JUDGMENT OF THE COURT

(Grand Chamber)

6 September 2017

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In Joined Cases C-643/15 and C-647/15,

ACTIONS for annulment under Article 263 TFEU, brought on 2 and 3 December 2015 respectively,

Slovak Republic, represented by the Ministerstvo spravodlivosti Slovenskej republiky (C-643/15),

and

Hungary, represented by M.Z. Fehér and G. Koós, acting as Agents (C-647/15),

applicants,

supported by:

Republic of Poland, represented by B. Majczyna and M. Kamejsza, acting as Agents,

intervener,

v

Council of the European Union, represented by M. Chavrier, K. Pleśniak, N. Pethő and Z. Kupčová, acting as Agents,

defendant,

supported by:

Kingdom of Belgium, represented by J. Van Holm, M. Jacobs and C. Pochet, acting as Agents,

Federal Republic of Germany, represented by T Henze, R. Kanitz and J. Möller (C-647/15), acting as Agents,

Hellenic Republic, represented by M. Michelogiannaki and A. Samoni-Rantou, acting as Agents, with an address for service in Luxembourg,

French Republic, represented by D. Colas, F.-X. Bréchot and E. Armoet, acting as Agents,

Italian Republic, represented by G. Palmieri, acting as Agent, and by L. D'Ascia, avvocato dello Stato,

Grand Duchy of Luxembourg, represented by A. Germeaux, C. Schiltz and D. Holderer, acting as Agents,

Kingdom of Sweden, represented by A. Falk, C. Meyer-Seitz, U. Persson, O. Widgren, E. Karlsson and L. Swedenborg, acting as Agents,

European Commission, represented by M. Condou-Durande and K. Talabér-Ritz (C-647/15) and by J. Baquero Cruz and A. Tokár (C-643/15) and G. Wils, acting as Agents, with an address for service in Luxembourg,

interveners,

THE COURT

(Grand Chamber),

composed of

K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen and A. Prechal (Rapporteur), Presidents of Chambers, J.-C. Bonichot, A. Arabadjiev, C. Toader, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda, S. Rodin and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 10 May 2017,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

gives the following

J u d g m e n t

1 By their applications, the Slovak Republic and Hungary seek annulment 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, 'the contested decision').

I. The contested decision: context, history and content

A. Context of the contested decision

2 The context in which the contested decision was adopted is described as follows in recitals 3 to 7 and 10 to 16 thereof:

‘(3) The recent crisis situation in the Mediterranean prompted the [European] Union institutions to immediately acknowledge the exceptional migratory flows in that region and call for concrete measures of solidarity towards the frontline Member States. In particular, at a joint meeting of Foreign and Interior Ministers on 20 April 2015, the [European] Commission presented a 10-point plan of immediate action to be taken in response to the crisis, including a commitment to consider options for an emergency relocation mechanism.

(4) At its meeting of 23 April 2015, the European Council decided, inter alia, to reinforce internal solidarity and responsibility and committed itself in particular to increasing emergency assistance to frontline Member States and to considering options for organising emergency relocation between Member States on a voluntary basis, as well as to deploying European Asylum Support Office (EASO) teams in frontline Member States for the joint processing of applications for international protection, including registration and fingerprinting.

(5) In its resolution of 28 April 2015, the European Parliament reiterated the need for the Union to base its response to the latest tragedies in the Mediterranean on solidarity and fair sharing of responsibility and to step up its efforts in this area towards those Member States which receive the highest number of refugees and applicants for international protection in either absolute or relative terms.

(6) Besides measures in the area of asylum, Member States at the frontline should increase their efforts to set up measures to cope with mixed migration flows at the external borders of the European Union. Such measures should safeguard the rights of those in need of international protection and prevent irregular migration.

(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.

...

(10) Among the Member States witnessing situations of considerable pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece in particular have experienced unprecedented flows of migrants, including applicants for international protection who are in clear need of international protection, arriving on their territories, generating significant pressure on their migration and asylum systems.

(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 (EU) 2015/1523 [establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ 2015 L 239, p.146)], 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.

(13) According to data of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), the central and eastern Mediterranean routes were the main areas for irregular border crossing into the Union in the first eight months of 2015. Since the beginning of 2015, approximately 116 000 migrants arrived in Italy in an irregular manner ... During May and June 2015, 34 691 irregular border crossings were detected by Frontex and during July and August 42 356, an increase of 20%. A strong increase was also witnessed by Greece in 2015, with more than 211 000 irregular migrants reaching the country ... During May and June 2015, 53 624 irregular border crossings were detected by Frontex and during July and August 137 000, an increase of 250%. A significant proportion of the total number of irregular migrants detected in those two regions included migrants of nationalities which, based on the ... data [of the Statistical Office of the European Union (Eurostat)], meet a high Union-level recognition rate.

(14) According to Eurostat and EASO figures, 39 183 persons applied for international protection in Italy between January and July 2015, compared to 30 755 in the same period of 2014 (an increase of 27%). A similar increase in the number of applications was witnessed by Greece with 7 475 applicants (an increase of 30%).

(15) Many actions have been taken so far to support Italy and Greece in the framework of the migration and asylum policy, including by providing them with substantial emergency assistance and EASO operational support. ...

(16) Due to the ongoing instability and conflicts in the immediate neighbourhood of Italy and Greece, and the repercussions in migratory flows on other Member States, it is very likely that a significant and increased pressure will continue to be put on their migration and asylum systems, with a significant proportion of the migrants who may be in need of international protection. This demonstrates the critical need to show solidarity towards Italy and Greece and to complement the actions taken so far to support them with provisional measures in the area of asylum and migration.'

B. **History of the contested decision**

3 On 9 September 2015, the Commission submitted, on the basis of Article 78(3) TFEU, a Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary (COM(2015) 451; 'the Commission's initial proposal').

4 On the same day, the Commission also submitted, on the basis of Article 78(2)(e) TFEU, a Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the 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 (COM(2015) 450).

5 The Commission's initial proposal provided for the relocation of 120 000 applicants for international protection, from Italy (15 600 persons), Greece (50 400 persons) and Hungary (54 000 persons), to the other Member States. The Annexes accompanying that proposal contained three charts allocating those applicants from each of those three Member States among the other Member States, with the exception of theUnited Kingdom, Ireland and Denmark, in the form of quotas determined for each of those Member States.

6 On 13 September 2015, the Commission forwarded that proposal to national parliaments.

7 By a letter of 14 September 2015, the Council forwarded the proposal to the Parliament for consultation. In that letter the Council asked the Parliament to give its opinion as quickly as possible in view of the critical situation in the Mediterranean Sea and on the western Balkans route and undertook to keep the Parliament informed, on an informal basis, about developments in the case within the Council.

8 On 17 September 2015, the Parliament adopted a legislative resolution approving the proposal, having regard, in particular, to the 'exceptional situation of urgency and the need to address the situation with no further delay', while asking the Council to consult the Parliament again if it intended to substantially amend the Commission's initial proposal.

9 At the various meetings held within the Council between 17 and 22 September 2015, the Commission's initial proposal was amended on certain points.

10 In particular, Hungary stated at those meetings that it rejected the notion of being classified as a 'frontline Member State' and that it did not wish to be among the Member States benefiting from relocation as were Italy and Greece. Accordingly, in the final version of the proposal, all reference to Hungary as a beneficiary Member State, including in the title of the proposal, was deleted. Likewise, Annex III to the Commission's initial proposal, concerning the distribution of 54 000 applicants for international protection whom it had initially been planned to relocate from Hungary was deleted. On the other hand, Hungary was included in Annexes I and II as a Member State of relocation of applicants for international protection from Italy and Greece respectively and allocations were therefore attributed to it in those annexes.

11 On 22 September 2015, the Commission's initial proposal as thus amended was adopted by the Council by a qualified majority. The Czech Republic, Hungary, Romania and the Slovak Republic voted against the adoption of that proposal. The Republic of Finland abstained.

C. **Content of the contested decision**

12 Recitals 2, 22, 23, 26, 30, 32, 35 and 44 of the contested decision state:

'(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.

...

(22) In accordance with Article 78(3) TFEU, the measures envisaged for the benefit of Italy and of Greece should be of a provisional nature. A period of 24 months is reasonable in view of ensuring that the measures provided for in this Decision have a real impact in respect of supporting Italy and Greece in dealing with the significant migration flows on their territories.

(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, 'the Dublin III Regulation'),] 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 [the Dublin III Regulation] ... remain applicable ... This Decision also entails a derogation from the consent of the applicant for international protection as referred to in Article 7(2) of Regulation (EU) No 516/2014 of the European Parliament and of the Council [of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ 2014 L 150, p. 168)].

...

(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. This number corresponds to approximately 43% of the total number of third-country nationals in clear need of international protection who have entered Italy and Greece irregularly in July and August 2015. The relocation measure foreseen in this Decision constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other, given the overall available figures on irregular border crossings in 2015. Given the figures at stake, 13% of these applicants should be relocated from Italy, 42% from Greece and 45% should be relocated as provided for in this Decision.

...

(30) With a view to implementing the principle of solidarity and fair sharing of responsibility, and taking into account that this Decision constitutes a further policy development in this field, it is appropriate to ensure that the Member States that relocate, pursuant to this Decision, applicants from Italy and Greece who are in clear need of

international protection, receive a lump sum for each relocated person which is identical to the lump sum provided for in Article 18 of Regulation ... No 516/2014, namely EUR 6 000, and is implemented by applying the same procedures. ...

...

(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.

...

(35) The legal and procedural safeguards set out in [the Dublin III] Regulation remain applicable in respect of applicants covered by this Decision. In addition, applicants should be informed of the relocation procedure set out in this Decision and be notified with the relocation decision which constitutes a transfer decision within the meaning of Article 26 of [the Dublin III] Regulation. Considering that an applicant does not have the right under Union law to choose the Member State responsible for his or her application, the applicant should have the right to an effective remedy against the relocation decision in line with [the Dublin III Regulation], only in view of ensuring respect for his or her fundamental rights. In line with Article 27 of that Regulation, Member States may provide in their national law that the appeal against the transfer decision does not automatically suspend the transfer of the applicant but that the person concerned has the opportunity to request a suspension of the implementation of the transfer decision pending the outcome of his or her appeal.

...

(44) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.'

13 Under Article 1 of the contested decision, which is entitled 'Subject matter':

'1. 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.

2. The Commission shall keep under constant review the situation regarding massive inflows of third country nationals into Member States.

The Commission will submit, as appropriate, proposals to amend this Decision in order to take into account the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States.'

14 Article 2 of that decision, which is entitled ‘Definitions’, provides:

‘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 [the Dublin III] Regulation ... 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 [the Dublin III Regulation] of an applicant following his or her relocation in the territory of that Member State.’

15 Article 3 of the contested decision, which is entitled ‘Scope’, provides 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 [the Dublin III Regulation].

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 ... is, according to the latest available updated quarterly Union-wide average Eurostat data, 75% or higher. ...’

16 Under the title ‘Relocation of 120 000 applicants to Member States’, Article 4(1) to (3) of the contested decision provides:

‘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.

3. If by 26 September 2016, the Commission considers that an adaptation of the relocation mechanism is justified by the evolution of the situation on the ground or that a Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows and taking into account the views of the likely beneficiary Member State, it may submit, as appropriate, proposals to the Council, as referred to in Article 1(2).

Likewise, a Member State may, giving duly justified reasons, notify the Council and the Commission that it is confronted with a similar emergency situation. The Commission shall assess the reasons given and submit, as appropriate, proposals to the Council, as referred to in Article 1(2).'

17 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 the contested decision:

'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 Council [on] 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.

...'

18 It follows from Article 2 of Decision 2016/1754 that the latter entered into force on 2 October 2016 and is applicable until 26 September 2017 to all the persons who, for the purposes of Article 4(3a) of the contested decision, have been admitted from Turkey by the Member States as from 1 May 2016.

19 Article 4(4) of the contested decision provides for the possibility of Ireland and the United Kingdom taking part, on a voluntary basis, in executing the decision. Ireland's participation was subsequently confirmed by the Commission and the Council set a number of applicants who were to be relocated to that Member State and adapted the quotas of the other Member States accordingly.

20 Article 4(5) of the contested decision provides that in exceptional circumstances a Member State may, subject to the conditions laid down in that provision, request, by 26 December 2015, a temporary suspension of the relocation of up to 30% of the applicants allocated to it.

21 That provision was applied at the request of the Republic of Austria and the matter was dealt with by Council Implementing Decision (EU) 2016/408 of 10 March 2016 on the temporary suspension of the relocation of 30% of applicants allocated to Austria under [the contested decision] (OJ 2016 L 74, p. 36). Article 1 of Decision 2016/408 provides that the relocation to Austria of 1 065 of the applicants allocated to it under the contested decision was to be suspended until 11 March 2017.

22 Article 5 of the contested decision, which is entitled 'Relocation procedure', provides:

‘...

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.

...

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 ...

...’

23 Article 6 of the contested decision, which is entitled ‘Rights and obligations of applicants for international protection covered by this Decision’, provides:

‘1. The best interests of the child shall be a primary consideration for Member States when implementing this Decision.

2. Member States shall ensure that family members who fall within the scope of this Decision are relocated to the territory of the same Member State.

3. Prior to the decision to relocate an applicant, Italy and Greece shall inform the applicant in a language which the applicant understands or is reasonably supposed to understand of the relocation procedure as set out in this Decision.

4. When the decision to relocate an applicant has been taken and before the actual relocation, Italy and Greece shall notify the person concerned of the decision to relocate him in writing. That decision shall specify the Member State of relocation.

5. An applicant or beneficiary of international protection who enters the territory of a Member State other than the Member State of relocation without fulfilling the conditions for stay in that other Member State shall be required to return immediately. The Member State of relocation shall take back the person without delay.'

24 Article 7 of the contested decision contains provisions concerning operational support to the Hellenic Republic and the Italian Republic.

25 Article 8 of that decision lays down further measures that are to be taken by those two Member States.

26 Article 9 of the decision empowers the Council to take provisional measures under Article 78(3) TFEU if the conditions laid down by that provision are met. It states that such measures may, where appropriate, include a suspension of the participation of the Member State which is faced with a sudden inflow of nationals of third countries in the relocation provided for by the contested decision.

