



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

16 July 2020*

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Prevention of the use of the financial system for the purposes of money laundering or terrorist financing — Directive (EU) 2015/849 — Failure to transpose and/or to notify transposition measures — Article 260(3) TFEU — Application for an order to pay a lump sum)

In Case C-550/18,

ACTION for failure to fulfil obligations under Article 258 and Article 260(3) TFEU, brought on 27 August 2018,

European Commission, represented by T. Scharf, L. Flynn and G. von Rintelen, acting as Agents,

applicant,

v

Ireland, represented by G. Hodge, M. Browne and A. Joyce, acting as Agents, and by P. McGarry, Senior Counsel, and G. Gilmore, Barrister-at-Law,

defendant,

supported by:

Republic of Estonia, represented by N. Grünberg, acting as Agent,

French Republic, represented by A.-L. Desjonquères, B. Fodda and J.-L. Carré, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras, L.S. Rossi and I. Jarukaitis, Presidents of Chambers, M. Ilešič, J. Malenovský, L. Bay Larsen, T. von Danwitz, F. Biltgen (Rapporteur), A. Kumin, N. Jääskinen and N. Wahl, Judges,

Advocate General: E. Tanchev,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 10 December 2019,

* Language of the case: English.

after hearing the Opinion of the Advocate General at the sitting on 5 March 2020,
gives the following

Judgment

- 1 By its application, the European Commission claims that the Court should:
 - declare that, by having failed to adopt, by 26 June 2017 at the latest, all the laws, regulations and administrative provisions necessary to comply with 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), or, in any event, by having failed to notify those provisions to the Commission, Ireland has failed to fulfil its obligations under Article 67(1) of Directive 2015/849;
 - impose a periodic penalty payment on Ireland pursuant to Article 260(3) TFEU in the amount of EUR 17 190.60, with effect from the date of the judgment of the Court, for failure to fulfil its obligation to notify the measures transposing that directive;
 - impose the payment of a lump sum on Ireland pursuant to Article 260(3) TFEU, based on a daily amount of EUR 4 701.20 multiplied by the number of days of continued infringement, with a minimum lump sum of EUR 1 685 000, and
 - order Ireland to pay the costs.

Legal context

- 2 Under Article 1(1) and (2) of Directive 2015/849:
 - ‘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 Article 67 of that directive provides:
 - ‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 June 2017. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

 - 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.’
- 4 Directive 2015/849 was amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive 2015/849 and Directives 2009/138/EC and 2013/36/EU (OJ 2018 L 156, p. 43). Directive 2018/843 entered into force on 9 July 2018.

5 Article 1(42) of that directive states:

‘Directive (EU) 2015/849 is amended as follows:

...

(42) In Article 67, paragraph (1) is replaced by the following:

“1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 June 2017.

Member States shall apply Article 12(3) as of 10 July 2020.

Member States shall set up the registers referred to in Article 30 by 10 January 2020 and the registers referred to in Article 31 by 10 March 2020 and the centralised automated mechanisms referred to in Article 32a by 10 September 2020.

The Commission shall ensure the interconnection of registers referred to in Articles 30 and 31 in cooperation with the Member States by 10 March 2021.

Member States shall immediately communicate the text of the measures referred to in this paragraph to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.”

Pre-litigation procedure and proceedings before the Court

- 6 On 23 February 2017, Ireland notified, by way of transposition of Directive 2015/849, the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016. Since that measure represented, in the Commission’s view, only a transposition of the first subparagraph of Article 30(1) of Directive 2015/849, and since Ireland had not informed the Commission of any other measures adopted to comply with that directive, the Commission sent a letter of formal notice to Ireland on 19 July 2017.
- 7 Ireland’s reply, dated 13 September 2017, stated that, as at that date, measures to transpose that directive were being adopted. However, no draft legislative text was provided concerning the planned regulations dealing with trusts and collective asset management vehicles.
- 8 Considering that the transposition of Directive 2015/849 was still incomplete, the Commission sent a reasoned opinion to Ireland on 8 March 2018, inviting it to take the necessary measures to comply with the requirements of that directive within two months of receipt of that opinion.
- 9 Ireland replied to the reasoned opinion by letter of 4 May 2018, informing the Commission that a Bill incorporating Directive 2015/849 into national legislation had been prepared and that the Irish authorities attached a very high priority to its adoption. Accordingly, the parliamentary debate on the draft text that was already published, which had been sent to the Commission, was due to commence in May 2018.

- 10 Considering that Ireland had neither adopted the national measures necessary to transpose Directive 2015/849 nor notified those measures, the Commission brought the present action, seeking a declaration from the Court that Ireland has failed to fulfil its obligations in the manner alleged and an order that Ireland should pay not only a lump sum but also a daily penalty payment.
- 11 At the hearing on 10 December 2019, the Commission informed the Court that it was withdrawing part of its action inasmuch as it no longer sought the imposition of a daily penalty payment, since that claim had become devoid of purpose as a result of Directive 2015/849 having been transposed in full into Irish law. At the same time, the Commission clarified that the payment of the lump sum which it sought in the present case amounted to EUR 2 766 992 and covered the period from 27 June 2017 to 2 December 2019.
- 12 By decisions of the President of the Court of 12 and 11 February 2019, the Republic of Estonia and the French Republic, respectively, were granted to leave to intervene in support of Ireland.

