 In that regard, as stated in paragraph 133 of this judgment, although the organisation of justice in the Member States, including the establishment, composition and functioning of a constitutional court, falls within the competence of those Member States, they are nonetheless required, when exercising that competence, to comply with their obligations deriving from EU law.

217 Article 19 TEU, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice (judgments of 5 November 2019, *Commission* v *Poland (Independence of ordinary courts)*, C-192/18, EU:C:2019:924, paragraph 98 and the case-law cited, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 108).

218 Specifically, as is confirmed by recital 3 of Decision 2006/928, the value of the rule of law 'implies for all Member States the existence of an impartial, independent and effective judicial and administrative system properly equipped, inter alia, to fight corruption'.

219 The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law. In that regard, as provided for in the second subparagraph of Article 19(1) TEU, it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 ECHR and is now reaffirmed in Article 47 of the Charter (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 189 and 190 and the case-law cited).

220 It follows that, pursuant to the second subparagraph of Article 19(1) TEU, every Member State must ensure that the bodies which are called upon, as 'courts or tribunals' within the meaning of EU law, to rule on questions related to the application or interpretation of EU law and thus come within its judicial system in the fields covered by EU law, meet the requirements of effective judicial protection, it being clarified that that provision refers to 'fields covered by Union law', irrespective of the circumstances in which the Member States are implementing EU law within the meaning of Article 51(1) of the Charter (see, to that effect, judgments of 5 November 2019, *Commission* v *Poland (Independence of ordinary courts)*, C-192/18, EU:C:2019:924, paragraphs 101 and 103 and the case-law cited; of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraphs 36 and 37; and of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 191 and 192).

221 To ensure that bodies that may be called upon to rule on questions concerning the application or interpretation of EU law are in a position to ensure the effective judicial protection required under the second subparagraph of Article 19(1) TEU, maintaining their independence is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy (judgments of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme*

Court – Actions), C-824/18, EU:C:2021:153, paragraph 115 and the case-law cited, and of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 194).

222 That requirement that courts be independent, which is inherent in the task of adjudication, forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial, which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 116 and the case-law cited).

223 Similarly, as follows inter alia from recital 3 of Decision 2006/928 and from the benchmarks referred to in points 1 to 3 of the annex to that decision, the existence of an impartial, independent and effective judicial system is of particular importance in the fight against corruption, in particular high-level corruption.

224 The requirement that courts be independent, which stems from the second subparagraph of Article 19(1) TEU, has two aspects to it. The first aspect, which is external in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (see, to that effect, judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraphs 121 and 122 and the case-law cited).

225 Those guarantees of independence and impartiality required under EU law presuppose rules that are such as to dispel any reasonable doubt, in the minds of individuals, as to the imperviousness of the body in question to external factors and its neutrality with respect to the interests before it (see, to that effect, judgments of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraph 53 and the case-law cited; of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 196; and of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 59 and the case-law cited).

226 In that regard, it is necessary that judges be protected from external intervention or pressure liable to jeopardise their independence. The rules applicable to the status of judges and to the exercise by them of their duties must, in particular, be such as to preclude not only any direct influence, in the form of instructions, but also types of influence which are more indirect and liable to have an effect on the decisions of the judges concerned, and thus be such as to prevent those judges not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society governed by the rule of law must inspire in subjects of the law (see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraphs 119 and 139 and the case-law cited).

227 As regards specifically the rules governing the disciplinary regime, the requirement of independence means that, in accordance with settled case-law, that regime must provide the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions. To that end, it appears essential that the fact that a judicial decision contains a possible error in the interpretation and application of national and EU law, or in the assessment of the facts and the appraisal of the evidence, cannot in itself trigger the disciplinary liability of the judge concerned (see, to that effect, judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 198 and 234 and the case-law cited, and of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraphs 134 and 138). The fact that national judges are not exposed to disciplinary proceedings or measures for having exercised the discretion to make a reference for a preliminary ruling to the Court under Article 267 TFEU, which is exclusively within their jurisdiction, also constitutes a guarantee that is essential to their independence (see, to that effect, judgments of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraphs 17 and 25; of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 59; and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 91).

