JUDGMENT OF THE COURT (Third Chamber)

2 April 2020 (*)

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In Joined Cases C-715/17, C-718/17 and C-719/17,

ACTIONS for failure to fulfil obligations under Article 258 TFEU, brought on 21 and 22 December 2017,

European Commission, represented by Z. Malůšková, A. Stobiecka-Kuik, G. Wils and A. Tokár, acting as Agents,

applicant,

v

Republic of Poland, represented by E. Borawska-Kędzierska and B. Majczyna, acting as Agents,

defendant,

supported by:

Czech Republic, represented by M. Smolek, J. Vláčil, J. Pavliš and A. Brabcová, acting as Agents,

Hungary, represented by M.Z. Fehér, acting as Agent,

interveners (Case C-715/17),

European Commission, represented by Z. Malůšková, A. Stobiecka-Kuik, G. Wils and A. Tokár, acting as Agents,

applicant,

v

Hungary, represented by M.Z. Fehér and G. Koós, acting as Agents,

defendant,

supported by:

Czech Republic, represented by M. Smolek, J. Vláčil, J. Pavliš and A. Brabcová, acting as Agents,

Republic of Poland, represented by E. Borawska-Kędzierska and B. Majczyna, acting as Agents,

interveners (Case C-718/17),

and

European Commission, represented by Z. Malůšková, A. Stobiecka-Kuik, G. Wils and A. Tokár, acting as Agents,

applicant,

v

Czech Republic, represented by M. Smolek, J. Vláčil, J. Pavliš and A. Brabcová, acting as Agents,

defendant,

supported by:

Hungary, represented by M.Z. Fehér, acting as Agent,

Republic of Poland, represented by E. Borawska-Kędzierska and B. Majczyna, acting as Agents,

interveners (Case C-719/17),

THE COURT (Third Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Third Chamber, L.S. Rossi, J. Malenovský and F. Biltgen, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 15 May 2019,

after hearing the Opinion of the Advocate General at the sitting on 31 October 2019,

gives the following

Judgment

1 By its application in Case C-715/17, the European Commission seeks a declaration from the Court that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who could be relocated swiftly to its territory, the Republic of Poland has, since 16 March 2016, failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ 2015 L 239, p. 146) and Article 5(2) of Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ

2015 L 248, p. 80), and, consequently, the subsequent relocation obligations incumbent on it under Article 5(4) to (11) of each of those two decisions.

2 By its application in Case C-718/17, the Commission seeks a declaration from the Court that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who could be relocated swiftly to its territory, Hungary has failed to fulfil its obligations under Article 5(2) of Decision 2015/1601 and, consequently, the subsequent relocation obligations incumbent on it under Article 5(4) to (11) of that decision.

3 By its application in Case C-719/17, the Commission seeks a declaration from the Court that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who could be relocated swiftly to its territory, the Czech Republic has failed to fulfil its obligations under Article 5(2) of Decision 2015/1523 and Article 5(2) of Decision 2015/1601 and, consequently, the subsequent relocation obligations incumbent on it under Article 5(4) to (11) of each of those two decisions.

Legal context

International law

4 The Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which for its part entered into force on 4 October 1967 ('the Geneva Convention').

5 Article 1 of the Geneva Convention, following the definition, inter alia, in section A, of the term 'refugee' for the purposes of that convention, states in section F:

'The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.'

European Union law

Directive 2011/95/EU

6 Chapter III of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), entitled 'Qualification for being a refugee', includes Article 12 of that directive, entitled 'Exclusion'. Paragraphs 2 and 3 of that article provide as follows:

'2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations[, signed in San Francisco on 26 June 1945].

3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.'

7 Chapter V of Directive 2011/95, entitled 'Qualification for subsidiary protection', includes Article 17 of that directive, entitled 'Exclusion', pursuant to which:

'1. A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious crime;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

2. Paragraph 1 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.'

Decisions 2015/1523 and 2015/1601

8 Recitals 1, 2, 7, 11, 12, 23, 25, 26, 31 and 32 of Decision 2015/1601 state as follows:

'(1) According to Article 78(3) [TFEU], in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State(s) concerned.

(2) According to Article 80 TFEU, the policies of the Union in the area of border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility between the Member States, and Union acts adopted in this area are to contain appropriate measures to give effect to this principle.

…

(7) At its meeting of 25 and 26 June 2015, the European Council decided, inter alia, that three key dimensions should be advanced in parallel: relocation/resettlement, return/readmission/reintegration and cooperation with countries of origin and transit. The European Council agreed in particular, in the light of the current emergency situation and the commitment to reinforce solidarity and responsibility, on the temporary and exceptional relocation over 2 years, from Italy and from Greece to other Member States of 40 000 persons in clear need of international protection, in which all Member States would participate.

…

(11) On 20 July 2015, reflecting the specific situations of Member States, a Resolution of the representatives of the Governments of the Member States meeting within the [European] Council on relocating from Greece and Italy 40 000 persons in clear need of international protection was adopted by consensus. Over a period of 2 years, 24 000 persons will be relocated from Italy and 16 000 persons will be relocated from Greece. On 14 September 2015, the Council [of the European Union] adopted Decision … 2015/1523, which provided for a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection.

(12) During recent months, the migratory pressure at the southern external land and sea borders has again sharply increased, and the shift of migration flows has continued from the central to the eastern Mediterranean and towards the Western Balkans route, as a result of the increasing number of migrants arriving in and from Greece. In view of the situation, further provisional measures to relieve the asylum pressure from Italy and Greece should be warranted.

…

(23) The measures to relocate from Italy and from Greece, provided for in this Decision, entail a temporary derogation from the rule set out in Article 13(1) of [Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31)] according to which Italy and Greece would otherwise have been responsible for the examination of an application for international protection based on the criteria set out in Chapter III of that Regulation, as well as a temporary derogation from the procedural steps, including the time limits, laid down in Articles 21, 22 and 29 of that Regulation. The other provisions of Regulation … No 604/2013 … remain applicable …

…

(25) A choice had to be made in respect of the criteria to be applied when deciding which and how many applicants are to be relocated from Italy and from Greece, without prejudice to decisions at national level on asylum applications. A clear and workable system is envisaged based on a threshold of the average rate at Union level of decisions granting international protection in the procedures at first instance, as defined by Eurostat, out of the total number at Union level of decisions on applications for international protection taken at first instance, based on the latest available statistics. On the one hand, this threshold would have to ensure, to the maximum extent possible, that all applicants in clear need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation. On the other hand, it would have to prevent, to the maximum extent possible, applicants who are likely to receive a negative decision on their application from being relocated to another Member State, and therefore from prolonging unduly their stay in the Union. A threshold of 75%, based on the latest available updated Eurostat quarterly data for decisions at first instance, should be used in this Decision.

(26) The provisional measures are intended to relieve the significant asylum pressure on Italy and on Greece, in particular by relocating a significant number of applicants in clear need of international protection who will have arrived in the territory of Italy or Greece following the date on which this Decision becomes applicable. Based on the overall number of third-country nationals who have entered Italy and Greece irregularly in 2015, and the number of those who are in clear need of international protection, a total of 120 000 applicants in clear need of international protection should be relocated from Italy and Greece. …

…

(31) It is necessary to ensure that a swift relocation procedure is put in place and to accompany the implementation of the provisional measures by close administrative cooperation between Member States and operational support provided by [the European Asylum Support Office (EASO)].

(32) National security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented. In full respect of the

fundamental rights of the applicant, including the relevant rules on data protection, where a Member State has reasonable grounds for regarding an applicant as a danger to its national security or public order, it should inform the other Member States thereof.'

9 Recitals 1, 2, 7, 23, 25, 26, 31 and 32 of Decision 2015/1601 were drafted in terms essentially identical to those of recitals 1, 2, 6, 18, 20, 21, 25 and 26, respectively, of Decision 2015/1523.

10 Article 1 of Decision 2015/1601, entitled 'Subject matter', provided as follows, in paragraph 1 thereof, in terms which were essentially identical to those of Article 1 of Decision 2015/1523:

'This Decision establishes provisional measures in the area of international protection for the benefit of Italy and of Greece, in view of supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States.'

11 Article 2 of each of those decisions, entitled 'Definitions', provided as follows:

'For the purposes of this Decision, the following definitions apply:

…

(e) "relocation" means the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of Regulation … No 604/2013 indicate as responsible for examining his or her application for international protection to the territory of the Member State of relocation;

(f) "Member State of relocation" means the Member State which becomes responsible for examining the application for international protection pursuant to Regulation … No 604/2013 of an applicant following his or her relocation in the territory of that Member State.'

12 Article 3 of Decision 2015/1601, entitled 'Scope', provided, in identical terms to those of Article 3 of Decision 2015/1523, as follows:

'1. Relocation pursuant to this Decision shall take place only in respect of an applicant who has lodged his or her application for international protection in Italy or in Greece and for whom those States would have otherwise been responsible pursuant to the criteria for determining the Member State responsible set out in Chapter III of Regulation … No 604/2013.

2. Relocation pursuant to this Decision shall be applied only in respect of an applicant belonging to a nationality for which the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection as referred to in Chapter III of Directive 2013/32/EU [of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60)] is, according to the latest available updated quarterly Union-wide average Eurostat data, 75% or higher. …'

13 Article 4 of Decision 2015/1523 provided for the relocation, from Italy and Greece to the territory of the other Member States to which that decision was applicable, which did not include Hungary, of 40 000 persons in clear need of international protection, 24 000 of which were to be from Italy and 16 000 of which were to be from Greece.

14 Article 4 of Decision 2015/1601 provided as follows:

‘1. 120 000 applicants shall be relocated to the other Member States as follows:

(a) 15 600 applicants shall be relocated from Italy to the territory of the other Member States in accordance with the table set out in Annex I;

(b) 50 400 applicants shall be relocated from Greece to the territory of the other Member States in accordance with the table set out in Annex II;

(c) 54 000 applicants shall be relocated to the territory of the other Member States, proportionally to the figures laid down in Annexes I and II, either in accordance with paragraph 2 of this Article or through an amendment of this Decision, as referred to in Article 1(2) and in paragraph 3 of this Article.

2. As of 26 September 2016, 54 000 applicants, referred to in point (c) of paragraph 1, shall be relocated from Italy and Greece, in proportion resulting from points (a) and (b) of paragraph 1, to the territory of other Member States and proportionally to the figures laid down in Annexes I and II. The Commission shall submit a proposal to the Council on the figures to be allocated accordingly per Member State.

…’

15 Article 1 of Council Decision (EU) 2016/1754 of 29 September 2016 (OJ 2016 L 268, p. 82) added the following paragraph to Article 4 of Decision 2015/1601:

‘3a. In relation to the relocation of applicants referred to in point (c) of paragraph 1, Member States may choose to meet their obligation by admitting to their territory Syrian nationals present in Turkey under national or multilateral legal admission schemes for persons in clear need of international protection, other than the resettlement scheme which was the subject of the Conclusions of the Representatives of the Governments of the Member States meeting within the [European] Council of 20 July 2015. The number of persons so admitted by a Member State shall lead to a corresponding reduction of the obligation of the respective Member State.

