Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 December 2024*

(Reference for a preliminary ruling – Customs union – Regulation (EU) No 952/2013 – Union Customs Code – Article 15 – Provision of information to the customs authorities – Failure to comply with the customs legislation – Article 42 – Effective, proportionate and dissuasive penalties – Framework Decision 2005/212/JHA – Confiscation of crime-related proceeds, instrumentalities and property – Articles 2(1) – Confiscation – National provision providing for the imposition of a fine of between 100% and 200% of the customs value of the goods and confiscation thereof irrespective of the owner)

In Joined Cases C-717/22 and C-372/23,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Rayonen sad Svilengrad (District Court, Svilengrad, Bulgaria) (C-717/22) and from the Administrativen sad – Haskovo (Administrative Court, Haskovo, Bulgaria) (C-372/23), made by decisions of 10 November 2022 and 1 June 2023, received at the Court on 23 November 2022 and 13 June 2023 respectively, in the proceedings

'SISTEM LUX' OOD (C-717/22),

VU (C-372/23)

v

Teritorialna direktsia Mitnitsa Burgas,

intervening parties:

Rayonna prokuratura – Haskovo, Teritorialno otdelenie – Svilengrad (C-717/22),

Okrazhna prokuratura – Haskovo (C-372/23),

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Second Chamber, acting as President of the Third Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen (Rapporteur), M. Gavalec and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

* Language of the case: Bulgarian.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ‘SISTEM LUX’ OOD, by I.A. Ivanov, advokat,

– la Teritorialna direktsia Mitnitsa Burgas, by V. Stefanov,

– the Bulgarian Government, by T. Mitova, S. Ruseva and R. Stoyanov, acting as Agents,

– the Belgian Government, by S. Baeyens and P. Cottin, acting as Agents,

– the Spanish Government, by A. Pérez-Zurita Gutiérrez, acting as Agent,

– the Italian Government, by G. Palmieri, acting as Agent, and by A. Collabolletta and F. Meloncelli, avvocati dello Stato,

– the Latvian Government, by J. Davidoviča, K. Pommere and I. Romanovska, acting as Agents,

– the European Commission, by F. Moro and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2024,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of the fourth indent of Article 1 and Article 2(1) of Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49), Article 5(3), Article 15 and Article 42(1) and (2) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum OJ 2016 L 267, p. 2) (‘the Union Customs Code’), of Article 2(4) of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39), and of Article 17(1), Article 41 and Article 49(3) of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The requests have been made in proceedings between ‘SISTEM LUX’ OOD (‘Sistem Lux’), a company established in Serbia, and Teritorialna direktsia Mitnitsa Burgas (Regional Customs Directorate, Burgas, Bulgaria) (‘the Customs Directorate’) (Case C-717/22), on the one hand, and VU, a private individual of Serbian nationality, and the Customs Directorate (Case C-372/23), on the other, concerning the decision to impose an administrative penalty on VU for smuggling and to confiscate the goods of Sistem Lux which were smuggled.

Legal context

European Union law

Framework Decision 2005/212

3 Recital 1 of Framework Decision 2005/212 states:

‘The main motive for cross-border organised crime is financial gain. In order to be effective, therefore, any attempt to prevent and combat such crime must focus on tracing, freezing, seizing and confiscating the proceeds from crime. …’

4 Article 1 of that framework decision, entitled ‘Definitions’, in its fourth indent, provides:

‘For the purposes of this Framework Decision:

…

– “confiscation” means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property’.

5 Article 2 of that framework decision, entitled ‘Confiscation’, provides:

‘1. Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.

…’

The Union Customs Code

6 Article 15 of the Union Customs Code, entitled ‘Provision of information to the customs authorities’, provides:

‘1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.

2. The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of an application for an authorisation or any other decision, shall render the person concerned responsible for all of the following:

(a) the accuracy and completeness of the information given in the declaration, notification or application;

(b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application;

(c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.

The first subparagraph shall also apply to the provision of any information in any other form required by, or given to, the customs authorities.

Where the declaration or notification is lodged, the application is submitted, or information is provided, by a customs representative of the person concerned, as referred to in Article 18, that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph.'

7 Article 42 of that code, entitled 'Application of penalties', states:

'1. Each Member State shall provide for penalties for failure to comply with the customs legislation. Such penalties shall be effective, proportionate and dissuasive.

2. Where administrative penalties are applied, they may take, inter alia, one or both of the following forms:

(a) a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty;

(b) the revocation, suspension or amendment of any authorisation held by the person concerned.

…'

8 Article 79 of that code, entitled 'Customs debt incurred through non-compliance', provides in paragraph 1 thereof:

'For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the [European] Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

(b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;

(c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.'

