Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

2 March 2023 *

(Reference for a preliminary ruling – Articles 56 and 63 TFEU – Freedom to provide services – Free movement of capital – National measure imposing an obligation on a credit institution to terminate business relationships with non-nationals or no longer to enter into such relationships – Restriction – Article 65(1)(b) TFEU – Justification – Directive (EU) 2015/849 – Prevention of the use of the financial system for the purpose of money laundering and terrorist financing – Proportionality)

In Case C-78/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), made by decision of 11 January 2021, received at the Court on 1 February 2021, in the proceedings

AS 'PrivatBank',

A,

B,

Unimain Holdings LTD

v

Finanšu un kapitāla tirgus komisija,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen, Vice-President of the Court, acting as Judge of the First Chamber, P.G. Xuereb, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: J. Kokott,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 27 April 2022,

* Language of the case: Latvian.

after considering the observations submitted on behalf of:

– AS ‘PrivatBank’, by A. Medne, advokāte,

– A, B and Unimain Holdings LTD, by J. Loze, K. Loze and L. Mence, advokāti,

– the Finanšu un kapitāla tirgus komisija, by J. Pogiļdjakova, L. Skolmeistare and I. Skuja-Ķirķe,

– the Latvian Government, by J. Davidoviča, K. Pommere and I. Romanovska, acting as Agents,

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

– the European Commission, by L. Malferrari, A. Sauka and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 September 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 63(1) and Article 65(1)(b) TFEU, Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the [EC] Treaty [(article repealed by the Treaty of Amsterdam)] (OJ 1988 L 178, p. 5) and Article 1 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the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).

2 The request has been made in proceedings between AS ‘PrivatBank’, A and B and Unimain Holdings LTD, on the one hand, and the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission, Latvia) (‘the FKTK’), on the other, concerning the lawfulness of a sanction and administrative measures imposed by the latter on PrivatBank in order to prevent the risk that that credit institution might become involved in money laundering and terrorist financing.

Legal context

European Union law

Directive 88/361

3 Article 1(1) of Directive 88/361 provides:

‘Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate

application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.'

4 The introduction to Annex I to that directive states:

'In this Nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this Nomenclature are taken to cover:

– all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),

…

This Nomenclature is not an exhaustive list for the notion of capital movements – whence a heading XIII – F. "Other capital movements – Miscellaneous". It should not therefore be interpreted as restricting the scope of the principle of full liberalization of capital movements as referred to in Article 1 of the Directive.'

5 The capital movements listed in Annex I include, under Heading VI, 'Operations in current and deposit accounts with financial institutions' and, under Heading VIII, 'Financial loans and credits (not included under I, VII and XI)'.

6 Lastly, Annex I states, in the section entitled 'Explanatory notes', that 'financial institutions' means 'banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character' and that 'credit institutions' means 'banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit'.

Directive 2015/849

7 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 [European] 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.'

8 Article 1(1) and (2) of that directive provides:

'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.'

9 Article 5 of Directive 2015/849 provides:

‘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.’

10 Article 8(1) and (3) of Directive 2015/849 is worded as follows:

‘1. Member States shall ensure that obliged entities take appropriate steps to identify and assess the risks of money laundering and terrorist financing, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels. Those steps shall be proportionate to the nature and size of the obliged entities.

…

3. Member States shall ensure that obliged entities have in place policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified at the level of the Union, the Member State and the obliged entity. Those policies, controls and procedures shall be proportionate to the nature and size of the obliged entities.’

11 Article 11 of that directive provides:

‘Member States shall ensure that obliged entities apply customer due diligence measures in the following circumstances:

…

(b) when carrying out an occasional transaction that:
(i) amounts to EUR 15 000 or more, whether that transaction is carried out in a single operation or in several operations which appear to be linked;

…’

12 Article 13(1) of Directive 2015/849 states:

‘Customer due diligence measures shall comprise:

(a) identifying the customer and verifying the customer’s identity …;

…

(c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;

(d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity’s knowledge of the customer, the business and risk profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date.

…’

13 Article 59(1), (2) and (4) of Directive 2015/849 provides:

‘1. Member States shall ensure that this Article applies at least to breaches on the part of obliged entities that are serious, repeated, systematic, or a combination thereof, of the requirements laid down in:

(a) Articles 10 to 24 (customer due diligence);

…

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

…

(c) where an obliged entity is subject to an authorisation, withdrawal or suspension of the authorisation;

…

4. Member States may empower competent authorities to impose additional types of administrative sanctions in addition to those referred to in points (a) to (d) of paragraph 2 or to impose administrative pecuniary sanctions exceeding the amounts referred to in point (e) of paragraph 2 and in paragraph 3.’

Latvian law

14 The Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums (Law on the prevention of money laundering and the financing of terrorism and proliferation) of 17 July 2008 (*Latvijas Vēstnesis*, 2008, No 116; ‘the Law on prevention’) was amended for the purpose, inter alia, of transposing Directive 2015/849 into Latvian law.

