

JUDGMENT OF THE COURT (Grand Chamber)

16 July 2026 (*)

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In Case C-280/25 [Lin II], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 13 March 2025, received at the Court on 10 April 2025, in the criminal proceedings against

M.G.D.,

with the participation of:

Parchetul de pe lângă Curtea de Apel Oradea,

Statul român – Agenția Națională de Administrare Fiscală prin Direcția Generală Regională a Finanțelor Publice Cluj-Napoca, prin Administrația Județeană a Finanțelor Publice Satu Mare,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, C. Lycourgos (Rapporteur), I. Jarukaitis, M.L. Arastey Sahún, I. Ziemele, J. Passer and M. Condinanzi, Presidents of Chambers, N. Piçarra, A. Kumin, N. Jääskinen, D. Gratsias, B. Smulders, S. Gervasoni and N. Fenger, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 7 October 2025,

after considering the observations submitted on behalf of:

- the Romanian Government, by M. Chicu, E. Gane, L. Ghiță and L. Lițu, acting as Agents, and by G. Rădășanu, in his capacity as expert,

– the European Commission, by F. Blanc, I.V. Rogalski, C. Valero and P.J.O. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 December 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 TEU, Article 4(2) and (3) TEU, Article 2(2) TFEU, Article 325(1) TFEU, and Article 49, Article 52(3) and Article 53 of the Charter of Fundamental Rights of the European Union ('the Charter'), as well as Article 1(1)(a), Article 2 and Article 9 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995 (OJ 1995 C 316, p. 48) ('the PFI Convention').

2 The request has been made in connection with an appeal on a point of law brought before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) ('the ICCJ') by the Parchetul de pe lângă Curtea de Apel Oradea (Public Prosecutor's Office attached to the Court of Appeal, Oradea, Romania) against the decision handed down on 21 March 2024 by the Curtea de Apel Oradea (Court of Appeal, Oradea, Romania) and ordering the closure of the criminal proceedings against M.G.D. on the ground that the limitation period for criminal liability for the offence of complicity in continuous tax evasion, of which the person concerned was accused, had expired.

I. Legal context

A. International law

3 Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), provides:

'1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.'

B. European Union law

1. *The PFI Convention*

4 Article 1 of the PFI Convention, entitled 'General provisions', provides:

'1. For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

...

(b) in respect of revenue, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

...

2. Subject to Article 2(2), each Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.

3. Subject to Article 2(2), each Member State shall also take the necessary measures to ensure that the intentional preparation or supply of false, incorrect or incomplete statements or documents having the effect described in paragraph 1 constitutes a criminal offence if it is not already punishable as a principal offence or as participation in, instigation of, or attempt to commit, fraud as defined in paragraph 1.

...'

5 Article 2 of that convention, entitled 'Penalties', provides:

'1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1(1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding [EUR] 50 000.

2. However in cases of minor fraud involving a total amount of less than [EUR] 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1.

...'

6 Article 9 of the PFI Convention, entitled 'Internal provisions', states:

'No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.'

2. **Decision 2008/40/JHA**

7 Article 2(1) of Council Decision 2008/40/JHA of 6 December 2007 concerning the accession of Bulgaria and Romania to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, the Protocol of 27 September 1996, the Protocol of 29 November 1996 and the Second Protocol of 19 June 1997 (OJ 2008 L 9, p. 23), provides:

'[The PFI Convention], the [Council Act of 27 September 1996 drawing up a Protocol to the Convention on the protection of the European Communities' financial interests (OJ 1996 C 313, p. 1)] and the [Council Act of 29 November 1996 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests (OJ 1997 C 151, p. 1)] shall enter into force in relation to [the Republic of] Bulgaria and Romania on the first day of the first month following the date of adoption of this Decision, unless they have already entered into force for [the Republic of] Bulgaria or Romania before that date.'

3. **Directive (EU) 2017/1371**

- 8 Article 16 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29), entitled 'Replacement of [the PFI Convention]', specifies:

'[The PFI Convention], including the Protocols thereto of 27 September 1996 [and] of 29 November 1996, [as well as the Second Protocol to the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 19 June 1997 on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities' financial interests (OJ 1997 C 221, p. 12)], is hereby replaced by this Directive for the Member States bound by it, with effect from 6 July 2019.

For the Member States bound by this Directive, references to [the PFI Convention] shall be construed as references to this Directive.'

4. ***Regulation (EEC, Euratom) No 1553/89***

- 9 Article 3 of Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ 1989 L 155, p. 9), in the version applicable to the dispute in the main proceedings ('Regulation No 1553/89'), provides:

'For a given calendar year, and without prejudice to Articles 5 and 6, the [value added tax (VAT)] resources base shall be calculated by dividing the total net VAT revenue collected by a Member State during that year by the rate at which VAT is levied during that same year.

If more than one VAT rate is applied in a Member State, the VAT resources base shall be calculated by dividing the total net VAT revenue collected by the weighted average rate of VAT. In this case the Member State shall calculate the weighted average rate, to four decimal places, by the common method defined in Article 4. This weighted average rate shall be expressed as a percentage.'

5. ***Decisions 2007/436/EC and 2014/335/EU, Euratom***

- 10 Article 2(1) and (4) of Council Decision 2007/436/EC of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17) provided:

'1. Revenue from the following shall constitute own resources entered in the general budget of the European Union:

...

- (b) without prejudice to the second subparagraph of paragraph 4, the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined according to [European] Community rules. The assessment base to be taken into account for this purpose shall not exceed 50% of [gross national income (GNI)] for each Member State, as defined in paragraph 7;

...

4. The uniform rate referred to in paragraph 1(b) shall be fixed at 0,30%.

...'

- 11 Article 2(1) and (4) of Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ 2014 L 168, p. 105), applicable from 1 January 2014 in accordance with Article 11 thereof, provided:

'1. Revenue from the following shall constitute own resources entered in the budget of the Union:

...

- (b) without prejudice to the second subparagraph of paragraph 4, the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined in accordance with Union rules. For each Member State the assessment base to be taken into account for this purpose shall not exceed 50% of [GNI], as defined in paragraph 7;

...

- 4. The uniform rate referred to in paragraph 1(b) shall be fixed at 0,30%.

...'

- 12 That decision was repealed by paragraph 1 of Article 11 of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ 2020 L 424, p. 1), subject to paragraph 2 of that article.

C. **Romanian law**

1. ***The Romanian Constitution***

- 13 The principle of the retroactive application of the more lenient criminal law ('the *lex mitior* principle') is set out in Romanian law in Article 15(2) of the Constituția României (Romanian Constitution), pursuant to which 'the law shall have legal effect only for the future, with the exception of the more lenient criminal or administrative law'.

- 14 Article 147(1) and (4) of the Romanian Constitution provides:

'1. The provisions of laws and ordinances currently in force, as well as those of regulations, that are found to be unconstitutional shall cease to have legal effect 45 days after the publication of the decision of the Curtea Constituțională [(Constitutional Court, Romania)] if, during that time, the Parliament or the Government, as appropriate, fails to bring the unconstitutional provisions into line with the provisions of the Constitution. Throughout that period, the provisions that have been found to be unconstitutional shall be suspended by law.

...

4. The decisions of the Curtea Constituțională [(Constitutional Court)] shall be published in the *Monitorul Oficial al României* [(Official Gazette of Romania)]. As from the date of publication, those decisions shall be generally binding and shall have legal effect only for the future.'

2. ***The Criminal Code of 1968***

- 15 Before being replaced by Legea nr. 286 privind Codul penal (Law No 286 establishing the Criminal Code) of 17 July 2009 (*Monitorul Oficial al României*, Part I, No 510 of 24 July 2009), in force since 1 February 2014 ('the Criminal Code of 2009'), the Criminal Code was the one which had initially been published in *Buletinul Oficial al României* No 79 – 79 bis of 21 June 1968, had entered into force on 1 January 1969, and had been republished in *Monitorul Oficial al României* No 65 of 16 April 1997 ('the Criminal Code of 1968'). Thus, until 1 February 2014, Article 42 of the Criminal Code of 1968, read in conjunction with Article 34(1)(b) thereof, provided that the term of imprisonment provided for in respect of a given offence could be increased by five years where that offence was an ongoing offence.

- 16 During that period, Article 122(1) of the Criminal Code of 1968 provided:

'The limitation periods for criminal liability for natural persons are as follows:

- (a) 15 years, where the offence committed is punishable by law by life imprisonment or by a term of imprisonment of more than 15 years;
- (b) 10 years, where the offence committed is punishable by law by a term of imprisonment of not less than 10 years and not more than 15 years;
- (c) 8 years, where the offence committed is punishable by law by a term of imprisonment of not less than 5 years and not more than 10 years;
- (d) 5 years, where the offence committed is punishable by law by a term of imprisonment of not less than 1 year and not more than 5 years;
- (e) 3 years, where the offence committed is punishable by law by a term of imprisonment of less than 1 year or by a fine.'

17 During the period from 1 January 1969 to 1 February 2014, Article 123 of the Criminal Code of 1968 provided that the limitation period for criminal liability would be interrupted by the performance of any act which, by law, had to be notified to the suspect or defendant in the course of the criminal proceedings.

3. *The Criminal Code of 2009*

18 Article 5 of the Criminal Code of 2009 provides:

'1. If, between the commission of an offence and the final judgment in the case, one or more criminal laws are passed, the more lenient law shall be applied.

2. The provisions of paragraph 1 shall also apply to legislative acts or provisions thereof that have been declared unconstitutional, as well as to emergency orders approved by Parliament with amendments or additions or rejected, if – during the period in which they were in force – they contained more lenient criminal provisions.'

19 Article 36(1) of that code provides:

'The penalty for an ongoing offence shall be the penalty provided for by law for that offence; in the case of a term of imprisonment, the maximum length of that term may be increased by a maximum of 3 years. In the case of a fine, the maximum amount of that fine may be increased by a maximum of one third.'

20 Article 154(1) of the Criminal Code of 2009 provides:

'The limitation periods for criminal liability are as follows:

- (a) 15 years, where the offence committed is punishable by law by life imprisonment or by a term of imprisonment of more than 20 years;
- (b) 10 years, where the offence committed is punishable by law by a term of imprisonment of not less than 10 years and not more than 20 years;
- (c) 8 years, where the offence committed is punishable by law by a term of imprisonment of not less than 5 years and not more than 10 years;
- (d) 5 years, where the offence committed is punishable by law by a term of imprisonment of not less than 1 year and not more than 5 years;
- (e) 3 years, where the offence committed is punishable by law by a term of imprisonment of less than 1 year or by a fine.'

21 In its initial version, Article 155(1) of that code provided:

‘The limitation period for criminal liability shall be interrupted by the performance in the proceedings of any procedural act.’

4. ***Case-law of the Curtea Constituțională (Constitutional Court)***

22 By Decizia nr. 297 din 26 aprilie 2018 (Decision No 297 of 26 April 2018), published on 25 June 2018 in the *Monitorul Oficial al României*, the Curtea Constituțională (Constitutional Court) upheld a plea of unconstitutionality concerning Article 155(1) of the Criminal Code of 2009, inasmuch as that provision, by permitting procedural acts to interrupt the limitation period for criminal liability even if those acts had not been notified to the suspect or the defendant, was in breach of the constitutional principle that criminal law must be precise and foreseeable.

23 By Decizia nr. 358 din 26 mai 2022 (Decision No 358 of 26 May 2022), published on 9 June 2022 in the *Monitorul Oficial al României*, the Curtea Constituțională (Constitutional Court) upheld another plea of unconstitutionality concerning Article 155(1) of the Criminal Code of 2009, finding that the lack of action on the part of the Romanian legislature to replace that provision, which had been declared unconstitutional, had given rise to another situation which lacked clarity and foreseeability. That court specified that, between the date of publication of Decision No 297 of 26 April 2018 and the entry into force of a legislative act determining the applicable rule, ‘[Romanian] positive law [did] not provide for any ground for interrupting the limitation period for criminal liability’.

5. ***OUG nr. 71/2022***

24 After Decision No 358 of 26 May 2022 was handed down by the Curtea Constituțională (Constitutional Court), but before it was published, the Romanian Government, acting on the basis of its delegated legislative powers, adopted Ordonanța de urgență a Guvernului nr. 71 pentru modificarea articolului 155 alineatul (1) din Legea nr. 286/2009 privind Codul penal (Government Emergency Order No 71 amending Article 155(1) of Law No 286/2009 establishing the Criminal Code) of 30 May 2022 (*Monitorul Oficial al României*, Part I, No 531 of 30 May 2022) (‘OUG nr. 71/2022’), which entered into force on the same date.

25 Since 30 May 2022, that provision, as inserted by OUG nr. 71/2022, provides:

‘The limitation period for criminal liability shall be interrupted by the performance in the proceedings of any procedural act which, by law, must be notified to the suspect or defendant.’

6. ***Decision No 67/2022 of the ICCJ***

26 On 25 October 2022, the ICCJ – Completul pentru dezlegarea unor chestiuni de drept (Panel for Preliminary Ruling on Questions of Law) found, by Decizia nr. 67 (Decision No 67), published on 28 November 2022 (‘Decision No 67/2022 of the ICCJ’), that, in Romanian law, the rules relating to the interruption of the limitation period for criminal liability formed part of substantive criminal law and that, consequently, they were subject to the principle of non-retroactivity of criminal law, without prejudice to the application of the *lex mitior* principle, as guaranteed in, inter alia, Article 15(2) of the Romanian Constitution.

