Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

2 September 2021 *

(Reference for a preliminary ruling – Prevention of the use of the financial system for the purposes of money laundering and terrorist financing – Directive (EU) 2015/849 – Directive 2005/60/EC – Offence of money laundering – Laundering by the perpetrator of the predicate offence ('self-laundering'))

In Case C-790/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Brașov (Court of Appeal, Brașov, Romania), made by decision of 14 October 2019, received at the Court on 24 October 2019, in the proceedings

Parchetul de pe lângă Tribunalul Brașov

v

LG,

MH,

intervener:

Agenția Națională de Administrare Fiscală – Direcția Generală Regională a Finanțelor Publice Brașov,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, A. Kumin, T. von Danwitz, P.G. Xuereb and I. Ziemele (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Parchetul de pe lângă Tribunalul Brașov, by C. Constantin Sandu, acting as Agent,

* Language of the case: Romanian.

– the Romanian Government, by E. Gane and L. Lițu, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil and L. Dvořáková, acting as Agents,

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

– the European Commission, initially by T. Scharf, M. Wasmeier, R. Troosters and L. Nicolae, and subsequently by T. Scharf, M. Wasmeier and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(3)(a) 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).

2 The request has been made in criminal proceedings brought against LG and MH, who are being prosecuted for having committed and participated in, respectively, the offence of money laundering.

Legal context

Law of the Council of Europe

Protocol No 7 to the ECHR

3 Article 4 of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), headed 'Right not to be tried or punished twice', provides:

'1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

…'

The Strasbourg Convention

4 Article 1(a) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990 (*European Treaty Series* No 141, 'the Strasbourg Convention') provides as follows:

'For the purposes of this Convention:

a "proceeds" means any economic advantage from criminal offences. It may consist of any property as defined in sub-paragraph b of this article'.

5 Article 6(1) and (2) of that convention provides:

'1. Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

…

2. For the purposes of implementing or applying paragraph 1 of this article:

…

b it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

…'

The Warsaw Convention

6 The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, signed in Warsaw on 16 May 2005 (*Council of Europe Treaty Series* No 198, 'the Warsaw Convention'), which entered into force on 1 May 2008, contains, in Article 1(a), the same definition of the term 'proceeds' as the Strasbourg Convention.

7 Article 9(1) and (2) of that convention is worded as follows:

'1. Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

…

2. For the purposes of implementing or applying paragraph 1 of this article:

…

b it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

…'

The explanatory reports to the Strasbourg and Warsaw Conventions

8 The explanatory reports to the Strasbourg and Warsaw Conventions state that Article 6(2)(b) of the Strasbourg Convention and Article 9(2)(b) of the Warsaw Convention take into account that in some States, according to basic principles of domestic penal law, the person who committed the predicate offence will not commit a further offence when laundering the proceeds of that predicate offence, whereas in other States laws to such effect have already been enacted.

EU law

Framework Decision 2001/500/JHA

9 Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ 2001 L 182, p. 1) provides in Article 1:

'In order to enhance action against organised crime, Member States shall take the necessary steps not to make or uphold reservations in respect of the following articles of the [Strasbourg] Convention:

…

(b) Article 6, in so far as serious offences are concerned. Such offences shall in any event include offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.'

10 Article 2 of that framework decision provides:

'Each Member State shall take the necessary steps consistent with its system of penalties to ensure that the offences referred to in Article 6(1)(a) and (b) of the [Strasbourg] Convention, as they result from Article 1(b) of this framework Decision, are punishable by deprivation of liberty for a maximum of not less than 4 years.'

Directive 2005/60/EC

11 Recitals 1, 5 and 48 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (OJ 2005 L 309, p. 15) are worded as follows:

'(1) Massive flows of dirty money can damage the stability and reputation of the financial sector and threaten the single market, and terrorism shakes the very foundations of our society. In addition to the criminal law approach, a preventive effort via the financial system can produce results.

