Reports of Cases

OPINION OF ADVOCATE GENERAL
BIONDI
delivered on 6 March 2025 [1]

Case C-294/23 P

Republic of Bulgaria
v

European Commission

(Appeal – EAGF and EAFRD – Regulation (EU) No 1306/2013 – Expenditure not effected in conformity with EU law – Conformity clearance – Article 52 – Commission implementing decision – Article 54 – Recovery request – Time limits – Decision to exclude from EU financing amounts charged to the EU budget in the case of failure to observe the time limit for requesting recovery – Rights of the defence – Duty to state reasons – Duty of diligence – Principle of sincere cooperation – Principle of good administration – Article 47 – On-the-spot checks)

1. While the adage goes that what is well conceived may be expressed clearly, EU legislation on European funds is sometimes an exception to that rule.

2. In the present case, the Republic of Bulgaria asks the Court of Justice to set aside the judgment of the General Court of the European Union of 8 March 2023 [2] *Bulgaria* v *Commission*, dismissing as unfounded its action under Article 263 TFEU for annulment of Commission Implementing Decision (EU) 2021/261 of 17 February 2021 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) [3] in so far as it concerns certain expenditure incurred by the Republic of Bulgaria.

3. That decision was adopted on grounds relating, first, to the breach by the Republic of Bulgaria of the obligation to request recovery of undue payments from the beneficiaries concerned within a period of 18 months arising from Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and No 485/2008 [4] and, secondly, to the fact that, in the European Commission's view, the lack of recovery constituted an irregularity or negligence attributable to the Bulgarian authorities within the meaning of that

1 Original language: French.

2 T-235/21, ('the judgment under appeal'), EU:T:2023:105.

3 OJ 2021 L 59, p. 10 ('the decision at issue').

4 OJ 2013 L 347, p. 549.

regulation. However, the procedure which led to the adoption of that decision had been initiated on a different basis, relating to the identification of expenditure which had not been effected in conformity with EU law.

4. Resolution of the present appeal will require the Court to delve into the intricacies of Regulation No 1306/2013 and to clarify the conditions under which the Commission may adopt an implementing act penalising the manifest intention of the Member State concerned not to comply with its obligation to request recovery of amounts unduly charged to the EU budget, where such an intention has been revealed in the course of the conformity clearance procedure.

I. Legal context

A. Regulation No 1306/2013

5. Recitals 36, 37 and 39 and Article 1, Article 2(1)(g), Article 7(1), Article 47 and Article 48(1) and (3) of Regulation No 1306/2013 are relevant in the context of the present appeal.

6. In addition, Section II of Chapter IV, entitled 'Clearance', contains Article 52 on the conformity clearance, which provides:

'1. Where it finds that expenditure falling within the scope of Article 4(1) and Article 5 has not been effected in conformity with Union law and, in respect of the EAFRD, has not been effected in conformity with the applicable Union and national law referred to in Article 85 of Regulation (EU) No 1303/2013, [5] the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature of the infringement and of the financial damage caused to the Union. It shall base the exclusion on the identification of amounts unduly spent and, where these cannot be identified with proportionate effort, may apply extrapolated or flat-rate corrections. Flat-rate corrections shall only be applied where, due to the nature of the case or because the Member State has not provided the Commission with the necessary information, it is not possible with proportionate effort to identify more precisely the financial damage caused to the Union.

3. Before the adoption of any decision to refuse financing, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken. At that point in the procedure the Member States shall be given the opportunity to demonstrate that the actual extent of the non-compliance is less than in the Commission's assessment.

If agreement is not reached, the Member State may request the opening of a procedure aimed at reconciling, within a period of four months, each party's position. A report of the outcome of the

[5] Regulation of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).

procedure shall be submitted to the Commission. The Commission shall take into account the recommendations in the report before deciding on any refusal of financing and shall give reasons if it decides not to follow those recommendations.

4. Financing may not be refused for:

(a) expenditure as indicated in Article 4(1) which is effected more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

…

5. Paragraph 4 shall not apply in the case of:

(a) irregularities covered by Section III of this Chapter;

…'

7. Under Article 53(1)(b) of Regulation No 1306/2013, 'the Commission shall adopt implementing acts laying down rules on: … the conformity clearance provided for in Article 52 with regard to the measures to be taken in connection with the adoption of the decision and its implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected as well as the conciliation procedure provided for in that Article, including the establishment, tasks, composition and working arrangements of the conciliation body.'

8. Section III of Chapter IV of Regulation No 1306/2013, entitled 'Irregularities', contains Article 54 on 'Common Provisions', which provides in paragraphs 1, 2 and 5 thereof:

'1. For any undue payment following the occurrence of irregularity or negligence, Member States shall request recovery from the beneficiary within 18 months after the approval and, where applicable, reception, by the paying agency or body responsible for the recovery, of a control report or similar document, stating that an irregularity has taken place. The corresponding amounts shall be recorded at the time of the recovery request in the debtors' ledger of the paying agency.

2. If recovery has not taken place within four years from the date of the recovery request, or within eight years where recovery is taken in the national courts, 50% of the financial consequences of the non-recovery shall be borne by the Member State concerned and 50% by the Union's budget, without prejudice to the requirement that the Member State concerned must pursue recovery procedures in compliance with Article 58.

Where, in the context of the recovery procedure, the absence of any irregularity is recorded by an administrative or legal instrument of a final nature, the Member State concerned shall declare as expenditure to the Funds the financial burden borne by it under the first subparagraph.

…

5. The Commission may, provided that the procedure laid down in Article 52(3) has been followed, adopt, implementing acts, excluding from Union financing sums charged to the Union's budget in the following cases:

(a) if the Member State has not respected the time limits referred to in paragraph 1;

…

(c) if it considers that an irregularity or lack of recovery is the outcome of irregularity or negligence attributable to the administrative authorities or another official body of the Member State.

