Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

6 October 2021 *

(Reference for a preliminary ruling – Article 63 TFEU – Free movement of capital – Directive (EU) 2015/849 – Scope – National legislation requiring payments exceeding a certain amount to be made only by transfer or deposit into a payment account – Article 65 TFEU – Justification – Combating tax evasion and tax avoidance – Proportionality – Administrative penalties of a criminal nature – Article 49 of the Charter of Fundamental Rights of the European Union – Principles of legality and proportionality of criminal offences and penalties)

In Case C-544/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria), made by decision of 5 July 2019, received at the Court on 17 July 2019, in the proceedings

'ECOTEX BULGARIA' EOOD

v

Teritorialna direktsia na Natsionalnata agentsia za prihodite – Sofia,

interested party:

Prokuror ot Okrazhna prokuratura – Blagoevgrad,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader M. Safjan and N. Jääskinen (Rapporteur), Judges

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having considered the observations submitted on behalf of:

– the Bulgarian Government, by L. Zaharieva and E. Petranova, acting as Agents,

* Language of the case: Bulgarian.

– the Czech Government, by M. Smolek, O. Serdula and J. Vláčil, acting as Agents,

– the Spanish Government, by S. Jiménez García, acting as Agent,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. Meloncelli, avvocato dello Stato,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the European Commission, by H. Tserepa-Lacombe, Y. Marinova and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of (i) Article 63 TFEU, (ii) Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73), read in the light of recital 6 and in conjunction with Articles 4 and 5 of that directive, and (iii) Article 58(1) and Article 60(4) of that directive, read in the light of Article 47 and Article 49(3) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between 'Ecotex Bulgaria' EOOD ('Ecotex') and the Teritorialna direktsia na Natsionalna agentsia za prihodite – Sofia (Territorial Directorate of the National Revenue Agency, Sofia, Bulgaria; 'the competent tax authority') concerning the lawfulness of the administrative financial penalty imposed on that company in respect of an infringement of the national legislation on the restriction of cash payments.

Legal background

European Union law

3 Recital 1 of Directive 2015/849 states:

'Flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results.'

4 Recital 6 of the Directive is worded as follows:

‘The use of large cash payments is highly vulnerable to money laundering and terrorist financing. In order to increase vigilance and mitigate the risks posed by such cash payments, persons trading in goods should be covered by this Directive to the extent that they make or receive cash payments of EUR 10 000 or more. Member States should be able to adopt lower thresholds, additional general limitations to the use of cash and further stricter provisions.’

5 Recital 11 of the directive states:

‘It is important expressly to highlight that “tax crimes” relating to direct and indirect taxes are included in the broad definition of “criminal activity” in this Directive, in line with the revised [Financial Action Task Force (FATF)] Recommendations. Given that different tax offences may be designated in each Member State as constituting “criminal activity” punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States’ national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs).’

6 In accordance with Article 1(1) thereof, Directive 2015/849 aims to prevent the use of the European Union’s financial system for the purposes of money laundering and terrorist financing.

7 Article 2(1) of that directive states:

‘This Directive shall apply to the following obliged entities:

(1) credit institutions;

(2) financial institutions;

(3) the following natural or legal persons acting in the exercise of their professional activities:

…

(e) other persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

…’

8 Article 3 of that directive provides:

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

…

(4) “criminal activity” means any kind of criminal involvement in the commission of the following serious crimes:

…

(f) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

…'

9 Article 4 of the directive provides:

'1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing.

2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.'

10 Article 5 of Directive 2015/849 is worded as follows:

'Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.'

11 Article 58(1) of that directive states:

'Member States shall ensure that obliged entities can be held liable for breaches of national provisions transposing this Directive in accordance with this Article and Articles 59 to 61. Any resulting sanction or measure shall be effective, proportionate and dissuasive.'

12 Article 60(4) of that directive provides:

'Member States shall ensure that when determining the type and level of administrative sanctions or measures, the competent authorities shall take into account all relevant circumstances, including where applicable:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person held responsible;

(c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;

(d) the benefit derived from the breach by the natural or legal person held responsible, in so far as it can be determined;

(e) the losses to third parties caused by the breach, in so far as they can be determined;

(f) the level of cooperation of the natural or legal person held responsible with the competent authority;

(g) previous breaches by the natural or legal person held responsible.'

13 Article 67(1) of the directive provides:

'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.'

Bulgarian law

14 Pursuant to Article 1 of the Zakon za ogranichavane na plashtaniyata v broy (Law on the restriction of cash payments, DV No 16 of 22 February 2011; 'the ZOPB'), that law governs the restrictions on cash payments in Bulgarian territory.

15 Article 2 of the ZOPB provides:

'The Law does not apply:

1. to withdrawals and deposits made in cash from or into the holder's own payment account;

2. to withdrawals and deposits made in cash from or into the account of a person subject to a general or specific legal disability, or the accounts of spouses or direct ascendants or descendants;

3. to transactions in a foreign currency carried out in a professional capacity;

4. to transactions in bank notes and coins where one party to the transaction is the Bulgarian National Bank;

5. to the exchange by banks of used Bulgarian bank notes and coins;

6. to the payment of wages within the meaning of the [Kodeks na truda (Labour Code)];

7. … to the payment of guaranteed deposits within the meaning of the [Zakon za garantirane na vlogovete v bankite (Law on guarantees for bank deposits)].'

16 Article 3 of the ZOPB provides:

'(1) Domestic payments shall be made only by transfer or deposit into a payment account where they are:

1. … in an amount equal to or greater than BGN 10 000 [10 000 lev (BGN) (approx. EUR 5 110)];

2. … in an amount less than BGN 10 000 but may be regarded as part of linked payment transactions having the same basis, the total amount of which is equal to or greater than BGN 10 000.