27 That provision was applied at the request of the Kingdom of Sweden and the matter was dealt with in Council Decision (EU) 2016/946 of 9 June 2016 establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Decision 2015/1523 and Article 9 of Decision 2015/1601 (OJ 2016 L 157, p. 23). Article 2 of Decision 2016/946 provides that the obligations of the Kingdom of Sweden as a Member State of relocation under Decision 2015/1523 and the contested decision are to be suspended until 16 June 2017.

28 Article 10 of the contested decision makes provision for financial support for each person relocated pursuant to that decision, such support being given to both the Member State of relocation and to either the Hellenic Republic or the Italian Republic.

29 Article 11 of the contested decision provides that, with the assistance of the Commission, bilateral arrangements may be made between those two Member States and the 'associated' States, namely the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation and that, where such bilateral arrangements are made, the Council is accordingly to adapt, on a proposal from the Commission, the allocations of Member States by reducing them in due proportion. Such agreements have subsequently been concluded and the associated States are thus participating in the relocation for which the contested decision provides.

30 Article 12 of the contested decision provides, inter alia, that the Commission is to report to the Council every six months on the implementation of the decision. 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 the contested decision.

31 Finally, under Article 13(1) and (2) of the contested decision, the latter entered into force on 25 September 2015 and is to apply until 26 September 2017. Article 13(3) provides that the decision is 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 having arrived on the territory of those Member States from 24 March 2015 onwards.

II. **Procedure before the Court and forms of order sought**

32 In Case C-643/15 the Slovak Republic claims that the Court should annul the contested decision and order the Council to pay the costs.

33 In Case C-647/15 Hungary claims that the Court should:

– principally, annul the contested decision;

– in the alternative, annul that decision in so far as it concerns Hungary; and

– order the Council to pay the costs.

34 In Cases C-643/15 and C-647/15 the Council asks the Court to dismiss the actions as unfounded and to order the Slovak Republic and Hungary, respectively, to pay the costs.

35 By decision of the President of the Court of 29 April 2016, the Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Sweden and the Commission were granted leave to intervene in support of the form of order sought by the Council in Cases C-643/15 and C-647/15.

36 By the same decision, the Republic of Poland was granted leave to intervene, in Case C-643/15, in support of the form of order sought by the Slovak Republic and, in Case C-647/15, in support of the form of order sought by Hungary.

37 The parties and the Advocate General having been heard in this regard, it is appropriate, on account of the connection between the present cases, to join them for the purposes of the judgment, in accordance with Article 54 of the Rules of Procedure of the Court.

III. **The actions**

A. **Overview of the pleas in law**

38 In support of its action in Case C-643/15, the Slovak Republic relies on six pleas in law, alleging (i) infringement of Article 68 TFEU and Article 13(2) TEU, and breach of the principle of institutional balance; (ii) infringement of Article 10(1) and (2) TEU, Article 13(2) TEU, Article 78(3) TFEU, Articles 3 and 4 of Protocol (No 1) on the role of the national parliaments in the European Union, annexed to the EU and FEU Treaties (‘Protocol (No 1)’), and Articles 6 and 7 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the EU and FEU Treaties (‘Protocol (No 2)’), and breach of the principles of legal certainty, representative democracy and institutional balance; (iii) breach of essential procedural requirements relating to the legislative process and infringement of Article 10(1) and (2) TEU and Article 13(2) TEU, and breach of the principles of representative democracy, institutional balance and sound administration (in the alternative); (iv) breach of essential procedural requirements and infringement of Article 10(1) and (2) TEU and Article 13(2) TEU, and breach of the principles of representative democracy, institutional balance and sound administration (partly in the alternative); (v) failure to meet the conditions under which Article 78(3) TFEU is applicable (in the alternative); and (vi) breach of the principle of proportionality.

39 In support of its action in Case C-647/15, Hungary relies on 10 pleas in law.

40 The first and second pleas allege infringement of Article 78(3) TFEU, since, in Hungary's submission, that provision does not afford the Council an appropriate legal basis for the adoption of measures which, in the present case, entail a binding exception to the provisions of a legislative act, which are applicable for a period of 24 months, or indeed of 36 months in some cases, and the effects of which extend beyond that period, something which, in its view, is incompatible with the concept of 'provisional measures'.

41 The third to sixth pleas allege breach of essential procedural requirements, in that (i) when adopting the contested decision, the Council infringed Article 293(1) TFEU by departing from the Commission's initial proposal without a unanimous vote (third plea); (ii) the contested decision contains a derogation from the provisions of a legislative act and is itself a legislative act by virtue of its content, so that, even if it were decided that the contested decision could properly have been adopted on the basis of Article 78(3) TFEU, it would have nonetheless been necessary, at the time of its adoption, to respect the right of the national parliaments to issue an opinion on legislative acts, laid down in Protocol (No 1) and Protocol (No 2) (fourth plea); (iii) after consulting the Parliament, the Council substantially amended the text of the proposal without consulting the Parliament again on the matter (fifth plea); and (iv) when the Council adopted the contested decision, the proposal for a decision was not available in all the language versions corresponding to the official languages of the European Union (sixth plea).

42 The seventh plea alleges infringement of Article 68 TFEU and of the conclusions of the European Council of 25 and 26 June 2015.

43 The eighth plea alleges breach of the principles of legal certainty and normative clarity, since on a number of points it is, in Hungary's view, unclear how the contested decision should be applied or how its provisions interrelate with those of the Dublin III Regulation.

44 The ninth plea alleges breach of the principles of necessity and proportionality, in that, as Hungary is no longer among the beneficiary Member States, there is no reason why the contested decision should provide for the relocation of 120 000 persons seeking international protection.

45 The 10th plea, which is submitted in the alternative, alleges breach of the principle of proportionality and infringement of Article 78(3) TFEU so far as Hungary is concerned, since the contested decision attributes a mandatory quota to it as a host Member State, even though it is recognised that a large number of migrants have entered Hungary irregularly and have made applications for international protection there.

B. **Preliminary observation**

46 Since it is the legal basis of a measure that determines the procedure to be followed in adopting that measure (see, to that effect, judgment of 10 September 2015, *Parliament* v *Council*, C-363/14, EU:C:2015:579, paragraph 17), it is appropriate to examine, first, the pleas alleging that Article 78(3) TFEU does not provide a proper legal basis for the contested decision, secondly, the pleas alleging that procedural errors were made when the decision was adopted and that such errors amounted to breaches of essential procedural requirements and, thirdly, the substantive pleas.

C. **The pleas alleging that Article 78(3) TFEU is not a proper legal basis for the contested decision**

1. *The Slovak Republic's second plea and Hungary's first plea, relating to the legislative nature of the contested decision*

(a) *Arguments of the parties*

47 The Slovak Republic and Hungary maintain that even though the contested decision was adopted in accordance with the non-legislative procedure and is therefore formally a non-legislative act, it must nevertheless be classified as a legislative act because of its content and its effects, since — as is expressly confirmed in recital 23 of the decision — it amends a number of legislative acts of EU law and, moreover, does so fundamentally.

48 They argue that that is particularly true of Article 13(1) of the Dublin III Regulation, under which the Hellenic Republic or the Italian Republic, as the case may be, are in principle responsible for examining the application for international protection, a rule from which Article 3(1) of the contested decision derogates.

49 Although the contested decision classifies these amendments as mere 'derogations', the distinction between a derogation and an amendment is, in the applicants' view, artificial, since, in both cases, the effect is to exclude the application of a normative provision and, by the same token, to undermine its effectiveness.

50 However, it follows, so they argue, from the provisional and urgent nature of the measures referred to in Article 78(3) TFEU that that provision is intended to provide a legal basis for support measures capable of accompanying legislative acts adopted on the basis of Article 78(2) TFEU. The measures concerned are, in particular, rapid-response measures to manage or alleviate a crisis, including financial or technical assistance or the provision of qualified personnel.

51 Thus, they argue, Article 78(3) TFEU does not provide a legal basis for the adoption of legislative measures, since that provision gives no indication that the measures adopted on the basis of it must be adopted in accordance with a legislative procedure.

52 The Slovak Republic maintains in particular that a non-legislative act based on Article 78(3) TFEU, such as the contested decision, can under no circumstances derogate from a legislative act. It submits that the extent of the derogation and the question whether or not the provision derogated from is essential are irrelevant. Any derogation, however limited its scope, by a non-legislative act from a legislative act is prohibited given that it amounts to a circumvention of the legislative procedure, in the present case the procedure provided for in Article 78(2) TFEU.

53 Hungary argues that, in any event, even though the derogations from legislative acts for which the contested decision provides are limited in time, they interfere with the fundamental provisions of existing legislative acts relating to the fundamental rights and obligations of the individuals concerned.

54 Finally, Hungary maintains that Article 78(3) TFEU can be interpreted as meaning that the requirement to consult the Parliament, laid down in that provision, should be regarded as 'participation' of the Parliament within the meaning of Article 289(2) TFEU, with the consequence that the special legislative procedure applies. In that case, Article 78(3) TFEU could in fact constitute a valid legal basis for the contested decision, as a legislative act.

55 However, if that interpretation of Article 78(3) TFEU were accepted, the procedural requirements associated with the adoption of a legislative act would have to be observed, in particular the participation of the Parliament and of national parliaments in the legislative process: that clearly did not occur in the present case.

56 The Council contends that it follows from Article 289(3) TFEU that the test for determining whether or not an act is a legislative act is exclusively procedural in the sense that, whenever a legal basis in the Treaty expressly provides that an act is to be adopted 'in accordance with the ordinary legislative procedure' or 'in accordance with a special legislative procedure', the act in question is a legislative act. It disputes the allegation that the contested decision amended a number of legislative acts of EU law and should thus be classified as a legislative act on account of its content. Nor is there any ground for maintaining that the derogations introduced by the contested decision are means of circumventing the ordinary legislative procedure, as provided for in Article 78(2) TFEU.

(b) *Findings of the Court*

57 Consideration must be given, first, to whether, as Hungary maintains, Article 78(3) TFEU is to be interpreted to the effect that acts adopted under it must be classified as 'legislative acts' on the ground that the requirement for consultation of the Parliament which that provision imposes constitutes a form of participation of that institution within the meaning of Article 289(2) TFEU, with the consequence that such acts must follow the special legislative procedure. That did not occur in the case of the contested decision.

58 In the words of Article 289(3) TFEU, legal acts adopted by legislative procedure are to constitute legislative acts. Accordingly, non-legislative acts are those that are adopted by a procedure other than a legislative procedure.

59 The distinction between legislative and non-legislative acts is undoubtedly significant, since it is only on the adoption of legislative acts that certain obligations must be complied with, relating, inter alia, to the participation of national parliaments in accordance with Articles 3 and 4 of Protocol (No 1) and Articles 6 and 7 of Protocol (No 2) and also to the requirement that the Council is to meet in public when considering and voting on a draft legislative act, which arises from Article 16(8) TEU and Article 15(2) TFEU.

60 In addition, it is clear, on reading Article 289(1) TFEU in conjunction with Article 294(1) TFEU, that the ordinary legislative procedure, which is characterised by the joint adoption of an act of EU law by the Parliament and the Council on a proposal from the Commission, applies only where the provision of the Treaties forming the legal basis for the act in question '[makes] reference' to that legislative procedure.

61 As regards the special legislative procedure, which is characterised by the fact that it envisages the adoption of an EU act either by the Parliament with the participation of the Council or by the Council with the participation of the Parliament, Article 289(2) TFEU provides that it is to apply 'in the specific cases provided for by the Treaties'.

62 It follows that a legal act can be classified as a legislative act of the European Union only if it has been adopted on the basis of a provision of the Treaties which expressly refers either to the ordinary legislative procedure or to the special legislative procedure.

63 A systemic approach of that kind provides the requisite legal certainty in procedures for adopting EU acts, in that it makes it possible to identify with certainty the legal bases empowering the institutions of the European Union to adopt legislative acts and to distinguish those bases from bases which can serve only as a foundation for the adoption of non-legislative acts.

64 Accordingly, contrary to what is argued by Hungary, it cannot be inferred from the reference — made in the provision of the Treaties that forms the legal basis for the act at issue — to the requirement for consultation of the Parliament that the special legislative procedure applies to the adoption of that act.

65 In the present case, whilst Article 78(3) TFEU provides that the Council is to adopt the provisional measures referred to therein on a proposal from the Commission and after consulting the Parliament, it does not contain an express reference to either the ordinary legislative procedure or the special legislative procedure. By contrast, Article 78(2) TFEU expressly provides that the measures listed in points (a) to (g) of that provision are to be adopted 'in accordance with the ordinary legislative procedure'.

66 In view of the foregoing, it must be held that measures which are capable of being adopted on the basis of Article 78(3) TFEU must be classified as 'non-legislative acts' because they are not adopted at the end of a legislative procedure.

67 The Council, when it adopted the contested decision, was therefore fully entitled to take the view that it had to be adopted following a non-legislative procedure and was accordingly a non-legislative EU act.

68 As a consequence, there arises, secondly, the question whether, as the Slovak Republic and Hungary maintain, Article 78(3) TFEU was not a proper legal basis for the contested decision because the decision is a non-legislative act which derogates from a number of legislative acts, whereas only a legislative act can derogate from another legislative act.

69 In that regard, recital 23 of the contested decision states that the relocation from Italy and Greece provided for in the decision entails a 'temporary derogation' from certain provisions of legislative acts of EU law, including (i) Article 13(1) of the Dublin III Regulation, under which the Hellenic Republic or the Italian Republic would in principle have been responsible for examining an application for international protection on the basis of the criteria set out in Chapter III of that regulation, and (ii) Article 7(2) of Regulation No 516/2014, which requires the consent of an applicant for international protection.

70 Article 78(3) TFEU does not define the nature of the 'provisional measures' that may be adopted pursuant to it.

71 Therefore, contrary to what is maintained by the Slovak Republic and Hungary, the wording of Article 78(3) TFEU does not in itself support a restrictive interpretation of the concept of 'provisional measures' to the effect that the concept covers only accompanying measures which support a legislative act adopted on the basis of Article 78(2) TFEU and deal, in particular, with financial, technical or operational support to Member States confronted with an emergency situation characterised by a sudden inflow of nationals of third countries.