…’

16 Annexes I and II to Decision 2015/1601 contained tables indicating, in respect of the Member States to which that decision was applicable, other than the Hellenic Republic and the Italian Republic, including the Republic of Poland, Hungary and the Czech Republic, the binding allocations of applicants for international protection from Italy or Greece respectively who had to be relocated in each of those Member States.

17 Article 5 of Decision 2015/1601, entitled ‘Relocation procedure’, provided as follows:

‘…

2. Member States shall, at regular intervals, and at least every 3 months, indicate the number of applicants who can be relocated swiftly to their territory and any other relevant information.

3. Based on this information, Italy and Greece shall, with the assistance of EASO and, where applicable, of Member States’ liaison officers referred to in paragraph 8, identify the individual applicants who could be relocated to the other Member States and, as soon as possible, submit all relevant information to the contact points of those Member States. Priority shall be given for that purpose to vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU [of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96)].

4. Following approval of the Member State of relocation, Italy and Greece shall, as soon as possible, take a decision to relocate each of the identified applicants to a specific Member State of relocation, in consultation with EASO, and shall notify the applicant in accordance with Article 6(4). The Member State of relocation may decide not to approve the relocation of an applicant only if there are reasonable grounds as referred to in paragraph 7 of this Article.

5. Applicants whose fingerprints are to be taken in accordance with the obligations laid down in Article 9 of Regulation (EU) No 603/2013 [of the European Parliament and of the Council of 26 June 2013 on the establishment of “Eurodac” for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1),] may be proposed for relocation only if their fingerprints have been taken and transmitted to the Central System of Eurodac, pursuant to that Regulation.

6. The transfer of the applicant to the territory of the Member State of relocation shall take place as soon as possible following the date of the notification to the person concerned of the transfer decision referred to in Article 6(4) of this Decision. Italy and Greece shall transmit to the Member State of relocation the date and time of the transfer as well as any other relevant information.

7. Member States retain the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of Directive 2011/95/EU.

8. For the implementation of all aspects of the relocation procedure described in this Article, Member States may, after exchanging all relevant information, decide to appoint liaison officers to Italy and to Greece.

9. In line with the Union *acquis*, Member States shall fully implement their obligations. Accordingly, identification, registration and fingerprinting for the relocation procedure shall be guaranteed by Italy and by Greece. To ensure that the process remains efficient and manageable, reception facilities and measures shall be duly organised so as to temporarily accommodate people, in line with the Union *acquis*, until a decision is quickly taken on their situation. Applicants that elude the relocation procedure shall be excluded from relocation.

10. The relocation procedure provided for in this Article shall be completed as swiftly as possible and not later than 2 months from the time of the indication given by the Member State of relocation as referred to in paragraph 2, unless the approval by the Member State of relocation referred to in paragraph 4 takes place less than 2 weeks before the expiry of that 2-month period. In such case, the time limit for completing the relocation procedure may be extended for a period not exceeding a further 2 weeks. In addition, the time limit may also be extended, for a further 4-week period, as appropriate, where Italy or Greece show objective practical obstacles that prevent the transfer from taking place.

Where the relocation procedure is not completed within these time limits and unless Italy and Greece agree with the Member State of relocation to a reasonable extension of the time limit, Italy and Greece shall remain responsible for examining the application for international protection pursuant to Regulation (EU) No 604/2013.

11. Following the relocation of the applicant, the Member State of relocation shall take and transmit to the Central System of Eurodac the fingerprints of the applicant in accordance with Article 9 of Regulation (EU) No 603/2013 and update the data sets in accordance with Article 10 of, and, where applicable, Article 18 of that Regulation.'

18 Article 5 of Decision 2015/1523, entitled 'Relocation procedure', was essentially worded in the same terms as Article 5 of Decision 2015/1601.

19 Article 12 of Decision 2015/1523 and of Decision 2015/1601 provided, inter alia, that the Commission was to report to the Council every six months on the implementation of those decisions.

20 The Commission subsequently undertook to submit monthly reports on the implementation of the various measures adopted at EU level for the relocation and resettlement of applicants for international protection, including those provided for in Decisions 2015/1523 and 2015/1601. On that basis, the Commission presented 15 reports on relocation and resettlement to the European Parliament, the European Council and the Council.

21 On 15 November 2017 and 14 March 2018, the Commission also submitted progress reports which included, inter alia, updated data on the relocations carried out under Decisions 2015/1523 and 2015/1601.

22 It is apparent from Article 13(1) and (2) of Decision 2015/1523 that the latter entered into force on 16 September 2015 and was to apply until 17 September 2017. Article 13(3) of that decision provided that it applied to persons who had arrived on the territory of Italy or Greece from 16 September 2015 until 17 September 2017, as well as to applicants for international protection who had arrived on the territory of one of those Member States from 15 August 2015 onwards.

23 Under Article 13(1) and (2) of Decision 2015/1601, the latter entered into force on 25 September 2015 and was to apply until 26 September 2017. Article 13(3) thereof provided that the decision was to apply to persons arriving on the territory of Italy and Greece from 25 September 2015 until 26 September 2017, as well as to applicants for international protection who had arrived on the territory of one of those Member States from 24 March 2015 onwards.

Background and pre-litigation procedure

24 On 16 December 2015, the Republic of Poland, pursuant to Article 5(2) of each of Decisions 2015/1523 and 2015/1601, indicated that 100 applicants for international protection could be relocated swiftly to its territory, 65 of which were from Greece and 35 of which were from Italy. Subsequently, the Hellenic Republic and the Italian Republic identified 73 and 36 persons, respectively, which they requested the Republic of Poland to relocate. That Member State did not follow up those requests and no applicant for international protection was relocated on the territory of that Member State under Decisions 2015/1523 and 2015/1601. The Republic of Poland did not subsequently make any relocation commitments.

25 It is common ground that at no point did Hungary, which did not participate in the voluntary relocation measure provided for in Decision 2015/1523, indicate a number of applicants for international protection who could be relocated swiftly to its territory under Article 5(2) of Decision 2015/1601 and that, as a result, no applicant for international protection was relocated to the territory of that Member State under that decision.

26 On 5 February and 13 May 2016, the Czech Republic, pursuant to Article 5(2) of each of Decisions 2015/1523 and 2015/1601, indicated that 30 and 20 applicants, respectively, for international protection could be relocated swiftly to its territory, 20 plus 10 of which were from Greece and two times 10 of which were from Italy. The Hellenic Republic and the Italian Republic identified 30 and 10 persons respectively whose relocation to the Czech Republic they requested. That latter Member State agreed to relocate 15 persons from Greece, 12 of which were actually relocated. The Czech Republic did not accept any of the persons identified by the Italian Republic and no relocation took place from Italy to the Czech Republic. Consequently, a total of 12 applicants for international protection, all from Greece, were relocated to the Czech Republic under Decisions 2015/1523 and 2015/1601. After 13 May 2016 the Czech Republic did not make any commitments concerning relocation.

27 By letters of 10 February 2016, the Commission called on the Republic of Poland, Hungary and the Czech Republic, in particular, to communicate at least every three months information concerning the number of applicants for international protection who could be relocated to their territory and to relocate such applicants at regular intervals in order to comply with their legal obligations.

28 By letters of 5 August 2016, the Commission drew to the attention of all the Member States their obligations concerning relocation under Decisions 2015/1523 and 2015/1601.

29 In a letter of 28 February 2017, sent jointly by the Commission and by the Presidency of the Council of the European Union to the Ministers responsible for Home Affairs, the Member States who had not yet relocated anyone or who had not relocated in proportion to their allocation were called upon to step up their efforts immediately.

30 The Czech Republic stated by a letter of 1 March 2017 that it considered its first offer, dated 5 February 2016, to relocate 30 persons to be adequate.

31 On 5 June 2017, the Czech Republic adopted Resolution No 439 by which it decided to suspend the implementation of the obligations it had taken on at the meeting of the European Council on 25 and 26 June 2015, subsequently formalised at the meeting of the Representatives of the Governments of the Member States, meeting within the European Council, of 20 July 2015 and implemented by Decision 2015/1523, as well as the implementation of its obligations under Decision 2015/1601 'in view of the significant deterioration of the security situation in the Union … and having regard to the obvious malfunctioning of the relocation system'.

32 In several of its reports to the European Parliament, the European Council and the Council on relocation and resettlement, the Commission insisted that the Member States indicate at regular intervals a number of applicants for international protection who could be relocated to their territory in accordance with the obligations on each Member State under Decision 2015/1523 and/or Decision 2015/1601 and actually relocate people in proportion to their obligations and, in particular, their allocations in Annexes I and II to Decision 2015/1601, failing which they would be subject to an action for failure to fulfil obligations.

33 In its Communications of 18 May 2016 to the European Parliament, the European Council and the Council — Third report on relocation and resettlement (COM(2016) 360 final); of 15 June 2016 to the European Parliament, the European Council and the Council — Fourth report on relocation and resettlement (COM(2016) 416 final); of 13 July 2016 to the European Parliament, the European Council and the Council — Fifth report on relocation and resettlement (COM(2016) 480 final); of 28 September 2016 to the European Parliament, the European Council and the Council — Sixth report on relocation and resettlement (COM(2016) 636 final); of 9 November 2016 to the European Parliament, the European Council and the Council — Seventh report on relocation and resettlement (COM(2016) 720 final); and of 8 December 2016 to the European Parliament, the European Council and the Council — Eighth report on relocation and resettlement (COM(2016) 791 final), the Commission stated that it reserved the right to use the powers conferred upon it under the Treaties if the Member States concerned did not take the necessary measures to comply with their obligations on relocation as provided for in Decisions 2015/1523 and 2015/1601.

34 Furthermore, in its Communications of 8 February 2017 to the European Parliament, the European Council and the Council — Ninth report on relocation and resettlement (COM(2017) 74 final); of 2 March 2017 to the European Parliament, the European Council and the Council — Tenth report on relocation and resettlement (COM(2017) 202 final); of 12 April 2017 to the

European Parliament, the European Council and the Council — Eleventh report on relocation and resettlement (COM(2017) 212 final); and of 16 May 2017 to the European Parliament, the European Council and the Council — Twelfth report on relocation and resettlement (COM(2017) 260 final), the Commission specifically required the Republic of Poland, Hungary and the Czech Republic to comply with their relocation obligations under Decision 2015/1523 and/or Decision 2015/1601 by relocating applicants for international protection and by making relocation commitments. It indicated that it reserved the right to initiate proceedings for failure to fulfil obligations against those Member States if they did not comply with their obligations without delay.

35 In the Twelfth report on relocation and resettlement, the Commission required that the Member States that had not relocated any applicants for international protection or had not indicated for over a year a number of applicants for international protection which could be relocated from Greece and Italy to their territory should carry out such relocations or make such commitments immediately or, at the latest, within one month.