(2) … Paragraph 1 applies equally to payments in foreign currency where the equivalent amount in BGN is equal to or greater than BGN 10 000. The equivalent amount in BGN shall be calculated at the Balgarska narodna banka [(Bulgarian National Bank)] rate as at the day of payment.'

17 Article 5 of the ZOPB is worded as follows:

'(1) Any person who infringes Article 3, or allows an infringement of that article, is liable to a fine amounting to 25% of the total amount of the payment, in the case of a natural person, or to a financial penalty amounting to 50% of the total amount of the payment, in the case of a legal person.

(2) In the event that the infringement referred to in paragraph 1 is repeated, the fine shall amount to 50% of the amount of the payment, and the financial penalty shall amount to 100% of the amount of the payment.'

18 Article 6 of the ZOPB provides:

'(1) Decisions establishing infringements of the present law shall be drawn up by the Natsionalna agentsia za prihodite [(National Revenue Agency, Bulgaria)]. Decisions imposing administrative penalties shall be issued by the Executive Director of the National Revenue Agency or by officials authorised by him or her.

(2) The Zakon za administrativnite narushenia i nakazania [(Law on administrative offences and penalties, DV No 92 of 28 November 1969; 'the ZANN')] governs the drawing up of decisions imposing an administrative penalty, their issuing, the types of recourse available against them and their enforcement.'

19 Article 27(1) to (5) of the ZANN provides:

'(1) Administrative penalties shall be determined in accordance with the provisions of this law, within the limits of the penalty provided for in relation to the offence.

(2) In determining the penalty, regard shall be had to the seriousness of the offence, the reasons for its commission, and other mitigating or aggravating circumstances, as well as the financial situation of the offender.

(3) Mitigating circumstances shall lead to the imposition of a more lenient penalty, and aggravating circumstances to the imposition of a more severe penalty.

…

(5) Nor shall the penalty imposed be lower than the prescribed minimum applicable to penalties and suspension of the right to exercise a specified profession or activity.'

20 Article 28(a) of the ZANN provides that, in the case of a minor administrative offence, it is open to the authority with power to impose penalties not to do so, but in such a case it must inform the offender, either orally or in writing, that an administrative penalty will be imposed in the event of a repeat offence.

21 Under Article 63 of that law, the district court, sitting in a single-judge formation, has jurisdiction to examine the case on the merits and deliver a judgment which may uphold, amend or overturn the decision imposing an administrative penalty or the electronic record. An appeal on a point of law lies from that judgment to the administrative court, on the grounds provided for in the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure), in accordance with Chapter 12 of the Administrativnoprotsesualen kodeks (Code of Administrative Procedure).

22 Article 83 of the ZANN provides:

'(1) In the circumstances laid down by the relevant law, by order of the Council of Ministers or by order of the municipal council, a financial penalty may be imposed on legal persons or individual traders for infringement of their obligations to the State or the municipality in the exercise of their activity.

(2) The penalty referred to in the preceding paragraph is imposed pursuant to the present law, unless the normative measure in question provides otherwise.'

The main proceedings and the questions referred for a preliminary ruling

23 Ecotex, a commercial company incorporated under Bulgarian law, is principally a wholesaler and installer of manufacturing machinery. KS, a Greek national and resident of Greece, is its managing director and sole shareholder.

24 At Ecotex's general meeting of 14 March 2018, it was resolved that the undistributed profit after corporate income tax, of an amount of BGN 100 000 (approx. EUR 51 110), would be distributed in the form of dividends to the sole shareholder, KS. It was also resolved that that sum would be paid to KS in cash, by means of authorised withdrawals from the cash held by the company.

25 During a tax inspection it was established, in particular, that pursuant to the resolution passed at the general meeting of 14 March 2018 in relation to the distribution of dividends, over the period from 14 March 2018 to 22 March 2018, a sum of BGN 95 000 (approx. EUR 48 550) had been paid to KS, in cash, by way of nine authorised withdrawals of BGN 10 000 (approx. EUR 5 110) each, and one in an amount of BGN 5 000 (approx. EUR 2 555).

26 The competent tax authority announced, on 5 June 2018, that criminal proceedings of an administrative nature had been commenced against Ecotex, and on 26 June 2018 it issued a decision establishing that the provisions of the ZOPB had been infringed in that, on 14 March 2018, Ecotex had paid KS, in cash, by way of an authorised withdrawal, an amount of BGN 10 000, pursuant to the resolution passed at the general meeting of 14 March 2018 to make a distribution of dividends to KS in an amount of BGN 100 000.

27 On 10 July 2018, Ecotex lodged an objection to that decision, contending that the payment of BGN 10 000 made on 14 March 2018 exceeded the cash payments limit laid down by the ZOPB by only BGN 0.01 (approx. EUR 0.005), and that the offence was therefore 'minor' within the meaning of Article 28 of the ZANN.

28 On 3 September 2018, on the basis of the same decision, the competent tax authority adopted a decision imposing a financial penalty on Ecotex, pursuant to Article 5(1) of the ZOPB, on the ground that, on 14 March 2018, that company had made a cash payment to KS in the amount of

BGN 10 000. It is apparent from the order for reference that each of the cash payments of BGN 10 000 made to KS was regarded as an infringement of Article 3(1)(1) of the ZOPB, and that nine decisions imposing a financial penalty were issued on the basis of Article 5(1) of the ZOPB. In accordance with the national legislation, each financial penalty was in the sum of BGN 5 000, representing half of the amount paid in cash.