…'

B. Implementing Regulation (EU) No 908/2014

9. Article 34 of Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation [No 1306/2013] with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency,[6] entitled 'Conformity clearance', provides:

'1. In order to determine what amounts are to be excluded from Union financing, when finding that expenditure has not been incurred in conformity with Union rules, the Commission shall use its own findings and shall take into account the information made available by Member States, provided that the latter information is provided within the time limits set by the Commission in the framework of the conformity clearance procedure carried out in accordance Article 52 of Regulation (EU) No 1306/2013 and in conformity with this Article.

2. When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Union rules, it shall communicate its findings to the Member State concerned, specifying the corrective measures needed to ensure future compliance with those rules, and indicating the provisional level of financial correction which at that stage of the procedure it considers corresponds to its findings. That communication shall also schedule a bilateral meeting within five months after expiry of the period for reply by the Member State. The communication shall make reference to this Article.

…

3. In the bilateral meeting both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Union budget.

…

The Commission shall within six months after sending the minutes of the bilateral meeting formally communicate its conclusions to the Member State on the basis of the information

[6] OJ 2014 L 255, p. 59. The text of Article 34 of that regulation has been amended several times (see, inter alia, the corrigendum published in 2015 (OJ 2015 L 114, p. 25) and Article 1(6) of Commission Implementing Regulation (EU) 2018/56 of 12 January 2018 amending Implementing Regulation No 908/2014 (OJ 2018 L 10, p. 9)).

received in the framework of the conformity clearance procedure. That communication shall evaluate the expenditure to be excluded from Union financing under Article 52 of Regulation [No 1306/2013] and Article 12 of [Commission] Delegated Regulation (EU) No 907/2014 [of 11 March 2014 supplementing Regulation [No 1306/2013] with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ 2014 L 255, p. 18)]. The communication shall make reference to Article 40(1) of this Regulation.

…

5. In order to apply paragraphs 3 and 4 within the respective time periods, the Commission shall have available all information relevant at that particular step of the procedure. Where the Commission deems it lacks information, it may at any time within the time periods set out in paragraphs 3 and 4:

(a) ask for additional information from the Member State, to which the Member State shall reply within two months of receipt of the communication; and/or

(b) inform the Member State of its intention to carry out an additional audit mission to conduct the necessary verifications.

In that case, the time periods referred to in paragraphs 3 and 4 shall start again either on the receipt by the Commission of the requested additional information or from the last day of the additional audit mission.

…

7. The Commission, after having communicated its conclusions to the Member States in accordance with Article 34 paragraph 3 or 4 of this Regulation, shall adopt, where appropriate, one or more decisions under Article 52 of Regulation (EU) No 1306/2013 in order to exclude from Union financing expenditure affected by the non-compliance with Union rules. The Commission may pursue consecutive conformity clearance procedures until the Member State has actually implemented the corrective measures.

…'

10. The first subparagraph of Article 40(1) of Implementing Regulation No 908/2014, entitled 'Conciliation procedure', provides:[7]

'A Member State may refer a matter to the Conciliation Body within 30 working days of receipt of the Commission's formal communication referred to in the third subparagraph of Article 34(3) by sending a reasoned request for conciliation to the secretariat of the Conciliation Body'.

II. The background to the dispute and the decision at issue

11. I refer here to paragraphs 2 to 14 of the judgment under appeal.

[7] The text of Article 40(1) of Implementing Regulation No 908/2014 was the subject of a corrigendum in 2015 (see OJ 2015 L 114, p. 25).

III. The proceedings before the General Court, the judgment under appeal, the proceedings before the Court of Justice and the forms of order sought by the parties

12. By application lodged at the Registry of the General Court on 28 April 2021, the Republic of Bulgaria brought an action for annulment of the decision at issue in so far as it imposed on it a financial correction in the sum of EUR 7 656 848.97.

13. By the judgment under appeal, the General Court rejected the five pleas in law raised before it by the Republic of Bulgaria [8] and, accordingly, dismissed the latter's action.

14. On 8 May 2023, the Republic of Bulgaria lodged an appeal against the judgment under appeal. In its forms of order sought, it claims that the Court of Justice should set aside the judgment under appeal in its entirety, give final judgment in the matter or, in the alternative, refer the case back to the General Court, and order the Commission to pay the costs.

15. The Commission contends that the Court of Justice should dismiss the appeal and order the Republic of Bulgaria to pay the costs.

16. The Republic of Bulgaria and the Commission presented oral argument at the hearing held before the Court on 4 December 2024.

IV. Analysis

17. In support of its appeal, the Republic of Bulgaria puts forward two grounds of appeal.

18. The first alleges an error of law in the interpretation of Article 52(3) of Regulation No 1306/2013 and Article 34 of Regulation No 908/2014, read in conjunction with Article 52(1) and Article 54(5) of Regulation No 1306/2013, and of the duty to state reasons under Article 296 TFEU, the principle of good administration and the principle of sincere cooperation, leading the General Court to erroneously conclude that the Republic of Bulgaria's rights of defence and procedural guarantees, the duty to state reasons in Commission decisions and the principles of good administration and sincere cooperation had been complied with. The Republic of Bulgaria also criticises the General Court, in the context of that first ground of appeal, for inadequate and inappropriate reasoning in the judgment under appeal, since the General Court did not assess all the relevant elements of fact and law which it had submitted to it.

19. The second ground of appeal alleges that the General Court erred in law in its interpretation of Article 54(5)(a) and (c), read in conjunction with Article 54(1) of Regulation No 1306/2013, by holding that the 18-month time limit had started to run from the date on which the reports of the European Anti-Fraud Office (OLAF) were communicated to the appellant.

20. In accordance with the Court of Justice's request, this targeted Opinion will deal solely with the first ground of appeal.

[8] For a presentation of those pleas, see paragraph 23 of the judgment under appeal.

A. The first ground of appeal

21. The Republic of Bulgaria's line of argument in the context of that first ground of appeal seems to be rich but unstructured. Nevertheless, it appears it may be understood as being subdivided into six complaints which must be reorganised.

22. The first complaint alleges misinterpretation of, first, Article 52(3) of Regulation No 1306/2013 and Article 34 of Implementing Regulation No 908/2014 and, secondly, Article 52(1) and Article 54(5) of Regulation No 1306/2013, on the other.

