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Judgment of the Court of Justice in Case C-280/25 | [Lin II] ¹

Combating serious fraud affecting the financial interests of the European Union: the Court explains why the judgment in *Lin* ² was neither in breach of the principle of legality in criminal matters ³ nor in breach of the national standard of protection of fundamental rights forbidding courts from combining different pieces of legislation in order to establish a set of rules on limitation in that regard ⁴

In that context, the Court also provides clarification regarding what is to be understood by 'serious' fraud affecting the financial interests of the Union

The judgment in *Lin* of 24 July 2023 concerned several Romanian nationals sentenced to terms of imprisonment for tax fraud. Those persons had contested their sentence, arguing that, under the national standard of protection relating to the retroactive application of the more lenient criminal law (*lex mitior*), their criminal liability was time-barred. ⁵ Those Romanian nationals relied on two decisions of the Romanian Constitutional Court handed down in 2018 and 2022. Those decisions had declared invalid a provision of national legislation ⁶ governing the grounds for interruption ⁷ of the limitation period in criminal matters, with the result that, for a period of almost four years, Romanian law did not provide for any ground for interruption of that limitation period. They also relied on a decision of 2022 of the Romanian High Court of Cassation and Justice (HCCJ) which had held that that lack of grounds for interruption with regard to limitation also applied to offences committed between 2014 (the moment when the unconstitutional provision was adopted) and 2018 (the date on which the first decision of the Constitutional Court was handed down), under the principle of the retroactive application of *lex mitior*. ⁸ The Court had been questioned, in essence, regarding the conformity of those various decisions handed down by the Romanian courts with EU law, in particular provisions seeking effectively to combat fraud affecting the financial interests of the Union. In the judgment in *Lin*, it recalled that the Member States must ensure that the rules on limitation laid down by national law enable the effective punishment of offences connected with fraud affecting the financial interests of the European Union, with the aim of avoiding a systemic risk of impunity in respect of such offences. Therefore, the Court held that the Romanian courts had to disapply the national standard of protection, enshrined in the decision of the HCCJ of 2022, relating to *lex mitior*. By contrast, it held that the decisions of the Romanian Constitutional Court handed down in 2018 and 2022 were in conformity with EU law, because they were implementing the principle of legality in criminal matters and because the scope of the systemic risk of impunity entailed by those decisions was smaller than that of the application of the national standard of protection of *lex mitior* enshrined in the decision of the HCCJ of 2022. Following the judgment in *Lin*, the HCCJ nevertheless held, in 2024, that the Romanian courts could not disapply its decision of 2022 without being in breach of the principle of legality in criminal matters and the principle of the prohibition of *lex tertia*. In its judgment in *Lin II* delivered today, the Court finds, in essence, that that approach by the HCCJ is not in conformity with EU law.

In the case giving rise to the judgment in *Lin II*, the director of two commercial companies prepared fictitious tax invoices in order to enable a third company to reduce its taxable base. The damage caused to the Romanian State budget is

268 536 Romanian lei (RON) (approximately €59 304), while the amount of value added tax (VAT) evaded is RON 163 656 (approximately €36 142), which thus affects the financial interests of the Union.

That administrator, although prosecuted for complicity in continuous tax evasion, has nevertheless avoided any sentencing. It was found at first instance, and then confirmed on 21 March 2024 by the Court of Appeal, Oradea (Romania) that the limitation period for his criminal liability had expired. On 9 April 2024, the Public Prosecutor's Office attached to the Court of Appeal, Oradea, being of the view that the appeal court had been wrong to close the criminal proceedings by applying the national standard of protection, enshrined in the decision of the HCCJ of 2022, relating to *lex mitior*, and thus without taking the judgment of the Court in *Lin* into account, contested that decision of the appeal court before the HCCJ. Having doubts as to the rules governing the application, by the Romanian courts, of the judgment in *Lin*, the HCCJ has referred questions to the Court for a preliminary ruling. It also questions the Court as to the interpretation of the concept of 'serious' fraud in EU law.