…

(5) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted solely at national or even [European Union] level, without taking account of international coordination and cooperation, would have very limited effects. The measures adopted by the [Union] in this field should therefore be consistent with other action undertaken in other international fora. The [Union] action should continue to take particular account of the Recommendations of the Financial Action Task Force (hereinafter referred to as the FATF), which constitutes the foremost international body active in the fight against money laundering and terrorist financing. Since the FATF Recommendations were substantially revised and expanded in 2003, this Directive should be in line with that new international standard.

…

(48) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the [ECHR].'

12 Article 1(1) and (2) of that directive provides:

'1. Member States shall ensure that money laundering and terrorist financing are prohibited.

2. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.'

13 Article 5 of Directive 2005/60 provides that 'the Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing'.

Directive 2015/849

14 Article 1 of Directive 2015/849 provides:

'1. This Directive aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.

2. Member States shall ensure that money laundering and terrorist financing are prohibited.

3. For the purposes of this Directive, the following conduct, when committed intentionally, shall be regarded as money laundering:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).

…'

Directive (EU) 2018/1673

15 Recitals 1 and 11 of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ 2018 L 284, p. 22) provides:

'(1) Money laundering and the related financing of terrorism and organised crime remain significant problems at Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal market and the internal security of the Union. In order to tackle those problems and to complement and reinforce the application of Directive [2015/849], this Directive aims to combat money laundering by means of criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities.

…

(11) Member States should ensure that certain types of money laundering activities are also punishable when committed by the perpetrator of the criminal activity that generated the property ("self-laundering"). In such cases, where the money laundering activity does not simply amount to the mere possession or use of property, but also involves the transfer, conversion, concealment or disguise of property and results in further damage than that already caused by the criminal activity, for instance by putting the property derived from criminal activity into circulation and, by doing so, concealing its unlawful origin, that money laundering activity should be punishable.'

16 Article 3 of that directive, headed 'Money laundering offences', provides:

'1. Member States shall take the necessary measures to ensure that the following conduct, when committed intentionally, is punishable as a criminal offence:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity;

(c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity.

2. Member States may take the necessary measures to ensure that the conduct referred to in paragraph 1 is punishable as a criminal offence where the offender suspected or ought to have known that the property was derived from criminal activity.

…

5. Member States shall take the necessary measures to ensure that the conduct referred to in points (a) and (b) of paragraph 1 is punishable as a criminal offence when committed by persons who committed, or were involved in, the criminal activity from which the property was derived.'

17 Under Article 13(1) of that directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 3 December 2020.

Romanian law

18 Legea nr. 656/2002 pentru prevenirea și sancționarea spălării banilor, precum și pentru instituirea unor măsuri de prevenire și combatere a finanțării terorismului (Law No 656/2002 on the prevention and sanctioning of money laundering and establishing measures to prevent and combat terrorist financing) of 7 December 2002 (*Monitorul Oficial al României*, Part I, No 904 of 12 December 2002), in the version in force at the time of the facts in the main proceedings ('Law No 656/2002), transposed into Romanian law, inter alia, Directive 2005/60.

19 Article 29(1) of Law No 656/2002 reads as follows:

'(1) The following shall constitute the offence of money laundering, punishable by a custodial sentence of between 3 and 12 years:

(a) the conversion or transfer of property, knowing that such property is derived from the commission of a criminal offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting the perpetrator of the offence from which such property is derived in avoiding prosecution, trial or execution of a sentence;

(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from the commission of a criminal offence;

(c) the acquisition, possession or use of property, knowing that such property is derived from the commission of a criminal offence.'

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

20 On 15 November 2018, the Tribunalul Brașov (Regional Court, Brașov, Romania) sentenced LG to imprisonment for one year and nine months, with a conditional suspension of execution of the sentence, for the offence of money laundering provided for in Article 29(1)(a) of Law No 656/2002 in respect of 80 acts committed between 2009 and 2013. The funds in question were derived from the offence of tax evasion committed by LG. The criminal proceedings relating to the offence of tax evasion were closed after LG had repaid the amounts due.