The action

The failure to fulfil obligations under Article 258 TFEU

Arguments of the parties

- 13 According to the Commission, by having failed to adopt, by 26 June 2017 at the latest, all the laws, regulations and administrative provisions necessary to comply with Directive 2015/849 or, in any event, by having failed to notify those provisions to the Commission, Ireland has failed to fulfil its obligations under Article 67 of that directive.
- 14 As at the date on which the present action was brought, the Commission had not received, beyond the information concerning the measures adopted to ensure the transposition of the first subparagraph of Article 30(1) of Directive 2015/849, any other particulars from Ireland showing that that directive had been transposed into Irish law.
- 15 As regards the alleged national measures transposing Directive 2015/849 notified after the application was lodged, referred to by Ireland in its defence, the Commission accepts that, with the notification on 29 November 2018 of several transposition measures, Ireland has indeed largely transposed that directive. However, as at the date on which the reply was lodged, gaps remained as regards Article 30(1), second subparagraph, (2) and (7), Article 31(1) to (3) and (7), Article 47(2) and (3), Article 48(5) to (9), Article 61(3) and Article 62(2) of that directive.
- 16 The Commission also disputes the claim that Directive 2015/849 merely restates, with amendments, 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 (OJ 2005 L 309, p. 15), already transposed into Irish law. Directive 2015/849 marks a significant evolution in the European Union's rules on anti-money laundering compared to the provisions of Directive 2005/60, since, in particular, Directive 2015/849 broadens the scope of application of the anti-money laundering rules, by extending in several respects the concept of the 'obliged entities' who are subject to those rules. Directive 2015/849 expressly introduces the inclusion of tax crimes in the list of predicate offences of money laundering and extends the definition of politically exposed persons to include domestic persons. That directive emerges from, and is a reflection of, an updated policy environment regarding money laundering. Furthermore, during the pre-litigation procedure, Ireland never notified any of the national measures transposing Directive

2005/60 in the framework of the transposition of Directive 2015/849, nor did it provide a correlation table that would demonstrate the relevance of such national provisions and explain the relationship between those individual national provisions and the provisions of Directive 2015/849.

- 17 The Commission notes, in that regard, that, according to the settled case-law of the Court, first, the Member States should adopt a positive act of transposition where, as in Article 67 of Directive 2015/849, a directive expressly requires Member States to ensure that the provisions necessary for its implementation contain a reference to that implemented directive or be accompanied by such a reference on the occasion of their official publication. Secondly, the provisions of a directive should be implemented with undeniable binding force and with the specificity, precision and clarity required, in order to satisfy the requirement of legal certainty which requires that where the directive is intended to create rights for individuals, the beneficiaries should be able to know the fullness of their rights. In the present case, on the expiry of the period prescribed in the reasoned opinion of 8 March 2018, those requirements had not been met.
- 18 Ireland contends that the Commission's action must be dismissed, as it has fulfilled its obligations under Article 67 of Directive 2015/849 since 29 November 2018. Ireland states that, with the entry into force on 26 November 2018, of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 ('the 2018 Act') and the adoption of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Section 25) (Prescribed Class of Designated Person) Regulations 2018, it ensured that Directive 2015/849 was fully transposed.
- 19 Ireland nonetheless contends that Directive 2015/849 in many parts merely restates with amendments provisions of the Third Money Laundering Directive, namely Directive 2005/60. The first three Money Laundering Directives were already transposed by extant national legislation, in particular the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ('the 2010 Act'). The 2010 Act already comprised many of the fundamental requirements of Directive 2015/849, with the result that, even in the absence of legislative amendments being introduced by the 2018 Act, the 2010 Act already ran to 122 sections, 85 of which pertained to obliged entities and their obligations. The significant body of transposition measures already in effect with respect to the preceding suite of Money Laundering Directives has not been reflected in the Commission's application.
- 20 Ireland also notified to the Commission, on 23 February 2017, the 2016 Regulations mentioned in paragraph 6 above. Those regulations give effect to the obligation under Directive 2015/849 to require corporate or other legal entities incorporated in the Member State concerned to obtain and hold adequate, accurate and current information in respect of its beneficial owners. The provisions introduced by the 2016 Regulations form an important measure for the transposition of that directive.
- 21 The 2018 Act, which introduces amendments to the 2010 Act, is a further transposition measure. Ireland contends that the enactment of the 2018 Act required a lengthier process of transposition to ensure the effectiveness of the provisions of Directive 2015/849, that it prioritised the passage of the Bill transposing that directive and that the Bill was already at an advanced stage of the legislative process when the Commission brought the present action.
- 22 Ireland further contends that some of the provisions of Directive 2015/849 do not require any transposition measure.
- 23 Consequently, while accepting that some of the provisions of Directive 2015/849 had not been transposed until the 2018 Act entered into force on 26 November 2018, Ireland, first, contends that it cannot be maintained, as the Commission argues, that, as at the date on which the present action was brought, most parts of that directive had not been transposed into Irish law and, secondly, states that it notified the Commission of the partial transposition of Directive 2015/849 prior to the time limit set down by Article 67(1) of that directive.

- 24 As regards the gaps in the transposition of Directive 2015/849 which allegedly continued to exist after the 2018 Act entered into force on 26 November 2018, Ireland contends, as regards the provisions of Article 30(1), second subparagraph, (2) and (7) and Article 31(1) to (3) and (7) of that directive, that it had considered that the deadline for transposing them had been extended by the modification of Article 67(1) of that directive brought about by Directive 2018/843. In any event, some of those provisions had already been fully or partially transposed into national law by the 2010 Act.
- 25 As regards Article 47(2) of Directive 2015/849, Ireland contends that the 2018 Act introduced registration provisions for cheque cashing offices, but since no such entities had been registered on its territory, it was not adjudged necessary to introduce a provision on fitness and probity tailored to cheque cashing offices.
- 26 As regards Article 47(3) of Directive 2015/849, Ireland notes that, in the correlation table notified with the 2018 Act, it referred to the fact that relevant professional bodies screen for criminal convictions for those who are members of those bodies. As regards the entities referred to in that provision, it is established that auditors, notaries and independent legal professionals must all be members of the relevant professional bodies and are, as such, screened for criminal convictions. Consequently, the obligations stemming from Article 47(3) of that directive are complied with.
- 27 As regards Article 48(5) to (9) of Directive 2015/849, Ireland maintains that those provisions do not require specific obligations to be set out in specific statutory provisions. In so far as such obligations arise under paragraphs 5 to 8 of that article, Ireland understands these to be ancillary and incidental to the general functions of competent authorities which are set out under section 63 of the 2010 Act. Since Article 48(9) of that directive is permissive in nature, it does not need a separate measure of transposition.
- 28 As regards Article 61(3) of Directive 2015/849, Ireland contends that section 54 of the 2010 Act, as amended by section 26 of the 2018 Act, captures obligations for the persons referred to in Article 61(3). Protection for whistle-blowers, referred to by the Commission in its reply, is provided by existing national legislation, namely the Protected Disclosures Act 2014.
- 29 As regards Article 62(2) of Directive 2015/849, Ireland contends that that provision is transposed by existing legislation, since it is the Central Bank of Ireland which, on the basis of the Fitness and Probity Standards (Code issued under section 50 of the Central Bank Reform Act 2010) issued by the Central Bank in 2014, imposes administrative penalties.

