

are located in different Member States or third states?

3. Depending on the reply given to the first two questions: in which of the three EU Member States should value added tax on the supply of services be, respectively, declared and paid?
4. Do the VAT Directive and the principle of the prevention of double taxation preclude national tax legislation, such as Article 307 of Legea nr. 227/2015 (Law No 227/2015), under which:
  - (a) the national tax authorities of the State of the provider may classify cross-border services provided by a taxable person in one EU Member State (P1 — video chat studio), consisting in the supply (transfer) of digital content such as that at issue in the main proceedings to a taxable person in another Member State (P2), by means of an online live streaming platform in another State (P3), as services giving admission to an entertainment event, pursuant to Article 53 of the VAT Directive, with the result that the VAT relating to those services must be collected and paid to the Treasury of the State in which the provider's registered office is situated, whereas, at an earlier point in time, the same services were classified by the tax authorities of the State in which the recipient of the services is established (P2), by way of a fiscal administrative act which became final in the absence of any judicial challenge, as intra-Community supplies of services covered by the general rule laid down in Article 44 of the VAT Directive? Is it possible for the tax authorities of a State to which the matter is subsequently referred or which are acting on their own initiative to make a legal classification of the cross-border services that are subject to a tax inspection in that State that differs from the legal classification already adopted for the same services, under a fiscal administrative act that has become final in the absence of any judicial challenge, by the tax authorities of the other State to which the matter was originally referred or which acted on their own initiative, thereby giving rise to the double taxation of VAT, or are the tax authorities to which the matter is subsequently referred or which act on their own initiative bound by the legal classification of the cross-border services in question by the tax authorities to which the matter was originally referred, which has become final as a result of the absence of any challenge and is [therefore] not open to judicial review?
  - (b) In the light of the answer given to the above questions, in a case such as that at issue in the main proceedings, pursuant to the VAT Directive and the principle of the prevention of double taxation, which place is to be regarded as the place of supply of services?

<sup>(1)</sup> OJ 2006 L 347, p. 1.

<sup>(2)</sup> Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ 2011 L 77, p. 1).

**Request for a preliminary ruling from the Curtea de Apel Ploiești (Romania) lodged on 10 February 2023 — Criminal proceedings against C.A.A., C.F.G., C.G.C., C.D.R., G.L.C., G.S., L.C.I., M.G., M.C.G., N.A.S., P.C., U.V., S.O., Ș.V.O., C.V., I.R.P., B.I.I.**

(Case C-74/23, Parchetul de pe lângă Înalta Curte de Casație și Justiție — D.N.A. Serviciul Teritorial Brașov)

(2023/C 205/26)

*Language of the case: Romanian*

**Referring court**

Curtea de Apel Ploiești

**Appellant**

Parchetul de pe lângă Înalta Curte de Casație și Justiție — Direcția Națională Anticorupție — Serviciul Teritorial Brașov

**Defendants**

C.A.A., C.F.G., C.G.C., C.D.R., G.L.C., G.S., L.C.I., M.G., M.C.G., N.A.S., P.C., U.V., S.O., Ș.V.O., C.V., I.R.P., B.I.I.

**Civil party**

Unitatea Administrativ Teritorială Județul Brașov

## Interested persons

C.M., C.A., C.Al.

## Questions referred

1. Are Article 2 TEU, the second paragraph of Article 19(1) TEU and Article 4[(3)] TEU, read in conjunction with Article 325(1) TFEU, Article 2(1) of the PFI Convention,<sup>(1)</sup> Articles 2 and 12 of the PFI Directive<sup>(2)</sup> and Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, with reference to the principle of effective and dissuasive penalties in cases of serious fraud affecting the financial interests of the European Union,<sup>(3)</sup> and in application of Commission Decision 2006/928/EC,<sup>(4)</sup> with reference to the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding a legal situation, such as that in the case in the main proceedings, in which defendants request the application of the principle of the more lenient criminal law, in a context in which a national constitutional court decision has declared as unconstitutional legislation on the interruption of the limitation period for criminal liability (decision of 2022), on the ground that the legislature had failed to act to bring the legislation in question into line with another decision of the same constitutional court delivered four years earlier (decision of 2018) — and in the interim the case-law of the ordinary courts applying the first decision had become settled in the sense that the legislation in question continued to exist, in the form understood following the first decision of the constitutional court — with the practical consequence that the limitation period for all the offences in relation to which no final conviction had been handed down prior to the first decision of the constitutional court was reduced by half and the criminal proceedings against the defendants in question were consequently discontinued?
2. Are Article 2 TEU, on the values of the rule of law and respect for human rights in a society in which justice prevails, and Article 4[(3)] TEU, on the principle of sincere cooperation between the European Union and the Member States, in application of Commission Decision 2006/928/EC, in so far as concerns the commitment to ensuring the efficiency of the Romanian judicial system, with reference to the last sentence of Article 49[(1)] of the Charter of Fundamental Rights of the European Union, which enshrines the principle of the more lenient criminal law, to be interpreted, in relation to the national judicial system as a whole, as precluding a legal situation, such as that in the case in the main proceedings, in which defendants request the application of the principle of the more lenient criminal law, in a context in which a national constitutional court decision has declared as unconstitutional legislation on the interruption of the limitation period for criminal liability (decision of 2022), on the ground that the legislature had failed to act to bring the legislation in question into line with another decision of the same constitutional court delivered four years earlier (decision of 2018) — and in the interim the case-law of the ordinary courts applying the first decision had become settled in the sense that the legislation in question continued to exist, in the form understood following the first decision of the constitutional court — with the practical consequence that the limitation period for all the offences in relation to which no final conviction had been handed down prior to the first decision of the constitutional court was reduced by half and the criminal proceedings against the defendants in question were consequently discontinued?
3. If that is so, and only if it is impossible to provide an interpretation in conformity with EU law, is the principle of the primacy of EU law to be interpreted as precluding national legislation or a national practice pursuant to which the ordinary national courts are bound by decisions of the national constitutional court and binding decisions of the national supreme court and, for that reason, cannot, without committing a disciplinary offence, of their own motion disapply the case-law resulting from those decisions, even if, in light of a judgment of the Court of Justice, they take the view that that case-law is contrary to Article 2 TEU, the second paragraph of Article 19(1) TEU and Article 4[(3)] TEU, read in conjunction with Article 325(1) TFEU, in application of Commission Decision 2006/928/EC, with reference to the last sentence of Article 49[(1)] of the Charter of Fundamental Rights of the European Union, as in the situation in the main proceedings?

<sup>(1)</sup> 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 (OJ 1995 C 316, p. 49).

<sup>(2)</sup> 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).

<sup>(3)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

<sup>(4)</sup> Commission Decision 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).