15 The referring court states that Article 5, Article 6(13) and Article 7(1)(3) of the Finanšu un kapitāla tirgus komisijas likums (Law on the Financial and Capital Market Commission) of 1 June 2000 (*Latvijas Vēstnesis*, 2000, No 230/232), Article 45(1)(1) of the Law on prevention, and Article 99.[1] and Article 113(1)(4) of the Kredītiestāžu likums (Law on credit institutions) of 5 October 1995 (*Latvijas Vēstnesis*, 1995, No 163), as in force at the time of the facts, provided, in essence, that the FKTK is to carry out supervision and monitoring to ensure that financial and capital markets institutions comply with the requirements of the Law on prevention and that that authority is to have the power to impose restrictions on a credit institution’s rights and activities, including suspending all or part of its financial services and imposing restrictions on compliance with obligations.

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

16 PrivatBank is a credit institution established in Latvia, of which A and B, who are Cypriot nationals, and Unimain Holdings, a company established in Cyprus, are the shareholders. It is apparent from the order for reference that those shareholders are also customers of PrivatBank.

17 The FKTK undertook an inspection of PrivatBank's activities to assess whether that credit institution was complying with the legislative requirements on the combating of money laundering and the financing of terrorism and, in particular, whether it was carrying out due diligence measures on customers connected to its shareholders and was monitoring their transactions.

18 During that inspection, the FKTK found that PrivatBank was failing to comply with certain requirements concerning the prevention of money laundering and terrorist financing laid down, inter alia, in the Law on prevention. The FKTK took the view that PrivatBank's internal control system concerning customer due diligence and the monitoring of transactions did not enable it to be ensured that that credit institution was providing effective management of the relevant risks. In particular, PrivatBank had created more favourable conditions for certain customers, whose beneficial owners are its shareholders, as regards the monitoring of transactions carried out by existing customers as well as the registration of new customers.

19 By decision of 13 September 2019, the FKTK fined PrivatBank and also imposed on it, inter alia, an administrative measure which, until such time as it implements certain measures provided for in that decision and obtains approval from the FKTK in that regard, prohibits it, as from the adoption of that decision, from entering into business relationships with:

– natural persons who have no links with the Republic of Latvia and a monthly account turnover exceeding EUR 15 000;

– legal persons whose economic activity is not connected to the Republic of Latvia and whose monthly account turnover exceeds EUR 50 000;

– legal persons whose beneficial owners are shareholders in PrivatBank and parties related to shareholders,

and requires it immediately to terminate any such relationships entered into after the adoption of that decision.

20 In addition, PrivatBank was required to ensure that the monthly account turnover of customers whose beneficial owners are shareholders in that credit institution or their related parties and that of persons in the group of customers connected to such customers do not, according to information supplied by that credit institution, exceed the average monthly account turnover for the customer in question for 2019.

21 PrivatBank lodged an action with the Administratīvā apgabaltiesa (Regional Administrative Court), the referring court, seeking to have the decision of 13 September 2019 annulled in so far as that decision concerns the finding of a breach and the imposition of a fine. For their part, A, B and Unimain Holdings lodged an action with that court seeking the annulment of the administrative measure provided for in that decision.

22 In their action, A, B and Unimain Holdings submit that the administrative measure at issue in the main proceedings infringes Articles 18 and 63 TFEU. They state that the restrictions on the movement of capital resulting from that measure were not imposed in response to any unlawful activities or on the basis of the provisions on the prevention of money laundering in force within the European Union. Those restrictions were adopted and apply in relation to any natural or legal person, even where that person is acting lawfully. Moreover, by imposing on PrivatBank the obligation to restrict its working relationships solely to Latvian nationals and commercial companies established in Latvia, the FKTK is requiring it automatically to treat all other persons, including Member State nationals and undertakings established in the European Union, as potentially high risk and dangerous.

23 In its defence, the FKTK submits that the administrative measure at issue in the main proceedings cannot be regarded as a restriction on the free movement of capital, since it applies only to a specific credit institution, in this case PrivatBank, and affects only a limited group of customers. Thus, those customers could deposit funds in any other credit institution authorised in Latvia. The objective of that administrative measure is, in particular, to put an end to the infringements committed by PrivatBank and to prevent any future infringements in the field of money laundering. In any event, that administrative measure constitutes a restriction that is permissible and proportionate for the purpose of Article 65(1)(b) TFEU.

24 In those circumstances, the Administratīvā apgabaltiesa (Regional Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) May financial loans and credits and operations in current and deposit accounts with financial institutions (including banks), referred to in Annex I to [Directive 88/361], also be classed as movements of capital within the meaning of Article 63(1) of the Treaty on the Functioning of the European Union?

(2) Does a restriction (which does not follow directly from the Member State’s legislation) imposed on a specific credit institution by the competent authority of a Member State, prohibiting the institution from entering into business relationships with persons who are not nationals of the Republic of Latvia and requiring it to terminate any such existing relationships, constitute a measure adopted by a Member State for the purposes of Article 63(1) of the Treaty on the Functioning of the European Union and, as such, amount to a restriction on the principle of free movement of capital between Member States arising from that provision?