21 That court found that, during the period between 2009 and 2013, LG had failed to record tax documents proving the receipt of income in the accounts of a company of which he was the manager, which is classified as 'tax evasion' under Romanian law. The sums of money deriving from the tax evasion were transferred to the bank account of another company, of which MH was the manager, and then withdrawn by LG and MH. This transfer was carried out on the basis of a contract of assignment of debt concluded between LG, the company of which he was the manager and the company of which MH was the manager. Pursuant to that contract of assignment, the sums owed to LG by the company of which he was the manager were paid by clients of that company into the bank account of the company managed by MH.

22 The Tribunalul Brașov (Regional Court, Brașov) also found that LG had been aided by MH in committing the offence of money laundering, but ordered that MH be acquitted on the ground that the condition of imputability of the offence was not satisfied because it had not been proved that MH was aware that LG had laundered money derived from tax evasion.

23 On 13 December 2018, appeals were brought against the judgment of the Tribunalul Brașov (Regional Court, Brașov) before the Curtea de Apel Brașov (Court of Appeal, Brașov, Romania) by the Parchetul de pe lângă Tribunalul Brașov (Public Prosecutor of the Regional Court of Brașov, 'the Public Prosecutor'), LG and a civil party, namely, the Agenția Națională de Administrare Fiscală, Direcția Generală Regională a Finanțelor Publice Brașov (National Tax Administration Agency, Regional Directorate-General of Public Finances, Brașov, Romania).

24 LG has subsequently withdrawn his appeal. The Public Prosecutor's appeal concerns, inter alia, whether MH's acquittal of the offence of aiding money laundering was properly justified. The civil party is challenging the treatment of the civil action following the criminal proceedings as regards the amount of damages which the accused was ordered to pay.

25 The referring court has explained that it is seeking an interpretation of Directive 2015/849, even though that directive had not been transposed into Romanian law within the prescribed period, because that directive defines the offence of money laundering in the same way as Directive 2005/60, which was in force at the time of the facts at issue in the main proceedings and which had been transposed into Romanian law by Law No 656/2002.

26 In the referring court's view, Article 1(3)(a) of Directive 2015/849 must be interpreted as meaning that the perpetrator of the offence of money laundering – which is, by its nature, a consequential offence resulting from a predicate offence – cannot be the perpetrator of the predicate offence.

27 According to the referring court, such an interpretation follows from the preamble to, and Article 1(3) of, Directive 2015/849 and from a grammatical, semantic and teleological analysis of the words 'knowing that such property is derived from criminal activity', which makes sense only if the perpetrator of the predicate offence is different from that of the money laundering offence. In addition, the last part of the sentence in Article 1(3)(a) of Directive 2015/849 ('or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action') is linked not to the perpetrator of the money laundering, but to the perpetrator of the predicate offence.

28 Furthermore, according to the referring court, to consider that the perpetrator of the predicate offence may also be the perpetrator of the offence of money laundering amounts to an infringement of the principle *non bis in idem*.

29 In those circumstances, the Curtea de Apel Braşov (Court of Appeal, Braşov) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 1(3)(a) of Directive 2015/849 be interpreted as meaning that the person who commits the act which constitutes the offence of money laundering must always be a person other than the person who commits the predicate offence (the alleged offence from which is derived the money that is laundered)?'

Procedure before the Court

30 By letter of 6 January 2020, the Court asked the referring court to confirm that LG had withdrawn his appeal against the judgment of the Tribunalul Braşov (Regional Court, Braşov) of 15 November 2018 and, if so, to what extent the answer to the question referred was still necessary for the resolution of the dispute in the main proceedings.

31 In its reply to that letter received at the Court on 16 January 2020, the referring court confirmed that LG had withdrawn his appeal, but that this did not affect the relevance of the request for a preliminary ruling owing to the appeals which had also been brought by the Public Prosecutor and the civil party. Examination of those appeals requires the referring court to rule on whether the elements of the offence of money laundering – relating to the adequacy between the facts

complained of and the facts alleged against LG and MH, unlawfulness and imputability – are present, with the result that resolution of the substance of the case itself depends on the answer to the question submitted.

32 In addition, the referring court stated that, in the case in the main proceedings, it would be adjudicating at last instance.