9 Article 158 of that code, entitled 'Customs declaration of goods and customs supervision of Union goods', is worded as follows:

'1. All goods intended to be placed under a customs procedure, except for the free zone procedure, shall be covered by a customs declaration appropriate for the particular procedure.

2. In specific cases, other than those referred to in Article 6(3), a customs declaration may be lodged using means other than electronic data-processing techniques.

3. Union goods declared for export, internal Union transit or outward processing shall be subject to customs supervision from the time of acceptance of the declaration referred to in paragraph 1 until such time as they are taken out of the customs territory of the Union or are abandoned to the State or destroyed or the customs declaration is invalidated.'

10 Article 198 of the Union Customs Code, entitled 'Measures to be taken by the customs authorities', provides:

'1. The customs authorities shall take any necessary measures, including confiscation and sale, or destruction, to dispose of goods in the following cases:

(a) where one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union has not been fulfilled, or the goods have been withheld from customs supervision;

…'

11 Article 233 of that code, entitled 'Obligations of the holder of the Union transit procedure and of the carrier and recipient of goods moving under the Union transit procedure', provides:

'1. The holder of the Union transit procedure shall be responsible for all of the following:

(a) presentation of the goods intact and the required information at the customs office of destination within the prescribed time limit and in compliance with the measures taken by the customs authorities to ensure their identification;

…

3. A carrier or recipient of goods who accepts goods knowing that they are moving under the Union transit procedure shall also be responsible for presentation of the goods intact at the customs office of destination within the prescribed time limit and in compliance with the measures taken by the customs authorities to ensure their identification.'

12 Article 226 of that code, entitled 'External transit', provides:

'1. Under the external transit procedure, non-Union goods may be moved from one point to another within the customs territory of the Union without being subject to any of the following:
(a) import duty;
(b) other charges as provided for under other relevant provisions in force;

(c) commercial policy measures, in so far as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

2. In specific cases, Union goods shall be placed under the external transit procedure.

…'

Directive 2014/42

13 Article 2 of Directive 2014/42, entitled 'Definitions', provides in paragraph 4 thereof:

'For the purpose of this Directive, the following definitions apply:

…

(4) "confiscation" means a final deprivation of property ordered by a court in relation to a criminal offence;

…'

14 Article 14 of that directive, entitled 'Replacement of Joint Action 98/699/JHA and of certain provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA', provides, in paragraph 1 thereof:

'Joint Action 98/699/JHA [of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ 1998 L 333, p. 1)], point (a) of Article 1 and Articles 3 and 4 of [Council] Framework Decision 2001/500/JHA [of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ 2001 L 182, p. 1)], and the first four indents of Article 1 and Article 3 of Framework Decision [2005/212] are replaced by this Directive for the Member States bound by this Directive, without prejudice to the obligations of those Member States relating to the time limits for transposition of those Framework Decisions into national law.'

The European Code of Good Administrative Behaviour

15 Under Article 7, entitled 'Absence of abuse of power' of the European Code of Good Administrative Behaviour, approved by resolution of the Parliament of 6 September 2001 (OJ 2002 C 72 E, p. 331):

'Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.'

Bulgarian law

The Law on Customs

16 Article 231 of the Zakon za mitnitsite (Law on customs) (DV No 15 of 6 February 1998), in the version applicable to the main proceedings ('the Law on customs'), provides:

'Decisions imposing administrative penalties shall be issued by the director of the Agentsia "Mitnitsi" [(Customs Agency, Bulgaria)] or by officials appointed by him or her.'

17 Article 233 of that law provides:

'(1) A person who ships or moves goods across the national border, or who attempts to do so, without the knowledge or approval of the customs authorities, shall be penalised for smuggling by a fine equal to between 100 and 200 per cent of the customs value of the goods and, on exportation, equal to the value of the goods, unless the act is a criminal offence.

…

(6) Goods which have been smuggled shall be seized for the benefit of the State, whoever their owner may be, and where they are missing or have been stolen, [the person who committed the offence] shall be fined an amount equal to their customs value or, in the case of export, the value of those goods.

…'

The Law on administrative offences and penalties

18 Under Article 7 of the zakon za administrativnite narushenia i nakazania (Law on administrative offences and penalties) (DV No 92 of 28 November 1969):

'(1) A person is guilty of an act classified as an administrative offence whether it is committed intentionally or unintentionally.

(2) Unintentional acts shall not be punishable by law, except in the cases expressly provided for.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-717/22

19 On 28 May 2021, a customs officer at the Kapitan Andreevo customs post (Bulgaria), located at the Bulgaria–Türkiye border, carried out an inspection of an articulated lorry transporting 13 consignments of aluminium profiles which had been loaded in Türkiye.

20 The customs officer checked the customs documents presented to him by VU, the driver of that lorry, and found that eight of the consignments being transported, belonging to Sistem Lux, had not been declared in the accompanying documents.