27 Accordingly, that panel of the ICCJ held that a final conviction could, in principle, be the subject of an extraordinary appeal based on the effects of Decisions No 297 of 26 April 2018 and No 358 of 26 May 2022 of the Curtea Constituțională (Constitutional Court) (‘the decisions of the Constitutional Court of 2018 and 2022’), as the more lenient criminal law.

7. ***Law No 241/2005***

28 The version of Article 9 of Legea nr. 241 pentru prevenirea și combaterea evaziunii fiscale (Law No 241 on preventing and combating tax evasion) of 15 July 2005 (*Monitorul Oficial al României*, Part I, No 672

of 27 July 2005) which was in force on 23 January 2014 provided:

‘1. Commission of the following acts in order to avoid fulfilling tax obligations shall constitute tax evasion and shall be punishable by a term of imprisonment of two to eight years and the loss of certain rights or the imposition of a fine:

...

(c) the recording, in the accounts or in other legal documents, of expenditure which does not correspond to actual transactions or the recording of other fictitious transactions;

...

2. If the acts referred to in paragraph 1 give rise to a loss of more than EUR 100 000, in the equivalent in national currency, the minimum and maximum penalties provided for by law shall be increased by five years.

3. If the acts referred to in paragraph 1 give rise to a loss of more than EUR 500 000, in the equivalent in national currency, the minimum and maximum penalties provided for by law shall be increased by seven years.’

29 The version of Article 9 of that law currently in force provides:

‘1. Commission of the following acts in order to avoid fulfilling tax obligations shall constitute tax evasion and shall be punishable by a term of imprisonment of 3 to 10 years and the loss of certain rights or the imposition of a fine:

...

(c) the recording, in the accounts, in an electronic invoice or in other legal documents, of expenditure which does not correspond to actual transactions or the recording of other fictitious transactions;

2. If the acts referred to in paragraph 1 give rise to a loss of more than EUR 500 000, in the equivalent in national currency, the minimum and maximum penalties provided for by law shall be increased by three years.

3. If the acts referred to in paragraph 1 give rise to a loss of more than EUR 1 000 000, in the equivalent in national currency, the minimum and maximum penalties provided for by law shall be increased by five years.’

II. Procedure in the main proceedings and the questions referred for a preliminary ruling

30 M.G.D. is being prosecuted for having, in his capacity as director of two commercial companies, deliberately made available to B.V. 12 tax invoices relating to fictitious purchases during the period from 3 May 2012 to 3 January 2014. The amount of the damage caused to the State budget is 268 536 Romanian lei (RON) (approximately EUR 59 304), and the amount of VAT evaded is RON 163 656 (approximately EUR 36 142).

31 By a decision of 21 March 2024, regarded as final in Romanian law, the Curtea de Apel Oradea (Court of Appeal, Oradea, Romania) held, relying on Decision No 67/2022 of the ICCJ, that the limitation period for M.G.D.’s criminal liability had expired.

32 On 9 April 2024, the Parchetul de pe lângă Curtea de Apel Oradea (Public Prosecutor’s Office attached to the Court of Appeal, Oradea) (‘the Parchetul’) lodged an appeal on a point of law in respect of that decision before the ICCJ, which is the referring court.

- 33 The Parchetul notes that it follows from the judgment of the Court of Justice of 24 July 2023, *Lin* (C-107/23 PPU, EU:C:2023:606) ('the judgment in *Lin*'), that Article 325(1) TFEU and Article 2(1) of the PFI Convention have to be interpreted as meaning that the Romanian courts are required to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle.
- 34 Accordingly, the Curtea de Apel Oradea (Court of Appeal, Oradea) was wrong to order that the criminal proceedings against M.G.D. be closed when, pursuant to the judgment in *Lin*, the limitation period could not be regarded as having expired. Indeed, procedural acts interrupting that period had been carried out both before 25 June 2018 and after 30 May 2022.
- 35 In the first place, the referring court notes that Article 325(1) TFEU obliges the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union through effective deterrent measures. In addition, cases of serious fraud or other serious illegal activities affecting the financial interests of the Union must be punishable with effective dissuasive criminal penalties.
- 36 Furthermore, Articles 1 and 2 of the PFI Convention require the Member States, first, to establish as criminal offences instances of conduct constituting fraud affecting the financial interests of the Union and, second, to ensure that such conduct, including instances of VAT fraud, be punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, namely those involving a minimum amount which may not be set by the Member States at a sum exceeding EUR 50 000, penalties involving deprivation of liberty.
- 37 However, the referring court questions whether Article 325(1) TFEU, as well as Article 1(1), Article 2(1) and Article 9 of the PFI Convention, are to be interpreted as meaning that, where there is no provision of national law fixing a minimum amount above which an instance of fraud affecting the financial interests of the Union is to be regarded as serious, an instance of VAT fraud, such as that at issue in the main proceedings, committed under the aggravating circumstances specific to an ongoing offence, but involving an amount of VAT of RON 163 656 (approximately EUR 36 142), cannot be regarded as serious on the ground that that amount does not exceed EUR 50 000.
- 38 In the referring court's view, EU law precludes such an interpretation. Indeed, where there is no provision of national law fixing a minimum amount above which an instance of fraud may be regarded as 'serious', it should be possible to take into account other circumstances which, in accordance with that law, may constitute aggravating circumstances, such as the ongoing nature of the offence.
- 39 In the second place, the referring court emphasises, as a preliminary point, that, although it was handed down after the judgment in *Lin*, the final decision of the Curtea de Apel Oradea (Court of Appeal, Oradea) implemented the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle.
- 40 The referring court also notes that, by two decisions handed down after that decision of the Curtea de Apel Oradea (Court of Appeal, Oradea), other panels of the ICCJ have (i) considered that the information provided to the Court of Justice in connection with the case giving rise to the judgment in *Lin* was either an insufficient or inaccurate reflection of both the scope of the principle that offences and penalties must be defined by law, as understood in Romanian law, and the effects of the decisions of the Curtea Constituțională (Constitutional Court), and (ii) held that, in Romanian law, the judgment in *Lin* could be applied only in part.
- 41 Thus, in Decizia nr. 37 din 17 iunie 2024 (Decision No 37 of 17 June 2024) ('Decision No 37/2024 of the ICCJ'), the ICCJ's Panel for Preliminary Ruling on Questions of Law held that the prohibition laid down, by the judgment in *Lin*, on the Romanian courts applying Decision No 67/2022 of the ICCJ was tantamount to guaranteeing a level of protection which was not equivalent or comparable to the level of protection ensured by Article 7 ECHR, and was in breach of both the principle that offences and penalties must be defined by law, as understood in Romanian law, and the principle of legal certainty, by making it

possible for the application of the rules governing the concurrence of laws in time to differ depending on the nature of the offence. In addition, as the Romanian criminal courts do not have a set of criteria defined by the national legislature for assessing whether there is a systemic risk of impunity, as envisaged in the judgment in *Lin*, the assessment, by those courts, of whether such a risk exists would undermine the principle of the separation of powers.

- 42 Furthermore, in Decizia nr. 16 din 16 septembrie 2024 (Decision No 16 of 16 September 2024) ('Decision No 16/2024 of the ICCJ'), the ICCJ – Completul pentru soluționarea recursului în interesul legii (Panel for Appeal in the Interest of the Law) held that, by virtue of Decizia nr. 265 din 6 mai 2014 (Decision No 265 of 6 May 2014) of the Curtea Constituțională (Constitutional Court), the Romanian courts were required to determine the more lenient criminal law overall. According to that decision, the constitutional principle prohibiting the application of *lex tertia* forbids the criminal courts to combine different provisions of a number of successive criminal laws and requires them to determine, on the basis of a specific assessment, the only criminal law which is to be regarded as the most lenient of all the successive criminal laws. Such an obligation would avoid giving rise to both a difference in treatment, in the event of the concurrence of offences, depending on whether or not the offence in question affects the Union budget, and a double standard of protection of fundamental rights, which would entail the determination of an unlawful penalty.
- 43 On the basis of that constitutional case-law, the ICCJ's Panel for Appeal in the Interest of the Law began by establishing that procedural acts performed before 25 June 2018 interrupted the limitation period for criminal liability in cases relating to instances of fraud affecting the financial interests of the Union only if the criminal legislation in force during the period from 1 February 2014 to 25 June 2018 could be regarded as constituting, overall, the more lenient criminal law.
- 44 Next, it is apparent from Decision No 16/2024 of the ICCJ that procedural acts which, in accordance with the law, had to be notified to the suspect or the defendant after 30 May 2022, the date on which OUG nr. 71/2022 entered into force, do not interrupt the limitation period for criminal liability, as regards acts committed before that date, unless the criminal legislation in force from 30 May 2022 may be regarded, overall, as being the more lenient criminal law.
- 45 Lastly, Decision No 16/2024 of the ICCJ specifies that, given that, during the period from 25 June 2018 to 30 May 2022, the limitation periods for criminal liability ran without the possibility of interruption, the act of disapplying Decision No 265/2014 of the Curtea Constituțională (Constitutional Court) would have the effect of 'reactivating' criminal liability, after the expiry of the applicable limitation periods, on the basis of a later, harsher criminal law, which would be contrary to Article 7 ECHR.
- 46 The referring court notes, however, that, by not recognising procedural acts performed before 25 June 2018 as having interrupting effect with regard to limitation unless the criminal law applicable during that period can be regarded as being *lex mitior*, Decision No 16/2024 of the ICCJ makes the application of EU law, as interpreted in the judgment in *Lin*, subject to an additional requirement which was not examined in that judgment and which could, in practice, render the interpretation given to EU law in that judgment inapplicable. It is very unlikely that the criminal law predating 25 June 2018 could be regarded, as a whole, as being legislation more favourable to the defendant than the legal rules in force during the period from 25 June 2018 to 30 May 2022 and derived from the decisions of the Constitutional Court of 2018 and 2022.
- 47 The referring court notes that Decision No 37/2024 of the ICCJ and Decision No 16/2024 of the ICCJ are binding on all the Romanian courts.
- 48 In those circumstances, that court has questions as to whether the obligation, deriving from the judgment in *Lin*, for the Romanian courts to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, is to be maintained.
- 49 More specifically, the referring court questions, first, whether it remains required to refuse to apply such a standard, including where, by virtue of Decision No 37/2024 of the ICCJ and Decision No 16/2024 of the

ICCJ, such a refusal would be contrary to a constitutional principle forbidding the national courts to apply *lex tertia* and would have the result of guaranteeing a level of protection which is not equivalent or comparable to the protection guaranteed under Article 7 ECHR.

- 50 In that regard, that court considers that, in the context of criminal proceedings relating to instances of serious VAT fraud, the Romanian courts should be empowered, under EU law, to set aside the obligation deriving from that constitutional principle, pursuant to which they cannot recognise procedural acts performed before 25 June 2018 as having the effect of interrupting the limitation period for criminal liability unless the criminal legislation under which those procedural acts were performed can be regarded, as a whole, as being *lex mitior*.
- 51 The referring court considers that, pursuant to the *lex mitior* principle, the national courts are free to determine whether the more lenient criminal law is the law in force until 25 June 2018 or, on the contrary, the law after that date. However, when they exercise that prerogative, those courts are required to interpret the legal rules applicable during the period from 25 June 2018 to 30 May 2022 in conformity with EU law as interpreted by the Court of Justice, in order to guarantee the unity and effectiveness of EU law, which does not, in itself, entail the creation of *lex tertia*.
- 52 Furthermore, the application of the judgment in *Lin* to a case of concurrence between offences, only some of which affect the financial interests of the Union, raises only questions of application of national law and may be examined only specifically by the national courts. Such a hypothetical situation should not affect the primacy of EU law, which cannot be dependent on the interpretation given to national legislation in areas not covered by EU law.
- 53 In any event, the referring court considers that the Romanian legislation relating to the grounds for interruption of the limitation period for criminal liability, interpreted in conformity with EU law, cannot be regarded as constituting a standard of protection relating to the application of the *lex mitior* principle which is not equivalent or comparable to the standard enshrined in Article 7 ECHR.
- 54 Second, that court also questions whether it remains required to refuse to apply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle in a situation where – as in the present case – the application of the general limitation period in accordance with that national standard of protection would mean finding that the criminal liability of the person concerned – in the present case, M.G.D. – had been extinguished before the delivery of the judgment in *Lin*.
- 55 According to the referring court, the answer to that question requires an assessment of the predictability and accessibility of the interpretation of EU law provided in the judgment in *Lin*.
- 56 That being so, that court recalls that, according to the case-law of the European Court of Human Rights, the rules concerning limitation are, in principle, procedural laws, with the result that Article 7 ECHR does not prevent the immediate application, to ongoing proceedings, of laws which extend limitation periods where the relevant offences have never become subject to limitation.
- 57 In addition, Romanian legislation does not contain any express provisions on the basis of which it could be concluded that, for offences of the same nature as those at issue in the main proceedings, the limitation period for criminal liability had expired before the delivery of the judgment in *Lin*. Such a conclusion would be possible only if it were to be accepted, thereby going against that judgment, that procedural acts performed before 25 June 2018 have no interrupting effect.
- 58 Third, the referring court has questions as to whether it has an obligation to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle even though the Romanian legislature has not established any criteria on the basis of which the courts of the Member State concerned could assess whether there is a systemic risk of impunity in a

significant number of cases, which could result in a breach of the principle that offences and penalties must be defined by law as guaranteed under Article 7 ECHR.

59 In that regard, that court notes that, in paragraph 91 of the judgment in *Lin*, the Court of Justice held that Decision No 67/2022 of the ICCJ entailed such a systemic risk of impunity. Accordingly, the referring court considers that its obligation to give full effect to EU law, as interpreted in that judgment, cannot be made subject to a prior, separate assessment of whether there is a systemic risk of impunity in respect of instances of serious VAT fraud.