(3) Is the restriction on the free movement of capital, which is guaranteed under Article 63(1) of the Treaty on the Functioning of the European Union, justified by the objective of preventing the use of the Union’s financial system for the purposes of money laundering and terrorist financing, which is set out in Article 1 of Directive [2015/849]?

(4) Is the means chosen by the Member State – the imposition on a specific credit institution of a prohibition on entering into business relationships with persons who are not nationals of a specific Member State (the Republic of Latvia) and a requirement to terminate any such existing relationships – appropriate to achieve the objective established in Article 1 of Directive [2015/849], and does it therefore constitute an exception provided for in Article 65(1)(b) of the Treaty on the Functioning of the European Union?’

Consideration of the questions referred

The first question

25 By its first question, the referring court asks, in essence, whether financial loans and credits and operations in current and deposit accounts with financial institutions and, in particular, credit institutions constitute movements of capital within the meaning of Article 63(1) TFEU.

26 According to the settled case-law of the Court, Article 63(1) TFEU lays down a general prohibition on restrictions on the movement of capital between Member States and between Member States and third countries (judgment of 21 December 2021, *Finanzamt V (Inheritance – Partial allowance and deduction of reserved portions)*, C-394/20, EU:C:2021:1044, paragraph 28).

27 In the absence, in the FEU Treaty, of a definition of the concept of 'movement of capital' within the meaning of Article 63(1) TFEU, the Court has recognised the nomenclature of capital movements included in Annex I to Directive 88/361 as having indicative value for the purpose of defining that concept, it being understood that, as pointed out in the introduction to that annex, that nomenclature is not exhaustive (judgments of 15 February 2017, *X*, C-317/15, EU:C:2017:119, paragraph 27 and the case-law cited, and of 16 September 2020, *Romenergo and Aris Capital*, C-339/19, EU:C:2020:709, paragraph 32).

28 Nevertheless, Annex I makes reference, under Heading VI, to 'Operations in current and deposit accounts with financial institutions' and, under Heading VIII, to 'Financial loans and credits'. Furthermore, that annex, in the section entitled 'Explanatory notes', states that the term 'financial institutions' refers, inter alia, to banks.

29 Lastly, the Court has already held that the activity of granting credit on a commercial basis also concerns the free movement of capital (see, to that effect, judgments of 3 October 2006, *Fidium Finanz*, C-452/04, EU:C:2006:631, paragraph 43, and of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123, paragraph 53 and the case-law cited).

30 In the light of the foregoing considerations, the answer to the first question is that financial loans and credits and operations in current and deposit accounts with financial institutions and, in particular, credit institutions constitute movements of capital within the meaning of Article 63(1) TFEU.

The second question

Preliminary observations

31 By its second question, the referring court asks, in essence, whether an administrative measure by which the competent national authority imposes on a credit institution, first, a prohibition on entering into business relationships with persons who are not Latvian nationals and, secondly, an obligation to terminate any such existing business relationships amounts to a restriction within the meaning of Article 63(1) TFEU.

32 In the first place, it should be noted that, on 10 March 2022, in response to a request for clarification made by the Court, the referring court stated that the identification of persons with whom PrivatBank cannot establish or maintain business relationships pursuant to the administrative measure at issue in the main proceedings is based, first, on the criterion of the connection that natural or legal persons have with Latvia and, secondly, on that of the monthly level of account turnover. Therefore, that measure does not necessarily affect solely relationships between that credit institution and natural persons who are not Latvian nationals.

33 In the second place, in the context of the second question, the referring court asks the Court whether a measure which does not follow directly from national legislation but which has been imposed by a competent authority of a Member State, such as the FKTK, constitutes 'a measure adopted by a Member State for the purposes of Article 63(1) of the Treaty on the Functioning of the European Union and, as such, [amounts] to a restriction on the principle of free movement of capital between Member States'.

34 In that regard, it must be borne in mind, first, that it is for the referring court to determine whether such an administrative measure is compatible with higher-ranking national provisions. Secondly, as the European Commission submits in its written observations, Article 63(1) TFEU is intended to bring about the elimination, inter alia, of administrative obstacles which are capable of impairing the free movement of capital between Member States (see, to that effect, judgment of 27 October 2005, *Trapeza tis Ellados*, C-329/03, EU:C:2005:645, paragraph 25 and the case-law cited). Accordingly, an administrative measure included in a prudential decision adopted by a public authority such as the FKTK may amount to a restriction within the meaning of that provision.

35 In the third place, it must be borne in mind that, according to settled case-law, in order to provide a satisfactory answer to the national court which has referred a question to it, the Court of Justice may deem it necessary to consider provisions of EU law to which the national court has not referred in its question (judgment of 2 September 2021, *LG and MH (Self-laundering)*, C-790/19, EU:C:2021:661, paragraph 43 and the case-law cited).