21 Administrative offence proceedings were initiated under Article 233(1) of the Law on customs, following which it was established that although VU was present when the goods were loaded and weighed, he had failed to fulfil his obligation, as a driver operating international transport services, to acquaint himself with the documents supplied to him and to check, in particular, that they corresponded to the goods actually transported.

22 Consequently, the authority which imposed the administrative penalty took the view that, by transporting, without the knowledge and authorisation of the customs authorities, the aluminium profiles at issue across the Bulgarian border, VU had, through his negligence, committed the administrative offence referred to in Article 233(1) of the Law on customs. Accordingly, it fined him 73 140.06 Bulgarian lev (BGN) (approximately EUR 37 400) for smuggling, corresponding to the customs value of the aluminium profiles found in the eight undeclared consignments. It also ordered that those aluminium profiles be confiscated for the benefit of the State, on the basis of Article 233(6) of the Law on customs.

23 In those circumstances, Sistem Lux brought an action before the Rayonen sad Svilengrad (District Court, Svilengrad, Bulgaria), which is the referring court, against the decision to confiscate those aluminium profiles.

24 In that regard, the referring court considers that Article 233(6) of the Law on customs, which provides that smuggled goods may be confiscated whoever their owner may be, could be contrary to provisions of EU law, where those goods belong to someone other than the person who committed the administrative offence or where the person committed that offence through his or her negligence.

25 In addition, that court notes that EU law may also preclude a national provision such as that referred to in the preceding paragraph in so far as confiscation, which is a further penalty in addition to the fine imposed for smuggling, might breach the principle of proportionality enshrined in Article 42(1) of the Union Customs Code, read in conjunction with Article 49(3) of the Charter. Such a provision may also be contrary to the right of every person to have free enjoyment of the possessions he or she has acquired, referred to in Article 17(1) of the Charter.

26 Furthermore, the referring court is uncertain as to whether the confiscation measure laid down in Article 233(6) of the Law on customs is compatible with Article 42(2) of the Union Customs Code, in so far as Article 233(6) sets out an exhaustive list of the administrative penalties that may be applied for failure to comply with the customs legislation, and with the fourth indent of Article 1 and Article 2(1) of Framework Decision 2005/212 and Article 2(4) of Directive 2014/42, which preclude administrative authorities from ordering such a measure.

27 In those circumstances, the Rayonen sad Svilengrad (District Court, Svilengrad) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 42(2) of [the Union Customs Code], which exhaustively specifies the administrative penalties that can be applied for breaches of customs legislation, read in conjunction with Article 17(1) of the [Charter], to be interpreted as meaning that a national provision such as that of Article 233(6) of the Zakon za mitnitsite ([Law on customs]), which provides for an additional administrative penalty in the form of confiscation of the items involved in the offence (removal of property into State ownership), is unlawful? Is confiscation of the items involved in the offence lawful in those cases where the confiscated assets belong to someone other than the [person who committed the offence]?

(2) Is Article 42(1) of [that code], read in conjunction with Article 49(3) of the Charter, to be interpreted as meaning that a national provision such as that of Article 233(6) of the [Law on customs], which, alongside fines, provides for the additional penalty of confiscation (removal of property into State ownership) of the items involved in the offence, is unlawful in the following cases by reason of constituting a disproportionately punitive interference with the right to property which is not commensurate with the legitimate goal being pursued: both generally, in those cases where the confiscated asset, being the item involved in the offence, belongs to the [person who committed the offence], and in those cases where it belongs to a third party other than the [person who committed the offence], and particularly in those cases where the perpetrator committed the offence not intentionally but through negligence?

(3) Are the provisions of Article 2(1) of Framework Decision 2005/212, read in conjunction with Article 17(1) of the Charter and regard being had to the judgment of the Court of Justice of the European Union of [14 January 2021, *Okrazhna prokuratura – Haskovo and Apelativna prokuratura – Plovdiv* (C-393/19, EU:C:2021:8)], to be interpreted by way of *argumentum a fortiori* as meaning that they also apply in cases where the act constitutes not a criminal offence but an administrative offence, whereas the difference between the two lies solely in the criterion of 'large quantities' in terms of the value of the smuggled items as assumed by the courts? Are the fourth indent of Article 1 of [Framework Decision 2005/212] and Article 2(4) of [Directive 2014/42] to be interpreted in this case as meaning that the term "confiscation" refers specifically to a penalty or measure that must be issued by a court and cannot be ordered by an administrative authority, and is a national provision such as that of Article 233(6) of the [Law on customs], read in conjunction with Article 231 thereof, in that sense unlawful?'

Case C-372/23

28 It should be noted that the dispute in the main proceedings in Case C-372/23 arises from the same facts as those in Case C-717/22, set out in paragraphs 19 to 22 above.