60 Lastly, that court emphasises that, although the rules relating to the limitation period for criminal liability have traditionally been regarded as forming part of substantive criminal law and, consequently, as falling within the scope of the principles of legality, non-retroactivity, and retroactivity *in mitius*, the Romanian legislature has nevertheless gradually introduced a series of exceptions to the prohibition on the retroactive application of harsher rules on limitation in respect of certain serious offences, without those exceptions having been found to be unconstitutional by the Curtea Constituțională (Constitutional Court).

61 In those circumstances, the ICCJ decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) In interpreting and applying Article 325 [TFEU], Article 1(1)(a) and Articles 2 and 9 of [the PFI Convention], [as well as] Article 49 of [the Charter], in the absence of a provision of domestic law establishing a minimum amount for a case of fraud affecting the financial interests of the European Union to be considered serious, must the provisions of EU law be interpreted as meaning that fraud is considered serious only if it involves an amount exceeding EUR 50 000?
- (2) If the answer to [Question 1] is in the negative, must the provisions of Article 2 and Article 4(2) and (3) TEU, Article 2(2) and Article 325(1) TFEU and Article 2(1) of [the PFI Convention], as interpreted by the [Court of Justice in the judgment in *Lin*], [as well as] Article 49(1), Article 52(3) and Article 53 of the Charter[,] be interpreted as meaning that, in criminal proceedings concerning offences relating to VAT, the national court must disapply the national standard of protection relating to [the *lex mitior* principle], as this emerges from the binding case-law of the highest court of that Member State, a standard according to which procedural acts taking place before the national legislative provision governing the causes of interruption of the limitation periods for criminal liability was invalidated do not have [interrupting effect with regard to limitation], where:
 - (a) the disapplication of that national standard is incompatible with the prohibition on applying *lex tertia* – a principle of constitutional rank;
 - (b) in application of that national case-law, it can be considered that the general limitation period for criminal liability had expired before [the judgment in *Lin*] was delivered;
 - (c) the disapplication, on the basis of EU law, of that national standard results in a level of protection of the fundamental rights enshrined in the Charter that is not equivalent or comparable to the protection guaranteed by Article 7 [ECHR];
 - (d) national law does not lay down specific criteria to be applied by the court of the Member State to assess, at a preliminary stage, the systemic risk of impunity arising from the application of that national standard in cases of serious fraud affecting the financial interests of the European Union?’

III. Procedure before the Court

62 By order of 17 June 2025, *Lin II* (C-280/25, EU:C:2025:499), the President of the Court decided that the request for a preliminary ruling was to be determined pursuant to the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

63 On 6 August 2025, the Court of Justice sent the referring court a request for information regarding the legal context of the procedure in the main proceedings. On 2 September 2025, the referring court replied to that request.

64 On 12 September 2025, the Court of Justice sent the referring court a request for clarification. On 15 September 2025, the referring court replied to that request.

IV. Consideration of the questions referred

A. The first question

65 By its first question, the referring court asks, in essence, whether Article 325(1) TFEU, Article 1(1)(a) of the PFI Convention, and Articles 2 and 9 of the PFI Convention, read in conjunction with Article 49 of the Charter, are to be interpreted as meaning that, where no provision of national legislation establishes an amount above which an instance of fraud affecting the financial interests of the Union is to be regarded as ‘serious’, such an instance of fraud may not be so classified unless it involves an amount exceeding EUR 50 000.

66 The uncertainty of the referring court which has given rise to that question is derived from the fact that, according to the explanations provided by that court, the illegal activities at issue in the main proceedings have resulted in damage to the Romanian State budget in a total amount of RON 268 536 (approximately EUR 59 304), while the amount of VAT evaded is RON 163 656 (approximately EUR 36 142), as is indicated in paragraph 30 of the present judgment.

67 Regarding, in the first place, the PFI Convention, it should be emphasised, first, that, as the acts giving rise to the procedure in the main proceedings were committed during the years 2012 to 2014, that convention applied to them *ratione temporis*.

68 It can be seen from Article 2 of Decision 2008/40 that that convention entered into force in Romania on, at the latest, 1 January 2008. In addition, the PFI Convention ceased to have effect only as from 6 July 2019, the date on which it was replaced by Directive 2017/1371, as specified in Article 16 of that directive (the judgment in *Lin*, paragraph 64).

69 As regards, second, the material scope of the PFI Convention, it should be noted that, in the context of prejudice to the financial interests of the Union, Article 1 of that convention defines the concept of ‘fraud’ as being, inter alia, ‘in respect of revenue, any intentional act or omission relating to ... the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of [the Union] or budgets managed by, or on behalf of, [the Union]’. That diminution therefore covers the loss of revenue derived from applying a uniform rate to the harmonised VAT assessment bases determined according to EU rules. That conclusion cannot be called into question by the fact that VAT is not levied directly on behalf of the European Union, as Article 1 of the PFI Convention specifically does not lay down such a condition, which would be contrary to that convention’s objective of vigorously combatting fraud affecting the financial interests of the Union (see, to that effect, judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 41).

70 Subject to verification by the referring court, it therefore appears that the offence at issue in the main proceedings comes within the material scope of the PFI Convention as established in Article 1 thereof, inasmuch as it concerns, inter alia, the intentional preparation of false invoices the aim of which is the evasion of VAT.

71 Third, Article 2(1) of the PFI Convention requires the Member States to take the necessary measures to ensure that instances of conduct constituting fraud affecting the financial interests of the Union are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, namely those involving a minimum amount which may not be set by the Member States at a sum exceeding EUR 50 000, penalties involving deprivation of liberty which can give rise to extradition, it

being understood that, in accordance with Article 9 of that convention, the Member States are free to adopt rules which go beyond those requirements (see, to that effect, judgment of 2 May 2018, *Scialdone*, C-574/15, EU:C:2018:295, paragraph 36, and the judgment in *Lin*, paragraph 85).

- 72 It thus follows from Article 1(1) and Article 2(1) of the PFI Convention, which have remained unaltered since that convention was adopted, that criminal penalties must be adopted in order effectively and dissuasively to combat, inter alia, cases of serious fraud affecting the proper receipt, by the budget of the Union, of the part of VAT revenue which is its due.
- 73 It is expressly stated in Article 2(1) of that convention that any instance of fraud in an amount exceeding EUR 50 000 necessarily constitutes an instance of ‘serious fraud’ for the purposes of that provision.
- 74 Accordingly, while it follows from the wording of Article 9 of the PFI Convention that instances of fraud affecting the financial interests of the Union in an amount not exceeding such a threshold may be classified as ‘serious’ by the laws of the Member States, any instance of fraud involving an amount exceeding such a threshold necessarily constitutes an instance of ‘serious fraud’ for the purposes of Article 2(1) of that convention.
- 75 In the second place, it should be borne in mind that Article 2(1) of the PFI Convention has direct effect (see, to that effect, the judgment in *Lin*, paragraph 96 and the case-law cited).
- 76 It follows that, where it is unable to interpret national legislation in conformity with that provision of EU law, any national court which is called upon, within the limits of its jurisdiction, to apply that provision must give full effect to the requirements of EU law in the proceedings before it, if necessary refusing of its own motion to apply any national rule or practice, even if adopted subsequently, that is contrary to that provision, and it is not necessary for that court to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 24, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 53 and the case-law cited).
- 77 Accordingly, where they are unable to interpret their national legislation in a manner which is consistent with Article 2(1) of the PFI Convention, the courts of the Member States are required to disapply any provision of national law which would prevent an instance of fraud which involves an amount exceeding EUR 50 000 and which affects the financial interests of the Union from being classified as ‘serious’ for the purposes of that provision.
- 78 Thus, without prejudice to the possibility provided for in Article 9 of the PFI Convention and to the extent that national law does not clarify the concept of ‘serious fraud affecting the financial interests of the Union’, the courts of the Member State concerned are required to classify an instance of fraud which is in an amount exceeding EUR 50 000 and which affects the financial interests of the Union as ‘serious fraud’.
- 79 In the third place, it should be emphasised that such a threshold must be regarded as having been exceeded from the moment that the total amount of the damage caused by the instance of fraud or illegal activity is greater than EUR 50 000, regardless of whether the damage caused to the budget of the Union as a result of that offence reaches such an amount.
- 80 Such an interpretation follows, first, from the very wording of Article 2(1) and (2) of the PFI Convention.
- 81 Article 2(1) of that convention confines itself to establishing that any instance of fraud ‘involving a minimum amount to be set in each Member State’ must be considered to be serious fraud, it being understood that ‘this minimum amount may not be set at a sum exceeding [EUR] 50 000’; it does not rule out the possibility that the damage caused by that instance of fraud to the detriment of victims other than the Union, and in particular to the detriment of the budget of the Member States, may be included in the calculation of such an amount.

- 82 In addition, Article 2(2) of the PFI Convention permits the Member States, by way of derogation, not to impose criminal penalties in cases of minor fraud, which involve, inter alia, a ‘total amount’ of less than EUR 4 000. It is therefore apparent from the very wording of that provision that it is the entirety of the damage caused by the instance of fraud which must be taken into account for the purpose of determining whether that instance of fraud may be classified as ‘minor’.
- 83 In view of the connections between, on the one hand, the threshold of EUR 50 000, beyond which an instance of fraud affecting the financial interests of the Union must be classified as ‘serious’, and, on the other, the ceiling of EUR 4 000 below which such an instance of fraud may be classified as ‘minor’, it would be inconsistent if the method for calculating that threshold of EUR 50 000 did not permit account to be taken of damage other than that caused to the budget of the Union, when the method for calculating that ceiling of EUR 4 000 requires such other damage to be taken into account.
- 84 Second, as has been emphasised in paragraph 69 of the present judgment, the PFI Convention is intended vigorously to combat fraud affecting the financial interests of the Union. Such an objective therefore argues in favour of an interpretation of Article 2(1) of the PFI Convention which enables the criminal authorities of the Member States easily to determine whether a case of fraud affecting the financial interests of the Union concerns an amount greater than EUR 50 000.
- 85 However, in practice, establishing precisely, at a sufficiently early stage in a given set of criminal proceedings, the exact amount of the damage suffered by the Union as a result of an instance of fraudulent conduct which, as in the present case, has enabled its perpetrator to evade a number of direct and indirect taxes, only some of which, such as VAT, generate revenue part of which is intended to be allocated to the budget of the Union, may prove to be particularly complex.
- 86 This is particularly the case for an instance of fraud which, as in the present case, concerns, inter alia, VAT, as the reduction of the Union’s own resources which could be caused by such an instance of fraud is difficult to quantify.
- 87 The Union’s own resources derived from the levying of VAT are not made up of simply a percentage of the revenue from that tax actually collected, but result from the application of a uniform rate to the harmonised VAT assessment bases of the Member States, themselves calculated in accordance with Article 3 of Regulation No 1553/89 and subject to various adjustments provided for by the provisions of that regulation (see, to that effect, judgment of 13 July 2023, *Napfény-Toll*, C-615/21, EU:C:2023:573, paragraph 32).
- 88 Thus, regarding, more specifically, the period during which the instances of VAT fraud took place in the present case, it can be seen from Article 2(1)(b) and (4) of Decisions 2007/436 and 2014/335 that own revenue entered in the budget of the Union resulted from, inter alia, the application of a uniform rate of 0.3% to the harmonised VAT assessment bases determined in accordance with Article 3 of Regulation No 1553/89, it being understood that those assessment bases could not exceed 50% of GNI for each Member State. In addition, Article 3 of Regulation No 1553/89, in the version applicable to the dispute in the main proceedings, provided, without prejudice to various adjustments provided for by other provisions of that regulation, that the harmonised VAT assessment base was to be obtained by dividing the total net VAT revenue collected by a Member State during the year by the rate at which VAT was levied during that same year, with a weighted average rate of VAT being used for the purposes of such division where more than one VAT rate was applied in a Member State (judgment of 8 March 2022, *Commission v United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 567).
- 89 It follows that there is no easily quantifiable correlation between the amount of VAT evaded by an economic operator, on the one hand, and the loss of revenue suffered by the budget of the Union as a result of that instance of fraud, on the other.
- 90 Third, in so far as Article 2(1) of the PFI Convention requires that harsher penalties be imposed in the event of serious fraud affecting the financial interests of the Union, it should be borne in mind that

Article 49(1) of the Charter requires that offences and penalties be laid down in a way that is clear, precise and foreseeable (see, to that effect, the judgment in *Lin*, paragraphs 104 and 105 and the case-law cited). It follows that the criteria pursuant to which the Member States must necessarily, where appropriate solely on the basis of Article 2(1) of that convention, classify an instance of fraud affecting the financial interests of the Union as ‘serious fraud’ must be sufficiently clear, precise and foreseeable on the date when the fraud is committed.

