Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

16 November 2023 *

(Reference for a preliminary ruling – Economic and monetary policy – Prudential requirements for credit institutions – Regulation (EU) No 575/2013 – Points 1 and 42 of Article 4(1) – Definitions – Concepts of 'credit institution' and 'authorisation' – Grant of loans without approval)

In Case C-427/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), made by decision of 21 June 2022, received at the Court on 28 June 2022, in the criminal proceedings against

BG,

other party:

Varhovna kasatsionna prokuratura,

THE COURT (Sixth Chamber),

composed of T. Von Danwitz, President of the Chamber, P.G. Xuereb and A. Kumin (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by A. Nijenhuis, D. Triantafyllou and I. Zaloguin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Bulgarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of points 1 and 42 of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1).

2 The request has been made in criminal proceedings brought against BG, who has been found guilty of granting loans to two natural persons without having the approval necessary to do so.

Legal context

European Union law

Regulation No 575/2013

3 Under recital 5 of Regulation No 575/2013:

‘Together, this Regulation and Directive 2013/36/EU [of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338)] should form the legal framework governing the access to the activity, the supervisory framework and the prudential rules for credit institutions and investment firms (referred to collectively as “institutions”). This Regulation should therefore be read together with that Directive.’

4 Article 1 of that regulation, entitled ‘Scope’, provides, in the first subparagraph thereof:

‘This Regulation lays down uniform rules concerning general prudential requirements that institutions supervised under Directive 2013/36/EU shall comply with in relation to the following items:

(a) own funds requirements relating to entirely quantifiable, uniform and standardised elements of credit risk, market risk, operational risk and settlement risk;

(b) requirements limiting large exposures;

(c) after the delegated act referred to in Article 460 has entered into force, liquidity requirements relating to entirely quantifiable, uniform and standardised elements of liquidity risk;

(d) reporting requirements related to points (a), (b) and (c) and to leverage;

(e) public disclosure requirements.’

5 Article 4 of that regulation, entitled ‘Definitions’, provides, in paragraph 1 thereof:

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

(1) “credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

…

(3) “institution” means a credit institution or an investment firm;

…

(26) “financial institution” means an undertaking other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, …

…

(42) “authorisation” means an instrument issued in any form by the authorities by which the right to carry out the business is granted;

…’

6 Point 1 of Article 4(1) of Regulation No 575/2013, as amended by Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 (OJ 2019 L 314, p. 1) (‘the amended Regulation No 575/2013’), states:

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

(1) “credit institution” means an undertaking the business of which consists of any of the following:
   (a) to take deposits or other repayable funds from the public and to grant credits for its own account;
   (b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council [of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ 2014 L 173 p. 349)], where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:
      (i) the total value of the consolidated assets of the undertaking is equal to or exceeds EUR 30 billion;
      (ii) the total value of the assets of the undertaking is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in that group that individually have total assets of less than EUR 30 billion and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion; or

(iii) the total value of the assets of the undertaking is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion, where the consolidating supervisor, in consultation with the supervisory college, so decides in order to address potential risks of circumvention and potential risks for the financial stability of the [European] Union;

for the purposes of points (b)(ii) and (b)(iii), where the undertaking is part of a third-country group, the total assets of each branch of the third-country group authorised in the [European] Union shall be included in the combined total value of the assets of all undertakings in the group'.

7 Under point 1 of Article 62 of Regulation 2019/2033, the title of Regulation No 575/2013 has been replaced by the following text:

'Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012'.

Directive 2013/36

8 Under recitals 2 and 42 of Directive 2013/36:

'(2) This Directive should, inter alia, contain the provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States in this regard and the provisions governing the initial capital and the supervisory review of credit institutions and investment firms. … This Directive should … be read together with Regulation [No 575/2013] and should, together with that Regulation, form the legal framework governing banking activities, the supervisory framework and the prudential rules for credit institutions and investment firms.

…

(42) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal penalties.'

