Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 11 January 2024[1]

Case C-22/23

'Citadeles nekustamie īpašumi' SIA
v
Valsts ieņēmumu dienests

(Request for a preliminary ruling from the Administratīvā rajona tiesa (District Administrative Court, Latvia))

(Reference for a preliminary ruling – Prevention of the use of the financial system for the purposes of money laundering and terrorist financing – Directive (EU) 2015/849 – Article 3(7)(c) – Concept of 'trust or company service providers' – Owner of a building who has entered into leases with legal persons – Consent to register a registered office in that building – Article 4 – Extension of the concept of 'obliged entities' to professions and to categories of undertakings other than those referred to in Directive (EU) 2015/849)

I. Introduction

1. Must a lessor who lets a property owned by him, her or it to a company and consents to that company registering its registered office at that property be regarded as a 'trust or company service provider' under Directive (EU) 2015/849,[2] and must he, she or it therefore be classified as an 'obliged entity' required to comply with the obligations arising from that directive?

2. That is, in essence, the question which the Court has to examine in the present case, which concerns a request for a preliminary ruling made by the Administratīvā rajona tiesa (District Administrative Court, Latvia) relating to the interpretation of Article 3(7)(c) of Directive 2015/849. That request has been made in the context of proceedings between a company and the competent Latvian authority concerning a fine imposed for infringements of the national provisions on the prevention of money laundering and terrorist financing.

[1] Original language: French.

[2] Directive of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73), as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (OJ 2018 L 156, p. 43) ('Directive 2015/849').

3. This case provides the Court with the opportunity to clarify the scope of the concept of a 'trust or company service provider' under Directive 2015/849, and to provide guidance on the possible extension by the Member States of the scope of that directive to obliged entities other than those expressly mentioned in that directive.

II. Legal framework

A. European Union law

4. Article 1(1) of Directive 2015/849 provides:

'This Directive aims to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.'

5. Article 2(1), point (3), and (7) of that directive states:

'1. This Directive shall apply to the following obliged entities:

…

(3) the following natural or legal persons acting in the exercise of their professional activities:

(a) auditors, external accountants and tax advisors, and any other person that undertakes to provide, directly or by means of other persons to which that person is related, material aid, assistance or advice on tax matters as principal business or professional activity;

(b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for the client concerning the:

(i) buying and selling of real property or business entities;

…

(c) trust or company service providers not already covered under point (a) or (b);

(d) estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10 000 or more;

…

…

7. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for the purposes of money laundering or terrorist financing.'

6. Article 3(7) of Directive 2015/849 provides:

‘For the purposes of this Directive, the following definitions shall apply:

…

(7) “trust or company service provider” means any person that, by way of its business, provides any of the following services to third parties:

(a) the formation of companies or other legal persons;

(b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;

(d) acting as, or arranging for another person to act as, a trustee of an express trust or a similar legal arrangement;

(e) acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with Union law or subject to equivalent international standards;’

7. Article 4 of Directive 2015/849 provides:

‘1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing.

2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.’

8. Article 5 of that directive reads as follows:

‘Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.’

B. Latvian law

9. The provisions on the prevention of money laundering and terrorist financing in Latvian law are contained in the Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums (Law on the prevention of money laundering and terrorist and of proliferation financing) of 17 July 2008 [3] (‘the Latvian Anti-Money Laundering Law’), which was amended with a view, inter alia, to transposing Directive 2015/849 into the Latvian legal order.

[3] *Latvijas Vēstnesis*, 2008, No 116.

10. That law, in the version applicable to the facts in the main proceedings, defines, in Article 1(10), the concept of a 'provider of services for the establishment and operation of legal arrangements or legal persons'. Under that provision, such a provider is a legal or natural person who enters into a business relationship with a client and supplies, inter alia, under point (c) of that provision, 'legal arrangements or legal persons with a registered office, a correspondence address, a physical address for carrying out transactions and other similar services'.

11. Article 3 of the Latvian Anti-Money Laundering Law provides:

'(1) Persons who carry on the following business or professional activities shall be obliged entities:

…

(4) public notaries, lawyers and other independent providers of legal services, where, acting on behalf of and for their clients, they assist in the planning or carrying out of transactions, participate in such transactions or carry out professional activities relating to transactions for their clients concerning the:

(a) buying and selling of real estate [or] shares in a commercial company;

…

(5) providers of services for the establishment and operation of legal arrangements or legal persons;

(6) intermediaries in real estate transactions.'

