AG: Union Law Allows Punishment of Self-Laundering

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In his Opinion of 14 January 2021 in Case C-790/19 (*LG and MH (Autoblanchiment)*), Advocate General *Hogan* held that Union law does not preclude the interpretation of a national provision which criminalises so-called self-money laundering. The case specifically concerns the interpretation of Art. 1(2) lit. a) of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. This Directive is applicable in the case at issue and established the following obligation for Member States – an obligation that has been taken over in subsequent anti-money laundering directives that replaced Directive 2005/60: "As money laundering shall be regarded … the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action."

This provision was transposed *verbatim* into Romanian law and the prescribed conduct made punishable by a prisons sentence between 3 to 12 years. The referring Romanian court wishes to know whether the person who commits an act which constitutes the offence of money laundering within the meaning of this definition in Art. 1(2)(a) of Directive 2005/60 may also be the person who committed the predicate offence (the act from which the money to be laundered is derived). The case in question concerns *LG*'s conviction for money laundering because he transferred funds stemming from tax evasion to a company account and then withdrew them.

The Advocate General is of the opinion that neither the wording of the said provision of Directive 2005/60 nor the objective of the Directive exclude the criminalisation of self-laundering. However, it was in principle open to Romania to provide such an offence in its national law since the legal basis of the Directive comes from provisions of the EC Treaty that aim to ensure the proper functioning of the internal market; thus, the enactment of penal legislation by the Member States is not required (but also not excluded). The international context – namely the FATF Recommendations and the 1990 Council of Europe (CoE) Convention on money laundering – also indicate that self-laundering could be criminalised. Both the Recommendations and the Convention empower states to also apply the criminal offence of money laundering to persons who committed the predicate offence.

Ultimately, the principle of *ne bis in idem* as provided in Art. 50 CFR does not speak against the result. The activities of conversion and transfer of illicitly obtained assets and their concealment and disguise through the financial system clearly constitute an additional criminal act distinguishable from the predicate offence

(here: tax evasion). These laundering activities, moreover, cause additional or a different type of damage than that already caused by the predicate offence.

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