36 By letters of formal notice dated 15 June 2017, so far as concerns Hungary and the Czech Republic, and 16 June 2017, so far as concerns the Republic of Poland, the Commission initiated infringement proceedings under Article 258(1) TFEU against those three Member States. In those letters, the Commission maintained that those Member States had complied with neither their obligations under Article 5(2) of Decision 2015/1523 and/or Article 5(2) of Decision 2015/1601 nor, as a result, their subsequent relocation obligations provided for in Article 5(4) to (11) of Decision 2015/1523 and/or Article 5(4) to (11) of Decision 2015/1601.

37 Not being persuaded by the replies of the Republic of Poland, Hungary and the Czech Republic to those letters of formal notice, the Commission, on 26 July 2017, sent a reasoned opinion to each of those three Member States, maintaining its position that the Republic of Poland, since 16 March 2016, Hungary, since 25 December 2015, and the Czech Republic, since 13 August 2016, had failed to fulfil their obligations under Article 5(2) of Decision 2015/1523 and/or Article 5(2) of Decision 2015/1601 and, consequently, their subsequent obligations under Article 5(4) to (11) of Decision 2015/1523 and/or Article 5(4) to (11) of Decision 2015/1601, while calling upon those three Member States to take the necessary measures to comply with those obligations within four weeks, that is, by 23 August 2017 at the latest.

38 The Czech Republic, by a letter of 22 August 2017, and the Republic of Poland and Hungary, by letters of 23 August 2017, replied to the reasoned opinions.

39 In its Communication of 6 September 2017 to the European Parliament, the European Council and the Council — Fifteenth report on relocation and resettlement (COM(2017) 465 final), the Commission again noted that the Republic of Poland and Hungary were the only Member States not to have relocated any applicant for international protection, that the Republic of Poland had not made any relocation commitments since 16 December 2015 and that the Czech Republic had not made any such commitments since 13 May 2016 and had not relocated anyone since August 2016. It requested that those three Member States make relocation commitments and start relocating immediately. It also referred in that communication to the judgment of 6 September

2017, *Slovakia and Hungary* v *Council* (C-643/15 and C-647/15, EU:C:2017:631), stating that, by that judgment, the Court had confirmed the validity of Decision 2015/1601.

40 By letters of 19 September 2017, the Commission drew that judgment to the attention of the Republic of Poland, Hungary and the Czech Republic, reiterating that it had confirmed the validity of Decision 2015/1601, and invited those three Member States to quickly adopt the necessary measures in order to make relocation commitments and to relocate people.

41 Having received no response to those letters, the Commission decided to bring the present actions.

Procedure before the Court

42 By decision of the President of the Court of 8 June 2018, the Czech Republic and Hungary were granted leave to intervene in support of the form of order sought by the Republic of Poland in Case C-715/17.

43 By decision of the President of the Court of 12 June 2018, Hungary and the Republic of Poland were granted leave to intervene in support of the form of order sought by the Czech Republic in Case C-719/17.

44 By decision of the President of the Court of 13 June 2018, the Czech Republic and the Republic of Poland were granted leave to intervene in support of the form of order sought by Hungary in Case C-718/17.

45 After hearing the parties and the Advocate General on that point, the Court considers that it is appropriate, on account of the connection between them, to join the present cases for the purposes of the judgment, in accordance with Article 54 of the Rules of Procedure of the Court of Justice.

The actions

Admissibility

46 The three Member States in question raise a number of arguments to dispute the admissibility of the action for failure to fulfil obligations brought against them.

The objections of inadmissibility in Cases C-715/17, C-718/17 and C-719/17, alleging that the actions are devoid of purpose and inconsistent with the objective of the procedure under Article 258 TFEU

– *Arguments of the parties*

47 The three Member States in question claim, in essence, that the action concerning them is inadmissible on the ground that, if the Court were to reach the finding that they had failed to fulfil their obligations under Decision 2015/1523 and/or Decision 2015/1601 as alleged, the fact remains

that it is impossible for each Member State in question to remedy that failure by implementing the obligations imposed under Article 5(2) and 5(4) to 5(11) of each of those decisions, since the periods of application of those decisions and, consequently, the obligations which they impose, definitively expired on 17 September 2017 and 26 September 2017 respectively.

48 They submit that it follows from case-law of the Court of Justice that an action brought under Article 258 TFEU must have the objective of finding a failure to fulfil obligations with a view to putting an end to such a situation and its sole objective cannot be the delivery of a judgment that is purely declaratory finding there to have been a failure to fulfil obligations.

49 Accordingly, the actions are devoid of purpose and are not in line with the objective of the procedure for finding a failure to fulfil obligations under Article 258 TFEU.

50 In addition, as regards failures to fulfil obligations resulting from EU acts whose period of application has definitively expired and which may no longer be remedied, the Commission cannot claim a sufficient interest in seeking that the Court establish such failures to fulfil obligations.

51 The Commission disputes those arguments.

– *Findings of the Court*

52 The objective pursued by the procedure envisaged in Article 258 TFEU is an objective finding that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary legislation and such a procedure also makes it possible to establish whether a Member State has infringed EU law in a given case (judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraph 40 and the case-law cited).

53 In that context, one of the purposes of the pre-litigation procedure is to give the Member State concerned the opportunity to comply with its obligations arising from EU law (see, to that effect, judgment of 16 September 2015, *Commission* v *Slovakia*, C-433/13, EU:C:2015:602, paragraphs 39 and 40 and the case-law cited).

54 It is apparent from the second paragraph of Article 258 TFEU that, if the Member State concerned does not comply with the reasoned opinion within the period laid down therein, the Commission may bring the matter before the Court. According to the settled case-law of the Court, the question whether a Member State has failed to fulfil its obligations must consequently be determined by reference to the situation prevailing in the Member State at the end of that period (judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraph 39 and the case-law cited).

55 It is true, as the three Member States in question point out, that according to the Court's settled case-law the Commission's function is to ensure, of its own motion and in the general interest, that the Member States give effect to EU law and to obtain a declaration of any failure to fulfil the obligations deriving therefrom with a view to bringing them to an end (see, inter alia, judgment of 7 April 2011, *Commission* v *Portugal*, C-20/09, EU:C:2011:214, paragraph 41 and the case-law cited).

56 However, that case-law must be understood to mean that, in an action for failure to fulfil obligations, the Commission cannot seek from the Court anything other than a finding that the failure to fulfil obligations alleged exists with a view to bringing that situation to an end. Thus, the Commission cannot, for example, ask the Court, in an action for failure to fulfil obligations, to require a Member State to adopt a particular conduct in order to comply with EU law (see, to that effect, judgment of 7 April 2011, *Commission* v *Portugal*, C-20/09, EU:C:2011:214, paragraph 41).

57 On the other hand, an action for failure to fulfil obligations is admissible if the Commission confines itself to asking the Court to declare the existence of the alleged failure, in particular in a situation, such as that before the Court, in which the secondary EU legislation whose infringement is alleged definitively ceased to be applicable after the expiry of the time limit set in the reasoned opinion.

58 Having regard to the case-law recalled in paragraph 52 above, such an action for failure to fulfil obligations, inasmuch as it seeks an objective finding by the Court that a Member State has failed to fulfil the obligations imposed on it under an act of secondary legislation and makes it possible to establish whether a Member State has infringed EU law in a given case, falls wholly within the scope of the objective pursued by the procedure envisaged in Article 258 TFEU.

59 In that context, it must be observed that the period of application of Decisions 2015/1523 and 2015/1601 definitively expired on 17 September 2017 and 26 September 2017 respectively (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 94).

60 In this connection, the three Member States in question put forward the fact that it is no longer possible to remedy the failure alleged since the period of application of Decisions 2015/1523 and 2015/1601 has definitively expired. However, that fact, even if it were established, cannot lead to the inadmissibility of the present actions.

61 The three Member States in question were given the opportunity to end the alleged infringement before the expiry of the period laid down in the reasoned opinions, namely 23 August 2017, and thus before the expiry of the period of application of Decisions 2015/1523 and 2015/1601, by making relocation commitments under Article 5(2) of Decision 2015/1523 and/or of Decision 2015/1601 and by actually relocating people in fulfilment of their obligations under Article 5(4) to (11) of Decision 2015/1523 and/or Article 5(4) to (11) of Decision 2015/1601, as indeed they were requested by the Commission in a series of letters and in several of its monthly communications on relocation and resettlement.

62 Since, at the date at which the period thus fixed in the reasoned opinions expired, the obligations following for the Member States from Decisions 2015/1523 and 2015/1601 were still in force and, as the Commission submits without its having been disproven, the three Member States concerned still had not complied with those obligations even though the Commission had offered them the opportunity to do so by that date at the latest, that institution is, notwithstanding the subsequent expiry of the period of application of those decisions, entitled to bring the present action seeking that the Court establish the alleged failures to fulfil obligations.

63 Were the arguments of the three Member States in question to be accepted, any Member State which, by its conduct, were to impede the achievement of the objective inherent in a decision adopted on the basis of Article 78(3) TFEU and applying as a 'provisional measure' within the meaning of that provision, only during a limited period, as is the case for Decisions 2015/1523 and 2015/1601 (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraphs 90 and 94), could evade infringement proceedings, on the sole ground that the infringement concerns an act of EU law whose period of application definitively expired after the expiry date of the period set in the reasoned opinion, as a result of which the Member States might take advantage of their own misconduct (see, by analogy, judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraph 48).

64 In such a situation, the Commission would thus be unable to bring proceedings, within the powers that it holds under Article 258 TFEU, against the Member State concerned before the Court with a view to obtaining a declaration of such an infringement and to performing fully its role as guardian of the Treaties, conferred on it by Article 17 TEU (judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraph 49).

65 Furthermore, to uphold, in circumstances such as those of the present cases, the inadmissibility of an action for failure to fulfil obligations brought against a Member State on the grounds of infringement of decisions adopted under Article 78(3) TFEU, such as Decisions 2015/1523 and 2015/1601, would be detrimental both to the binding nature of those decisions and, more generally, to the respect for the values on which the European Union, in accordance with Article 2 TEU, is founded, one such being the rule of law (see, by analogy, judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraph 50).

66 A declaration as to the failures to fulfil obligations at issue is still, moreover, of substantive interest, inter alia, as establishing the basis of a responsibility that a Member State can incur as a result of its default, as regards other Member States, the European Union or private parties (see, to that effect, judgment of 7 February 1973, *Commission* v. *Italy*, 39/72, EU:C:1973:13, paragraph 11).

67 Lastly, as regards the argument that, following the definitive expiry of the period of application of Decisions 2015/1523 and 2015/1601, the Commission no longer has any interest in bringing proceedings, attention must be drawn to the principle, enshrined in settled case-law of the Court of Justice, that the Commission does not have to show a legal interest in bringing proceedings or to state the reasons why it is bringing an action for failure to fulfil obligations (judgment of 3 March 2016, *Commission* v *Malta*, C-12/14, EU:C:2016:135, paragraph 26 and the case-law cited).