29 By judgment of 14 December 2018, the Rayonen sad Petrich (District Court, Petrich, Bulgaria) dismissed an action for annulment brought by Ecotex against that decision of the competent authority. Ecotex then brought an appeal on a point of law before the referring court, the Administrativen sad Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria).

30 Before that court, Ecotex reiterates, in essence, the argument set out in paragraph 27 of this judgment, submitting that, having regard to the minor nature of the infringement, a financial penalty amounting to half of the total sum received in cash appears disproportionate. Ecotex also submits that the right to receive company dividends does not constitute a transaction or contract, and accordingly does not fall within the concept of 'payment', within the meaning of Article 3(1)(1) of the ZOPB.

31 The competent tax authority maintains that the concept of 'payment', within the meaning of Article 3(1)(1) of the ZOPB, should be understood as encompassing, without exception, any payment or financial transaction, irrespective of whether it takes the form of a distribution of dividends or whether it is based on a contractual or extra-contractual relationship or a relationship of affiliation.

32 The referring court states, as a preliminary remark, that the ZOPB is the national instrument transposing 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), which was repealed and replaced, as from 26 June 2017, by Directive 2015/849.

33 It therefore considers that Article 3(1)(1) of that law should be interpreted in the light of the relevant provisions of Directive 2015/849, but also in the light of Article 63 TFEU.

34 In the first place, referring to the judgment of 6 June 2000, *Verkooijen* (C-35/98, EU:C:2000:294), the referring court states that the concept of 'capital movements' includes, in particular, the receipt of dividends on shares in commercial companies. The question therefore arises of whether Article 63 TFEU – which, according to the case-law of the Court, prohibits, inter alia, measures liable to deter non-residents from investing in a Member State or retaining an investment in a Member State – precludes a legislative provision such as Article 3(1)(1) of the ZOPB, which imposes a restriction on payments in cash.

35 In the second place, the referring court states that the objective of Directive 2015/849 is to prevent the use of the EU financial system for the purposes of money laundering or terrorist financing. In accordance with Article 5 of that directive, Member States may, to that end, introduce restrictions on the use of cash payments that are stricter than those laid down by that directive. Against that background, the referring court wishes to establish whether the restriction on payment in cash imposed by Article 3(1)(1) of the ZOPB comes within the substantive scope of Directive 2015/849, and if so, whether the Member States are free to set a cash payment threshold lower than EUR 10 000.

36 In the third place, if the second question is answered in the affirmative, the referring court considers that it would be necessary to determine, having regard to Article 58(1) and Article 60(4) of Directive 2015/849, read in the light of Article 49(3) of the Charter, the extent to which a national provision such as Article 5(1) of the ZOPB may provide, in respect of all financial transactions, for a financial penalty, payable by legal persons, in a fixed amount representing half the total amount of the cash payment. The further question arises, in the view of the referring court, of whether such a national provision infringes the principle of effective judicial review, enshrined in Article 47 of the Charter, given that it is apparent from Article 27(5) of the ZANN that, in the event that an action is brought against the penalty, the competent national court cannot reduce it below the minimum amount laid down by Article 5(1) of the ZOPB.

37 In those circumstances, the Administrativen sad Blagoevgrad (Administrative Court, Blagoevgrad) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 63 TFEU be interpreted as precluding national legislation such as that in question in the main proceedings, under which domestic payments amounting to [BGN 10 000] or more are only to be made by transfer or deposit into a payment account and which restricts the cash payment of dividends from undistributed profits of BGN 10 000 or more? If Article 63 TFEU does not preclude [such legislation], is such a restriction justified by the aims of [Directive 2015/849]?

(2) Must Article 2(1) of [Directive 2015/849], in consideration of recital 6 and Articles 4 and 5 thereof, be interpreted as not precluding a general national legislative provision such as that in question in the main proceedings, under which domestic payments of BGN 10 000 or more are only to be made by transfer or deposit into a payment account and which has no interest in the person and in the reason for the cash payment and at the same time covers all cash payments among natural and legal persons?

[(a)] If that question is answered in the affirmative, does Article 2(1)(3)(e) of [Directive 2015/849], in consideration of recital 6 and Articles 4 and 5 thereof, allow the Member States to provide for additional general restrictions of domestic cash payments in a national legislative provision such as that in question in the main proceedings, under which domestic cash payments of BGN 10 000 or more are only to be made by transfer or deposit into a payment account, if the reason for the cash payment is “undistributed profit” (dividends)?

[(b)] If that question is answered in the affirmative, does Article 2(1)(3)(e) of [Directive 2015/849], in consideration of recital 6 and Article 5 thereof, allow the Member States to provide for restrictions of cash payments in a national legislative provision such as that in question in the main proceedings, under which domestic payments of BGN 10 000 or more are only to be made by transfer or deposit into a payment account, where the threshold value is below EUR 10 000?

(3) [(a)] Must Article 58(1) and Article 60(4) of [Directive 2015/849], with regard to Article 49(3) of the [Charter], be interpreted as precluding a national legislative provision such as that in question in the main proceedings, which stipulates a fixed level of administrative penalties for infringements of the cash payment restrictions and does not allow any differentiating assessment taking account of the specific relevant circumstances?

[(b)] If the answer is that the provisions of Article 58(1) and Article 60(4) of [Directive 2015/849], with regard to Article 49(3) of the [Charter], allow a national legislative provision such as that in question in the main proceedings, which stipulates a fixed level of administrative penalties for infringements of the cash payment restrictions, must the provisions of Article 58 and Article 60(4) of [Directive 2015/849], in consideration of the principle of effectiveness and the right to an effective remedy under Article 47 of the [Charter], be interpreted as precluding a national legislative provision such as that in question in the main proceedings, which restricts judicial review, if that provision does not allow the court to determine an administrative penalty for infringements of the cash payment restrictions, in the event of an appeal, below the amount that has been set, taking account of the specific relevant circumstances?'