Findings of the Court

- 30 According to the settled case-law of the Court, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, the Court being unable to take account of any subsequent changes (judgments of 30 January 2002, *Commission v Greece*, C-103/00, EU:C:2002:60, paragraph 23; of 18 October 2018, *Commission v Romania*, C-301/17, not published, EU:C:2018:846, paragraph 42; and of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 23).
- 31 In addition, the Court has repeatedly held that if a directive expressly requires Member States to ensure that the necessary measures transposing the directive include a reference to it or that such reference is made when those measures are officially published, it is, in any event, necessary for Member States to adopt a specific measure transposing the directive in question (see, to that effect, judgments of 27 November 1997, *Commission v Germany*, C-137/96, EU:C:1997:566, paragraph 8; of 18 December 1997, *Commission v Spain*, C-360/95, EU:C:1997:624, paragraph 13; and of 11 June 2015, *Commission v Poland*, C-29/14, EU:C:2015:379, paragraph 49).

- 32 In the present case, the Commission sent its reasoned opinion to Ireland on 8 March 2018, with the result that the two-month period prescribed therein expired on 8 May 2018. The assessment as to whether or not there has been a failure to fulfil obligations as claimed must, therefore, relate to the state of the national legislation in force on that date (see, by analogy, judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 24 and the case-law cited).
- 33 In that regard, first, it is apparent from Ireland's response of 4 May 2018 that, as at that date, notwithstanding the adoption of a national measure transposing the first subparagraph of Article 30(1) of Directive 2015/849, that directive had not been fully transposed into national law. It is not in dispute that that situation had remained unchanged as at 8 May 2018, since the measures which, even in Ireland's view, were necessary to transpose Directive 2015/849 in full were not notified to the Commission until 29 November 2018.
- 34 Secondly, it is established that, apart from the measure transposing the first subparagraph of Article 30(1) of Directive 2015/849, not only were the other national measures which Ireland claims did in fact ensure the partial transposition of that directive by the expiry of the period prescribed in the reasoned opinion of 8 March 2018 not notified to the Commission on that basis, but they moreover do not contain, contrary to the requirements of Article 67 of Directive 2015/849, any reference to that directive.
- 35 It follows that the measures in question cannot be considered to be a specific act of transposition within the meaning of the case-law mentioned in paragraph 31 above.
- 36 As to the remainder, it suffices to note that the measures notified on 29 November 2018 and 30 January, 27 March, 27 November and 3 December 2019 were adopted and entered into force well after the period prescribed in the reasoned opinion of 8 March 2018 had expired, so that, in any event, they cannot be taken into account in order to determine the existence of the alleged failure to fulfil obligations at the end of that period.
- 37 It must, therefore, be concluded that, on the expiry of the period prescribed in the reasoned opinion, Ireland had neither adopted all the measures necessary to ensure that Directive 2015/849 was transposed nor, therefore, notified those transposition measures to the Commission.
- 38 Accordingly, it must be held that, by having failed to adopt, on the expiry of the period prescribed in the reasoned opinion of 8 March 2018, all the laws, regulations and administrative provisions necessary to comply with Directive 2015/849 and, therefore, by having failed to notify those provisions to the Commission, Ireland has failed to fulfil its obligations under Article 67 of that directive.

The failure to fulfil obligations under Article 260(3) TFEU

The application of Article 260(3) TFEU

– Arguments of the parties

- 39 According to the Commission, Article 260(3) TFEU was introduced by the Treaty of Lisbon with the aim of reinforcing the penalty mechanism previously introduced by the Treaty of Maastricht. Given the novel character of Article 260(3) TFEU and the need to preserve transparency and legal certainty, the Commission adopted the communication entitled 'Implementation of Article 260(3) [TFEU]' (OJ 2011 C 12, p. 1, 'the 2011 communication').

- 40 The purpose of Article 260(3) TFEU is to give a stronger incentive to Member States to transpose directives within the deadlines laid down by the EU legislature and to ensure that EU legislation is applied.
- 41 The Commission submits that Article 260(3) TFEU applies both in the case of the total failure to notify any measures to transpose a directive and where there is only partial notification of transposition measures.
- 42 The Commission further submits that since Article 260(3) TFEU refers to the failure of a Member State to fulfil its obligation to notify ‘measures transposing a directive’, that provision applies not only in the event of failure to notify the national measures transposing a directive, but also in the event of failure to adopt such measures. A purely formalist interpretation of that provision, according to which it aims merely to ensure effective notification of national measures, would not guarantee relevant transposition of all the provisions of the directive in question and would deprive the duty to transpose directives into national law of any meaningful effect.
- 43 The present case specifically concerns penalties for Ireland’s failure to adopt and publish, and therefore to notify to the Commission, all the legal provisions necessary for the transposition of Directive 2015/849 into national law.
- 44 As regards the arguments put forward by Ireland challenging the applicability of Article 260(3) TFEU to the present case, the Commission notes, first of all, that that provision has a specific field of application and is not conceived of as a derogation from a general rule, so that it is not subject to strict interpretation. The timely transposition of directives into national law is of fundamental importance and the purpose of Article 260(3) TFEU is specifically to enforce transposition periods.
- 45 The Commission submits, next, that the concepts of ‘complete transposition’, on the one hand, and ‘correct transposition’, on the other, can be clearly distinguished from each another. Where the Commission finds that there are gaps in the transposition of a directive into national law, this does not in any way mean that it has conducted a review of the conformity of existing provisions of national law with that directive. That is all the more true where, as in the present case, the defaulting Member State itself accepts that the transposition of the directive at issue into its national law is still lacking in part. In addition, having regard to the objective of Article 260(3) TFEU, as specified by the Court in its judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573), the application of that provision is not limited to cases of a complete absence of transposition.
- 46 The Commission also rejects the argument that, in the present case, it acted in a disproportionate manner in proposing financial penalties and that it failed to meet the requirements of the duty of sincere cooperation under Article 4(3) TEU. In that regard, it emphasises that it has never denied that Ireland had acted in good faith and cooperated sincerely. In addition, there is no need to examine the applicability of Article 260(3) TFEU in the light of the *bona fides* of the Member State concerned, since it is not in dispute that Ireland was late in adopting the main instrument of national law chosen by it to give effect to most of the provisions of Directive 2015/849, that is the 2018 Act. That approach of the Commission is all the more apposite, since the very purpose of Article 260(3) TFEU is to induce Member States to transpose in a timely fashion all the provisions of a directive. There is no need to fear that Member States will compromise the quality of transposition in favour of timeliness of transposition, since the EU legislature had in mind the periods that would be required for satisfactory quality to be ensured in transposition, and those considerations are already embedded in the choice of transposition date laid down by directives. Moreover, the Court has held that if the period allowed for the implementation of a directive proves to be too short, the only means of action compatible with EU law available to the Member State concerned consists in taking the appropriate initiatives to obtain the necessary extension of the period by the competent institution.