72 That finding is borne out by the overall scheme and objectives of paragraphs 2 and 3 of Article 78 TFEU.

73 They are in fact two distinct provisions of primary EU law pursuing different objectives and each having its own conditions for application, which provide a legal basis for the adoption, in the case of Article 78(3) TFEU, of provisional, non-legislative, measures intended to respond swiftly to a particular emergency situation facing Member States and, in the case of Article 78(2) TFEU, legislative acts whose purpose is to regulate, generally and for an indefinite period, a structural problem arising in the context of the European Union's common policy on asylum.

74 Accordingly, those provisions are complementary, permitting the European Union to adopt, in the context of the common policy on asylum, a wide range of measures in order to ensure that it has the necessary tools to respond effectively, both in the short term and in the long term, to migration crises.

75 In that regard, a restrictive interpretation of the concept of 'provisional measures' in Article 78(3) TFEU to the effect that it permits only the adoption of accompanying measures which supplement the legislative acts adopted on the basis of Article 78(2) TFEU, but not the adoption of measures derogating from such acts, would, apart from the fact that such an interpretation finds no support in the wording of Article 78(3) TFEU, also significantly reduce its effectiveness, given that those acts have covered, or may cover, the various aspects of the common European asylum system listed in points (a) to (g) of Article 78(2) TFEU.

76 That is specifically the case of the area mentioned in point (e) of Article 78(2) TFEU, concerning criteria and mechanisms for determining which Member State is responsible for examining an application for asylum or subsidiary protection, which is covered by a full set of rules, at the forefront of which are the rules laid down by the Dublin III Regulation.

77 In the light of the foregoing, the concept of 'provisional measures' within the meaning of Article 78(3) TFEU must be sufficiently broad in scope to enable the EU institutions to adopt all the provisional measures necessary to respond effectively and swiftly to an emergency situation characterised by a sudden inflow of nationals of third countries.

78 Although, with that end in mind, it has to be accepted that the provisional measures adopted on the basis of Article 78(3) TFEU may in principle also derogate from provisions of legislative acts, both the material and temporal scope of such derogations must nonetheless be circumscribed, so that the latter are limited to responding swiftly and effectively, by means of a temporary arrangement, to a specific crisis: that precludes such measures from having either the object or effect of replacing legislative acts or amending them permanently and generally, thereby circumventing the ordinary legislative procedure provided for in Article 78(2) TFEU.

79 In the present case, the Court finds that the derogations provided for in the contested decision meet the requirement that their material and temporal scope be circumscribed and have neither the object nor the effect of replacing or permanently amending provisions of legislative acts.

80 Indeed, the derogations from particular provisions of legislative acts for which the contested decision provides apply for a two-year period only, subject to the possibility of extending that period under Article 4(5) of the decision, and will, in the event, cease to apply on 26 September 2017. Moreover, they concern a limited number of 120 000 nationals of certain third countries who have made an application for international protection in either Greece or Italy, who have one of the nationalities referred to in Article 3(2) of the contested

decision, who will be relocated from either Greece or Italy and who arrive in those Member States between 24 March 2015 and 26 September 2017.

81 In those circumstances, there is no ground for maintaining that the ordinary legislative procedure provided for in Article 78(2) TFEU was circumvented by the adoption of the contested decision on the basis of Article 78(3) TFEU.

82 In view of the foregoing, the fact that the contested decision, whose classification as a non-legislative act cannot be called in question, entails derogations from particular provisions of legislative acts did not prevent its adoption on the basis of Article 78(3) TFEU.

83 The Court also rejects, on the same grounds, the Slovak Republic's arguments alleging infringement of Article 10(1) and (2) TEU and Article 13(2) TEU and breach of the principles of legal certainty, representative democracy and institutional balance.

84 The Slovak Republic's second plea and Hungary's first plea must therefore be rejected as unfounded.

2. *The first part of the Slovak Republic's fifth plea and Hungary's second plea, alleging that the contested decision is not provisional and that its period of application is excessive*

(a) *Arguments of the parties*

85 The Slovak Republic and Hungary maintain that Article 78(3) TFEU does not provide a proper legal basis for the adoption of the contested decision, since the decision is not provisional, contrary to the requirements of that provision.

86 They submit that, since the contested decision applies, pursuant to Article 13(2) thereof, until 26 September 2017, that is, for a period of two years which may, moreover, be extended by one year under Article 4(5) and (6) of the decision, it cannot be classified as a 'provisional measure' within the meaning of Article 78(3) TFEU.

87 That is a fortiori the case, according to the Slovak Republic and Hungary, given that the temporal effects of the contested decision vis-à-vis the applicants for international protection concerned will far exceed that period of two or even three years. In their view, the decision will, in all likelihood, result in lasting ties being created between the applicants for international protection and the Member States of relocation.

88 The Council explains that the contested decision, in accordance with Article 13(2) thereof, will apply for 24 months, that is, until 26 September 2017. An extension by up to 12 months in the specific context of the suspension mechanism provided for in Article 4(5) of the contested decision is no longer possible. It submits that the duration of the effects which the contested decision may have with regard to persons who have been relocated is irrelevant for the purpose of determining whether the decision is provisional. The question of the provisional nature of the contested decision must be assessed by reference to the temporal application of the relocation mechanism for which it provides, namely a period of 24 months.

(b) *Findings of the Court*

89 Under Article 78(3) TFEU, only 'provisional measures' may be adopted.

90 A measure may be classified as 'provisional' in the usual sense of that word only if it is not intended to regulate an area on a permanent basis and only if it applies for a limited period.

91 Nevertheless, by contrast with Article 64(2) EC, under which the period of application of measures adopted on the basis of that provision could not exceed six months, Article 78(3) TFEU, which is the successor to that provision, no longer provides for such temporal limitation.

92 Accordingly, Article 78(3) TFEU, whilst requiring that the measures referred to therein be temporary, affords the Council discretion to determine their period of application on an individual basis, in the light of the circumstances of the case and, in particular, of the specific features of the emergency situation justifying those measures.

93 It is clear from Article 13 of the contested decision that the decision is to apply from 25 September 2015 to 26 September 2017, that is, for a period of 24 months, to persons arriving in Greece and Italy during that period and to applicants for international protection having arrived on the territory of those Member States from 24 March 2015 onwards.

94 As for Article 4(5) of the contested decision, it provides that, 'in exceptional circumstances' and where a Member State has given notification by 26 December 2015, the 24-month period referred to in Article 13(2) of the decision may be extended by up to 12 months in the context of the mechanism for the temporary and partial suspension of the obligation of the Member State concerned with regard to the relocation of applicants for international protection. It thus confirms the temporary nature of the various measures in the contested decision. Moreover, since that mechanism could no longer be triggered after 26 December 2015, the contested decision will definitively expire on 26 September 2017.

95 Accordingly, the contested decision must be found to apply for a limited period.

96 Moreover, the Council did not manifestly exceed the bounds of its discretion when it set the period of application of the measures provided for in the contested decision, given that it took the view, in recital 22 of the decision, that 'a period of 24 months is reasonable in view of ensuring that the measures provided for in this Decision have a real impact in respect of supporting Italy and Greece in dealing with the significant migration flows on their territories'.

97 That choice of a period of application of 24 months is justified in view of the fact that the relocation of a large number of persons, such as that provided for in the contested decision, 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.

98 The Court also rejects the argument put forward by the Slovak Republic and Hungary that the contested decision is not provisional since it will have long-term effects because many applicants for international protection will remain in the Member State of relocation well beyond the 24-month period of application of the contested decision.

99 If, in assessing whether a relocation measure is provisional within the meaning of Article 78(3) TFEU, it were necessary to take into account the duration of the effects of that measure on the persons relocated, no measures for the relocation of persons in clear need of

international protection could be taken under that provision, since such more or less long-term effects are inherent in such relocation.

100 Nor can the Court accept the argument of the Slovak Republic and of Hungary that, for a measure to be considered provisional within the meaning of Article 78(3) TFEU, the period of application of the measure in question must not exceed the minimum period necessary for the adoption of a legislative act based on Article 78(2) TFEU.

101 Quite apart from the fact that such an interpretation of Article 78(2) and (3) TFEU is not supported by any argument based on the wording of the provisions and disregards the complementary nature of the measures referred to in paragraphs 2 and 3 of that article respectively, it is very difficult, or even impossible, to determine in advance the minimum period that would be necessary for the adoption of a legislative act on the basis of Article 78(2) TFEU, with the consequence that that criterion appears impossible to put into practice.

102 That is also illustrated by the fact that, in the present case, although the proposal for a regulation including a permanent relocation mechanism was submitted on 9 September 2015 — namely on the same day as the Commission submitted its initial proposal which would later become the contested decision — it has not been adopted as at the date of delivery of the present judgment.

103 In view of the foregoing, the first part of the Slovak Republic's fifth plea and Hungary's second plea must be rejected as unfounded.

3. *The second part of the Slovak Republic's fifth plea, alleging that the contested decision does not satisfy the conditions for the application of Article 78(3) TFEU*

(a) *Arguments of the parties*

104 The Slovak Republic contends that, in three respects, the contested decision does not satisfy the condition for the application of Article 78(3) TFEU, namely that the Member State benefiting from the provisional measures must be confronted by 'an emergency situation characterised by a sudden inflow of nationals of third countries'.

105 First, according to the Slovak Republic, the inflow of nationals of third countries into Italy and Greece at the time of the adoption of the contested decision or immediately before its adoption was reasonably foreseeable and therefore cannot be described as 'sudden'.

106 It submits in that regard that the statistics for 2013 and 2014 and the early part of 2015 indicate that the number of nationals of third countries heading for Greece and Italy had been steadily increasing and that, from late 2013 until early 2014, that increase was considerable. In addition, so far as Italy is concerned, the data for 2015 instead suggested a year-on-year fall in the number of migrants.

107 Secondly, the Slovak Republic submits that, at least as regards the situation in Greece, there is no causal link between the emergency situation and the inflow of third country nationals into that Member State, although such a link is required as a result of the emergency situation referred to in Article 78(3) TFEU being qualified by the word 'characterised'. It is not disputed that there have long been serious shortcomings in the way the Hellenic

Republic's asylum policy is implemented, which have no direct causal link with the migration phenomenon characteristic of the period in which the contested decision was adopted.

108 Thirdly, the Slovak Republic maintains that, whilst the purpose of Article 78(3) TFEU is to resolve existing or imminent emergency situations, the contested decision addresses, at least in part, hypothetical future situations.

109 In its view, the period of application, of two, or even three years, of the contested decision is too long for it to be possible to assert that, throughout that period, the measures adopted will respond to the emergency situation, whether present or imminent, affecting the Hellenic Republic and the Italian Republic. Thus, during that period, the emergency situation may cease to exist in those Member States. Furthermore, the mechanism for relocating 54 000 persons provided for in Article 4(3) of the contested decision is intended to address wholly hypothetical situations in other Member States.

110 The Republic of Poland supports that point of view and maintains that Article 78(3) TFEU is directed at a pre-existing and current crisis situation which requires the adoption of immediate corrective measures and not, as the contested decision is, at crisis situations that may arise in the future but whose incidence, nature and degree are uncertain or difficult to foresee.

111 The Council and the Member States supporting it contend that the unprecedented emergency situation that gave rise to the contested decision, which is illustrated by the statistical data mentioned in recitals 13 and 26 of the decision, was both characterised and principally caused by a sudden and massive inflow of nationals of third countries, in particular in July and August 2015.

112 The Council further submits that the fact that the contested decision refers to future events or situations does not mean that it is incompatible with Article 78(3) TFEU.

(b) *Findings of the Court*

113 It is appropriate, first, to consider the Slovak Republic's argument that the inflow of nationals of third countries to Greece and Italy in 2015 cannot be classified as 'sudden' for the purposes of Article 78(3) TFEU, since it represented the continuation of what was already a large inflow of such nationals in 2014 and was therefore foreseeable.

114 In that regard, an inflow of nationals of third countries on such a scale as to be unforeseeable may be classified as 'sudden' for the purposes of Article 78(3) TFEU, even though it takes place in the context of a migration crisis spanning a number of years, inasmuch as it makes the normal functioning of the EU common asylum system impossible.

115 In the present case, as the Advocate General has noted in point 3 of his Opinion, the contested decision was adopted in the context of the migration crisis, alluded to in recital 3 of the decision, which affected the European Union from 2014, then became more acute in 2015, in particular in July and August of that year, and of the catastrophic humanitarian situation to which that crisis gave rise in the Member States, in particular in frontline Member States such as the Hellenic Republic and the Italian Republic, which faced a massive inflow of migrants, most of whom came from third countries such as Syria, Afghanistan, Iraq and Eritrea.

116 According to statistics from the Frontex Agency, provided in an annex to the statement in intervention of the Grand Duchy of Luxembourg, in 2015, for the European Union as a whole, 1.83 million irregular border crossings were detected at the Union's external borders as against 283 500 in 2014. Moreover, according to statistical data from Eurostat, in 2015, almost 1.3 million migrants applied for international protection in the Union as against 627 000 in the previous year.

117 In addition, the statistical data included in recital 13 of the contested decision, which were provided by the Frontex Agency, specifically show that the Hellenic Republic and the Italian Republic were confronted, in the first eight months of 2015 — and, in particular, in July and August of that year — with a massive inflow of third country nationals into their territory, in particular of persons whose nationality was among those referred to in Article 3(2) of the decision, with the consequence that the migratory pressure on the Italian and Greek asylum systems increased sharply in that period.

118 Thus, according to those data, 116 000 irregular crossings of the Italian Republic's external borders were detected in the first eight months of 2015. In July and August 2015, 34 691 migrants arrived in Italy irregularly, representing an increase of 20% as compared with May and June 2015.