9 Article 1 of that directive is worded as follows:

'This Directive lays down rules concerning:

(a) access to the activity of credit institutions and investment firms (collectively referred to as "institutions");

…'

10 Article 3 of that directive, entitled ‘Definitions’, provides, in paragraph 1 thereof:

‘For the purposes of this Directive, the following definitions shall apply:

(1) “credit institution” means credit institution as defined in point (1) of Article 4(1) of Regulation [No 575/2013];

…

(22) “financial institution” means financial institution as defined in point (26) of Article 4(1) of Regulation [No 575/2013];

…

(38) “authorisation” means authorisation as defined in point (42) of Article 4(1) of Regulation [No 575/2013];

…’

11 Entitled ‘General requirements for access to the activity of credit institutions’, Chapter 1 of Title III of Directive 2013/36 contains, inter alia, Articles 8 and 9 thereof.

12 Article 8 of that directive, entitled ‘Authorisation’, provides, in paragraph 1 thereof:

‘Member States shall require credit institutions to obtain authorisation before commencing their activities. …’

13 Article 9 of that directive, entitled ‘Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public’, states, in paragraph 1 thereof:

‘Member States shall prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.’

14 Directive 2013/36 contains a Title V, entitled ‘Provisions concerning the freedom of establishment and the freedom to provide services’, Chapter 1 of which, entitled ‘General Principles’, includes, inter alia, Article 34 of that directive.

15 Article 34, entitled ‘Financial institutions’, provides, in paragraph 1 thereof:

‘Member States shall provide that the activities listed in Annex I may be carried out within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46, either by establishing a branch or by providing services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying out of those activities and which fulfils each of the following conditions:

…’

16 Annex I to Directive 2013/36, entitled 'List of activities subject to mutual recognition', states, in points 1 and 2 thereof:

'1. Taking deposits and other repayable funds.

2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).'

Directive 2014/65

17 Annex I to Directive 2014/65 is entitled 'Lists of services and activities and financial instruments'. Section A of Annex I, entitled 'Investment services and activities', states, in points 3 and 6 thereof:

'3. Dealing on own account;

…

6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis'.

Bulgarian law

Criminal Code

18 Article 252(1) of the Nakazatelen kodeks (Criminal Code) provides:

'Any person who, without the necessary approval, carries out, on a commercial basis, banking, insurance or other financial transactions, provides payment services or issues electronic money requiring such approval shall be punished by a term of imprisonment of between three and five years and confiscation up to one half of the offender's assets.'

Law on credit institutions

19 Article 2(1) of the Zakon za kreditnite institutsii (Law on credit institutions) (DV No 59 of 21 July 2006), in the version applicable to the dispute in the main proceedings ('the Law on credit institutions'), defines the concept of a 'bank' (credit institution) as follows:

'A legal person that takes deposits or other repayable funds from the public and grants credits or other financing for its own account and at its own risk.'

20 Point 3 of Article 3(1) of that law defines the concept of 'financial institution' as a person, other than an institution and an industrial holding company, whose principal activity is, inter alia, to grant credits with funds that do not come from deposits or other repayable funds taken from the public.

21 Article 3a(1) of that law provides:

'In order to carry out the activities referred to in points 6, 7 and 12 of Article 2(2) and in points 2 and 3 of Article 3(1) on a commercial basis, the person must be entered in a public register of the [Balgarska narodna banka (Bulgarian National Bank) (BNB)] if one or more of those activities are essential for that person. The criteria for defining an essential activity are set by regulation of the BNB.'

22 In accordance with Article 13(1) of that law, authorisation issued by the BNB is required for carrying out banking activities.

23 The additional provisions of the Law on credit institutions provide, in paragraph 4 thereof, that that law is to implement, inter alia, the provisions of Directive 2013/36.

The main proceedings and the questions referred

24 During the period from April 2016 to September 2017, BG, a Bulgarian national who served as municipal councillor during that period, granted interest-bearing cash loans to two natural persons.

25 By judgment of 1 October 2020, BG was found guilty of carrying out banking transactions on a commercial basis without having the necessary approval to do so under the Law on credit institutions. Accordingly, on the basis of Article 252(1) of the Criminal Code in particular, he received a three-year prison sentence, which was suspended for four years, and had certain assets confiscated.