29 VU challenged the decision of the authority which imposed the administrative penalty on him for smuggling in the sum of BGN 73 140.06 and confiscating the goods in question for the benefit of the State before the Rayonen sad Svilengrad (District Court, Svilengrad).

30 That court upheld that decision, on the ground that VU had actually transported those goods and had brought them into the Bulgarian territory without the knowledge and authorisation of the customs authorities, having failed to comply with the prior obligation to declare those goods not orally but in writing, and that the administrative offence of 'smuggling', within the meaning of Article 233(1) of the Law on customs, had therefore been established. It also noted that VU had been 'guilty' of a failure to exercise due diligence, within the meaning of Article 7 of the Law on administrative offences and penalties, even though he had acted negligently.

31 VU appealed against that judgment to the Administrativen sad – Haskovo (Administrative Court, Haskovo, Bulgaria), which is the referring court. Before that court, VU submits that he did not intentionally infringe the obligation to declare the goods in question in writing and that he therefore did not commit the offence of smuggling, which presupposes the existence of intent.

32 VU also submitted that, during the customs inspection, the customs officers had failed to comply with Articles 6 to 10 of the European Code of Good Administrative Behaviour and, in particular, had infringed Article 7 of that code by holding him liable.

33 The referring court states that it has doubts as to whether Article 233(1) of the Law on customs is compatible with EU law in so far as that provision does not distinguish intentional smuggling from unintentional smuggling. That said, that court considers that the national legislation could equally be regarded as compatible with Article 49(3) of the Charter, on the ground that administrative offences pose less of a risk to society than criminal offences. In addition, that court notes that Article 233(1) of the Law on customs provides that an adjustable penalty of between 100% and 200% of the customs value of the goods may be imposed, with the result that the authority which imposes the administrative penalty applies that provision taking into account all the facts and circumstances of the case, including whether the offence was committed intentionally or unintentionally.

34 In those circumstances, the Administrativen sad – Haskovo (Administrative Court, Haskovo) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 15 of [the Union Customs Code], read in conjunction with Article 42(1) thereof, to be interpreted as precluding a national rule such as that laid down in Article 233(1) of [the Law on customs], read in conjunction with Article 7 of [the Law on administrative offences and administrative penalties], which provides for the imposition of a penalty for smuggling not committed intentionally in cases where a customs offence is committed through a lack of diligence consisting in failure to comply with the prescribed form of declaration of goods transported across the national border? Is a national rule lawful which, in such cases, allows the offence to be classed as customs smuggling committed through negligence, or is intent a necessary constituent of customs smuggling?

(2) Is Article 42(1) of [that code] to be interpreted as precluding a national rule such as that laid down in Article 233(1) of [the Law on customs], read in conjunction with Article 7 of [the Law on administrative offences and penalties], under which a first offence falling under the heading of “smuggling”, whether committed intentionally or through negligence, is punishable by a penalty of the same nature and the same amount, namely a fine of between 100% and 200% of the customs value of the property involved in the offence?

(3) Is Article 42(2) of [that code] to be interpreted as precluding national legislation, such as that under Article 233(6) of [the Law on customs], which provides, as an additional administrative penalty, for the confiscation (removal for the benefit of the State) of the goods or property which were involved in the offence and the possession of which is not prohibited? Is confiscation of the items involved in the offence lawful in those cases where the confiscated assets belong to someone other than the [person who committed the offence]?

(4) Is Article 42(1) of [that code], read in conjunction with Article 49(3) of [the Charter], to be interpreted as meaning that a national rule such as that of Article 233(6) of [the Law on customs], which, alongside fines, provides for the additional penalty of confiscation (removal for the benefit of the State) of the goods or property which were involved in the offence and the possession of which is not prohibited, is unlawful in the following cases by reason of constituting a disproportionately punitive interference with the right to property which is not commensurate with the legitimate goal being pursued: both generally, in those cases where the confiscated asset, being the item involved in the offence, belongs to the [person who committed the offence] and in those cases where it belongs to a third party other than the offender, and particularly in those cases where the offender committed the offence not intentionally but through negligence?

(5) Is Article 5(3) of [the Union Customs Code], read in conjunction with Article 41 of the [Charter], to be interpreted as meaning that the authorities carrying out customs controls must comply with the provisions of the European Code of Good Administrative Behaviour, in particular Articles 6 to 10 thereof, and that a national rule such as that laid down in Article 233(1) of [the Law on customs], read in conjunction with Article 7(2) of [the Law on administrative offences and penalties], is unlawful which provides that penalties for intentional conduct may be imposed on persons who have committed a formal and negligent infringement of customs law and that confiscation for the benefit of the State of the item involved in the offence belonging to a third party may be ordered under Article 233(6) of [the Law on customs], without the person who acted without due diligence having previously been instructed as to how to conduct him or herself in accordance with the law and how to complete his or her documents for the carriage of goods across an external border of the European Union properly as prescribed by law?'

