

## JUDGMENT OF THE COURT (Grand Chamber)

30 November 2021

(Reference for a preliminary ruling – Protocol (No 7) on the privileges and immunities of the European Union – Member of an organ of the European Central Bank – Governor of a national central bank of a Member State – Immunity from criminal proceedings – Indictment connected with activities carried out in the course of employment within the Member State)

In Case C-3/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rīgas rajona tiesa (District Court, Riga, Latvia), made by decision of 20 December 2019, received at the Court on 7 January 2020, in criminal proceedings against

**AB,**

**CE,**

**‘MM investīcijas’ SIA,**

intervener:

**LR Ģenerālprokuratūras Krimināltiesiskā departamenta Sevišķi svarīgu lietu izmeklēšanas nodaļa,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, K. Jürimäe, C. Lycourgos, E. Regan, N. Jääskinen and I. Ziemele, Presidents of Chambers, M. Ilešič, J.-C. Bonichot (Rapporteur), P.G. Xuereb and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 26 January 2021,

after considering the observations submitted on behalf of:

- AB, by M. Kvēps and A. Repšs, advokāti,
- CE, by D. Vilemsons, advokāts,
- LR Ģenerālprokuratūras Krimināltiesiskā departamenta Sevišķi svarīgu lietu izmeklēšanas nodaļa, by V. Jirgena,
- the Latvian Government, by K. Pommere, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato,

- the European Commission, by L. Flynn, I. Naglis and S. Delaude initially, then by L. Flynn and S. Delaude, acting as Agents,
- the European Central Bank, by C. Zilioli, K. Kaiser and F. Malfrère, acting as Agents, and by V. Čukste-Jurjeva, advokāte,

after hearing the Opinion of the Advocate General at the sitting on 29 April 2021,

gives the following

## **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 11(a), Article 17 and the first paragraph of Article 22 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2016 C 202, p. 266) ('the Protocol on privileges and immunities').
- 2 The request has been made in the context of a criminal prosecution for corruption and money laundering initiated against AB, former Governor of the Central Bank of Latvia, CE and 'MM investīcijas' SIA.

### **Legal context**

#### *EU law*

##### *Protocol (No 4) on the Statute of the ESCB and of the ECB*

- 3 Article 2 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (OJ 2016 C 202, p. 230; 'the Protocol on the Statute of the ESCB and of the ECB'), entitled 'Objectives', provides as follows:

'In accordance with Article 127(1) and Article 282(2) of the Treaty on the Functioning of the European Union, the primary objective of the [European System of Central Banks (ESCB)] shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119 of the Treaty on the Functioning of the European Union.'

- 4 Article 3 of that protocol, entitled 'Tasks' provides as follows:

'3.1. In accordance with Article 127(2) of the Treaty on the Functioning of the European Union, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union,
- to conduct foreign-exchange operations consistent with the provisions of Article 219 of that Treaty;
- to hold and manage the official foreign reserves of the Member States,

– to promote the smooth operation of payment systems.

3.2. In accordance with Article 127(3) of the Treaty on the Functioning of the European Union, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 127(5) of the Treaty on the Functioning of the European Union, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.’

5 Under Article 7 of that protocol, entitled: ‘Independence’:

‘In accordance with Article 130 of the Treaty on the Functioning of the European Union, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute, neither the [European Central Bank (ECB)], nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.’

6 Article 9 of the Protocol on the Statute of the ESCB and of the ECB provides, in paragraph 9.3 thereof, as follows:

‘In accordance with Article 129(1) of the Treaty on the Functioning of the European Union, the decision making bodies of the ECB shall be the Governing Council and the Executive Board.’

7 Article 10 of that protocol, entitled ‘The Governing Council’, provides as follows, in paragraph 10.1 thereof:

‘In accordance with Article 283(1) of the Treaty on the Functioning of the European Union, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro.’

8 Article 39 of that protocol, entitled ‘Privileges and immunities’, provides as follows:

‘The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union.’

9 Under Article 44 of the Protocol on the Statute of the ESCB and of the ECB, entitled ‘The General Council of the ECB’:

‘44.1. Without prejudice to Article 129(1) of the Treaty on the Functioning of the European Union, the General Council shall be constituted as a third decision-making body of the ECB.

44.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.

...’

*The Protocol on privileges and immunities*

10 Under Article 8 of the Protocol on privileges and immunities:

‘Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.’

11 Article 9 of the same protocol states:

‘During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.’

12 Article 10 of the Protocol on privileges and immunities provides as follows:

‘Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.’

13 Article 11 of that protocol provides as follows:

‘In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office.

...’

14 Under Article 17 of that protocol:

‘Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union is to be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.’

15 Article 18 of the Protocol on privileges and immunities provides as follows:

‘The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.’

16 Article 22 of that protocol provides as follows:

‘This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

...’

### *Latvian law*

#### *The Law on the Central Bank of Latvia*

17 Article 2 of the likums ‘Par Latvijas Banku’ (Law on the Central Bank of Latvia) provides that the Central Bank of Latvia is a member of the ESCB.

18 Under Article 7 of that law, the Central Bank of Latvia is to cooperate with the ECB, the central banks of the Member States of the European Union, the central banks of third countries and with other financial institutions. Subject to the ECB’s approval, the Central Bank of Latvia is empowered to participate in international monetary institutions within the meaning of Article 6.2 of the Protocol on the Statute of the ESCB and of the ECB. The Central Bank of Latvia may participate in international monetary institutions that correspond to its aims and functions, in compliance with the provisions of the Treaty and of that protocol.