36 In this case, the parties to the main proceedings, the Italian and Latvian Governments and the Commission submitted, in their written or oral observations, that the administrative measure at issue in the main proceedings could be analysed not only in the light of the free movement of capital, provided for in Article 63(1) TFEU, but also in the light of the freedom to provide services, guaranteed under Article 56 TFEU.

37 In that regard, it follows from the case-law of the Court that the business of a credit institution, consisting of granting credit, constitutes a service within the meaning of Article 56 TFEU (judgment of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123, paragraph 58 and the case-law cited).

38 Thus, and also taking into account the case-law cited in paragraph 29 above, operations of a grant of credit on a commercial basis relate, in principle, both to the freedom to provide services within the meaning of Articles 56 TFEU et seq. and to the free movement of capital within the meaning of Articles 63 TFEU et seq. (see, to that effect, judgment of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123, paragraph 53 and the case-law cited).

39 Where a national measure relates to both the freedom to provide services and the free movement of capital, it is necessary to consider to what extent the exercise of those fundamental freedoms is affected and whether, in the circumstances of the case, one of them prevails over the other. The Court will, in principle, examine the measure in dispute in relation to only one of those two freedoms if it appears, in the circumstances of the case, that one of them is entirely secondary in relation to the other and may be considered together with it (judgment of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123, paragraph 54 and the case-law cited).

40 In this case, it is apparent that, as the Advocate General observed in points 44 and 45 of her Opinion, the administrative measure at issue in the main proceedings concerns, to the same extent, both the use of PrivatBank's financial services and capital flows as such.

41 First, that administrative measure, by virtue, in particular, of the criterion of the monthly level of account turnover, directly affects the movement of capital, irrespective of the use by the customer concerned of advisory services provided by PrivatBank. Secondly, an administrative measure prohibiting a credit institution from entering into business relationships with certain customers and requiring it to terminate any such existing business relationships affects that credit institution's freedom to provide services.

42 In the light of the foregoing considerations, it is appropriate to reformulate the second question referred to the effect that, by that question, the referring court asks, in essence, whether the first paragraph of Article 56 and Article 63(1) TFEU must be interpreted as meaning that an administrative measure by which the competent authority of a Member State, first, prohibits a credit institution from entering into business relationships with any natural or legal person who has no connection with the Member State in which that institution is established and whose monthly account turnover exceeds a certain level, and, secondly, requires that institution to terminate any such business relationships entered into after the adoption of that measure, amounts to a restriction on the freedom to provide services, within the meaning of the first of those provisions, and a restriction on the movement of capital, within the meaning of the second of those provisions.

The existence of a restriction on the freedom to provide services and the free movement of capital

43 In the first place, it must be borne in mind that Article 56 TFEU precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within a Member State. In accordance with the Court's case-law, Article 56 TFEU requires the abolition of any restriction on the freedom to provide services imposed on the ground that the person providing a service is established in a Member State other than that in which the service is provided (judgment of 22 November 2018, *Vorarlberger Landes- und Hypothekenbank*, C-625/17, EU:C:2018:939, paragraph 28 and the case-law cited).

44 Restrictions on the freedom to provide services are national measures which prohibit, impede or render less attractive the exercise of that freedom (judgment of 22 November 2018, *Vorarlberger Landes- und Hypothekenbank*, C-625/17, EU:C:2018:939, paragraph 29 and the case-law cited).

45 Furthermore, according to settled case-law of the Court, Article 56 TFEU confers rights not only on the provider of services but also on the recipient of those services (judgment of 30 January 2020, *Anton van Zantbeek*, C-725/18, EU:C:2020:54, paragraph 24 and the case-law cited).

46 In this case, it is apparent from the file before the Court that the administrative measure at issue in the main proceedings prevents PrivatBank from offering, for amounts exceeding those provided for therein, certain banking services related, for example, to the provision of credit or the acceptance of funds to natural persons who have no links with Latvia or to legal persons without an economic activity connected to that Member State. That measure is therefore liable to make the provision of services between Member States more difficult than the provision of services purely within the Republic of Latvia.

47 Therefore, in accordance with the case-law cited in paragraphs 43 to 45 above, an administrative measure such as that at issue in the main proceedings amounts to a restriction on the freedom to provide services, prohibited, in principle, by the first paragraph of Article 56 TFEU.

48 In the second place, 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 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803, paragraph 62 and the case-law cited).

49 In particular, that concept includes State measures which are discriminatory in nature in that they establish, directly or indirectly, a difference in treatment between domestic and cross-border movements of capital which does not correspond to an objective difference in circumstances, and which are therefore liable to deter natural or legal persons from other Member States or third countries from carrying out cross-border movements of capital (judgment of 18 June 2020, *Commission* v *Hungary (Transparency of Associations)*, C-78/18, EU:C:2020:476, paragraph 53 and the case-law cited).

