Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

5 December 2024*

(Reference for a preliminary ruling – Prevention of the use of the financial system for the purposes of money laundering or terrorist financing – Directive (EU) 2015/849 – Scope – Article 2(1)(3)(a) – Obliged entity – Concept of 'external accountants' – Accounting services provided, on an ancillary basis, to companies related to the entity providing them)

In Case C-3/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia), made by decision of 4 January 2024, received at the Court on 4 January 2024, in the proceedings

**'MISTRAL TRANS' SIA**

v

**Valsts ieņēmumu dienests,**

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, A. Kumin (Rapporteur), I. Ziemele and S. Gervasoni, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Latvian Government, by E. Bārdiņš, J. Davidoviča and K. Pommere, acting as Agents,

– the European Commission, by C. Auvret, G. von Rintelen and I. Rubene, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Latvian.

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(3)(a) and Article 58(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 'MISTRAL TRANS' SIA ('Mistral Trans') and the Valsts ieņēmumu dienests (State Tax Authority, Latvia) ('the VID') concerning a fine imposed on Mistral Trans for infringements of the national provisions on the prevention of money laundering and terrorist financing.

### Legal context

#### *European Union law*

3 According to recital 1 of Directive 2015/849:

'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.'

4 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.'

5 Article 2(1) of that directive, in the version applicable to the dispute in the main proceedings, provides:

'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:
(a) auditors, external accountants and tax advisers;

…'

6 Article 58(1) of Directive 2015/849 provides:

‘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.’

### *Latvian law*

7 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), was amended for the purpose, in particular, of transposing Directive 2015/849 into Latvian law.

8 That law, in the version applicable to the facts in the main proceedings (‘the Law on prevention’), provides, in Article 3(1)(3) thereof, that external accountants are among the entities subject to that law.

9 Article 77(3) of that law provides:

‘The supervisory authority, when establishing the type and scope of penalties or supervisory measures in accordance with paragraph 1 of this article, shall take account of all of the relevant circumstances, inter alia:

(1) the seriousness, duration and systematic nature of the breach;

(2) the degree of responsibility of the natural or legal person;

(3) the financial situation of the natural or legal person (annual income of the natural person held responsible or total annual turnover of the legal person held responsible and other factors affecting the person’s financial situation);

(4) the benefit obtained by the natural or legal person as a consequence of the breach, in so far as it can be calculated;

(5) the losses caused to third parties as a consequence of the breach, in so far as they can be determined;

(6) the level of cooperation of the natural or legal person held responsible with the supervisory authority;

(7) any previous breaches by the natural or legal person with regard to the prevention of money laundering and the financing of terrorism and proliferation and with regard to international and domestic sanctions.’

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

10 On 8 October 2013, Mistral Trans, an undertaking the main activity of which is the transport of goods, notified the VID that it had begun to provide outsourced accounting services.

11 On 10 April 2018, the VID carried out an inspection in order to assess Mistral Trans's compliance with the provisions on the prevention of money laundering, following which it made recommendations for measures to rectify the shortcomings found.

12 On 16 May 2019, the VID carried out a further inspection and found various shortcomings in Mistral Trans's internal control system, concerning, inter alia, risk assessment, customer due diligence, the lack of periodic review of policies and procedures and the lack of a procedure for destroying documents.

13 Consequently, by a decision of 12 June 2019, confirmed by a decision of 15 August 2019, the VID imposed a fine of EUR 5 000 on Mistral Trans, taking into account the nature, character and duration of the infringements found, the financial situation of the company and the fact that Mistral Trans had not attempted to comply with the recommendations made by the VID following its inspection on 10 April 2018.

14 Mistral Trans brought an action before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) against the decision of the VID of 15 August 2019. In its action, it claimed, inter alia, that the outsourced accounting services were provided to only three related companies, it being noted that Mistral Trans and those related companies have identical members on their boards of directors, identical shareholders and identical beneficial owners. The way of carrying out the accounting was chosen solely to save resources and to avoid having to purchase a separate licence for the accounting software for each of the companies. In addition, following the decision of the VID of 12 June 2019, the accounting was reorganised such that, since 2 July 2019, the accounts of all of the related companies are drawn up independently.

15 By judgment of 29 October 2020, the Administratīvā apgabaltiesa (Regional Administrative Court) dismissed the action brought by Mistral Trans. In that regard, it found that, under Article 2(1)(3)(a) of Directive 2015/849, that directive applies to external accountants, irrespective of who the recipients of the outsourced accounting service are. Nor does Latvian law on the prevention of money laundering include any provision that is more beneficial for related persons. Thus, according to that court, the VID was right to find that Mistral Trans had infringed the provisions on money laundering.

