



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-3/20  
LR Ģenerālprokuratūra

**Where a criminal authority finds that the conduct investigated by it of a governor of a central bank of a Member State was manifestly not committed by that governor in his or her official capacity, proceedings against him or her may be continued since immunity from legal proceedings does not apply**

*Acts of fraud, corruption or money laundering are thus not carried out by such a governor in his or her official capacity*

In June 2018, the Latvian Public Prosecutor charged the Governor of the Central Bank of Latvia ('AB') for various offences of corruption before the Rīgas rajona tiesa (Riga District Court, Latvia). Specifically, AB is accused of having accepted two bribes in connection with a procedure relating to prudential supervision of a Latvian bank and for having laundered the money from one of those bribes.

As Governor of the Central Bank of Latvia, AB, whose last term of office as governor ended in December 2019, was also a member of the General Council and the Governing Council of the European Central Bank (ECB).

In the light of that particular circumstance, the Riga District Court asks whether, by virtue of his status as a member of the General Council and the Governing Council of the ECB, AB may enjoy immunity under Article 11(a) of Protocol (No 7) on the privileges and immunities of the European Union,<sup>1</sup> which grants officials and other servants of the European Union immunity from legal proceedings in respect of all acts performed by them in their official capacity.

Thus, the Riga District Court decided to refer a question to the Court for a preliminary ruling seeking to ascertain whether and, if so, under what conditions and according to what arrangements the governor of a central bank of a Member State may enjoy immunity from legal proceeding under the Protocol on privileges and immunities in the context of criminal proceedings against him or her.

### **Findings of the Court**

Pointing out that all the governors of the central banks of the Member States are members of the General Council of the ECB and that the governors of the central banks of the Member States whose currency is the euro are also members of the Governing Council of the ECB, the Court, sitting as the Grand Chamber, observes, first of all, that the Protocol on privileges and immunities, in accordance with Article 22 thereof, applies to the ECB, the members of its organs and its staff. Consequently, that protocol is applicable to the governors of the central banks of the Member States, as members of at least one organ of the ECB.

In that context, the governors of the central banks, more specifically, enjoy the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities in respect of acts performed in their official capacity as a member of an organ of the ECB. In accordance with

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<sup>1</sup> Protocol (No 7) on the privileges and immunities of the European Union (OJ 2016 C 202, p. 266) ('the Protocol on privileges and immunities').

that provision, those governors continue to enjoy that immunity from legal proceedings after they have ceased to hold office.

As regards the purpose and scope of the protection provided for in Article 11(a) of the Protocol on privileges and immunities, the Court points out, next, that under the first paragraph of Article 17 of that protocol, immunity from legal proceedings is accorded solely in the interests of the European Union. The second paragraph of Article 17 of that protocol implements that principle by requiring that each institution of the European Union is to be required to waive that immunity wherever that institution considers that the waiver of such immunity is not contrary to the interests of the European Union.

Thus, it is for the ECB alone, when seised of an application for waiver of immunity from legal proceedings concerning a governor of a central bank in the light of ongoing national criminal proceedings, to assess whether the waiver of immunity is contrary to the interests of the European Union.

By contrast, the ECB and the authority responsible for criminal proceedings concerning a governor of a national central bank share competence to determine whether the conduct liable to be characterised as criminal was carried out by the governor in his or her official capacity as a member of an organ of the ECB and therefore falls within the scope of the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities.

As regards the arrangements for that division of competence, the Court states that, where the authority responsible for the criminal proceedings finds that the conduct in question was manifestly not carried out by the governor of the central bank in his or her official capacity as a member of an organ of the ECB, the proceedings against him or her may be continued since immunity from legal proceedings does not apply. That is the case in respect of acts of fraud, corruption or money laundering committed by the governor of a central bank of a Member State, which fall necessarily outside the bounds of the duties of an official or other servant of the European Union.

On the other hand, where, at any stage of the criminal proceedings, the national authority finds that the conduct in question was carried out by the governor concerned in his or her official capacity as a member of an organ of the ECB, it must request a waiver of immunity from legal proceedings. Where the national authority raises that issue, it is required to consult the ECB and, if the ECB considers that the acts were carried out in an official capacity, the authority must request from it the waiver of immunity of the governor concerned. Such requests for waiver of immunity must be granted, unless it is established that the interests of the Union preclude it.

Respect for that division of competence is, moreover, subject to review by the Court, which may be seised of an action for failure to fulfil obligations under Article 258 TFEU where the national authorities fail to fulfil their obligation to consult the EU institution concerned where all doubt as to the applicability of immunity from legal proceedings cannot reasonably be ruled out. Conversely, where the waiver of immunity is refused by the competent EU institution, the validity of that refusal may be the subject of a reference for a preliminary ruling to the Court or even of a direct action brought by the Member State concerned on the basis of Article 263 TFEU.

As regards the scope of the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities, the Court states that such immunity does not preclude the criminal prosecution in its entirety, in particular investigative measures, the gathering of evidence and service of the indictment. Nevertheless, if, at the stage of the investigations conducted by the national authorities and before the matter is brought before a court, it is established that the official or servant of the European Union may enjoy immunity from legal proceedings in respect of the acts which are the subject of the criminal prosecution, it is for those authorities to request a waiver of immunity from the EU institution concerned. Moreover, that immunity, since it is enjoyed by the official or servant of the European Union concerned only in respect of a particular act, does not preclude evidence gathered during a police or judicial investigation into such an official or servant from being used in other proceedings concerning other acts not covered by the immunity or directed against third parties.

Lastly, the Court notes that, even if immunity from legal proceedings does not apply where the beneficiary of that immunity is implicated in criminal proceedings in respect of acts which have not been carried out in the context of the duties which he or she performs on behalf of an EU institution, abusive national prosecutions initiated in respect of acts which are not covered by that immunity in order to exert pressure on the EU servant concerned would, in any event, be contrary to the principle of sincere cooperation enshrined in the third subparagraph of Article 4(3) TEU.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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