- 91 If only instances of fraud which cause damage to the budget of the Union in an amount greater than EUR 50 000 were to be covered by the concept of ‘serious fraud’, the perpetrators of such offences would be, in a considerable number of cases, unable to determine with sufficient precision, on the date of committing those offences, whether they would be risking a stricter penalty pursuant to Article 2(1) of the PFI Convention.
- 92 As can be seen from paragraph 88 of the present judgment, the share of the revenue collected each year by a Member State as a result of VAT which goes to the budget of the Union varies depending on various criteria, some of which, such as GNI, are not foreseeable on the date of collection or evasion of such a tax.
- 93 Fourth, the interpretation provided in paragraph 79 of the present judgment is also supported by the case-law of the Court: when called upon to classify an instance of fraud as ‘serious’ for the purpose of applying Article 2(1) of the PFI Convention, the Court has taken account of the entirety of the damage caused by the fraud, without identifying what proportion of that damage exclusively affected the budget of the Union (see, to that effect, judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 42, and the judgment in *Lin*, paragraphs 22 and 79).
- 94 In the present case, it is therefore appropriate to take into consideration the total amount of the damage, namely RON 268 536 (approximately EUR 59 304), and not only the amount of VAT evaded, for the purpose of classifying the instance of fraud which gave rise to that damage.
- 95 In the fourth and last place, it should be added that, as can be seen from Article 1(3) and Article 2(1) of the PFI Convention, an attempt to commit fraud affecting the financial interests of the Union must be treated in the same way as an instance of fraud affecting those interests (see, to that effect, judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 187). Therefore, such an attempt must necessarily be regarded as an instance of serious fraud, where it can be established that the total amount of the damage that the fraud would have caused if it had been committed would have exceeded EUR 50 000.
- 96 It follows from all the foregoing considerations that the answer to the first question is that Article 2(1) of the PFI Convention, read in the light of Article 49 of the Charter, must be interpreted as meaning that, where no provision of national legislation establishes an amount above which an instance of fraud affecting the financial interests of the Union is to be regarded as ‘serious’, such an instance of fraud must necessarily be so classified as soon as it concerns a total amount greater than EUR 50 000, irrespective of whether the damage suffered by the budget of the Union as a result of that instance of fraud also exceeds such an amount.
- 97 As that interpretation of the PFI Convention is sufficient to provide the referring court with an answer to the first question which will be of use to it, there is no need to interpret, in addition, in examining that question, the concept of ‘fraud’ as referred to in Article 325(1) TFEU.

B. The second question

1. Admissibility

- 98 According to settled case-law, which is now reflected in Article 94 of the Rules of Procedure, the order for reference must set out the precise reasons why the national court is unsure as to the interpretation of EU

law and considers it necessary to refer a question to the Court of Justice for a preliminary ruling (judgment of 29 July 2024, *LivaNova*, C-713/22, EU:C:2024:642, paragraph 54 and the case-law cited).

- 99 In the present case, in the first place, the referring court has clearly set out, in the order for reference, the reasons why it considers it necessary to obtain clarification from the Court of Justice as to the interpretation of Article 325(1) TFEU, Article 49(1) of the Charter, and Article 2(1) of the PFI Convention.
- 100 In the second place, it should be observed that that court also refers to Article 2 TEU and Article 4(2) and (3) TEU, as well as Article 2(2) TFEU. Those provisions concern, respectively, the values on which the Union is founded, respect, on the part of the Union, for the national identities of the Member States inherent in their fundamental political and constitutional structures, the principle of sincere cooperation between the Union and its Member States, and the shared competences between the Union and its Member States.
- 101 However, the referring court has not explained, even in summary form, the reasons why it is unsure as to the interpretation of those provisions and considers it necessary to refer a question to the Court of Justice for a preliminary ruling in that regard. In particular, that court has not specified which provision of domestic law, applicable to the procedure in the main proceedings, would form part of the national identity of the Member State concerned for the purposes of Article 4(2) TEU.
- 102 It follows that the second question must be declared inadmissible inasmuch as it concerns the interpretation of Article 2 TEU and Article 4(2) and (3) TEU, as well as Article 2(2) TFEU.
- 103 Regarding, in the third place, Article 52(3) and Article 53 of the Charter, to which reference is also made in the second question, it should, first, be borne in mind that Article 52(3) of the Charter provides that the meaning and scope of rights enshrined in the Charter which correspond to rights guaranteed by the ECHR are to be the same as those laid down by the ECHR.
- 104 Accordingly, although the ECHR does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law, with the result that the interpretation of EU law and the examination of the validity of acts of the European Union must be undertaken in the light of the fundamental rights guaranteed by the Charter, the fact remains that Article 7 ECHR must be taken into account, as a minimum threshold of protection, when interpreting Article 49(1) of the Charter, because the latter provision contains, at the very least, the same guarantees as those provided for in the former (judgments of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraphs 98 and 99, and of 29 July 2024, *Alchaster*, C-202/24, EU:C:2024:649, paragraph 92 and the case-law cited).
- 105 Second, Article 53 of the Charter confirms that, in a situation where the action of the Member States is not entirely determined by EU law, as is the case in the procedure in the main proceedings, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised (see, to that effect, judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 211, and the judgment in *Lin*, paragraph 110).
- 106 Third, as has been stated in paragraphs 39 to 45 of the present judgment, the concerns which are reflected in the second question put by the referring court have, to a large extent, been caused by the doubts expressed by other compositions of the ICCJ as regards the possibility of reconciling the interpretation of Article 325(1) TFEU and Article 2(1) of the PFI Convention given in the judgment in *Lin* with both Article 7 ECHR and certain Romanian constitutional requirements. It must therefore be held that the referring court has set out with sufficient clarity the reasons why it has considered it necessary to obtain clarification from the Court of Justice as to the interpretation of Article 52(3) and Article 53 of the Charter.

107 It follows from the foregoing considerations that the second question is admissible inasmuch as it seeks an interpretation of Article 325(1) TFEU, Article 49(1), Article 52(3) and Article 53 of the Charter, and Article 2(1) of the PFI Convention.

2. *Substance*

108 By its second question, the referring court seeks, in essence, to obtain clarification as to the way in which Romanian courts are to apply the section of the operative part of the judgment in *Lin* whereby the Court has held that Article 325(1) TFEU and Article 2(1) of the PFI Convention must be interpreted as meaning that the Romanian courts are required to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle.

109 As a preliminary point, it should be borne in mind, in that regard, that, according to settled case-law, Article 325(1) TFEU requires the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union through effective deterrent measures. Although the Member States have freedom to choose the applicable penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two, they must nonetheless ensure, pursuant to that provision, that cases of serious fraud or other serious illegal activities affecting the financial interests of the Union are punishable by effective and dissuasive criminal penalties (see, to that effect, judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraphs 26 and 34; of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraphs 39, 42 and 43; of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 35; of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 54; of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 181 and 191; and the judgment in *Lin*, paragraphs 83 and 84).

(a) *The judgment in Lin*

110 In the case giving rise to the judgment in *Lin*, the Court, hearing a request for a preliminary ruling from the Curtea de Apel Braşov (Court of Appeal, Braşov, Romania), was called upon to examine whether EU law precluded the application, by the Romanian courts, of both the decisions of the Constitutional Court of 2018 and 2022 and Decision No 67/2022 of the ICCJ.

111 In that regard, it is important to specify, as a preliminary point, that, as can be seen from paragraphs 33 and 37 of the judgment in *Lin*, the Court was not called upon, in the case giving rise to that judgment, to give a ruling regarding the obligations which Article 325(1) TFEU and Article 2(1) of the PFI Convention impose on a Romanian court which is called upon to hear and determine a case in which, by a decision which has become final, it has previously been found, applying Decision No 67/2022 of the ICCJ, that the limitation period for the criminal liability of the defendant has expired.

(1) *The assessment, in the judgment in Lin, of the national standard of protection enshrined in the decisions of the Constitutional Court of 2018 and 2022*

112 It follows from the first section of point 1 of the operative part of the judgment in *Lin* that Article 325(1) TFEU and Article 2(1) of the PFI Convention must be interpreted as meaning that the Romanian courts are not required to disapply the decisions of the Constitutional Court of 2018 and 2022 when they are called upon to rule on criminal proceedings relating to cases of serious fraud affecting the financial interests of the Union.

113 In order to reach such a conclusion, the Court found, in the first place, that those decisions gave rise to a systemic risk that offences of serious fraud affecting the financial interests of the Union would remain unpunished under criminal law, which is incompatible with the requirements of Article 325(1) TFEU and Article 2(1) of the PFI Convention. As was noted by the Court in paragraphs 91, 92, 98 and 122 of the judgment in *Lin*, those decisions had the result of neutralising the interrupting effect, with regard to limitation, of procedural acts which had taken place during the period from 25 June 2018 to 30 May 2022

in a large number of cases of serious fraud affecting the financial interests of the Union, thereby making it impossible for the limitation period for the criminal liability of the perpetrators of those offences to be extended as a result of procedural acts which had taken place concerning them during that period.

114 In the second place, the Court nevertheless recalled, in paragraph 101 of the judgment in *Lin*, that no national court can be required, by virtue of Article 325(1) TFEU and Article 2(1) of the PFI Convention, to disapply a national rule relating to the calculation of limitation periods which entails a systemic risk that instances of serious fraud or other serious illegal activities affecting the financial interests of the Union remain unpunished under criminal law, where a refusal to apply that national rule would entail infringement of Article 49(1) of the Charter.

115 However, the Court found, in paragraphs 109 and 111 of the judgment in *Lin*, that the decisions of the Constitutional Court of 2018 and 2022 enshrine a national standard of protection relating to the application of the principle that offences and penalties must be defined by law which goes beyond the guarantees provided in the first sentence of Article 49(1) of the Charter.

116 The Court recalled, in paragraphs 104, 105 and 108 of the judgment in *Lin*, that that provision guarantees the accessibility, foreseeability and precision of provisions which define offences and the penalties associated therewith, and not that of provisions governing limitation periods for criminal liability. However, as the Court emphasised in paragraph 111 of that judgment, the decisions of the Constitutional Court of 2018 and 2022 are based on the premiss that, in Romanian law, the rules relating to the interruption of the limitation period for criminal liability fall within the scope of substantive criminal law, which justifies those requirements of foreseeability and precision being applied to a provision which, like Article 155(1) of the Criminal Code of 2009, governs the grounds for interruption of the limitation period for criminal liability.

117 In the third place, the Court considered that, notwithstanding the systemic risk of impunity entailed by the national standard of protection, enshrined in the decisions of the Constitutional Court of 2018 and 2022, relating to the application of the principle that offences and penalties must be defined by law, as referred to in the previous paragraph of the present judgment, the Romanian courts were nevertheless not required to disapply such a standard, in view of the importance of that standard.

118 Thus, the Court noted, in paragraphs 113 to 118 of the judgment in *Lin*, that, inasmuch as it guaranteed the foreseeability and precision of criminal law, including the rules on limitation with regard to criminal offences, that national standard supplements the protection against arbitrariness in criminal matters which is offered by EU law under the fundamental principle of legal certainty, which constitutes an essential element of the rule of law and thus a founding value of the European Union as referred to in Article 2 TEU. Such a principle requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular where those rules may have adverse consequences. That protection against arbitrariness is of such importance that it cannot be required, under Article 325 TFEU and Article 2(1) of the PFI Convention, that the Romanian courts disapply that national standard.

(2) *The assessment, in the judgment in Lin, of the national standard of protection enshrined in Decision No 67/2022 of the ICCJ*

119 It follows from the second section of point 1 of the operative part of the judgment in *Lin* that Article 325(1) TFEU and Article 2(1) of the PFI Convention must, by contrast, be interpreted as meaning that the Romanian courts are required to disapply Decision No 67/2022 of the ICCJ when they are called upon to hear and determine criminal proceedings relating to cases of serious fraud affecting the financial interests of the Union.

(i) *Classification of the national standard of protection enshrined in Decision No 67/2022 of the ICCJ in the light of Article 49 of the Charter*

- 120 In the first place, the Court held, in paragraphs 106 to 109 of the judgment in *Lin*, that the ICCJ, in Decision No 67/2022, had enshrined a national standard of protection relating to the application of the *lex mitior* principle which went beyond the guarantees provided in the last sentence of Article 49(1) of the Charter.
- 121 Under that national standard of protection, a rule governing the grounds for interruption of the limitation period for criminal liability may have to be applied retroactively as *lex mitior* where it appears, following an overall assessment of successive legal regimes, that such a rule is more favourable to the defendant.
- 122 It is apparent from the last sentence of Article 49(1) of the Charter that the *lex mitior* principle, as understood in EU law, enables a defendant to benefit from a provision which entered into force after the offence was committed and which either alters the classification, under criminal law, of that offence to his or her benefit or reduces the penalty associated with that offence, provided that the defendant has not been the subject of a final conviction (see, to that effect, judgments of 7 August 2018, *Clergeau and Others*, C-115/17, EU:C:2018:651, paragraph 38, and of 1 August 2025, *BAJI Trans*, C-544/23, EU:C:2025:614, paragraphs 81 and 97 and the case-law cited).
- 123 By contrast, unlike the national standard of protection enshrined in Decision No 67/2022 of the ICCJ, the *lex mitior* principle, as guaranteed in the last sentence of Article 49(1) of the Charter, is not applicable to a temporal succession of rules governing the method for calculating the limitation period for criminal liability.
- 124 In the second place, it should be noted that that interpretation of the last sentence of Article 49(1) of the Charter is consistent with the case-law of the European Court of Human Rights relating to the guarantees provided in Article 7 ECHR which must be taken into account, as has been emphasised in paragraph 104 of the present judgment, as a minimum threshold of protection.
- 125 According to that case-law, although Article 7(1) ECHR implicitly guarantees the principle of retroactivity of the more lenient criminal law, the fact remains that that principle applies only to provisions which define offences and the penalties for those offences, with the European Court of Human Rights regarding as reasonable the application, by the domestic courts, of the *tempus regit actum* principle with regard to procedural laws and, in particular, rules relating to the calculation of the limitation period for criminal liability (see, to that effect, judgments of the ECtHR of 17 September 2009, *Scoppola v. Italy (no. 2)*, CE:ECHR:2009:0917JUD001024903, §§ 109 and 110, and of 29 January 2019, *Orlen Lietuva Ltd v. Lithuania*, CE:ECHR:2019:0129JUD004584913, § 97 and the case-law cited).
- 126 It follows that, contrary to what was held by the ICCJ in Decision No 37/2024, the prohibition for Romanian courts, derived from the judgment in *Lin*, on applying Decision No 67/2022 of the ICCJ and, accordingly, on giving retroactive effect to the legal rules, derived from the decisions of the Constitutional Court of 2018 and 2022, governing the grounds for interruption of the limitation period which were in force during the period from 25 June 2018 to 30 May 2022, does not infringe the last sentence of Article 49(1) of the Charter by preserving the effects of an earlier, harsher criminal law. Indeed, although it is true that the *lex mitior* principle, as enshrined in that provision, requires that an earlier criminal law be disapplied in favour of a later criminal law that is more favourable to the defendant, so long as that person has not been the subject of a final conviction, such an obligation nevertheless applies only within the scope of that provision. As has been emphasised in paragraph 123 of the present judgment, the rules governing the method for calculating the limitation period for criminal liability are excluded from the scope of that provision.
- 127 In the third place, the interpretation of the last sentence of Article 49(1) of the Charter provided in paragraph 123 of the present judgment is also not called into question by the reasoning adopted by the ICCJ in Decision No 37/2024, according to which it follows from the judgment of the ECtHR of 12 January 2016, *Gouarré Patte v. Andorra* (CE:ECHR:2016:0112JUD003342710), that that provision must be interpreted as requiring the courts of a Member State to apply retroactively rules governing the method for calculating the limitation period for criminal liability which are more favourable to the

defendant where, as in the present case, the *lex mitior* principle, as understood in the law of that Member State, extends its scope to include the temporal succession of rules relating to the method for calculating limitation periods for criminal liability.