The questions referred for a preliminary ruling

Admissibility

35 According to settled case-law, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 44 and the case-law cited).

36 Since the order for reference serves as the basis for that procedure, the national court is required to explain, in that decision itself, the factual and legislative context of the dispute in the main proceedings and to provide the necessary explanations as to the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national law applicable to the proceedings pending before it (see, to that effect, judgment of 4 June 2020, *C.F. (Tax inspection)*, C-430/19, EU:C:2020:429, paragraph 23 and the case-law cited).

37 In that regard, it should also be emphasised that the information provided in the order for reference must enable, first, the Court to provide useful answers to the questions referred by the national court and, secondly, the governments of the Member States and other interested parties to exercise the right conferred on them by Article 23 of the Statute of the Court of Justice of the European Union to submit observations. It is the Court's duty to ensure that that right is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties (see, to that effect, judgment of 2 September 2021, *Irish Ferries*, C-570/19, EU:C:2021:664, paragraph 134 and the case-law cited).

38 Those cumulative requirements concerning the content of an order for reference are expressly set out in Article 94 of the Rules of Procedure of the Court of Justice, of which the referring court is supposed, in the context of the cooperation instituted by Article 267 TFEU, to be aware and which it is bound to observe scrupulously (order of 3 July 2014, *Talasca*, C-19/14, EU:C:2014:2049, paragraph 21; judgment of 9 September 2021, *Toplofikatsia Sofia and Others*, C-208/20 and C-256/20, EU:C:2021:719, paragraph 20 and the case-law cited). They are also set out in paragraphs 13, 15 and 16 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

(OJ 2019 C 380, p. 1), which now appear in paragraphs 13, 15 and 16 of the corrigendum to the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2024 C 6008).

39 In the present case, the fifth question in Case C-372/23 does not meet those requirements.

40 The order for reference does not contain a statement of the reasons which prompted the referring court to raise a question as to the interpretation of the provisions mentioned in the wording of that question, in particular those of the European Code of Good Administrative Behaviour. Nor does that court explain the link it establishes between the provisions of that code and the national legislation applicable to the dispute in the main proceedings. In those circumstances, the Court cannot assess to what extent an answer to that question is necessary to enable that court to give its decision.

41 It follows that the fifth question in C-372/23 is inadmissible.

Substance

The first and second questions in Case C-372/23

42 By its first and second questions in Case C-372/23, which it is appropriate to examine together, the referring court asks, in essence, whether Article 15 and Article 42(1) of the Union Customs Code are to be interpreted as precluding a national provision which makes it possible to establish a failure to comply with customs legislation on the sole ground of negligence, consisting of failure to use the prescribed form for declaring the goods being transported, and in such circumstances to impose on the person who failed to comply an administrative penalty which is at least equal to the customs value of the goods in respect of which he or she has failed to comply.

43 Article 15 of the Union Customs Code, entitled 'Provision of information to the customs authorities', states, in paragraph 1 thereof, that any person directly or indirectly involved in customs controls is to provide the customs authorities with all the requisite documents and information. In accordance with Article 15(2), the lodging of a customs declaration by a person to the customs authorities is to render the person concerned responsible, inter alia, for the accuracy and completeness of the information given in that declaration.

44 In the present case, the information in the file before the Court appears to indicate that the goods in question in the main proceedings were transported from Türkiye to Serbia, and that Bulgaria was merely a transit country. Subject to the verifications that it is for the referring court to carry out, those goods therefore had to be placed under the 'external transit procedure' within the meaning of Article 226 of the Union Customs Code. Article 158 of that code provides that all goods intended to be placed under a customs procedure, except for the free zone procedure, are to be covered by a customs declaration appropriate for the particular procedure.

45 Failure to fulfil the obligation to lodge a declaration under Article 15(1) of the Union Customs Code, read in conjunction with Article 158 of that code, constitutes a 'failure to comply with the customs legislation' within the meaning of Article 42(1) of that code. That concept covers not only fraudulent activities, but any failure to comply with EU customs legislation. In order to classify such non-fulfilment as a 'failure to comply with the customs legislation' within the meaning of Article 42(1), it is immaterial whether that non-fulfilment was intentional or negligent or in the

absence of any wrongful conduct on the part of the operator concerned (see, to that effect, judgment of 23 November 2023, *J.P. Mali*, C-653/22, EU:C:2023:912, paragraph 29 and the case-law cited).

46 It follows that the application of penalties under Article 42 of the Customs Code covers the situation in which the non-compliance of the operator concerned is the result of negligence.

