

CJEU: Union Law Does Not Preclude Criminalisation of Self-Laundering

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News

On 2 September 2021, the CJEU decided that EU law (i.e. Directive 2005/60/EC) does not preclude national legislation that provides that the offence of money laundering can also be committed by the perpetrator of the predicate offence, i.e. the criminal activity from which the money concerned was derived. As a result, the CJEU follows the opinion of AG Hogan in this case (→ [eucrim 1/2021, 20-21](#)).

The CJEU's judgment was delivered in a reference for a preliminary ruling that concerned Romanian legislation ([Case C-790/19, LG and MH](#)). Romania criminalised money laundering by literally taking up the definitions of conduct of money laundering in Directive 2005/60/EC – definitions that were later taken over also in Directive 2015/849. The provisions have not clarified whether the so-called “self-laundering” can be punished as well. According to the referring Romanian court, the perpetrator of the offence of money laundering – which is, by its nature, a consequential offence resulting from a predicate offence – cannot be the perpetrator of the predicate offence (in the case at issue: tax evasion).

In its judgment, the CJEU shared the AG Hogan's viewpoint and stressed that EU law does not preclude Member States to interpret Art. 1(2)(a) of Directive 2005/60 as meaning that also the perpetrator of the predicate offence can commit money laundering. This conclusion follows from the wording, the context of the provision and the objective of the EU's legal instrument. In this context, the CJEU mainly argued:

- Art. 1(2)(a) of Directive 2005/60 only concerns the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity – this conduct can be committed both by the perpetrator of the criminal activity from which the property in question is derived and by a third party;
- Both the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the FATF Recommendations leave it to the Member States to decide whether self-laundering should be criminalised when transposing provisions harmonising criminal law;
- The objective of Directive 2005/60 is to prevent or, at the very least, to restrict as far as possible activities that destabilise the integrity of the financial market, by establishing, for that purpose, barriers at all stages which those activities may include, against money launderers and terrorist financiers – hence, the objective of the EU instrument confirms the interpretation that self-laundering can be criminalised.

Ultimately, the CJEU dispels doubts that the *ne bis in idem* principle as enshrined in Art. 50 CFR may be incompatible with the found interpretation. Like the AG, the CJEU stressed that the facts in respect of which the prosecution of money laundering is brought are not identical to those constituting the predicate offence.

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