III. Facts of the dispute, procedure in the main proceedings and questions referred for a preliminary ruling

A. Background to the dispute and procedure in the main proceedings

12. 'Citadeles nekustamie īpašumi' SIA ('Citadeles'), the applicant in the main proceedings, is a commercial company registered in Latvia whose business consists, in particular, in the purchase and in the sale of real estate for its own account and in the letting and management of that property.

13. Between 14 September 2021 and 4 February 2022, the Valsts ieņēmumu dienests (State Tax Authority, Latvia) ('the VID') carried out an inspection of Citadeles in connection with the prevention of money laundering, on the basis of which an inspection report was drawn up.

14. In that inspection report, the VID found that Citadeles had let a building owned by it by entering into leases with lessees, including legal persons and legal arrangements, which had registered their registered office at the premises located within that building.

15. According to the findings of that inspection report, Citadeles had failed to register with the VID an activity deemed to be that of a 'provider of services for the establishment and operation of legal arrangements or legal persons' under the Latvian Anti-Money Laundering Law and to comply with the obligations which arose under that law.

16. On the basis of those findings, the VID, by decision of 28 March 2022, imposed on Citadeles a fine of EUR 1 000 for non-compliance with the requirements set out in the Latvian Anti-Money Laundering Law. That decision was upheld by a decision of the Director-General of the VID of 15 June 2022 ('the contested decision').

17. The contested decision is based on the VID's assertion that Citadeles' business consists in a provision of services for the establishment and operation of legal arrangements or legal persons since, under the leases at issue, that company permitted the lessees to register their registered office at the premises concerned. Thus, according to the VID, it should be regarded as an obliged entity under the Latvian Anti-Money Laundering Law.

18. By application of 15 July 2022, Citadeles asked the Administratīvā rajona tiesa (District Administrative Court, Latvia), the referring court, to annul the contested decision.

19. In support of its action, Citadeles claims that it is not an obliged entity under Directive 2015/849 and the Latvian Anti-Money Laundering Law and that, therefore, it is not required to comply with the requirements of that law, contrary to what the VID found. In the context of its business, it engages in the management and letting of self-owned property and does not provide 'services for the establishment and the operation of legal arrangements or legal persons' in accordance with that law. Citadeles states that the leases entered into simply provide that the lessees' option to register their registered office is one of the rights enjoyed by the lessees, and the agreed rent does not depend on whether or not the lessee has registered its registered office. Citadeles argues that it did not undertake to provide, and does not provide, the lessees with services beyond the letting of the premises.

B. The questions referred for a preliminary ruling

20. The referring court observes that the definition of a 'provider of services for the establishment and operation of legal arrangements or legal persons' under the Latvian Anti-Money Laundering Law corresponds to that of a 'company service provider' contained in Article 3(7) of Directive 2015/849.

21. However, neither that provision of Directive 2015/849 nor any other provision thereof specifies whether the concept of a 'company service', which consists in the provision of a registered office, business address, correspondence or administrative address and other related services, is to be interpreted as meaning that that service is a discrete service which does not arise from a transaction consisting in the letting of self-owned real estate or which is not linked to such a transaction.

22. The referring court notes that, under Latvian law, until 31 July 2021, in order to be eligible for entry into the commercial register, a company was required to submit evidence of the property owner's consent vis-à-vis the registration of the registered office in the building. Since the leases examined by the VID were concluded prior to 1 August 2021, the consent given by Citadeles contained in those leases could be regarded merely as consent given with a view to satisfying the requirements of the Commercial Code and not as a discrete company service. The referring court

observes that, from 1 August 2021, such consent is no longer required. In such circumstances, the referring court considers that a lessor of real estate cannot be regarded as a company service provider within the meaning of Article 3(7) of Directive 2015/849.

23. In that regard, that court distinguishes that case from cases in which a registered office is provided as a discrete service in order to obtain a mere 'letterbox' address or an address where particular transactions are carried out, but at which the legal person or legal arrangement does not in fact carry on its business on a day-to-day basis.