68 It is true in that regard, as the Republic of Poland submits, that in a situation in which the action was brought at a time when the failure to fulfil obligations had virtually come to an end owing to the substitution of new provisions of Union law for those alleged to have been infringed, the Court stated that, by way of exception to the principle referred to in the preceding paragraph of this judgment, it is, although not in a position to determine how far it was expedient for the Commission to bring the action, responsible for considering whether the Commission still has a 'sufficient legal interest' in bringing an action for failure to fulfil obligations relating to past

conduct (see, to that effect, judgment of 9 July 1970, *Commission* v *France*, 26/69, EU:C:1970:67, paragraphs 9 and 10).

69 However, it must be stated that the situation at issue in the present infringement proceedings does not fall within the scope of the special situation referred to in the case-law cited in the preceding paragraph of this judgment, which is characterised by the replacement of the provisions of EU law whose infringement was alleged by new provisions which virtually led to the end of the infringement in question.

70 Furthermore and in any event, in the present instance, the Commission's interest in bringing the proceedings cannot be called into question. First, the period fixed in the reasoned opinions ended at a date at which the criticised failures to fulfil obligations were still ongoing. Secondly, as also noted by the Advocate General in point 105 of her Opinion, these three cases raise important questions of Union law, including whether and, if so, under what conditions a Member State may rely on Article 72 TFEU to disapply decisions adopted on the basis of Article 78(3) TFEU, the binding nature of which is not disputed, and which are aimed at relocating a significant number of applicants for international protection in accordance with the principle of solidarity and fair sharing of responsibility between Member States, which, in accordance with Article 80 TFEU, governs the Union's asylum policy (see, by analogy, judgment of 9 July 1970, *Commission* v *France*, 26/69, EU:C:1970:67, paragraphs 11 and 13).

71 Accordingly, the objections of inadmissibility alleging that the actions are devoid of purpose and inconsistent with the objective of the procedure under Article 258 TFEU, like those alleging that the Commission did not put forward a sufficient interest in bringing those proceedings, must be rejected.

The objections of inadmissibility in Cases C-715/17 and C-718/17, alleging an infringement of the principle of equal treatment

– *Arguments of the parties*

72 In Case C-718/17, Hungary claims that the actions for failure to fulfil obligations are inadmissible since the Commission, in confining itself to bringing an action against solely the three Member States in question even though the majority of the Member States did not fully comply with their obligations under Decision 2015/1523 and/or Decision 2015/1601, infringed the principle of equal treatment and thus exceeded the limits of the discretion conferred upon it under Article 258 TFEU.

73 In Case C-715/17, the Republic of Poland essentially puts forward an objection of inadmissibility of the same nature

74 The Commission disputes those arguments.

– *Findings of the Court*

75 According to settled case-law of the Court, it is for the Commission to determine whether it is expedient to take action against a Member State and what provisions, in its view, the Member State has infringed, and to choose the time at which it will bring an action for failure to fulfil obligations; the considerations which determine that choice cannot affect the admissibility of the action (judgment of 19 September 2017, *Commission* v *Ireland (Registration tax)*, C-552/15, EU:C:2017:698, paragraph 34 and the case-law cited).

76 The Court has thus held that, given that discretion, the lack of infringement proceedings against one Member State is irrelevant in the assessment of the admissibility of infringement proceedings brought against another Member State (judgment of 3 March 2016, *Commission* v *Malta*, C-12/14, EU:C:2016:135, paragraph 25).

77 Moreover, as the Commission pointed out at the hearing, it clearly stated in the Twelfth report on relocation and resettlement that Member States who had not yet relocated any applicant for international protection (the situation of the Republic of Poland and Hungary) and/or who had not made any commitments on relocation from Greece and Italy for over a year (the situation of the Republic of Poland and the Czech Republic) might be the subject of an action for failure to fulfil obligations unless those Member States started immediately, or at the latest within one month, to make such commitments and to actually relocate people.

78 Subsequently, in its Communication of 13 June 2017 to the European Parliament, the European Council and the Council — Thirteenth report on relocation and resettlement (COM(2017) 330 final), the Commission noted that, following its call in the Twelfth report on relocation and resettlement, all Member States with the exception of the Republic of Poland, Hungary and the Czech Republic had begun to make regular commitments under Article 5(2) of each of Decisions 2015/1523 and 2015/1601 and it indicated that it had therefore decided to initiate infringement proceedings against those three Member States.

79 In that context, the action brought by the Commission, inasmuch as it seeks to ensure that all the Member States, other than the Hellenic Republic and the Italian Republic, which were bound by the relocation obligations under Decisions 2015/1523 and 2015/1601 implement those obligations, falls fully within the scope of the objective pursued by those decisions.

80 It is important to recall that the burdens entailed by the provisional measures provided for in Decisions 2015/1523 and 2015/1601, since they were adopted under Article 78(3) TFEU for the purpose of helping the Hellenic Republic and the Italian Republic to better cope with an emergency situation characterised by a sudden influx of third-country nationals on their territory, must, in principle, be divided between all the other Member States, in accordance with the principle of solidarity and fair sharing of responsibility between the Member States, since, in accordance with Article 80 TFEU, that principle governs the Union's asylum policy (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 291).

81 The Commission's action is therefore based, in the present case, on a neutral and objective criterion relating to the gravity and the persistence of the infringements which the Republic of Poland, Hungary and the Czech Republic are alleged to have committed, which, having regard to

the objective of Decisions 2015/1523 and 2015/1601 such as that objective has just been recalled, serves to distinguish the situation of those three Member States from that of the other Member States, including those which did not fully comply with their obligations under those decisions.

82 It follows that, in the present case, the Commission did not in any way exceed the limits of its discretion under Article 258 TFEU in deciding to bring an action for failure to fulfil obligations against the Republic of Poland, Hungary and the Czech Republic and not against other Member States. Consequently, the objections of inadmissibility alleging infringement of the principle of equal treatment must be rejected.

The objection of inadmissibility in Case C-718/17, alleging infringement of the rights of the defence during the pre-litigation procedure

– *Arguments of the parties*

83 In Case C-718/17, Hungary alleges that the Commission, in the first place, did not observe its rights of the defence in the pre-litigation procedure inasmuch as the four-week deadline for replying set in the letter of formal notice and in the reasoned opinion was excessively short, in contrast to the usual deadline of two months, and was not warranted by a legitimate emergency.

84 It submits that the Commission infringed Hungary's rights of the defence, in particular, by rejecting its application for an extension of the deadline for replying set in the reasoned opinion.

85 Hungary submits that the Commission, inasmuch as it did not decide until June 2017, and thus at a date relatively close to the expiry date of the period for the application of Decisions 2015/1523 and 2015/1601, to initiate the procedures for failure to fulfil obligations against the three Member States in question, is itself the cause of the emergency which it is relying upon. The excessively short deadlines for replying and the hurried nature of the pre-litigation procedure can be explained not by a real emergency, but by the fact that the Commission still wanted at all costs to be able to fix in the reasoned opinion the end of the period prescribed for the Member States in question to comply with their obligations such that it would expire before those decisions ceased to be applicable in September 2017, in order to prevent the defence that its actions were inadmissible from being raised against it. The urgency relied upon by the Commission is also belied by the fact that that institution still had to wait four months after the expiry of the deadline set in the reasoned opinion to bring the present actions.

86 In the second place, Hungary maintains that the Commission did not indicate during the pre-litigation procedure the infringement it was alleged to have committed.

87 Hungary submits in this connection that while, in its application, the Commission provided a short explanation indicating why, in its view, the infringement of Article 5(2) of Decision 2015/1601 entails an infringement of Article 5(4) to (11) of that decision, that explanation does not suffice to remedy the fact that, during the pre-litigation phase of the infringement proceedings, the Commission did not clearly define the infringement which those proceedings concerned.

88 Whereas in the grounds of the letter of formal notice and the reasoned opinion Hungary was alleged to have committed only an infringement of Article 5(2) of Decision 2015/1601, in the conclusions of that letter and that opinion, the Commission also alleged infringement of Article 5(4) to (11) of that decision without any additional analysis.

89 That imprecision in terms of the subject matter of the proceedings is also due to the fact that, in the pre-litigation procedure, the Commission referred at several points to an infringement both of Decision 2015/1523 and of Decision 2015/1601, although, in the absence of a voluntary commitment, Hungary was not required to relocate applicants for international procedure under the first of those two decisions.

90 The Commission disputes those arguments.

– *Findings of the Court*

91 The Court has consistently held that the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself against the objections formulated by the Commission. The proper conduct of that procedure constitutes an essential guarantee required by the FEU Treaty, not only in order to protect the rights of the Member State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject matter (judgment of 19 September 2017, *Commission* v *Ireland (Registration tax)*, C-552/15, EU:C:2017:698, paragraphs 28 and 29 and the case-law cited).

92 Those objectives require the Commission to allow Member States a reasonable period to reply to letters of formal notice and to comply with reasoned opinions, or, where appropriate, to prepare their defence. In order to determine whether the period allowed is reasonable, account must be taken of all the circumstances of the case. Thus, very short periods may be justified in particular circumstances, especially where there is an urgent need to remedy an infringement or where the Member State concerned is fully aware of the Commission's views long before the procedure starts (judgment of 13 December 2001, *Commission* v *France*, C-1/00, EU:C:2001:687, paragraph 65).

93 Furthermore, according to the settled case-law already referred to in paragraph 75 above, it is for the Commission to determine whether it is expedient to take action against a Member State and what provisions, in its view, the Member State has infringed, and to choose the time at which it will bring an action for failure to fulfil obligations; the considerations which determine that choice cannot affect the admissibility of the action.

94 In the present case, as regards, in the first place, the objection of inadmissibility concerning the allegedly excessively short deadlines for replying which were fixed in the letter of formal notice and in the reasoned opinion, it is clear from the Commission's reports on relocation and resettlement that that institution decided to initiate the infringement proceedings on 15 June 2017 and 16 June 2017, and thus at a relatively advanced stage of the two-year period of application of Decisions 2015/1523 and 2015/1601, which ended on 17 September 2017 and 26 September 2017 respectively. That decision was motivated by the fact that, before initiating those proceedings and

before the expiry of that period of application, that institution wished to give one last opportunity to the three Member States in question, which had either not yet relocated any applicant for international protection or not made any relocation commitments for over a year, to comply with their obligations under those decisions by making formal commitments and by relocating applicants for international protection, at the latest within one month.

95 Moreover, that choice to initiate infringement proceedings at a relatively late stage in the two-year period of application of Decisions 2015/1523 and 2015/1601 is justified in view of the fact, already noted by the Court, that the relocation of a large number of applicants for international protection, such as that provided for in Decision 2015/1601, is an unprecedented and complex operation which requires a certain amount of preparation and implementation time, in particular as regards coordination between the authorities of the Member States, before it has any tangible effects (judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 97).

96 Consequently, while, given the relatively close expiry dates of the period of application of Decisions 2015/1523 and 2015/1601, it finally became a matter of urgency in May 2017 to make provision for obliging the three Member States in question through infringement proceedings to comply with their relocation obligations imposed by those decisions for the remainder of that period of application, the reason for that urgency cannot be attributed to any inertia or late action on the part of the Commission, but is to be found in the persistent refusal of those three Member States to follow up the Commission's repeated calls seeking that they comply with those obligations.