- 47 The Commission submits, lastly, that its decision systematically to request the Court to impose a financial penalty pursuant to Article 260(3) TFEU cannot be understood as a failure on its part to exercise its discretion. Indeed, in point 16 of the 2011 communication, the Commission expressly took account of the fact that that provision confers wide discretionary powers on it, along the lines of the power to decide whether to bring infringement proceedings under Article 258 TFEU. Consequently, the policy decision to make use of the instrument provided for by Article 260(3) TFEU as a matter of principle in all cases of failure to fulfil an obligation covered by that provision was taken in the exercise of the Commission's discretionary power. Although the Commission does not exclude that particular cases might arise in which a request for penalties under that provision would appear to it to be inappropriate, it makes clear that that is not the case here.
- 48 In that regard, the Commission disputes the argument of Ireland and the intervening Member States that it bases its request to impose a financial penalty on a Member State on the conduct of other Member States. On the contrary, by virtue of the calculation method it applies, the Commission seeks to propose penalties that are tailored to the specific infringement and that conclusion is not invalidated by the fact that it drew up a general framework that allows it to apply its method in every given case in a non-discriminatory manner.
- 49 Ireland, while accepting that it had transposed Directive 2015/849 only in part on the expiry of the period prescribed in the reasoned opinion, disputes the application of Article 260(3) TFEU in the present case.
- 50 In support of its position, Ireland contends, in particular, that since 29 November 2018 it had transposed Directive 2015/849 in full, whereas, in the Commission's view, it was not until 3 December 2019 that that directive was fully transposed into Irish law. The Commission's argument relating to the period after 29 November 2018 is based on a qualitative analysis of the transposition of that directive, which proves that it is difficult to distinguish between 'complete transposition' and 'incorrect transposition' of a directive. In such a case, a Member State would be prevented from ascertaining whether or not a given failure to fulfil obligations falls within the scope of Article 260(3) TFEU and, if so, the period during which such a failure persisted. Even assuming that, in the present case, there had still been gaps in the transposition of Directive 2015/849 after 26 November 2018, which Ireland disputes, those gaps would be attributable to misinterpretation by Ireland of its obligations, inadvertence or gaps in population of the correlation table. To rely, as the Commission does, on Article 260(3) TFEU to penalise minor alleged shortcomings in Ireland's prima facie assessment of its obligations would be contrary to the objective of that provision.
- 51 Ireland also contends that whether Article 260(3) TFEU is applicable must be assessed on a case-by-case basis, taking into account the *bone fides* of the Member State concerned. Since the power conferred upon the Commission by Article 260(3) TFEU is discretionary in nature, it must be concluded that the Commission's blanket policy, as set out in the Commission communication entitled 'EU law: Better results through better application' (OJ 2017 C 18 p. 10), consisting in systematically requesting the imposition of lump sums and penalty payments, is not consistent with the objective of that provision. In addition, that policy does not accommodate good faith efforts by Member States. In the present case, the Commission was informed of the progress in transposing Directive 2015/849 and of the timetable established for adopting the measures transposing it. In such circumstances, the imposition of a lump sum payment is not likely to achieve a deterrent effect such as to safeguard 'the general interests pursued by Union legislation' referred to by the Commission, but might, on the contrary, serve to motivate Member States to compromise the quality of transposition in favour of timeliness of transposition. Accordingly, the Commission approach infringes the principle of proportionality set out in Article 5(4) TEU. Furthermore, that approach does not sit well with the Commission's duty of sincere cooperation under Article 4(3) TEU. Its decision to request systematically the payment of a lump sum without stating reasons for that request on a case-by-case basis is indeed contrary to the case-law of the Court according to which the imposition of a lump sum must not be automatic and must be decided according to the circumstances of the case. In the

present case, the Commission's objective is to make an example of Ireland and to prompt the other Member States, in future, to comply with the transposition periods prescribed in directives. That is unfair and unlawful. The Commission's conduct is based, moreover, on the assumption that Member States are seeking to delay transposition of directives, which is tantamount in fact to assuming bad faith on their part. Such an assumption runs counter to the duty of sincere cooperation under Article 4(3) TEU.

- 52 The Republic of Estonia and the French Republic contend, in particular, that the present case shows how difficult it is for a Member State to distinguish between incomplete and incorrect transposition of a directive. Member States are, therefore, put in an extremely difficult position, since, if the approach advocated by the Commission is followed, they could never be certain that the Commission will not seek to impose a financial penalty on them.
- 53 Furthermore, according to those interveners, in the present case, Article 260(3) TFEU cannot apply since the Commission has not provided a detailed statement of reasons for its decision to request the imposition of a lump sum. As is apparent from the Court's case-law in that area, specific reasons for such a decision must be provided in relation to the particular circumstances of each case. The Commission cannot simply make use, as a matter of principle, of the instrument laid down in Article 260(3) TFEU, without infringing that provision. In addition, a detailed analysis of each case by the Commission is required since those elements are necessary in order to determine the nature of the financial penalty which should be imposed to prompt the Member State concerned to put an end to the failure to fulfil obligations at issue and in order to establish an amount which is appropriate to the circumstances of the case, as required by that case-law.