19 It is apparent from Article 13 of that law that the Governor, the Vice-Governor and the Members of the Board of the Central Bank of Latvia may not solicit or accept any instruction from the Government of the Republic of Latvia or from those of the other Member States of the European Union, the EU institutions and other national, foreign or international institutions or bodies thereof. That article also provides, in accordance with Article 130 TFEU, that those governments, institutions and their bodies may not give instructions to the Governor, the Vice-Governor or the Members of the Board of the Central Bank of Latvia, or seek to influence them in any other way in the performance of their duties. The Central Bank of Latvia is to adopt its decisions and implement them independently.

#### *The Code of Criminal Procedure*

20 Article 10 of the Kriminālprocesa likums (Code of Criminal Procedure) provides that immunity from criminal proceedings completely or partially exempts a person from participating in criminal proceedings, giving evidence and producing documents and other items of evidence, and removes or limits the right to prosecute and to apply restrictive measures in respect of that person, and the right to enter premises in the possession of that person to carry out investigative acts.

21 Under Article 116(1) to (3) of that code:

‘1. Immunity from criminal proceedings shall derive from the special legal status of a person, piece of information or place, as specified in the Constitution, in the present code or in other international legislation or treaties and which safeguards a person’s right not to comply, in full or in part, with an obligation arising from criminal proceedings or limits the right to carry out specific investigatory acts.

2. Immunity of a person from criminal proceedings shall be derived from:

- (1) his or her criminal immunity, as specified in the Constitution or international treaties;
- (2) his or her office or occupation;
- (3) his or her status in the criminal proceedings concerned;
- (4) his or her kindred relationships.

3. A person shall be entitled to immunity from criminal proceedings where the information requested concerns:

- (1) State secrets protected by law;
- (2) professional secrecy protected by law;
- (3) business confidentiality protected by law;
- (4) privacy of personal life protected by law.’

22 Article 404 of the Code of Criminal Procedure provides that, unless that code stipulates otherwise, where a person, by law, has immunity from criminal proceedings, the Office of the Public Prosecutor is to provide the competent authority with a proposal to authorise the prosecution of that person if it considers there to be grounds for establishing that he or she is criminally liable. The proposal is to be accompanied by information about the evidence demonstrating the guilt of the person whose immunity is proposed to be waived.

### **The main proceedings and the questions referred**

23 AB held the post of Governor of the Central Bank of Latvia from 21 December 2001 to 21 December 2019.

24 He became a member of the General Council of the ECB following the accession of the Republic of Latvia to the European Union on 1 May 2004, then a member of the Governing Council of the ECB following the accession of that Member State to the euro area on 1 January 2014.

25 On 17 February 2018, AB was arrested following the initiation of a preliminary criminal investigation conducted by the Korupcijas novēršanas un apkarošanas birojs (Anti-Corruption Office, Latvia) (‘the KNAB’) and was released on 19 February 2018. By a decision adopted on the same day, the KNAB imposed on him a number of security measures, including the prohibition on performing his duties as Governor of the Central Bank of Latvia. On 28 June 2018, he was charged with offences of corruption by the prosecutor in charge of the case.

- 26 By judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia* (C-202/18 and C-238/18, EU:C:2019:139), the Court, ruling on actions brought by AB and the ECB, annulled the decision of 19 February 2018 of the KNAB, in so far as it prohibited AB from performing his duties as Governor of the Central Bank of Latvia. The Court held that the Republic of Latvia had not established that relieving AB from office was based on sufficient evidence establishing that he had been guilty of serious misconduct, within the meaning of the second subparagraph of Article 14.2 of the Protocol on the Statute of the ESCB and of the ECB.
- 27 AB's indictment was supplemented on 24 May 2019 and contains three charges.
- 28 The first charge against him concerns the acceptance, before 30 June 2010, of an offer of a bribe made by KM, Chairman of the Supervisory Board of a Latvian bank, and of the bribe itself, consisting of a collective leisure trip to the Kamtchaka (Russia), in the amount of EUR 7 490, which took place from 20 to 30 August 2010. In return, AB is alleged to have provided advice to KM in order to enable that bank to avoid the supervision of the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission, Latvia) ('the FKTK') and to have refrained from participating in the FKTK meetings during which the issues relating to the supervision of that bank were discussed.
- 29 The second charge brought against him concerns, first, the acceptance, after 23 August 2012, of an offer of bribe consisting of the payment of a sum of EUR 500 000 by OP, Vice-President of the Board of Directors of the same Latvian bank, in exchange for the advice of AB in order to obtain the lifting of the restrictions on the activities of that bank ordered by the FKTK and to prevent other restrictions, and, secondly, the acceptance by AB of payment of half of that bribe, that is to say, EUR 250 000. The other half of the bribe, which was to be paid after the FKTK had adopted a decision favourable to that bank, was not paid to AB.
- 30 The third charge against AB concerns money laundering intended to conceal the origin, transfers and ownership of the funds paid to him corresponding to the bribe referred to in the second charge. That bribe was invested in the purchase of a building by a front company by means of funds contributed by an intermediary.
- 31 During the criminal proceedings, AB's lawyers asked the referring court to refer a question to the Court of Justice for a preliminary ruling on the interpretation of the Protocol on privileges and immunities. Relying on Articles 11 and 22 of that protocol, they consider that the immunity from legal proceedings provided for in that protocol is applicable to AB in respect of acts which he performed in his capacity as a member of the Governing Council of the ECB.
- 32 The Public Prosecutor does not dispute that AB may enjoy such immunity where he acts as a member of the Governing Council of the ECB, but considers that, in the context of the criminal proceedings in the main proceedings, the acts of which he is accused are not linked to the performance of his duties as a member of that council, with the result that the Protocol on privileges and immunities does not apply to AB.
- 33 The referring court is of the opinion that, before opening the oral stage of the criminal trial, it must rule on the existence and scope of any immunity held by AB. It raises the issue of whether AB's status as Governor of the Central Bank of Latvia, from which he also derives his status as member of the Governing Council of the ECB, automatically confers on him immunity from criminal prosecution and judicial proceedings. If it does, that court takes the view that it is necessary to determine whether a waiver of immunity should be sought in all circumstances or whether the authority responsible for the proceedings, that is to say, the Office of the Public

