



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 March 2020*

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Proceedings for the confiscation of illegally obtained assets in the absence of a criminal conviction — Directive 2014/42/EU — Scope — Framework Decision 2005/212/JHA)

In Case C-234/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria) made by decision of 23 March 2018, received at the Court on 3 April 2018, in the proceedings

Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo,

v

BP,

AB,

PB,

‘Trast B’ OOD,

‘Agro In 2001’ EOOD,

‘ACounT Service 2009’ EOOD,

‘Invest Management’ OOD,

‘Estate’ OOD,

‘Bromak’ OOD,

‘Bromak Finance’ EAD,

‘Viva Telekom Bulgaria’ EOOD,

‘Balgarska Telekomunikationna Kompania’ AD,

‘Hedge Investment Bulgaria’ AD,

‘Kemira’ OOD,

* Language of the case: Bulgarian.

'Dunarit' AD,
'Technologischen Zentar-Institut Po Mikroelektronika' AD,
'Evrobild 2003' EOOD,
'Technotel Invest' AD,
'Ken Trade' EAD,
'Konsult Av' EOOD,
Louvrier Investments Company 33 SA,
EFV International Financial Ventures Ltd,
Interv Investment SARL,
LIC Telecommunications SARL,
V Telecom Investment SCA,
V2 Investment SARL,
Empreno Ventures Ltd,
Other party to the proceedings:
Corporate Commercial Bank, in liquidation,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, R. Silva de Lapuerta, Vice-President of the Court, acting as Judges of the Third Chamber, L.S. Rossi (Rapporteur) and J. Malenovský, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 5 June 2019,

after considering the observations submitted on behalf of:

- Komisija za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo, by P. Georgiev and N. Kolev, acting as Agents,
- BP, by L.E. Karadaliev, advokat,
- AB, by S.A. Stoyanov, advokat,
- PB, by D.V. Kostadinova and S. Pappas, advokati,
- 'Trast B' OOD, by S.A. Stoyanov, advokat,

- 'Dunarit' AD, by T.S. Trifonov, advokat,
- Corporate Commercial Bank, in liquidation, by K.H. Marinova and A.N. Donovan, acting as Agents,
- the Bulgarian Government, by L. Zaharieva and T. Mitova, acting as Agents,
- the Czech Government, by M. Smolek and J. Vlácil and by A. Kasalická, acting as Agents,
- Ireland, by J. O'Connor, M. Browne, C. Durnin, M. Berry and A. Joyce, acting as Agents, assisted by D. Dodd, Barrister-at-Law, B. Murray and N. Butler, Senior Counsel,
- the European Commission, by R. Troosters and Y.G. Marinova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 October 2019,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39, and corrigendum OJ 2014 L 138, p. 114).
- 2 The request has been made in proceedings between Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo (the Commission for the combatting of corruption and for the confiscation of illegally obtained assets, Bulgaria) ('the Commission for the confiscation of assets'), and BP and a number of natural and legal persons regarded as being either associated with BP or controlled by BP, concerning an application for the confiscation of assets obtained illegally by BP and those persons.

Legal context

European Union law

Framework Decision 2005/212/JHA

- 3 Recitals 1, 5 and 10 of Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49) are worded as follows:
 - '(1) The main motive for cross-border organised crime is financial gain. In order to be effective, therefore, any attempt to prevent and combat such crime must focus on tracing, freezing, seizing and confiscating the proceeds from crime. However, this is made difficult, inter alia, as a result of differences between Member States' legislation in this area.
- ...
- (5) Pursuant to Recommendation 19 in the 2000 action plan entitled "The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium", which was approved by the [Council of the European Union] on 27 March 2000, an examination should be

made of the possible need for an instrument which, taking into account best practice in the Member States and with due respect for fundamental legal principles, introduces the possibility of mitigating, under criminal, civil or fiscal law, as appropriate, the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

...

(10) The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, inter alia, in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime. This Decision is linked to a Danish draft Framework Decision on the mutual recognition within the European Union of decisions concerning the confiscation of proceeds from crime and asset-sharing, which is being submitted at the same time.'