97 It was entirely legitimate for the Commission, in its discretion as to the choice of the point at which it initiates infringement proceedings, to first exhaust all the possibilities for convincing the three Member States in question to relocate people and to make formal commitments in order that those Member States should make a proper contribution — in accordance with the principle of solidarity and fair sharing of responsibilities between the Member States which, in accordance with Article 80 TFEU, governs the European Union's asylum policy — to the objective of effective relocation pursued by Decisions 2015/1523 and 2015/1601, while ensuring that those Member States did not avoid an action for failure to fulfil their obligations should they decide not to comply with the Commission's final call for compliance.

98 It follows that, in the present case, the Commission did not exceed the limits of that discretion.

99 It is important, moreover, to note that the three Member States in question had been informed, at least since 16 May 2017, the date of the Twelfth report on relocation and resettlement, of the Commission's intention to initiate infringement proceedings against them if they continued to refuse to comply with Decisions 2015/1523 and 2015/1601.

100 They were also fully aware of the Commission's view well before the initiation of the pre-litigation procedure on 15 June 2017 and 16 June 2017. The Commission's view as to the failure to fulfil obligations alleged against the three Member States concerned had been highlighted by

that institution in various letters and a number of reports on relocation and resettlement. In those circumstances, the deadlines in question of four weeks cannot be regarded as unreasonably short.

101 Moreover, it does not appear that the four-week deadlines for replying set in the letters of formal notice and in the reasoned opinions would have precluded the Member States in question from effectively putting forward, in the pre-litigation procedure, their pleas in defence against the complaints set out by the Commission.

102 In their statements in defence, rejoinders and statements in intervention, the three Member States in question in essence repeat the arguments which they had already raised in their responses to the letters of formal notice and to the reasoned opinions.

103 It is also necessary to reject Hungary's more specific argument that the Commission could not impose on it deadlines for replying of four weeks and could not refuse to grant it an extension of those deadlines where they expired in the summer of 2017, during which a reduced staff in the Hungarian ministry concerned had to prepare a response not only in that case but also in two other cases which raised complex issues of interpretation of EU law and required significant work.

104 Hungary knew, as of at least 16 May 2017, the date of the Twelfth report on relocation and resettlement, that the Commission intended within short notice to initiate proceedings for failure to fulfil obligations against that Member State if it continued not to implement Decision 2015/1601. Hungary also could not fail to be aware of the fact that, if those proceedings were initiated, the Commission would be obliged to grant relatively short deadlines for replying in order to ensure that the pre-litigation procedure could be completed before the expiry of the period of application of that decision on 26 September 2017. Accordingly, it was for that Member State to make sufficient arrangements, including over the summer of 2017, to be able to respond to the letter of formal notice and the reasoned opinion.

105 In the second place, as regards the alleged vagueness of the objections raised by the Commission against Hungary in the pre-litigation procedure and, more specifically, the fact that the link between the failure to fulfil obligations arising from Article 5(2) of Decision 2015/1601 and the failure to fulfil obligations arising from Article 5(4) to (11) of that decision was explained only in the application and then in a particularly succinct manner, it must be noted that both in the conclusions of the letter of formal notice and in those of the reasoned opinion, the Commission expressly criticised Hungary for a breach of its obligations under Article 5(2) of Decision 2015/1601 and, 'consequently', of its 'other relocation obligations' imposed by Article 5(4) to (11) of that decision.

106 Moreover, the Commission explained that causal link in the grounds of the letter of formal notice and of the reasoned opinion in identical and sufficiently clear terms, stating that the commitments referred to in Article 5(2) of Decision 2015/1601 constitute the 'first step' on which the detailed and binding procedure for administrative cooperation between the Hellenic Republic and the Italian Republic, on one hand, and, on the other hand, the Member States of relocation, is 'built', with the aim of effecting the transfer of applicants for international protection from the first two Member States to the others, and that Article 5(4) to (11) of that decision contains a series of precise and consequent legal obligations for the Member States of relocation.

107 In that regard, it must be observed that the actual relocation of applicants for international protection in return for their transfer to the territory of a Member State of relocation is possible only if that Member State has, in the first stage of the relocation procedure, made a commitment to that effect in respect of a certain number of applicants for international protection. Where no such commitment has been made, in breach of Article 5(2) of each of Decisions 2015/1523 and 2015/1601, that failure to fulfil obligations necessarily leads to a failure to fulfil the consequent obligations imposed under Article 5(4) to (11) of each of those decisions in the context of the subsequent stages of the procedure aimed at the actual relocation of the applicants in question in return for their transfer to the territory of the Member State concerned.

108 Accordingly, Hungary could not be unaware of the clear causal link between infringement of Article 5(2) of Decision 2015/1601 and that of Article 5(4) to (11) of that decision.

109 Moreover, while it is true that in some of the grounds of the letter of formal notice and of the reasoned opinion, in particular those describing the legal framework, the Commission referred not only to Decision 2015/1601 but also to Decision 2015/1523, even though Hungary was not bound by the latter decision, the subject matter of Hungary's alleged infringement was quite clear to that Member State from a reading of all the grounds of the letter of formal notice and of the reasoned opinion, in particular those concerning the Commission's assessment which refer only to Decision 2015/1601. Furthermore, in the conclusions of both the letter of formal notice and the reasoned opinion, Hungary is alleged to have failed to fulfil its obligations only with regard to that decision. Therefore, it does not seem that the alleged vagueness of some of the grounds of the application could have affected the exercise by Hungary of its rights of defence.

110 Having regard to the foregoing, the objection of inadmissibility raised by Hungary and alleging infringement of the rights of the defence during the pre-litigation procedure must be rejected.

The objection of inadmissibility in Case C-719/17, alleging that the application lacked precision and was inconsistent

– *Arguments of the parties*

111 In Case C-719/17, the Czech Republic, following a question requiring a written answer put to it by the Court for the purposes of the hearing, disputed in its answer to that question the admissibility of the action concerning it on the ground that the application does not state consistently and precisely how it is to have failed to fulfil its obligations. It submits in that regard that, in the form of order sought in the application, the date of the start of the infringement alleged against it is not mentioned, whereas, in the conclusions of both the letter of formal notice and the reasoned opinion, 13 August 2016 is mentioned as the date of the start of the infringement. In addition, it submits that certain grounds of the application indicate either 13 May 2016 or 13 August 2016 as the date of the start of that infringement.

112 The Commission disputes those arguments.

– *Findings of the Court*

113 An action must be considered having regard only to the form of order sought in the application initiating proceedings (judgment of 30 September 2010, *Commission* v *Belgium*, C-132/09, EU:C:2010:562, paragraph 35 and the case-law cited).

114 It also follows from settled case-law in relation to Article 120(c) of the Rules of Procedure that an application initiating proceedings must state clearly and precisely the subject matter of the proceedings and set out a summary of the pleas in law relied on, so as to enable the defendant to prepare a defence and the Court to rule on the application. It follows that the essential points of law and of fact on which such an action is based must be indicated coherently and intelligibly in the application itself and that the forms of order must be set out unambiguously so that the Court does not rule *ultra petita* or indeed fail to rule on one of the heads of claim (judgment of 31 October 2019, *Commission* v *Netherlands*, C-395/17, EU:C:2019:918, paragraph 52 and the case-law cited).

115 The Court has also held that, where an action is brought under Article 258 TFEU, the application must set out the complaints coherently and precisely, so that the Member State and the Court can know exactly the scope of the alleged infringement of EU law, a condition that must be satisfied if the Member State is to be able to present an effective defence and the Court to determine whether there has been a breach of obligations, as alleged (judgment of 31 October 2019, *Commission* v *Netherlands*, C-395/17, EU:C:2019:918, paragraph 53).

116 In particular, the Commission's action must contain a coherent and detailed statement of the reasons which have led it to conclude that the Member State in question has failed to fulfil one of its obligations under the Treaties. Accordingly, a contradiction in the heads of claim put forward by the Commission in support of its action for failure to fulfil obligations does not satisfy the requirements imposed (judgment of 2 June 2016, *Commission* v *Netherlands*, C-233/14, EU:C:2016:396, paragraph 35).

117 In the present case, although in the conclusions of both the letter of formal notice and the reasoned opinion the Commission fixed the date of the start of the infringement as alleged against the Czech Republic at 13 August 2016, the form of order sought in the application in Case C-719/17, as published in the *Official Journal of the European Union* (OJ 2018 C 112, p. 19), mentions neither that date nor indeed another date as the date of the start of that infringement.

118 Accordingly, the description in the form of order sought in the application initiating proceedings of the conduct alleged against the Czech Republic is, to a degree, vague or ambiguous. That form of order could thus be understood to the effect that that Member State infringed its obligations resulting from Article 5(2) of each of Decisions 2015/1523 and 2015/1601 throughout the two-year period of application of those decisions, whereas it is not disputed that the Czech Republic made relocation commitments under those provisions during that period of application, its second and last commitment dating from 13 May 2016.

119 However, while, having regard to what was stated in paragraph 113 above, that vagueness or ambiguity in the form of order sought in the application in Case C-719/17 is regrettable, the fact remains that it is sufficiently clear from the grounds of the application and confirmed by the reply that the precise failure to fulfil obligations alleged by the Commission against the Czech Republic

consists in its failure to have made any relocation commitments under Article 5(2) of each of Decisions 2015/1523 and 2015/1601 after 13 May 2016. Since, under those provisions, such commitments must be made ‘at least every 3 months’, the date of the start of the infringement alleged against the Czech Republic is necessarily 13 August 2016, as the Commission indeed expressly stated both in the conclusions of the letter of formal notice and of the reasoned opinion and in certain grounds of the application.

120 It follows that the Czech Republic could not reasonably have been in any doubt as to the precise date at which its failure to fulfil its obligations, as alleged by the Commission, began and that it was able to exercise its rights of defence effectively in respect of that failure to fulfil obligations (see, by analogy, judgments of 5 May 2011, *Commission* v *Portugal*, C-267/09, EU:C:2011:273, paragraph 28, and of 31 October 2019, *Commission* v *Netherlands*, C-395/17, EU:C:2019:918, paragraph 57). In those circumstances, there is also no risk of the Court ruling *ultra petita*.

121 Accordingly, the objection of inadmissibility raised by the Czech Republic alleging the lack of precision or inconsistency of the application initiating proceedings in Case C-719/17 must be rejected.

122 In respect of Case C-718/17, it must also be pointed out that while in the reasoned opinion the Commission fixed the date of the start of the infringement alleged against Hungary at 25 December 2015, the form of order sought in the application, as published in the *Official Journal of the European Union* (OJ 2018 C 112, p. 19), does not for its part mention any date in that regard. In those circumstances, and since the subject-matter of the proceedings brought before the Court is delimited by the reasoned opinion (see, inter alia, judgment of 18 June 1998, *Commission* v *Italy*, C-35/96, EU:C:1998:303, paragraph 28 and the case-law cited), the action in that case is admissible in so far as it concerns an alleged failure by Hungary to fulfil its obligations under Article 5(2) and Article 5(4) to (11) of Decision 2015/1601 as of 25 December 2015.