– *Findings of the Court*

- 54 It must be borne in mind that the first subparagraph of Article 260(3) TFEU provides that when the Commission brings a case before the Court pursuant to Article 258 TFEU on the ground that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. In accordance with the second subparagraph of Article 260(3) TFEU, if the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation is to take effect on the date set by the Court in its judgment.
- 55 As regards the scope of Article 260(3) TFEU, the Court has held that that provision had to be interpreted in a manner which, on the one hand, allows prerogatives held by the Commission for the purposes of ensuring the effective application of EU law and protecting the rights of the defence and the procedural position enjoyed by the Member States under Article 258 TFEU, read in conjunction with Article 260(2) TFEU, to be guaranteed, and, on the other, puts the Court in a position of being able to exercise its judicial function of determining, in a single set of proceedings, whether the Member State in question has fulfilled its obligations to notify the measures transposing the directive in question and, where relevant, assess the seriousness of the declared failure and impose the financial penalty which it considers to be the most suited to the circumstances of the case (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 58).
- 56 In that context, the Court has interpreted the expression 'obligation to notify measures transposing a directive' in Article 260(3) TFEU as referring to the obligation of the Member States to provide sufficiently clear and precise information on the measures transposing a directive. In order to satisfy the obligation of legal certainty and to ensure the transposition of the provisions of that directive in full throughout their territory, the Member States are required to state, for each provision of the

directive, the national provision or provisions ensuring its transposition. Once notified, and having also received a correlation table where relevant, it is for the Commission to establish, for the purposes of seeking a financial penalty to be imposed on the Member State in question provided for in Article 260(3) TFEU, whether certain transposition measures are clearly lacking or do not cover all the territory of the Member State in question, bearing in mind that it is not for the Court, in judicial proceedings brought under Article 260(3) TFEU, to examine whether the national measures notified to the Commission ensure a correct transposition of the provisions of the directive in question (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 59).

- 57 Since, as is apparent from paragraphs 37 and 38 above, it is established that, on the expiry of the period prescribed in the reasoned opinion of 8 March 2018, Ireland had not notified to the Commission all the measures transposing Directive 2015/849 within the meaning of Article 260(3) TFEU, the failure to fulfil obligations thus declared falls within the scope of that provision.
- 58 As regards whether, as Ireland and the Member States intervening in support of it argue, the Commission must state reasons, on a case-by-case basis, for its decision to request a financial penalty under Article 260(3) TFEU or whether it may take such a decision without stating reasons, in all cases falling within the scope of that provision, it must be borne in mind that, as guardian of the Treaties pursuant to the second sentence of Article 17(1) TEU, the Commission enjoys a discretion to take such a decision.
- 59 Article 260(3) TFEU cannot be applied in isolation, but must be linked to the commencement of infringement proceedings under Article 258 TFEU. Since the application for a financial penalty under Article 260(3) TFEU is only an ancillary mechanism of the infringement proceedings the effectiveness of which it must ensure and the Commission enjoys a discretion as to whether or not to commence such proceedings, which is not for review by the Court (see, to that effect, judgments of 14 February 1989, *Star Fruit v Commission*, 247/87, EU:C:1989:58, paragraph 11; of 6 July 2000, *Commission v Belgium*, C-236/99, EU:C:2000:374, paragraph 28; and of 26 June 2001, *Commission v Portugal*, C-70/99, EU:C:2001:355, paragraph 17), the conditions for applying Article 260(3) TFEU cannot be more restrictive than those governing the implementation of Article 258 TFEU.
- 60 In addition, it must be pointed out that under Article 260(3) TFEU the Court alone has the power to impose a financial penalty on a Member State. Where the Court takes such a decision at the end of *inter partes* proceedings, it must state reasons. Consequently, the Commission's failure to state reasons for its decision to request the Court to apply Article 260(3) TFEU does not affect the procedural guarantees of the Member State in question.
- 61 Furthermore, the fact that the Commission is not required to state reasons on a case-by-case basis for its decision to seek the imposition of a financial penalty under Article 260(3) TFEU does not relieve it of the obligation to state reasons for the nature and the amount of the financial penalty sought, taking into account in that regard the guidelines which it has adopted, such as those in the Commission's communications which, although not binding on the Court, contribute to ensuring that the action brought by the Commission is transparent, foreseeable and consistent with legal certainty (see, by analogy with Article 260(2) TFEU, judgment of 30 May 2013, *Commission v Sweden*, C-270/11, EU:C:2013:339, paragraph 41 and the case-law cited).
- 62 That requirement to state reasons for the nature and the amount of the financial penalty sought is all the more important since, unlike the provisions of Article 260(2) TFEU, Article 260(3) TFEU provides that, in the context of proceedings brought under that provision, the Court has only a limited power to assess, since, where it finds that there is an infringement, the Commission's proposals are binding on it as to the nature of the financial penalty which the Court may impose and the maximum amount of the penalty which it may set.

- 63 Indeed, the authors of Article 260(3) TFEU not only provided that it is for the Commission to specify ‘the amount of the lump sum or penalty payment to be paid’ by the Member State in question, but also made clear that the Court may only impose a financial penalty payment ‘not exceeding the amount specified’ by the Commission. They therefore established a direct correlation between the penalty sought by the Commission and the penalty that may be imposed by the Court under Article 260(3) TFEU.
- 64 Nor is the argument that, in accordance with the case-law of the Court, a lump sum must not be imposed automatically (see, in particular, judgment of 9 December 2008, *Commission v France*, C-121/07, EU:C:2008:695, paragraph 63) capable of affecting the Commission’s power to commence proceedings, as a matter of principle, under Article 260(3) TFEU in all cases where it considers that an infringement falls within the scope of that provision. That case-law concerns the assessment of the merits of a request by the Commission for the Court to ‘order’ a financial penalty and not the question whether such a request should be made.
- 65 As regards Ireland’s argument that the Commission’s action seeks to make an example, in particular, of that Member State and of Romania, in order to induce the other Member States to comply with the transposition periods prescribed in directives, it must be pointed out that, first, as the Commission noted without that point being contested, on the date on which the present action was brought Ireland and Romania were the only Member States not to have transposed Directive 2015/849 in full. Secondly, in any event, the considerations which led the Commission to bring the present proceedings against Ireland, and to do so on the date of its choosing, cannot prejudice the applicability of Article 260(3) TFEU or the admissibility of the action brought under that provision.
- 66 It must, therefore, be held that Article 260(3) TFEU applies in a situation such as that at issue in the present case.