- 128 It is true that it can be seen from paragraph 35 of that judgment that the European Court of Human Rights held that, under the principle of the supremacy of law, of which Article 7 ECHR constitutes an essential element, the national courts must apply a later law providing for a lighter penalty, including where that law entered into force after the handing down of a final conviction, where the national standard of protection relating to the application of the *lex mitior* principle provides an additional guarantee in comparison with those derived from Article 7 ECHR, by requiring that laws which have been adopted since the person concerned was finally convicted and which are more favourable to that person also have retroactive effect.
- 129 However, first, such an obligation has been enshrined by the European Court of Human Rights only with regard to provisions laying down lighter penalties and not with regard to provisions attenuating the severity of the method for calculating limitation periods for criminal liability. It cannot therefore be inferred from that judgment that that Court is requiring, under the principle of the supremacy of law, of which Article 7 ECHR constitutes an essential element, that the courts of a Member State apply retroactively rules relating to the method for calculating the limitation period for criminal liability which are more favourable to the defendant, where the *lex mitior* principle, as enshrined in their national law, applies to the temporal succession of such rules.
- 130 Second, the reasoning adopted by the European Court of Human Rights in that judgment explicitly relies on the principle of the supremacy of law, of which Article 7 ECHR constitutes an essential element.
- 131 Therefore, it cannot be argued on the basis of the judgment of the ECtHR of 12 January 2016, *Gouarré Patte v. Andorra* (CE:ECHR:2016:0112JUD003342710), that a national standard of protection relating to the application of the *lex mitior* principle which goes beyond the guarantees provided in the last sentence of Article 49(1) of the Charter must be protected under Article 7 ECHR and, accordingly, must also be protected under the last sentence of Article 49(1) of the Charter where that national standard of protection is contrary to other provisions of EU law, such as Article 325 TFEU and Article 2(1) of the PFI Convention and thus does not respect the principle of the supremacy of law on which that judgment is based.
- 132 That is all the more the case given that, as has been emphasised in paragraph 105 of the present judgment, in a situation such as that at issue in the main proceedings, the national courts cannot apply national standards of protection of fundamental rights except in so far as, inter alia, the primacy, unity and effectiveness of EU law are not thereby compromised.
- 133 The requirement that such national standards of protection must not compromise the primacy, unity and effectiveness of EU law would not be met if it were to be accepted that a national standard of protection relating to the application of the *lex mitior* principle which goes beyond the guarantees provided in the last sentence of Article 49(1) of the Charter must be applied by the national courts under that provision, regardless of the fact that that standard is in breach of other provisions of EU law.
- 134 It follows from paragraphs 120 to 133 of the present judgment that it is appropriate to reiterate the assessment, set out in the judgment in *Lin*, that the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle does not implement the guarantees enshrined in the last sentence of Article 49(1) of the Charter.

(ii) *Assessment of the systemic risk arising from the national standard of protection enshrined in Decision No 67/2022 of the ICCJ*

- 135 In paragraphs 98, 99 and 121 to 124 of the judgment in *Lin*, the Court held that the Romanian courts had to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, after weighing that national standard of protection against the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention.

- 136 In that regard, the Court noted, more specifically, that Decision No 67/2022 of the ICCJ exacerbated the systemic risk of impunity which, as has been recalled in paragraph 113 of the present judgment, had already arisen from the decisions of the Constitutional Court of 2018 and 2022, by extending the neutralising effect imposed by those decisions of the Constitutional Court on grounds for interrupting the limitation period for criminal liability to include procedural acts which took place before 25 June 2018.
- 137 In so doing, in the judgment in *Lin*, Decision No 67/2022 of the ICCJ enshrining the national standard of protection relating to the application of the *lex mitior* principle, on the one hand, and the decisions of the Constitutional Court of 2018 and 2022 enshrining the national standard of protection relating to the application of the principle that criminal law must be precise and foreseeable, on the other, were treated differently. Such a difference in treatment stems both from the intrinsic specific features of those two national standards of protection of fundamental rights and from the considerable increase in the systemic risk of impunity resulting from the application of the first of those standards.
- 138 Thus, it should, in the first place, be noted that, contrary to the decisions of the Constitutional Court of 2018 and 2022, Decision No 67/2022 of the ICCJ does not rely on the requirements of foreseeability and precision regarding criminal law – which are of specific importance in EU law, as has been recalled in paragraph 118 of the present judgment – in order to deprive procedural acts which have taken place before 25 June 2018 of their interrupting effect with regard to the limitation period for criminal liability. On the contrary, that decision requires a retroactive alteration of the rules relating to the method for calculating the limitation period for criminal liability which were in force on the date when the offence was committed, whether that offence was committed before or after 1 February 2014. It is apparent from the order for reference that those rules were necessarily less lenient than the legal rules on limitation derived from the decisions of the Constitutional Court of 2018 and 2022.
- 139 In the second place, it is important to emphasise that the national standard of protection, enshrined by the ICCJ in Decision No 67/2022, relating to the application of the *lex mitior* principle leads to the systemic risk that perpetrators of instances of serious fraud affecting the financial interests of the Union will not be penalised under criminal law being increased to such an extent that Article 325(1) TFEU and Article 2(1) of the PFI Convention would have been deprived of a significant proportion of their effectiveness if the Romanian courts had not been required to disapply that standard.
- 140 First, it is apparent from the request for a preliminary ruling that Decision No 67/2022 of the ICCJ requires that procedural acts which have taken place during the period from 1 February 2014, the date of the entry into force of Article 155(1) of the Criminal Code of 2009, to 25 June 2018, the date on which Decision No 297/2018 of the Constitutional Court was published, be deprived of all interrupting effect with regard to limitation, on the ground that the legal rules governing the calculation of the limitation period for criminal liability in force during the period from 25 June 2018 to 30 May 2022 and derived from the decisions of the Constitutional Court of 2018 and 2022 must be regarded, following an overall assessment, as being a more lenient criminal ‘law’ than Article 155(1) of the Criminal Code of 2009.
- 141 It follows that, under Decision No 67/2022 of the ICCJ, a period of at least 51 months is added to the period of approximately 47 months during which no act was capable of interrupting the limitation period for criminal liability, in accordance with the legal rules derived from the decisions of the Constitutional Court of 2018 and 2022, during which a single set of legal rules applies, which constitutes a considerable extension of the systemic risk of impunity arising from those decisions of the Constitutional Court.
- 142 Second, it is apparent from the order for reference that Decision No 67/2022 of the ICCJ would also deprive procedural acts which have been notified to the suspect or defendant during the period from 1 January 1969, the date of the entry into force of Article 123 of the Criminal Code of 1968, to 1 February 2014, the date of its repeal, of all interrupting effect with regard to limitation, on the ground that the legal rules governing the calculation of the limitation period in force during the period from 25 June 2018 to 30 May 2022 and derived from the decisions of the Constitutional Court of 2018 and 2022 should be regarded, following an overall assessment, as being a more lenient criminal ‘law’ than Article 123 of the Criminal Code of 1969.

- 143 In such a scenario, the limitation period for the criminal liability of perpetrators of all instances of serious fraud affecting the financial interests of the Union which were committed between the date of Romania's accession to the Union and 30 May 2022 would thus not be subject to any grounds for interruption.
- 144 Third, it should also be emphasised that Decision No 67/2022 of the ICCJ leads to procedural acts which, on the date they took place, legally had interrupting effect, being retroactively deprived of such an effect. Such a consequence would significantly reduce the effectiveness of criminal proceedings brought in respect of instances of serious fraud affecting the financial interests of the Union by making it possible to negate, retroactively, the effects resulting from an interruption of the limitation period which had been legally obtained and on which the Romanian criminal authorities had relied in order to consider that the period within which it was necessary to close the criminal proceedings against the perpetrators of those instances of fraud had been extended.
- 145 Conversely, from the date on which the decision of the Constitutional Court of 2018 was published – 25 June 2018 – those authorities were in a position to assess the risk that the procedural acts which they were planning to adopt from that date and which, under Article 155(1) of the Criminal Code of 2009, should have interrupted the limitation period for criminal liability would be deprived of such an effect, because of the incompatibility of that provision with the principle that offences and penalties must be defined by law, as understood in Romanian law.
- 146 In the third place, it should be added that the prohibition, derived from the judgment in *Lin*, on Romanian courts applying the national standard of protection enshrined in Decision No 67/2022 of the ICCJ does not affect the requirements of precision and foreseeability regarding criminal law which stem from the national standard of protection enshrined in the decisions of the Constitutional Court of 2018 and 2022.
- 147 On the contrary, by requiring the Romanian courts to disapply Decision No 67/2022 of the ICCJ, pursuant to which procedural acts which took place before 25 June 2018 could be retroactively deprived of their interrupting effect, the Court maintained, in the judgment in *Lin*, the full application of the rules relating to the method for calculating the limitation period for criminal liability that were in force before the publication of Decision No 67/2022 of the ICCJ.
- 148 Thus, the judgment in *Lin* in no way has the result that grounds for interruption of the limitation period for criminal liability for serious fraud affecting the financial interests of the Union which were not provided for on the date when such offences were committed will be applied to perpetrators of those offences. That judgment has not, therefore, frustrated the legitimate expectations which those subject to the law might have been harbouring on such a date (see, *a contrario*, judgment of 5 December 2017, *M.A.S. and M.B.*, C-42/17, 'the judgment in *M.A.S. and M.B.*', EU:C:2017:936, paragraph 60).
- 149 In the fourth and last place, it follows from the foregoing considerations that the Court in no way held, in the judgment in *Lin*, that the national standard of protection laid down in Romanian law relating to the application of the *lex mitior* principle is in breach, as a matter of principle, of EU law and must necessarily be disapplied by the Romanian Courts. Indeed, the Court confined itself to holding that, as enshrined in Decision No 67/2022 of the ICCJ, that national standard of protection entailed such a systemic risk of impunity with regard to instances of serious fraud affecting the financial interests of the Union that it was at odds with the very essence of the protection due to the financial interests of the Union under Article 325 TFEU and Article 2(1) of the PFI Convention and that, for that reason, EU law precluded the Romanian courts from applying that national standard of protection.

(b) *Application of the judgment in Lin in the light of the constitutional principle prohibiting the application of lex tertia in criminal law*

- 150 By point (a) of its second question, the referring court asks, in essence, whether Article 325 TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49, Article 52(3) and Article 53 of the Charter, are to be interpreted as meaning that the Romanian courts are required to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex*

mitior principle, notwithstanding the fact that, under a principle of constitutional rank prohibiting the application of *lex tertia*, those courts are forbidden to apply in part successive pieces of criminal legislation by combining some of the provisions of those pieces of legislation, including provisions relating to the method for calculating the limitation period for criminal liability.