Prosecutor, in the preliminary phase, or the court hearing the substance of the case, in the court proceedings, has competence to determine whether, in the specific context of the proceedings in question, there is a European Union interest in the person concerned enjoying such immunity and, if there is such an interest, to seek a waiver of that immunity only where the acts relate to performance of duties at an EU institution, namely the ECB. If a member of the Governing Council of the ECB is granted immunity from criminal proceedings, the referring court also asks at what stage of the proceedings the waiver of that immunity must be requested. Lastly, it observes that, in so far as the conduct and acts of a person are determined by all the information at his or her disposal, it is not always easy, in practice, to separate immunity granted in the interests of the European Union from acts performed outside the scope of that immunity.

34 In those circumstances the Rīgas rajona tiesa (Riga District Court, Latvia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Do Article 11(a) and the first paragraph of Article 22 of [the Protocol on privileges and immunities] apply to the post of member of the Governing Council of the [ECB], held by the governor of the central bank of a Member State, that is to say, the President of the Central Bank of Latvia, AB?
- (2) If the answer to the first question is in the affirmative, does that person continue to be immune from criminal proceedings under those provisions even after he has left the post of governor of the central bank of a Member State and, therefore, the post of member of the Governing Council of the [ECB]?
- (3) If the answer to the first question is in the affirmative, does that immunity relate only to immunity “from legal proceedings” as referred to in Article 11(a) of [the Protocol on privileges and immunities] or does it also cover the criminal prosecution, including service of the indictment and the gathering of evidence? In the event that the immunity applies to the criminal prosecution, does that fact influence whether the evidence can be used?
- (4) If the answer to the first question is in the affirmative, does Article 11(a) of [the Protocol on privileges and immunities], read in conjunction with Article 17 of that protocol, allow the person directing the proceedings or, at the corresponding stage of the proceedings, the composition of the court, to assess whether there is a European Union interest in those proceedings and, only where it is found that there is – that is to say, if [AB’s] alleged conduct relates to the performance of his duties at an EU institution – to request the institution concerned, that is to say, the [ECB], to waive that person’s immunity?
- (5) For the purposes of applying the provisions of [the Protocol on privileges and immunities], must the existence of a European Union interest always relate directly to decisions taken or acts carried out in performance of duties at an EU institution? May such an official be subjected to a measure of criminal procedure if his indictment does not relate to his duties at an EU institution but to activities carried on as part of his duties in a Member State?’

## **Consideration of the questions referred**

### ***The first question***

- 35 By its first question, the referring court asks, in essence, whether Article 22 of the Protocol on privileges and immunities must be interpreted as meaning that the governor of a central bank of a Member State may enjoy the immunity from legal proceedings provided for in Article 11(a) of that protocol.
- 36 In the first place, it should be noted that the governor of a central bank of a Member State is among the persons covered by Article 22 of the Protocol on privileges and immunities.
- 37 The first paragraph of Article 22 of the Protocol on privileges and immunities provides that it is to apply to the ECB, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the ESCB and of the ECB.
- 38 First, the governors of the central banks of the Member States whose currency is the euro are, pursuant to Article 283(1) TFEU and Article 10.1 of the Protocol on the Statute of the ESCB and of the ECB, legal members of the Governing Council of the ECB, which is a decision-making body of the ECB, pursuant to Article 129(1) TFEU and Article 9.3 of the Protocol on the Statute of the ESCB and of the ECB. Secondly, Article 44.2 of that protocol provides that the governors of the national central banks of the Member States are to be members of the General Council, the ECB's third decision-making body pursuant to Article 44.1 of that protocol.
- 39 Consequently, as a member of at least one organ of the ECB, the governor of a central bank of a Member State is one of the persons covered by Article 22(1) of the Protocol on privileges and immunities. Accordingly, that protocol is applicable to him or her.
- 40 In the second place, the question arises as to whether the governor of a national central bank may enjoy the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities.
- 41 Article 22(1) of the Protocol on privileges and immunities does not specify which provisions of that protocol are applicable to the persons to whom it refers. Moreover, that protocol grants immunities, which vary by their nature and extent, to three categories of persons, the connection with which of the governor of a national central bank is not obvious.
- 42 First, the immunities of Members of the European Parliament, provided for in Articles 8 and 9 of the Protocol on privileges and immunities, are defined in terms which refer specifically to the functions of the latter and are therefore not applicable to a governor of a national central bank.
- 43 Secondly, the immunities of the representatives of the Member States participating in the work of the EU institutions, which are the subject of Article 10 of the Protocol on privileges and immunities, cannot benefit a governor of a national central bank either. On one hand, the latter cannot be regarded as the representative of a Member State when he or she performs his or her duties as a member of the Governing Council or the General Council of the ECB. Article 130 TFEU and Article 7 of the Protocol on the Statute of the ESCB and of the ECB provide that, in carrying out the tasks conferred on them by the Treaties, the governors of the national central banks may not request or take any instructions from, inter alia, the national authorities (see, to that effect, judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 72). On the other hand and on any view, the immunities of the representatives of the Member States participating in the work of the EU institutions are the 'customary ... immunities', which, as the Advocate General stated in point 56 of her