The reference for a preliminary ruling

Admissibility

33 The Romanian Government disputes the admissibility of the request for a preliminary ruling. It submits, first of all, that following the withdrawal of LG's appeal, the referring court is no longer required to rule on his conviction for the offence of money laundering. Accordingly, it has not been established that an answer to the question submitted is necessary for the resolution of the dispute in the main proceedings.

34 Next, in the view of the Romanian Government, the account of the facts that led to the dispute in the main proceedings seems unclear, which gives rise to doubt as to whether the Court has all the information necessary to be able to give judgment.

35 Lastly, contrary to what is claimed by the referring court, the Romanian Government submits that there are no conflicting interpretations in Romanian case-law of Article 29(1)(a) of Law No 656/2002, which reproduces the wording of Article 1(2)(a) of Directive 2005/60.

36 In that regard, it must be borne in mind that, in accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 25 and the case-law cited).

37 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling 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 purpose, 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 (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26 and the case-law cited).

38 Specifically, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it. Thus, the preliminary ruling procedure is based on the premiss, inter alia, that a case is

pending before the national courts in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 27 and the case-law cited).

39 In the present case, it is apparent from the request for a preliminary ruling and from the referring court's reply to the question put to it by the Court by letter of 6 January 2020 that a dispute is pending before the referring court and that that court considers that, in order to resolve the dispute, it is called upon to decide, in essence, whether the perpetrator of the offence of money laundering may be the perpetrator of the predicate offence. The referring court is therefore able to take into account the answer to the question referred.

40 Accordingly, it is not obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, or that the problem is hypothetical.

41 Furthermore, even though the description of the facts giving rise to the main action is very succinct and not entirely unambiguous, it nevertheless makes it possible to understand the issues in the main proceedings. Moreover, it enabled the Romanian, Czech and Polish Governments and the European Commission to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union.

42 It follows that the request for a preliminary ruling is admissible.

Substance

43 As a preliminary point, it should be noted that, according to settled case-law, in order to provide a satisfactory answer to the national court which has referred a question to it, the Court of Justice may deem it necessary to consider provisions of EU law to which the national court has not referred in its question (judgment of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, paragraph 38 and the case-law cited).

44 In the present case, although the referring court's question concerns Article 1(3) of Directive 2015/849, it should be noted that, as is apparent from the request for a preliminary ruling, LG was convicted of the offence of money laundering provided for in Article 29(1)(a) of Law No 656/2002, which transposed into Romanian law Article 1(2)(a) of Directive 2005/60 which was in force during the period to which the dispute in the main proceedings relates.

45 Furthermore, it should be pointed out that the wording of Article 1(2) of Directive 2005/60 and Article 1(3) of Directive 2015/849 is similar in substance.

46 In those circumstances, in order to provide a satisfactory answer to the referring court, the question submitted should be understood as seeking to ascertain, in essence, whether Article 1(2)(a) of Directive 2005/60 must be interpreted as precluding national legislation which provides that the offence of money laundering, within the meaning of that provision, may be committed by the perpetrator of the criminal activity which generated the money in question.

47 According to the Court's settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (judgment of 26 September 2018, *Baumgartner*, C-513/17, EU:C:2018:772, paragraph 23 and the case-law cited).

48 Article 1(1) of Directive 2005/60 provides that Member States are to ensure that money laundering and terrorist financing are prohibited. Article 1(2) of that directive lists the acts which, when committed intentionally, are to be regarded as the constituent elements of the offence of money laundering for the purposes of Directive 2005/60.

49 Article 1(2)(a) of Directive 2005/60 concerns the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action.

50 It is apparent from the wording of Article 1(2)(a) of Directive 2005/60 that, for a person to be regarded as having committed money laundering, within the meaning of that provision, that person must be aware that the property is derived from criminal activity or from an act of participation in such activity.

51 Such a condition merely requires that the perpetrator of the offence of money laundering is aware of the criminal origin of the property in question. Since that condition is necessarily satisfied as regards the perpetrator of the criminal activity from which that property is derived, it does not rule out that that person may also be the perpetrator of the offence of money laundering provided for in Article 1(2)(a) of Directive 2005/60.