24. In the referring court's view, the fact that the concept of a 'company service provider', within the meaning of Article 3(7) of Directive 2015/849, does not include the letting of self-owned real estate is borne out by recital 8 and by other provisions of that directive, from which it is apparent that that directive applies to notaries and to other independent members of legal professions, as well as to real estate agents, whereas, by contrast, company service providers are regarded as separate entities for the purposes of that directive, with no links to real estate transactions.

25. The referring court does, however, observe that, under Article 2(7) of Directive 2015/849, a Member State may construe broadly the activities carried out by individuals which are likely to entail the achievement of an unlawful objective. That court thus considers that, when he, she or it enters into leases, a lessor of self-owned real estate may be involved in money laundering or terrorist financing, and that, in order to reduce the likelihood of such situations arising, that lessor must also be regarded as a trust or company service provider where he, she or it lets self-owned real estate to a lessee which registers its registered office at that property and carries on a business there.

26. Furthermore, the question also arises whether all individuals which let self-owned real estate should be regarded as company service providers, and therefore, when real estate is let by a natural person, that person must be subject to the same requirements as those imposed on a legal person.

27. It is in that context that the Administratīvā rajona tiesa (District Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the concept of "company service provider" set out in Article 3(7)(c) of Directive [2015/849] to be interpreted as referring to a discrete service which does not arise from a transaction involving the letting of self-owned real estate and is not linked to such a transaction, irrespective of whether or not the lessor has consented to the lessee registering its registered office at the leased property and carrying out transactions there?

(2) If the answer to the first question is in the negative, is the concept of "company service provider" set out in Article 3(7)(c) of Directive 2015/849 to be interpreted as meaning that, where a natural person lets a property, that person should be subject to the same requirements as a legal person or legal arrangement, regardless of the factual circumstances, for example, the number of properties which the natural person owns and lets, whether the letting of the property is unrelated to the business, or other circumstances?'

28. The request for a preliminary ruling was received at the Court on 19 January 2023. Written observations were submitted by Citadeles, the VID and the European Commission. At the end of the written part of the procedure, the Court considered that it had sufficient information to proceed to judgment without a hearing.

IV. Analysis

A. The first question referred for a preliminary ruling

1. Preliminary observations

29. By its first question referred for a preliminary ruling, the referring court asks the Court whether the concept of a 'trust or company service provider' contained in Article 3(7)(c) of Directive 2015/849 is to be interpreted as referring to a discrete service which does not arise from – or is not linked to – a transaction consisting solely in the letting of self-owned real estate, irrespective of whether the lessor has consented to the lessee registering its registered office at the leased property and to carrying out transactions there.

30. As a preliminary point, I would observe that, under Article 3(7)(c) of Directive 2015/849, '"trust or company service provider" means any person that, by way of its business, provides' a service which consists in 'providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement'.

31. By its question, the referring court seeks to determine whether, in a situation such as that in the main proceedings, an operator must be regarded as having provided a 'company service' within the meaning of that provision by virtue of the fact that he, she or it has let self-owned property to companies, explicitly giving, in the leases, his, her or its consent to the lessees registering their registered offices in the building leased. If it were to be found that, in such a situation, that operator did provide a 'company service' within the meaning of Directive 2015/849, then that operator would have to be regarded as an 'obliged entity' and would thus be required to comply with the obligations arising from that directive, as well as with the national provisions transposing that directive into domestic law.

32. In order to answer the question submitted by the referring court for a preliminary ruling, it is therefore necessary to interpret the concept of 'trust or company service' as defined in Article 3(7)(c) of Directive 2015/849.

2. Interpretation of Article 3(7)(c) of Directive 2015/849

33. According to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of the wording of that provision, but also of its context and of the objectives pursued by the rules of which that provision is part. [4]

34. Turning, first of all, to the textual analysis of Article 3(7)(c) of Directive 2015/849, I note that the wording of that provision explicitly states that the definition of 'trust or company service' [5] includes within that type of service a service which consists in providing 'a registered office, business address, correspondence or administrative address *and* other related services' [6] for a company or any other legal arrangement.

4 See, recently, judgments of 8 June 2023, *VB (Information for a person convicted in absentia)* (C-430/22 and C-468/22, EU:C:2023:458, paragraph 24 and the case-law cited), and of 17 November 2022, *Rodl & Partner* (C-562/20, EU:C:2022:883, paragraph 81).