Opinion, must be understood as a reference to the immunities provided for by the Vienna Convention on Diplomatic Relations, concluded in Vienna on 18 April 1961. Such immunities, which are granted to diplomats in order to ensure the effective performance of the functions of diplomatic and consular missions in the State of residence, cannot by nature be relied on by their beneficiaries as against the States which they represent. Consequently, the governor of a central bank of a Member State cannot, in any event, rely on entitlement to those immunities in respect of the authorities of that Member State.

- 44 Thirdly, although officials and other servants of the European Union enjoy, under Article 11(a) of the Protocol on privileges and immunities, immunity from legal proceedings in respect of acts performed by them, including their words and written language, in their official capacity, it must be observed that the governors of the national central banks are in a different position from those officials and other servants. First, as national authorities, they are appointed by and, as the case may be, dismissed by the Member States (judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 72). Secondly, they are not subject to an EU institution since, under Article 130 TFEU and Article 7 of the Protocol on the Statute of the ESCB and of the ECB, they may neither request nor take instructions from the institutions, bodies, offices or agencies of the European Union, or from the Member States or any other body.
- 45 However, the position of a governor of a national central bank, who is admittedly a national authority but who acts within the framework of the ESCB and sits, where he or she is the governor of a national central bank of a Member State whose currency is the euro, on the main decision-making body of the ECB, is characterised by a dual professional role resulting in a hybrid status (judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 70). Thus, that governor acts on behalf of an EU institution, in this case the ECB, in the performance of his or her duties as a member of the Governing Council. The same is true, as is apparent from paragraph 38 above, of a governor of a national central bank of a Member State whose currency is not the euro in the performance of his or her duties as a member of the General Council of the ECB.
- 46 The immunity enjoyed by a governor of a central bank in the performance of his or her duties as a member of the ECB's Governing Council or as a member of the ECB's General Council therefore stems from the need to ensure the ECB's immunity as is necessary for the performance of its tasks, as provided for in Article 39 of the Protocol on the Statute of the ESCB and of the ECB. Consequently, a governor of a central bank must enjoy, in the performance of those duties, the privileges and immunities as are necessary for the performance of the ECB's tasks.
- 47 In addition, the grant to the governors of the national central banks of the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities, which seeks to guarantee the independence of its beneficiaries vis-à-vis the national authorities in the interests of the European Union, is likely to contribute to the independence which Article 130 TFEU and Article 7 of the Protocol on the Statute of the ESCB and of the ECB require, inter alia, from those governors in the exercise of the powers and the performance of the tasks conferred on them by the Treaties and by the Protocol on the Statute of the ESCB and of the ECB.
- 48 Moreover, since the governors of the national central banks clearly cannot benefit from either of the other two immunities provided for in the Protocol on privileges and immunities, denying them also entitlement to the immunity from legal proceedings laid down in Article 11(a) of the Protocol on privileges and immunities would have the paradoxical consequence of depriving of

any immunity persons to whom the Treaties entrust responsibility for the monetary policy of the European Union and whom those treaties expressly intended to be exempt from any influence in the performance of that task.

- 49 Finally, the first paragraph of Article 22 of the Protocol on privileges and immunities must be interpreted as granting ECB staff, to which it expressly refers, the same immunity from legal proceedings enjoyed by the staff of other EU institutions. It does not follow from the Treaties or the Protocol on the Statute of the ESCB and of the ECB that the EU legislature intended to confer on the members of the organs of the ECB, and in particular the members of the Governing Council, its main decision-making body, less protection than on the staff of the ECB as a whole.
- 50 Having regard to the foregoing considerations, the answer to the first question is that Article 22 of the Protocol on privileges and immunities, read in the light of Article 130 TFEU and Article 7 of the Protocol on the Statute of the ESCB and of the ECB, must be interpreted as meaning that the governor of a central bank of a Member State enjoys the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities for acts performed by him or her in his or her official capacity as a member of an organ of the ECB.

#### ***The second question***

- 51 By its second question, the referring court asks, in essence, whether Article 11(a) of the Protocol on privileges and immunities, read in conjunction with Article 22 of that protocol, must be interpreted as meaning that the governor of a central bank of a Member State continues to enjoy the immunity from legal proceedings provided for in Article 11(a) of that protocol after he or she has ceased to hold office.
- 52 In accordance with that provision, officials and other servants of the European Union continue to enjoy immunity from legal proceedings after they have ceased to hold office. As has been concluded in paragraph 50 of the present judgment, the governor of a national central bank enjoys that immunity from legal proceedings as a member of an organ of the ECB, pursuant to Article 22 of the Protocol on privileges and immunities. Consequently, he or she retains the benefit of that once he or she has ceased to hold the office of member of such an organ.
- 53 That is why the termination of office as governor of a national central bank, which ends, pursuant to Article 10.1 of the Protocol on the Statute of the ESCB and of the ECB, the performance by that governor *ex lege* of duties as a member of an organ of the ECB, does not deprive him or her of the entitlement to immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities.
- 54 Consequently, the answer to the second question is that Article 11(a) of the Protocol on privileges and immunities, read in conjunction with Article 22 of that protocol, must be interpreted as meaning that the governor of a central bank of a Member State continues, in respect of acts performed in his or her official capacity, to enjoy the immunity from legal proceedings provided for in Article 11(a) of that protocol after he or she has ceased to hold office.