52 It is also apparent from the wording of Article 1(2)(a) of Directive 2005/60 that the act referred to in that provision consists in, inter alia, the conversion or transfer of property, for the purpose of concealing or disguising the illicit origin of that property.

53 In so far as such conduct constitutes a contingent act which, unlike the mere possession or use of the property, does not automatically result from the criminal activity from which that property is derived, it may be committed both by the perpetrator of the criminal activity from which the property in question is derived and by a third party.

54 It follows from the foregoing that the wording of Article 1(2)(a) of Directive 2005/60 does not preclude the perpetrator of the predicate offence from which the laundered money is derived from also being the perpetrator of the offence of money laundering provided for in that provision.

55 As regards the legislative context of Directive 2005/60, it should be borne in mind that, on the date of its adoption, Framework Decision 2001/500 was in force. Article 1(b) of that framework decision provides that in order to enhance action against organised crime, Member States are to take the necessary steps not to make or uphold any reservations in respect of, inter alia, Article 6(1)(a) of the Strasbourg Convention in so far as serious offences are concerned and, in any event, as regards offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year, or, as regards offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.

56 Article 6(1) of the Strasbourg Convention provides that each Party is to adopt ‘such legislative and other measures’ as may be necessary to establish as offences under its domestic law, when committed intentionally, the acts listed in that provision. The act of money laundering provided for in Article 6(1)(a) of the Strasbourg Convention is, in essence, the same as that provided for in Article 1(2)(a) of Directive 2005/60.

57 Article 6(2)(b) of the Strasbourg Convention gives the Parties the power to provide that the offences set forth in Article 6(1) do not apply to the persons who committed the predicate offence. As is apparent from the explanatory report to that convention, that provision takes into account that, in some States, the person who committed the predicate offence will not, according to basic principles of domestic penal law, commit a further offence when laundering the proceeds of the predicate offence.

58 It follows that, when Directive 2005/60 was adopted, criminalising the conduct referred to in Article 1(2)(a) of Directive 2005/60, as regards the perpetrator of the predicate offence, was permitted according to the Strasbourg Convention, but it was open to the Member States not to criminalise that conduct under their domestic penal law. Furthermore, the same conclusion applies as regards the Warsaw Convention, Article 9(2)(b) of which states that it may be provided that the offences set forth in Article 9(1) do not apply to the persons who committed the predicate offence.

59 Directive 2005/60 – which lays down, in Article 1(1), an obligation on the Member States to prohibit certain acts of money laundering, without prescribing the means for implementing such a prohibition, and which defines, in Article 1(2)(a), money laundering in a manner which permits, but does not require, the criminalisation of the conduct referred to in that provision as regards the perpetrator of the predicate offence – consequently leaves it to the Member States to decide whether such conduct should be criminalised when transposing that provision into their domestic law.

60 That finding is confirmed, first, by recital 5 of Directive 2005/60, according to which that directive was intended to be 'in line with' the FATF recommendations, as revised and expanded in 2003. As the Advocate General observed in point 45 of his Opinion, according to the first of those recommendations, States may provide that the offence of money laundering cannot be applied to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.

61 Second, as the Advocate General observed in point 41 of his Opinion, Article 5 of Directive 2005/60 expressly acknowledges that Member States may adopt or retain in force stricter provisions in the field covered by that directive to prevent money laundering and terrorist financing. That article, which appears in Chapter I of that directive, headed 'Subject matter, scope and definitions', applies to all the provisions in the field covered by the directive in order to prevent money laundering and terrorist financing (see, to that effect, judgment of 10 March 2016, *Safe Interenvíos*, (C-235/14, EU:C:2016:154, paragraph 78).

62 It should also be noted that, as is apparent from recitals 1 and 11 of Directive 2018/1673, that directive aims to combat money laundering by means of criminal law and requires Member States to ensure that certain types of money laundering activities are also punishable when committed by the perpetrator of the criminal activity that generated that money.