23. The second complaint alleges an error of law in the interpretation of Article 47 of Regulation No 1306/2013 in that the General Court held that the Commission was not required to carry out on-the-spot checks.

24. The third complaint alleges an error of law as regards the Commission's respect for the rights of the defence.

25. The fourth complaint alleges an error of law in the interpretation of the Commission's duty to state reasons.

26. The fifth complaint alleges that the General Court breached its duty to state reasons by failing to examine the allegation of breach of the duty of general diligence.

27. The sixth complaint also alleges a breach, by the General Court, of its duty to state reasons by failing to assess or comment on the evidence submitted before the hearing in support of the allegation that the Commission breached the principles of sincere cooperation and good administration.

28. In order of importance, I shall first examine the first and third complaints together, before examining separately the second, fourth, fifth and, lastly, sixth complaints.

1. The first and third complaints, alleging an error of law in the interpretation of Articles 52 and 54 of Regulation No 1306/2013 and an error of law in the interpretation of the rights of the defence during the administrative procedure

(a) Summary of the arguments of the parties

29. As regards the first complaint, the Republic of Bulgaria claims that, in paragraphs 40 to 42 and 47 to 49 of the judgment under appeal, the General Court erred in law and confused the procedure giving effect to the principle *audi alteram partem* under Article 52(3) of Regulation No 1306/2013, read in conjunction with Article 34 of Regulation No 908/2014, with the separate substantive ground referred to in Article 54(5) of Regulation No 1306/2013. It submits that the General Court was therefore wrong to hold, in paragraphs 47 to 49 of the judgment under appeal, that, in view of the sending of the letter and the holding of the second bilateral meeting, the procedural defects relating to the alteration by the Commission of the legal basis for the financial correction at issue had been remedied.

30. The Republic of Bulgaria claims that the imposition of a financial correction under Article 52(1) of Regulation No 1306/2013 and the imposition of such a correction under Article 54(5) of that regulation rest on different legal bases, even though those two procedures are subject to the same procedure giving effect to the principle *audi alteram partem*, governed by Article 52(3) of Regulation No 1306/2013, read in conjunction with Article 34 of Regulation No 908/2014.

31. The exclusion decision of the Commission at issue should therefore have been based on the same grounds as those on which the procedure had been initiated.

32. The General Court therefore wrongly held, in paragraph 42 of the judgment under appeal, that the second invitation to a bilateral meeting was capable of changing the communication of findings to the new legal basis relied on, since Article 54(5) clearly provides that the procedure laid down in Article 52(3) of Regulation No 1306/2013 must have been followed.

33. As regards the third complaint, the appellant claims that, in the context of the second ground for the adoption of implementing acts excluding amounts from EU financing, set out in Article 54 of Regulation No 1306/2013, the Commission is required to carry out the checks referred to in paragraph 4 of that provision in order to ensure the correct application of Article 54(2) of that regulation. It submits that Article 54 empowered the Commission to adopt implementing acts excluding amounts from EU financing, even in the absence of on-the-spot checks, provided that the procedure giving effect to the principle *audi alteram partem* laid down in Article 52(3) of Regulation No 1306/2013, which guarantees that the Member State has the opportunity to exercise its rights of defence before an exclusion decision is taken, has been followed.

34. In its reply, the Republic of Bulgaria explains the alleged breaches of its rights of defence during the administrative procedure. It thus submits that, whereas the communication of findings as provided for in Article 34 of Regulation No 908/2014 must give full knowledge of the Commission's reservations in order to fulfil its informative function, the Republic of Bulgaria had to begin its defence 'blindly'. The Commission did not make reference to the provisions of the structural legislation which it considered might have been infringed by the payments under investigation, which, moreover, led to the national courts annulling the orders to suspend payments adopted by the paying agency. The 18-month time limit for requesting recovery may not begin to run until the date of the implementing decision by which the Commission identifies precisely the payments to be excluded from EU financing, in order to give the Member State concerned time to react in full knowledge of the facts. The retrospective application of Article 54 of Regulation No 1306/2013 did not enable the appellant to comply with its obligations, as the implementing decision was given when the 18-month period had almost expired. Nor did it allow it to take advantage of the 50/50 rule.

35. The Commission contends that those complaints are unfounded.

(b) Assessment

36. The present complaints raise, first, the question of the possible relationship between the procedures initiated under Article 52(1) of Regulation No 1306/2013 and those initiated on the basis of Article 54(5) of that regulation and, secondly, the question of respect for the appellant's rights of defence during the procedure which led to the adoption of the decision at issue.

(1) The relationship between the procedures initiated under Article 52(1) of Regulation No 1306/2013 and those initiated on the basis of Article 54(5) of that regulation

37. Regulation No 1306/2013 establishes two types of clearance. The first is clearance of accounts. It is governed by Article 51 and takes place annually. The second is the conformity clearance, governed by Article 52. According to the first paragraph of that provision, it is carried out where the Commission 'finds that expenditure falling within the scope of Article 4(1) and Article 5 *has not been effected in conformity with Union law*'.[9] The Commission may then adopt implementing acts deciding to exclude amounts *not effected in conformity* from EU financing.[10] Article 52(3) of Regulation No 1306/2013 defines the procedure to be followed prior to 'any decision to refuse financing'.

38. Moreover, Article 54 of Regulation No 1306/2013 provides that, for any undue payment following the occurrence of irregularity or negligence, Member States are required to request recovery from the beneficiary within 18 months after the approval or reception, by the paying agency or body responsible for the recovery, of a control report or similar document, stating that an irregularity has taken place[11] and that the corresponding amounts are to be recorded at the time of that 'request'[12] in the debtors' ledger of the paying agency.