Consideration of the questions referred

The second question

38 By its second question, which it is appropriate to examine in the first place, the referring court asks, in essence, whether Article 2(1)(3)(e) of Directive 2015/849, read in the light of recital 6 of that directive and in conjunction with Articles 4 and 5 thereof, must be interpreted as precluding legislation of a Member State which, for domestic payments the amount of which is equal to or exceeds a set threshold, prohibits natural and legal persons from making payments in cash and requires them to make a transfer or deposit into a payment account.

39 In that regard, it should be borne in mind that Article 2 of Directive 2015/849 lists the entities to which, by reason of their involvement in the execution of a transaction or a financial activity, that directive applies.

40 That directive thus applies, inter alia, in accordance with Article 2(1)(3)(e) thereof, to payments made or received in cash by persons trading in goods in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked.

41 Directive 2015/849 provides, moreover, in Article 4, that Member States may extend that scope to professions or categories of undertakings which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing. In addition, Article 5 of Directive 2015/849 provides that the Member States may equally adopt stricter provisions in the field covered by that directive to prevent such criminal activity, within the limits of EU law. Furthermore, it is apparent from recital 6 of that directive that Member States should 'be able to adopt … thresholds [lower than EUR 10 000], additional general limitations to the use of cash and further stricter provisions'.

42 It is therefore necessary to consider whether national legislation such as that at issue in the main proceedings comes within the scope of Directive 2015/849 and, in particular, one or more of those provisions.

43 In that regard, as the Advocate General noted in point 45 of his Opinion, it appears, having regard to the objectives and general scheme of Directive 2015/849, that it does not.

44 In the first place, as regards the objectives of Directive 2015/849, that directive aims, as is apparent from Article 1 thereof, read in the light of recital 1, to prevent the use of the financial system for the purposes of money laundering and terrorist financing, so as to avoid flows of illicit money damaging the integrity, stability and reputation of the EU financial sector and threatening its internal market as well as international development. As the Advocate General observed in point 46 of his Opinion, that directive effects, to that end, a harmonisation of the measures of due diligence and monitoring which Member States are required to introduce with regard to those categories of profession which are most vulnerable to the manipulation of money derived from serious crime and the collection of money or property for terrorist purposes.

45 While it is true that tax crimes relating to direct and indirect taxes are included in the criminal activities falling within the scope of Directive 2015/849, it is nonetheless apparent from Article 3(4)(f) of that directive, and from recital 11 thereof, that that relates only to crimes which are punishable by deprivation of liberty or a detention order for a certain period. Consequently, Directive 2015/849 is intended to prevent the commission of tax crimes more serious than those resulting from the infringement of a restriction of payments in cash.

46 As regards the national legislation at issue in the main proceedings, it is apparent from the file available to the Court that the objectives it seeks to attain are different from those pursued by Directive 2015/849. It appears that the national legislation seeks to combat tax evasion and avoidance by requiring payments in an amount equal to or greater than BGN 10 000 to be made not in cash, but by transfer or deposit into a payment account, so as to ensure that financial transactions are traceable. According to the Bulgarian Government, the ZOPB is thus intended to restrict the informal sector of the Bulgarian economy and prevent payments or revenue and expenditure being concealed with a view to avoiding payment of the tax provided for by the legislation in force as well as payment of mandatory social security contributions.

47 The Bulgarian Government has also stated, in its written observations, that at national level there are two texts which have been adopted to transpose Directive 2015/849, namely the Zakon za merkite sreshtu izpiraneto na pari (Law on measures to combat money laundering, DV No 27 of 27 March 2018) and the Zakon za merkite sreshtu finansiraneto na terorizma (Law on measures to combat terrorist financing, DV No 16 of 18 February 2003). In contrast, it observes, the ZOPB does not contain any measure concerning efforts to combat money laundering and terrorist financing, and makes no reference to Directive 2015/849.

48 It should be noted, in that regard, that in accordance with Article 67(1) of Directive 2015/849, when the Member States adopt the laws, regulations and administrative provisions necessary to comply with that directive, those measures must contain a reference to the directive or be accompanied by such a reference at the time of their official publication.

49 In the second place, as regards the general scheme of Directive 2015/849, it establishes measures which differ in terms of their nature and their addressees from those implemented by the national legislation at issue in the main proceedings.

50 In relation, first, to the nature of those measures, persons falling within the scope of that directive are – just as they were under Directive 2005/60 – subject to a number of obligations due to their involvement in the execution of a transaction or a financial activity, namely, inter alia, to identify and verify the identity of the client and the beneficial owner, to obtain information on the purpose and intended nature of the business relationship and to report any indication of money laundering

or terrorist financing to the competent authorities (see, to that effect, in relation to Directive 2005/60, judgment of 17 January 2018, *Corporate Companies*, C-676/16, EU:C:2018:13, paragraph 27).

51 In contrast, it is apparent from the file available to the Court that the ZOPB is limited to regulating the use of means of payment by natural or legal persons domestically.

52 It should also be observed that Directive 2015/849 does not contain any provision limiting the amount of payments that can be made in cash; nor does it require Member States to impose such restrictions.

53 Furthermore, while it is apparent, in particular from Article 5 and recital 6 of Directive 2015/849, that that directive does not prevent Member States from adopting or retaining in force stricter provisions to prevent money laundering and terrorist financing, that is not the objective of the legislation at issue in the main proceedings, as is apparent from paragraphs 46 and 47 of this judgment. The measures laid down by that legislation thus do not constitute measures transposing that directive.