#### ***The fourth question***

- 55 By its fourth question, which it is appropriate to examine before the third question, the referring court asks, in essence, whether Article 11(a) of the Protocol on privileges and immunities, read

in conjunction with Article 17 of that protocol, must be interpreted as allowing the national authority responsible for the criminal proceedings, that is to say, depending on the stage of the proceedings, the authority responsible for criminal prosecution or the competent criminal court, itself to find that the conditions for immunity from legal proceedings are satisfied before requesting the EU institution concerned to waive that immunity.

- 56 It should be noted at the outset that Article 11(a) of the Protocol on privileges and immunities provides that officials and other servants of the European Union enjoy immunity from legal proceedings only in respect of acts performed ‘in an official capacity’, that is to say, within the framework of the task entrusted to the European Union (judgment of 11 July 1968, *Sayag and Zürich*, 5/68, EU:C:1968:42, p. 401).
- 57 In addition, the privileges and immunities which the Protocol grants to the European Union have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the European Union, which entails, in particular, that the privileges, immunities and facilities accorded to officials and other servants of the European Union are done so solely in the interests of the latter (order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315, paragraphs 19 and 20, and judgment of 18 June 2020, *Commission v RQ*, C-831/18 P, EU:C:2020:481, paragraph 47).
- 58 In order to ensure that functional character, the first paragraph of Article 17 of that protocol states that the immunity is accorded to officials and other servants of the European Union 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 the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the European Union.
- 59 It follows from the foregoing that it is for the EU institution concerned, and not the national authority responsible for criminal proceedings, to assess whether the waiver of immunity is contrary to the interests of the European Union.
- 60 On the other hand, neither Article 11(a) nor Article 17 of the Protocol on privileges and immunities indicates which authority is competent to assess the condition for the application of the immunity from legal proceedings referred to in paragraph 56 above, namely that the act alleged against the official or other servant of the European Union must have been carried out by him or her in his or her official capacity.
- 61 Consequently, it is in the light of the context and purpose of those provisions of the Protocol on privileges and immunities that it is necessary to determine which authority is competent to assess whether that condition is met.
- 62 In the first place, the EU institution to which the official or other servant involved belongs is best placed to determine in which capacity he or she acted. It is even possible that it holds the documents necessary to establish the offence (order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315). Moreover, the power which the second paragraph of Article 17 of the Protocol on privileges and immunities expressly confers on the EU institution concerned to verify that the request for waiver of immunity addressed to it is not contrary to the interests of the Union itself confers on that institution competence to ensure that the act alleged against the official or other servant was carried out in his or her official capacity on behalf of the European Union. If the actions of the official or other servant were not carried out in his or her

official capacity, the proceedings brought against him or her are a fortiori incapable of harming the interests of the European Union. It follows from the foregoing that the institution to which the person concerned belongs is competent to assess the condition referred to in paragraph 56 above.

- 63 In the second place, such a conclusion does not, however, mean that the EU institution concerned has, in all circumstances, competence to assess whether the act of which the official or other servant of the European Union is accused was carried out by him or her in his or her official capacity.
- 64 As the Advocate General stated, in essence, in point 93 of her Opinion, it is the competent authorities or courts of the Member States that will in practice initially address the question whether there might be an impediment to conducting a criminal prosecution against a member of staff of the European Union on account of the immunity on which that member of staff may rely, since they alone have the information from which it can be determined whether the act in question has the characteristics of an act carried out by such a member of staff in his or her official capacity on behalf of the EU institution to which he or she belongs.
- 65 If, in those circumstances, they had no power to assess whether the act was carried out in an official capacity, they would be required to request the EU institution concerned to waive immunity whenever the act complained of was committed by an EU official or other servant.
- 66 However, such an interpretation would disregard the objectives pursued by the authors of the Treaties in conferring immunity from legal proceedings on officials and other servants of the European Union.
- 67 First, under Article 11(a) of the Protocol on privileges and immunities, immunity from legal proceedings is limited to acts performed by officials and other servants of the European Union in their official capacity and therefore covers only a small proportion of the criminal acts which those officials and other servants may commit. It is apparent, in that regard, from the case-law that that concept covers only acts which, by their nature, represent a participation of the person claiming immunity in the performance of the tasks of the institution to which he or she belongs (judgment of 11 July 1968, *Sayag and Zürich*, 5/68, EU:C:1968:42, p. 403). In the light of that very definition, acts of fraud or, as in dispute in the main proceedings, corruption or money laundering fall necessarily outside the bounds of the duties of an official or other servant of the European Union, as well as of those of a governor of a central bank of a Member State sitting on an organ of the ECB, and cannot be considered acts carried out by those persons in their official capacity.
- 68 Secondly, it is apparent from the first paragraph of Article 17 of the Protocol on privileges and immunities that the sole purpose of immunity from legal proceedings is, by avoiding any interference with the functioning and independence of the European Union (order of 13 July 1990, *Zwartveld and Others*, C-2/88 IMM, EU:C:1990:315, paragraph 19), to ensure the protection of the interests of the European Union and it cannot therefore impede the exercise by the Member States of their competence to punish criminal offences where those interests are not at stake.
- 69 The exercise of that competence would be hindered, or at least systematically delayed, if the national authority responsible for the criminal proceedings were, in all cases, required to request the EU institution concerned to waive immunity as soon as a criminal prosecution is initiated against one of the officials or other servants of that institution.