The imposition of a lump sum in the present case

– Arguments of the parties

- 67 As regards the amount of the financial penalty to be imposed, the Commission submits, in accordance with the position reflected in point 23 of the 2011 communication, that, since a failure to fulfil the obligation to notify measures transposing a directive is no less serious than a failure to fulfil obligations that may be the subject of the penalties mentioned in Article 260(2) TFEU, the method of calculating the penalties referred to in Article 260(3) TFEU must be the same as that applied in the context of the procedure set out in Article 260(2) TFEU.
- 68 In the present case, the Commission requests the imposition of a lump sum calculated according to the guidelines in the communication of 13 December 2005, entitled ‘Application of Article [260 TFEU]’ (SEC(2005) 1658), as updated by the communication of 13 December 2017, entitled ‘Updating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings’ (C(2017) 8720), the minimum lump sum for Ireland being EUR 1 685 000. That minimum lump sum is not, however, to be applied in the present case, since it is lower than the amount which results from calculating the lump sum in accordance with those communications. In order to determine the daily amount forming the basis of that calculation, the standard flat-rate amount of EUR 230 must be multiplied by the coefficient for seriousness and by the ‘n’ factor of 2.92 for Ireland. The coefficient for seriousness decreased as Ireland notified additional transposition measures. Consequently, for the period from 27 June 2017 to 28 November 2018, the coefficient for seriousness is 7 on a scale of 1 to 20, for the period from 29 November 2018 to 26 March 2019, the coefficient for seriousness is 2, and for the period from 27 March

to 2 December 2019, the coefficient for seriousness is 1. Adding together the three amounts corresponding to those periods, namely EUR 2 439 922.80, EUR 158 497.60 and EUR 168 571.60, the Commission requests the imposition of a total lump sum of EUR 2 766 992.

- 69 The Commission denies, moreover, that the imposition of a lump sum is an exception and applies only in exceptional circumstances. The late transposition of directives undermines not only the safeguarding of the general interests pursued by EU legislation, where delays are unacceptable, but also and above all the protection of European citizens who enjoy individual rights under that legislation. Furthermore, it is the credibility of EU law as a whole that is threatened when legislative acts take full legal effect in the Member States years later than they should. Consequently, delays in the transposition of directives are special circumstances sufficiently serious to justify the imposition of a lump sum.
- 70 As regards the amount of the lump sum which the Commission seeks, Ireland considers that, as has been held regarding Article 260(2) TFEU, the Court is not bound by the Commission's guidelines and, in particular, by the minimum lump sum of EUR 1 685 000 set for Ireland. In addition, in circumstances where the failure to fulfil obligations has come to an end by the time of the Court's judgment in the case concerning that failure to fulfil obligations, the Court may find that no lump sum payment is necessary. Indeed, no lump sum payment should be imposed in the present case. As to the remainder, there is no reason to apply the calculation method for financial penalties imposed under Article 260(2) TFEU to those imposed under Article 260(3) TFEU, since the seriousness of the failures to fulfil obligations to be penalised is not the same.
- 71 Ireland further contends that the day after the transposition deadline provided for in Directive 2015/849, namely 27 June 2017, cannot be an appropriate starting point (*dies a quo*) for evaluating the duration of the failure to fulfil obligations at issue since, at that date, it could not have known that that failure came within the scope of Article 260(3) TFEU and that the Commission was going to adopt a policy of systematically applying that provision. In addition, to calculate the lump sum by reference to a daily amount, thereby exceeding the minimum lump sum proposed by the Commission, would be contrary to the principle of legal certainty. As regards the date on which the failure to fulfil obligations came to an end, Ireland notes that, in its view, this was 29 November 2018, not 3 December 2019 as the Commission argues. As at 29 November 2018, all the provisions of Directive 2015/849 which had to be transposed had been fully transposed into national law. If, notwithstanding the fact that the failure to fulfil obligations at issue came to an end on the day on which the Court examined the facts, the Court nonetheless decided to impose a lump sum on Ireland, that financial penalty should be the minimum.
- 72 As regards the coefficient for seriousness, Ireland contends that, in the light of the importance of the EU rules subject to the infringement at issue, the minor effects of the non-transposition of Directive 2015/849 on general and individual interests and the mitigating factors, the coefficient proposed by the Commission is far too high. The coefficient for seriousness should, therefore, be reduced in the present case to 1. Among those mitigating factors, Ireland notes in particular that the 2018 Act entered into force during the course of the proceedings, that transposition by primary legislation is connected to the strength of enforcement measures set out in extant legislation, that Ireland prioritised progress of the Bill through the Houses of Parliament, that it kept the Commission informed of legislative progress of the Bill and that it has abided by the indicative timetable notified to the Commission prior to the commencement of legal proceedings.
- 73 The Republic of Estonia and the French Republic contend that, in the present case, the amount of the lump sum proposed by the Commission must, in any event, be reduced.