47 As regards the consequences of such a failure, it is for each Member State to provide, in accordance with Article 42(1) of the Union Customs Code, for effective, proportionate and dissuasive penalties, inter alia, for the provision of incorrect information in a customs declaration (judgment of 23 November 2023, *J.P. Mali*, C-653/22, EU:C:2023:912, paragraph 30).

48 In the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by a procedure imposed by such legislation are not complied with, Member States are free to choose the penalties they consider appropriate. However, in accordance with the requirement that penalties must be proportionate, laid down in Article 42(1) of the Union Customs Code, the administrative measures or the measures imposing penalties adopted in accordance with that provision must not go beyond what is necessary in order to attain the objectives legitimately pursued by that code or be disproportionate to those objectives (see, to that effect, judgment of 8 June 2023, *ZES Zollner Electronic*, C-640/21, EU:C:2023:457, paragraphs 60 and 61 and the case-law cited).

49 Accordingly, the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the requirement of proportionality (see, to that effect, judgments of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 42, and of 24 February 2022, *Agenzia delle dogane e dei monopoli and Ministero dell'Economia e delle Finanze*, C-452/20, EU:C:2022:111, paragraph 39).

50 Member States are required to comply with that requirement not only as regards the determination of factors constituting an offence and the determination of the rules concerning the severity of fines, but also as regards the assessment of the factors which may be taken into account in the fixing of a fine (see, to that effect, judgment of 23 November 2023, *J.P. Mali*, C-653/22, EU:C:2023:912, paragraph 33 and the case-law cited).

51 In the present case, it is apparent from the order for reference that the fine laid down in Article 233(1) of the Law on customs for the offence of smuggling is between 100% and 200% of the customs value of the goods which are the subject of that offence, with the result that the customs authority may vary the amount of that fine by taking account of all the facts and circumstances of the case, including whether the offence was committed intentionally or unintentionally.

52 However, even in the light of the specific nature of customs offences, in particular the frequency with which they are committed and the difficulty of detecting them, a fine provided for by national law, the amount of which is between 100% and 200% of the customs value of the goods, does not appear to be commensurate with the seriousness of all the offences for which it is imposed, in particular where a person has failed to comply with his or her customs declaration obligations under the external transit customs procedure. Such a penalty, first, goes beyond what is necessary to ensure that the goods under that procedure are not removed from customs

supervision and, secondly, appears disproportionate in relation to the customs debt incurred as a result of the removal from customs supervision of goods placed under that procedure (see, to that effect, judgment of 4 March 2020, *Schenker*, C-655/18, EU:C:2020:157, paragraphs 44 and 46).

53 That is all the more true given that, in addition to that penalty, Article 233(6) of the Law on customs provides that goods which have been smuggled are to be seized for the benefit of the State, whoever their owner may be, and where those goods are missing or have been stolen, the person who committed the offence is to be fined an amount equal to their customs value or, in the case of export, the value of those goods. The combined penalties to which a person who committed a smuggling offence is liable may result in that person being ordered to pay three times the customs value of the goods concerned.

54 In the light of the foregoing considerations, the answer to the first and second questions in Case C-372/23 is that Article 15 and Article 42(1) of the Union Customs Code must be interpreted as not precluding a national provision which makes it possible to establish a failure to comply with customs legislation on the sole ground of negligence, consisting of failure to use the prescribed form for declaring the goods being transported. By contrast, in such circumstances, those provisions preclude the imposition, on the person who failed to comply, of an administrative penalty which is at least equal to the customs value of the goods in respect of which he or she has failed to comply.

The first and second questions in Case C-717/22 and the third and fourth questions in Case C-372/23

55 By the first and second questions in Case C-717/22 and the third and fourth questions in Case C-372/23, which it is appropriate to examine together, the referring courts ask, in essence, whether paragraphs 1 and 2 of Article 42 of the Union Customs Code, read in the light of Article 17(1) of the Charter, are to be interpreted as precluding a national provision which, for failure to comply with the customs legislation, provides not only for the imposition of a fine but also for the confiscation of the goods in respect of which the offence was committed. If not, those courts wish to know whether such confiscation is permitted even where those goods do not belong to the person who committed the offence.

56 As a preliminary point, as has been pointed out in paragraph 44 above, subject to the verifications that it is for the referring courts to carry out, the goods at issue in the main proceedings should have been placed under the external transit procedure. Thus, in accordance with Article 158 of the Union Customs Code, those goods should have been the subject of a customs declaration.

57 Having clarified that point, and as regards the first part of the questions referred, as reformulated, it should be noted that Article 42(2) of that code provides that 'where administrative penalties are applied, they may take, inter alia, one or both of the following forms: … a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty; … the revocation, suspension or amendment of any authorisation held by the person concerned'.