- 70 Consequently, that national authority must be able to find that the offence committed by an official or other servant of the European Union was manifestly not committed by him or her in the performance of his or her duties.
- 71 The division of competence between the national authority responsible for criminal proceedings and the EU institution concerned to assess whether the act liable to be characterised as criminal was carried out by an official or other servant of the European Union in the performance of his or her duties is, moreover, consistent with the intention expressed by the authors of the Treaties in Article 18 of the Protocol on privileges and immunities. That article provides that, for the purpose of applying that protocol, the EU institutions must cooperate with the responsible authorities of the Member States concerned.
- 72 In that regard, the Court has held that the fact of giving active assistance to legal proceedings, by producing documents to the national court and authorising its officials or other servants to give evidence in the national proceedings constitutes an obligation for all EU institutions, those institutions remaining bound, when applying that protocol, to comply with their duty of sincere cooperation with the national authorities, in particular the judicial authorities (see, to that effect, order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315, paragraphs 21 and 22).
- 73 As regards the manner of that cooperation, in practice, the question whether the act complained of was carried out by the official or servant of the European Union in his or her official capacity first arises for the national authority responsible for the criminal proceedings and that authority is in a position to carry out only a cursory assessment of the truth of that criterion. Thus, where that court finds that the act which is the subject of the criminal proceedings was clearly not carried out by the implicated official or servant of the European Union in his or her official capacity, the proceedings against him or her may be continued since immunity from legal proceedings does not apply. On the other hand, where, at any stage of the criminal proceedings, that national authority raises that issue, it is required, by virtue of the principle of sincere cooperation laid down in Article 4(3) TEU and in accordance with Article 18 of the Protocol on privileges and immunities, to consult the EU institution concerned and, if that institution considers that the act was carried out in an official capacity, to request it to waive the immunity of the official or servant concerned.
- 74 Where the national authority responsible for criminal proceedings considers from the outset that the act was carried out by the official or servant concerned in his or her official capacity, it must submit directly to the EU institution concerned a request for waiver of his or her immunity if it intends to continue those proceedings. In accordance with the rule laid down in the second paragraph of Article 17 of the Protocol on privileges and immunities, which is a specific expression of the duty of sincere cooperation owed to the Member States by the institutions, bodies, offices and agencies of the European Union, that request for waiver of immunity must be granted unless it is established that the interests of the Union preclude it. That functional and therefore relative character of the privileges and immunities of the European Union, to which the Court has already had occasion to draw attention (order of 13 July 1990, *Zwartveld and Others*, C-2/88- IMM, EU:C:1990:315, paragraph 20), is all the more important because the effectiveness of proceedings, in particular criminal proceedings, in the Member States is itself capable of directly falling within the interests of the European Union, in particular as regards the protection of the European Union's financial interests (see, to that effect, judgments of 2 May 2018, *Scialdone*, C-574/15, EU:C:2018:295, paragraphs 27 to 29; of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraphs 53 to 55; and of 18 May 2021, *Asociația*

*'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraphs 212 to 214).

- 75 Observance of the division and proper exercise of the abovementioned competences is ensured, where appropriate, by the Court of Justice of the European Union in accordance with the legal remedies provided for in the Treaties. Thus, a failure of the national authorities, including judicial authorities, responsible for criminal proceedings to fulfil their obligation under the principle of sincere cooperation to consult the EU institution concerned where all doubt cannot reasonably be ruled out as to whether the act constituting the alleged offence was carried out in an official capacity may be referred to the Court in the context of infringement proceedings provided for under Article 258 TFEU. Conversely, where the waiver of immunity has been requested of the EU institution concerned and has been refused by it, the validity of that refusal may be the subject of a question referred for a preliminary ruling by the competent national court or even a direct action by the Member State concerned on the basis of Article 263 TFEU. Finally, the official or servant of the European Union who is implicated may bring an action under Article 90(2) and Article 91 of the Staff Regulations of Officials before the Court of Justice against the decision of the EU institution to which he or she belongs to waive his or her immunity from legal proceedings, since that decision constitutes an act adversely affecting him or her (judgment of 18 June 2020, *Commission v RQ*, C-831/18 P, EU:C:2020:481, paragraph 48).
- 76 Having regard to the conclusion drawn in paragraph 50 above, according to which the governor of a national central bank enjoys immunity from legal proceedings under Article 11(a) of the Protocol on privileges and immunities as a member of an organ of the ECB pursuant to Article 22 of that protocol, the interpretation set out in paragraphs 56 to 75 above applies likewise to the case of such a governor.
- 77 In the light of the foregoing considerations, the answer to the fourth question is that Article 11(a) of the Protocol on privileges and immunities, read in conjunction with Articles 17 and 22 of that protocol, must be interpreted as meaning that the national authority responsible for the criminal proceedings, that is to say, depending on the stage of the proceedings, the authority responsible for criminal prosecutions or the competent criminal court, has the competence to assess, in the first place, whether the offence potentially committed by the governor of a national central bank, in his or her capacity as a member of an organ of the ECB, is an act of that governor carried out in the performance of his or her duties within that organ, but in the event of doubt it is required, in accordance with the principle of sincere cooperation, to request the ECB's opinion and to comply with the latter. Conversely, it is for the ECB alone to assess, when it receives an application for waiver of that governor's immunity, whether such a waiver of immunity is contrary to the interests of the European Union, subject to the potential review of that assessment by the Court of Justice.