39. Those two stages (request for recovery/entry in the debtors' ledger) precede the actual recovery stage.[13] Member States are therefore clearly required to request recovery within a period of 18 months *from the time of receipt* of notification that irregular payments have been made.[14]

40. Furthermore, it is equally clear from the wording of Article 54(5) of Regulation No 1306/2013 that the EU legislature did not make the existence of an implementing decision under Article 52(1) of that regulation a precondition for requesting recovery. That article states that the Commission may, 'provided that the procedure laid down in Article 52(3) has been followed', adopt implementing acts which exclude from EU financing sums for which the Member State concerned has not requested recovery or where it considers that a lack of recovery is the

9 Article 52(1) of Regulation No 1306/2013. Emphasis added. Article 4(1) of that regulation lists the expenditure eligible for financing by the EAGF provided that it is effected in accordance with EU law. Article 5 of that regulation concerns the EAFRD. Since it is clear from paragraph 2 of the judgment under appeal that only expenditure relating to the EAGF was covered by the proceedings initiated by the Commission, I shall focus on the provisions relating to that fund or in so far as they are applicable to it.

10 As provided for in Article 52(2) of Regulation No 1306/2013.

11 The starting point of that 18-month time limit is examined in the context of the second ground of the present appeal, which is not the subject of this targeted Opinion. Subject always to the Court's classification of the two OLAF reports received by the Republic of Bulgaria (see paragraphs 5 and 8 of the judgment under appeal), I shall confine myself to holding that, for the purposes of analysing the present ground of appeal, it follows from the wording of Article 54(1) of Regulation No 1306/2013 that the period of 18 months starts to run from the time when the Bulgarian authorities received a 'control report or similar document, stating that an irregularity has taken place'.

12 Article 54(1) of Regulation No 1306/2013 therefore requires Member States only to make a request for recovery. The time limits within which recovery must actually take place are laid down in Article 54(2) of Regulation No 1306/2013.

13 That is confirmed by the first subparagraph of Article 54(2) of Regulation No 1306/2013, which provides that recovery must take place within a period of eight years if it is challenged before the national courts, and by the second subparagraph of that provision, which, for its part, envisages the possibility that an administrative or legal instrument of a final nature may, ultimately, record the absence of any irregularity. Under Regulation No 1306/2013, the request for recovery must be made immediately, with the review of its merits deferred to a later stage.

14 On the rationale behind that 18-month time limit, see recital 37 of Regulation No 1306/2013.

outcome of irregularity or negligence attributable to the national authorities.[15] Article 54 of Regulation No 1306/2013 therefore requires the Commission to adopt an implementing act by which it excludes amounts from EU financing on the ground that the national authorities did not request recovery within the prescribed time limit by following the procedure laid down in Article 52(3) of that regulation, without ever requiring that that procedure be initiated only following a full procedure which was completed and which resulted in an implementing decision excluding irregular payments from EU financing. Since the obligation to request recovery arises from the date on which a control report or any similar document indicating an irregularity[16] on the part of the economic operators concerned is noted, the procedure which may lead to the adoption of an implementing act excluding from EU financing the amounts identified for failure to request recovery is not necessarily consubstantial with or successive to that relating to the identification of the operators concerned and the suspicious payments.

41. It follows from the foregoing considerations that a procedure giving rise to the adoption of an implementing act on the basis of Article 54(5) of Regulation No 1306/2013 is an autonomous procedure which need not necessarily have been preceded by a full procedure leading to the adoption of an implementing act based on Article 52(1) of that regulation. In the light of the objective of celerity pursued by Article 54 of Regulation No 1306/2013, recalled in paragraph 34 of the judgment under appeal – which, as the Commission pointed out, is not disputed by the appellant – the Commission may at any time, as soon as the breach of the obligation to recover is established, adopt an implementing act on that ground, provided that it follows the procedure laid down in Article 52(3) of that regulation. The close link between conformity clearance procedures and the obligation of the Member States to pursue and recover the financial consequences of identified irregularities has already been highlighted by the Court,[17] just as the Court has already held that the absence of or recurrent delay in the recovery of debts may properly justify the adoption of a correction.[18]

42. It follows from the findings of the General Court that the procedure under Article 52(3) of Regulation No 1306/2013, read in conjunction with Article 34 of Regulation No 908/2014, consists of six stages.[19] The Commission complied with all of those stages.

43. It was only the communication of the initial findings that related exclusively to the ground provided for in Article 52(1) of Regulation No 1306/2013. Indeed, in paragraph 41 of the judgment under appeal, the General Court acknowledged that 'the grounds for the contested financial correction, as set out in the summary report and in the decision [at issue], only partially

[15] See, respectively, points (a) and (c) of the first subparagraph of Article 54(5) of Regulation No 1306/2013. The three situations described in the first subparagraph of Article 54(5) of that regulation relate to different situations (absence of a request for recovery/decision not to recover not justified by Article 54(3)/irregularity and negligence attributable to the national authorities) and are alternatives. Since the Republic of Bulgaria does not dispute that it did not request recovery within the prescribed period, its situation falls within the scope of point (a) of that provision.
However, I would question the reference to Article 54(3) of Regulation No 1306/2013 made in the second subparagraph of Article 54(5) of that regulation, given that Article 54(3) does not concern the procedure to be followed. I find it difficult to understand why the second subparagraph of Article 54(5), which is intended to cover the three situations referred to in the first subparagraph thereof, should require checks solely under Article 54(3), which are relevant only to situation in point (c) of that first subparagraph. I therefore wonder whether this might not be a drafting error on the part of the EU legislature, which might instead have intended to refer once again to Article 52(3) of Regulation No 1306/2013, the content of which is, for its part, clearly procedural.

[16] As defined in Article 2(1)(g) of Regulation No 1306/2013, that is to say 'any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the [European Union] or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the [European Union], or by an unjustified item of expenditure' (see Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1)).

[17] See judgment of 31 January 2019, *Greece* v *Commission* (C-6/18 P, EU:C:2019:83, paragraph 55).

[18] See judgment of 31 January 2019, *Greece* v *Commission* (C-6/18 P, EU:C:2019:83, paragraph 57).

[19] See paragraph 36 of the judgment under appeal.

match the grounds for initiating the clearance procedure at issue, as explained by the Commission in the communication of findings'. However, the reasons for that change in grounds are set out in paragraphs 43 to 46 of that judgment, which are not contested by the Republic of Bulgaria in its first ground of appeal. It follows, in essence, from those paragraphs that the Commission did not remind that Member State of its obligation to recover until the first OLAF report was brought to its attention and that the change in the Commission's attitude was dictated by the Republic of Bulgaria's own reaction to the invocation of that obligation.