50 In this case, and as the Advocate General observed in point 47 of her Opinion, the administrative measure at issue in the main proceedings, which requires PrivatBank to terminate its business relationships with any natural person who has no links with Latvia and with any legal person whose economic activity has no connection with that Member State, and prohibits it from entering into such relationships, constitutes indirect discrimination based on nationality.

51 Although such an administrative measure, which merely refers to the criterion of a connection with Latvia, does not refer directly to the nationality of the persons concerned, it is nevertheless liable to affect to a greater extent nationals of a Member State other than the Republic of Latvia and companies established in such a Member State, since they are much less likely to have a connection with the Republic of Latvia than Latvian nationals or companies established in Latvia.

52 In the third place, contrary to what is submitted by the Latvian Government in its written observations, the fact that customers who are likely to be affected by the administrative measure at issue in the main proceedings remain free to open an account with, or deposit funds in, any other credit institution authorised in Latvia, since that measure applies only to PrivatBank, or the fact that that measure applies only temporarily, cannot deprive that measure of its restrictive nature.

53 In that regard, first, according to the settled case-law of the Court, a restriction on a fundamental freedom is, in principle, prohibited by the FEU Treaty even if it is of limited scope or minor importance (judgment of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 40 and the case-law cited).

54 Secondly, as the Advocate General observed in point 53 of her Opinion, it is part of the essence of the freedom to provide services and the free movement of capital that natural or legal persons can freely choose the credit institution with which they wish to establish a business relationship in order, for example, to avail themselves of certain conditions or products.

55 In the light of all the foregoing considerations, the answer to the second question is that the first paragraph of Article 56 and Article 63(1) TFEU must be interpreted as meaning that an administrative measure by which the competent authority of a Member State, first, prohibits a credit institution from entering into business relationships with any natural or legal person who has no connection with the Member State in which that institution is established and whose monthly account turnover exceeds a certain level, and, secondly, requires that institution to terminate any such business relationships entered into after the adoption of that measure, amounts to a restriction on the freedom to provide services, within the meaning of the first of those provisions, and a restriction on the movement of capital, within the meaning of the second of those provisions.

The third and fourth questions

56 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether a restriction on the freedom to provide services and on the free movement of capital imposed by an administrative measure by which the competent authority of a Member State, first, prohibits a credit institution from entering into business relationships with any natural person who has no links with the Member State in which that institution is established and whose monthly account turnover exceeds EUR 15 000, or with any legal person whose economic activity has no connection with that Member State and whose monthly account turnover exceeds EUR 50 000, and, secondly, requires that institution to terminate any such business relationships entered into after the adoption of that measure, can be justified by the objective of preventing money laundering and terrorist financing, which is set out in Article 1 of Directive 2015/849, and whether, if so, that measure is covered by Article 65(1)(b) TFEU.

Whether the restriction can be justified

57 As regards, in the first place, the free movement of capital, according to settled case-law of the Court, it may be limited by a State measure 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 (see, to that effect, judgment of 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803, paragraph 67 and the case-law cited).

58 It is apparent from the order for reference that the administrative measure at issue in the main proceedings was adopted in order, first, to put an end to the infringements of laws and regulations on the combating of money laundering and the financing of terrorism committed by PrivatBank and, secondly, to prevent that credit institution from committing such infringements again in the future, since such infringements could result not only in PrivatBank itself becoming involved in money laundering or attempted money laundering as well as in the evasion or breach of international sanctions, but could also result in the national financial sector as a whole being exposed to significant reputational risks.

59 In that regard, first of all, Article 65(1)(b) TFEU provides that Article 63 TFEU is to be without prejudice to the right of Member States, in particular, to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of the prudential supervision of financial institutions, or to take measures which are justified on grounds of public policy or public security.

60 The Court has stated that, in order to be regarded as a 'requisite measure' within the meaning of Article 65(1)(b) TFEU, the measure concerned must have the very aim of preventing infringement of the laws and regulations in the field of the prudential supervision of financial institutions (see, to that effect, judgment of 7 June 2012, *VBV – Vorsorgekasse*, C-39/11, EU:C:2012:327, paragraph 30).

61 Next, the Court has already accepted that the combating of money laundering, which is related to the aim of protecting public order, constitutes a legitimate aim capable of justifying a barrier to the fundamental freedoms guaranteed by the Treaty (judgment of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 38 and the case-law cited).

62 In accordance with settled case-law, grounds of public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society and, moreover, those grounds must not serve purely economic ends (see, to that effect, judgment of 16 September 2020, *Romenergo and Aris Capital*, C-339/19, EU:C:2020:709, paragraph 40 and the case-law cited).

63 Lastly, as the Court has already observed, the EU legislature has only partially harmonised the measures seeking to combat money laundering and the financing of terrorism, so therefore the Member States are still entitled to rely on the fight against money laundering and the financing of terrorism to justify national provisions restricting free movement of capital, as grounds of public policy (judgment of 18 June 2020, *Commission* v *Hungary (Transparency of Associations)*, C-78/18, EU:C:2020:476, paragraph 89).