123 Having regard to all the foregoing, and subject to the clarification in the preceding paragraph, the three actions for failure to fulfil obligations must be held admissible.

Substance

Whether the infringements alleged in fact took place

124 It should be borne in mind that, in proceedings under Article 258 TFEU for failure to fulfil obligations, it is for the Commission, which is responsible for proving the existence of the alleged infringement, to provide the Court with the information necessary for it to determine whether that infringement is made out, and the Commission may not rely on any presumption for that purpose (judgment of 18 November 2010, *Commission* v *Portugal*, C-458/08, EU:C:2010:692, paragraph 54 and the case-law cited).

125 In the present instance the Commission alleges that the Republic of Poland, from 16 March 2016, Hungary, from 25 December 2015, and the Czech Republic, from 13 August 2016, failed to fulfil their obligations under Article 5(2) of Decision 2015/1523 and/or Article 5(2) of Decision

2015/1601 and, as a consequence, their subsequent obligations concerning relocation under Article 5(4) to (11) of Decision 2015/1523 and/or Article 5(4) to (11) of Decision 2015/1601.

126 In this respect, it should be noted, first, that the obligation to make relocation commitments at least every three months is laid down in Article 5(2) of Decision 2015/1523 in identical terms to those of Article 5(2) of Decision 2015/1601 and that subsequent obligations to actually relocate people are laid down in Article 5(4) to (11) of Decision 2015/1523 in essentially identical terms to Article 5(4) to (11) of Decision 2015/1601, the few differences in the wording of Article 5(4) and Article 5(9) being irrelevant for the purposes of assessing the merits of the three actions.

127 Secondly, as has already been observed in paragraph 107 above, there is a clear causal link, about which the Member States in question could not reasonably have been in any doubt, between the infringement of Article 5(2) of Decision 2015/1523 and/or Article 5(2) of Decision 2015/1601 and the infringement of Article 5(4) to (11) of Decision 2015/1523 and/or Article 5(4) to (11) of Decision 2015/1601.

128 These are in fact consequent obligations in the relocation procedure, such that, if the obligation imposed under Article 5(2) of each of those decisions is not complied with, to the extent that relocation commitments concerning a certain number of applicants for international protection are not made, the obligations imposed under Article 5(4) to (11) of each of those decisions with a view to the actual relocation of applicants for international protection in respect of which commitments have been made are not complied with either.

129 It must be stated that the three Member States in question do not dispute the fact that on the expiry of the period laid down in the reasoned opinions, namely 23 August 2017, they had failed to fulfil their obligations under Article 5(2) of Decision 2015/1523 and/or Article 5(2) of Decision 2015/1601, and therefore the existence of those infringements and, consequently, of infringements of their subsequent relocation obligations under Article 5(4) to (11) of Decision 2015/1523 and/or Article 5(4) to (11) of Decision 2015/1601 should be regarded as established.

130 Those infringements may indeed not be denied given that, in its various monthly reports on relocation and resettlement, of which it is common ground that the three Member States in question knew, the Commission had monitored, in particular, the progress of the relocations from Greece and Italy provided for under Decisions 2015/1523 and 2015/1601, indicating, in respect of each Member State of relocation, the number of applicants for international protection in respect of which relocation commitments had been made and the number of applicants for international protection who were actually relocated. Those reports show that the infringements alleged by the Commission and set out in paragraph 125 above actually took place.

131 In the case of the Czech Republic, the existence of the infringement alleged against it is also shown clearly by Resolution No 439 of 5 June 2017, mentioned in paragraph 31 above, by which that Member State decided to suspend the implementation of the obligations it had taken on at the meeting of the European Council on 25 and 26 June 2015, subsequently formalised at the meeting of the Representatives of the Governments of the Member States, meeting within the European Council, of 20 July 2015 and implemented by Decision 2015/1523, as well as the implementation of its obligations under Decision 2015/1601.

132 Therefore, the Commission has proven that the infringements alleged in the three sets of infringement proceedings in question took place.

133 That said, the three Member States at issue put forward a series of arguments which they claim vindicates them for having disapplied Decisions 2015/1523 and 2015/1601. The arguments concerned, first, relate to the responsibilities of Member States with regard to the maintenance of law and order and the safeguarding of internal security, arguments derived by the Republic of Poland and Hungary from Article 72 TFEU read in conjunction with Article 4(2) TEU and, secondly, are derived by the Czech Republic from the malfunctioning and alleged ineffectiveness of the relocation mechanism as provided for under those decisions.

The pleas in defence derived by the Republic of Poland and Hungary from Article 72 TFEU, read in conjunction with Article 4(2) TEU

Arguments of the parties

134 The Republic of Poland and Hungary submit, in substance, that, in the present case, they were entitled under Article 72 TFEU, read in conjunction with Article 4(2) TEU, which reserves to them exclusive competence for the maintenance of law and order and the safeguarding of internal security in the context of acts adopted in the area of freedom, security and justice referred to in Title V of the FEU Treaty, to disapply their secondary, and therefore lower-ranking, legal obligations arising from Decision 2015/1523 and/or Decision 2015/1601, acts adopted on the basis of Article 78(3) TFEU and therefore falling within the scope of Title V of the FEU Treaty.

135 Those Member States submit that they decided, under Article 72 TFEU, to disapply Decision 2015/1523 and/or Decision 2015/1601. They take the view that, according to their assessment of the risks posed by the possible relocation on their territory of dangerous and extremist persons who might carry out violent acts or acts of a terrorist nature, the relocation mechanism as provided for in Article 5 of each of those decisions and as it was applied by the Greek and Italian authorities did not enable them to fully guarantee the maintenance of law and order and the safeguarding of internal security.

136 In this connection, those Member States refer to the many problems encountered in the application of the relocation mechanism so far as concerns, in particular, establishing with sufficient certainty the identity of applicants for international protection who could be relocated and where such applicants originated from. They submit that those problems were aggravated by the lack of cooperation by the Greek and Italian authorities in the relocation procedure, in particular by the refusal of those authorities to allow liaison officers from the Member States of relocation to conduct interviews with the applicants concerned before their transfer.

137 The Republic of Poland takes the view, in particular, that Article 72 TFEU is not a provision having regard to which the validity of an act of EU law may be called into question. On the contrary, it is a rule comparable to a conflict-of-law rule under which the prerogatives of the Member States in the field of maintenance of law and order and safeguarding of internal security take precedence over their obligations under secondary law. It submits that a Member State can invoke Article 72 in order not to implement an act adopted under Title V of the Treaty each time

it considers that there is a risk, even a potential risk, for the maintenance of law and order and the safeguarding of internal security for which it bears responsibility. In that regard, a Member State has a very wide margin of discretion and must only show the plausibility of a risk for the maintenance of law and order and the safeguarding of internal security in order to be able to rely on Article 72 TFEU

138 Without raising a separate plea in defence derived from Article 72 TFEU, the Czech Republic, for its part, contends that, in order to counter the threats to public security posed by the relocation of persons with potential links to religious extremism, it should be ensured that each Member State of relocation is able to safeguard its internal security. Such safeguarding of internal security was not ensured on account above all of the absence of adequate information on the persons concerned and of the impossibility of conducting interviews to ascertain that the applicants for international protection concerned do not pose a threat to national security or law and order in the Member State of relocation.

Findings of the Court

139 In a European Union based on the rule of law, acts of the institutions enjoy a presumption of lawfulness. Since Decisions 2015/1523 and 2015/1601 were, as of their adoption, of a binding nature for the Republic of Poland and the Czech Republic, those Member States were required to comply with those acts of EU law and to implement them throughout their two-year period of application. The same applies in respect of Hungary as regards Decision 2015/1601, an act which was of a binding nature for that Member State as of its adoption and throughout its two-year period of application (see, by analogy, judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraph 85).

140 That binding nature of Decisions 2015/1523 and 2015/1601 is not in any way altered by the fact that the lawfulness of Decision 2015/1601 was challenged by Hungary and the Slovak Republic before the Court of Justice, in the context of an action for annulment under Article 263 TFEU, proceedings in which the Republic of Poland intervened in support of those two Member States. None of those Member States has moreover sought a suspension of the implementation of that latter decision or the adoption of interim measures by the Court of Justice under Articles 278 and 279 TFEU, so that those actions for annulment had no suspensive effect, in accordance with Article 278 TFEU (see, by analogy, judgment of 27 March 2019, *Commission* v *Germany*, C-620/16, EU:C:2019:256, paragraphs 86 and 87).

141 Besides, by the judgment of 6 September 2017, *Slovakia and Hungary* v *Council* (C-643/15 and C-647/15, EU:C:2017:631), the Court dismissed those actions for annulment directed against Decision 2015/1601, thereby confirming the lawfulness of that decision.

142 In the present case, the Republic of Poland and Hungary, while indicating that they do not intend to plead the illegality of Decision 2015/1523 and/or of Decision 2015/1601 in the light of Article 72 TFEU, maintain that that article allowed them to disapply those decisions or one or the other of those decisions.

143 In this connection, according to settled case-law of the Court of Justice, although it is for the Member States to adopt appropriate measures to ensure law and order on their territory and their internal and external security, it does not follow that such measures fall entirely outside the scope of European Union law. As the Court has already held, the only articles in which the Treaty expressly provides for derogations applicable in situations which may affect law and order or public security are Articles 36, 45, 52, 65, 72, 346 and 347 TFEU, which deal with exceptional and clearly defined cases. It cannot be inferred that the Treaty contains an inherent general exception excluding all measures taken for reasons of law and order or public security from the scope of European Union law. The recognition of the existence of such an exception, regardless of the specific requirements laid down by the Treaty, might impair the binding nature of European Union law and its uniform application (see to that effect, inter alia, judgments of 15 December 2009, *Commission* v *Denmark*, C-461/05, EU:C:2009:783, paragraph 51, and of 4 March 2010, *Commission* v *Portugal*, C-38/06, EU:C:2010:108, paragraph 62 and the case-law cited).

144 In addition, the derogation provided for in Article 72 TFEU must, as is provided in settled case-law, inter alia in respect of the derogations provided for in Articles 346 and 347 TFEU, be interpreted strictly (see, to that effect, judgments of 15 December 2009, *Commission* v *Denmark*, C-461/05, EU:C:2009:783, paragraph 52, and of 4 March 2010, *Commission* v *Portugal*, C-38/06, EU:C:2010:108, paragraph 63).

145 It follows that, although Article 72 TFEU provides that Title V of the Treaty is not to affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, it cannot be read in such a way as to confer on Member States the power to depart from the provisions of the Treaty based on no more than reliance on those responsibilities (see, by analogy, judgments of 15 December 2009, *Commission* v *Denmark*, C-461/05, EU:C:2009:783, paragraph 53, and of 4 March 2010, *Commission* v *Portugal*, C-38/06, EU:C:2010:108, paragraph 64).