4 The first to fourth indents of Article 1 of that framework decision provide:

'For the purposes of this Framework Decision:

- "proceeds" means any economic advantage from criminal offences. It may consist of any form of property as defined in the following indent,
- "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property,
- "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences,
- "confiscation" means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property'.

5 Article 2 of that framework decision, entitled 'Confiscation', provides:

'1. Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.

2. In relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.'

6 Entitled 'Extended powers of confiscation', Article 3 of the framework decision states in paragraph (2)(c) and paragraph (4):

'2. Each Member State shall take the necessary measures to enable confiscation under this Article at least:

...

(c) where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.

...

4. Member States may use procedures other than criminal procedures to deprive the perpetrator of the property in question.'

7 Article 4 of Framework Decision 2005/212 states as follows:

'Each Member State shall take the necessary measures to ensure that interested parties affected by measures under Articles 2 and 3 have effective legal remedies in order to preserve their rights.'

8 Article 5 of that framework decision states:

'This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental principles, including in particular the presumption of innocence, as enshrined in Article 6 of the Treaty on European Union.'

9 Article 6(1) of that framework decision provides:

'Member States shall adopt the necessary measures to comply with this Framework Decision by 15 March 2007.'

Framework Decision 2006/783/JHA

10 Recital 8 of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ 2006 L 328, p. 59) states:

'The purpose of this Framework Decision is to facilitate cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property so as to oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State. This Framework Decision is linked to [Framework Decision 2005/212]. The purpose of that Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, inter alia in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.'

Directive 2014/42

11 Recitals 9, 22 and 23 of Directive 2014/42 state:

'(9) This Directive aims to amend and expand the provisions of [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)] and [Framework Decision 2005/212]. Those Framework Decisions should be partially replaced for the Member States bound by this Directive.

...

(22) This Directive lays down minimum rules. It does not prevent Member States from providing more extensive powers in their national law, including, for example, in relation to their rules on evidence.

(23) This Directive applies to criminal offences which fall within the scope of the instruments listed herein. Within the scope of those instruments, Member States should apply extended confiscation at least to certain criminal offences as defined in this Directive.'

12 Article 1 of that directive provides:

'1. This Directive establishes minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters.

2. This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question.'

13 Article 2 of that directive provides:

'For the purpose of this Directive:

- (1) "proceeds" means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;
- (2) "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;
- (3) "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- (4) "confiscation" means a final deprivation of property ordered by a court in relation to a criminal offence;
- (5) "freezing" means the temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property;
- (6) "criminal offence" means an offence covered by any of the instruments listed in Article 3.'

14 Article 3 of Directive 2014/42 provides as follows:

'This Directive shall apply to criminal offences covered by:

- (a) Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [(OJ 1997 C 195, p. 1)] ...;
- (b) Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro [(OJ 2000 L 140, p. 1)];
- (c) Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment [(OJ 2001 L 149, p. 1)];
- (d) Framework Decision [2001/500];
- (e) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [(OJ 2002 L 164, p. 3)];
- (f) Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector [(OJ 2003 L 192, p. 54)];

- (g) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking [(OJ 2004 L 335, p. 8)];
- (h) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [(OJ 2008 L 300, p. 42)];
- (i) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [(OJ 2011 L 101, p. 1)];
- (j) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [(OJ 2011 L 335, p. 1)];
- (k) Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA [(OJ 2013 L 218, p. 8)],

as well as other legal instruments if those instruments provide specifically that this Directive applies to the criminal offences harmonised therein.'

15 Article 4 of Directive 2014/42, entitled 'Confiscation', provides:

'1. Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.

2. Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.'

16 Article 5, entitled 'Extended confiscation', of that directive, provides in paragraph 1:

'Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.'

17 Article 6(1) of that directive provides:

'Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.'

18 Article 8(1) of Directive 2014/42 provides:

'Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to uphold their rights.'

19 According to Article 14 of that directive:

'1. ... the first four indents of Article 1 and Article 3 of Framework Decision [2005/212] are replaced by this Directive for the Member States bound by this Directive, without prejudice to the obligations of those Member States relating to the time limits for transposition of [that Framework Decision] into national law.

2. For the Member States bound by this Directive, references to ... the provisions of [Framework Decision 2005/212] referred to in paragraph 1 shall be construed as references to this Directive.'