228 In addition, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must in particular be ensured in relation to the legislature and the executive (judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 124 and the case-law cited, and of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 118).

229 Although neither Article 2 TEU nor the second subparagraph of Article 19(1) TEU, nor any other provision of EU law, requires Member States to adopt a particular constitutional model governing the relationship and interaction between the various branches of the State, in particular as regards the definition and delimitation of their competences, Member States must nonetheless comply, inter alia, with the requirements of judicial independence stemming from those provisions of EU law (see, by reference to the case-law of the European Court of Human Rights on Article 6 ECHR, judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 130).

230 In those circumstances, Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928 do not preclude national rules or a national practice under which the decisions of the constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive, as required by those provisions. However, if the national law does not guarantee such independence, those provisions of EU law preclude such national rules or such a national practice since such a constitutional court is not in a position to ensure the effective judicial protection required by the second subparagraph of Article 19(1) TEU.

231 In the present case, the questions raised by the referring courts in the light of the requirement of judicial independence arising from those provisions of EU law concern, first, a series of aspects related to the status, composition and functioning of the Curtea Constituțională (Constitutional Court) which delivered the decisions at issue in the main proceedings. More specifically, those courts observe that, under the Romanian Constitution, the Curtea Constituțională

(Constitutional Court) is not part of the judicial system, that its members are appointed by bodies within the legislature and the executive which are also empowered to refer matters to it, or even that it exceeded its powers and made an arbitrary interpretation of the relevant national legislation.

232 As for the fact that, under the Romanian Constitution, the Curtea Constituțională (Constitutional Court) is not part of the judicial system, it has been stated in paragraph 229 above that EU law does not require Member States to adopt a particular constitutional model governing the relationship and interaction between the various branches of the State, in particular as regards the definition and delimitation of their respective competences. In that regard, it must be clarified that EU law does not preclude the establishment of a constitutional court the decisions of which are binding on the ordinary courts, provided that that court complies with the requirements of independence referred to in paragraphs 224 to 230 above. There is nothing in the requests for a preliminary ruling to suggest that the Curtea Constituțională (Constitutional Court), which has inter alia the power to review the constitutionality of laws and ordinances and to rule on legal conflicts of a constitutional nature between the public authorities, pursuant to Article 146(d) and (e) of the Romanian Constitution, does not satisfy those requirements.

233 With regard to the circumstances in which judges of the Curtea Constituțională (Constitutional Court) are appointed, it is clear from the case-law of the Court of Justice that the mere fact that the judges concerned are appointed by the legislature and the executive, as is the case with the judges of the Curtea Constituțională (Constitutional Court) pursuant to Article 142(3) of the Romanian Constitution, does not give rise to a relationship of subordination of those judges to the legislature or the executive or to doubts as to their impartiality, if, once appointed, they are free from influence or pressure when carrying out their role (see, by analogy, judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 133 and the case-law cited).

234 Whilst it may, indeed, prove necessary to ensure that the substantive conditions and procedural rules governing the adoption of those appointment decisions are such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once the persons concerned are appointed, and whilst it is important, inter alia, in that perspective, that those conditions and procedural rules are drafted in a way which meets the requirements set out in paragraph 226 of this judgment (judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 123 and the case-law cited), there is nothing in the information contained in the requests for a preliminary ruling to indicate that the circumstances in which the appointments of the judges of the Curtea Constituțională (Constitutional Court) were made, that is to say the judges who delivered the decisions at issue in the main proceedings, are contrary to those requirements.

235 In addition, it must be noted that, according to that same information, Article 142(2) of the Romanian Constitution provides that the judges of the Curtea Constituțională (Constitutional Court) are to be 'appointed for a term of office of nine years, which may not be extended or renewed', and that Article 145 of the Romanian Constitution states that those judges are to be 'independent in the exercise of their office and shall be irremovable throughout that term of office'. Furthermore, Article 143 of that constitution specifies the conditions for appointment of the judges of the Curtea Constituțională (Constitutional Court) and requires, in that regard, that they must have 'excellent legal qualifications, a high level of professional competence and at least

18 years' experience of legal work or in higher legal education', whilst Article 144 of the Constitution lays down the principle that the office of judge of the Curtea Constituțională (Constitutional Court) is to be incompatible 'with any other public or private office, with the exception of teaching duties in higher legal education'.