5 Article 3(7)(a), (b), (d) and (e) of Directive 2015/849 defines other types of 'trust or company service'.

6 Emphasis added.

35. However, in my view, a service which consists in providing 'a registered office' or a 'business address, correspondence or administrative address' is not identical to a service which consists simply in letting real estate. The content of the first service is both different and broader.

36. The existence of a registered office or, at least, of a business address, correspondence or administrative address is an essential element for any business activity and more generally for any professional activity. A registered office is usually required to establish and to operate a company, since it allows the authorities and any other person entering into a relationship with the company to communicate with that company, by providing a point of contact and a location for the receipt of correspondence or any other communication.

37. A service which consists in providing 'a registered office' or 'a business address, correspondence or administrative address' therefore involves making available a point of contact for the company or the legal arrangement concerned for professional or administrative purposes. By contrast, simply letting real estate involves merely undertaking to make that property available for use in exchange for the payment of rent for the use of the property.

38. It is true that a service which consists in providing 'a registered office' or 'a business address, correspondence or administrative address' may, in certain cases, include the letting of the real estate used for the purposes of establishing that office or that address. However, the letting of property is neither a sufficient nor a necessary component for that type of service. First, as is clear from the considerations above, that service presupposes something more than merely the letting of real estate. Second, it is quite possible for an operator to undertake to provide a registered office or a business address, correspondence or administrative address to a legal arrangement without entering into a lease with that arrangement for the property at which the office or the address is established.

39. Furthermore, the use of the conjunction 'and' in the text of Article 3(7)(c) of Directive 2015/849[7] demonstrates, in my view, that the EU legislature intended to define that type of company service as not being exclusively limited to making available – by letting or on another basis – a location in which the company or the legal entity can establish its registered office or business address, correspondence or administrative address, but rather that it also required that 'other related services' are provided.

40. That consideration confirms that simply making available real estate at which a 'registered office' or 'a business address, correspondence or administrative address' is established is not sufficient for the services to fall within the scope of the concept of a 'company service' as defined in the provision at issue. To fall within that scope, 'other related services' must in fact be provided, namely additional services which – as is clearly set out in the German language version of that provision[8] – must be services connected with the provision of the registered office or of the business address, correspondence or administrative address.

[7] In that regard, it should be observed that all the language versions of the provision at issue appear to use a conjunction equivalent to 'and' in English. Thus, for example, the French language version uses the word 'et', the Spanish language version the word 'y', the German language version the word 'und', the Italian and Portuguese language versions the word 'e', the Lithuanian language version the word 'ir', the Dutch language version the word 'en', the Polish language version the word 'i', the Romanian language version the word 'și' and the Slovak language version the word 'a'.

[8] In the German language version of Article 3(7)(c) of Directive 2015/849, the legislature used the words 'und anderer damit zusammen hängender Dienstleistungen' (literally: 'and other services related to that', namely related to the provision of a 'registered office or a business address, correspondence or administrative address'. Analysis of the French language version, which uses the words 'autres services liés', the Polish language version, which uses the words 'i innych pokrewnych usług', and the Italian, Spanish and Portuguese language versions support that interpretation.

41. Also viewed from that perspective, the type of services covered by Article 3(7)(c) of Directive 2015/849 appears, therefore, to be different in nature from merely letting real estate to a company. That service requires, in principle, a more active participation on the part of the lessor, who must provide such additional services related to the provision of the location at which the registered office or the business address, correspondence or administrative address is established. Services of that kind could include, for example, a service that consists in providing a point of contact for the entity's administrative activities, a correspondence management service or other similar services. [9]

42. However, the mere consent given by the lessor under the lease to the lessee registering its registered office in the building leased and carrying out transactions there cannot fall within the scope of the concept of 'other related services' for the purposes of Article 3(7)(c) of Directive 2015/849. As the Commission rightly points out in its observations, in the context of a lease agreement for real estate, the right to use the address of the property let, inter alia as a registered office or business address, correspondence or administrative address, is simply a connected right arising from the primary service provided – that is to say, the provision of that property – the exercise of which does not require the lessor's active participation. It is not even, in fact, a service provided by the lessor, but rather simply explicit consent to the use of the property for a specific purpose. [10]

43. Furthermore, as the referring court sets out, in the main proceedings, that consent was given because of a provision of national law – which was subsequently repealed – requiring that evidence of the property owner's consent had to be submitted for a company to be entered into the commercial register. Such explicit consent was thus necessary *de jure* for any letting of property to companies intending to establish their registered office in the building leased. As the referring court notes, in those circumstances, such consent therefore constitutes a form of authorisation given in order to satisfy requirements laid down by law and not a service provided to companies. In addition, the fact that, in the present case, the building leased is the location at which the companies concerned actually carry on their business reinforces the genuine nature of the transaction at issue.