64 In that regard, it must be borne in mind, first, that Directive 2015/849 carries out only a minimum harmonisation, as Article 5 thereof allows Member States to adopt or retain in force stricter provisions where those provisions seek to strengthen the fight against money laundering and terrorist financing, within the limits of Union law (judgment of 17 November 2022, *Rodl & Partner*, C-562/20, EU:C:2022:883, paragraph 46).

65 Secondly, in accordance with Article 59(4) of that directive, Member States may empower competent authorities to impose additional types of administrative sanctions in addition to those referred to in that article or to impose administrative pecuniary sanctions exceeding the amounts referred to in that article.

66 In the light of the foregoing considerations, a restriction on the free movement of capital imposed by an administrative measure can be justified, first, under Article 65(1)(b) TFEU where that measure is essential in order to prevent infringements of national law and regulations, in particular in the field of the prudential supervision of financial institutions. Secondly, such a restriction can also be justified by the need to prevent and combat money laundering and terrorist financing.

67 In the light of the objectives thus pursued by the administrative measure at issue in the main proceedings, referred to in paragraph 58 above, such a measure meets the conditions referred to in the preceding paragraph, which it is for the referring court to verify.

68 As regards, in the second place, the freedom to provide services, it is sufficient to note that the Court has already accepted that the combating of money laundering, which is related to the aim of protecting public order, constitutes a legitimate aim which is also capable of justifying a barrier to the freedom to provide services (judgment of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, paragraph 64).

69 It follows from the foregoing considerations that, subject to the verifications which it is for the referring court to carry out, the administrative measure at issue in the main proceedings can be justified both by the legitimate aim of preventing and combating money laundering and terrorist financing and on the basis of Article 65(1)(b) TFEU provided that that administrative measure pursues one of the objectives referred to in that provision.

70 That being so, it is also necessary for that administrative measure, in accordance with the Court's settled case-law, to observe the principle of proportionality, a condition that requires, inter alia, the measure to be appropriate for ensuring, in a consistent and systematic manner, the attainment of the objective pursued and not to go beyond what is necessary in order for it to be attained (judgment of 18 June 2020, *Commission* v *Hungary (Transparency of Associations)*, C-78/18, EU:C:2020:476, paragraph 76 and the case-law cited).

71 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 (judgment of 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803, paragraph 72 and the case-law cited).

Observance of the principle of proportionality

72 As regards, in the first place, the issue of whether the administrative measure at issue in the main proceedings is appropriate for ensuring attainment of the objective pursued, it should be observed that, according to the settled case-law of the Court, a national measure 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, judgment of 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803, paragraph 73 and the case-law cited).

73 Furthermore, the Court has stated that, where the objective of a national measure is the prevention of money laundering and terrorist financing, that measure is to be regarded as being appropriate for securing the attainment of the preventive objective thus relied on if it helps to reduce the risk of money laundering and terrorist financing (see, to that effect, judgment of 10 March 2016, *Safe Interenvíos*, C-235/14, EU:C:2016:154, paragraph 104).

74 In this case, it is apparent from the file before the Court that the administrative measure at issue in the main proceedings was adopted, in particular, as a result of the infringement by PrivatBank of certain requirements on the prevention of money laundering and terrorist financing, laid down by national legislation. More specifically, as stated in paragraph 18 above and as the FKTK and the

Latvian Government observed at the hearing, PrivatBank's internal control system concerning customer due diligence and the monitoring of transactions was regarded as not enabling it to be ensured that that credit institution provided effective management of the relevant risks. In particular, since PrivatBank is unable to obtain information on its customers, it is impossible for it to know them and, consequently, to comply with its due diligence obligations.

75 In that regard, it should be borne in mind that the provisions of Directive 2015/849, which are preventive in nature, seek to implement, taking a risk-based approach, a body of preventive and dissuasive measures to combat money laundering and terrorist financing effectively, in order to prevent, as is apparent from recital 1 in the preamble to that directive, flows of illicit money from being able to damage the integrity, stability and reputation of the financial sector and threaten the internal market of the Union as well as international development (judgment of 17 November 2022, *Rodl & Partner*, C-562/20, EU:C:2022:883, paragraph 34 and the case-law cited).

76 Those preventive and dissuasive measures to combat money laundering and terrorist financing effectively include those referred to in Article 8(1) and (3) and Article 11 of Directive 2015/849, which impose obligations on obliged entities as regards the identification and management of the risks of money laundering and terrorist financing relating to their customers and the identification of those customers in the context of the adoption of due diligence measures.

77 Obliged entities are, inter alia, required to apply standard customer due diligence measures where they have identified, in their customer risk assessment, a normal level of risk of money laundering and terrorist financing (judgment of 17 November 2022, *Rodl & Partner*, C-562/20, EU:C:2022:883, paragraph 68).

78 As to the due diligence measures themselves which the obliged entities must implement, Article 13(1) of Directive 2015/849 mentions some of them, including identifying the customer and verifying the customer's identity (point (a)); assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship (point (c)); or conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date (point (d)).