44. The Republic of Bulgaria submits, in essence, that the Commission was required to recommence the procedure *ab initio* if its intention had changed in the course of the procedure and if it ultimately intended to adopt an implementing decision on the basis of Article 54(5) of Regulation No 1306/2013.

45. Such an interpretation, which, incidentally, is not supported by the actual wording of that provision, appears instead to be excessively formalistic and seems to disregard the need for timely action [20] – by both the Commission and the national authorities – where sums have been wrongly charged to the EU budget. It follows however from the case-law of the Court, as recalled by the Commission at the hearing, that while the Commission is bound, in its relations with the Member States, to respect the conditions it has imposed on itself by implementing regulations, the Member States cannot, in their relations with the Commission, adopt purely formalist positions, when it is clear from the circumstances that their rights were fully protected. [21]

46. Moreover, I would point out that the decision at issue was indeed adopted after the expiry of the 18-month period during which the Republic of Bulgaria was expected, following communication of a control report or similar document stating that an irregularity has taken place, [22] to request recovery from the beneficiaries and a record in the debtors' ledger of the paying agency, and that the Republic of Bulgaria's refusal had been formalised several times in writing during the procedure leading to the adoption of the decision at issue. In those circumstances, the claim of a retrospective application of Article 54 of Regulation No 1306/2013 and the adoption of the decision at issue before the expiry of the period provided for in the first paragraph of that provision must be rejected.

47. As regards the difficulties arising from national law relied on by the Republic of Bulgaria and explained in particular at the hearing before the Court, I note that the EU legislature did not consider that such difficulties could lead the national authorities *not to request recovery* as soon as necessary. However, Article 54(2) of Regulation No 1306/2013 provides for a possible extension of the period within which *recovery must actually take place* in a situation where legal proceedings are brought to challenge it.

[20] Recalled in paragraph 34 of the judgment under appeal. I would also point out that, according to the case-law of the Court, the management of EAGGF financing is based on a relationship of mutual trust between the Commission and the national administrative bodies and authorities (see, inter alia, judgment of 7 October 2004 *Spain* v *Commission* (C-153/01, EU:C:2004:589, paragraph 133).

[21] See judgments of 24 January 2002, *Finland* v *Commission* (C-170/00, EU:C:2002:51, paragraph 34), and of 7 October 2004, *Spain* v *Commission* (C-153/01, EU:C:2004:589, paragraph 93). On the respect for the appellant's rights of defence during the administrative procedure, see point 50 et seq. of the present Opinion.

[22] Namely the two OLAF reports sent respectively on 19 January 2018 and 3 September 2018. The decision at issue, for its part, is dated 17 February 2021.

48. Thus, while the Republic of Bulgaria is correct in maintaining that it was under no obligation to request recovery immediately after the communication or receipt of the documents referred to above,[23] it nevertheless appears to be confusing *the obligation to request recovery* with *the effectiveness of the recovery*.

49. It follows from those considerations that the complaint alleging that the General Court erred in law by holding, in paragraph 42 of the judgment under appeal, that the invitation to a second bilateral meeting had altered the findings, for the purposes of Article 52(3) of Regulation No 1306/2013, read in conjunction with Article 34 of Implementing Regulation No 908/2014, must be rejected.

(2) The appellant's rights of defence during the procedure leading to the adoption of the decision at issue

50. As regards the alleged breach of the rights of the defence, I note that the General Court correctly recalled the relevant case-law in paragraph 31 of the judgment under appeal and, in particular, that, in the context of proceedings relating to the EAGF, respect for the rights of the defence requires the final and conclusive decision on the clearance of accounts to be taken at the conclusion of a specific procedure giving effect to the principle *audi alteram partem*, during which the Member States concerned must be provided with all the guarantees necessary for them to present their point of view.

51. I also note that the factual description of the procedure which led to the adoption of the decision at issue[24] shows that the first OLAF report was communicated to the Republic of Bulgaria on 19 January 2018. The obligation to request recovery within 18 months was raised by the Commission for the first time in its invitation to a second bilateral meeting dated 7 May 2018, which refers to Article 54 of Regulation No 1306/2013, and then at each successive stage, including during the conciliation procedure. In particular, the official communication of 19 November 2019[25] already found that the Republic of Bulgaria had neither made the request for recovery nor recorded the corresponding amounts in the debtors' ledger and already proposed to exclude EUR 7 656 848.97 from EAGF financing since the national management and control system did not comply with the requirements of EU law.

52. The Republic of Bulgaria claims, as it confirmed at the hearing in response to a question put by the Court, that the procedure which led to the adoption of the decision at issue and the interpretation of that decision by the General Court are based on a breach of its rights of defence in that they did not allow it to benefit from the 50/50 rule.[26] However, it must be stated that the appellant is mistaken as to the meaning of Article 54(2) of Regulation No 1306/2013, which, as its wording clearly indicates and as the Commission pointed out at the hearing, cannot apply where a request for recovery has not been made by the Member State concerned.

53. The same applies where the Republic of Bulgaria submits that, in the context of a procedure based on Article 54 of Regulation No 1306/2013, the Commission is required to carry out the checks referred to in Article 54(4) of that regulation and that, by failing to carry out such checks,

[23] Since that request must be made within a time limit of 18 months: see Article 54(1) of Regulation No 1306/2013.

[24] See paragraphs 2 to 14 of the judgment under appeal.

[25] See paragraph 10 of the judgment under appeal.

[26] That provision states that where recovery has not taken place within four years from the date of the recovery request, or within eight years where that request is challenged before the national courts, 50% of the financial consequences of the non-recovery will be borne by the Member State concerned and 50% by the EU budget.

the Commission breached its rights of defence. Aside from the fact that the paragraphs of the judgment under appeal referred to by the appellant in its arguments do not refer to that provision, I note that the abovementioned paragraph 4 refers to Article 54(2) of Regulation No 1306/2013 and relates to the financial consequences for the Member State resulting from a recovery which did not take place within four or eight years *after a request for recovery was made*. However, I reiterate that such a request is purely and simply lacking here.