54 In relation, second, to the scope *ratione personae* of Directive 2015/849, as the Advocate General observed in point 54 of his Opinion, the measures contained in that directive are addressed, in accordance with Article 2 thereof, to a limited range of entities, which can be identified either on the basis of the degree to which they are exposed to risks of money laundering and terrorist financing, or on the basis of the degree of vulnerability of their transactions or their financial activity.

55 In contrast, it is apparent from the file available to the Court that the national legislation at issue in the main proceedings is applicable to any natural or legal person, regardless of the capacity in which that person makes the payment, of whether the payment relates to a transaction, and, if it does, of the nature of that transaction.

56 Furthermore, it should be noted, having regard to the facts of the dispute in the main proceedings, that the scope of Article 2(1)(3)(e) of Directive 2015/849 is in any event limited to payments made in consideration of a supply of goods, and does not concern the relationship between a company and its shareholders. In those circumstances, the option left open to the Member States by recital 6 of that directive, to adopt thresholds lower than that provided for by Article 2(1)(3)(e), cannot be relevant in a situation such as that at issue in the main proceedings.

57 Similarly, while Article 4 of Directive 2015/849 permits Member States to extend the scope of that directive, that provision envisages such extension only in relation to professionals and categories of undertakings 'which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing'. It thus cannot serve as the legal basis for legislation such as that at issue in the main proceedings, which is applicable, as is apparent from paragraph 55 of this judgment, to any natural or legal person, regardless of the capacity in which that person makes the payment, of whether the payment relates to a transaction, and, if it does, of the nature of that transaction.

58 Having regard to all of the foregoing considerations, the answer to the second question is that legislation of a Member State which, for domestic payments the amount of which is equal to or exceeds a set threshold, prohibits natural and legal persons from making payments in cash and requires them to make a transfer or deposit into a payment account, does not come within the scope of Directive 2015/849.

The first and third questions

59 By its first and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 63 TFEU, read in conjunction with Article 49(3) of the Charter, must be interpreted as precluding legislation of a Member State which, first, prohibits natural and legal persons from making domestic payments in cash where the amount of the payment is equal to or exceeds a set threshold and requires, to that end, a transfer or deposit into a payment account, including as regards the distribution of dividends of a company, and second, provides for a system of penalties for infringing that prohibition in the context of which the amount of the fine that may be imposed is calculated as a fixed percentage of the total amount of the payment made in breach of that prohibition, without it being possible to adjust that fine depending on the particular circumstances of the case.

60 As a preliminary remark, it should be noted that while, in the absence of common or harmonised rules concerning the circumstances in which and the methods by which Member States may restrict cash payments domestically, they are free to introduce such restrictions, they are nevertheless obliged to make use of that option in a manner that is consistent with EU law (see, by analogy, judgment of 22 November 2018, *Vorarlberger Landes- und Hypothekenbank*, C-625/17, EU:C:2018:939, paragraph 27 and the case-law cited).

61 Under Article 63(1) TFEU, all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited.

62 It follows from consistent case-law of the Court that the concept of a 'restriction' in Article 63 TFEU covers, generally, any restriction on movements of capital both between Member States and between Member States and third countries (judgment of 18 June 2020, *Commission* v *Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 52 and the case-law cited).

63 Furthermore, in accordance with the Court's case-law, the measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include those that are such as to discourage non-residents from making investments in a Member State or to discourage that Member State's residents from doing so in other States (see, to that effect, judgment of 30 April 2020, *Société Générale*, C-565/18, EU:C:2020:318, paragraph 22 and the case-law cited).

64 It is apparent from the file available to the Court that the national legislation at issue in the main proceedings limits the means by which a company may pay dividends which have fallen due for payment to its shareholders, both resident and non-resident, and, in that regard, excludes payment in cash in Bulgaria from the lawful means of payment, where the amount of the payment is equal to or greater than a set amount. In the present case, that legislation is applicable to the distribution of dividends by a company established in Bulgaria to a shareholder who is a citizen and resident of another Member State.

65 While it applies indiscriminately, the restriction on the lawful means of payment by which a company established in a Member State may pay dividends which have fallen due for payment to its shareholders is liable to dissuade certain investors and non-residents from acquiring a shareholding in a company established in that Member State. It should be observed, in that regard, that the articles of the FEU Treaty relating to the free movement of goods, persons, services and capital are fundamental provisions of EU law and that any restriction of that freedom, however minor, is prohibited (see, to that effect, judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs*, C-514/12, EU:C:2013:799, paragraph 34 and the case-law cited).

66 Accordingly, a prohibition such as that at issue in the main proceedings constitutes a restriction on the free movement of capital.

67 According to settled case-law of the Court, the free movement of capital may be limited by national legislation only if it is justified by one of the reasons mentioned in Article 65 TFEU or by overriding reasons in the public interest as defined in the Court's case-law, to the extent that there are no harmonising measures at European Union level ensuring the protection of those interests (judgment of 13 November 2014, *Commission* v *United Kingdom*, C-112/14, not published, EU:C:2014:2369, paragraph 23 and the case-law cited).

68 In particular, the Court has repeatedly held that the objectives of combating tax evasion and tax avoidance may justify a restriction of the free movement of capital, provided that that restriction is appropriate for attaining those objectives and does not go beyond what is necessary for attaining them (see, to that effect, judgment of 13 November 2014, *Commission* v *United Kingdom*, C-112/14, not published, EU:C:2014:2369, paragraph 24 and the case-law cited).