63 Article 3(5) of Directive 2018/1673 provides that Member States are to take the necessary measures to ensure that the conduct referred to in, inter alia, Article 3(1)(a) of that directive is punishable as a criminal offence when committed by persons who committed, or were involved in, the criminal activity from which the property was derived.

64 It should be noted that the description of the conduct referred to in Article 3(1)(a) of Directive 2018/1673 corresponds to that of the conduct referred to in Article 1(2)(a) of Directive 2005/60.

65 Accordingly, it is only Directive 2018/1673, whose transposition period expired on 3 December 2020, which imposed an obligation on Member States, arising under EU law, to criminalise, as regards the perpetrator of the predicate offence, the conversion or transfer of property, which is derived from such a criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action.

66 Consequently, it follows from the legislative context of Directive 2005/60 that that directive does not preclude a Member State from transposing Article 1(2)(a) of Directive 2005/60 into its domestic law by criminalising, as regards the perpetrator of the predicate offence, the offence of money laundering, in line with its international commitments and the fundamental principles of its domestic law.

67 That conclusion is supported by the aim of Directive 2005/60.

68 The Court has held in that regard that Directive 2005/60 has as its main aim the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, as is apparent both from its title and the preamble and from the fact that it was adopted in an international context, in order to apply and make binding in the European Union the FATF recommendations (see judgment of 4 May 2017, *El Dakkak and Intercontinental*, C-17/16, EU:C:2017:341, paragraph 32 and the case-law cited).

69 The provisions of Directive 2005/60 are, therefore, preventive in nature, in so far as they seek to establish, taking a risk-based approach, a body of preventive and dissuasive measures to combat money laundering and terrorist financing effectively and to safeguard the soundness and integrity of the financial system. Those measures are intended to prevent or, at the very least, to restrict as far as possible those activities, by establishing, for that purpose, barriers at all stages which those activities may include, against money launderers and terrorist financers (judgment of 17 January 2018, *Corporate Companies*, C-676/16, EU:C:2018:13, paragraph 26).

70 However, although, as is apparent from recital 1 of Directive 2005/60, that directive represents a 'preventive effort via the financial system', in addition to the criminal law approach, the transposition of that directive into national law, by providing that the acts which constitute money laundering referred to in Article 1(2) of that directive are criminal offences, contributes effectively to the fight against money laundering and terrorist financing and to the safeguarding of the soundness and integrity of the financial system, and is therefore in line with the objectives of the directive.

71 The criminalisation of the offence of money laundering as regards the perpetrator of the predicate offence is also in line with the objectives of Directive 2005/60, in so far as, as the Advocate General pointed out, in essence, in point 43 of his Opinion, that offence is liable to make the introduction of criminal funds into the financial system more difficult and thereby contributes to the proper functioning of the internal market.

72 Consequently, having regard to the wording of Article 1(2)(a) of Directive 2005/60, the legislative context of that directive and the objective it pursues, Article 1(2)(a) of the directive must be interpreted as not precluding a Member State from transposing that provision into its domestic law by criminalising, as regards the perpetrator of the predicate offence, the offence of money laundering. The same conclusion applies as regards Article 1(3)(a) of Directive 2015/849, which simply replaced Article 1(2)(a) of Directive 2005/60 without making any substantial amendment.

73 In so far as the referring court is unsure whether, in essence, such an interpretation might be incompatible with the principle *non bis in idem*, it should be recalled that, under Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), the provisions of the Charter are addressed to the institutions of the European Union and to the Member States when they are implementing EU law.

74 It should also be borne in mind that the principle *non bis in idem* is enshrined in Article 4 of Protocol No 7 to the ECHR and in Article 50 of the Charter, which provides that 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law'.

75 Whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR, the latter does not constitute, for as long as the Union has not acceded to it, a legal instrument which has been formally incorporated into EU law. According to the explanations relating to Article 52 of the Charter, Article 52(3) thereof is intended to ensure the necessary consistency between the Charter and the ECHR, 'without thereby adversely affecting the autonomy of Union law and … that of the Court of Justice of the European Union' (judgment of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraphs 24 and 25 and the case-law cited).