146 The scope of the requirements relating to the maintenance of law and order or national security cannot therefore be determined unilaterally by each Member State, without any control by the institutions of the European Union (see, to that effect, judgments of 11 June 2015, *Zh. and O.*, C-554/13, EU:C:2015:377, paragraph 48, and of 2 May 2018, *K. and H.F. (Right of residence and alleged war crimes)*, C-331/16 and C-366/16, EU:C:2018:296, paragraph 40 and the case-law cited).

147 It is for the Member State which seeks to take advantage of Article 72 TFEU to prove that it is necessary to have recourse to that derogation in order to exercise its responsibilities in terms of the maintenance of law and order and the safeguarding of internal security (see, by analogy, judgments of 15 December 2009, *Commission* v *Denmark*, C-461/05, EU:C:2009:783, paragraph 55, and of 4 March 2010, *Commission* v *Portugal*, C-38/06, EU:C:2010:108, paragraph 66).

148 It must be observed in that regard, as regards Decision 2015/1601, that the Court in paragraphs 307 to 309 of the judgment of 6 September 2017, *Slovakia and Hungary* v *Council* (C-643/15 and C-647/15, EU:C:2017:631), has already rejected the argument, raised by the Republic of Poland as an intervener, that that decision infringes the principle of proportionality,

since it does not allow the Member States to effectively carry out their responsibilities to maintain law and order and safeguard internal security under Article 72 TFEU.

149 The Court held that recital 32 of Decision 2015/1601, which is moreover drafted in identical terms to those of recital 26 of Decision 2015/1523, stated, inter alia, that national security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented, and that, in that context, the applicant's fundamental rights, including the relevant rules on data protection, must be fully respected (judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 307).

150 The Court also referred to Article 5 of Decision 2015/1601, entitled 'Relocation procedure', which provides, in paragraph 7 thereof, whose wording is moreover identical to that of Article 5(7) of Decision 2015/1523, that Member States retain the right to refuse to relocate an applicant for international protection only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of Directive 2011/95 (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 308).

151 It must be added in that regard that Article 5(4) of Decision 2015/1523 and, in identical terms, Article 5(4) of Decision 2015/1601 provide that a Member State of relocation may decide not to approve the relocation of an applicant for international protection identified by the Hellenic Republic or the Italian Republic for the purposes of his or her relocation only if there are reasonable grounds as referred to in Article 5(7), that is to say, reasonable grounds for regarding the applicant in question as a danger to their national security or public order.

152 The manner in which the mechanism in Article 5 of each of those decisions functions indeed reflects the principles, reiterated in paragraphs 143 to 147 of the present judgment, according to which Article 72 TFEU is, as a derogatory provision, to be interpreted strictly and, accordingly, does not confer on Member States the power to depart from the provisions of European Union law based on no more than reliance on the interests linked to the maintenance of law and order and the safeguarding of internal security, but requires them to prove that it is necessary to have recourse to that derogation in order to exercise their responsibilities on those matters.

153 Therefore, the Council, in the adoption of Decisions 2015/1523 and 2015/1601, duly took into account the exercise of the responsibilities incumbent on Member States under Article 72 TFEU by rendering that exercise, so far as concerns the two stages of the relocation procedure subsequent to that of the making of commitments, subject to the specific conditions laid down in Article 5(4) and (7) of each of those decisions.

154 In that regard, with regard to the 'serious reasons' for applying the 'exclusion' provisions set out in Articles 12 and 17 of Directive 2011/95, reasons which in accordance with Article 5(7) of each of Decisions 2015/1523 and 2015/1601 allowed a Member State to refuse to relocate an applicant for international protection, it follows from the case-law of the Court that the competent authority of the Member State concerned cannot rely on the exclusion clause provided for in

Article 12(2)(b) of Directive 2011/95 and Article 17(1)(b) of that directive, which concern the commission by the applicant for international protection of a 'serious crime', until it has undertaken, for each individual case, an assessment of the specific facts within its knowledge. That is done with a view to determining whether there are serious reasons for taking the view that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for the status applied for, come within the scope of that particular ground for exclusion, the assessment of the seriousness of the crime in question requiring a full investigation into all the circumstances of the individual case concerned (judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, points 48, 55 and 58).

155 In addition, the Court stated that, while the grounds for exclusion in Articles 12 and 17 of Directive 2011/95 are structured around the concept of 'serious crime', the scope of the ground for exclusion from subsidiary protection laid down by Article 17(1)(b) of Directive 2011/95 is broader than that of the ground for exclusion from refugee status laid down by Article 1(F)(b) of the Geneva Convention and Article 12(2)(b) of Directive 2011/95. While the ground for exclusion from refugee status laid down by that provision refers to a serious non-political crime committed outside the country of refuge prior to admission of the person concerned as a refugee, the ground for exclusion from subsidiary protection laid down by Article 17(1)(b) of Directive 2011/95 refers more generally to a serious crime and is therefore limited neither territorially nor temporally, or as to the nature of the crimes at issue (judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, points 46 and 47).

156 As to the so-called 'reasonable' grounds for regarding the applicant for international protection as a 'danger to national security or public order' in the territory of the Member State of relocation in question, which allow the latter under Article 5(4) of each of Decisions 2015/1523 and 2015/1601 not to approve the relocation of an applicant for international protection identified by the Hellenic Republic or the Italian Republic and, under Article 5(7) of each of those decisions, to refuse to relocate an applicant for international protection, those grounds, since they must be 'reasonable' and not 'serious' and do not necessarily relate to a serious crime already committed or a serious non-political crime committed outside the country of refuge before the person concerned was admitted as a refugee but only require evidence of a 'danger to national security or public order', clearly leave a wider margin of discretion to the Member States of relocation than the serious reasons for applying the exclusion provisions contained in Articles 12 and 17 of Directive 2011/95.

157 Furthermore, it should be noted that the wording of Article 5(4) and (7) of each of Decisions 2015/1523 and 2015/1601 differs, in particular, from that of Article 27(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34), which requires that the personal conduct of the individual concerned must represent a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society' of the Member State concerned. Consequently, the concept of 'danger to … national security or public order' within the meaning of the abovementioned provisions of Decisions

2015/1523 and 2015/1601 must be interpreted more broadly than it is in the case-law in relation to persons enjoying the right of free of movement. That concept may cover inter alia potential threats to national security or public order (see, by analogy, judgments of 4 April 2017, *Fahimian*, C-544/15, EU:C:2017:255, paragraph 40, and of 12 December 2019, *E.P. (Threat to public policy)*, C-380/18, EU:C:2019:1071, paragraphs 29 and 32).

158 A wide discretion must therefore be accorded to the competent authorities of the Member States of relocation when they determine whether a third-country national to be relocated is a threat to their national security or public order (see, by analogy, judgment of 12 December 2019, *E.P. (Threat to public policy)*, C-380/18, EU:C:2019:1071, paragraph 37).

159 That said, as with the serious reasons for applying the provisions on exclusion in Articles 12 and 17 of Directive 2011/95, the reasonable grounds for regarding an applicant for international protection as a danger to national security or public order can be invoked by the authorities of the Member State of relocation only if there is consistent, objective and specific evidence that provides grounds for suspecting that the applicant in question actually or potentially represents such a danger (see, by analogy, judgment of 12 December 2019, *E.P. (Threat to public policy)*, C-380/18, EU:C:2019:1071, paragraph 49), and not until those authorities, in respect of each applicant whose relocation is proposed, have made an assessment of the facts within their knowledge with a view to determining whether, in the light of an overall examination of all the circumstances of the individual case concerned, such reasonable grounds exist.

160 It follows that the wording set out, in the context of the relocation procedure, in Article 5(4) and (7) of each of Decisions 2015/1523 and 2015/1601 authorised the competent authorities of the Member State of relocation to rely on serious reasons or reasonable grounds relating to the maintenance of their national security or public order only following a case-by-case investigation of the danger actually or potentially represented by the applicant for international protection concerned for those interests. Thus, as the Advocate General also in essence observed in point 223 of her Opinion, it precluded a Member State from peremptorily invoking Article 72 TFEU in that procedure for the sole purposes of general prevention and without establishing any direct relationship with a particular case, in order to justify suspending the implementation of or even a ceasing to implement its obligations under Decision 2015/1523 and/or Decision 2015/1601.

161 That explains why Article 5(2) of each of Decisions 2015/1523 and 2015/1601, which concerned the first stage of the relocation procedure and set out the obligation on the Member States of relocation to indicate, at least every three months, the number of applicants for international protection who could be relocated swiftly to their territory, rendered that obligation unconditional and did not provide for the possibility for those Member States to rely upon the existence of a danger for their national security or public order to justify the non-application of that provision. The absence of identification, at that initial stage of that procedure, of the applicants to be relocated in the Member State concerned rendered impossible any individualised assessment of the risk which they might have represented for the public order or national security of that State.

162 As regards, further, the difficulties allegedly encountered by the Republic of Poland in guaranteeing national security or public order in the stages of the relocation procedure subsequent

to its commitments made on 16 December 2016, those difficulties applied to the beginning of the two-year period of application of Decisions 2015/1523 and 2015/1601.

163 In this connection, as has already been pointed out in paragraph 95 above, the relocation of a large number of persons, such as that provided for by Decisions 2015/1523 and 2015/1601, is an unprecedented and complex operation which requires a certain amount of preparation and implementation time, in particular as regards coordination between the authorities of the Member States, before it has any tangible effects.

164 Furthermore, if, as the Republic of Poland and the Czech Republic maintain, the mechanism provided for in Article 5(4) and (7) of each of Decisions 2015/1523 and 2015/1601 was ineffective, in particular because of a lack of cooperation on the part of the Italian authorities, such practical difficulties do not appear to be inherent in that mechanism and must, should they arise, be resolved in the spirit of cooperation and mutual trust between the authorities of the Member States that are beneficiaries of relocation and those of the Member States of relocation. That spirit of cooperation and mutual trust must prevail when the relocation procedure provided for in Article 5 of each of those decisions is implemented (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 309).

165 In this connection, it is apparent from the reports on relocation and resettlement that, although at the beginning of the period of application of Decisions 2015/1523 and 2015/1601 the number of applicants for international protection who were relocated was relatively low, due to the fact that, inter alia, certain Member States refused in a considerable number of cases to relocate applicants for international protection identified by the Hellenic Republic or the Italian Republic on account, in particular, of the danger allegedly represented by those applicants for their public order or their security, that problem gradually became less significant and relocations were carried out at a steadier rhythm.

166 As is shown by the eighth, eleventh and twelfth reports on relocation and resettlement, the Member States of relocation were in fact able, in some circumstances, to perform additional security checks, even systematically, through, inter alia, interviews and, with respect to relocations from Italy, had the opportunity from 1 December 2016 to request assistance from the European Union Agency for Law Enforcement Cooperation (Europol) for the purpose of carrying out those interviews, with the objective of preventing those checks from continuing to unduly slow down the relocation process.

167 In addition, as regards relocations from Greece, the Member States of relocation had the opportunity, from the point at which Decisions 2015/1523 and 2015/1601 entered into force, to require that security interviews were to be carried out by their own police officers prior to relocation.