54. As regards the claim that the change of legal basis in the course of the procedure forced the Republic of Bulgaria to defend itself 'blindly', I refer to the detailed description of the procedure which led to the adoption of the decision at issue as set out in paragraphs 2 to 14 of the judgment under appeal, from which it is clear, in particular, that the question of recovery was at the heart of all the exchanges with the Commission which followed the invitation to a second bilateral meeting.

55. The General Court was therefore also right to hold, in paragraph 49 of the judgment under appeal, that there had been no breach of the rights of the defence when it ruled, implicitly but necessarily in view of the reference to the case-law in paragraph 31 of the judgment under appeal, that the decision at issue had been adopted following a specific procedure giving effect to the principle *audi alteram partem*, during which the appellant had had every opportunity to put forward its point of view on the question of the absence of a request for recovery.

(3) Conclusion

56. The first and third complaints must be rejected as unfounded.

2. The second complaint, alleging an error of law in the interpretation of Article 47 of Regulation No 1306/2013 as regards the absence of on-the-spot checks

57. The Republic of Bulgaria claims that, in order to adopt a decision under Article 52 of Regulation No 1306/2013, the Commission was required to carry out on-the-spot checks and to notify the Member State concerned in good time, in accordance with Article 47 of that regulation.[27] The Republic of Bulgaria complains that the General Court failed to examine the evidence provided in order to assess whether the Commission had notified it in good time before the on-the-spot check when initiating the procedure under Article 52(3) of Regulation No 1306/2013, read in conjunction with Article 52(1) of that regulation, as required by Article 47(2) of that regulation.

58. The Commission contends that that second complaint should be rejected.

59. It is apparent from paragraph 33 of the appeal that the Republic of Bulgaria 'considers that, in the present case, in order to adopt a decision under Article 52 [of Regulation No 1306/2013], the Commission should have carried out an on-the-spot check … in the Member State on the basis of Article 47 and, following that mission, on the basis of Article 52(1) [of that regulation], adopted an implementing decision determining the amounts to be excluded from EU financing on the basis of its own findings or notified the Member State of the closure of the investigation.'

[27] Article 47(1) of Regulation No 1306/2013 states that 'without prejudice to the checks carried out by Member States under national law, … the Commission may organise on-the-spot checks in Member States'. The first subparagraph of paragraph 2 of that provision provides that 'the Commission shall give sufficient prior notice of an on-the-spot check to the Member State concerned'.

60. The Republic of Bulgaria fails to identify the passages in the judgment under appeal in which the General Court allegedly misinterpreted Article 47 of Regulation No 1306/2013. The judgment under appeal contains no record of any discussion of that provision. At the same time, I note that the Republic of Bulgaria does not dispute paragraph 23 of the judgment under appeal, in which the General Court set out the pleas raised before it and which contains no mention of Article 47. I therefore agree with the Commission that the Republic of Bulgaria cannot, in the context of the appeal, criticise the General Court for failing to address that issue. Having regard to the limits inherent in the jurisdiction of the Court of Justice in the context of an appeal, which is bound by the limits of the findings of law on the pleas and heads of claim argued before the General Court, [28] the appellant cannot put forward for the first time before the Court of Justice a ground for complaint which it did not raise before the General Court.

61. As regards the criticism that the General Court did not examine the evidence which would have enabled it to assess whether the condition relating to on-the-spot checks was met, the Republic of Bulgaria does not support its claim with any precise identification of that evidence which was submitted to the General Court without the latter having taken it into account.

62. Prima facie, the present complaint could therefore be rejected as inadmissible.

63. However, the Republic of Bulgaria explains in its reply that the present complaint must be understood in the broader context of its demonstration seeking to establish the difference in nature between the procedures based on Article 52 of Regulation No 1306/2013 and those based on Article 54 of that regulation. It submits that the adoption of an implementing decision under that first provision requires on-the-spot checks, which the Republic of Bulgaria legitimately expected.

64. Even if the Court of Justice were to decide to consider the merits of the present complaint – holding that, as the appellant claims, it is a new argument developed in relation to the position adopted by the General Court [29] – the Republic of Bulgaria would be unable to draw any useful conclusion from it for the purposes of the present appeal, since the procedure which led to the adoption of the decision at issue must be regarded, from the date of the invitation to that of the second bilateral meeting, as a procedure based on Article 54(5) of Regulation No 1306/2013.

65. Moreover, as regards the allegation of an obligation to carry out on-the-spot checks where the Commission decides to initiate a procedure under Article 52(1) of Regulation No 1306/2013 with a view to adopting an implementing decision as such, I share the Commission's view and shall confine myself to stating, first, that it is unmistakably clear from the wording of Article 47 of Regulation No 1306/2013 [30] that on-the-spot checks are merely an option; [31] secondly, that nowhere does it appear that the initiation of proceedings under Article 52(1) of Regulation No 1306/2013 is conditional on such checks being carried out and, thirdly, that such a finding is

[28] See, among the most recent expressions of that well-known requirement, for example, the judgments of 26 September 2024, *JCDecaux Street Furniture Belgium* v *Commission* (C-710/22 P, EU:C:2024:787, paragraph 33); of 4 October 2024, *Aeris Invest* v *Commission and SRB* (C-535/22 P, EU:C:2024:819, paragraph 253); and of 4 October 2024, *thyssenkrupp* v *Commission* (C-581/22 P, EU:C:2024:821, paragraph 123).

[29] See judgment of 19 December 2019, *HK* v *Commission* (C-460/18 P, EU:C:2019:1119, paragraph 27) cited by the Republic of Bulgaria. In the present case, that would be the General Court's assertion that it was possible for the communication of findings to be altered (see paragraph 42 of the judgment under appeal). I therefore also refer to point 43 et seq. of the present Opinion.

[30] See footnote 26 to the present Opinion.