69 The Court has also held that the need to ensure the effective collection of tax is a legitimate objective capable of justifying a restriction on fundamental freedoms. A Member State may therefore apply measures which enable the amount of the tax payable to be ascertained clearly and precisely, provided, once again, that those measures are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for that purpose (judgment of 30 April 2020, *Société Générale*, C-565/18, EU:C:2020:318, paragraph 38 and the case-law cited).

70 In the present case, as is apparent from paragraph 46 of this judgment, the national legislation at issue in the main proceedings seeks to combat tax evasion and tax avoidance by requiring payments of an amount equal to or greater than BGN 10 000 to be made not in cash, but by means of a transfer or deposit into a payment account, so as to ensure that financial transactions are traceable, which also contributes to efforts to combat the emergence of a parallel economy characterised by illicit trading. According to the Bulgarian Government, the ZOPB thus seeks to limit cash payment practices, including the payment of sums exceeding those set out in the accounting documents, which thus escape personal and corporate income tax, as well as mandatory social insurance contributions. Accordingly, as the Advocate General indicated in point 83 of his Opinion, the obligation, when making a distribution of dividends, to do so by means of a bank transfer or a deposit into a payment account helps to prevent such distributions being concealed, and thus to ensure that such dividends are taxed by the Member State in which the company concerned is established.

71 It follows that a restriction on the free movement of capital such as that resulting from the national legislation at issue in the main proceedings may be justified by the objective of combating tax evasion and avoidance. As is apparent from paragraph 68 and 69 of this judgment, the restriction must also be appropriate for ensuring the attainment of that objective, and it must not go beyond what is necessary for attaining it.

72 While it is ultimately for the national court, which has sole jurisdiction to assess the facts and interpret the national legislation, to determine whether those requirements are met in the case in point, the Court, in the context of a reference for a preliminary ruling, may provide the referring court with guidance, on the basis of the documents relating to the main proceedings and the written and oral observations which have been submitted to it, in order to enable that court to resolve the dispute before it (see, to that effect, judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 79 and the case-law cited).

73 In that regard, it should be observed, in the first place, as regards the issue of whether the national legislation at issue in the main proceedings is appropriate for ensuring attainment of the objectives pursued that, according to the settled case-law of the Court, national legislation is appropriate for ensuring attainment of the objective relied on only if it genuinely reflects a concern to attain that objective in a consistent and systematic manner (see, to that effect, judgments of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, paragraph 66, and of 21 May 2019, *Commission v Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 61 and the case-law cited).

74 In the present case, as the Advocate General observed in point 88 of his Opinion, and subject to the verifications which it is for the referring court to carry out, it is apparent, first, from the file available to the Court, that the national legislation at issue in the main proceedings seeks to enable the national authorities to detect and, where appropriate, penalise tax evasion as widely as possible.

75 Subject to the exceptions referred to in Article 2 of the ZOPB, that legislation appears to apply, as is apparent from paragraph 55 of this judgment, uniformly to all natural and legal persons making a domestic payment in an amount equal to or greater than the threshold of BGN 10 000. All economic actors and sectors are thus subject to the same obligations, regardless of the nature or purpose of the transaction to which the payment relates.

76 Furthermore, the threshold of BGN 10 000 appears to be applicable whether the transaction is carried out singly or in the form of several linked transactions, which allows detection of attempts to avoid the applicable legislation by dividing the payment of the sum due into as many instalments as are necessary to take it out of the scope of the ZOPB.

77 Second, the means of payment laid down by the national legislation at issue in the main proceedings for payments in an amount equal to or greater than BGN 10 000 appear to be appropriate for ensuring that fraudulent transactions are identified and that the tax rules are applied.

78 Bank transfers and deposits into a payment account help to remove the element of anonymity in financial transactions and to ensure that such transactions are traceable, so that they can be recorded and taxed by the revenue authorities of the State – whereas cash payments do not.

79 Third, and lastly, as regards the alignment of the system of penalties provided for by the national legislation at issue in the main proceedings with the objectives pursued by that legislation, it must be noted that that system is designed to penalise infringement of the legislation concerning the restriction of cash payments by a fine in an amount which, depending on the circumstances, may be 25%, 50% or 100% of the amount of the payment made. It must be recognised that, in taking that approach, such a system of penalties combats tax evasion and avoidance by prevention and deterrence.

80 It follows from the foregoing considerations that national legislation, such as that at issue in the main proceedings, which prohibits domestic payments being made in cash where the amount of the payment is equal to or greater than a set threshold and requires, to that end, a transfer or deposit into a payment account, subject to penalties ranging from 25% to 100% of the total amount paid in cash, appears, subject to the verifications which it is for the referring court to carry out, to be appropriate for attaining, in a coherent and systematic manner, the objectives of combating tax evasion and tax avoidance.

81 As regards, in the second place, the question whether the national legislation at issue in the main proceedings goes beyond what is necessary for attaining the objectives it pursues, it must be noted, first, that the threshold of BGN 10 000, which signifies an obligation to make a transfer or a deposit into a payment account, does not appear to be excessively low, because it does not lead to a situation in which individuals would find, in respect of their everyday purchases or transactions, that cash payments were refused. Furthermore, it must be noted that, in accordance with Article 2(6) of the ZOPB, that law does not apply to the payment of wages, within the meaning of the Labour Code.

82 In addition, it does not appear that the payment of an amount greater than the threshold prescribed by the national legislation at issue in the main proceedings, by means of a transfer or a deposit into a payment account, prevents or delays, in the circumstances under consideration, the execution of the payment transaction.