16 Furthermore, as regards the determination of the penalty, the Administratīvā apgabaltiesa (Regional Administrative Court) found that the VID had taken into account the circumstances referred to in Article 77(3) of the Law on prevention, in particular the seriousness of the infringement and its duration, the degree of responsibility and the financial situation of Mistral Trans, as well as the cooperation with the supervisory authority. The fine of EUR 5 000 imposed on Mistral Trans is therefore appropriate to the nature of the infringements and proportionate to the financial situation of that company and to the threat caused to the interests of the national economy.

17 Mistral Trans brought an appeal on a point of law against that judgment before the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia), which is the referring court, claiming that the fine imposed was disproportionate.

18 The referring court states that, in the first place, it is necessary to clarify whether Article 2(1)(3)(a) of Directive 2015/849 is also applicable to those cases in which the accounting services are provided exclusively to companies related to the entity providing them.

19 In that regard, that court considers that, in general, external accountants must be regarded as persons whose activities are exposed to a fairly high risk of money laundering. Furthermore, it infers from a literal interpretation of the term 'external accountant' in Article 2(1)(3)(a) of Directive 2015/849 that that directive is not applicable to any accountant, but only to those whose professional activities are organised outside the undertaking to which the accounting services are provided.

20 In the present case, the VID considered it irrelevant that Mistral Trans's main activity was never linked to the provision of accounting services and that the particular way of carrying out the accounting between related persons was designed to save resources. The referring court has doubts as to whether the VID's position is well founded.

21 Both in competition law and in law relating to State aid, related undertakings may be regarded as a single undertaking. It seems doubtful whether the provision of accounting services within such related undertakings is exposed to a greater risk of money laundering than accounting organised in-house, which uses salaried accountants.

22 Similarly, according to the referring court, the applicability of Directive 2015/849 to the present situation is also questionable on account of considerations relating to the practical effect of that directive, since both Mistral Trans and the companies to which it provided accounting services are all controlled by the same persons. In those circumstances, the possibility of the provider of accounting services complying, independently and fully, with the obligations imposed on it and, consequently, the very possibility of achieving the objectives of that directive seem doubtful.

23 In the second place, in the event that Article 2(1)(3)(a) of Directive 2015/849 applies even in cases where accounting services are provided to parties related to the entity providing them, the referring court recalls that, in accordance with Article 58(1) of that directive, Member States must ensure that obliged entities can be held liable for infringements of the provisions transposing that directive, and any resulting sanction or measure must be effective, proportionate and dissuasive. In that regard, it is necessary to clarify whether the fact that accounting services are provided solely to related persons must be taken into account in determining the appropriate penalty.

24 In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the term "external accountant" in [Article 2(1)(3)(a)] of Directive [2015/849] be interpreted as meaning that it is also applicable to cases in which the accounting services are provided solely to persons related to the external accountant?

(2) If the answer to the first question is in the affirmative, must Article 58(1) of Directive [2015/849] be interpreted as meaning that, in the context of the proportionality of the sanction imposed, the following facts are relevant:
[(a)] the accounting service is provided solely to persons related to the person providing the service;
[(b)] the choice to carry out the accounting by taking on an external accountant depends on efficiency considerations, within a group of related undertakings, and is not determined by criteria derived from legislation or criteria based on economic reality?'

## Consideration of the questions referred

### *The first question*

25 As a preliminary point, it should be recalled that the main aim of Directive 2015/849, as is apparent from its heading and from Article 1(1) and (2) thereof, is the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (judgment of 18 April 2024, *Citadeles nekustamie īpašumi*, C-22/23, EU:C:2024:327, paragraph 31 and the case-law cited).

26 More specifically, the provisions of Directive 2015/849, which are preventive in nature, seek to establish, 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 of 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 European Union as well as international development (judgment of 18 April 2024, *Citadeles nekustamie īpašumi*, C-22/23, EU:C:2024:327, paragraph 32 and the case-law cited).

27 In that regard, Article 2(1) of Directive 2015/849 lists the entities to which, by reason of their participation in the carrying out of a transaction or a financial activity, that directive applies. Those entities include, as provided for in point 3(a) of that provision, external accountants acting in the exercise of their professional activities.

28 In addition, Article 58(1) of Directive 2015/849 provides that Member States are to ensure that obliged entities can be held liable for breaches of national provisions transposing that directive.

29 In the present case, the dispute in the main proceedings concerns the verification of the existence of an infringement by Mistral Trans of the provisions of the Law on prevention capable of giving rise to the imposition of a penalty.

30 In those circumstances, the first question must be understood as seeking to ascertain whether an undertaking such as Mistral Trans must, in view of the nature of its activities, be regarded as an 'obliged entity' and, more specifically, as falling within the scope of the concept of 'external accountants', within the meaning of Article 2(1)(3)(a) of Directive 2015/849.