58 In that regard, the referring courts' doubt arises, in part, from their reading of Article 42(2), namely that it exhaustively lists the administrative penalties that can be applied for failure to comply with the customs legislation.

59 However, as the Advocate General observed in point 63 of his Opinion, the use of the words 'inter alia' in that provision shows that the list of those administrative penalties is not exhaustive and that the Member States may, in principle, provide for administrative penalties other than those referred to in that provision, such as measures for the confiscation of goods in respect of which a customs offence has been committed.

60 Furthermore, in the absence of harmonisation, by the Union Customs Code, of the penalties applicable in the event of failure to comply with the provisions of that code, it is open to the Member States to impose a combination of administrative penalties, such as those at issue in the main proceedings, subject to compliance with the requirement of proportionality enshrined in Article 42(1) of that code (see, to that effect, judgment of 4 March 2020, *Schenker*, C-655/18, EU:C:2020:157, paragraphs 41 and 42 and the case-law cited).

61 As regards whether Article 42 of the Customs Code precludes goods from being confiscated when they do not belong to the person who committed the offence, the Court has already held that a national provision which permits the confiscation of goods belonging to a third party acting in good faith which are used to commit a smuggling offence is incompatible with the right to property guaranteed in Article 17(1) of the Charter (see, to that effect, judgment of 14 January 2021, *Okrazhna prokuratura – Haskovo and Apelativna prokuratura – Plovdiv*, C-393/19, EU:C:2021:8, paragraph 56).

62 By contrast, confiscation measures relating to the proceeds of an offence or unlawful activity or an instrument that has been used to commit an offence which does not belong to a third party in good faith constitute regulation of the use of property within the meaning of the third sentence of Article 17(1) of the Charter (see, to that effect, judgment of 10 September 2024, *Neves 77 Solutions*, C-351/22, EU:C:2024:723, paragraph 82).

63 In order to ensure that a system of administrative penalties applicable to a customs offence has a genuinely deterrent effect, while respecting the requirement of proportionality, offenders must actually be deprived of the economic advantages resulting from those offences and the penalties must be capable of producing results proportionate to the seriousness of such offences, thereby effectively discouraging further offences of the same kind (see, by analogy, judgment of 24 February 2022, *Agenzia delle dogane e dei monopoli and Ministero dell'Economia e delle Finanze*, C-452/20, EU:C:2022:111, paragraph 44).

64 In the present case, it is apparent from the documents before the Court that the confiscated goods belong not to VU but to Sistem Lux. As noted in particular by the Customs Directorate and the Bulgarian Government in their written observations, it appears that that company is the consignee of the goods and/or the holder of the Union transit procedure. It is therefore required, in either of those situations, to comply with the obligations arising from Article 233 of the Union Customs Code.

65 In such circumstances, it cannot be ruled out that Sistem Lux may be regarded as the entity to which the infringement of Article 233 must be attributed in the event of failure to comply with the obligations under that provision. It is for the referring courts to verify those facts in order to establish the possible liability of that company.

66 In the context of the two situations referred to in paragraph 64 of the present judgment, it must be held that, in view of the objective pursued by the customs legislation of preventing illegal imports of non-Union goods into the European Union and of combating fraud by ensuring the correct

collection of import duties in order to protect the financial interests of the European Union (see, to that effect, judgments of 15 July 2010, *DSV Road*, C-234/09, EU:C:2010:435, paragraph 33, and of 7 April 2022, *Kauno teritorinė muitinė*, C-489/20, EU:C:2022:277, paragraph 35), the confiscation of those goods, as an additional penalty, where they belong to a person to whom a failure to comply with the Union Customs Code is attributable, appears proportionate and at the same time capable of deterring the operators concerned from failing to comply with their obligations under the Code and of preventing them from benefiting from such failures to comply.

67 That interpretation is, moreover, supported by Article 198(1)(a) of the Union Customs Code, according to which 'the customs authorities shall take any necessary measures, including confiscation …, to dispose of goods … where one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union has not been fulfilled, or the goods have been withheld from customs supervision'.

68 In the light of the foregoing considerations, the answer to the first and second questions in Case C-717/22 and the third and fourth questions in Case C-372/23 is that Article 42(1) and (2) of the Union Customs Code, read in the light of Article 17(1) of the Charter, must be interpreted as not precluding a national provision which, for failure to comply with the customs legislation, provides not only for the imposition of a fine but also for the confiscation of the goods in respect of which there has been a failure to comply, provided that the system of penalties applicable to that failure to comply, as a whole, satisfies the requirement of proportionality.