83 In the light of those considerations, and subject to the verifications which it is for the referring court to carry out, the prohibition on making a domestic payment in cash where the amount of that payment is equal to or exceeds a threshold set by the national legislation at issue in the main proceedings, and the obligation to make such payments by means of a transfer or deposit into a payment account, do not appear to go beyond what is necessary for attaining the objectives pursued by that legislation.

84 Second, as regards the proportionality of the system of penalties provided for by that legislation, by way of response to infringement of the prohibition on making domestic payments in cash, where the amount of the payment is equal to or exceeds a threshold set by that legislation, it is clear from settled case-law of the Court that, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under such legislation are not complied with, Member States are empowered to choose the sanctions which seem to them to be appropriate. They must, however, exercise their powers in accordance with EU law and its general principles, and, consequently, in accordance with the principle of proportionality (judgments of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 21 and the case-law cited, and of 2 June 2016, *Kapnoviomichania Karelia*, C-81/15, EU:C:2016:398, paragraph 48 and the case-law cited).

85 In that context, it should also be borne in mind that the fundamental rights guaranteed by the Charter are applicable in all situations governed by EU law and that they must, therefore, be complied with inter alia where national legislation falls within the scope of EU law (see, in particular, judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 63 and the case-law cited).

86 That is inter alia the case where national legislation is such as to obstruct one or more of the fundamental freedoms guaranteed by the FEU Treaty and the Member State concerned relies on grounds envisaged in Article 65 TFEU, or on overriding reasons in the public interest that are recognised by EU law, in order to justify such an obstacle. In such a situation, the national legislation concerned can, according to settled case-law, fall within the exceptions thereby provided for only if it complies with the fundamental rights the observance of which is ensured by the Court (judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 64 and the case-law cited).

87 It should be pointed out, in that regard, that where a Member State enacts a measure that derogates from a fundamental freedom guaranteed by the FEU Treaty, such as the free movement of capital, that measure falls within the scope of EU law (see, by analogy, judgment of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, paragraph 56).

88 The use by a Member State of the exceptions provided for by EU law in order to justify an impediment to a fundamental freedom guaranteed by the Treaty must be regarded as 'implementing Union law' within the meaning of Article 51(1) of the Charter (judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 65 and the case-law cited).

89 In the present case, as is apparent from paragraphs 66 and 71 of this judgment, a prohibition such as that provided for by the national legislation at issue in the main proceedings constitutes a restriction on the free movement of capital which is capable of being justified by overriding reasons in the public interest. In those circumstances, the compatibility of that legislation with EU law must be examined in the light both of the exceptions thus provided for by the Court's case-law and of the fundamental rights guaranteed by the Charter, one of which is the principle of proportionality of penalties set out in Article 49(3) of the Charter, to which the referring court's third question refers (see, by analogy, judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 66 and the case-law cited).

90 Given that Article 49(3) of the Charter, which provides that the severity of penalties must not be disproportionate to the criminal offence, relates to penalties of a criminal nature, it is first necessary to determine whether the system of penalties at issue in the main proceedings is criminal in nature.

91 In that regard, it must be noted that, according to the case-law of the Court, three criteria are relevant. The first criterion is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty that the person concerned is liable to incur (judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 26 and the case-law cited).

92 Although it is for the referring court to assess, in the light of those criteria, whether the penalties provided for by the national legislation at issue in the main proceedings are criminal in nature for the purposes of Article 49(3) of the Charter, the Court, when giving a preliminary ruling, may

nevertheless provide clarification designed to give the national court guidance in its assessment (see, by analogy, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 27 and the case-law cited).

93 In that regard, as the Advocate General noted in point 117 of his Opinion, it is apparent first of all from the order for reference that the fine or financial penalty which can be imposed on a person infringing the prohibition on making a domestic payment in cash where the amount is equal to or greater than the threshold set by the national legislation at issue in the main proceedings is an administrative penalty of a criminal nature. It is thus apparent from the order for reference that the administrative penalty is imposed in criminal proceedings.

94 Next, that penalty is not limited to compensation for the harm caused by the infringement, but is punitive in nature, in that it seeks to suppress infringements of the prohibition. It thus appears that that penalty has a punitive purpose, which is the hallmark of a penalty of a criminal nature for the purposes of Article 49 of the Charter (see, by analogy, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 32).

95 Lastly, the severity of that penalty is liable to support the view that it is of a criminal nature for the purposes of Article 49 of the Charter, which is however for the referring court to determine (see, by analogy, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 33). In that regard, it is apparent from the order for reference that the administrative penalty provided for by the ZOPB takes the form, in accordance with Article 5 thereof, of a fine in an amount equivalent, where the infringing party is a natural person, to 25% of the total amount of the payment made, or 50% in the case of a repeat infringement, or of a financial penalty in an amount equivalent, where the infringing party is a legal person, to 50% of the total amount of the payment made, or 100% in the case of a repeat infringement.

96 Consequently, it appears that the system of penalties provided for by the national legislation at issue in the main proceedings is criminal in nature and can therefore be assessed in the light of the principle of proportionality enshrined in Article 49(3) of the Charter.

97 In that regard, it should be borne in mind that the severity of a penalty must correspond to the seriousness of the offence concerned, that requirement following both from Article 52(1) of the Charter and from the principle of proportionality of penalties in Article 49(3) of the Charter (see, to that effect, judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 42 and the case-law cited).

98 It should also be borne in mind that the principle of proportionality has to be observed, not only as regards the determination of factors constituting an infringement, but also the determination of the rules concerning the severity of fines and the assessment of the factors which may be taken into account in the fixing of those fines (see, to that effect, judgment of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 40 and the case-law cited).

99 It is also apparent from the case-law of the Court that the administrative or punitive measures permitted under national legislation must not go beyond what is necessary in order to attain the objectives legitimately pursued by that legislation (judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 22 and the case-law cited).