- 151 The referring court specifies that the *lex mitior* principle, as interpreted by the Curtea Constituțională (Constitutional Court), involves, where there is a succession of legal rules, choosing and applying the law which, as a whole, guarantees that the accused person benefits from a more favourable situation, without it however being permissible to combine the favourable provisions of successive laws and create, through judicial development of the law, *lex tertia*.
- 152 In that regard, and in the first place, it should be noted that, as was confirmed by the Romanian Government at the hearing, the principle that offences and penalties must be defined by law, as understood in Romanian law, means that the calculation of the limitation period for a given offence must be carried out under the rules applicable on the date when that offence was committed, unless a piece of legislation more favourable to the defendant has entered into force after that date.
- 153 In addition, in the judgment in *Lin*, the Court confined itself to ruling that EU law precluded the Romanian courts, when called upon to hear and determine criminal proceedings relating to cases of serious fraud affecting the financial interests of the Union, from applying Decision No 67/2022 of the ICCJ and, accordingly, granting retroactive effect, under the *lex mitior* principle, to the rules governing the grounds for interruption of the limitation period which were in force during the period from 25 June 2018 to 30 May 2022.
- 154 It follows from the foregoing that, as was, moreover, noted by the referring court in its request for a preliminary ruling, the interpretation of Article 325(1) TFEU and Article 2(1) of the PFI Convention provided in the judgment in *Lin* in no way requires the Romanian courts to combine several successive pieces of legislation in order to create, through judicial development of the law, a set of rules governing the method for calculating the limitation period for criminal liability.
- 155 More specifically, it should be emphasised, first, that the judgment in *Lin* has not had the effect of preventing Romanian courts from calculating the limitation period for the criminal liability of the perpetrator of an offence committed before 1 February 2014 in accordance with the grounds for interruption of the limitation period established in Article 123 of the Criminal Code of 1968; nor has it prevented them from calculating the limitation period for the criminal liability of the perpetrator of an offence committed during the period from 1 February 2014 to 25 June 2018 in accordance with the grounds for interruption provided for in Article 155(1) of the Criminal Code of 2009.
- 156 Second, the Court in no way prohibited, in the judgment in *Lin*, the Romanian courts from calculating the limitation period for the criminal liability of the perpetrator of an offence committed during the period from 25 June 2018 to 30 May 2022 by refusing to recognise any procedural act whatsoever as having interrupting effect with regard to limitation, in accordance with the decisions of the Constitutional Court of 2018 and 2022.
- 157 Third, EU law also does not preclude Article 155(1) of the Criminal Code of 2009, as inserted by OUG nr. 71/2022, from applying only to offences which were committed from 30 May 2022, the date of its entry into force.
- 158 In the second place, in the event that, by point (a) of its second question, the referring court also seeks to question the Court regarding the difference in treatment, derived from the judgment in *Lin*, as between, on the one hand, the legislation applicable to the method for calculating the limitation period for the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union and, on the other, the legislation applicable to the method for calculating the limitation period for the criminal liability of perpetrators of other types of fraud, the following should be noted.

- 159 It is true that Article 325(1) TFEU and Article 2(1) of the PFI Convention, as interpreted by the Court in the judgment in *Lin*, require only that the Romanian courts disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle in connection with instances of serious fraud affecting the financial interests of the Union. Therefore, perpetrators of other instances of fraud may benefit from the retroactive effect granted, under Decision No 67/2022 of the ICCJ, to the rules governing the grounds for interruption of that limitation period which were in force during the period from 25 June 2018 to 30 May 2022, and may have their criminal liability extinguished more quickly.
- 160 However, such a difference in treatment, which arises directly from the limited material scope of the requirements laid down in Article 325(1) TFEU and Article 2(1) of the PFI Convention, which are intended to ensure effective protection of the financial interests of the Union, must be regarded as being reasonably justified in light of such an objective, so that that difference in treatment is not in breach of the principle of equality and non-discrimination, as understood in EU law.
- 161 Furthermore, it cannot be accepted that, under a national standard of protection prohibiting such a difference in treatment, the Romanian courts would be required to apply Decision No 67/2022 of the ICCJ to cases of serious fraud affecting the financial interests of the Union.
- 162 Indeed, first, such a consequence would entail an increase in the systemic risk of impunity for instances of serious fraud affecting the financial interests of the Union which would be equivalent to that arising from the application, by those courts, to those cases of serious fraud, of the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle. Second, that consequence would not be based on the principle that offences and penalties must be defined by law in terms of its requirements relating to the clarity, precision, foreseeability and non-retroactivity of criminal law, including provisions governing limitation periods for criminal liability, as referred to in the judgment in *M.A.S. and M.B.*, as well as the judgment in *Lin*.
- 163 It follows from all the foregoing considerations that the answer to point (a) of the second question is that Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49, Article 52(3) and Article 53 of the Charter, must be interpreted as meaning that the Romanian courts are required to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, notwithstanding the fact that, under a principle of constitutional rank prohibiting the application of *lex tertia*, those courts are forbidden to apply in part successive pieces of criminal legislation by combining some of the provisions of those pieces of legislation.
- (c) ***The application, in the judgment in Lin, of the condition relating to the systemic risk of impunity***
- 164 By point (d) of its second question, which it is appropriate to examine second, the referring court asks, in essence, whether Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49, Article 52(3) and Article 53 of the Charter, are to be interpreted as meaning that the Romanian courts must disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, despite the fact that, in their national law, there are no criteria enabling them to determine whether the application of that national standard of protection entails a systemic risk of impunity with regard to perpetrators of instances of serious fraud affecting the financial interests of the Union.
- 165 In that regard, it should be noted, in the first place, that, as has been recalled in paragraphs 113 and 136 of the present judgment, the Court held, in paragraph 91 of the judgment in *Lin*, that the legal situation resulting from the decisions of the Constitutional Court of 2018 and 2022 and from Decision No 67/2022 of the ICCJ entails a systemic risk that offences of serious fraud affecting the financial interests of the Union will not be penalised under criminal law, in particular in cases the complexity of which calls for a longer investigation on the part of the criminal authorities.

- 166 Such a finding was based not only on the findings made by the referring court in the case giving rise to the judgment in *Lin*, but also on the data presented by the Commission on 22 November 2022 in its Report to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (COM(2022)664 final), pursuant to Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56). Those data confirmed the risk that numerous cases of serious fraud affecting the financial interests of the Union may no longer be penalised because of the alterations made to the method for calculating the limitation period for the criminal liability of the perpetrators thereof derived from those decisions of the Constitutional Court, on the one hand, and the ICCJ, on the other (see, to that effect, the judgment in *Lin*, paragraphs 89 and 90).
- 167 In addition, as has been recalled in paragraphs 136 and 141 of the present judgment, the Court found, in the judgment in *Lin*, that the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle considerably increased the systemic risk of impunity which had already arisen from the decisions of the Constitutional Court of 2018 and 2022, because of the retroactive effect which that decision of the ICCJ conferred on the legal rules governing the calculation of the limitation period derived from those decisions of the Constitutional Court.
- 168 Thus, as has been noted by the referring court in its request for a preliminary ruling, it expressly follows from the judgment in *Lin* that the Court itself held that the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle entails a systemic risk of impunity in respect of instances of serious fraud affecting the financial interests of the Union. Accordingly, where they are called upon to apply Article 325(1) TFEU and Article 2(1) of the PFI Convention, the Romanian courts are free from the obligation to examine whether Decision No 67/2022 of the ICCJ entails such a systemic risk of impunity and must, on the contrary, take it for granted that such is the case, in accordance with the binding effect of the case-law of the Court.
- 169 It also follows that, unlike in the situation giving rise to the judgment in *M.A.S. and M.B.*, the assessment of whether the application of Decision No 67/2022 of the ICCJ entails a systemic risk of impunity for perpetrators of instances of serious fraud affecting the financial interests of the Union does not lead to uncertainty in the national legal order which is liable to be in breach of the national standard of protection relating to the application of the principle that the criminal law applicable must be precise (see, to that effect, the judgment in *M.A.S. and M.B.*, paragraph 59).
- 170 Lastly, it should be added, in that regard, that, although the Romanian Government referred to certain judicial statistics during the hearing before the Court, none of those statistics appears to be such as to alter the finding of the Court that Decision No 67/2022 of the ICCJ entails a systemic risk of impunity in respect of perpetrators of instances of serious fraud affecting the financial interests of the Union, a finding which, moreover, has not been called into question by the referring court.
- 171 In the second place, it should be emphasised that, by finding that such a systemic risk of impunity exists, the Court did not act in breach of the guarantees derived from the principle of legal certainty, as referred to in paragraph 118 of the present judgment.
- 172 Thus, the analysis set out in paragraphs 89 to 91, 99, 121 and 122 of the judgment in *Lin* is based on a foreseeable interpretation of the concept of a ‘systemic risk of impunity’ within the meaning of EU law, in view of, inter alia, the explanations provided in that regard in paragraph 47 of the judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555), and in paragraphs 200 and 201 of the judgment of 21 December 2021, *Euro Box Promotion and Others* (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034).
- 173 In addition, it should be noted that, from the moment of its publication, it was foreseeable that Decision No 67/2022 of the ICCJ would entail such a systemic risk of impunity. Thus, perpetrators of instances of serious fraud affecting the financial interests of the Union were in a position to foresee the incompatibility

of that decision with the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention from the date on which they could hope to benefit from the national standard of protection, enshrined in that decision, relating to the application of the *lex mitior* principle.

174 Moreover, while it is true that, for offences committed before the publication of Decision No 67/2022 of the ICCJ, the existence of that risk was not foreseeable on the date when those offences were committed, such a situation nevertheless does not arise from a lack of foreseeability of the EU law applicable, but only from the fact that Decision No 67/2022 of the ICCJ, although it was adopted after those offences were committed, nonetheless has had the effect of retroactively altering the method for calculating the limitation period for the criminal liability of the perpetrators of those offences.

175 It follows from all the foregoing considerations that the answer to point (d) of the second question is that Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49, Article 52(3) and Article 53 of the Charter, must be interpreted as meaning that the Romanian courts must disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, despite the fact that, in their national law, there are no criteria enabling them to determine whether the application of that national standard of protection entails a systemic risk of impunity with regard to instances of serious fraud affecting the financial interests of the Union, given that it follows from the judgment in *Lin*, in a manner that is explicit and foreseeable, that that national standard of protection entails such a systemic risk.

(d) *Application of the judgment in Lin to offences definitively time-barred under the national standard of protection enshrined in Decision No 67/2022 of the ICCJ*

176 By point (b) of its second question, which it is appropriate to examine third, the referring court asks, in essence, whether Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49(1), Article 52(3) and Article 53 of the Charter, are to be interpreted as meaning that the Romanian courts must disapply Decision No 67/2022 of the ICCJ when they are called upon to hear and determine criminal proceedings in respect of which the limitation period, if it were to be calculated by taking that decision into account, would have to be regarded as having expired before the date of delivery of the judgment in *Lin*.

177 In that regard, it is important to distinguish between two scenarios. The first concerns a situation where a Romanian court is called upon to apply Article 325(1) TFEU and Article 2(1) of the PFI Convention to cases of serious fraud affecting the financial interests of the Union in respect of which a court decision having the authority of *res judicata* has already definitively found that, because of the application of the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, the limitation period for criminal liability has expired. The second concerns a situation where those provisions of EU law must be applied to cases of serious fraud affecting the financial interests of the Union in respect of which no court decision of that kind has yet been handed down.

(1) *Application of the judgment in Lin to a case in which a court decision has definitively found that the limitation period for criminal liability has expired*

178 In the first place, it is important to bear in mind the importance of the principle of *res judicata* both in the legal order of the Union and in the national legal orders. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that decisions of courts or tribunals which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question (see judgments of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 38, and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 37).

179 Therefore, EU law does not require a national court to disapply domestic rules of procedure conferring the authority of *res judicata* on a decision of a court or tribunal, even if to do so would make it possible to

remedy a national situation which is incompatible with EU law. Accordingly, EU law does not require a national judicial body automatically to go back on a decision handed down by that body and having the authority of *res judicata* in order to take into account the interpretation of a relevant provision of EU law adopted by the Court after that decision was handed down. That said, if the applicable domestic rules of procedure provide the possibility, under certain conditions, for a national court to go back on a decision having the authority of *res judicata* in order to render the situation compatible with national law, that possibility must prevail if those conditions are met, in accordance with the principles of equivalence and effectiveness, so that the situation at issue in the main proceedings is brought back into line with the rules of EU law (see, to that effect, judgments of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraphs 59 to 62, and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraphs 38 and 42).

- 180 As was noted, in essence, by the Advocate General in points 74 to 80 of his Opinion, Article 325(1) TFEU and Article 2(1) of the PFI Convention thus do not require, in themselves, that a court decision having the authority of *res judicata* by which it has been found, on the basis of a calculation of the limitation period applying the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, that criminal liability has been extinguished must be called into question. Such a conclusion applies regardless of whether the court decision finding, definitively, that the limitation period has expired was handed down before or after the delivery of the judgment in *Lin*.
- 181 However, in accordance with the case-law referred to in paragraph 179 of the present judgment, if Romanian law were to provide the possibility, under certain conditions, to go back on a decision having the authority of *res judicata* in order to render the situation compatible with that law, such a decision would also have to be capable of being called into question, under the same conditions, in order to render the situation at issue in the main proceedings compatible with Article 325(1) TFEU and Article 2(1) of the PFI Convention.
- 182 In the second place, it should be emphasised, first, that, while the assessment of the ‘final’ nature of the conviction must be carried out on the basis of the law of the Member State in which that conviction was handed down, the fact remains that that concept must be given an autonomous and uniform interpretation throughout the European Union, in so far as it determines the extent of the obligations derived, for the Member States, from weighing the respect due to the principle of the primacy of EU law, on the one hand, against that due to the principle of *res judicata*, on the other. It follows that the fact that a conviction is regarded as final under national law is not decisive for the purposes of the application of the case-law referred to in paragraph 179 of the present judgment (see, by analogy, judgment of 1 August 2025, *BAJI Trans*, C-544/23, EU:C:2025:614, paragraphs 100 and 101 and the case-law cited).
- 183 Second, a court decision cannot be regarded as being final, for the purposes of that case-law, where it may be the subject of an ordinary appeal, that is to say, any appeal which forms part of the normal course of an action and which, as such, constitutes a procedural development which any party must reasonably expect. That is, inter alia, the case where the person convicted under criminal law or the public authority responsible for prosecution may bring, within a time limit determined by law and without having to rely on exceptional circumstances (such as the need to ensure, in the interests of the law, the consistency of case-law), proceedings before a court in order to obtain annulment or variation of a judgment. In that regard, the fact that the proceedings which may be brought within a time limit determined by law and without the need for reliance on exceptional circumstances are regarded, under national law, as being an extraordinary remedy is irrelevant: as long as the time limit for bringing such proceedings has not expired or a ruling has not been given thereon, that court decision cannot be regarded as having definitively barred further prosecution (see, by analogy, judgment of 1 August 2025, *BAJI Trans*, C-544/23, EU:C:2025:614, paragraphs 102 and 103 and the case-law cited).
- 184 It follows that, where an appeal in cassation is launched, under the conditions referred to in the previous paragraph of the present judgment, against a decision of a court or tribunal, that decision cannot become final until the parties have exhausted that legal remedy or have allowed the time limit for bringing such an

appeal to have elapsed without having lodged such an appeal (see, by analogy, judgment of 1 August 2025, *BAJI Trans*, C-544/23, EU:C:2025:614, paragraph 105).