119 The statistical data for the Hellenic Republic, which are mentioned in recital 13 of the contested decision, give an even clearer indication in that sharp increase in the number of migrants arriving. In the first eight months of 2015, more than 211 000 irregular migrants arrived in Greece. During July and August 2015 alone, the Frontex Agency counted 137 000 irregular border crossings, an increase of 250% as compared with May and June 2015.

120 Moreover, recital 14 of the contested decision states that, according to Eurostat and EASO figures, 39 183 persons applied for international protection in Italy between January and July 2015, as against 30 755 in the same period of 2014 (an increase of 27%), while a similar increase was witnessed in Greece, where there were 7 475 applicants (a 30% increase).

121 It is also stated in recital 26 of the contested decision that the Council specifically set the total of 120 000 persons to be relocated on the basis of the overall number of third country nationals who entered Greece and Italy irregularly in July and August 2015 and were in clear need of international protection.

122 It follows that the Council thus identified — on the basis of statistical data that have not been challenged by the Slovak Republic — a sharp increase in the inflow of third country nationals into Greece and Italy over a short period of time, in particular during July and August 2015.

123 It must be held that in such circumstances the Council could, without making a manifest error of assessment, classify such an increase as 'sudden' for the purposes of Article 78(3) TFEU even though that increase represented the continuation of a period in which extremely high numbers of migrants had already arrived.

124 It should be recalled in that regard that the EU institutions must be allowed broad discretion when they adopt measures in areas which entail choices, in particular of a political nature, on their part and complex assessments (see, to that effect, judgment of 4 May 2016,

Poland v *Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 79 and the case-law cited).

125 With regard, secondly, to the argument, raised by the Slovak Republic, concerning the strict interpretation of the word 'characterised' qualifying the 'emergency situation' referred to in Article 78(3) TFEU, the Court observes that, although a minority of the language versions of Article 78(3) TFEU do not use the word 'characterised' but rather the word 'caused', in the context of that provision and in view of its objective of enabling the swift adoption of provisional measures in order to provide an effective response to a migration crisis, those two words must be understood in the same way, namely as requiring there to be a sufficiently close link between the emergency situation in question and the sudden inflow of nationals of third countries.

126 It is apparent from recitals 12, 13 and 26 of the contested decision and from the statistical data mentioned in those recitals that a sufficiently close link has been established between the emergency situation in Greece and Italy, namely the significant pressure on the asylum systems of those Member States, and the inflow of migrants throughout 2015, in particular in July and August of that year.

127 That finding of fact is not undermined by the existence of other factors that may also have contributed to that emergency situation, including structural defects in those systems in terms of lack of reception capacity and of capacity to process applications.

128 Moreover, the inflow of migrants with which the Greek and Italian asylum systems were confronted in 2015 was on such a scale that it would have disrupted any asylum system, even one without structural weaknesses.

129 Thirdly, the Court must reject the Slovak Republic's argument, which is supported by the Republic of Poland, that the contested decision could not properly be adopted on the basis of Article 78(3) TFEU because, instead of an existing or imminent emergency situation affecting the Hellenic Republic and the Italian Republic, it sought to resolve, at least in part, hypothetical future situations, that is to say, situations which, at the time of the adoption of the contested decision, could not have been claimed to be sufficiently likely to arise.

130 In fact, recitals 13 and 26 of the contested decision make clear that the decision was adopted on account of an emergency situation with which the Hellenic Republic and the Italian Republic were confronted in 2015, more specifically in July and August 2015. Accordingly, that situation had patently arisen before the date on which the contested decision was adopted even though it is apparent from recital 16 of the decision that the Council also took account of the fact that the emergency situation would very probably continue owing to the ongoing instability and conflicts in the immediate vicinity of Italy and Greece.

131 In addition, in view of the fact that migration flows are inherently likely to evolve rapidly, notably by shifting towards other Member States, the contested decision contains various mechanisms, in particular in Article 1(2), Article 4(2) and (3) and Article 11(2), to adapt its arrangements in the light of any change in the initial emergency situation, in particular in the event of such a situation arising in other Member States.

132 Article 78(3) TFEU does not preclude the provisional measures taken under it being supplemented by such adjustment mechanisms.

133 That provision confers a broad discretion on the Council in the choice of the measures that may be taken in order to respond rapidly and efficiently to a particular emergency as well as to any possible developments in the situation.

134 As the Advocate General has observed in point 130 of his Opinion, responding to the emergency does not mean that the response cannot evolve and adapt, provided that it retains its provisional nature.

135 The second part of the Slovak Republic's fifth plea must therefore be rejected.

D. **The pleas relating to the lawfulness of the procedure leading to the adoption of the contested decision and alleging breach of essential procedural requirements**

1. *The Slovak Republic's first plea and Hungary's seventh plea, alleging infringement of Article 68 TFEU*

(a) *Arguments of the parties*

136 The Slovak Republic and Hungary maintain that, since the contested decision was adopted by qualified majority although it followed from the European Council's conclusions of 25 and 26 June 2015 that the decision had to be adopted 'by consensus' in a manner 'reflecting the specific situations of Member States', the Council infringed Article 68 TFEU and breached essential procedural requirements.

137 The Slovak Republic and Hungary submit that the Council should, at the time of the adoption of the contested decision, have followed the guidelines deriving from those conclusions, in particular the requirement that a distribution of applicants in clear need of international protection between the Member States should be by a decision adopted unanimously or in the form of voluntary allocations agreed by the Member States.

138 They submit that it was particularly important that the Council abide by the conclusions of the European Council since the Council should have taken account of the fact that the relocation of applicants for international protection is a politically sensitive question for several Member States given that such a relocation measure significantly undermines the present system under the Dublin III Regulation.

139 Hungary submits in particular that, since the conclusions of the European Council of 25 and 26 June 2015 expressly provided for the Council to take a decision only in respect of the relocation of 40 000 applicants for international protection, the Council was not entitled to decide on the relocation of 120 000 additional applicants without having obtained the European Council's agreement in principle in that regard. Consequently, both the Commission's presentation of a proposal for a decision entailing such additional relocation and the Council's adoption of that proposal constitute, in its view, an infringement of Article 68 TFEU and a breach of essential procedural requirements.

140 The Council contends that there is no contradiction between the contested decision and the European Council's conclusions of 25 and 26 June 2015.

141 The Council further submits that the conclusions whereby the European Council defines 'directions' do not provide the action taken by the other institutions either with a legal basis or with rules and principles by reference to which the Court reviews the legality of the acts of the

other EU institutions, even though such directions are binding on the European Union under Article 15 TEU and are therefore not purely political in nature.

142 The Commission argues that, as the conclusions of the European Council are not binding but merely have effects at a political level, such conclusions cannot determine or limit, from the legal standpoint, the Commission's right of initiative to propose measures on the basis of Article 78(3) TFEU or the Council's power to adopt a decision under that provision after consulting the Parliament.

(b) *Findings of the Court*

143 The conclusions of the European Council of 25 and 26 June 2015 state that the Member States should agree 'by consensus' on a distribution 'reflecting the specific situations of Member States'. On that point, those conclusions expressly refer to 'the temporary and exceptional relocation over two years from Italy and Greece ... to other Member States of 40 000 persons in clear need of international protection' by means of 'the rapid adoption by the Council of a decision to this effect'.

144 That mechanism for the relocation of 40 000 persons formed the subject matter of Decision 2015/1523, which was adopted on 14 September 2015 by consensus. Thus, on that point Decision 2015/1523 implemented those conclusions in full.

145 As regards the alleged effect of the 'political' nature of the conclusions of the European Council of 25 and 26 June 2015 on both the Commission's power of legislative initiative and the voting rules within the Council, as provided for in Article 78(3) TFEU, such an effect — assuming it to be established and discussed within the European Council — cannot be a ground on which the Court may annul the contested decision.

146 First, the power of legislative initiative accorded to the Commission by Article 17(2) TEU and Article 289 TFEU — which reflects the principle of conferred powers, enshrined in Article 13(2) TEU, and, more broadly, the principle of institutional balance, characteristic of the institutional structure of the European Union — means that it is for the Commission to decide whether to bring forward a proposal for a legislative act. In that connection, it is also for the Commission, which, in accordance with Article 17(1) TEU, is to promote the general interest of the European Union and take appropriate initiatives to that end, to determine the subject matter, objective and content of the proposal (see, to that effect, judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraphs 64 and 70).

147 Those principles also apply to the Commission's power of initiative in the context of the adoption, on the basis of Article 78(3) TFEU, of non-legislative acts, such as the contested decision. In that regard, as the Advocate General has also observed in point 145 of his Opinion, Article 78(3) TFEU does not make the Commission's power of initiative conditional upon the European Council's having previously defined guidelines under Article 68 TFEU.

148 Secondly, Article 78(3) TFEU allows the Council to adopt measures by a qualified majority, as it did when it adopted the contested decision. The principle of institutional balance prevents the European Council from altering that voting rule by imposing on the Council, by means of conclusions adopted pursuant to Article 68 TFEU, a rule requiring a unanimous vote.

149 Indeed, as the Court has already held, as the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaties and are not within the discretion of the Member States or of the institutions themselves, the Treaties alone may, in particular cases, empower an institution to amend a decision-making procedure established by the Treaties (judgment of 10 September 2015, *Parliament* v *Council*, C-363/14, EU:C:2015:579, paragraph 43).

150 The Slovak Republic's first plea and Hungary's seventh plea must therefore be rejected as unfounded.

2. *The third part of the Slovak Republic's third plea and the first part of its fourth plea, and Hungary's fifth plea, alleging breach of essential procedural requirements in that the Council did not comply with the obligation to consult the Parliament laid down in Article 78(3) TFEU*

(a) *Arguments of the parties*

151 The Slovak Republic and Hungary claim that, since the Council made substantial amendments to the Commission's initial proposal and adopted the contested decision without consulting the Parliament afresh, it breached the essential procedural requirements laid down in Article 78(3) TFEU, with the consequence that the contested decision must be annulled. The Slovak Republic maintains that, in proceeding in that way, the Council also infringed Article 10(1) and (2) and Article 13(2) TEU and breached the principles of representative democracy, institutional balance and sound administration.

152 It is argued that the most significant amendments to the Commission's initial proposal concern the fact that, in the contested decision, Hungary is no longer among the Member States that benefit from relocation as do the Hellenic Republic and the Italian Republic, but is instead among the Member States of relocation. That entailed, in particular, the deletion of Annex III to the Commission's initial proposal, which concerned relocation quotas from Hungary, and the inclusion of Hungary in Annexes I and II to the contested decision.

153 The Slovak Republic mentions other amendments which were made to the Commission's initial proposal and are included in the contested decision, including the fact that that decision does not lay down an exhaustive list of the Member States that may benefit from the system of relocation which it establishes but provides, in Article 4(3), that other Member States may benefit from it if they satisfy the conditions set out in that provision.

154 The applicants take issue with the Council for having failed to consult the Parliament again after making those amendments to the Commission's initial proposal, even though, in its resolution of 17 September 2015, the Parliament had asked the Council to consult it again if it intended to substantially amend the Commission's proposal.

155 Although the Presidency of the European Union regularly informed the Parliament, in particular the Parliament's Civil Liberties, Justice and Home Affairs Committee, of how the Council's dossier was progressing, that cannot, in the applicants' submission, replace a formal resolution of the Parliament adopted in plenary session.

156 Hungary refers in that regard to two letters sent by the President of the Parliament's Legal Affairs Committee to the President of the Parliament, in which it is stated that that committee had reached the conclusion that the Council had substantially amended the

Commission's initial proposal by removing Hungary from the group of beneficiary Member States and that the Parliament should therefore have been consulted again.

157 The Council's primary contention is that, in view of the urgent nature of the case, its consultation of the Parliament was sufficient, enabling the latter to familiarise itself, in good time, with the substance of the final text of the contested decision and to express a view on the matter. In any event, the text of the contested decision, as finally adopted and taken as a whole, did not substantially depart from the text on which the Parliament had been consulted on 14 September 2015.

(b) *Findings of the Court*

158 It should be noted as a preliminary point that the Council contends that the letters from the Parliament's Legal Affairs Committee, which were produced by Hungary in an annex to its reply and are mentioned in paragraph 156 of the present judgment, are inadmissible as evidence since they were improperly obtained. It requests that the Court, as a precautionary step, remove those letters from the file in the present cases. Like Hungary, it asks the Court to adopt a measure of inquiry inviting the Parliament to confirm whether the letters are authentic and, if they are, to clarify their legal status and to let the Court know whether it would agree to Hungary using the letters as evidence.

159 In that regard, the Court considers that, since it has been sufficiently informed of the facts relating to the question whether, in the present case, the Council complied with its obligation to consult the Parliament, as provided for in Article 78(3) TFEU, it is in a position to decide that question of law without it being necessary to address the requested measure of inquiry to the Parliament.

160 As for the substance, it must be recalled that due consultation of the Parliament in the cases provided for by the Treaty constitutes an essential procedural requirement disregard of which renders the measure concerned void. Effective participation of the Parliament in the decision-making process, in accordance with the procedures laid down by the Treaty, represents an essential element of the institutional balance intended by the Treaty. This function reflects the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly (see, to that effect, inter alia, judgments of 11 November 1997, *Eurotunnel and Others*, C-408/95, EU:C:1997:532, paragraph 45, and of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraphs 24 and 25).

161 The Court has consistently held that the obligation to consult the Parliament in the decision-making procedure in the cases provided for by the Treaty means that the Parliament must be consulted again whenever the text finally adopted, taken as a whole, differs in essence from the text on which the Parliament has already been consulted, except in cases in which the amendments substantially correspond to the wishes of the Parliament itself (see judgments of 11 November 1997, *Eurotunnel and Others*, C-408/95, EU:C:1997:532, paragraph 46, and of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 26).

162 Amendments which go to the heart of the arrangements established or affect the scheme of the proposal as a whole are to be regarded as substantial amendments (see, to that effect, judgment of 1 June 1994, *Parliament* v *Council*, C-388/92, EU:C:1994:213, paragraphs 13 and 18).