Bulgarian law

Law on Confiscation

20 Before its repeal on 19 January 2018, the *Zakon za otnemane v polza na darzhavata na nezakono pridobito imushtestvo* (Law on confiscation in favour of the State of illegally obtained assets) (DV No 38, of 18 May 2012; 'the Law on Confiscation'), which entered into force on 19 November 2012 and which was repealed by the *Zakon za protivodeystvie na korupsiata i za otnemane na nezakonno pridobitoto imushestvo* (Law on combating corruption and on the confiscation of illegally obtained assets) (DV No 7 of 19 January 2018), provided in Article 1:

'(1) This law shall govern the conditions and detailed rules for the confiscation by the State of illegally obtained assets.

(2) Assets within the meaning of paragraph 1 shall be those assets for which no legal source of acquisition can be identified.'

21 Article 2(1) of the Law on Confiscation provided:

'The proceedings provided for in this Law shall be conducted independently of the criminal proceedings brought against the person under inquiry and/or the persons acting in conjunction with him or her.'

22 Under Article 5(1) of that law:

'The [Commission for the confiscation of assets] shall be a specialist national authority which is independent and permanent.'

23 Article 21 of that law provided:

'(1) The [Commission for the confiscation of assets] shall initiate proceedings under this law where there are reasonable grounds to suspect that certain assets were obtained illegally.

(2) Such reasonable grounds exist where, after investigation, it appears that the asset of the person subject to investigation presents substantial irregularities.'

24 Article 22(1) of the Law on Confiscation provided:

'The investigation under Article 21(2) shall be commenced by order of the Director of the regional directorate concerned, where a person is suspected or accused of having committed a criminal offence referred to in the following provisions:

...

8. Articles 201 to 203 of the [Nakazatelen kodeks (Criminal Code)];

...'

25 Article 66 of that law provided:

'(1) Assets which the person under inquiry has transferred to a legal person or has deposited into a legal person's capital in the form of a monetary or other contribution shall be subject to confiscation, where the persons managing or controlling the legal person knew or, in the circumstances, had reason to suspect that the assets had been obtained illegally.

(2) The illegally obtained assets of a legal person controlled by the person under inquiry or by persons acting in conjunction with him or her, individually or jointly, shall also be subject to confiscation.

...'

26 Under Article 75(1) of that law:

'A [court application] for confiscation by the State of illegally obtained assets shall be lodged against the person subject to investigation and persons referred to in Articles 64, 65, 66, 67 and 71.'

27 Article 76(2) of the same law provided:

'The person subject to investigation and the persons referred to in Articles 64, 65, 66, 67 and 71 shall be the defendants in the proceedings.'

28 Article 80 of the Law on Confiscation provided:

'Questions that are not covered in this section shall be subject to the provisions of the Grazhdanski-protsesualen kodeks [(The Code of Civil Procedure)].'

The Code of Civil Procedure

29 Article 17(1) of the Code of Civil Procedure provides:

'The court shall rule on all the issues relevant to the outcome of the proceedings, apart from the issue of whether an offence has been committed.'

The Criminal Code

30 Article 53 of the Criminal Code provides:

'(1) Irrespective of criminal liability, the following shall be confiscated in favour of the State:

- (a) items belonging to the offender which are intended to be used or are used to commit a deliberate criminal offence;
- (b) items which are the property of the offender and have been the object of a deliberate offence, in cases expressly provided for in the Special Part of the Criminal Code.

(2) The following shall also be confiscated in favour of the State:

- (a) items which are the subject matter or instrument of a criminal offence or the possession of which is prohibited, and
- (b) items obtained by a criminal offence, which cannot be refunded or restituted. Where the items obtained have disappeared or have been passed on, an amount corresponding to their value shall be confiscated.'

31 Article 201 of that code provides:

'A person who, in the course of their duties, misappropriates funds, property or other valuable assets which they do not own and which were transferred to them in the course of their duties or entrusted to them so that they may take care of or manage them shall, for that misappropriation in the course of their duties, be liable to a maximum of eight years' imprisonment and the court may order the confiscation of no more than one half of the offender's property and deprive them of their rights ...'