185 In this instance, it does not appear from the file before the Court that the decision of 21 March 2024 of the Curtea de Appel Oradea (Court of Appeal, Oradea) finding, on the basis of a calculation of the limitation period for criminal liability applying the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, that M.G.D.'s criminal liability was extinguished constituted a final judgment having the authority of *res judicata* for the purposes of the case-law referred to in paragraphs 183 and 184 of the present judgment.

(2) *Application of the judgment in Lin to criminal proceedings in respect of which expiry of the limitation period has not been found by a final judicial decision*

186 As can be seen from paragraph 176 of the present judgment, the referring court is questioning whether the first sentence of Article 49(1) of the Charter requires the Romanian courts to refrain from applying Article 325(1) TFEU and Article 2(1) of the PFI Convention as interpreted in the judgment in *Lin* where the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union would have to be regarded as having been extinguished before the date of delivery of that judgment if the limitation period for that liability were to be calculated on the basis of Decision No 67/2022 of the ICCJ.

187 That court thus seeks to determine whether, by applying the judgment in *Lin*, the Romanian courts are reactivating, in breach of the guarantees provided in Article 7 ECHR, a limitation period which should be regarded as having definitively expired.

188 As a preliminary point, it should be borne in mind, first, that the principle that offences and penalties must be defined by law, as enshrined in the first sentence of Article 49(1) of the Charter, requires, according to the very wording of that provision, that no one is to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Similarly, Article 49(1) of the Charter provides that a heavier penalty than the one that was applicable at the time the criminal offence was committed is not to be imposed. It follows that provisions defining offences and penalties must be accessible and foreseeable and may not, in principle, act with retroactive effect, unless such retroactive application is beneficial to the defendant, in accordance with the guarantees provided in the last sentence of Article 49(1) of the Charter, as referred to in paragraph 122 of the present judgment.

189 By contrast, the first sentence of Article 49(1) of the Charter does not guarantee that persons prosecuted under criminal law will remain subject to the rules governing the limitation period for their criminal liability which were in force on the date when the offences which they are alleged to have committed took place, as those rules may be amended so long as the limitation period has not yet expired (see, to that effect, judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraphs 54 to 57 and the case-law cited, and the judgment in *M.A.S. and M.B.*, paragraph 42).

190 However, the first sentence of Article 49(1) of the Charter precludes the possibility that, after the limitation period for the criminal liability of the perpetrator of an offence has expired, that person's liability may be triggered again because of the entry into force of a new provision which extends that limitation period. Indeed, it would be contrary to the first sentence of Article 49(1) of the Charter for such an extension of the limitation period to be capable of reactivating criminal liability which has been definitively extinguished.

191 That interpretation of the first sentence of Article 49(1) of the Charter respects the minimum threshold of protection offered under Article 7 ECHR. In accordance with the case-law of the European Court of Human Rights, Article 7 ECHR does not prevent limitation periods from being extended, through the immediate application of a procedural law, where the relevant offences have never become subject to limitation. By contrast, re-establishing criminal liability after the limitation period has expired is

incompatible with the fundamental principles of legality and foreseeability enshrined in Article 7 ECHR (see, to that effect, judgment of the ECtHR of 22 June 2000, *Coëme and Others v. Belgium*, CE:ECHR:2000:0622JUD003249296, § 149, and Advisory Opinion of the ECtHR of 26 April 2022 on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture, §§ 75 and 77).

192 Second, it should also be borne in mind that, as has been emphasised in paragraph 118 of the present judgment, the principle of legal certainty – of which the first sentence of Article 49(1) of the Charter constitutes one particular expression – requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular where those rules may have adverse consequences (see, to that effect, the judgment in *Lin*, paragraph 114 and the case-law cited).

193 It follows that, in order not to be in breach of that principle, neither Article 325 TFEU nor Article 2(1) of the PFI Convention may prevent the limitation period for the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union from being regarded as having expired on the basis of Decision No 67/2022 of the ICCJ unless those provisions of EU law constitute a sufficiently clear and foreseeable legal basis to prevent the expiry of such a limitation period (see, by analogy, Advisory Opinion of the ECtHR of 26 April 2022 on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture, § 78).

194 It is therefore necessary to examine whether the interpretation of Article 325 TFEU and Article 2(1) of the PFI Convention in the judgment in *Lin* has had the effect of requiring, in breach of Article 49(1) of the Charter, the reopening of a limitation period after that period has expired. That would be the case not only if the requirements imposed by those provisions of EU law had not been applicable until after that period had elapsed, but also if those provisions, although having entered into force earlier, had to be regarded as lacking clarity or as not having been sufficiently foreseeable on the date when that period should have expired under the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle.

(i) *Date of the entry into force of the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention*

195 In the first place, it should be emphasised that Article 325(1) TFEU and Article 2(1) of the PFI Convention were incorporated into Romanian law on, at the latest, 1 December 2009 and 1 January 2008, respectively.

196 In addition, it is common ground that no instance of serious fraud affecting the financial interests of the Union could have been committed, in Romania, before 1 January 2007, the date of that State's accession to the Union. Moreover, it is apparent from the file before the Court that the minimum limitation period applicable to such instances of fraud is eight years.

197 It follows that Article 325(1) TFEU and Article 2(1) of the PFI Convention were part of Romanian law well before any kind of serious fraud affecting the financial interests of the Union was capable of being time-barred under the standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle in Romanian law.

198 In the second place, as has been recalled in paragraph 119 of the present judgment, those provisions were interpreted, in the judgment in *Lin*, as precluding a national standard of protection relating to the application of the *lex mitior* principle, such as that enshrined in Decision No 67/2022 of the ICCJ, from being applied to criminal proceedings brought in respect of cases of serious fraud affecting the financial interests of the Union.

199 It can be seen from settled case-law that the interpretation thus given, in the judgment in *Lin*, to Article 325(1) TFEU and Article 2(1) of the PFI Convention is confined to clarifying and defining the meaning and scope of those provisions as they ought to have been understood and applied from the time of

their entry into force (see, inter alia, judgments of 27 March 1980, *Denkavit italiana*, 61/79, EU:C:1980:100, paragraph 16, and of 5 April 2022, *Commissioner of An Garda Síochána and Others*, C-140/20, EU:C:2022:258, paragraph 125).

200 It follows that those provisions must be regarded, from the moment of their entry into force in the Romanian legal order, as precluding the application of a national standard of protection, such as that enshrined in Decision No 67/2022 of the ICCJ, to criminal proceedings in respect of instances of serious fraud affecting the financial interests of the Union.

201 In the third place, both Article 325(1) TFEU and Article 2(1) of the PFI Convention have direct effect (the judgment in *Lin*, paragraph 96 and the case-law cited). It follows that, where it is unable to interpret the national legislation in conformity with those provisions of EU law, any Romanian court called upon to apply, within the limits of its jurisdiction, those provisions must refuse of its own motion to apply any national rule or practice, even if adopted subsequently, that is contrary to those provisions.

202 Thus, Article 325(1) TFEU and Article 2(1) of the PFI Convention must be regarded as having forbidden the Romanian courts, from the date on which those provisions of EU law entered into force in Romanian law, to apply a national standard of protection relating to the application of the *lex mitior* principle, such as that enshrined in Decision No 67/2022 of the ICCJ, to cases of serious fraud affecting the interests of the Union. As has been recalled in paragraph 197 of the present judgment, no limitation period relating to such instances of fraud had expired on that date, even applying such a national standard of protection to the calculation of that limitation period.

203 In the fourth place, it should also be noted that Article 280 EC, as inserted by the Treaty of Nice, that is to say, before Romania's accession to the Union, was worded almost identically to Article 325 TFEU, which replaced it. It is therefore permissible to consider, for reasons similar to those set out in paragraphs 196 to 202 of the present judgment, that EU law precluded Romanian courts from applying a national standard of protection, such as that enshrined in Decision No 67/2022 of the ICCJ, from the moment of Romania's accession to the Union.

204 It follows from the foregoing considerations that the Romanian courts were under an obligation, derived from Article 325 TFEU and Article 2(1) of the PFI Convention, to disapply a national standard of protection relating to the application of the *lex mitior* principle, such as that enshrined in Decision No 67/2022 of the ICCJ, already before the first date on which an instance of serious fraud affecting the financial interests of the Union could have been regarded as being time-barred in accordance with that national standard of protection.

(ii) *Clarity and foreseeability of the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention*

205 As a second step, it is, however, still necessary to verify, as has been emphasised in paragraph 194 of the present judgment, whether Article 325 TFEU and Article 2(1) of the PFI Convention constitute a sufficiently clear and foreseeable legal basis to prevent the expiry of a limitation period calculated in accordance with Decision No 67/2022 of the ICCJ.

206 In that regard, it should be noted that Article 325(1) TFEU and Article 2(1) of the PFI Convention are clearly and precisely worded. Those subject to the law are in a position to ascertain, on the basis of the wording of the relevant provisions and, if need be, with the help of the interpretative assistance given by case-law, the scope of the requirements stemming from those provisions (see, by analogy, judgments of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 50; of 5 May 2022, *BV*, C-570/20, EU:C:2022:348, paragraphs 38 and 39; and the judgment in *Lin*, paragraph 105).

207 In addition, while there is no doubt that, from the date of delivery of the judgment in *Lin*, it has been foreseeable that Article 325(1) TFEU and Article 2(1) of the PFI Convention will require the Romanian courts to disapply Decision No 67/2022 of the ICCJ in criminal proceedings involving instances of serious

fraud affecting the financial interests of the Union, the Court must still examine whether such was the case before the delivery of that judgment.

- 208 In that regard, it should be noted, as a preliminary point, that such a requirement of foreseeability does not preclude a necessary clarification of Article 325(1) TFEU and Article 2(1) of the PFI Convention by the Court, provided that the result of such a clarification is reasonably foreseeable (see, by analogy, judgments of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 217 and 218; of 22 October 2015, *AC-Treuhand v Commission*, C-194/14 P, EU:C:2015:717, paragraph 41; and of 27 June 2024, *Servier and Others v Commission*, C-201/19 P, EU:C:2024:552, paragraph 387). That is the case where that interpretation is confined to reflecting a perceptible line of case-law development, even if it explains it in the light of a specific case (see, by analogy, judgment of the ECtHR of 21 October 2013, *Del Río Prada v. Spain*, CE:ECHR:2013:1021JUD004275009, § 112, and Advisory Opinion of the ECtHR of 29 May 2020 concerning the use of the ‘blanket reference’ or ‘legislation by reference’ technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law, § 62).
- 209 In addition, the scope of the concept of foreseeability depends to a large extent on the content of the text in issue, the field it covers and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, including economic operators subject to VAT, who are used to having to proceed with a high degree of caution when pursuing their occupation. Such persons can therefore be expected to take special care in assessing the risks that such an activity entails (see, to that effect, judgments of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 219; of 22 October 2015, *AC-Treuhand v Commission*, C-194/14 P, EU:C:2015:717, paragraph 42; and of 27 June 2024, *Servier and Others v Commission*, C-201/19 P, EU:C:2024:552, paragraph 388).
- 210 In the light of those preliminary observations, it should, in the first place, be emphasised that, already before Romania’s accession to the Union, the Court had held that the principle of sincere cooperation, now set out in Article 4(3) TEU, requires that, where EU law does not establish penalties for infringement of one of its provisions, the Member States are to ensure that instances of such infringement, including prejudice to the financial interests of the Union, are penalised under conditions, both procedural and substantive, which make the penalty effective, proportionate and dissuasive (see, to that effect, inter alia, judgments of 21 September 1989, *Commission v Greece*, 68/88, EU:C:1989:339, paragraphs 23 and 24; of 10 July 1990, *Hansen*, C-326/88, EU:C:1990:291, paragraph 17; of 8 June 1994, *Commission v United Kingdom*, C-382/92, EU:C:1994:233, paragraph 55; and of 3 May 2005, *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraph 65).
- 211 It follows that the interpretation whereby Article 325(1) TFEU and Article 2(1) of the PFI Convention preclude, in principle, the courts of the Member States from applying provisions of national law relating to the method for calculating the limitation period for criminal liability which impede the effective punishment of prejudice to the financial interests of the Union was foreseeable already before Romania’s accession to the Union.
- 212 That case-law was fully confirmed by the Court as soon as it was called upon to interpret Article 325(1) TFEU, as is made clear by the case-law referred to in paragraph 109 of the present judgment.
- 213 In addition, in the judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555, point 1 of the operative part), the Court expressly held that Article 325 TFEU must be interpreted as forbidding the courts of a Member State to apply provisions of national legislation relating to limitation periods in criminal matters if it turns out that those provisions entail a systemic risk that instances of serious fraud

affecting the financial interests of the Union will not be penalised in a way that is effective and dissuasive. The Court confirmed such an interpretation in paragraphs 192 and 194 to 201 of the judgment of 21 December 2021, *Euro Box Promotion and Others* (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034).