236 It must be added, in the present case, that the fact that matters can be referred to the Curtea Constituțională (Constitutional Court) by bodies within the executive and the legislature is connected to the nature and the function of a court established to rule on disputes of a constitutional nature and cannot, in and of itself, constitute a factor capable of calling into question its independence in relation to the executive and the legislature.

237 As regards the question whether the Curtea Constituțională (Constitutional Court) failed to act independently and impartially in the cases that led to the decisions at issue in the main proceedings, the mere fact relied on by the referring courts that the Curtea Constituțională (Constitutional Court) exceeded its powers at the expense of the Romanian judiciary and provided an arbitrary interpretation of the relevant national legislation, assuming it were established, cannot establish that the Curtea Constituțională (Constitutional Court) does not meet the requirements of independence and impartiality referred to in paragraphs 224 to 230 above. The requests for a preliminary ruling do not contain any detailed information from which it is apparent that those decisions were made in a context giving rise to a reasonable doubt as to the complete compliance of the Curtea Constituțională (Constitutional Court) with those requirements.

238 As far as concerns, second, the disciplinary liability that judges of the ordinary courts may incur, under the national legislation at issue, if they fail to comply with the decisions of the Curtea Constituțională (Constitutional Court), it is true that safeguarding the independence of the courts cannot, in particular, have the effect of totally excluding the possibility that the disciplinary liability of a judge may, in certain very exceptional cases, be triggered as a result of judicial decisions adopted by that judge. Such a requirement of independence is clearly not intended to support any serious and totally inexcusable forms of conduct on the part of judges, which would consist, for example, in violating deliberately and in bad faith, or as a result of particularly serious and gross negligence, the national and EU law with which they are supposed to ensure compliance, or acting arbitrarily or denying justice when they are called upon, as guardians of the duty of adjudicating, to rule in disputes which are brought before them by individuals (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 137).

239 However, it appears essential, in order to preserve the independence of the courts and, in so doing, to prevent the disciplinary regime from being diverted from its legitimate purposes and used to exert political control over judicial decisions or pressure on judges, that the fact that a judicial decision contains a possible error in the interpretation and application of national and EU law, or in the assessment of the facts and the appraisal of the evidence, cannot in itself trigger the disciplinary liability of the judge concerned (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 138 and the case-law cited).

240 Consequently, it is important that the triggering of the disciplinary liability of a judge as a result of a judicial decision should be limited to entirely exceptional cases, such as those referred to in paragraph 238 above, and be governed, in that regard, by objective and verifiable criteria, arising from requirements relating to the sound administration of justice, and also by guarantees designed to avoid any risk of external pressure on the content of judicial decisions and thus

helping to dispel, in the minds of individuals, any reasonable doubts as to the imperviousness of the judges concerned and their neutrality with respect to the interests before them (judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 139 and the case-law cited).

241 In the present case, there is nothing in the information contained in the requests for a preliminary ruling to indicate that the disciplinary liability of the national judges of the ordinary courts as a result of non-compliance with the decisions of the Curtea Constituțională (Constitutional Court), as provided for in Article 99(ș) of Law No 303/2004, the wording of which does not include any other condition, is limited to the entirely exceptional cases mentioned in paragraph 238 above, contrary to the case-law set out in paragraphs 239 and 240 above.

242 It follows that Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928 are to be interpreted as not precluding national rules or a national practice under which the decisions of the constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive, as required by those provisions. However, those provisions of the EU Treaty and that decision are to be interpreted as precluding national rules under which any failure to comply with the decisions of the national constitutional court by national judges of the ordinary courts can trigger their disciplinary liability.

243 In those circumstances, and as regards cases in which the national rules or the national practice at issue in the main proceedings constitute an implementation of EU law within the meaning of Article 51(1) of the Charter, a separate examination of Article 47 of the Charter, which could only substantiate the finding already set out in the preceding paragraph, appears unnecessary for the purpose of answering the questions put by the referring courts and for the outcome of the proceedings brought before them.