[31] '… the Commission *may* organise on-the-spot checks in Member States' (emphasis added). It is only where the Commission decides to carry out on-the-spot checks that it is required, in accordance with Article 47(2) of Regulation No 1306/2013, to notify the Member State concerned in good time.

not called into question by a reading of Article 52(3) of Regulation No 1306/2013, which refers to 'the findings from the Commission's inspection' without establishing any systematic link between that inspection and the organisation of on-the-spot checks. [32]

66. Consequently, the present complaint, assuming that it is admissible, must be rejected as unfounded.

3. The fourth complaint, alleging an error of law in the interpretation of the Commission's duty to state reasons

67. As regards the fourth complaint, the Republic of Bulgaria claims that the General Court erred in finding, in paragraphs 61 and 62 of the judgment under appeal, that the obligation to state reasons had been complied with by reason of the Republic of Bulgaria's participation in the procedure giving effect to the principle *audi alteram partem* provided for in Article 52(3) of Regulation No 1306/2013.

68. It submits that no communication informing the Member State of its findings under Article 54(5) of Regulation No 1306/2013, drawn up following the checks referred to in paragraph 4 of that article, was transmitted by the Commission, contrary to the requirements of Article 34 of Implementing Regulation No 908/2014. The Commission may not change the legal basis in the course of the procedure. By proceeding in that way, it did not enable the appellant to understand the actual grounds on which the procedure was opened, which also do not appear in the decision at issue.

69. The Commission contends that that fourth complaint should be rejected.

70. It is clear from the paragraphs of the judgment under appeal to which the present complaint relates that it was only in the invitation to the second bilateral meeting that the Commission made its first reference to Article 54(1) of Regulation No 1306/2013. The General Court nevertheless noted that the Republic of Bulgaria had been involved in the process by which the decision at issue came about and had been able to discuss the question of debt recovery on numerous occasions prior to the adoption of that decision. [33] The General Court concluded that the appellant was not justified in claiming that it had not been informed or put in a position to understand the reasons why the Commission intended to impose on it the financial correction at issue. [34]

71. Those paragraphs of the judgment under appeal were preceded by a reminder, in paragraphs 57 to 60 of that judgment, of the relevant case-law relating to the Commission's duty to state reasons. The Republic of Bulgaria does not dispute the scope of the duty to state reasons as set out in those paragraphs.

72. Thus, in paragraph 60 of the judgment under appeal, the General Court clarified the relevant case-law of the Court of Justice relating specifically to the circumstances in which a Commission decision by which it refuses to charge part of the declared expenditure to the fund concerned appears to be sufficiently reasoned. It found that those decisions must be taken on the basis of a

[32] As the Commission rightly argued, Article 48(1) of Regulation No 1306/2013 describes on-the-spot checks carried out by the Commission as one of the means – and not the only means – available to it of obtaining the information necessary for its control.

[33] See paragraph 61 of the judgment under appeal.

[34] See paragraph 62 of the judgment under appeal.

summary report and correspondence between the Commission and that Member State and that the obligation to state reasons is satisfied where, first, that Member State is closely involved in the process by which the decision came about and, secondly, it was aware of the reasons for which the Commission had decided not to charge the sum in dispute to the fund concerned. The General Court then verified that those two conditions were satisfied in the present case.

73. In concluding that the appellant had been closely involved in the process by which the decision came about, the General Court referred to paragraphs 38 to 40 of its judgment – which are not disputed [35] – from which it is clear that, first, the invitation to a second bilateral meeting sent to the appellant referred to Article 54(1) of Regulation No 1306/2013; secondly, the final opinion sent to the Republic of Bulgaria stated that the Commission intended to maintain its proposal to impose a financial correction on the basis of Article 54(5)(a) and (c) of that regulation; and, thirdly, although the decision at issue referred, in general terms, to Article 52 of that regulation, in the table annexed to that decision, in the part dedicated to Bulgaria, the absence of recovery clearly appeared in the 'Grounds' column. [36] I would add, as the Commission rightly pointed out, that the Republic of Bulgaria does not appear to dispute the fact that the summary report itself expressly refers to Article 54(1) of Regulation No 1306/2013. [37]

74. The close involvement of the Republic of Bulgaria throughout the decision-making process leading to the decision at issue is thus clear from the findings of the General Court. The General Court therefore did not err in law in holding that, having regard to the manner in which the administrative procedure had been conducted, the Republic of Bulgaria had been duly informed, from the time of the invitation to the second bilateral meeting, [38] of the Commission's intention, and then of its decision, to exclude particular amounts from EU financing on account of the Republic of Bulgaria's persistent refusal to request recovery of the amounts in question. [39]

75. Logically, it also follows from that refusal that the appellant's claim that it was unaware of the reasons why the Commission had decided to exclude the amounts concerned from EU financing is unconvincing.

76. The General Court therefore did not err in law when it concluded that the Commission had not breached its duty to state reasons. The present complaint must therefore be rejected as unfounded.

4. The fifth complaint, alleging failure to examine the duty of general diligence laid down in Article 4(3) TEU

77. As regards the fifth complaint, the appellant criticises the General Court for failing to ascertain whether the Commission had complied with the duty of general diligence laid down in Article 4(3) TEU even though the Commission acted prematurely in adopting the decision at issue. It thus claims that after receiving OLAF's final reports, the Commission should have sent

[35] The Republic of Bulgaria acknowledges, moreover, in paragraph 24 of its appeal, that the statements contained in paragraph 40 of the judgment under appeal are correct.

[36] See, respectively, paragraphs 39, 40 and 41 of the judgment under appeal.

[37] That summary report was submitted to the General Court by the Commission in its response (see Annex B.1 to that pleading). The Commission also cites an extract from it in paragraph 16 of its response to the present appeal. Reference is made to it in paragraph 41 of the judgment under appeal.

[38] See paragraph 6 of the judgment under appeal.

[39] That is also confirmed by the description of the various stages of the procedure, as described, in particular, in paragraphs 9, 10 and 12 of the judgment under appeal.

them to the Member State only with a recommendation to take corrective action and then verify that Article 54(1) of Regulation No 1306/2013 had been complied with before adopting an implementing decision on the basis of Article 54(5)(a) and (c) of that regulation.