32 Article 203(1) of that code provides:

'Particularly extensive misappropriation in the performance of administrative duties, in a particularly serious case, shall be punishable by a custodial sentence of 10 to 20 years.'

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

33 In July 2014, the Sofiyska gradska prokuratura (Public Prosecutor's Office of Sofia, Bulgaria) informed the Commission for the confiscation of assets that BP was subject to criminal proceedings in his capacity as Chair of the supervisory board of a Bulgarian bank for having knowingly incited others, from December 2011 to 19 June 2014, to misappropriate funds belonging to that bank in breach of Article 201 and Article 203(1) of the Criminal Code in respect of a total value greater than 205 million leva (BGN) (approximately EUR 105 million).

34 According to the order for reference, those criminal proceedings are pending and therefore have not yet given rise to a final judgment or final conviction.

35 The Commission for the confiscation of assets carried out an investigation, covering the period from 4 August 2004 to 4 August 2010, from which it emerges, in particular, that BP and members of his family held bank deposits of considerable value which did not correspond to their legal income, that they carried out banking transactions the origin of the resources used for which cannot be established, that they acquired moveable and immovable assets of considerable value and that BP received income under contracts which, it is stated, were fictitious, the revenue drawn from those fictitious transactions having been intended to disguise the illegal origin of the resources used by BP to acquire assets.

- 36 By decision of 14 May 2015, the Commission for the confiscation of assets brought proceedings pursuant to Article 22(1)(8) of the Law on Confiscation before the Sofiyski gradski sad (Sofia City Court, Bulgaria) with a view to confiscating the assets of BP and members of his family, and third parties associated with BP or controlled by BP, which were acquired illegally, for their exchange value in money where they were sold or assets resulting from the illegal conversion of those assets.
- 37 On an application by the Commission for the confiscation of assets, the Sofiyski gradski sad (Sofia City Court) adopted measures to conserve the assets whose confiscation is sought.
- 38 In the context of the proceedings before the referring court, BP and certain defendants in the main proceedings submit that the application to confiscate assets brought by the Commission for the confiscation of assets is inadmissible on the ground, in essence, that it is contrary to Directive 2014/42. That directive requires that the confiscation of assets is based on a final conviction, which is absent in the case in the main proceedings. According to BP and those defendants, there is no legislation at EU level concerning civil confiscation, such that confiscation can take place only on the basis of a definitive criminal conviction. According to those same parties, the defendants in the main proceedings are being treated as if they had been finally judged and sentenced, which infringes, inter alia, the presumption of innocence and the right to a fair trial.
- 39 The referring court states that it is expressly stated in the Law on Confiscation that confiscation proceedings brought before the civil court are independent of criminal proceedings brought against the person under investigation and/or the persons associated with or controlled by him or her. The existence of criminal charges in itself suffices for civil proceedings for confiscation to be commenced. However, according to the referring court, it is clear from the wording of Directive 2014/42 that the connection between criminal proceedings and civil-law confiscation proceedings must not be excluded, and that civil-law confiscation proceedings must not be concluded before the criminal proceedings have concluded. According to that court, the Law on Confiscation therefore went beyond the minimum harmonisation provided for by Directive 2014/42 and was therefore contrary to that directive. Since BP has not yet been criminally convicted in respect of the acts at issue in the main proceedings, that court considers that the confiscation procedure should be suspended until the criminal proceedings brought, inter alia, against BP are concluded.
- 40 Since it nevertheless has some doubts as to the interpretation of the provisions of Directive 2014/42, the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and to refer the following questions to the Court:
- ‘(1) Is Article 1(1) of Directive [2014/42], which provides for the establishment of “minimum rules on the freezing of property with a view to possible subsequent confiscation”, to be interpreted as meaning that it permits Member States to adopt provisions for civil-law confiscation that is not based on a conviction?
- (2) Does it follow from Article 1(1) of Directive [2014/42], taking into account Article 4(1) thereof, that the institution of criminal proceedings against the person whose assets are the subject of confiscation is, of itself, a sufficient basis on which to bring and conclude civil-law confiscation proceedings?
- (3) Can the grounds given in Article 4(2) of Directive [2014/42] be interpreted broadly as permitting civil-law confiscation that is not based on a conviction?
- (4) Is Article 5(1) of Directive [2014/42] to be interpreted as meaning that a right to property may be withdrawn, as having been directly or indirectly obtained by way of a criminal offence, on the sole ground of the discrepancy between the value of a person’s assets and their lawful earnings, in the case where there is no final criminal judgement finding that the person concerned committed the criminal offence in question?