– *The primacy of EU law*

244 The referring courts observe that the case-law of the Curtea Constituțională (Constitutional Court) established in the decisions at issue in the main proceedings, in relation to which they have doubts as to the compatibility of that case-law with EU law, is, in accordance with Article 147(4) of the Romanian Constitution, binding and must be observed by the national courts, failing which a disciplinary penalty may be imposed on their members pursuant to Article 99(ș) of Law No 303/2004. In those circumstances, the referring courts are seeking to ascertain whether the principle of primacy of EU law precludes such national rules or such a national practice and allows a national court to disapply case-law of that kind, without that court's members bearing a risk of incurring a disciplinary penalty.

245 In that regard, it must be recalled that, in its settled case-law on the EEC Treaty, the Court has previously held that, unlike standard international treaties, the Community Treaties established a new legal order, which is integrated into the legal systems of the Member States on the entry into force of the Treaties and which are binding on their courts. That new legal order, for the benefit of which the Member States limited their sovereign rights in the fields defined by the Treaties and the subjects of which comprise not only the Member States but also their nationals, has its own institutions (see, to that effect, judgments of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1, p. 23, and of 15 July 1964, *Costa*, 6/64, EU:C:1964:66, pp. 593 and 594).

246 Thus, in the judgment of 15 July 1964, *Costa* (6/64, EU:C:1964:66, pp. 593 to 594), the Court laid down the principle of the primacy of Community law, which is understood to enshrine the precedence of Community law over the law of the Member States. In that regard, it found that the establishment by the EEC Treaty of the Community's own legal system, accepted by the Member States on a basis of reciprocity, means, as a corollary, that they cannot accord precedence to a unilateral and subsequent measure over that legal system or rely on rules of national law of any kind against the law stemming from the EEC Treaty, without depriving the latter law of its character as Community law and without the legal basis of the Community itself being called into question. In addition, the executive force of Community law cannot vary from one Member State to another in deference to subsequent domestic laws, without jeopardising the attainment of the objectives of the EEC Treaty or giving rise to discrimination on grounds of nationality prohibited by that treaty.

247 In paragraph 21 of its Opinion 1/91 (First Opinion of the EEA Agreement) of 14 December 1991 (EU:C:1991:490), the Court thus found that the EEC Treaty, albeit concluded in the form of an international agreement, nonetheless constitutes the constitutional charter of a Community based on the rule of law, and that the essential characteristics of the Community legal order thus established are in particular its primacy over the law of the Member States and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves.

248 Those essential characteristics of the EU legal order and the importance of compliance with that legal order were, moreover, confirmed by the ratification, without reservation, of the Treaties amending the EEC Treaty and, in particular, the Treaty of Lisbon. When that treaty was adopted, the conference of representatives of the governments of the Member States was keen to state expressly, in its Declaration No 17 concerning primacy, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon (OJ 2012 C 326, p. 346), that, in accordance with settled case-law of the Court, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of the Member States, under the conditions laid down by that case-law.

249 It must be added that Article 4(2) TEU provides that the Union is to respect the equality of Member States before the Treaties. However, the Union can respect such equality only if the Member States are unable, under the principle of the primacy of EU law, to rely on, as against the EU legal order, a unilateral measure, whatever its nature.

250 Following the entry into force of the Treaty of Lisbon, the Court has consistently confirmed the earlier case-law on the principle of the primacy of EU law, a principle which requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 244 and the case-law cited; of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 156; and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 78 and the case-law cited).

251 Thus, by virtue of the principle of the primacy of EU law, a Member State's reliance on rules of national law, even of a constitutional nature, cannot be allowed to undermine the unity and effectiveness of EU law. In accordance with settled case-law, the effects of the principle of the

primacy of EU law are binding on all the bodies of a Member State, without, inter alia, provisions of domestic law, including constitutional provisions, being able to prevent that (judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 245 and the case-law cited; of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 157; and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 79 and the case-law cited).

252 In that regard, it must, inter alia, be recalled that, in accordance with the principle of primacy, the national court called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty, where it is unable to interpret national law in compliance with the requirements of EU law, to give full effect to the requirements of EU law in the dispute brought before it by disapplying, as required, on its own authority, any national rule or practice, even if adopted subsequently, that is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (see, to that effect, judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 247 and 248, and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 80).