44. It is clear from the foregoing considerations that the literal analysis of Article 3(7)(c) of Directive 2015/849 argues in favour of that provision being interpreted to the effect that the type of 'company service' referred to therein concerns services which are distinct from the mere letting of real estate to a company, irrespective of the lessor's consent for the lessee to register its registered office in the building leased. That type of service cannot thus be identical to the mere provision of the building leased.

45. A schematic interpretation of the provisions of Directive 2015/849 supports such an interpretation of Article 3(7)(c) of that directive.

46. As the referring court rightly observes, it follows from Article 2(1)(3)(b)(i) and (d) of that directive that 'obliged entities' include inter alia 'notaries and other independent legal professionals, where they participate, … in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions … concerning the … buying and selling of real

[9] Other additional services typically offered in this context may include a dedicated fax and telephone call transfer service, the collection of bank statements, the provision of meeting rooms for meetings of the board of directors or of other management bodies of the company, and the provision of introductions to specialist service providers for other services such as, for example, vehicle registration.

[10] If there is no explicit prohibition in the lease, the view could even be taken that such consent is implicitly given by the lessor, in so far as the particular use of the property let is not out of the ordinary.

property' and 'estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10 000 or more'.

47. However, unlike in the case of such types of obliged entities, Article 3(7)(c) of Directive 2015/849 does not link the definition of 'trust or company service provider' to real estate transactions, let alone make it subject to such transactions. That finding also argues in favour of that provision being interpreted to the effect that the services referred to therein are different in nature from the mere letting of real estate to a company.

48. As regards, lastly, the teleological interpretation, it should be recalled that, according to case-law, the main aim of Directive 2015/849 is the prevention of the use of the financial system for the purposes of money laundering and terrorist financing; the provisions of that directive seek to establish, taking a risk-based approach, a body of preventive and dissuasive measures to prevent flows of illicit money from being able to damage the integrity, stability and reputation of the financial sector and threaten the internal market of the European Union as well as international development. [11]

49. In that regard, the risk of a lessor being involved in money laundering or terrorist financing activities in connection with the letting of self-owned real estate to legal persons or legal arrangements which register their registered office there cannot be ruled out. As the referring court observes, such a risk could exist, in particular, in the case of so-called letterbox companies, that is to say, legal persons or legal arrangements which do not carry out any business at the premises leased and use them simply to register their registered office. The registration of a legal arrangement, which is usually sought for lawful purposes, may be abused, for example, with the sole aim of obtaining access to the national financial system by opening a bank account so as to transfer funds into that account, even where there is no genuine connection with the country concerned.

50. Nevertheless, first, as is clear from the considerations contained in points 38 and 41 of this Opinion, the mere letting of real estate is not sufficient to enable a 'letterbox company' to be formed, as other additional services – such as those set out in the examples given in point 41 – are required to that end. Thus, not classifying a lessor which simply lets his, her or its self-owned real estate to a company or other legal entity, which establishes its registered office at that property, as an 'obliged entity' under Directive 2015/849 does not appear, in principle, capable of giving rise to risks of the provisions of Directive 2015/849 being circumvented.

51. Second, and without prejudice to the considerations which I will make in point 55 et seq. of this Opinion, I agree with the view set out by the Commission in its observations that any interpretation of the provision at issue as meaning that *any* lessor of self-owned real estate which lets that property to a company with its registered office at the property and carries on its business there should be classified as an 'obliged entity' under Directive 2015/849 and would thus be subject to the requirements arising from the rules contained in that directive would not necessarily contribute to achieving the aims of that directive, such as those referred to in point 48 above. An interpretation to that effect would entail extending the concept of an 'obliged entity' and the obligations arising from that status to a very significant number of individuals, whose activity – that is to say, simply letting self-owned real estate – is not, in principle, particularly likely to be linked to money laundering or terrorist financing.

[11] See judgment of 17 November 2022, *Rodl & Partner* (C-562/20, EU:C:2022:883, paragraphs 33 and 34 and the case-law cited).