– Findings of the Court

- 74 As regards, in the first place, the argument that it would be disproportionate to impose a lump sum since, in the course of the proceedings, Ireland put an end to the infringement at issue, it must be borne in mind, first, that the failure of a Member State to fulfil its obligation to notify measures transposing a directive, whether by providing no information at all, partial information or by providing insufficiently clear and precise information, may of itself justify recourse to the procedure under Article 258 TFEU in order to establish the failure to fulfil the obligation (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 51). Secondly, the objective pursued by the introduction of the system set out in Article 260(3) TFEU is not only to induce Member States to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, but also to simplify and speed up the procedure for imposing financial penalties for failures to comply with the obligation to notify a national measure transposing a directive adopted through a legislative procedure, it being specified that, prior to the introduction of such a system, it might be years before a financial penalty was imposed on Member States which had failed to comply in a timely manner with an earlier judgment of the Court and failed to respect their obligations to transpose a directive (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 52).
- 75 It must be pointed out that, in order to achieve the objective pursued by Article 260(3) TFEU, the authors of that provision provided for two types of financial penalty, the lump sum and the periodic penalty payment.
- 76 In that regard, it is apparent from the case-law of the Court that application of each of those measures depends on their respective ability to meet the objective pursued according to the circumstances of the case. While the imposition of a penalty payment seems particularly suited to inducing a Member State to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, the imposition of a lump sum is based more on assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period (see, by analogy with Article 260(2) TFEU, judgment of 12 July 2005, *Commission v France*, C-304/02, EU:C:2005:444, paragraph 81).
- 77 In those circumstances, an application which, as in the present case, seeks the imposition of a lump sum cannot be dismissed as disproportionate solely because it concerns a failure to fulfil obligations which, having persisted over time, came to an end by the time of the Court's examination of the facts.
- 78 As regards, in the second place, whether or not a financial penalty should be imposed in the present case, it must be borne in mind that, in each case, it is for the Court to determine, in the light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties that are appropriate, in particular, for preventing the recurrence of similar infringements of EU law (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 78).
- 79 In the present case, it must be found that, notwithstanding the fact that Ireland cooperated with the Commission services throughout the pre-litigation procedure and kept them informed of the progress of the transposition of Directive 2015/849, all the legal and factual circumstances culminating in the breach of obligations established — namely, the fact that, as the date on which the present action was brought, only one transposition measure covering just the provisions of the first subparagraph of Article 30(1) of that directive had been notified and the fact that the final measures transposing Directive 2015/849 entered into force one week before the hearing — indicate that if the future repetition of similar infringements of EU law is to be effectively prevented, a dissuasive measure must

be adopted, such as a lump sum payment (see, to that effect, by analogy with Article 260(2) TFEU, judgments of 11 December 2012, *Commission v Spain*, C-610/10, EU:C:2012:781, paragraph 142, and of 4 December 2014, *Commission v Sweden*, C-243/13, not published, EU:C:2014:2413, paragraph 63).

80 That conclusion is not called in question by the line of argument set out in paragraph 65 above. As pointed out in that paragraph, it is for the Commission, in particular, to assess whether or not proceedings should be brought against a Member State and to choose the time at which it initiates the infringement proceedings against that Member State.

81 As regards, in the third place, the calculation of the lump sum which it is appropriate to impose in the present case, it must be borne in mind that, in exercising its discretion in the matter, as delimited by the Commission's proposals, it is for the Court to fix the amount of the lump sum which may be imposed on a Member State pursuant to Article 260(3) TFEU, in an amount appropriate to the circumstances and proportionate to the failure to fulfil obligations. Relevant considerations in that respect include factors such as the seriousness of the failure to fulfil obligations, the length of time for which the failure has persisted and the relevant Member State's ability to pay (see, by analogy with Article 260(2) TFEU, judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraph 114 and the case-law cited).

82 As regards, first, the seriousness of the infringement, it must be borne in mind that the obligation to adopt national measures for the purposes of ensuring that a directive is transposed in full and the obligation to notify those measures to the Commission are fundamental obligations incumbent on the Member States in order to ensure optimal effectiveness of EU law and that failure to fulfil those obligations must, therefore, be regarded as definitely serious (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 85). Furthermore, Directive 2015/849 is an important instrument for ensuring that the European Union's financial system is effectively protected against the threats from money laundering and terrorist financing. The absence or inadequacy of such protection of the European Union's financial system must be considered particularly serious in the light of its effects on public and private interests within the European Union.

83 Although Ireland did, in the course of the proceedings, put an end to the failure to fulfil obligations complained of, the fact remains that that failure to fulfil obligations existed on the expiry of the period prescribed in the reasoned opinion of 8 March 2018, namely 8 May 2018, with the result that the effectiveness of EU law was not ensured at all times.

84 The seriousness of that failure is also reinforced by the fact that, as at that date, Ireland had adopted measures transposing Directive 2015/849 only in relation to a single provision of that directive.

85 The arguments put forward by Ireland to explain the delay in transposing Directive 2015/849, principally that in order for the 2018 Act to be enacted it was necessary to embark on a lengthier process of transposition in order to ensure the effectiveness of that directive's provisions are not such as to affect the seriousness of the infringement at issue since, according to settled case-law, a Member State cannot rely on practices or circumstances existing in its internal legal order to justify its failure to comply with the obligations and time limits laid down by EU directives, nor therefore the late or incomplete implementation of directives. Likewise, it is irrelevant that the failure of a Member State to fulfil its obligations is the result of technical difficulties encountered by it (see, in particular, judgment of 7 May 2002, *Commission v Netherlands*, C-364/00, EU:C:2002:282, paragraph 10 and the case-law cited). Indeed, if the period allowed for the implementation of a directive proves to be too short, the only means of action compatible with EU law available to the Member State concerned consists in taking the appropriate initiatives in order to obtain the necessary extension of the period by the competent EU institution (see, to that effect, judgment of 1 October 1998, *Commission v Spain*, C-71/97, EU:C:1998:455, paragraph 16).