163 In this regard, the various amendments to the Commission's initial proposal which related to the change of Hungary's status were made by the Council after Hungary had refused to be a beneficiary of the relocation mechanism provided for by the proposal. Nevertheless, taking account in particular of the fact that Article 78(3) TFEU concerns the adoption of provisional measures for the benefit of one or more Member States confronted with an emergency situation within the meaning of that provision, the determination of the Member States benefiting from those provisional measures is an essential element of any measure adopted on the basis of Article 78(3) TFEU.

164 It must therefore be held that the text of the contested decision as finally adopted, taken as a whole, differs in essence from the Commission's initial proposal.

165 It must, however, be noted that on 16 September 2015 the President of the Council stated at an extraordinary plenary sitting of the Parliament:

'Given the urgency of the situation and as mentioned in the letter consulting the Parliament, I am taking the opportunity to inform you that there will be a significant departure from the [Commission's] initial proposal.

Hungary does not consider itself to be a frontline country and has told us that it does not wish to be a beneficiary of relocation.

The Parliament will be able to take this information into account in its opinion.'

166 Accordingly, in its legislative resolution of 17 September 2015 expressing its support for the Commission's initial proposal, the Parliament must necessarily have taken account of that fundamental change in Hungary's status, which the Council was bound to respect.

167 Furthermore, although the Council made other amendments to the Commission's initial proposal following the Parliament's adoption of that legislative resolution, those amendments did not affect the very essence of the proposal.

168 Moreover, the Council Presidency, within the framework of the informal contacts mentioned in the consultation letter, kept the Parliament fully informed of those amendments.

169 The obligation to consult the Parliament laid down in Article 78(3) TFEU was therefore complied with.

170 In view of the foregoing, the Court rejects as unfounded the third part of the Slovak Republic's third plea and the first part of its fourth plea and Hungary's fifth plea.

3. *The second part of the Slovak Republic's fourth plea and Hungary's third plea, alleging breach of essential procedural requirements in that the Council did not act unanimously, contrary to Article 293(1) TFEU*

(a) *Arguments of the parties*

171 The Slovak Republic and Hungary maintain that, in adopting the contested decision, the Council breached the essential procedural requirement imposed in Article 293(1) TFEU, in that it amended the Commission's proposal without complying with the requirement for unanimity laid down in that provision. The Slovak Republic submits that, in so doing, the

Council also infringed Article 13(2) TEU and breached the principles of institutional balance and sound administration.

172 The applicants argue that the requirement for unanimity laid down in Article 293(1) TFEU applies to any amendment of the Commission's proposal, including where the amendment is minor and regardless of whether the Commission has explicitly or implicitly accepted the amendments made to its proposal during the discussions within the Council.

173 They also claim that there is nothing to indicate that, during the procedure leading to the adoption of the contested decision, the Commission withdrew its proposal and submitted a new proposal drafted in identical terms to those of the text that was finally adopted. On the contrary, it follows from the minutes of the Council's sitting of 22 September 2015 that the Commission neither lodged a new proposal nor made a preliminary declaration concerning the amended proposal as finally adopted by the Council.

174 However, the Commission is required to endorse actively and explicitly the amendments concerned before it can be considered to have altered its proposal within the meaning of Article 293(2) TFEU. The present case is, they submit, different in this respect from that at issue in the judgment of 5 October 1994, *Germany* v *Council* (C-280/93, EU:C:1994:367).

175 The Council replies that, on 22 September 2015, during the Council meeting at which the contested decision was adopted, the Commission, represented by its First Vice-President and by the Commissioner responsible for asylum and immigration, agreed to all the Council's amendments to the Commission's initial proposal. That agreement — even if it were considered to be implicit — would amount to an alteration of the proposal on the part of the Commission.

176 The Commission similarly submits that it amended its proposal in accordance with the amendments adopted by the responsible Commissioners on its behalf in order to facilitate the proposal's adoption.

(b) *Findings of the Court*

177 Article 293 TFEU attaches to the Commission's power of initiative — in this case the power conferred by Article 78(3) TFEU in the framework of a non-legislative procedure — a twofold safeguard. On the one hand, Article 293(1) TFEU provides that where, pursuant to the Treaties, the Council acts on a proposal from the Commission, it may amend that proposal only by acting unanimously, except in the cases referred to in the provisions of the FEU Treaty which are mentioned in Article 293(1) and which are of no relevance in the present case. On the other hand, Article 293(2) TFEU states that, as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of an EU act (see, to that effect, judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraphs 71 to 73).

178 It follows that if, under Article 293(2) TFEU, the Commission amends its proposal during the procedure for adoption of an EU act, the Council is not subject to the requirement for unanimity laid down in Article 293(1) TFEU.

179 So far as Article 293(2) TFEU is concerned, the Court has already held that the amended proposals that the Commission adopts do not have to be in writing as they are part of

the process for adopting EU acts, a characteristic of which is a degree of flexibility, necessary for achieving a convergence of views between the institutions (see, to that effect, judgment of 5 October 1994, *Germany* v *Council*, C-280/93, EU:C:1994:367, paragraph 36).

180 Such considerations as to flexibility must, a fortiori, prevail in the case of the procedure for adopting an act on the basis of Article 78(3) TFEU, since the purpose of that provision is to make it possible for provisional measures to be adopted quickly so as to provide a rapid and effective response to an 'emergency situation' within the meaning of that provision.

181 It follows that, in the particular context of Article 78(3) TFEU, the Commission may be considered to have exercised its power of amendment under Article 293(2) TFEU when its participation in the process for adopting the measure concerned clearly shows that it has approved the amended proposal. Such an interpretation is consistent with the objective of Article 293(2) TFEU, which seeks to protect the Commission's power of initiative.

182 In the present case the Commission does not consider its power of initiative under Article 78(3) TFEU to have been undermined.

183 It submits in that regard that it amended its initial proposal since it approved the amendments made to that document at the various meetings held within the Council.

184 It states that it was represented at those meetings by two of its Members, namely its First Vice-President and the Commissioner responsible, inter alia, for immigration. They were duly empowered by the College of Commissioners, pursuant to Article 13 of the Commission's Rules of Procedure, to approve amendments to its initial proposal in keeping with the priority objective, set by the College of Commissioners at its meeting of 16 September 2015, which was that the Council should adopt a binding and immediately applicable decision concerning the relocation of 120 000 persons in clear need of international protection.

185 In this connection, it follows from Article 13 of the Commission's Rules of Procedure, interpreted in the light of the objective of Article 293(2) TFEU of protecting the Commission's power of initiative, that the College of Commissioners may authorise one or more of its Members to amend, in the course of the procedure, the Commission's proposal within the limits that the College has previously defined.

186 Although the Slovak Republic and Hungary dispute the fact that the two Members of the Commission in question had been duly empowered by the College of Commissioners, as required by Article 13 of the Commission's Rules of Procedure, to approve the amendments to the initial proposal, those Member States have adduced no evidence which casts doubt on the veracity of the Commission's remarks or the reliability of the evidence that it has put before the Court.

187 In view of those matters, it must be held that in the present case the Commission exercised its power under Article 293(2) TFEU to amend a proposal, since its participation in the process for adopting the contested decision clearly shows that the amended proposal was approved on behalf of the Commission by two of its Members, who were authorised by the College of Commissioners to adopt the amendments concerned.

188 Accordingly, the Council was not subject to the requirement for unanimity laid down in Article 293(1) TFEU.

189 In the light of the foregoing, the Court rejects as unfounded the second part of the Slovak Republic's fourth plea and Hungary's third plea.

4. *The first and second parts of the Slovak Republic's third plea and Hungary's fourth plea, alleging breach of essential procedural requirements, in that the right of the national parliaments to issue an opinion in accordance with Protocol (No 1) and Protocol (No 2) was not respected and that the Council failed to fulfil the requirement that the deliberations and the vote within the Council be held in public*

(a) *Arguments of the parties*

190 The Slovak Republic, by way of alternative plea, and Hungary claim that, at the time of the adoption of the contested decision, the right of the national parliaments to issue an opinion on any draft proposal for a legislative act, as provided for in Protocols (No 1) and (No 2) was not respected.

191 The Slovak Republic further maintains, in the alternative, that if the Court were to hold that the contested decision had to be adopted by means of a legislative procedure, the Council breached an essential procedural requirement by adopting the contested decision *in camera*, following the rule applicable when it carries out its non-legislative activities, whilst Article 16(8) TEU and Article 15(2) TFEU provide that the meetings of the Council are to be held in public when it considers and votes on a draft legislative act.

192 The Council contends that since the contested decision is a non-legislative act, the decision is not subject to the conditions attached to the adoption of a legislative act.

(b) *Findings of the Court*

193 Since, as is apparent from paragraph 67 of the present judgment, the contested decision must be classified as a non-legislative act, it follows that the adoption of that act in a non-legislative procedure was not subject to the requirements relating to the participation of the national parliaments provided for by Protocols (No 1) and (No 2) or the requirements relating to the public nature of the deliberations and the vote within the Council, which apply only when draft legislative acts are adopted.

194 Accordingly, the first and second parts of the Slovak Republic's third plea and Hungary's fourth plea must be rejected as unfounded.

5. *Hungary's sixth plea, alleging breach of essential procedural requirements in that, when adopting the contested decision, the Council did not comply with the rules of EU law on the use of languages*

(a) *Arguments of the parties*

195 Hungary maintains that the contested decision is vitiated by a fundamental procedural error inasmuch as the Council failed to comply with the rules of EU law on the use of languages.

196 It claims, in particular, that the Council infringed Article 14(1) of its Rules of Procedure since the texts setting forth the successive amendments to the Commission's initial proposal,

including, ultimately, the text of the contested decision as adopted by the Council, were provided to the Member States only in English.

197 In its reply, the Slovak Republic raises a similar plea, which it considers to involve a question of public policy, alleging breach of essential formal requirements, in that the Council failed to comply with the language rules, in particular Article 14(1) of its Rules of Procedure, in the adoption of the contested decision.

198 The Council submits that the Council's deliberations were conducted in accordance with EU law on the use of languages and, in particular, with the simplified language rules that apply in the case of amendments, as provided for by Article 14(2) of the Council's Rules of Procedure.

(b) *Findings of the Court*

199 As a preliminary point, the Court notes, without there being any need to rule on the admissibility of the plea raised by the Slovak Republic alleging an infringement of the rules of EU law on the use of languages, that that plea overlaps with Hungary's sixth plea, which must be examined as to its substance.

200 Hungary's sixth plea alleges infringement of Article 14 of the Council's Rules of Procedure, which is headed 'Deliberations and decisions on the basis of documents and drafts drawn up in the languages provided for by the language rules in force' and in particular of Article 14(1) of those rules, which provides that except as otherwise decided unanimously by the Council on grounds of urgency, the Council is to deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages. Under Article 14(2) of those rules, any member of the Council may oppose discussion if any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 of that article.

201 The Council submits that Article 14 must be interpreted — and is applied in practice by the institution — to the effect that, whilst paragraph 1 of that article requires that the drafts that constitute the 'basis' of the Council's deliberations, in this instance the Commission's initial proposal, must as a rule be drawn up in all the official languages of the European Union, paragraph 2 lays down a simplified procedure for amendments, which do not necessarily have to be available in all the official languages of the European Union. Only where a Member State objects do the language versions indicated by that Member State also have to be submitted to the Council before it can continue to deliberate.

202 The Council's Comments on its Rules of Procedure explain, in the same vein, that Article 14(2) of those rules enables any member of the Council to oppose discussion if any proposed amendments are not drawn up in all the official languages of the European Union.

203 Even though, as the Court has already stated, the European Union is committed to the preservation of multilingualism, the importance of which is stated in the fourth subparagraph of Article 3(3) TEU (see, to that effect, judgment of 5 May 2015, *Spain* v *Council*, C-147/13, EU:C:2015:299, paragraph 42), the Council's interpretation of its Rules of Procedure must be accepted. That interpretation in fact reflects a balanced and flexible approach conducive to efficacy and speed in the Council's work, which are especially important in the particular context of urgency characterising the procedure for adopting provisional measures on the basis of Article 78(3) TFEU.

204 It is common ground that in the present case the Commission's initial proposal was made available to all the delegations of the Member States in all the official languages of the European Union. Furthermore, Hungary has not disputed the fact that no Member State raised any objection to discussions being on the basis of documents drafted in English and setting out the agreed amendments and that, moreover, all the amendments were read by the President of the Council and simultaneously interpreted into all the official languages of the European Union.

205 Having regard to all the foregoing, the Court rejects as unfounded the plea raised by the Slovak Republic and Hungary's sixth plea, which concern an alleged infringement of the European Union's language rules.

E. **The substantive pleas in law**

1. *The Slovak Republic's 6th plea and Hungary's 9th and 10th pleas, alleging breach of the principle of proportionality*

(a) *Preliminary observations*

206 As a preliminary point, it must be recalled that, according to settled case-law of the Court, the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, inter alia, judgment of 4 May 2016, *Poland* v *Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 78 and the case-law cited).

207 With regard to judicial review of compliance with that principle, it should also be borne in mind, as has already been stated in paragraph 124 of the present judgment, that the EU institutions must be allowed broad discretion when they adopt measures in areas which entail choices on their part, including of a political nature, and in which they are called upon to undertake complex assessments. Consequently, the legality of a measure adopted in one of those areas can be affected only if the measure is manifestly inappropriate having regard to the objective which those institutions are seeking to pursue (see, to that effect, judgment of 4 May 2016, *Poland* v *Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 79 and the case-law cited).

208 The principles thus affirmed by the Court's case-law are fully applicable to the measures adopted in the area of the European Union's common policy on asylum and, in particular, to provisional measures adopted on the basis of Article 78(3) TFEU, such as those provided for in the contested decision. Those measures entail essentially political choices and complex assessments that must, in addition, be made within a short time in order to provide a swift and tangible response to an 'emergency situation' within the meaning of that provision.

(b) *The Slovak Republic's sixth plea, in so far as it alleges that the contested decision is not appropriate for attaining the objective which it pursues*

(1) *Arguments of the parties*

209 The Slovak Republic, supported by the Republic of Poland, claims that the contested decision is not appropriate for attaining the objective which it pursues and that the decision is therefore contrary to the principle of proportionality, laid down in Article 5(4) TEU and Articles 1 and 5 of Protocol (No 2).