79 In that regard, it should be noted, first, that the threshold of a monthly account turnover of EUR 15 000 laid down in the administrative measure at issue in the main proceedings for natural persons – which corresponds, moreover, to the threshold triggering the application of due diligence measures, which is referred to in Article 11(b)(i) of Directive 2015/849 – relates to a situation in which it is reasonable to take the view that there is a risk of money laundering and terrorist financing. Similarly, the reasonableness of the threshold of a monthly account turnover of EUR 50 000 for legal persons laid down in that administrative measure, which, according to the FKTK, was determined in accordance with national legislation, was not called into question in the main proceedings.

80 Secondly, as noted in paragraph 74 above, it is apparent from the file before the Court that PrivatBank's internal control system concerning customer due diligence and the monitoring of transactions was regarded by the FKTK as not enabling it to be ensured that that credit institution provided effective management of the relevant risks. In the context of the assessment

of the appropriateness of the administrative measure at issue in the main proceedings for attaining the legitimate objective of preventing and combating money laundering and terrorist financing, account should be taken of such a deficiency in PrivatBank's risk management system.

81 In the light of the foregoing considerations, it appears that the administrative measure at issue in the main proceedings, in so far as it requires PrivatBank to terminate its business relationships above a certain amount with any natural or legal person who has no connection with Latvia and not to enter into any such relationships, is appropriate for ensuring that that credit institution can comply with its identification obligations in the context, first, of the assessment of the risks relating to the customer and, secondly, of the possible adoption of due diligence measures.

82 Consequently, in the light of the deficiency in PrivatBank's risk management system, as observed by the referring court itself and as is not disputed by the parties to the main proceedings, and of the risk that that credit institution might not be able to comply, inter alia, with its due diligence obligations in respect of its customers who have no connection with Latvia and who have a significant account turnover, the administrative measure at issue in the main proceedings appears appropriate for reducing, in a consistent and systematic manner, the risk of money laundering and terrorist financing.

83 As regards, in the second place, the necessity of the administrative measure at issue in the main proceedings, it must be borne in mind that measures which restrict a fundamental freedom may be justified only if the objective pursued cannot be attained by less restrictive measures (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 81).

84 In the present case, it is common ground that the administrative measure at issue in the main proceedings introduces a prohibition on the establishment of business relationships with customers who have no connection with Latvia and an obligation to terminate any such existing business relationships, if the threshold of the amounts provided for in that measure is reached.

85 It is for the referring court to determine whether that administrative measure can be regarded as necessary, taking into consideration in particular the fact that, as the Advocate General noted in point 80 of her Opinion, the condition relating to the absence of a connection with Latvia may, in the light of its broad nature, also affect natural or legal persons who, in accordance with Directive 2015/849, do not pose any particular risk of money laundering or terrorist financing.

86 In that regard, account may be taken of the difficulties of the credit institution in question in obtaining information from its customers, difficulties which, according to the FKTK's observations at the hearing before the Court, are proven to exist, which it is for the referring court to ascertain. In particular, it is for that court to determine whether the deficiencies in the due diligence measures or their implementation were such that they made it necessary to adopt a broad measure introducing indirect discrimination.

87 In addition, account should also be taken of the fact that, in accordance with Article 59(1) and (2) of Directive 2015/849, in the event of serious, repeated or systematic breaches on the part of the obliged entity concerned of its obligations, inter alia of the customer due diligence requirements referred to in Articles 10 to 24 of that directive, the national authorities may impose administrative sanctions and measures on those entities.

88 Those sanctions and measures include, in addition to administrative pecuniary sanctions, in accordance with Article 59(2)(c) of Directive 2015/849, the withdrawal or suspension of the authorisation where the obliged entity in question is subject to such an authorisation.

89 In addition, as noted in paragraph 65 above, Article 59(4) of Directive 2015/849 provides that Member States may empower competent authorities to impose additional types of administrative sanctions in addition to those referred to in paragraph 2(a) to (d) of that article.

90 As the Advocate General noted in point 85 of her Opinion, an administrative measure such as that at issue in the main proceedings appears, subject to verification by the referring court, to be milder than the withdrawal or suspension of the authorisation, referred to in Article 59(2)(c) of Directive 2015/849.

91 Furthermore, at the hearing, the Latvian Government stated that, in the past, enhanced due diligence requirements, less prejudicial to fundamental freedoms than those laid down in the administrative measure at issue in the main proceedings, had been imposed on PrivatBank, but that those measures had not been sufficiently effective to counteract the risks identified.

92 It follows from the foregoing that, subject to verifications to be carried out by the referring court, the administrative measure at issue in the main proceedings appears to be the least restrictive administrative measure effectively to prevent the risk of money laundering and terrorist financing to which PrivatBank was exposed.

93 In the third place, it must be determined whether an administrative measure which seeks to prevent and combat money laundering and terrorist financing, such as that at issue in the main proceedings, does not lead to an excessive impairment of the rights and interests protected under Articles 56 and 63 TFEU, which are enjoyed by the credit institution concerned and its customers.