78. The Commission contends that the present complaint should be rejected.

79. At the outset, it must be stated that the scope of the obligation to recover sums unduly paid was correctly noted by the General Court when it held that such an obligation 'expresses, as regards the financing of the common agricultural policy, the duty of general diligence laid down in Article 4(3) TEU' and that it 'means that the national authorities are to effect recovery promptly and in good time, and are to make use of the means of verification and recovery at their disposal in order to ensure that those interests are protected'.[40] It appears that the present complaint should be interpreted rather as criticising the General Court for failing to respond to arguments relied on at first instance and thus amounts to pleading a breach of the General Court's obligation to state reasons.[41]

80. According to settled case-law, the General Court's obligation to state reasons is intended to enable the persons concerned to know the reasons which led it to adopt the judgment in question and provide the Court of Justice with sufficient material for it to exercise its power of review.[42] The General Court is not required to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case and its reasoning may be implicit, on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review.[43]

81. I note, from the outset, that the presentation of the pleas in law in the action before the General Court, as set out in paragraph 23 of the judgment under appeal, is not contested by the appellant in context of the appeal.

82. The arguments put forward by the Republic of Bulgaria before the General Court in relation to the question of breach of the principle of sincere cooperation were not independent[44] in nature but appeared, on the contrary, to be a consequence of the alleged infringement of the procedure which would necessarily have led to the adoption of the decision at issue. The General Court was therefore legitimately entitled to examine that complaint in the context of the examination of the first plea as it had renamed it.

83. Furthermore, the arguments put forward by the appellant were distinctive in being particularly cursory.[45] A cursory response to a cursory argument cannot be criticised.

84. Thus, as the Commission rightly submits, the General Court was able to hold, in paragraph 49 of the judgment under appeal, that, 'since the Commission's position on the need to recover the expenditure at issue had been communicated to it before the second bilateral meeting, and since all the questions relating to the application … of Article 54 of Regulation No 1306/2013 were

40 See paragraph 88 of the judgment under appeal and the case-law cited.

41 See judgment of 12 December 2024, *DD* v *FRA* (C-680/22 P, EU:C:2024:1019, paragraph 58).

42 See judgment of 7 June 2018, *Equipolymers and Others* v *Council* (C-363/17 P, EU:C:2018:402, paragraph 45).

43 See judgment of 12 December 2024, *DD* v *FRA* (C-130/22 P, EU:C:2024:1018, paragraph 87 and the case-law cited).

44 I refer here to the heading of the first plea in law as set out in the application initiating the proceedings.

45 See, for example, paragraph 108 of the application initiating the proceedings.

discussed throughout the remainder of the clearance procedure, including before the conciliation body, it cannot be held that the procedural rights of the Republic of Bulgaria were infringed, nor [was] … the principle of sincere cooperation'.

85. In so doing, the General Court clearly responded to the essence of the arguments set out in paragraphs 104 to 108 [46] of the application initiating the proceedings, since the appellant submitted in those paragraphs that it was as a result of the infringement of its procedural rights under Article 54 of Regulation No 1306/2013 that the principle of sincere cooperation had been breached.

86. The fifth complaint must therefore be rejected as unfounded.

5. The sixth complaint, alleging that the General Court breached its duty to state reasons

87. The Republic of Bulgaria complains that the General Court did not give sufficient reasons for its judgment, based essentially on three arguments. It thus claims that the General Court did not take into consideration or assess the letter from the Commission submitted by the appellant just before the hearing held before it. Nor did it respond to the argument alleging a change of practice on the part of the Commission. Finally, the General Court did not take a position on the arguments based on Regulation (EU, Euratom) 2020/2223. [47]

88. The Commission contends that that sixth complaint should be rejected.

89. As regards the letter, it is apparent from paragraphs 17 to 22 of the judgment under appeal that that offer of evidence, submitted by the Republic of Bulgaria the day before the hearing before the General Court, was held to be admissible, with the result that the letter from the Commission received by the appellant on 12 May 2022 was produced in the proceedings. That letter is then referred to in the grounds of the judgment under appeal which concern the analysis of the first plea in law before the General Court in paragraph 53, from which it follows that, according to the General Court's assessment, the Republic of Bulgaria did not explain how that letter was capable of supporting its arguments. In so doing, the General Court has fully enabled the appellant to understand the reasons why its argument was not upheld.

90. It is also because, according to the General Court, the Republic of Bulgaria failed to explain the relevance of that letter to its action that the General Court did not take a position on the question of the alleged change in the Commission's practice.

91. Thus, since – as I have pointed out [48] – the General Court was not required to take a position on each of the arguments put forward by the appellant in its action, the judgment under appeal contains all the elements necessary to enable the Republic of Bulgaria to ascertain the reasons why the General Court did not uphold its arguments relating to the letter and the alleged change in the Commission's practice. The Republic of Bulgaria is therefore not justified in claiming that the General Court failed to fulfil its duty to state reasons.

[46] As the Republic of Bulgaria stated in its reply.

[47] Regulation of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations (OJ 2020 L 437, p. 49).

[48] See the case-law referred to in point 80 of the present Opinion.

92. Finally, as regards paragraph 48 of the appeal, it must be stated that the Republic of Bulgaria has failed to explain clearly why it considers that recital 29 of Regulation 2020/2223 could assist it in demonstrating that the judgment under appeal should be set aside. The same conclusion must be drawn with regard to the Republic of Bulgaria's reliance [49] on Article 2 of that regulation, the subject matter of which appears to be entirely irrelevant to the present dispute. [50] Such an argument does not therefore appear capable of influencing the outcome of the present appeal.

93. Accordingly, the complaint alleging that the General Court breached its duty to state reasons must be rejected in its entirety.

V. Conclusion

94. In the light of all of the foregoing considerations, and without prejudice to the examination of the second ground of appeal, I propose that the Court of Justice reject the first ground of appeal.

[49] See paragraph 48 of the appeal.

[50] That article merely sets out the conditions for the entry into force of Regulation 2020/2223.