210 In its view, the contested decision is not appropriate for attaining that objective because the relocation mechanism for which it provides is not capable of redressing the structural defects in the Greek and Italian asylum systems. Those shortcomings, which relate to lack of reception capacity and of capacity to process applications for international protection, need to be remedied before the relocation can actually be implemented. Moreover, the small number of relocations that have so far been carried out shows that, ever since its adoption, the relocation mechanism set up by the contested decision has been inappropriate for attaining the intended objective.

211 The Council and the Member States supporting it contend that, although there are structural defects in the Greek and Italian asylum systems, the relocation mechanism set up by the contested decision is appropriate for attaining its objective, in that it relieves the unsustainable pressure to which the asylum systems of the Hellenic Republic and the Italian Republic were subject after the unprecedented influx of migrants to their respective territories in 2015. They submit that any Member State whatsoever would have found that pressure unsustainable, including those whose asylum systems do not suffer from structural weaknesses. Moreover, the relocation mechanism is one of a broad range of financial and operational measures to support the asylum systems of the Hellenic Republic and the Italian Republic. The contested decision also imposes obligations on those two Member States, the aim of which is to enhance the efficiency of their respective asylum systems.

(2) *Findings of the Court*

212 The objective of the relocation mechanism provided for in the contested decision, in the light of which the proportionality of that mechanism must be considered, is, according to Article 1(1) of the decision, read in conjunction with recital 26 thereof, to help the Hellenic Republic and the Italian Republic cope with an emergency situation characterised by a sudden inflow, in their respective territories, of third country nationals in clear need of international protection, by relieving the significant pressure on the Greek and Italian asylum systems.

213 The mechanism for relocating a significant number of applicants in clear need of international protection for which the contested decision provides cannot be considered a measure that is manifestly inappropriate for working towards that objective.

214 It is equally hard to deny that any asylum system, even one without structural weaknesses in terms of reception capacity and capacity to process applications for international protection, would have been seriously disrupted by the unprecedented influx of migrants that occurred in Greece and Italy in 2015.

215 In addition, the relocation mechanism provided for in the contested decision forms part of a set of measures intended to relieve the pressure on Greece and Italy. The specific purpose of a number of those measures is to improve the functioning of their respective asylum systems. Consequently, the appropriateness of the relocation mechanism for attaining its objectives cannot be assessed in isolation but must be viewed within the framework of the set of measures of which it forms part.

216 Thus, Article 8 of the contested decision provides for complementary measures, in particular to enhance the capacity, quality and efficiency of the asylum systems, which must be taken by the Hellenic Republic and the Italian Republic. Those measures supplement the measures already prescribed by Article 8 of Decision 2015/1523 and their aim is, according to recital 18 of the contested decision, to oblige those Member States 'to provide structural solutions to address exceptional pressures on their asylum and migration systems, by establishing a solid and strategic framework for responding to the crisis situation and intensifying the ongoing reform process in these areas'.

217 Furthermore, Article 7 of the contested decision allows for the provision of operational support for the Hellenic Republic and the Italian Republic and Article 10 provides for them to receive financial support for each person relocated.

218 The relocation mechanism provided for in the contested decision also supplements other measures intended to take pressure off the Greek and Italian asylum systems, which have been severely disrupted by the successive surges in migratory flows since 2014. That is the case of (i) the European programme for the resettlement of 22 504 persons in need of international protection agreed upon on 20 July 2015 by the Member States and the States associated with the system deriving from the Dublin III Regulation, (ii) Decision 2015/1523 concerning the relocation of 40 000 persons in clear need of international protection, and (iii) the establishment of 'hotspots' in Italy and Greece, where all the EU agencies responsible for asylum-related matters and experts from the Member States work specifically with local and national authorities to help the Member States concerned meet their obligations under EU law with regard to such persons, in terms of checking, identification, registration of testimony and fingerprinting.

219 Moreover, as is stated in recital 15 of the contested decision, the Hellenic Republic and the Italian Republic have received substantial operational and financial support from the European Union in the framework of the migration and asylum policy.

220 Lastly, it cannot be concluded, a posteriori, from the small number of relocations so far carried out pursuant to the contested decision that the latter was, from the outset, inappropriate for attaining the objective pursued, as is argued by the Slovak Republic and by Hungary in the context of its ninth plea.

221 In fact, the Court has consistently held that the legality of an EU act cannot depend on retrospective assessments of its efficacy. Where the EU legislature is obliged to assess the future effects of rules to be adopted and those effects cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question (see, inter alia, judgments of 12 July 2001, *Jippes and Others*, C-189/01, EU:C:2001:420, paragraph 84, and of 9 June 2016, *Pesce and Others*, C-78/16 and C-79/16, EU:C:2016:428, paragraph 50).

222 In the present case, as can be seen from, inter alia, recitals 13, 14 and 26 of the contested decision, when the Council adopted the mechanism for the relocation of a large number of applicants for international protection, it carried out, on the basis of a detailed examination of the statistical data available at the time, a prospective analysis of the effects of the measure on the emergency situation in question. In the light of those data, that analysis does not appear manifestly incorrect.

223 Moreover, it is apparent that the small number of relocations so far carried out pursuant to the contested decision can be explained by a series of factors that the Council could not foresee at the time when the decision was adopted, including, in particular, the lack of cooperation on the part of certain Member States.

224 Having regard to the foregoing, the Court rejects as unfounded the Slovak Republic's sixth plea, in so far as it alleges that the contested decision is not appropriate for attaining the objective which it pursues.

(c) *The Slovak Republic's sixth plea, in so far as it alleges that the contested decision is not necessary in the light of the objective which it seeks to attain*

(1) *Arguments of the parties*

225 The Slovak Republic, supported by the Republic of Poland, maintains, first of all, that the objective pursued by means of the contested decision could be achieved just as effectively by other measures which could have been taken in the context of existing instruments and would have been less restrictive for Member States and impinged less on the 'sovereign' right of each Member State to decide freely upon the admission of nationals of third countries to its territory and on the right of Member States, set out in Article 5 of Protocol (No 2), that the financial and administrative burden should be minimised.

226 First, the Slovak Republic submits that recourse could have been had to the mechanism provided for by Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ 2001 L 212, p. 12).

227 It argues that the purpose of Directive 2001/55 is in essence to respond to the same situations of massive inflows of migrants as the contested decision by laying down a procedure for relocating persons qualifying for temporary protection. However, that directive is less harmful to the sovereign right of each Member State to decide freely on the admission of nationals of third countries to its territory, above all because it permits the Member States to decide themselves, in view of their reception capacity, how many persons are to be relocated to their territory. In addition, the status of temporary protection confers fewer rights than the status of international protection that the contested decision seeks to afford, in particular as regards the period of protection, and thus imposes significantly fewer burdens on the Member State of relocation.

228 Secondly, the Slovak Republic submits that the Hellenic Republic and the Italian Republic could have triggered what is known as the 'EU civil protection' mechanism provided for in Article 8a of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349, p. 1). That mechanism could have provided them with the necessary material assistance.

229 The Slovak Republic claims, thirdly, that the Hellenic Republic and the Italian Republic could also have sought assistance from the Frontex Agency in the form of 'rapid intervention'. Likewise, in accordance with Article 2(1)(f) and Article 9(1) and (1b) of Regulation No 2007/2004, those two Member States could, in its submission, have asked the Frontex Agency to procure for them the necessary assistance to arrange return operations.

230 Such assistance from the Frontex agency would have been capable of providing direct relief for the asylum and migration systems of those two Member States, since it would have allowed them to concentrate their resource on migrants who were applying for international protection.

231 Next, the Slovak Republic claims that it was not necessary to adopt other measures on the basis of Article 78(3) TFEU, as Decision 2015/1523 leaves it to the Member States to decide, in a spirit of solidarity, upon the extent to which they will participate in the common commitment. That decision is therefore less prejudicial to their sovereignty. Since the contested decision was adopted only eight days after Decision 2015/1523 providing for the relocation of 40 000 persons, it was impossible to conclude in such a brief period that Decision 2015/1523 was not appropriate for the purpose of responding to the situation obtaining at that time. Indeed, at the time of the adoption of the contested decision, nothing gave the Council grounds for considering that the reception measures provided for in Decision 2015/1523 would quickly become insufficient and that additional measures would be necessary.

232 The Slovak Republic further argues that Article 78(3) TFEU also made it possible to adopt measures which, whilst less restrictive for the Member States, would be suitable for attaining the objective pursued, such as the provision of assistance to facilitate return and registration or the provision of financial, material, technical and personnel support to the Italian and Greek asylum systems. The Member States could also take bilateral initiatives, on a voluntary basis, in order to provide such support and such initiatives have in fact been taken.

233 The Slovak Republic submits, finally, that the relocation of applicants provided for in the contested decision inevitably entails a financial and administrative burden for the Member States. The imposition of such a burden was not necessary since other, less restrictive measures were feasible. Consequently, the decision constitutes a superfluous and premature measure, contrary to the principle of proportionality and to Article 5 of Protocol (No 2).

234 The Council contends that, at the time of the adoption of the contested decision, it made sure, in accordance with the principle of proportionality, that there was no alternative measure that would enable the objective pursued by that decision to be attained as effectively, while impinging as little as possible on the sovereignty of the Member States or their financial interests. The alternative measures listed by the Slovak Republic do not, however, work to that effect.

(2) *Findings of the Court*

235 The Slovak Republic has put forward various arguments to demonstrate that the contested decision was unnecessary because the Council could have achieved the objective pursued by the decision by means of less restrictive measures that impinged less on the right of the Member States to decide, in compliance with the rules adopted by the European Union in the area of the common asylum policy, on the access to their territories of third country nationals. Before examining those arguments, it is necessary to recall the particularly sensitive context in which the contested decision was adopted, namely the acute emergency in Greece and Italy at that time, which was characterised by a sudden massive inflow of nationals of third countries in July and August 2015.

236 In such a particular context and in view of the principles already outlined in paragraphs 206 to 208 of the present judgment, it must be accepted that the decision to adopt

a compulsory mechanism for relocating 120 000 persons under Article 78(3) TFEU, whilst it must be founded on objective criteria, may be censured by the Court only if it is found that, when the Council adopted the contested decision, it made, in the light of the information and data available at that time, a manifest error of assessment in the sense that another measure that was less restrictive, but equally effective, could have been adopted within the same period.

237 In that regard, it should be noted, first, that, whilst it is true that Decision 2015/1523 was adopted on 14 September 2015 — in other words eight days before the contested decision — there is a connection between those measures.

238 Decision 2015/1523 was intended to put into effect the conclusions of the European Council of 25 and 26 June 2015 as well as the agreement between the Member States in the form of a resolution dated 20 July 2015. As can be seen from the statistical data mentioned in recitals 10 and 11 of Decision 2015/1523, the purpose of the latter was to respond to an emergency situation that had arisen in the first six months of 2015.

239 It is also clear from recital 21 of that decision that the total of 40 000 applicants was set on the basis of (i) the overall number of third country nationals who entered Italy or Greece irregularly in 2014 and (ii) the number of those persons who were in clear need of international protection, who represented around 40% of the overall number of third country nationals. It was decided on the basis of those 2014 figures that, of those 40 000 persons, 60% should be relocated from Italy and 40% from Greece.

240 On the other hand, it is apparent from the considerations and statistical data which the Council took as its basis when it adopted the contested decision and which are mentioned in particular in recitals 12, 13 and 26 thereof that the Council considered that a relocation mechanism for 120 000 persons, in addition to the mechanism provided for by Decision 2015/1523, had to be established in order to relieve the pressure on the Italian Republic and, above all, on the Hellenic Republic in the light of the new emergency arising from the fact that a huge number of migrants had entered those Member States irregularly in the first eight months of 2015, in particular in July and August of that year.

241 That further inflow of migrants, which was on an unprecedented scale, was also characterised by the fact that it came about, as is stated in recital 12 of the contested decision, because migration flows had shifted from the central to the eastern Mediterranean and towards the western Balkans route. That partial shift of the crisis from Italy to Greece also explains why it was decided that 13% of the total of 120 000 applicants for international protection should be relocated from Italy and 42% from Greece.

242 In those circumstances, the Council cannot be held to have made a manifest error of assessment in considering, in view of the most recent data available to it, that the emergency situation as at 22 September 2015 justified relocating 120 000 persons and that the relocation of 40 000 persons already provided for in Decision 2015/1523 would not be sufficient.

243 Secondly, as regards the impact of the contested decision on the legal framework governing the admission of third country nationals, the Court notes that the relocation mechanism provided for in the decision, whilst mandatory, applies for a two-year period only and concerns a limited number of migrants in clear need of international protection.

244 The binding effect of the contested decision is also limited because the decision makes it a condition of a relocation that Member States indicate, at regular intervals, and at least every three months, the number of applicants who can be relocated swiftly to their territory (Article 5(2) of the contested decision) and that they approve the relocation of the person concerned (Article 5(4) of the decision), with the proviso that, under Article 5(7) of the decision, a Member State may refuse to relocate an applicant only where there are reasonable grounds for doing so, related to public order or national security.

245 Thirdly, as regards the Slovak Republic's argument that the contested decision is disproportionate because it needlessly imposes a binding mechanism entailing the compulsory distribution between the Member States, in the form of quotas, of specific numbers of relocated persons, the Council does not appear to have made a manifest error of assessment in having chosen to introduce a binding relocation mechanism of that kind.

246 In fact, the Council was fully entitled to take the view, in the exercise of the broad discretion which it must be allowed in this regard, that the distribution of the persons to be relocated had to be mandatory, given the particular urgency of the situation in which the contested decision was to be adopted.

247 The Council has stated moreover, without being challenged on this point, that it had had to accept that the distribution by consensus between the Member States of the 40 000 persons concerned by Decision 2015/1523 had, even after long negotiations, ended in failure: consequently, when that decision was finally adopted, it did not include a table setting out the commitments of the Member States of relocation.

248 Nor is it disputed that, in the discussions on the contested decision within the Council, it quickly became clear that a decision by consensus, in particular on the distribution of the persons relocated, would prove to be impossible in the short term.