100 In that context, the Court has stated that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality (see, to that effect, judgments of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 23 and the case-law cited, and of 15 April 2021, *Braathens Regional Aviation*, C-30/19, EU:C:2021:269, paragraph 38).

101 In the present case, it is important to note, in relation to the nature and seriousness of the infringement, that the national legislation at issue in the main proceedings seeks to penalise non-compliance with the restriction on cash payments and the requirement for the use of a transfer or a deposit into a payment account, where the amount to be paid is equal to or greater than a set threshold, whether or not such non-compliance is linked to fraudulent or unlawful activities. There is nothing in the file available to the Court to indicate that that penalty is dependent on a finding of tax evasion.

102 It should be noted that, in the dispute in the main proceedings, the penalised infringement consists in the decision of a shareholder and managing director of a company to receive dividends in cash, in an amount well in excess of the threshold set by the national legislation for payment in cash, in spite of the legal prohibition.

103 As regards the arrangements for determining the amount of the penalty, it is calculated as a fixed percentage amounting, for natural persons, to 25% of the total amount of the payment made in breach of the national legislation at issue in the main proceedings and, in the case of a repeat infringement, to 50% of that amount. For legal persons, the fixed percentage is 50% of the total amount of the payment made in cash and, in the case of a repeat infringement, 100% of that amount.

104 A system under which the amount of the penalty varies as a function of the amount paid in breach of such legislation does not appear, in principle, to be disproportionate in itself. It should be observed in that regard that the amount of the fines provided for by the national legislation at issue in the main proceedings is not absolute, but increases in a linear fashion to reflect the amount paid in breach of that legislation and, accordingly, to reflect the extent and seriousness of the irregularity committed (see, by analogy, judgment of 16 March 2006, *Emsland-Stärke*, C-94/05, EU:C:2006:185, paragraphs 55 and 56).

105 It should also be noted that the situation of the person committing the infringement is taken into account, inasmuch as that legislation provides for a degree of individualisation of the penalty, a first infringement being more leniently penalised than subsequent infringements.

106 Furthermore, it appears from the clarification provided by the referring court, as well as the Bulgarian Government's responses to the Court's questions, that in the context of determining whether the infringement is minor, for the purposes of Article 28(a) of the ZANN, the national authority responsible for penalising the infringement, and the judicial authority hearing an appeal against a decision imposing an administrative penalty, may take account of all the matters and all the circumstances of the case referred to in Article 27(2) and (3) of the ZANN.

107 It is also important to note, as regards the issue of whether such penalties are dissuasive, that the non-compliance with the restriction on payments in cash relates, in the present case, to a relatively large sum, and that such non-compliance would appear to be difficult to detect, which could justify a system under which significant penalties are imposed, with a view to combating tax evasion and tax avoidance.

108 As the Bulgarian Government states in its written observations, non-compliance with the restriction on payments in cash is most often associated with concealment of a certain amount of a legal person's revenue and, accordingly, with non-compliance with the national tax and social security legislation. The level of the penalty is thus preventative, in relation to those risks, and liable to dissuade the persons concerned.

109 Having regard to the foregoing, the system of penalties provided for by the national legislation at issue in the main proceedings does not appear to go beyond what is necessary for attaining its objectives of combating tax evasion and avoidance. Nonetheless, as is apparent from the case-law of the Court referred to in paragraph 72 of this judgment, it is ultimately for the referring court to carry out the concrete examination of the proportionality of that legislation, taking account in particular of the imperatives of suppression and prevention, as well as the amounts at issue and the level of the penalties actually imposed.

110 In particular, a fine corresponding to 100% of the total amount paid in cash, in breach of the national legislation at issue in the main proceedings, would go beyond what is necessary in order to ensure compliance with the obligation to make payments by means of a transfer or deposit into a payment account (see, by analogy, judgment of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 45).

111 In the light of all the foregoing considerations, the answer to the first and third questions is that Article 63 TFEU, read in conjunction with Article 49(3) of the Charter, must be interpreted as not precluding legislation of a Member State which, with a view to combating tax evasion and tax avoidance, first, prohibits natural and legal persons from making domestic payments in cash where the amount of the payment is equal to or exceeds a set threshold and requires, to that end, a transfer or deposit into a payment account, including as regards the distribution of dividends of a company, and second, provides for a system of penalties for infringing that prohibition in the context of which the amount of the fine that may be imposed is calculated as a fixed percentage of the total amount of the payment made in breach of that prohibition, without it being possible to adjust that fine depending on the particular circumstances of the case, provided that that legislation is appropriate for securing attainment of those objectives and does not go beyond what is necessary for attaining them.

Costs

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

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

1. **Legislation of a Member State which, for domestic payments the amount of which is equal to or exceeds a set threshold, prohibits natural and legal persons from making payments in cash and requires them to make a transfer or deposit into a payment account does not come within the scope of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.**

2. **Article 63 TFEU, read in conjunction with Article 49(3) of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State which, with a view to combating tax evasion and tax avoidance, first, prohibits natural and legal persons from making domestic payments in cash where the amount of the payment is equal to or exceeds a set threshold and requires, to that end, a transfer or deposit into a payment account, including as regards the distribution of dividends of a company, and second, provides for a system of penalties for infringing that prohibition in the context of which the amount of the fine that may be imposed is calculated as a fixed percentage of the total amount of the payment made in breach of that prohibition, without it being possible to adjust that fine depending on the particular circumstances of the case, provided that that legislation is appropriate for securing attainment of those objectives and does not go beyond what is necessary for attaining them.**

[Signatures]