- (5) Is the provision contained in Article 6(1) of Directive [2014/42] to be interpreted as meaning that it provides for confiscation from third parties as an additional or alternative means of direct confiscation or as an additional means of extended confiscation?
- (6) Is the provision contained in Article 8(1) of Directive [2014/42] to be interpreted as meaning that it ensures the application of the presumption of innocence and prohibits confiscation that is not based on a conviction?

Admissibility of the request for a preliminary ruling

- 41 The Commission for the confiscation of assets and the Bulgarian and Czech Governments submit that the request for a preliminary ruling is inadmissible.
- 42 According to those interested parties, the interpretation of Directive 2014/42 is not relevant for the purpose of ruling on the case in the main proceedings. First of all, the aim of that directive is to lay down minimum rules relating to the confiscation of property in criminal matters whereas the confiscation proceedings in the case in the main proceedings, which are civil in nature, are independent of the conduct or outcome of criminal proceedings. Next, the application by that commission is based on the criminal offence of misappropriation of funds provided for in Articles 201 to 203 of the Criminal Code. However, that offence is not mentioned in any of the acts referred to in Article 3 of Directive 2014/42, which determines the material scope of that directive. Finally, the Commission for the confiscation of assets and the Bulgarian Government state that the deadline for transposing Directive 2014/42 was fixed at 4 October 2016 by Article 12 of that directive, whilst the proceedings before the referring court were commenced on 22 March 2016, such that the provisions of that directive are not applicable *ratione temporis* to the main proceedings.
- 43 In that regard, it should be pointed out that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its 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 (judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 30, and of 13 November 2018, *Levola Hengelo*, C-310/17, EU:C:2018:899, paragraph 28).
- 44 However, where it is not obvious that the interpretation of an EU provision bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that provision to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions (judgment of 12 December 2019, *Slovenské elektrárne*, C-376/18, EU:C:2019:1068, paragraph 29 and the case-law cited).
- 45 Consequently, the request for a preliminary ruling is admissible.

Substance

Preliminary observations

- 46 In the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court

may have to reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 5 December 2019, *EVN Bulgaria Toplofikatsia and Toplofikatsia Sofia*, C-708/17 and C-725/17, EU:C:2019:1049, paragraph 46 and the case-law cited).

- 47 By its questions, the referring court seeks a ruling by the Court on the interpretation of provisions of Directive 2014/42. However, as the Advocate General observed in point 41 of her Opinion, the misappropriation of funds, as described in the order for reference, does not constitute one of the offences covered by the legal instruments that are exhaustively listed in Article 3 of Directive 2014/42, such that the subject matter of the national proceedings brought by the Commission for the confiscation of assets falls outside the material scope of application of that directive.
- 48 It is also clear from Article 14(1) of Directive 2014/42 that that directive replaces only the first four indents of Article 1 and Article 3 of Framework Decision 2005/212 for the Member States bound by the directive, the consequence of which, as the Advocate General stated in essence in points 48 and 49 of her Opinion, that Articles 2, 4 and 5 of that framework decision remain in force after the adoption of Directive 2014/42.
- 49 In the present case, it is clear from the wording of Article 2(1) of Framework Decision 2005/212 that Member States must take the measures necessary to enable them to confiscate, wholly or in part, the instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year and, given that the offences set out by the referring court are punishable by a custodial sentence of 10 to 20 years, they are therefore capable of falling within the scope of that framework decision.
- 50 It follows that, without prejudice to the interpretation and scope of Framework Decision 2005/212, the provisions of that framework decision necessarily form part of the elements of EU law which, having regard to the subject matter of the dispute, must be taken into consideration by the Court in order for it to give a useful answer to the questions submitted to it.