### ***The third question***

- 78 By its third question, the referring court asks, in essence, whether Article 11(a) of the Protocol on privileges and immunities must be interpreted as meaning that the immunity from legal proceedings for which it provides precludes all criminal prosecution, in particular investigative measures, the gathering of evidence and service of the indictment, or merely prevents its beneficiaries from being tried and convicted by a court, and whether that immunity from legal proceedings precludes the subsequent use of the evidence gathered during the investigation.

- 79 It should be borne in mind that, in accordance with the Court's settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, irrespective of its treatment in the Member States, having regard to its wording, its context and the objectives pursued by the legislation of which it forms part (judgment of 9 September 2021, *Bundesamt für Fremdenwesen und Asyl (Subsequent application for international protection)*, C-18/20, EU:C:2021:710, paragraph 32).
- 80 It follows that, in the absence of any reference to national law in Article 11(a) of the Protocol on privileges and immunities, the concept of 'immunity from legal proceedings' in that provision must be regarded as an autonomous concept of EU law, the meaning and scope of which must be identical in all the Member States. It is therefore for the Court to give a uniform interpretation of that concept in the EU legal order.
- 81 As regards the wording of Article 11(a) of the Protocol on privileges and immunities, it should be noted that, in all the language versions, the immunity provided for in that provision precludes at least that its beneficiaries be tried and convicted by a court. On the other hand, it cannot be inferred solely from the wording of that provision that that immunity does not also cover some of the acts in the criminal proceedings referred to in paragraph 78 above, as the Advocate General observes, in essence, in point 71 of her Opinion.
- 82 Consequently, the concept of 'immunity from legal proceedings', within the meaning of that provision, must be interpreted in the light of the context and the objectives pursued by that provision.
- 83 As regards the context of Article 11(a) of the Protocol on privileges and immunities, it should be noted that Articles 8 and 9 of that protocol define the scope of the immunity of Members of the European Parliament more precisely than that of officials and other servants of the European Union. It is clear from those articles that the immunity of Members of the Parliament is defined as including prosecution and is not therefore limited to the trial stage alone (see, to that effect, judgments of 21 October 2008, *Marra*, C-200/07 and C-201/07, EU:C:2008:579, paragraph 27, and of 17 September 2020, *Troszczynski v Parliament*, C-12/19 P, EU:C:2020:725, paragraph 39). However, there is no such clarification in Article 11(a) of the Protocol on privileges and immunities as regards immunity from legal proceedings.
- 84 As regards the objectives pursued by Article 11(a) of the Protocol on privileges and immunities, the latter seeks to prevent the authorities of a Member State from bringing proceedings against an official or servant of the European Union only in exceptional cases in which the act of which he or she is accused is carried out by that official or servant in his or her official capacity and in so far as is strictly necessary for the protection of the interests of the European Union. The assessment of those conditions for the application of immunity from legal proceedings first of all requires the facts and their imputability to be established and thus in most cases makes it necessary to carry out a police or judicial investigation and to gather evidence. It would therefore be contrary to the relative scope deliberately conferred on the immunity from legal proceedings by the authors of the Protocol on privileges and immunities for that immunity to prevent police or judicial investigations.
- 85 Furthermore, too broad an interpretation of immunity from legal proceedings, including the police and judicial investigation and preliminary criminal proceedings, would be liable to

render EU officials and other servants virtually exempt from criminal liability and to excessively hinder the exercise of criminal justice in the Member State concerned where one of them is implicated, which would be contrary to the values, set out in Article 2 TEU, to which the authors of the Treaties subscribed, in particular the rule of law. In that regard, there is, in particular, no justification for the authority responsible for the criminal proceedings not to be able to serve on him or her an indictment.

- 86 It follows from the foregoing that the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities does not preclude the criminal prosecution in its entirety, in particular investigative measures, the gathering of evidence and service of the indictment.
- 87 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, in accordance with Article 4(3) TEU and Article 18 of the Protocol on privileges and immunities, to request a waiver of immunity from the EU institution concerned, which is then required to act, in particular, in accordance with the approach set out in paragraphs 58, 62 and 74 above.
- 88 As regards the question whether immunity from legal proceedings precludes the subsequent use of evidence gathered during the investigation, it follows from the foregoing that that immunity does not have such a scope. It merely precludes any use of evidence obtained for the purposes of trying and convicting the official or servant of the European Union in question for the act covered by that immunity. On the other hand, since that immunity is enjoyed by the official or servant of the European Union concerned only in respect of a particular act, it does not preclude that evidence from being used in other proceedings concerning other acts not covered by immunity or directed against third parties.
- 89 For the same reasons as those referred to in paragraph 76 above, the interpretation set out in paragraphs 81 to 88 above is also relevant to the assessment of the immunity from legal proceedings of a governor of a central bank of a Member State, in his or her capacity as a member of an organ of the ECB.
- 90 In the light of the foregoing, the answer to the third question is that Article 11(a) of the Protocol on privileges and immunities must be interpreted as meaning that the immunity from legal proceedings for which it provides does not preclude the criminal prosecution in its entirety, including 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 court is seised, it is established that the person under investigation 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. That immunity does not preclude evidence gathered during the investigation from being used in other judicial proceedings.

### *The fifth question*

- 91 By its fifth question, the referring court asks, in essence, whether Article 11(a) and Article 17 of the Protocol on privileges and immunities must be interpreted as meaning that immunity from legal proceedings may be invoked in the interests of the European Union where the

beneficiary of that immunity is implicated in criminal proceedings for acts unrelated to the duties which he or she carries out on behalf of an EU institution.