52. In those circumstances, the question could be raised as to whether an interpretation of the provision at issue to that effect would be compatible with the requirements under the principle of proportionality, which requires that a measure is appropriate for ensuring, in a consistent and systematic manner, the attainment of the objective pursued and not go beyond what is necessary in order for it to be attained. [12]

53. It follows from the foregoing literal, systematic and teleological analysis that, in my view, the concept of a 'trust or company service provider' contained in Article 3(7)(c) of Directive 2015/849 must be interpreted as referring to a discrete service which cannot arise from a transaction consisting merely in the letting of self-owned real estate, irrespective of whether the lessor has consented to the lessee registering its registered office in the building leased and carrying on transactions there.

3. Extension by Member States of the scope of Directive 2015/849 to other professions and categories of undertakings

54. That said, it must further be observed that, in its request for a preliminary ruling, the referring court also refers to the provisions of Article 2(7) of Directive 2015/849. That court considers that, on the basis of that provision, the legitimate objective of preventing money laundering or terrorist financing allows a Member State to construe broadly the activities carried out by individuals which are likely to entail the achievement of an unlawful objective. Thus, in order to minimise the likelihood of a lessor of self-owned real estate, when he, she or it enters into leases, being involved in money laundering or terrorist financing, it may be permissible to regard that lessor as a company service provider.

55. In that regard, it should be recalled that, as the Court has observed, Directive 2015/849 carries out only a minimum harmonisation, as Article 5 thereof allows Member States to adopt or to retain in force stricter provisions where those provisions seek to strengthen the fight against money laundering and terrorist financing, within the limits of EU law. [13]

56. In its now settled case-law, the Court explained that the expression 'stricter provisions', referred to in Article 5 of Directive 2015/849, may concern all situations which Member States consider to present a higher risk of money laundering and terrorist financing. In addition, as that Article 5 is contained in Section 1, headed 'Subject matter, scope and definitions', of Chapter 1, headed 'General provisions', of Directive 2015/849, it applies to all the provisions in the field covered by that directive. [14]

57. Thus, Directive 2015/849 leaves the Member States a broad discretion both with regard to the identification of the risks of money laundering and terrorist financing, and with regard to the appropriate measures to prevent, avoid or at least hinder such activities. [15]

[12] Judgment of 2 March 2023, *PrivatBank and Others* (C-78/21, EU:C:2023:137, paragraph 70 and the case-law cited).

[13] See judgment of 17 November 2022, *Rodl & Partner* (C-562/20, EU:C:2022:883, paragraph 46).

[14] See judgment of 17 November 2022, *Rodl & Partner* (C-562/20, EU:C:2022:883, paragraph 47), and, by analogy, judgment of 10 March 2016, *Safe Interenvios* (C-235/14, EU:C:2016:154, paragraph 77).

[15] See, in that regard, Opinion of Advocate General Pitruzzella in *Rodl & Partner* (C-562/20, EU:C:2022:381, point 44 et seq.).

58. In addition, Directive 2015/849 also recognises that Member States may be affected differently by different risks of money laundering and terrorist financing, which may depend on the specific situation of each Member State and may vary according to a host of parameters, such as its geographical location or its economic or social situation. [16]

59. In those circumstances, within the context of the broad discretion afforded to them in that field, the Member States may extend the scope of Directive 2015/849 by regarding as 'obliged entities' professions or categories of undertakings other than those explicitly referred to in Article 2(1) of that directive, taking into account the specific situation of each individual Member State.

60. However, the provision of Directive 2015/849 which is relevant to that end is not the one referred to by the referring court, namely Article 2(7). As is clear from its wording, that provision is concerned not with the identification of obliged entities but with the assessment of the risks of money laundering or terrorist financing for the purposes of Article 2 only.

61. The relevant provision is in fact Article 4 of Directive 2015/849, which provides that Member States are to ensure, in accordance with the risk-based approach, that the scope of that directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing.

62. It follows from paragraph 2 of that article that, where a Member State extends the scope of Directive 2015/849 to professions or to categories of undertakings other than those referred to in Article 2(1), that Member State is to inform the Commission thereof.