- 214 In the second place, it is true that, in the judgment in *M.A.S. and M.B.*, the Court acknowledged that Article 325(1) TFEU does not preclude the courts of a Member State from applying a national standard of protection of fundamental rights which entails such a systemic risk of impunity where that standard is based on the principles of precision, foreseeability and non-retroactivity regarding criminal law, including the rules relating to the method for calculating the limitation period for criminal liability.
- 215 However, it in no way follows from that judgment that it must be held that, since the date on which the judgment in *Lin* was delivered, the interpretation of Article 325(1) TFEU and Article 2(1) of the PFI Convention which was adopted in that judgment has become unforeseeable.
- 216 In that regard, first, as was noted by the Advocate General in point 56 of his Opinion, the Court applied, in the judgment in *Lin*, the lessons from the judgment in *M.A.S. and M.B.* as recalled in paragraph 214 of the present judgment. The Court held that EU law did not preclude Romanian courts from applying the national standard of protection, enshrined in the decisions of the Constitutional Court of 2018 and 2022, relating to the principle that offences and penalties must be defined by law, in respect of the requirements of precision and foreseeability regarding criminal law, notwithstanding the fact that those decisions entailed a systemic risk that perpetrators of instances of serious fraud affecting the financial interests of the Union would evade any criminal penalty.
- 217 Second, it clearly follows from the judgment in *M.A.S. and M.B.* that the particular status which the Court, in that judgment, recognised the national standard of protection relating to the principle that offences and penalties must be defined by law as having, in respect of the requirements of precision, foreseeability and non-retroactivity regarding criminal law, cannot be transposed to a national standard of protection relating to the application of the *lex mitior* principle, such as that enshrined in Decision No 67/2022 of the ICCJ.
- 218 Thus, the judgment in *M.A.S. and M.B.* could not be understood as meaning that the Court held, in that judgment, that Article 325(1) TFEU permits the courts of the Member States to apply any national standard of protection relating to the method for calculating the limitation period for criminal liability, irrespective of the extent of the potential systemic risk of impunity in respect of instances of serious fraud affecting the financial interests of the Union that such a standard of protection might entail.
- 219 Indeed, such an interpretation of the judgment in *M.A.S. and M.B.* would have been manifestly at odds with the settled case-law of the Court, recalled in paragraph 47 of that judgment, according to which the courts of the Member States may apply national standards of protection of fundamental rights, provided, *inter alia*, that the unity and effectiveness of EU law are not thereby compromised, as well as with paragraph 36 thereof, which specifies that the Member States must ensure that the limitation rules laid down by national law allow effective punishment of instances of VAT fraud.
- 220 Moreover, it should be borne in mind that the Court held, following the delivery of the judgment in *M.A.S. and M.B.*, that provisions of Romanian law, in respect of which it could not be excluded that they constituted a national standard of protection relating to effective judicial protection, had, in any event, to be disapplied by the courts of that Member State, precisely on the ground that the application of such a national standard of protection would give rise to a systemic risk of impunity to the benefit of, *inter alia*, perpetrators of instances of serious fraud affecting the financial interests of the Union and would thereby adversely affect the primacy, unity and effectiveness of EU law (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraphs 211 to 213).
- 221 In addition, in paragraphs 51 to 61 of the judgment in *M.A.S. and M.B.*, the Court expressly acknowledged that the national standard of protection relating to the principle that offences and penalties must be defined

by law, in respect of the requirements of precision, foreseeability and non-retroactivity regarding criminal law, including provisions governing limitation periods for criminal liability, is of specific importance in EU law, which justifies such a standard being capable of being applied by the national courts, notwithstanding the systemic risk of impunity which it entails.

- 222 As has been emphasised in paragraph 118 of the present judgment, such a national standard of protection supplements the protection against arbitrariness in criminal matters which is offered by EU law under the fundamental principle of legal certainty, which constitutes an essential element of the rule of law and thus a founding value of the European Union as referred to in Article 2 TEU.
- 223 However, as has been emphasised in paragraph 138 of the present judgment, the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle, far from being based on such requirements, involves, on the contrary, the retroactive application of certain rules relating to the method for calculating the limitation period. The line of reasoning adopted by the Court in the judgment in *M.A.S. and M.B.* could not therefore be transposed to such a national standard of protection.
- 224 It follows from paragraphs 206 to 223 of the present judgment that Article 325(1) TFEU and Article 2(1) of the PFI Convention must be regarded as constituting a sufficiently clear and foreseeable legal basis to enable the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle to be disapplied, so that, as can be seen from the judgment in *Lin*, the criminal liability of the perpetrator of an instance of serious fraud affecting the financial interests of the Union cannot be regarded as being time-barred, under Romanian law, except by virtue of a method for calculating the limitation period which excludes the application of Decision No 67/2022 of the ICCJ.
- 225 Furthermore, it should be noted that, in view of the sufficiently clear and precise nature of those provisions of EU law, and contrary to what was held by the ICCJ in Decision No 37/2024, the judgment in *Lin* has not had the result of disappointing any kind of legitimate expectation of persons subject to the law as regards the fact that, since the publication of Decision No 67/2022 of the ICCJ, the limitation period for the criminal liability of those persons could not be interrupted, including by procedural acts predating 25 June 2018.
- 226 Indeed, it is sufficient to recall that, according to settled case-law, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation, on the part of a person subject to the law, of beneficial treatment contrary to EU law (see, to that effect, judgment of 19 December 2024, *Kaduna*, C-244/24 and C-290/24, EU:C:2024:1038, paragraph 131 and the case-law cited).
- 227 In the third and last place, it also cannot be maintained that the judgment in *Lin* failed to have regard to the principle of legal certainty on the ground that, by requiring the Romanian courts to disapply Decision No 67/2022 of the ICCJ, the Court once again gave rise, within those courts, to uncertainty regarding the method for calculating the limitation period for criminal liability; uncertainty which had been dispelled by Decision No 67/2022 of the ICCJ.
- 228 It should be noted that the development of a consensus in the case-law as regards ascertaining how successive laws concerning time-barring are to be applied is a process which may evolve over time. Accordingly, the principle of legal certainty does not preclude the existence of such uncertainty in the case-law, provided that the applicable law enables it to be reduced (see, by analogy, judgment of the ECtHR of 22 September 2015, *Borcea v. Romania*, CE:ECHR:2015:0922DEC005595914, § 66).
- 229 The preliminary ruling procedure, as provided for in Article 267 TFEU, would have enabled the Romanian courts to avoid such uncertainty if they had made use of their option or abided by their obligation to question the Court as to the exact scope of the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention, as interpreted in the judgment in *Lin*.

- 230 Regarding, more specifically, Decisions No 37/2024 and No 16/2024 of the ICCJ, referred to in paragraphs 40 to 45 of the present judgment, it should be borne in mind that, by those decisions, that court of last instance held, in essence, that the Romanian courts had to refuse to apply Article 325(1) TFEU and Article 2(1) of the PFI Convention as those provisions had been interpreted in the judgment in *Lin*, on the ground that that interpretation would be contrary to Article 7 ECHR and to certain principles of constitutional rank, without questioning the Court beforehand in that regard.
- 231 However, it should be borne in mind that, according to settled case-law, where there is no judicial remedy under national law against the decisions of a national court or tribunal, that court or tribunal is in principle obliged to make a reference to the Court of Justice under the third paragraph of Article 267 TFEU where a question concerning the interpretation of EU law is raised before it, unless it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt. Such an obligation is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States (see, to that effect, judgments of 6 October 2021, *Conorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraphs 32 and 33, and of 15 October 2024, *KUBERA*, C-144/23, EU:C:2024:881, paragraphs 34 to 36).
- 232 In addition, it follows from equally settled case-law that national courts do not have the power to declare acts of the European Union institutions invalid. Thus, where a national court or tribunal considers that one or more grounds for invalidity of an act of the European Union, raised by the parties or, as the case may be, raised by that court or tribunal of its own motion, are well founded, it must stay the proceedings and make a reference to the Court for a preliminary ruling as to validity, as the Court alone has jurisdiction to determine that an act of the European Union is invalid (judgments of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraphs 47 and 48; of 13 March 2018, *European Union Copper Task Force v Commission*, C-384/16 P, EU:C:2018:176, paragraph 115; and of 30 January 2024, *Agentsia ‘Patna infrastructura’ (European funding of road infrastructure)*, C-471/22, EU:C:2024:99, paragraph 49).
- 233 The same is true where a court or tribunal of a Member State considers that the interpretation of a provision of EU law in a decision of the Court is in breach of the requirements stemming from Article 7 ECHR or of requirements of constitutional rank specific to its national law. The autonomy and effectiveness of the EU legal order preclude any external review of decisions of the Court in the exercise of its exclusive jurisdiction to give a definitive and binding interpretation of EU law and to review the legality of acts of the European Union (judgment of 18 December 2025, *Commission v Poland (Ultra vires review of the Court’s case-law – Primacy of EU law)*, C-448/23, EU:C:2025:975, paragraph 216).
- 234 It follows that, by adopting Decisions No 37/2024 and No 16/2024 without submitting a request for a preliminary ruling to the Court beforehand, the ICCJ not only failed to fulfil its obligations under Article 267 TFEU, but also contributed to creating a situation devoid of legal certainty by requiring, in breach of EU law, other Romanian courts to adopt an interpretation of their national law which is manifestly incompatible with the requirements stemming from the judgment in *Lin*.
- 235 It follows from all the foregoing considerations that the answer to point (b) of the second question is that Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49(1), Article 52(3) and Article 53 of the Charter, must be interpreted as not requiring that a court decision which has the authority of *res judicata* and which has found that the limitation period for the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union has expired, pursuant to the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle be called into question.
- 236 By contrast, those provisions of EU law must be interpreted as meaning that, except in such a scenario, they forbid the Romanian courts to apply that national standard of protection to criminal proceedings brought in respect of cases of serious fraud affecting the financial interests of the Union, including where

the limitation period for the criminal liability of the perpetrators of such offences would have expired, before the delivery of the judgment in *Lin*, if that period had been calculated by applying that national standard of protection.

(e) **Article 7 ECHR**

237 By point (c) of its second question, which it is appropriate to examine fourth and last, the referring court asks, in essence, whether, in order not to infringe Article 7 ECHR, the Romanian courts are required, contrary to what the judgment in *Lin* requires of them, to apply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle.

238 It can be seen from paragraphs 134, 163, 175, 235 and 236 of the present judgment that Article 325(1) TFEU and Article 2(1) of the PFI Convention, as interpreted in the judgment in *Lin*, correspond to the requirements of Article 49(1) of the Charter, which are at least equivalent to the guarantees derived from Article 7 ECHR.

239 It follows that the answer to point (c) of the second question is that consideration of that question has disclosed no factor of such a kind as to permit the consideration that, in order not to infringe Article 7 ECHR, the Romanian courts must apply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the application of the *lex mitior* principle.

240 It follows from all the foregoing considerations that the answer to the second question is that Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49, Article 52(3) and Article 53 of the Charter, must be interpreted as not requiring that a court decision which has the authority of *res judicata* and which has found that the limitation period for the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union has expired, pursuant to the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, relating to the retroactive application of the more lenient criminal law (*lex mitior*), be called into question. By contrast, except in such a scenario, those provisions of EU law forbid the Romanian courts to apply that national standard of protection to criminal proceedings brought in respect of cases of serious fraud affecting the financial interests of the Union, notwithstanding the fact that (i) under a principle of constitutional rank prohibiting the application of *lex tertia*, those courts are forbidden to apply in part successive pieces of criminal legislation by combining some of the provisions of those pieces of legislation, (ii) their national law does not contain any criteria enabling them to determine whether the application of that national standard of protection entails a systemic risk of impunity with regard to such instances of fraud, and (iii) the limitation period for the criminal liability of the perpetrators of those instances of fraud would have expired before the delivery of the judgment in *Lin* if that period had been calculated by applying that national standard of protection.

V. **Costs**

241 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 (Grand Chamber) hereby rules:

1. **Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995, read in the light of Article 49 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as meaning that, where no provision of national legislation establishes an amount above which an instance of fraud affecting the financial interests of the Union is to be

regarded as ‘serious’, such an instance of fraud must necessarily be so classified as soon as it concerns a total amount greater than EUR 50 000, irrespective of whether the damage suffered by the budget of the Union as a result of that instance of fraud also exceeds such an amount.

2. Article 325(1) TFEU and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests, read in conjunction with Article 49(1), Article 52(3) and Article 53 of the Charter of Fundamental Rights,

must be interpreted as not requiring that a court decision which has the authority of *res judicata* and which has found that the limitation period for the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union has expired, pursuant to the national standard of protection, enshrined in Decision No 67 of 25 October 2022 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), relating to the retroactive application of the more lenient criminal law (*lex mitior*), be called into question.

By contrast, except in such a scenario, those provisions of EU law forbid the Romanian courts to apply that national standard of protection to criminal proceedings brought in respect of cases of serious fraud affecting the financial interests of the Union, notwithstanding the fact that (i) under a principle of constitutional rank prohibiting the application of *lex tertia*, those courts are forbidden to apply in part successive pieces of criminal legislation by combining some of the provisions of those pieces of legislation, (ii) their national law does not contain any criteria enabling them to determine whether the application of that national standard of protection entails a systemic risk of impunity with regard to such instances of fraud, and (iii) the limitation period for the criminal liability of the perpetrators of those instances of fraud would have expired before the delivery of the judgment of 24 July 2023, *Lin* (C-107/23 PPU, EU:C:2023:606), if that period had been calculated by applying that national standard of protection.

[Signatures]

* Languages of the case: French and Romanian.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.