- 92 As a preliminary point, it should be recalled that it is apparent, first, from Article 11(a) of the Protocol on privileges and immunities that officials and other servants of the European Union enjoy immunity from legal proceedings only in respect of acts performed by them in their official capacity and, secondly, from the first paragraph of Article 17 of that protocol that that immunity is granted only if it is warranted by an interest of the European Union.
- 93 As has been stated in paragraph 73 above, where the authority responsible for criminal proceedings finds that the offence committed by the official or servant of the European Union clearly does not constitute an act carried out in his or her official capacity, it may rule out immunity from legal proceedings without the existence of an interest of the European Union having to be assessed by the EU institution concerned in the context of an application for waiver of immunity.
- 94 Consequently, immunity from legal proceedings is inapplicable in criminal proceedings brought against an official or servant of the European Union concerning acts unconnected with the performance of his or her duties. As noted in paragraph 76 above, that conclusion also applies to the governor of a Member State's central bank in his or her capacity as a member of an organ of the ECB.
- 95 The protection thus afforded by the Protocol on privileges and immunities to beneficiaries of immunity from legal proceedings is, as noted in paragraph 74 above, functional in scope and therefore relative and does not, in particular, shield them, as the case may be, against any pressure that might be deliberately exerted on them by means of abusive prosecutions for acts which are not carried out by officials or other servants of the European Union in their official capacity. However, it must be borne in mind that, under the principle of sincere cooperation, the Member States are required, under the third subparagraph of Article 4(3) TEU, to facilitate the achievement of the European Union's tasks and to refrain from any measure which could jeopardise the attainment of the European Union's objectives. Such pressure would be, as the Advocate General observed, in essence, in point 138 of her Opinion, capable of calling into question the functioning of the EU institutions and, therefore, of jeopardising the achievement of the objectives of the European Union.
- 96 In any event, observance of the obligation of sincere cooperation under Article 18 of the Protocol on privileges and immunities and Article 4(3) TEU may be imposed by proceedings for failure to fulfil obligations (judgment of 17 December 2020, *Commission v Slovenia (ECB archives)*, C-316/19, EU:C:2020:1030). Furthermore, as regards a governor of a national central bank sitting on the Governing Council of the ECB, Article 130 TFEU, reproduced in Article 7 of the Protocol on the Statute of the ESCB and of the ECB, which guarantees the independence of the members of the decision-making bodies of the ECB or the national central banks in carrying out the tasks and duties conferred on them by the Treaties and the Protocol on the Statute of the ESCB and of the ECB, would also provide the Commission with an appropriate legal basis to have, if established, the Court of Justice make a finding as to actions seeking to compromise that independence.
- 97 In the light of the foregoing, the answer to the fifth question is that Article 11(a) and Article 17 of the Protocol on privileges and immunities must be interpreted as meaning that immunity from legal proceedings does not apply where the beneficiary of that immunity is implicated in

criminal proceedings in respect of acts which were not performed in the context of the duties which he or she carries out on behalf of an EU institution.

### Costs

- 98 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 22 of Protocol (No 7) on the privileges and immunities of the European Union, read in the light of Article 130 TFEU and Article 7 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, must be interpreted as meaning that the governor of a central bank of a Member State enjoys the immunity from legal proceedings provided for in Article 11(a) of Protocol (No 7) on the privileges and immunities of the European Union for acts performed by him or her in his or her official capacity as a member of an organ of the European Central Bank.**
2. **Article 11(a) of Protocol (No 7) on the privileges and immunities of the European Union, read in conjunction with Article 22 of that protocol, must be interpreted as meaning that the governor of a central bank of a Member State continues, in respect of acts performed in his or her official capacity, to enjoy the immunity from legal proceedings provided for in Article 11(a) of that protocol after he or she has ceased to hold office.**
3. **Article 11(a) of Protocol (No 7) on the privileges and immunities of the European Union, read in conjunction with Articles 17 and 22 of that protocol, must be interpreted as meaning that the national authority responsible for the criminal proceedings, that is to say, depending on the stage of the proceedings, the authority responsible for criminal prosecutions or the competent criminal court, has the competence to assess, in the first place, whether the offence potentially committed by the governor of a national central bank, in his or her capacity as a member of an organ of the European Central Bank, is an act of that governor carried out in the performance of his or her duties within that organ, but in the event of doubt it is required, in accordance with the principle of sincere cooperation, to request the opinion of the European Central Bank and to comply with the latter. Conversely, it is for the European Central Bank alone to assess, when it receives an application for waiver of that governor's immunity, whether such a waiver of immunity is contrary to the interests of the European Union, subject to the potential review of that assessment by the Court of Justice.**
4. **Article 11(a) of Protocol (No 7) on the privileges and immunities of the European Union must be interpreted as meaning that the immunity from legal proceedings for which it provides does not preclude the criminal prosecution in its entirety, including 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 court is seised, it is established that the person under investigation 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 institution of the European Union concerned. That immunity does not preclude evidence gathered during the investigation from being used in other judicial proceedings.**

- 5. Article 11(a) and Article 17 of Protocol (No 7) on the privileges and immunities of the European Union must be interpreted as meaning that immunity from legal proceedings does not apply where the beneficiary of that immunity is implicated in criminal proceedings in respect of acts which were not performed in the context of the duties which he or she carries out on behalf of an institution of the European Union.**