249 The Council was, however, bound, in view of the critical situation of the Hellenic Republic and the Italian Republic following the unprecedented inflow of migrants in July and August 2015, to take measures which could be swiftly put in place and actually have an effect in helping those Member States to control the large migration flows on their territory.

250 In addition, in view of the considerations and statistical data referred to, inter alia, in recitals 12 to 16 of the contested decision, there is no ground for maintaining that the Council made a manifest error of assessment in concluding that the situation called for the adoption of a temporary relocation measure that was binding in nature.

251 It is thus apparent (i) from recital 15 of the contested decision that the Council found that many actions had already been taken to support the Hellenic Republic and the Italian Republic in the framework of the migration and asylum policy and (ii) from recital 16 of the decision that, since it was likely that significant and growing pressure would continue to be put on the Greek and Italian asylum systems, the Council considered it vital to show solidarity towards those two Member States and to complement the actions already taken with the provisional measures provided for in the contested decision.

252 In that regard, the Council, when adopting the contested decision, was in fact required, as is stated in recital 2 of the decision, to give effect to the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States,

which applies, under Article 80 TFEU, when the EU common policy on asylum is implemented.

253 Thus, in the circumstances of this case, there is no ground for complaining that the Council made a manifest error of assessment when it considered, in view of the particular urgency of the situation, that it had to take — on the basis of Article 78(3) TFEU, read in the light of Article 80 TFEU and the principle of solidarity between the Member States laid down therein — provisional measures imposing a binding relocation mechanism, such as that provided for in the contested decision.

254 Fourthly, contrary to what is maintained by the Slovak Republic and Hungary, the choice of a binding relocation mechanism cannot be criticised on the ground that Article 78(3) TFEU only permits the adoption of provisional measures that can be swiftly put into effect, whereas the preparation and implementation of a binding relocation mechanism requires a certain amount of time before relocations can proceed at a steady pace.

255 Article 78(3) TFEU seeks to ensure that effective action is taken and does not prescribe for that purpose any period within which provisional measures must be implemented. The Council thus did not go beyond the bounds of its broad discretion when it considered that the situation obtaining in July and August 2015 justified the adoption of a binding relocation mechanism to address that situation and that the mechanism should be established as soon as possible in order to produce tangible results equally soon, following any period necessary for preparation and implementation.

256 As regards Directive 2001/55 in particular, the Council has also maintained, without being contradicted on this point, that the system of temporary protection under that directive did not actually provide a solution to the problem in the present case — namely the complete saturation of reception facilities in Greece and Italy and the need to relieve those Member States as quickly as possible of a large number of migrants who had already arrived in their territory — since that system of temporary protection provides that persons eligible under it are entitled to protection in the Member State where they are located.

257 Fifthly, the choice made in the contested decision to grant international protection rather than a status conferring more limited rights, such as the status of temporary protection for which Directive 2001/55 provides, is an essentially political choice, the appropriateness of which cannot be examined by the Court.

258 So far as concerns, sixthly, the other measures mentioned by the Slovak Republic which it claims would be less restrictive than the contested decision, the Court observes that, unlike the relocation mechanism for which the contested decision provides, measures to strengthen the external borders or measures giving financial or operational support to the Greek and Italian asylum systems, do not provide an adequate response to the need to relieve the pressure on those systems caused by an influx of migrants that had already taken place.

259 They are in fact complementary measures which may contribute to the better control of future inflows of migrants but which, in themselves, cannot solve the existing problem, namely the saturation of the Greek and Italian asylum systems by persons who are already in those Member States.

260 Finally, seventhly, with regard to the argument that establishment of the relocation mechanism provided for in the contested decision will entail disproportionate costs for the

Member States, the Slovak Republic has produced nothing concrete to show that the alternative measures that it proposes — such as increasing the resources, in particular of a technical and financial nature, made available to the Hellenic Republic and the Italian Republic — would clearly involve lower costs than a temporary relocation mechanism.

261 Accordingly, the Court must reject as unfounded the Slovak Republic's arguments whereby it disputes the necessity of the contested decision. Thus, the Slovak Republic's sixth plea must therefore be rejected in its entirety.

(d) *Hungary's ninth plea, alleging that the contested decision is not necessary in the light of the objective which it seeks to attain*

(1) *Arguments of the parties*

262 Hungary, supported by the Republic of Poland, argues that, since the final text of the contested decision, in contrast to the Commission's initial proposal, no longer included Hungary among the beneficiary Member States, there was no reason why the decision should provide for the relocation of 120 000 applicants and that, on that account, the decision is contrary to the principle of proportionality.

263 It is argued that setting that total number of 120 000 persons to be relocated under the contested decision exceeds what is necessary in order to achieve the objective of the decision, since that number includes 54 000 persons who, under the Commission's initial proposal, were to be relocated from Hungary. The failure to reduce the total number of applicants to be relocated is unjustified, given that that number had initially been set on the basis of three, rather than two, beneficiary Member States.

264 It is further submitted that the distribution of the 54 000 applicants whom it was initially envisaged would be relocated from Hungary became hypothetical and uncertain, since the contested decision provides that that distribution is to be the subject of a final decision taken in the light of subsequent developments.

265 Hungary submits that, whilst the purpose of Article 78(3) TFEU is to ensure a rapid response to a situation that is not hypothetical but real, it was not clearly established, when the contested decision was adopted, that the relocation of those 54 000 applicants was necessary and, if that were the case, from which beneficiary Member States the applicants should come.

266 The Council disputes Hungary's arguments, contending, in particular, that — on the basis of all the statistics available when the contested decision was adopted — it could properly take the view that, even after Hungary had given up the status of beneficiary Member State, it was necessary to retain the total of 120 000 persons to be relocated.

(2) *Findings of the Court*

267 It is apparent, first of all, from recital 26 of the contested decision that the Council considered it necessary to relocate 'a significant number of applicants in clear need of international protection' and that the figure of 120 000 applicants was set 'on the [basis of] 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'.

268 In recital 13 of the contested decision, the Council set out inter alia the statistical data relating to the number of irregular entries into Greece and Italy in 2015, and more specifically in July and August 2015, which it accordingly took into account in setting that figure of 120 000 applicants.

269 That information shows that, even after Hungary had given up the status of beneficiary Member State, the Council chose, in view of the gravity of the situation in Greece and Italy in 2015, particularly in July and August of that year, to keep to the total number of 120 000 persons to be relocated.

270 It can also be inferred from recital 26 of the contested decision that the Council retained that total of 120 000 persons because it believed that only the relocation of a 'significant' number of applicants in clear need of international protection could actually reduce the pressure to which the Greek and Italian asylum systems were subject at that time.

271 The fact that it was necessary to retain the 54 000 applicants who had initially been assigned for relocation from Hungary is also supported by recital 16 of the contested decision. That recital states that, because of the ongoing instability and conflicts in the immediate vicinity of Greece and Italy, it was very likely that significant and increased pressure would continue to be put on the Greek and Italian asylum systems after the adoption of the contested decision.

272 Hungary has failed to establish, on the basis of specific information, that the statistical data relied on by the Council in setting at 120 000 the total number of persons to be relocated were not germane. It must thus be found that the Council did not make a manifest error of assessment in retaining that number on the basis of the aforementioned considerations and data, even after Hungary had given up the status of beneficiary Member State.

273 Next, Hungary maintains that the rules governing the 54 000 applicants whom it was initially envisaged would be relocated from Hungary are hypothetical and uncertain because the contested decision provides that those relocations will be the subject of a final decision taken in the light of subsequent developments.

274 However, it is clear from Article 4(1)(c), (2) and (3) of the contested decision that the allocation of those 54 000 applicants is governed by a mechanism which includes a primary rule, set out in Article 4(2) of the decision, whereby, as of 26 September 2016, those applicants will be relocated from Greece and Italy to the territory of other Member States in proportions resulting from the numbers of applicants referred to in Article 4(1)(a) and (b) of the decision.

275 That primary rule is a default rule in the sense that it is accompanied by a flexible rule, set out in Article 4(3) of the contested decision, which enables the primary rule to be adapted or varied if that is justified by the way the situation has evolved or by the fact that a Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries owing to a sharp shift of migration flows.

276 Such a default rule makes it possible to react, should the need arise, to future developments and thereby makes it possible to better adapt relocations to the most urgent needs.

277 If a mechanism that is implemented in two stages over a two-year period for the relocation of a large number of applicants, such as that established by the contested decision, is to be effective, it must be possible, under certain conditions, to adapt that mechanism during its period of application.

278 Consequently, Hungary's ninth plea must be rejected as unfounded.

(e) *Hungary's 10th plea, alleging breach of the principle of proportionality because of the particular effects of the contested decision on Hungary*

(1) *Arguments of the parties*

279 Hungary maintains, in the alternative, that if the Court were not to uphold any of its pleas for annulment, the contested decision would in any event be unlawful, since it infringes Article 78(3) TFEU and the principle of proportionality so far as Hungary is concerned.

280 Hungary takes issue with the Council for having included it among the Member States of relocation after it had given up the status of beneficiary Member State assigned to it in the Commission's initial proposal. In Hungary's submission it cannot be disputed that it was subject to particularly strong migratory pressure both during the period preceding the adoption of the contested decision and at the time of its adoption. In those circumstances, the contested decision places a disproportionate burden on Hungary by setting mandatory relocation quotas for it as it does for the other Member States.

281 The imposition of such quotas on Hungary when it had need itself of support in order to manage the large numbers of migrants is, in its view, contrary to Article 78(3) TFEU, since that provision envisages the adoption of provisional measures for the benefit of Member States confronted with a sudden inflow of nationals of third countries and therefore precludes the imposition of an additional burden on a Member State experiencing an emergency situation characterised by an inflow of that kind.

282 The Council submits that this plea is inadmissible since it seeks partial annulment of the contested decision in so far as the latter concerns Hungary, even though the decision forms an indivisible whole. On the substance of the plea, the Council contends inter alia that, at the time of the adoption of the contested decision, Hungary was no longer in an 'emergency situation' within the meaning of Article 78(3) TFEU, which would have justified its being included among the beneficiary Member States under the contested decision, In addition, the relocation mechanism provided for in the contested decision is accompanied by adjustment mechanisms enabling a Member State to request that its relocation obligations be suspended in the event of a sharp shift of migration flows.

(2) *Findings of the Court*

283 As a preliminary point, the Court considers that the proper administration of justice justifies, in the present case, examining the substance of Hungary's 10th plea — which it raises in the alternative and which alleges breach of the principle of proportionality because of the particular effects of the contested decision on Hungary — without ruling on the objection of inadmissibility raised by the Council, since this plea must in any event be rejected on the substance (see, to that effect, judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 193 and the case-law cited).

284 The examination of Hungary's 10th plea calls for an outline of the way the contested decision evolved.

285 In its proposal of 9 September 2015, the Commission had included Hungary among the Member States benefiting from relocation because the data for the first eight months of 2015, and in particular for July and August 2015, showed that migrants were arriving there in very large numbers, mostly from Greece, via the so-called 'western Balkans' route, thus putting significant pressure on the Hungarian asylum system, comparable to the pressure on the Greek and Italian asylum systems.

286 However, following the construction by Hungary of a fence along its border with Serbia and the large-scale westward transit of migrants in Hungary, mainly to Germany, that pressure reduced considerably towards mid-September 2015, as the number of migrants with irregular status in Hungary fell significantly.

287 Against the background of those events, which took place in September 2015, Hungary made a formal request to the Council, asking that it no longer be included among the Member States benefiting from relocation.

288 The Council took note of that request and made the statement cited in paragraph 165 of the present judgment at the plenary sitting of the Parliament on 16 September 2015.

289 According to Hungary, the imposition of binding quotas on it represents a disproportionate burden, taking account of the fact that it was, even after mid-September 2015, in an emergency situation because the migratory pressure on its borders had not diminished but had, at the most, shifted towards its border with Croatia where significant numbers of irregular border crossings were taking place every day. Consequently, since, in its view, Hungary thus continued even after the contested decision was adopted to be confronted with an emergency situation, the decision to include it among the Member States of relocation and, for that purpose, to impose additional burdens on it in the form of relocation quotas was contrary to the objective of Article 78(3) TFEU of supporting Member States in such a situation.

290 In that regard, it cannot be denied that the contested decision, in so far as it includes provision for a compulsory distribution between all the Member States of migrants to be relocated from Greece and Italy (i) has an impact on all the Member States of relocation and (ii) requires that a balance be struck between the different interests involved, account being taken of the objectives which that decision pursues. Therefore, the attempt to strike such a balance, taking into account not the particular situation of a single Member State, but that of all Member States, cannot be regarded as being contrary to the principle of proportionality (see, by analogy, judgment of 18 June 2015, *Estonia* v *Parliament and Council*, C-508/13, EU:C:2015:403, paragraph 39).

291 When one or more Member States are faced with an emergency situation within the meaning of Article 78(3) TFEU, the burdens entailed by the provisional measures adopted under that provision for the benefit of that or those Member States must, as a rule, 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 EU asylum policy.

292 Accordingly, in the present case the Commission and the Council rightly considered, at the time of adoption of the contested decision, that the distribution of the relocated applicants among all the Member States, in keeping with the principle laid down in Article 80 TFEU, was a fundamental element of the contested decision. That is clear from the many references which the contested decision makes to that principle, in particular in recitals 2, 16, 26 and 30.

293 Faced with Hungary's refusal to benefit from the relocation mechanism as the Commission had proposed, the Council cannot be criticised, from the point of view of the principle of proportionality, for having concluded on the basis of the principle of solidarity and fair sharing of responsibility laid down in Article 80 TFEU that Hungary had to be allocated relocation quotas in the same way as all the other Member States that were not beneficiaries of the relocation mechanism.

294 It should, moreover, be noted that Article 4(5) and Article 9 of the contested decision enable a Member State, under certain conditions, to request that its obligations as a Member State of relocation under that decision be suspended.

295 Thus, by Decision 2016/408, adopted under Article 4(5) of the contested decision, the Council — acknowledging inter alia that the Republic of Austria was facing exceptional circumstances and an emergency situation characterised by a sudden inflow of nationals of third countries into its territory, and that it had the second highest number, after the Kingdom of Sweden, of applicants for international protection per capita in the European Union — decided that the Republic of Austria's obligations relating to the relocation quota allocated to it were to be suspended for one year in respect of 30% of that quota.