In its judgment, delivered today, which constitutes the follow-up to the judgment in *Lin*, the Court, in the first place, **explains the concept of 'serious' fraud affecting the financial interests of the Union**. It thus holds that, where no provision of national legislation establishes the threshold above which an instance of fraud affecting the financial interests of the Union is to be regarded as 'serious', the instance of fraud must automatically be classified as 'serious', for the purposes of the PFI Convention,⁹ as soon as the total amount thereof exceeds €50 000, irrespective of whether or not the damage actually suffered by the budget of the Union is below that threshold.

In the second place, the Court emphasises that **it 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, which goes beyond the guarantees provided in Article 49 of the Charter of Fundamental Rights in that regard, is in breach, as a matter of principle, of EU law**. Indeed, **the Court confined itself to holding that EU law precludes that national standard of protection, enshrined in the decision of the HCCJ of 2022, from being applied by the Romanian courts to cases of serious fraud affecting the financial interests of the Union. This was justified by the fact that such an application considerably increases the systemic risk of impunity** already arising for such instances of fraud from the decisions of the Constitutional Court of 2018 and 2022, entailing a lack of any ground for interruption of limitation periods in criminal matters during a period of almost four years.

In the third place, the Court notes that the solution adopted in **the judgment in *Lin* does not require 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. The judgment in *Lin* thus does not require those courts to disregard the national standard of protection relating to the prohibition on applying *lex tertia*.

In the fourth place, the Court emphasises that the solution adopted in the judgment in *Lin* **is also not in breach of the principle, enshrined in Article 49 of the Charter of Fundamental Rights and Article 7 of the European Convention on Human Rights, that offences and penalties must be defined by law**. The prohibition, laid down in that judgment, on Romanian courts applying the decision of the HCCJ of 2022 is a continuation of earlier established case-law of the Court and was thus foreseeable. Furthermore, the Court emphasises that, in its judgment in *Lin*, the Court itself held that the decision of the HCCJ of 2022 gave rise to a systemic risk of impunity for instances of serious fraud affecting the financial interests of the Union. No uncertainty can therefore be identified in that regard, as the Romanian courts are required, in accordance with the judgment in *Lin*, to take such a risk for granted.

In the fifth place, the Court explains that, in view of the importance of the principle of ***res judicata* in EU law**, that law does not require that decisions having the authority of *res judicata* which have found, applying the decision of the HCCJ of 2022, that criminal liability for instances of serious fraud affecting the financial interests of the Union is time-barred be called into question. However, a decision which is the subject of an appeal on a point of law cannot, as a matter of principle, be regarded as a decision having the authority of *res judicata*.

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 EU law or the validity of

an EU 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 and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² Judgment of the Court of 24 July 2023, *Lin*, [C-107/23 PPU](#) (see also Press Release No [129/23](#)).

³ Article 7 of the European Convention on Human Rights, entitled 'No punishment without law', is based on the principle of legality and non-retroactivity in criminal matters. It stipulates 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 or international law at the time when it was committed. Similarly, a heavier penalty than the one that was applicable at the time the criminal offence was committed is not to be imposed. That provision protects individuals against arbitrariness in criminal matters and constitutes a fundamental element of the rule of law.

⁴ Under that principle, which is of constitutional rank, it is, *inter alia*, forbidden for the Romanian courts 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. The *lex mitior* principle, as interpreted by the Romanian 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, a hybrid set of rules (*lex tertia*).

⁵ Mechanism whereby the passage of time results in the elimination of the possibility of bringing legal proceedings. In other words, if the authorities have not initiated proceedings within a certain period, they definitively lose the right to do so.

⁶ The issue of unconstitutionality concerned Article 155(1) of the Criminal Code of 2009, inasmuch as that provision was in breach of the constitutional principle of precision and foreseeability regarding criminal law 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.

⁷ Namely procedural acts or rulings interrupting the limitation period for criminal liability.

⁸ Decision No 67/2022 of the HCCJ.

⁹ Convention on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995.