94 In that regard, first, it is apparent from the file before the Court that the administrative measure at issue in the main proceedings was intended to apply for a limited period of time, namely until the implementation of other measures provided for in the decision referred to in paragraph 19 above and the approval of that implementation by the FKTK. It follows that, as the Advocate General noted in point 89 of her Opinion, PrivatBank was itself able to influence the end of the restrictions.

95 Secondly, as the Advocate General stated in point 90 of her Opinion, the intensity of the administrative measure at issue in the main proceedings does not appear to be disproportionate to the legitimate objective pursued, which is the prevention and combating of money laundering and terrorist financing. Given that that administrative measure was applied only from the adoption of the decision at issue in the main proceedings, PrivatBank could maintain the business relationships that it had entered into before that adoption, including those with customers who had no connection with Latvia and whose monthly account turnover exceeded the thresholds laid down in that measure. In addition, that credit institution could continue to enter into new business relationships with persons who did not have a connection with Latvia, provided that their monthly account turnover was below those thresholds.

96 Thirdly, in the FKTK's view, the adoption of the administrative measure at issue in the main proceedings was necessary because of the systematic and repeated infringements by PrivatBank of national law and regulations on the prevention of money laundering and terrorist financing. Thus, it appears that PrivatBank itself culpably contributed to a risk situation in that area to which the competent national authority had to respond.

97 Fourthly, as the Advocate General observed in point 92 of her Opinion, although the free movement of capital means that the customer may freely choose the credit institution to which he or she intends to entrust, inter alia, the management of his or her bank accounts, that fundamental freedom does not, however, confer the right to enter into business relationships with a particular credit institution irrespective of the specific circumstances, such as the failure by that institution to comply with the laws and regulations on the prevention of money laundering and terrorist financing.

98 In those circumstances, and subject to the verifications which it is for the referring court to carry out, the administrative measure at issue in the main proceedings does not appear to lead to an excessive impairment of the rights and interests protected under Articles 56 and 63 TFEU, which are enjoyed by the credit institution concerned and its customers.

99 In the light of all the foregoing considerations, the answer to the third and fourth questions is that the first paragraph of Article 56 and Article 63(1) TFEU must be interpreted as meaning that they do not preclude an administrative measure by which the competent authority of a Member State, first, prohibits a credit institution from entering into business relationships with any natural person who has no links with the Member State in which that institution is established and whose monthly account turnover exceeds EUR 15 000, or with any legal person whose economic activity has no connection with that Member State and whose monthly account turnover exceeds EUR 50 000, and, secondly, requires that institution to terminate any such business relationships entered into after the adoption of that measure, provided that that administrative measure, first, is justified by the objective of preventing money laundering and terrorist financing or as a requisite measure to prevent infringements of national law and regulations in the field of the prudential supervision of financial institutions, or as a measure which is justified on grounds of public policy, referred to in Article 65(1)(b) TFEU; secondly, is appropriate for ensuring attainment of those objectives; thirdly, does not go beyond what is necessary for attaining them; and, fourthly, does not lead to an excessive impairment of the rights and interests protected under Articles 56 and 63 TFEU, which are enjoyed by the credit institution concerned and its customers.

Costs

100 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. **Financial loans and credits and operations in current and deposit accounts with financial institutions and, in particular, credit institutions constitute movements of capital within the meaning of Article 63(1) TFEU.**

2. **The first paragraph of Article 56 and Article 63(1) TFEU must be interpreted as meaning that an administrative measure by which the competent authority of a Member State, first, prohibits a credit institution from entering into business relationships with any natural or legal person who has no connection with the Member State in which that institution is established and whose monthly account turnover exceeds a certain level, and, secondly, requires that institution to terminate any such business relationships**

entered into after the adoption of that measure, amounts to a restriction on the freedom to provide services, within the meaning of the first of those provisions, and a restriction on the movement of capital, within the meaning of the second of those provisions.

3. **The first paragraph of Article 56 and Article 63(1) TFEU must be interpreted as meaning that they do not preclude an administrative measure by which the competent authority of a Member State, first, prohibits a credit institution from entering into business relationships with any natural person who has no links with the Member State in which that institution is established and whose monthly account turnover exceeds EUR 15 000, or with any legal person whose economic activity has no connection with that Member State and whose monthly account turnover exceeds EUR 50 000, and, secondly, requires that institution to terminate any such business relationships entered into after the adoption of that measure, provided that that administrative measure, first, is justified by the objective of preventing money laundering and terrorist financing or as a requisite measure to prevent infringements of national law and regulations in the field of the prudential supervision of financial institutions, or as a measure which is justified on grounds of public policy, referred to in Article 65(1)(b) TFEU; secondly, is appropriate for ensuring attainment of those objectives; thirdly, does not go beyond what is necessary for attaining them; and, fourthly, does not lead to an excessive impairment of the rights and interests protected under Articles 56 and 63 TFEU, which are enjoyed by the credit institution concerned and its customers.**

[Signatures]