Consideration of the questions referred

- 51 Having regard to the foregoing, it must be considered that by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Framework Decision 2005/212 must be interpreted as precluding legislation of a Member State which provides that the confiscation of illegally obtained assets is ordered by a national court following proceedings which are not subject either to a finding of a criminal offence or, a fortiori, the conviction of the persons accused of committing such an offence.
- 52 In order to answer that question, it should be recalled that Framework Decision 2005/212 is based on the provisions of Title VI of the EU Treaty, in the version prior to the Treaty of Lisbon, entitled 'Provisions on police and judicial cooperation in criminal matters', more specifically, Article 29, Article 31(1)(c) and Article 34(2)(b) EU.
- 53 Article 31(1)(c) EU states that common action in criminal matters aims to ensure, as may be necessary to improve such cooperation, the compatibility of the rules applicable in the Member States. In that context, the aim of Framework Decision 2005/212 is to ensure, as stated in recital 10 thereof, that all Member States have effective rules governing the confiscation of the proceeds of crime.

- 54 Thus, Article 2(1) of Framework Decision 2005/212 requires Member States to adopt the necessary measures to enable them to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds, whilst the fourth indent of Article 1 thereof defines 'confiscation' as a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property.
- 55 As also stated in recital 10 thereof, Framework Decision 2005/212 is linked to a proposal from the Kingdom of Denmark which led to the adoption of Framework Decision 2006/783. As stated in recital 8 of that latter framework decision, its purpose is to facilitate cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property so as to oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State.
- 56 Consequently, having regard to the aims and the wording of the provisions of Framework Decision 2005/212, as well as the context in which it was adopted, it must be held that that framework decision is an act intended to require Member States to establish common minimum rules for the confiscation of crime-related instrumentalities and proceeds, in order to facilitate the mutual recognition of judicial confiscation decisions adopted in criminal proceedings, as the Advocate General also observed, in essence, in point 63 of her Opinion.
- 57 Framework Decision 2005/212 does not therefore govern the confiscation of instrumentalities and proceeds resulting from illegal activities that is ordered by a court in a Member State in the context of or following proceedings that do not concern the finding of one or more criminal offences.
- 58 That interpretation is in no way invalidated by Article 2(2) of that framework decision.
- 59 That provision merely states that, in relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence. It cannot be interpreted, on the contrary, as meaning that the Member States are deprived of the possibility of commencing confiscation proceedings other than criminal proceedings which do not relate to tax offences. Such a prohibition would go beyond the scope of the minimum rules established by Framework Decision 2005/212.
- 60 In the present case, it appears that the confiscation proceedings pending before the referring court are civil in nature and that those proceedings coexist, in national law, with the regime for confiscation under criminal law. It is true that, pursuant to Article 22(1) of the Law on Confiscation, such proceedings are initiated by the Commission for confiscation of the assets where the latter is informed of the fact that a person is accused of having committed certain criminal offences. However, it is clear from the information in the file before the Court and the information provided at the hearing by the European Commission for confiscation of assets, the Bulgarian Government and the Commission that, in accordance with the provisions of that law, once commenced, those proceedings, which only concern assets alleged to have been illegally obtained, are conducted independently of any criminal proceedings brought against the person accused of committing offences and of the outcome of such proceedings, and in particular of the possible conviction of that person.
- 61 In those circumstances, it must be held that the decision which the referring court is called upon to adopt in the main proceedings does not fall within the context of, or follow on from, proceedings relating to one or more criminal offences. It does not therefore fall within the scope of Framework Decision 2005/212.

- 62 Having regard to the foregoing considerations, the answer to the questions referred is that Framework Decision 2005/212 must be interpreted as not precluding legislation of a Member State which provides that the confiscation of illegally obtained assets is ordered by a national court following proceedings which are not subject either to a finding of a criminal offence or, a fortiori, the conviction of the persons accused of committing such an offence.

Costs

- 63 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 (Third Chamber) hereby rules:

Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, must be interpreted as not precluding legislation of a Member State which provides that the confiscation of illegally obtained assets is ordered by a national court following proceedings which are not subject either to a finding of a criminal offence or, a fortiori, the conviction of the persons accused of committing such an offence.

[Signatures]