76 Accordingly, the examination of the question referred must be undertaken in the light of the fundamental rights guaranteed by the Charter and, in particular, of Article 50 thereof (judgment of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 26 and the case-law cited).

77 It follows from the very wording of Article 50 of the Charter that it prohibits prosecuting or imposing criminal sanctions on the same person more than once for the same offence (judgments of 5 April 2017, *Orsi and Baldetti*, C-217/15 and C-350/15, EU:C:2017:264, paragraph 18, and of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 36).

78 As regards, in particular, the prohibition against prosecuting a person for the same offence (the '*idem*' condition), according to the Court's case-law, the relevant criterion for the purposes of assessing the existence of the same offence is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together and which resulted in the final acquittal or conviction of the person concerned. Therefore, Article 50 of the Charter prohibits the imposition, with respect to identical facts, of several criminal penalties at the conclusion of different proceedings brought for those purposes (see judgments of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 35, and of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 37 and the case-law cited).

79 In order to assess whether such a set of concrete circumstances exists, the competent national courts must determine whether the material facts in the two proceedings constitute a set of facts which are inextricably linked together in time, in space and by their subject matter (see, by analogy, judgments of 18 July 2007, *Kraaijenbrink*, C-367/05, EU:C:2007:444, paragraph 27, and of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 39 and the case-law cited).

80 Moreover, the legal classification, under national law, of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another (judgments of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 36, and of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 38).

81 It must therefore be held that Article 50 of the Charter does not preclude the perpetrator of the predicate offence from being prosecuted for the offence of money laundering referred to in Article 1(2)(a) of Directive 2005/60 where the facts in respect of which the prosecution is brought are not identical to those constituting the predicate offence, and the issue of whether those material facts are identical is to be assessed in the light of the criterion set out in paragraphs 78 to 80 above.

82 As the Advocate General pointed out, in essence, in points 52 and 53 of his Opinion, money laundering, within the meaning of Article 1(2)(a) of Directive 2005/60, namely, inter alia, the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property, constitutes an act distinguishable from the predicate offence, even if that money laundering is carried out by the perpetrator of the predicate offence.

83 Lastly, it should be borne in mind that, when applying Article 29(1)(a) of Law No 656/2002, the referring court must ensure that the principle *non bis in idem*, as well as all of the relevant principles and fundamental rights guaranteed by the Charter to the accused persons in the main proceedings, are respected (see, to that effect, inter alia, judgments of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 53, and of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 68), in particular the principle that offences and penalties must be defined by law (judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 52) and the principle of proportionality of penalties enshrined in Article 49 of the Charter.

84 In the case in the main proceedings, it is for the referring court to examine whether Article 50 of the Charter is applicable and, accordingly, to determine whether the predicate offence was the subject of criminal proceedings in which the perpetrator was finally acquitted or convicted. In the present case, it is the referring court which must examine whether the closure of the criminal proceedings in respect of the predicate offence resulted in a final acquittal or conviction.

85 In order to ensure that Article 50 of the Charter is observed, the referring court must satisfy itself that the material facts constituting the predicate offence, namely tax evasion, are not identical to those that led to the prosecution brought against LG under Article 29(1)(a) of Law No 656/2002, taking into account the considerations set out in paragraphs 78 to 80 above. There would be no infringement of the principle *non bis in idem* if it is found that the facts which led to the criminal proceedings against LG for money laundering under Article 29(1)(a) of Law No 656/2002 are not identical to those constituting the predicate offence of tax evasion, as it appears from the documents before the Court.

86 In the light of all of the foregoing considerations, the answer to the question referred is that Article 1(2)(a) of Directive 2005/60 must be interpreted as not precluding national legislation which provides that the offence of money laundering, within the meaning of that provision, may be committed by the perpetrator of the criminal activity from which the money concerned was derived.

Costs

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

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

Article 1(2)(a) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing must be interpreted as not precluding national legislation which provides that the offence of money laundering, within the meaning of that provision, may be committed by the perpetrator of the criminal activity from which the money concerned was derived.

[Signatures]