The third question in Case C-717/22

69 By its third question in Case C-717/22, the referring court asks, in essence, whether Article 2(1) of Framework Decision 2005/212 is to be interpreted as applying to the confiscation of goods in respect of which there has been a failure to comply with the customs legislation where that failure does not constitute a criminal offence but an administrative offence. If so, that court asks, in essence, whether the fourth indent of Article 1 of that framework decision and Article 2(4) of Directive 2014/42 are to be interpreted as precluding a national provision which provides for such confiscation to be ordered by an administrative authority.

70 In that regard, it should be noted that Article 2(1) of Framework Decision 2005/212 provides that each Member State must take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.

71 It follows from the wording of that provision that the material scope of that framework decision is confined to criminal offences, as is also apparent from its title and recital 1 thereof, which refer, respectively, to 'confiscation of crime-related proceeds, instrumentalities and property' and 'organised crime' (see, to that effect, judgment of 9 March 2023, *Otdel 'Mitnichesko razsledvane i razuznavane'*, C-752/21, EU:C:2023:179, paragraph 40).

72 Moreover, only criminal offences of a certain gravity, namely those punishable by a custodial sentence of more than one year, are covered by those provisions (see, to that effect, judgment of 9 March 2023, *Otdel 'Mitnichesko razsledvane i razuznavane'*, C-752/21, EU:C:2023:179, paragraph 41).

73 As regards the concept of 'confiscation', it is appropriate, in accordance with Article 14(1) of Directive 2014/42, to refer to the wording of Article 2(4) thereof, according to which confiscation means the 'final deprivation of property ordered by a court in relation to a criminal offence' (see, to that effect, judgment of 9 March 2023, *Otdel 'Mitnichesko razsledvane i razuznavane'*, C-752/21, EU:C:2023:179, paragraph 42 and 43).

74 It is sufficient to note that, first, in the main proceedings, the decision confiscating the goods in respect of which there was a failure to comply with the customs legislation was issued following administrative proceedings which did not relate to a criminal offence punishable by a custodial sentence of more than one year, as required by Article 2(1) of Framework Decision 2005/212, or even, generally, to any criminal offence.

75 In that context, it should be pointed out that, although the administrative proceedings were, in the present case, preceded by criminal proceedings, it is unequivocally clear from the order for reference that no further action was taken in those proceedings, so that no criminal proceedings were pending when the administrative proceedings were initiated.

76 Secondly, it is also apparent from the documents before the Court that the confiscation of the goods in question was ordered not by a 'court', within the meaning of Article 2(4) of Directive 2014/42, but by the customs authorities.

77 Framework Decision 2005/212 is not applicable where the confiscation decision is taken by a customs authority following proceedings which do not relate to a criminal offence (see, to that effect, judgments of 19 March 2020, *'Agro In 2001'*, C-234/18, EU:C:2020:221, paragraph 61, and of 9 March 2023, *Otdel 'Mitnichesko razsledvane i razuznavane'*, C-752/21, EU:C:2023:179, paragraph 46).

78 In so far as the scope of that framework decision is clearly circumscribed and it was adopted with a view to establishing common minimum rules in a clearly defined area, which, moreover, concerns cooperation in criminal matters, that framework decision also cannot be materially applicable by analogy to a situation such as that at issue in the main proceedings (see, to that effect, judgment of 9 March 2023, *Otdel 'Mitnichesko razsledvane i razuznavane'*, C-752/21, EU:C:2023:179, paragraph 47).

79 In the light of all those grounds, the answer to the third question in Case C-717/22 is that Article 2(1) of Framework Decision 2005/212 must be interpreted as not applying to a confiscation measure adopted following a failure to comply with the customs legislation if that failure to comply does not constitute a criminal offence punishable by a custodial sentence of more than one year, but an administrative offence.

Costs

80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Article 15 and Article 42(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code**

   must be interpreted as not precluding a national provision which makes it possible to establish a failure to comply with customs legislation on the sole ground of negligence, consisting of failure to use the prescribed form for declaring the goods being transported. By contrast, in such circumstances, those provisions preclude the imposition, on the person who failed to comply, of an administrative penalty which is at least equal to the customs value of the goods in respect of which he or she has failed to comply.

2. **Article 42(1) and (2) of Regulation No 952/2013, read in conjunction with Article 17(1) of the Charter of Fundamental Rights of the European Union,**

   must be interpreted as not precluding a national provision which, for failure to comply with the customs legislation, provides not only for the imposition of a fine but also for the confiscation of the goods in respect of which the failure to comply has been committed, provided that the system of penalties applicable to that failure to comply, as a whole, complies with the requirement of proportionality.

3. **Article 2(1) of Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property**

   must be interpreted as not applying to a confiscation measure adopted following a failure to comply with the customs legislation if that failure to comply does not constitute a criminal offence punishable by a custodial sentence of more than one year, but an administrative offence.

[Signatures]