31 Since the concept of 'external accountants' is not defined in Directive 2015/849, its meaning and scope must be determined by reference to its usual meaning in everyday language, while account is also taken of the context in which it occurs and the purposes of the rules of which it forms part (see, by analogy, judgment of 1 October 2020, *Entoma*, C-526/19, EU:C:2020:769, paragraph 29 and the case-law cited).

32 As regards, first, the expression 'external accountants', it appears that, in certain language versions of Article 2(1)(3)(a) of Directive 2015/849, such as the German- ('*Buchprüfer*'), French- ('*experts-comptables*'), Romanian- ('*experți contabili*') and Swedish- ('*revisorer*') language versions, the terms used refer to persons belonging to a regulated professions whose activity consists, inter alia, in organising, verifying, assessing or correcting accounts. By contrast, the scope of the terms used in other language versions, such as the English- ('accountants'), Spanish- ('*contables*'), Latvian- ('*grāmatveži*') or Dutch- ('*accountants*') language versions is broader, since they refer more generally to persons whose activity consists in the preparation, keeping and auditing of accounts, including company accounts.

33 As regards, secondly, the use of the word 'external' in Article 2(1)(3)(a) of Directive 2015/849, it must be held that that term is intended expressly to exclude 'in-house' accountants – in other words persons, such as salaried accountants, who do not provide accounting services to third parties independently – from the obligations laid down by that directive. According to the information provided by the referring court, the meaning of the term used in the Latvian-language version of Article 2(1)(3)(a) ('*ārštata*') essentially reflects that interpretation.

34 It follows that the concept of 'external accountants', within the meaning of Article 2(1)(3)(a) of Directive 2015/849, refers to natural or legal persons whose professional activity consists in independently providing accounting services, such as the preparation, keeping or auditing of accounts, to third parties.

35 That interpretation is supported by the context of that provision. As pointed out in paragraph 27 above, Article 2(1) of Directive 2015/849 lists, in points 1 to 3 thereof, the entities to which that directive applies, referred to as 'obliged entities'. Those entities are, according to point 1, credit institutions, according to point 2, financial institutions and, according to point 3, the natural or legal persons referred to in that point, acting in the exercise of their professional activities.

36 More specifically, in accordance with Article 2(1)(3)(a) of Directive 2015/849, that directive applies to auditors, external accountants and tax advisors.

37 The extension of the scope of the provisions on the prevention of money laundering to such persons can be traced back to Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ 2001 L 344, p. 76), recital 15 of which stated that 'the obligations … concerning customer identification, record keeping and the reporting of suspicious transactions should be extended to a limited number of activities and professions which have been shown to be vulnerable to money laundering'.

38 The fact that Article 2(1)(3)(a) of Directive 2015/849 refers, in addition to external accountants, to auditors and tax advisors suggests that that provision concerns members of specific professions, that is to say persons whose professional activity consists in independently providing accounting, auditing and tax advice services to third parties.

39 In the light of those considerations, the concept of 'external accountants', within the meaning of Article 2(1)(3)(a) of Directive 2015/849, refers to natural or legal persons whose professional activity consists in independently providing accounting services, such as the preparation, keeping or auditing of accounts, to third parties. By contrast, a legal person that keeps the accounts of companies related to it, with a view to pooling resources, does not fall within the scope of that concept.

40 In the present case, it is apparent from the order for reference that Mistral Trans, which carries on the business of transporting goods, provided accounting services to related companies with identical members on their boards of directors, identical shareholders and identical beneficial owners to its own, with the sole aim of saving resources and avoiding the purchase of accounting software licences for each of the companies. In the light of the interpretation set out in paragraph 39 above, and subject to the verifications to be carried out by the referring court, such an undertaking does not appear to constitute an 'external accountant', within the meaning of Article 2(1)(3)(a) of Directive 2015/849.

41 In the light of all the foregoing considerations, the answer to the first question is that Article 2(1)(3)(a) of Directive 2015/849 must be interpreted as meaning that the concept of 'external accountants', within the meaning of that provision, refers to natural or legal persons whose professional activity consists in independently providing accounting services, such as the preparation, keeping or auditing of accounts, to third parties. By contrast, a legal person that keeps the accounts of companies related to it, with a view to pooling resources, does not fall within the scope of that concept.

### *The second question*

42 Given the answer to the first question, there is no need to address the second question.

## Costs

43 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:

**Article 2(1)(3)(a) 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,**

**must be interpreted as meaning that the concept of 'external accountants', within the meaning of that provision, refers to natural or legal persons whose professional activity consists in independently providing accounting services, such as the preparation, keeping or auditing of accounts, to third parties. By contrast, a legal person that keeps the accounts of companies related to it, with a view to pooling resources, does not fall within the scope of that concept.**

[Signatures]