168 Those measures were additional to the mechanism already provided for in Article 5 of each of Decisions 2015/1523 and 2015/1601 for ensuring the identification of the persons in question, in particular in Article 5(5) and 5(11), which required that fingerprints be taken before and after transfer of the persons in question and that those fingerprints be transmitted to the Central System of Eurodac.

169 It follows that the Republic of Poland and Hungary cannot rely on Article 72 TFEU to justify their refusal to implement all the relocation obligations imposed on them by Article 5(2) and (4) to (11) of Decision 2015/1523 and/or by Article 5(2) and (4) to (11) of Decision 2015/1601.

170 As the Advocate General also essentially observed, in points 226 and 227 of her Opinion, the arguments derived from a reading of Article 72 TFEU in conjunction with Article 4(2) TEU are not such as to call into question that finding. There is nothing to indicate that effectively safeguarding the essential State functions to which the latter provision refers, such as that of protecting national security, could not be carried out other than by disapplying Decisions 2015/1523 and 2015/1601.

171 On the contrary, the mechanism provided for in Article 5(4) and (7) of each of those decisions, including in its specific application as it developed in practice during the periods of application of those decisions, left the Member States of relocation genuine opportunities for protecting their interests relating to public order and internal security in the examination of the individual situation of each applicant for international protection whose relocation was proposed, without prejudicing the objective of those decisions to ensure the effective and swift relocation of a significant number of applicants clearly in need of international protection in order to alleviate the considerable pressure on the Greek and Italian asylum systems.

172 Consequently, the pleas in defence derived by the Republic of Poland and Hungary from Article 72 TFEU, read in conjunction with Article 4(2) TEU, must be rejected.

The plea in defence derived by the Czech Republic from the malfunctioning and alleged ineffectiveness of the relocation mechanism as provided for under Decisions 2015/1523 and 2015/1601 as applied in practice

Arguments of the parties

173 The Czech Republic claims that its decision to disapply Decisions 2015/1523 and 2015/1601 was warranted by the fact that, as applied in practice, the relocation mechanism as provided for by those decisions was to a large extent malfunctioning and ineffective, on account inter alia of the systematic lack of cooperation on the part of the Greek and Italian authorities or the actual absence in Greece or Italy, at the point at which relocation commitments were made, of applicants for international protection who were in a position to be relocated, which is demonstrated by the low success rate of that mechanism in terms of the total number of persons actually relocated.

174 Given the threats to public security entailed by the relocation of persons potentially linked to religious extremism, it should be guaranteed that each Member State of relocation is able to protect itself in accordance with Article 4(2) TEU and, more specifically, Article 72 TFEU. That principle is also reflected in Article 5(7) of each of Decisions 2015/1523 and 2015/1601. As applied in practice, the relocation mechanism did not guarantee such protection of public security on account, inter alia, of the lack of sufficient information on the persons concerned and the impossibility of carrying out security interviews, even though these are essential pre-requisites for ascertaining whether those persons constitute a danger to national security or public order in the Member State of relocation.

175 It follows that making relocation commitments under Article 5(2) of each of those decisions was no more than a purely formal exercise that did not achieve the objective of actual relocation pursued by those decisions.

176 The Czech Republic therefore preferred to concentrate its efforts on support measures more effective than a relocation measure by providing, both at bilateral level and within the framework of the European Union, financial, technical and staffing assistance to the third countries most affected and to the Member States in the front line of the massive influx of persons clearly in need of international protection.

177 The Commission disputes those arguments.

Findings of the Court

178 As a preliminary point, it should be recalled, as already stated in paragraph 31 of this judgment, that on 5 June 2017 the Czech Republic adopted Resolution No 439 by which that Member State decided to suspend the implementation of its obligations taken on at the meeting of the European Council on 25 and 26 June 2015, subsequently formalised at the meeting of the Representatives of the Governments of the Member States, meeting within the European Council, of 20 July 2015 and implemented by Decision 2015/1523, as well as the implementation of its obligations under Decision 2015/1601 'in view of the significant deterioration of the security situation in the Union … and having regard to the obvious malfunctioning of the relocation system'. It is common ground that at no subsequent point during the respective periods of application of those decisions did the Czech Republic lift that suspension.

179 In the present case, in its defence in the infringement proceedings concerning it, the Czech Republic relies on considerations relating to the alleged malfunctioning or ineffectiveness of the relocation mechanism provided for in Decisions 2015/1523 and 2015/1601, as applied in practice, including the specific mechanism provided for in Article 5(4) and (7) of each of those decisions aimed at enabling Member States to protect their national security or public order in the context of the relocation procedure, as a justification for its decision not to implement its relocation obligations under Article 5(2) and Article 5(4) to (11) of each of those decisions.

180 In this connection, it is not permissible, if the objective of solidarity inherent to Decisions 2015/1523 and 2015/1601 and the binding nature of those acts is not to be undermined, for a Member State to be able to rely, moreover without raising for that purpose a legal basis provided for in the Treaties, on its unilateral assessment of the alleged lack of effectiveness, or even the purported malfunctioning, of the relocation mechanism established by those acts, in particular so far as concerns the maintenance of public order and the safeguarding of internal security, in order to avoid any obligation to relocate people incumbent upon it under those acts.

181 As already pointed out in paragraph 80 of the present judgment, the burdens entailed by the provisional measures provided for in Decisions 2015/1523 and 2015/1601, since they were adopted under Article 78(3) TFEU for the purpose of helping the Hellenic Republic and the Italian Republic to better cope with an emergency situation characterised by a sudden influx of third-country nationals on their territory, must, in principle, be divided between all the other Member

States, in accordance with the principle of solidarity and fair sharing of responsibility between the Member States, which, in accordance with Article 80 TFEU, governs the Union's asylum policy.

182 Furthermore, the practical difficulties in the application of Decisions 2015/1523 and 2015/1601 referred to by the Czech Republic do not appear to be inherent in the relocation mechanism provided for in those decisions, nor indeed in the specific mechanism contained in Article 5(4) and (7) of each of those decisions, and must, in accordance with what has already been recalled in paragraph 164 above, be resolved, should they arise, in the spirit of cooperation and mutual trust between the authorities of the Member States that are beneficiaries of relocation and those of the Member States of relocation. That spirit of cooperation and mutual trust must prevail when the relocation procedure provided for in Article 5 of each of those decisions is implemented.

183 Thus, the alleged ineffectiveness or alleged malfunctioning of the relocation mechanism did not prevent other Member States from making, at regular intervals, relocation commitments and from actually relocating applicants for international protection throughout the respective periods of application of Decisions 2015/1523 and 2015/1601 and, even more markedly, towards the end of those periods, in response to the call made by the Commission in its monthly reports on relocation and resettlement to intensify the rhythm of relocations before the expiry of those periods.

184 Moreover, some of the practical problems raised by the Czech Republic are due to the fact, already mentioned in paragraphs 95 and 163 above, that the relocation of a large number of persons, such as that provided for by Decisions 2015/1523 and 2015/1601, is an unprecedented and complex operation which requires a certain amount of preparation and implementation time, in particular as regards coordination between the authorities of the Member States, before it has any tangible effects.

185 In this connection, as already observed in paragraph 166 above, during the period of application of Decisions 2015/1523 and 2015/1601, some adjustments were made to the relocation procedure in order to address, inter alia, the practical problems mentioned by the Czech Republic. That is the case concerning, in particular, the option for Member States of relocation to perform additional security checks in Greece or Italy prior to the relocation of applicants for international protection and the opportunity, offered as of 1 December 2016, to request Europol's assistance to carry out those additional security checks in Italy.

186 Lastly, it is also necessary to reject the Czech Republic's argument that that Member State preferred to support the Hellenic Republic and the Italian Republic as Member States in the front line and certain third countries by the provision of aid other than relocations.

187 Since, as of their adoption and during their period of application, Decisions 2015/1523 and 2016/1601 were binding on the Czech Republic, that Member State was required to comply with the relocation obligations imposed under those decisions irrespective of the provision of other types of aid to the Hellenic Republic and the Italian Republic, even if such aid was also intended to alleviate the pressure on the asylum systems of those two frontline Member States. Besides, it should be noted that certain types of aid were indeed imposed under those decisions or under other

acts adopted at European Union level. In no circumstances could such aid replace the implementation of the obligations resulting from Decisions 2015/1523 and 2015/1601.

188 It follows that the plea in defence derived by the Czech Republic from the alleged malfunctioning and alleged ineffectiveness of the relocation mechanism as provided for under Decisions 2015/1523 and 2015/1601 must be rejected.

189 Having regard to all the foregoing considerations, it must be declared that:

– by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Republic of Poland has, since 16 March 2016, failed to fulfil its obligations under Article 5(2) of Decision 2015/1523 and Article 5(2) of Decision 2015/1601, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;

– by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, Hungary has, since 25 December 2015, failed to fulfil its obligations under Article 5(2) of Decision 2015/1601 and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of that decision; and

– by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Czech Republic has, since 13 August 2016, failed to fulfil its obligations under Article 5(2) of Decision 2015/1523 and Article 5(2) of Decision 2015/1601, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions.

Costs

190 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Under Article 140(1) of those rules, Member States which have intervened in the proceedings are to bear their own costs.

191 Since the Commission has applied, in Case C-715/17, for costs to be awarded against the Republic of Poland and the Republic of Poland has been unsuccessful, it must be ordered, in addition to bearing its own costs, to pay those incurred by the Commission. It should be held that the Czech Republic and Hungary, which intervened in support of the Republic of Poland in that case, are to bear their own costs.

192 Since the Commission has applied, in Case C-718/17, for costs to be awarded against Hungary and Hungary has been unsuccessful, it must be ordered, in addition to bearing its own costs, to pay those incurred by the Commission. It should be held that the Czech Republic and the Republic of Poland, which intervened in support of Hungary in that case, are to bear their own costs.

193 Since the Commission has applied, in Case C-719/17, for costs to be awarded against the Czech Republic and the Czech Republic has been unsuccessful, it must be ordered, in addition to bearing its own costs, to pay those incurred by the Commission. It should be held that Hungary and the Republic of Poland, which intervened in support of the Czech Republic in that case, are to bear their own costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Declares that Cases C-715/17, C-718/17 and C-719/17 are joined for the purposes of the judgment;**

2. **Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Republic of Poland has, since 16 March 2016, failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, and Article 5(2) of Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;**

3. **Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, Hungary has, since 25 December 2015, failed to fulfil its obligations under Article 5(2) of Decision 2015/1601 and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of that decision;**

4. **Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Czech Republic has, since 13 August 2016, failed to fulfil its obligations under Article 5(2) of Decision 2015/1523 and Article 5(2) of Decision 2015/1601, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;**

5. **Orders the Republic of Poland, in addition to bearing its own costs in Cases C-715/17, C-718/17 and C-719/17, to pay those of the Commission in Case C-715/17;**

6. **Orders Hungary, in addition to bearing its own costs in Cases C-715/17, C-718/17 and C-719/17, to pay those of the Commission in Case C-718/17;**

7. **Orders the Czech Republic, in addition to bearing its own costs in Cases C-715/17, C-718/17 and C-719/17, to pay those of the Commission in Case C-719/17.**

[Signatures]