63. In that regard, I would observe that Article 4 of Directive 2015/849 does not specify the detailed rules governing such an extension. Thus, in view of the dynamic nature of both economic relations and criminal activities, the view must be taken, in my opinion, that EU law, and in particular the principles of legality and legal certainty, does not preclude national laws from exhaustively identifying the professions and categories of undertakings which constitute obliged entities, provided that the obliged entities other than those referred to in Article 2(1) of Directive 2015/849 to which the scope of the provisions of that directive is extended are specified subsequently in instruments which need not be legislative in nature, but which must receive due publicity. [17]

64. However, an extension by a Member State of the concept of an 'obliged entity' to entities other than those referred to in Directive 2015/849 is possible only, first, – as is clear from the very wording of Article 4(1) of that directive – where those entities 'engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing' and, second, where that concept is extended in strict compliance with EU law and, in particular, with the provisions of the FEU Treaty which guarantee the fundamental freedoms.

65. In the present case, it is for the referring court to determine, *in concreto*, whether, in the Latvian legal order, an operator, such as Citadeles, which simply let self-owned property and, to that end, entered into leases with lessees, explicitly consenting to those lessees registering their

[16] See, in that regard, Opinion of Advocate General Pitruzzella in *Rodl & Partner* (C-562/20, EU:C:2022:381, point 45).

[17] See, by analogy, judgment of 17 November 2022, *Rodl & Partner* (C-562/20, EU:C:2022:883, paragraph 51). In that regard, see also, by analogy, the considerations made in the Opinion of Advocate General Pitruzzella in *Rodl & Partner* (C-562/20, EU:C:2022:381, points 54 to 57).

registered offices at that property, must be regarded as belonging to a profession or to a category of undertakings, other than the obliged entities referred to in Article 2(1) of Directive 2015/849, to which the Republic of Latvia has, pursuant to Article 4 of that directive, extended the scope of the anti-money laundering rules laid down in that directive.

66. In that regard, there are, however, reasons to doubt that that is the case. In its written observations submitted to the Court, the Commission explicitly stated that it had not received any information from the Latvian Government, in accordance with Article 4(2) of Directive 2015/849, that the Republic of Latvia had extended the scope of that directive to other professions or categories of undertakings, namely to persons letting self-owned real estate.

4. Conclusion on the first question referred for a preliminary ruling

67. In the light of all the foregoing considerations, it is my view that the first question submitted by the referring court for a preliminary ruling should be answered to the effect that the concept of a 'trust or company service provider' contained in Article 3(7)(c) of Directive 2015/849 must be interpreted as referring to a discrete service which cannot arise from a transaction which consists simply in the letting of self-owned real estate, irrespective of whether the lessor has consented to the lessee registering its registered office at the property leased and carrying out transactions there.

B. The second question referred for a preliminary ruling

68. By its second question referred for a preliminary ruling, the referring court asks, if the answer to the first question is in the negative, whether the concept of a 'trust or company service provider' contained in Article 3(7)(c) of Directive 2015/849 is to be interpreted as meaning that, where a natural person lets real estate, that person is subject to the same requirements as those imposed on a legal person or legal arrangement, regardless of the factual circumstances, such as the number of properties owned and let, whether the letting of the property is unrelated to the business, or other circumstances.

69. Since the second question has been submitted in the event that the first question is answered in the negative, if the Court interprets Article 3(7)(c) of Directive 2015/849 in the manner which I have proposed in point 67 of this Opinion, there is no need to answer that question.

70. In any event, I consider the second question to be inadmissible. It is not apparent from any evidence in the file available to the Court that the dispute in the main proceedings concerns, even in part, the letting of real estate by a natural person.

71. It follows that to answer the second question in those circumstances would clearly amount to providing an advisory opinion on a hypothetical question, in disregard of the task assigned to the Court in the context of the judicial cooperation established by Article 267 TFEU. [18]

[18] See, *ex multis*, judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others* (C-160/20, EU:C:2022:101, paragraphs 82 and 84 and the case-law cited).

V. Conclusion

72. In the light of all the foregoing considerations, I propose that the Court answer the request for a preliminary ruling from the Administratīvā rajona tiesa (District Administrative Court, Latvia) as follows:

The concept of a 'trust or company service provider' set out in Article 3(7)(c) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

must be interpreted as referring to a discrete service which cannot arise from a transaction which consists simply in the letting of self-owned real estate, irrespective of whether the lessor has consented to the lessee registering its registered office at the property leased and carrying out transactions there.