26 That judgment was upheld on appeal by a judgment of 15 April 2021. BG then brought an appeal on a point of law against the latter judgment before the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), which is the referring court in the present case.

27 That court raises the point that, in accordance with the relevant provisions of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure), it may, inter alia, decide to acquit the accused if the facts of the case support the conclusion that the accused did not perpetrate the act alleged against him or if that act does not give rise to a criminal offence, or vary the judgment delivered on appeal by reclassifying that act as another criminal offence punishable by a sentence identical to or lesser than the sentence prescribed for the offence of which he was found guilty.

28 In order to determine whether it may exercise one or other of those powers, that court states that it must, at the outset, clarify the scope of the definitions in points 1 and 42 of Article 4(1) of Regulation No 575/2013, read in conjunction with Article 9(1) of Directive 2013/36 and points 1 and 2 of Annex I to that directive. According to the referring court, the interpretation of those provisions of EU law is relevant for determining the actual meaning of the various constituent elements of the criminal offence referred to in Article 252(1) of the Criminal Code, in particular the concept of 'banking transaction' therein.

29 In that regard, the referring court explains, first, that, in accordance with Bulgarian legal literature and the practice of Bulgarian courts, the meaning of those elements is clarified, in national law, by laws outside the scope of criminal law, inter alia by the Law on credit institutions, which govern

the activities of banks and define concepts such as 'bank', 'banking transaction', 'banking activity' and 'banking credit'. Furthermore, it is apparent from the order for reference that that law is to implement, inter alia, the provisions of Directive 2013/36.

30 As regards the meaning of the concept of 'banking activity', that law indicates that that activity consists, for a credit institution, of taking deposits or other repayable funds from the public and of granting credits or other financing for the account of that institution and at its own risk. Therefore, according to that court, the definition of that concept is consistent with the definition in point 1 of Article 4(1) of Regulation No 575/2013.

31 Secondly, that court states that, under Article 252(1) of the Criminal Code, read in conjunction with Article 13(1) of the Law on credit institutions, the carrying out of any banking activity, inter alia the grant of banking credits, without approval by authorisation issued by the BNB, constitutes a criminal offence.

32 Thirdly, that court observes that, in several of its recent decisions, the concept of 'banking transaction', within the meaning of Article 252(1) of the Criminal Code, has been clarified. Accordingly, by those decisions, it has been held that the act of granting interest-bearing loans, on a commercial basis, from funds that do not come from deposits taken from the public cannot be defined as such a transaction. In the cases that gave rise to those decisions, the accused were acquitted on the ground that that provision was applicable only to banking activities in respect of which a scheme for granting approval by authorisation was provided for.

33 Fourthly, the referring court states that the grant of credits with funds which do not stem from the activity consisting of taking deposits or other repayable funds from the public is a financial transaction in respect of which Article 3a(1) of the Law on credit institutions provides for a registration scheme, not an authorisation scheme. Carrying out that activity on a commercial basis without such registration does not constitute a criminal offence.

34 However, that court expresses some doubt as to the exact meaning that should be given to the definition of 'credit institutions' in point 1 of Article 4(1) of Regulation No 575/2013. Thus, it is uncertain whether the use of the conjunction 'and' in that definition, which links the activity consisting of taking deposits or other repayable funds from the public to the activity consisting of granting credits, means that such an institution issues loans only with funds taken from the public and cannot also issue loans with funds obtained from other sources, such as fees collected or interest. Those doubts also stem from the explicit prohibition, set out in Article 9(1) of Directive 2013/36, against persons or undertakings other than credit institutions from taking deposits or other repayable funds from the public, and from the fact that points 1 and 2 of Annex I to that directive refer separately to the two activities concerned.

35 In addition, that court considers that it needs clarification as to how to interpret the definition of the term 'authorisation' in point 42 of Article 4(1) of Regulation No 575/2013. That term refers to the document which confers the right to carry out the activity provided for in that regulation and in Directive 2013/36. More precisely, that court is uncertain whether, by referring to 'an instrument … in any form … by which the right to carry out the business is granted', that definition covers both approval granted by authorisation, provided for in national law in respect of credit institutions, and approval obtained by means of registration, which is the scheme for granting approval provided for in national law in respect of financial institutions.