- 86 As regards, secondly, the duration of the infringement, it should be recalled that that duration must, as a rule, be assessed by reference to the date on which the Court assesses the facts, not the date on which proceedings are brought before it by the Commission (judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)*, C-543/17, EU:C:2019:573, paragraph 87). That assessment of the facts must be considered as being made at the date of conclusion of the proceedings.
- 87 In the present case, although the parties do not dispute that the infringement at issue came to an end before the conclusion of the proceedings, they nonetheless disagree as to the exact date on which this occurred, the Commission considering that the infringement ceased on 3 December 2019, whereas Ireland contends that this occurred on 29 November 2018.
- 88 In that regard, in view of what has been set out in paragraph 82 above, it must be noted that certain measures transposing Directive 2015/849 were manifestly lacking after 29 November 2018. First, it is apparent from the documents before the Court that not only were the national provisions which, in Ireland's view, transposed Article 61(3) and Article 62(2) of that directive, only notified with the rejoinder of 4 March 2019, but, moreover, they contain no reference to that directive. Secondly, as the Advocate General observed in point 72 of his Opinion, national measures transposing the provisions of Article 47(2) of Directive 2015/849 did not enter into force until 3 December 2019. The same applies to the provisions of Article 48(5) to (8) of that directive, in respect of which Ireland accepts that it had not adopted any transposition measure before the measures which entered into force on 3 December 2019, on the ground that those provisions were, in its view, ancillary and incidental. Such an assessment by a Member State is manifestly insufficient to relieve it of its obligation to adopt the laws, regulations and administrative provisions necessary to comply with a directive or its obligation to notify to the Commission the measures transposing that directive.
- 89 Accordingly, 3 December 2019 must be held to be the date on which the infringement of the obligation referred to in Article 260(3) TFEU came to an end.
- 90 As regards the beginning of the period which must be taken into account in order to set the amount of the lump sum to be imposed pursuant to Article 260(3) TFEU, it must be stated that, unlike the Court's holding in paragraph 88 of its judgment of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU — High-speed networks)* (C-543/17, EU:C:2019:573), in relation to the determination of a daily penalty payment to be imposed, the relevant date for evaluating the duration of the infringement at issue for the purposes of imposing a lump sum pursuant to Article 260(3) TFEU is not the date of expiry of the period prescribed in the reasoned opinion, but the transposition date laid down in the directive in question.
- 91 As the Advocate General observed in point 73 of his Opinion, the objective of that provision is to encourage Member States to transpose directives within the deadlines set by the EU legislature and to ensure the full effectiveness of EU legislation. Thus, although the trigger for applying the procedure laid down in Article 260(2) TFEU is the fact that a Member State has failed to fulfil its obligations arising from a judgment finding an infringement, the trigger for applying the procedure laid down in Article 260(3) TFEU is the fact that a Member State has failed to fulfil its obligation to adopt and to notify the measures transposing a directive at the latest by the date laid down therein.
- 92 Any other approach would indeed be tantamount to calling into question the effectiveness of the provisions of directives setting the date on which the measures transposing those directives must enter into force. Since, according to the settled case-law of the Court, in order for a letter of formal notice to be issued, in accordance with the first paragraph of Article 258 TFEU, a prior failure by the Member State concerned to fulfil an obligation owed by it must be capable of being legitimately alleged by the Commission (judgment of 5 December 2019, *Commission v Spain (Waste management plans)*, C-642/18, EU:C:2019:1051 paragraph 17 and the case-law cited), Member States which had not transposed a directive as at the date laid down therein would, in that scenario, enjoy at all events an

additional transposition period, whose duration would moreover vary according to the speed with which the Commission initiated the pre-litigation procedure, without its nonetheless being possible to take into account the duration of that period when evaluating the duration of the failure to fulfil the obligations at issue. However, it is established that the date from which the full effectiveness of a directive must be ensured is the date of transposition laid down in the directive itself, not the date of expiry of the period prescribed in the reasoned opinion.

- 93 Contrary to what Ireland contends, this approach is not likely to compromise the principle of legal certainty, since, in a situation such as that at issue in the present case, the Member State in question cannot validly maintain that it was unaware of having failed to fulfil, as from the date of transposition laid down in the directive in question, its obligations under that directive. In addition, the protection of the rights of defence of the Member State in question guaranteed by the pre-litigation procedure cannot result in that Member State being protected against all financial consequences stemming from that failure to fulfil obligations for the period preceding the deadline set in the reasoned opinion.
- 94 In that regard, it must be added that, as the Advocate General noted in point 74 of his Opinion and contrary to Ireland's arguments at the hearing, the communication of the Commission mentioned in paragraph 51 above, published on 19 January 2017, was published before the transposition period prescribed in Directive 2015/849 had expired. Ireland cannot, therefore, validly claim that it was unaware that the failure to fulfil obligations at issue could give rise to an action under Article 260(3) TFEU.
- 95 Consequently, in order to ensure that EU law is fully effective, it is appropriate, when evaluating the duration of the infringement with a view to determining the amount of the lump sum to be imposed pursuant to Article 260(3) TFEU, to take into account the date of transposition provided for by the directive at issue itself.
- 96 In the present case, it is not in dispute that, as at the date of transposition laid down in Article 67 of Directive 2015/849, namely 26 June 2017, Ireland had not adopted the laws, regulations and administrative provisions necessary to ensure that that directive was transposed and had not, therefore, notified to the Commission the measures transposing it. It follows that the failure to fulfil obligations at issue, which did not come to an end until 3 December 2019, and thus one week before the hearing, persisted for almost two and a half years.
- 97 Thirdly, as regards the ability to pay of the Member State concerned, it is apparent from the case-law of the Court that it is necessary to take account of recent trends in that Member State's gross domestic product (GDP) at the time of the Court's examination of the facts (see, by analogy with Article 260(2) TFEU, judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraph 124 and the case-law cited).
- 98 Having regard to all the circumstances of the present case and in the light of the Court's discretion under Article 260(3) TFEU, which provides that the Court cannot, as regards the payment of the lump sum imposed by it, exceed the amount specified by the Commission, it must be held that the effective prevention of future repetition of similar infringements to that of Article 67 of Directive 2015/849 affecting the full effectiveness of EU law requires the imposition of a lump sum in the amount of EUR 2 000 000.
- 99 Ireland must, therefore, be ordered to pay the Commission a lump sum of EUR 2 000 000.

Costs

- 100 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful, the latter must be ordered to pay the costs.
- 101 In accordance with Article 140(1) of those rules, under which Member States which have intervened in the proceedings are to bear their own costs, the Republic of Estonia and the French Republic must be ordered to bear their own costs.

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

1. **Declares that, by having failed to adopt, on the expiry of the period prescribed in the reasoned opinion of 8 March 2018, all the laws, regulations and administrative provisions necessary to comply with 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, and, therefore, by having failed to notify those provisions to the European Commission, Ireland has failed to fulfil its obligations under Article 67 of Directive 2015/849;**
2. **Orders Ireland to pay the European Commission a lump sum in the amount of EUR 2 000 000;**
3. **Orders Ireland to pay the costs;**
4. **Orders the Republic of Estonia and the French Republic to bear their own costs.**

Lenaerts	Silva de Lapuerta	Arabadjiev
Prechal	Vilaras	Rossi
Jarukaitis	Ilešič	Malenovský
Bay Larsen	von Danwitz	Biltgen
Kumin	Jääskinen	Wahl

Delivered in open court in Luxembourg on 16 July 2020.

A. Calot Escobar
Registrar

K. Lenaerts
President