253 In addition, as regards the provisions of EU law referred to in the present requests for a preliminary ruling, it must be recalled that it follows from the Court's case-law that the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU and the benchmarks set out in the annex to Decision 2006/928 are formulated in clear and precise terms and are not subject to any conditions, and they therefore have direct effect (see, to that effect, judgments of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraphs 38 and 39, and of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 249 and 250).

254 In that context, it must be made clear that, in accordance with Article 19 TEU, whilst it is for the national courts and tribunals and the Court to ensure the full application of EU law in all the Member States and to ensure effective judicial protection of the rights of individuals under that law, the Court has exclusive jurisdiction to give the definitive interpretation of that law (see, to that effect, judgment of 2 September 2021, *Republic of Moldova*, C-741/19, EU:C:2021:655, paragraph 45). In addition, in the exercise of that jurisdiction, it is ultimately for the Court to clarify the scope of the principle of the primacy of EU law in the light of the relevant provisions of that law; that scope cannot turn on the interpretation of provisions of national law or on the interpretation of provisions of EU law by a national court which is at odds with that of the Court. To that end, the preliminary-ruling procedure provided for in Article 267 TFEU, which is the keystone of the judicial system established by the Treaties, sets up a dialogue between one court and another, specifically between the Court of Justice and the courts of the Member States, having the object of securing the uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (judgments of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 37 and the case-law cited, and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 27).

255 In the present case, the referring courts state that, under the Romanian Constitution, they are bound by the case-law established in the decisions of the Curtea Constituțională (Constitutional Court) at issue in the main proceedings and cannot disapply that case-law, otherwise their members risk being subject to a disciplinary procedure or penalty, even where they are of the view, in the light of a judgment given as a preliminary ruling by the Court of Justice, that the case-law is contrary to EU law.

256 In that regard, it must be recalled that a judgment in which the Court of Justice gives a preliminary ruling is binding on the national court, as regards the interpretation of the provisions of EU law in question, for the purposes of the decision to be given in the main proceedings (see, to that effect, judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 38 and the case-law cited).

257 Accordingly, the national court which exercised the discretion or complied with its obligation to make a reference to the Court for a preliminary ruling under Article 267 TFEU cannot be prevented from forthwith applying EU law in accordance with the decision or the case-law of the Court, since otherwise the effectiveness of that provision would be impaired (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 20, and of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 39). It must be added that the power to do everything necessary, when applying EU law, to disregard national rules or a national practice which might prevent EU rules from having full force and effect is an integral part of the role of a court of the European Union which falls to the national court responsible for applying, within its jurisdiction, the EU rules, and therefore the exercise of that power constitutes a guarantee that is essential to judicial independence as provided for in the second subparagraph of Article 19(1) TEU (see, to that effect, judgments of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 59, and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 91).

258 Thus, any national rules or practice which might impair the effectiveness of EU law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to disregard a national provision or practice which might prevent EU rules from having full force and effect are incompatible with the requirements which are the very essence of EU law (see, to that effect, judgments of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 44 and the case-law cited; of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 41; and of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 36).

259 National rules or a national practice under which the decisions of the national constitutional court are binding on the ordinary courts, even where the latter are of the view, in the light of a judgment given on a request for a preliminary ruling by the Court of Justice, that the case-law established in those constitutional decisions is contrary to EU law, can prevent those courts from ensuring that full effect is given to the requirements of EU law; that preventive effect may be heightened by the fact that the national law classifies any non-compliance with such constitutional case-law as a disciplinary offence.

260 In that context, it must be observed that Article 267 TFEU precludes any national rules or practice that can prevent national courts, as the case may be, from exercising the discretion or complying with the obligation, laid down in Article 267 TFEU, to make a reference for a preliminary ruling to the Court (see, to that effect, judgments of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraphs 32 to 34 and the case-law cited; of 19 November 2019, *A. K. and Others*

(Independence of the Disciplinary Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 103; and of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 93). Moreover, in accordance with the case-law cited in paragraph 227 of this judgment, for national judges, not being exposed to disciplinary proceedings or penalties for having exercised the discretion to make a reference for a preliminary ruling to the Court under Article 267 TFEU, which is exclusively within their jurisdiction, constitutes a guarantee that is essential to their independence. Similarly, if, following the answer given by the Court, a national judge of an ordinary court were prompted to take the view that the case-law of the national constitutional court is contrary to EU law, that national judge's disapplication of that case-law, in accordance with the principle of the primacy of EU law, cannot in any way trigger his or her disciplinary liability.