36 In those circumstances, the Varhoven kasatsionen sad (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the definition of a credit institution in [point 1 of] Article 4(1) … of [Regulation No 575/2013] to be interpreted as meaning that credit is to be granted exclusively from funds received from the public as deposits or other repayable funds, or may a credit institution also grant credit from funds from other sources?

(2) How is the content of the "instrument … in any form … by which the right to carry out the business is granted" within the meaning of [point 42 of] Article 4(1) … of [Regulation No 575/2013] to be interpreted, and does it include both the authorisation scheme and the registration scheme which grant approval for credit operations?'

Procedure before the Court

37 The referring court requested that this reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice. In support of its request, that court states that the case before it is urgent since the acts alleged against BG took place in 2016 and the length of the main proceedings risks infringing the right to a fair trial.

38 On 14 July 2022, the First Chamber of the Court decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that there was no need to grant that request on the ground that the condition relating to urgency laid down in Article 107 was not satisfied.

The jurisdiction of the Court

39 It should be noted at the outset that the facts in the main proceedings do not come within the scope of Regulation No 575/2013, the interpretation of which is the subject of the request for a preliminary ruling.

40 According to settled case-law, the Court does, however, have jurisdiction to give a preliminary ruling on questions concerning provisions of EU law in situations in which, even if the facts of the case in the main proceedings do not fall directly within the field of application of EU law, provisions of EU law have been rendered applicable by domestic law due to a reference made by that law to the content of those provisions (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 31 and the case-law cited).

41 In such circumstances, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, the provisions taken from EU law should be interpreted uniformly (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 32 and the case-law cited).

42 Thus, an interpretation by the Court of provisions of EU law in situations not falling within the scope of those provisions is warranted where such provisions have been made directly and unconditionally applicable to such situations by national law, in order to ensure that those

situations and situations falling within the scope of those provisions are treated in the same way (judgments of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 33, and of 10 September 2020, *Tax-Fin-Lex*, C-367/19, EU:C:2020:685, paragraph 21 and the case-law cited).

43 In that regard, it should also be borne in mind that the specific factors that allow it to be established that the provisions of EU law have been made applicable by national law directly and unconditionally must be apparent from the order for reference (see, to that effect, judgment of 27 April 2023, *Banca A (Application of the Merger Directive in a domestic situation)*, C-827/21, EU:C:2023:355, paragraph 46 and the case-law cited).

44 In the present case, the referring court, with exclusive jurisdiction to interpret national law under the framework of the system of judicial cooperation enshrined in Article 267 TFEU (judgment of 7 November 2018, *C and A*, C-257/17, EU:C:2018:876, paragraph 34 and the case-law cited), has set out the reasons why it is uncertain as to the interpretation of Regulation No 575/2013, as well as the link between that regulation and the provisions of national law at issue in the main proceedings. It is therefore apparent from the specific matters in the order for reference that that court must rely on the definitions in that regulation in order to rule on the substance of those proceedings.

45 In those circumstances, it must be held that Bulgarian law made those definitions directly and unconditionally applicable to situations such as that at issue in the main proceedings and that it is therefore clearly in the interest of the European Union that the Court rule on the request for a preliminary ruling.

Consideration of the questions referred

The first question

46 As a preliminary point, it should be noted that point 1 of Article 4(1) of Regulation No 575/2013, which was referred to in the first question and contains a definition of the concept of 'credit institution', has been amended by Regulation 2019/2033.

47 Prior to that amendment, that concept was defined as covering 'an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account'.

48 Since that amendment, 'credit institution' is considered to mean an undertaking the business of which consists of one or several of the activities referred to in point 1(a) and (b) of Article 4(1) of the amended Regulation No 575/2013.

49 Those activities are, under point 1(a) of that Article 4(1), 'to take deposits or other repayable funds from the public and to grant credits for its own account' and, under point 1(b) of that Article 4(1), 'to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive [2014/65]', subject to certain conditions.