296 Similarly, by Decision 2016/946, the Council, considering inter alia that the Kingdom of Sweden was facing an emergency situation characterised by a sudden inflow of nationals of third countries into its territory because of a sharp shift in migration flows and that it had by far the highest number of applicants for international protection per capita in the European Union, decided that its obligations as a Member State of relocation under the contested decision were to be suspended for one year.

297 Above all, it follows from the adjustment mechanism provided for in Article 4(3) of the contested decision that a Member State which considers itself to be facing an emergency situation characterised by a sudden inflow of nationals of third countries into its territory owing to a sharp shift in migration flows may inform the Commission and the Council of that emergency situation, giving duly justified reasons. That may lead to an amendment of the contested decision, with the consequence that that Member State can benefit, as of 26 September 2016, from the relocation of the 54 000 applicants referred to in Article 4(1)(c) of the decision.

298 The existence of those various adjustment mechanisms shows that the relocation mechanism for which the contested decision provides, taken as a whole, enables account to be taken, in a proportionate manner, of the particular situation of each Member State in this regard.

299 The proportionate nature of the relocation mechanism provided for in the contested decision is also shown by the distribution key, on the basis of which the allocations were set, in Annex I and Annex II to the decision, for relocations from Greece and Italy.

300 Although the contested decision as finally worded merely states, in recital 26, that the relocation mechanism provided for in the decision 'constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other, given the overall available figures on irregular border crossings in 2015', it is not disputed that the quotas in the contested decision were set on the basis of a distribution key the calculation of which is explained in the following terms in recital 25 of the Commission's initial proposal:

'... The proposed distribution key should be based on (a) the size of the population (40% weighting), (b) the total of the GDP (40% weighting), (c) the average number of asylum applications per one million inhabitants over the period 2010-2014 (10% weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution) and (d) the unemployment rate (10% weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution). ...'

301 That makes clear that the purpose of that key is to ensure that the distribution of the persons relocated between the Member States concerned is, in particular, proportionate to the economic weight of each of those States and to the migration pressure on their asylum systems.

302 In that regard, the Republic of Poland develops — on the basis of Hungary's 10th plea, alleging that the imposition of binding quotas on it has disproportionate effects in its regard — a more general argument criticising the allegedly disproportionate effects of those quotas on a number of host Member States which, in order to meet their relocation obligations, have to make far greater efforts and bear far heavier burdens than other host Member States. That is said to be the case of Member States which are 'virtually ethnically homogeneous, like Poland' and whose populations are different, from a cultural and linguistic point of view, from the migrants to be relocated on their territory.

303 That argument, apart from the fact that it is inadmissible because it was put forward in a statement in intervention and goes far beyond the argument made by Hungary, which is strictly limited to Hungary's own situation (see, to that effect, judgment of 7 October 2014, *Germany* v *Council*, C-399/12, EU:C:2014:2258, paragraph 27), must be rejected.

304 If relocation were to be strictly conditional upon the existence of cultural or linguistic ties between each applicant for international protection and the Member State of relocation, the distribution of those applicants between all the Member States in accordance with the principle of solidarity laid down by Article 80 TFEU and, consequently, the adoption of a binding relocation mechanism would be impossible.

305 It should be added that considerations relating to the ethnic origin of applicants for international protection cannot be taken into account since they are clearly contrary to EU law and, in particular, to Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

306 Finally, the Court rejects the Republic of Poland's argument that the contested decision is contrary to the principle of proportionality since it does not allow the Member States to ensure the effective exercise of their responsibilities with regard to the maintenance of law and order and the safeguarding of internal security as required under Article 72 TFEU. The Republic of Poland submits that that is particularly serious given that the contested decision will give rise to significant 'secondary' movements, caused by applicants leaving their host

Member State before the latter has been able to rule definitively upon their application for international protection.

307 It must be noted in this regard that recital 32 of the contested decision states, 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.

308 With that in mind, Article 5 of the contested decision, which is entitled 'Relocation procedure', provides, in paragraph 7, that 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.

309 If, as the Republic of Poland maintains, the mechanism provided for in Article 5(7) of the contested decision were ineffective because it requires Member States to check large numbers of persons in a short time, such practical difficulties are not inherent in the 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 the contested decision is implemented.

310 In view of all the foregoing, Hungary's 10th plea must be rejected as unfounded.

2. *Hungary's eighth plea, alleging breach of the principles of legal certainty and of normative clarity, and also of the Geneva Convention*

(a) *Arguments of the parties*

311 Hungary, supported by the Republic of Poland, maintains, first, that the contested decision fails to observe the principles of legal certainty and normative clarity, since, on a number of points, it does not clearly indicate the way in which its provisions must be applied or how they relate to the provisions of the Dublin III Regulation.

312 Thus, although recital 35 of the contested decision addressed the issue of the legal and procedural safeguards applicable to the relocation decisions, none of its normative provisions regulates that matter or refers to the relevant provisions of the Dublin III Regulation. That raises a problem from the viewpoint, in particular, of the right of applicants to a remedy, especially of those applicants who are not designated for relocation.

313 Nor does the contested decision clearly determine the criteria by reference to which applicants are chosen for relocation. The way in which the authorities of the Member States are called upon to decide on the transfer of applicants to a Member State of relocation makes it extremely difficult for applicants to know in advance whether they will be among the persons relocated and, if so, to which Member State they will be relocated.

314 Hungary further submits that the contested decision does not define in an appropriate manner the status of the applicants in the Member State of relocation and does not ensure that those applicants will actually remain in that Member State while a decision is taken on their application. As regards 'secondary' movements, Article 6(5) of the contested decision does

not in itself ensure that that decision will attain its objectives, namely the distribution of applicants between the Member States, if there is no guarantee that applicants will actually remain in the Member States of relocation.

315 Secondly, the fact that applicants may possibly be relocated to a Member State with which they have no particular connection raises the question whether the contested decision is compatible in that respect with the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations TreatySeries*, Vol. 189, p. 150, No 2545 (1954)), supplemented by the Protocol relating to the Status of Refugees of 31 January 1967 ('the Geneva Convention').

316 Hungary argues that, according to the interpretation adopted in point 192 of the Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees (United Nations High Commissioner for Refugees (HCR), May 1992), the applicant should be permitted to remain in the Member State in which he has lodged his request pending a decision on that request by the authorities of that country.

317 The right to remain in that Member State is also recognised in Article 9 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).

318 The contested decision deprives applicants for international protection of that right to remain and allows them to be relocated without their consent to another Member State with which they have no significant ties.

319 The Republic of Poland maintains that the contested decision falls short of the standards for human rights protection essentially because it takes the place of the system provided for by the Dublin III Regulation, whilst failing to lay down any clear criterion determining the Member State to which the applicant will be relocated and where his application for international protection will be examined.

320 It submits that persons applying for international protection could, under the contested decision, be resettled in distant regions of the European Union with which they have no cultural or social ties, which would make their integration in the society of the host Member State impossible.

321 The Council disputes, first, the allegation that the contested decision does not respect the principles of legal certainty and normative clarity. It is an emergency measure forming part, on the one hand, of the *acquis* relating to the common European asylum system which remains in principle fully applicable and, on the other, of the legal order created by the system of Treaties and by the Charter.

322 Secondly, as regards the alleged infringement of the right to remain in a Member State, which, it is argued, is safeguarded by the Geneva Convention, the Council contends that neither the Geneva Convention nor EU law gives an asylum seeker the right freely to choose his host country.

(b) *Findings of the Court*

323 As regards, first, the complaint alleging infringement of the principles of legal certainty and normative clarity, it must be borne in mind that the contested decision is composed of a series of provisional measures, including a temporary relocation mechanism which derogates from the *acquis* relating to the common asylum system only on certain specific points which are expressly listed. That mechanism is an integral part of that *acquis* and the latter therefore remains, in general terms, applicable.

324 In that regard, the Council observed the principles of legal certainty and normative clarity, explaining, in particular in recitals 23, 24, 35, 36 and 40 of the contested decision, the interaction between the provisions of that act and the provisions of legislative acts adopted within the framework of the European Union's common asylum policy.

325 In addition, there must be a right to an effective remedy under national law, in accordance with Article 47 of the Charter, against any decision to be taken by a national authority in the course of the relocation procedure laid down in Article 5 of the contested decision.

326 Hungary has also criticised the contested decision for allegedly failing to include proper rules for ensuring that applicants for international protection will remain in the Member State of relocation while a decision is taken on their applications or, in other words, for ensuring that 'secondary' movements are prevented.

327 It should be noted in that regard that recitals 38 to 41 of the contested decision refer, with sufficient detail and precision, to the measures that may be taken by the Member States, on the basis of a number of EU legislative acts forming part of the *acquis* relating to the common asylum policy, in order to avoid such 'secondary' movements.

328 In addition, Article 6(5) of the contested decision provides, clearly and precisely, that an applicant for, or beneficiary of, international protection who enters the territory of a Member State other than the Member State of relocation without fulfilling the conditions for stay in that other Member State shall be required to return immediately to the Member State of relocation.

329 As regards Hungary's complaint that the contested decision does not include criteria for determining which is the Member State of relocation, it must be recalled that, as is made clear in recital 2 of the decision and as has been stated, inter alia, in paragraphs 253 and 291 to 293 of the present judgment, the decision took account of Article 80 TFEU, which applies when the European Union's asylum policy is implemented and, in particular, when provisional measures based on Article 78(3) TFEU are adopted and from which it follows that the determination of the Member State of relocation must be based on criteria related to solidarity and fair sharing of responsibility between the Member States.

330 It should be added that paragraphs 1 and 2 of Article 6 of the contested decision lay down certain specific criteria for determining the Member State of relocation, which relate to the best interests of the child and to family ties and which are, moreover, similar to the criteria laid down in the Dublin III Regulation.

331 Moreover, recital 34 of the contested decision lists a series of elements which seek to ensure, inter alia, that applicants are relocated to a Member State with which they have some family, cultural or social ties and of which particular account should be taken when the

Member State of relocation is selected, the aim being to facilitate the applicants' integration in that State.

332 The contested decision therefore cannot be regarded as comprising an arbitrary system which has taken the place of the objective system laid down by the Dublin III Regulation.

333 On the contrary, there is ultimately no substantial difference between those two systems in the sense that the system established by the contested decision is based — like the system established by the Dublin III Regulation — on objective criteria rather than on a preference expressed by an applicant for international protection.

334 In particular, the rule concerning the responsibility of the Member State of first entry, laid down in Article 13(1) of the Dublin III Regulation, which is the only rule for determining the responsible Member State laid down in that regulation from which the contested decision derogates, is not linked to the applicant's preference for a particular host Member State and does not specifically seek to ensure that there are linguistic, cultural or social ties between the applicant and the responsible Member State.

335 Furthermore, although no provision is made, in the context of the relocation procedure, for the applicant to consent to his relocation, Article 6(3) of the contested decision provides that, prior to the relocation decision, the applicant is to be informed that he is the subject of a relocation procedure and Article 6(4) of the decision requires the authorities of the beneficiary Member State to notify the applicant of the relocation decision before he is actually relocated and to specify in that decision the Member State of relocation.

336 Moreover, as is made clear by recital 35 of the contested decision, it is because applicants do not have the right to choose which Member State is to be responsible for examining their applications that they must have the right to an effective remedy against the relocation decision, so as to ensure respect for their fundamental rights.

337 Finally, if the authorities of the beneficiary Member States are afforded some latitude when they have to identify, under Article 5(3) of the contested decision, the individual applicants who can be relocated to a given Member State of relocation, such latitude is justified in the light of the objective of the decision, which is to take pressure off the Greek and Italian asylum systems by actually relocating, within a short time frame, a significant number of applicants to other Member States, in compliance with EU law and, in particular, with the fundamental rights guaranteed by the Charter.

338 Secondly, contrary to Hungary's contention, it cannot validly be maintained that the contested decision, in so far as it provides for the transfer of an applicant for international protection before a decision on his application has been taken, is contrary to the Geneva Convention because that convention allegedly includes a right to remain in the State in which the application has been lodged while that application is pending.

339 In this regard, the Council, in recital 35 of the contested decision, rightly pointed out that an applicant does not have the right under EU law to choose the Member State responsible for examining his application. The criteria which the Dublin III Regulation lays down for determining which Member State is to be responsible for processing an application for international protection are not connected with the applicant's preference for a particular host Member State.

340 Nor can it be inferred from the passage in the Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees to which Hungary refers that the Geneva Convention guarantees an applicant for international protection the right to remain in the State in which the application for protection was lodged while the application is pending.

341 That passage must be understood as a particular expression of the principle of non-*refoulement*, which prohibits the expulsion of an applicant for international protection to a third country as long as a decision has not been taken on his application.

342 The transfer, in the context of a relocation operation, of an applicant for international protection from one Member State to another for the purpose of ensuring that his application is examined within a reasonable time cannot be regarded as *refoulement* to a third State.

343 It is on the contrary a crisis-management measure, taken at EU level, whose purpose is to ensure that the fundamental right to asylum, laid down in Article 18 of the Charter, can be exercised properly, in accordance with the Geneva Convention.

344 Hungary's eighth plea must therefore be rejected as unfounded.

345 As none of the pleas in law put forward by the Slovak Republic or by Hungary can be accepted, the actions must be dismissed.

IV. **Costs**

346 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. Since the Council has applied for costs and the Slovak Republic and Hungary have been unsuccessful in their respective actions, they must be ordered to bear their own costs and to pay those incurred by the Council.

347 In accordance with Article 140(1) of the Rules of Procedure, the Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Republic of Poland, the Kingdom of Sweden and the European Commission are to bear their own costs.

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

1. **Dismisses the appeals;**

2. **Orders the Slovak Republic and Hungary to bear their own costs and to pay those of the Council of the European Union;**

3. **Orders the Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Republic of Poland, the Kingdom of Sweden and the European Commission to bear their own costs.**

[Signatures]

*) Languages of the case: Slovak and Hungarian.