261 In the present case, it is apparent from the documents available to the Court that disciplinary proceedings were initiated pursuant to Article 99(ș) of Law No 303/2004 against certain judges of the referring courts after they submitted their request for a preliminary ruling. In addition, even if the answer given by the Court were to prompt those courts to disapply the case-law of the Curtea Constituțională (Constitutional Court) established in the decisions at issue in the main proceedings, it does not appear to be ruled out, in the light of the case-law of the Curtea Constituțională (Constitutional Court) referred to in paragraph 58 of this judgment, that the judges making up those courts may risk being subject to disciplinary penalties.

262 It follows that the principle of the primacy of EU law is to be interpreted as precluding national rules or a national practice under which national ordinary courts are bound by the decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgment of the Court of Justice, that that case-law is contrary to the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU or Decision 2006/928.

263 In the light of all the foregoing considerations, the second and third questions in Cases C-357/19, C-379/19, C-811/19 and C-840/19 and the single question in Case C-547/19 must be answered to the effect that

– Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928 are to be interpreted as not precluding national rules or a national practice under which the decisions of the national constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive, as required by those provisions. However, those provisions of the EU Treaty and that decision are to be interpreted as precluding national rules under which any failure to comply with the decisions of the national constitutional court by national judges of the ordinary courts can trigger their disciplinary liability;

– the principle of primacy of EU law is to be interpreted as precluding national rules or a national practice under which national ordinary courts are bound by decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgment of the Court of Justice, that that case-law is contrary to the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU or Decision 2006/928.

Costs

264 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption is, as long as it has not been repealed, binding in its entirety on Romania. The benchmarks in the annex to that decision are intended to ensure that Romania complies with the value of the rule of law, set out in Article 2 TEU, and are binding on it, to the effect that Romania is required to take the appropriate measures to meet those benchmarks, taking due account, under the principle of sincere cooperation laid down in Article 4(3) TEU, of the reports drawn up by the Commission on the basis of that decision, and in particular the recommendations made in those reports.**

2. **[As rectified by order of 15 March 2022] Article 325(1) TFEU, read in conjunction with Article 2 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995, and Decision 2006/928 are to be interpreted as precluding national rules or a national practice under which judgments in matters of corruption and value added tax (VAT) fraud, which were not delivered, at first instance, by panels specialised in such matters or, on appeal, by panels all the members of which were selected by drawing lots, are rendered absolutely null and void, such that the cases of corruption and VAT fraud concerned must, as the case may be further to an extraordinary appeal against final judgments, be re-examined at first and/or second instance, where the application of those national rules or that national practice is capable of giving rise to a systemic risk of acts constituting serious fraud affecting the European Union's financial interests or corruption in general going unpunished. The obligation to ensure that such offences are subject to criminal penalties that are effective and act as a deterrent does not exempt the referring court from verifying the necessary observance of the fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union, but does not allow that court to apply a national standard of protection of fundamental rights entailing such a systemic risk of impunity.**

3. **Article 2 TEU, the second subparagraph of Article 19(1) TEU and Decision 2006/928 are to be interpreted as not precluding national rules or a national practice under which the decisions of the national constitutional court are binding on the ordinary courts, provided that the national law guarantees the independence of that constitutional court in relation, in particular, to the legislature and the executive, as required by those provisions. However, those provisions of the EU Treaty and that decision are to be interpreted as precluding national rules under which any failure to comply with the decisions of the national constitutional court by national judges of the ordinary courts can trigger their disciplinary liability.**

4. The principle of primacy of EU law is to be interpreted as precluding national rules or a national practice under which national ordinary courts are bound by decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgment of the Court of Justice, that that case-law is contrary to the second subparagraph of Article 19(1) TEU, Article 325(1) TFEU or Decision 2006/928.

[Signatures]