50 In the present case, it should be observed that, first, according to the explanations provided by the referring court, the definition of the concept of 'credit institution', within the meaning of point 1 of Article 4(1) of Regulation No 575/2013, is relevant for interpreting the criminal provision on the basis of which BG was convicted.

51 Secondly, that conviction concerns facts which took place between April 2016 and September 2017, that is, before the entry into force of the amendment of point 1 of Article 4(1) of that regulation by Regulation 2019/2033.

52 However, the impact which that amendment may have cannot be ruled out in the light of the principle of the retroactive application of the more lenient criminal law (*lex mitior*). Although the documents before the Court do not indicate the way in which that principle is enshrined in Bulgarian law, the fact remains that, in any event, that principle is guaranteed by Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, to that effect, ECtHR, 17 September 2009, *Scoppola v. Italy (No 2)*, CE:ECHR:2009:0917JUD001024903, § 109), to which the Republic of Bulgaria is party.

53 In those circumstances, for the purpose of answering the first question, the amendment made to point 1 of Article 4(1) of Regulation No 575/2013 by Regulation 2019/2033 must be taken into account.

54 Lastly, and subject to the checks which are for the referring court to carry out, it appears that BG did not carry out any of the activities referred to in point 1(b) of Article 4(1) of the amended Regulation No 575/2013.

55 Accordingly, it must be considered that, by its first question, the referring court asks, in essence, whether point 1(a) of Article 4(1) of the amended Regulation No 575/2013 must be interpreted as meaning that an undertaking falls within the concept of 'credit institution', within the meaning of point 1 of that Article 4(1), only where its activity consists of granting credits with funds that come from deposits or other repayable funds taken from the public, excluding funds from other sources.

56 In that regard, it must be recalled that, according to settled case-law, the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of the context in which it occurs, as well as the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements that are relevant to its interpretation (judgment of 16 March 2023, *Towercast*, C-449/21, EU:C:2023:207, paragraph 31 and the case-law cited).

57 As regards the wording of point 1(a) of Article 4(1) of the amended Regulation No 575/2013, it should be noted that it contains two elements, namely, first, 'to take deposits or other repayable funds from the public' and, secondly, 'to grant credits for its own account'. Moreover, those two elements are linked by the conjunction 'and'.

58 It must be inferred therefrom that an undertaking which does not carry out any activity referred to in point 1(b) of Article 4(1) of that regulation falls within the concept of 'credit institution', within the meaning of point 1 of that Article 4(1), only if its activity consists, cumulatively, of taking deposits or other repayable funds from the public and of granting credits for its own account.

59 In addition, while it is not ruled out that credits may be granted from funds that come from sources other than deposits or other repayable funds taken from the public, as a general rule, there is necessarily a link between taking deposits and granting credits.

60 That is confirmed by the objective of point 1(a) of Article 4(1) of the amended Regulation No 575/2013, which is to provide a functional definition of the concept of 'credit institution'.

61 That provision has its origin in the first indent of Article 1 of First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ 1977 L 322, p. 30).

62 It is apparent from the legislative history of that provision that the definition of the concept of 'credit institution' is based on the function performed, inter alia, by banks concerned with finance in national economies, their essential task being to act as a link between saving and investment, in other words to receive monies and grant loans (proposal for a Council Directive on the coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions (COM (74)2010 final, p. 6)).

63 It follows that an undertaking which does not take deposits or other repayable funds from the public and which therefore only grants credits from funds that come from other sources falls outside the concept of 'credit institution', within the meaning of point 1(a) of Article 4(1) of the amended Regulation No 575/2013.

64 That conclusion is not invalidated by the fact that, following the amendment of Regulation No 575/2013 by Regulation 2019/2033, point 1 of that Article 4(1) now refers to an undertaking the business of which 'consists of any of the following [activities]'.

65 The EU legislature refrained, at the time of that amendment, from decoupling, in point 1(a) of Article 4(1) of that regulation, the activity consisting of taking deposits or other repayable funds from the public from the activity consisting of granting credits, thereby confirming that those two activities must be understood as forming a whole. In addition, unlike point 1(a), point 1(b) of that Article 4(1) refers, for its part, to 'any of the activities' referred to in points 3 and 6 of Section A of Annex I to Directive 2014/65.

66 Moreover, as regards the referring court's doubts relating to Article 9(1) of Directive 2013/36 and to Annex I thereto, it must be observed, first, that that Article 9(1) sets out the explicit prohibition against persons or undertakings other than credit institutions from taking deposits or other repayable funds from the public, without also referring to the activity consisting of granting credits, and, secondly, that points 1 and 2 of Annex I identify taking deposits and granting credits separately. However, that has no bearing on the interpretation of the concept of 'credit institution', within the meaning of Regulation No 575/2013.

67 In the light of all the foregoing considerations, the answer to the first question is that point 1(a) of Article 4(1) of the amended Regulation No 575/2013 must be interpreted as meaning that an undertaking falls within the concept of 'credit institution', within the meaning of point 1 of that Article 4(1), only where its activity consists, cumulatively, of taking deposits or other repayable funds from the public and of granting credits for its own account, it being specified that those deposits or other funds taken from the public are intended for granting credits, although it cannot be ruled out that credits may also be granted from funds that come from other sources.

The second question

68 By its second question, the referring court asks, in essence, whether the concept of 'authorisation', within the meaning of point 42 of Article 4(1) of Regulation No 575/2013, must be interpreted as including a registration scheme which grants approval for credit operations.

69 As a preliminary point, it is necessary to consider the context of the question.

70 Therefore, first, under the criminal provision at issue in the main proceedings, namely Article 252(1) of the Criminal Code, inter alia, 'any person who, without the necessary approval, carries out, on a commercial basis, banking, insurance or other financial transactions' may be punished. According to the explanations provided by the referring court, that provision is applicable only to activities in respect of which a scheme for granting approval in the form of authorisation is provided for.

71 Secondly, according to those explanations, the grant of credits with funds which do not stem from the activity consisting of taking deposits or other repayable funds from the public is, if not a banking transaction, at the very least a financial transaction in respect of which national law provides for a registration scheme, not an authorisation scheme, in such a way that carrying out such an activity, without registration, on a commercial basis does not constitute a criminal offence.

72 The referring court appears to consider that the interpretation of the concept of 'authorisation', within the meaning of Regulation No 575/2013, is relevant for interpreting the concept of 'approval', within the meaning of Article 252(1) of the Criminal Code, to the extent that, if, on the basis of a broad interpretation, a registration scheme also fell within those concepts, the carrying out of financial transactions such as ordinary loan transactions without registration would also have to be regarded as falling within the scope of the criminal offence provided for in that provision.

73 In that regard, it should be noted, as observed by the European Commission, that the concept of 'authorisation', within the meaning of point 42 of Article 4(1) of Regulation No 575/2013, must be understood in the context of that regulation, which includes Directive 2013/36.

74 That directive governs, in Chapter 1 of Title III thereof, the general requirements for access to the activity of credit institutions. In particular, Article 8(1) of that directive provides that Member States are to require credit institutions to obtain authorisation before commencing their activities.

75 By contrast, as regards financial institutions, which include, in accordance with the definition in point 26 of Article 4(1) of Regulation No 575/2013, undertakings other than credit institutions and whose principal activity is (solely or inter alia) to grant loans, Directive 2013/36 merely lays down, in Title V thereof, the provisions concerning the freedom of establishment and the freedom to provide services.

76 It follows that the conditions for obtaining approval as a financial institution, within the meaning of Regulation No 575/2013, are regulated only at national level, so that, as regards the detailed rules for such approval, the scope of the concept of 'authorisation', within the meaning of that regulation, is irrelevant to the main proceedings.

77 In those circumstances, there is no need to answer the second question.

Costs

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

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

Point 1(a) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, as amended by Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019,

must be interpreted as meaning that an undertaking falls within the concept of 'credit institution', within the meaning of point 1 of that Article 4(1), only where its activity consists, cumulatively, of taking deposits or other repayable funds from the public and of granting credits for its own account, it being specified that those deposits or other funds taken from the public are intended for granting credits, although it cannot be ruled out that credits may also be granted from funds that come from other sources.

[Signatures]