Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

5 December 2023 (*)

(Reference for a preliminary ruling – Directive 2004/38/EC – Articles 27 and 29 – Measures restricting the free movement of Union citizens on public health grounds – Measures of general application – National legislation providing for a ban on leaving the national territory in order to engage in non-essential travel to Member States classified as high-risk zones in the context of the COVID-19 pandemic and an obligation for every traveller entering the national territory from one of those Member States to undergo screening tests and to observe quarantine – Schengen Borders Code – Article 23 – Exercise of police powers in the field of public health – Equivalence with the exercise of border checks – Article 25 – Possibility of reintroducing border controls at internal borders in the context of the COVID-19 pandemic – Controls carried out in a Member State as part of measures prohibiting the crossing of borders for the purpose of engaging in non-essential travel from or to States in the Schengen area classified as high-risk zones in the context of the COVID-19 pandemic)

In Case C-128/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nederlandstalige rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking), Belgium) made by decision of 7 February 2022, received at the Court on 23 February 2022, in the proceedings

Nordic Info BV

v

Belgische Staat,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, C. Lycourgos, E. Regan, F. Biltgen and Z. Csehi, Presidents of Chambers, J.-C. Bonichot, M. Safjan (Rapporteur), S. Rodin, P.G. Xuereb, J. Passer, D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 10 January 2023,

after considering the observations submitted on behalf of:

– Nordic Info BV, by F. Emmerechts and R. Pockelé-Dilles, advocaten,

– the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents, and by L. De Brucker, E. Jacubowitz and P. de Maeyer, advocaten,

– the Romanian Government, by M. Chicu and E. Gane, acting as Agents,

– the Norwegian Government, by V. Hauan, A. Hjetland, T.B. Leming, I. Thue and P. Wennerås, acting as Agents,

– the Swiss Government, by L. Lanzrein and N. Marville-Dosen, acting as Agents,

– the European Commission, by E. Montaguti, J. Tomkin and F. Wilman, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 September 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35) and of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1), as amended by Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017 (OJ 2017 L 327, p. 1) ('the Schengen Borders Code').

2 The request has been made in proceedings between Nordic Info BV, a company established in Belgium, and the Belgische Staat (Belgian State) concerning compensation for the damage allegedly suffered by that company as a result of national measures restricting freedom of movement adopted during the health crisis linked to the COVID-19 pandemic.

Legal context

European Union law

Directive 2004/38

3 Recitals 22, 25 to 27 and 31 of Directive 2004/38 state:

‘(22) The Treaty allows restrictions to be placed on the right of free movement and residence on grounds of public policy, public security or public health. In order to ensure a tighter definition of the circumstances and procedural safeguards subject to which Union citizens and their family members may be denied leave to enter or may be expelled, this Directive should replace Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals, which are justified on grounds of public policy, public security or public health [(OJ, English Special Edition 1963-1964, p. 117)].

…

(25) Procedural safeguards should also be specified in detail in order to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being denied leave to enter or reside in another Member State, as well as to uphold the principle that any action taken by the authorities must be properly justified.

(26) In all events, judicial redress procedures should be available to Union citizens and their family members who have been refused leave to enter or reside in another Member State.

(27) In line with the case-law of the Court of Justice prohibiting Member States from issuing orders excluding for life persons covered by this Directive from their territory, the right of Union citizens and their family members who have been excluded from the territory of a Member State to submit a fresh application after a reasonable period, and in any event after a three year period from enforcement of the final exclusion order, should be confirmed.

…

(31) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation’.

4 Article 1 of Directive 2004/38, entitled ‘Subject’, is worded as follows:

‘This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

(b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

(c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.’

5 Article 2 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

(1) “Union citizen” means any person having the nationality of a Member State;

…

(3) “Host Member State” means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.’

6 Article 3 of the directive, entitled ‘Beneficiaries’, provides in paragraph 1:

‘This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.’

7 Article 4 of Directive 2004/38, entitled ‘Right of exit’, reads as follows:

‘1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.

2. No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.

3. Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.

4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.’

8 Under Article 5 of that directive, entitled ‘Right of entry’:

‘1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

No entry visa or equivalent formality may be imposed on Union citizens.

…

5. The Member State may require the person concerned to report his/her presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions.’

9 Articles 6 and 7 of that directive, included in Chapter III thereof on the right of residence, concern respectively the right of residence for up to three months and the right of residence for more than three months.

10 Chapter VI of Directive 2004/38 governs ‘restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health’ and contains Articles 27 to 33 of that directive.

11 Article 27 of that directive, entitled ‘General principles’, is worded as follows:

‘1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.’

12 Article 29 of Directive 2004/38, entitled ‘Public health’, provides:

‘1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation [(WHO)] and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.

2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.

3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.’

13 Article 30 of that directive, entitled ‘Notification of decisions’, provides:

‘1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.

2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.

3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.’

14 Article 31 of that directive, headed ‘Procedural safeguards’, provides:

‘1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.

…

3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.

4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.’

15 Article 32 of that directive, entitled ‘Duration of exclusion orders’, provides:

‘1. Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

The Member State concerned shall reach a decision on this application within six months of its submission.

2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.’

The Schengen Borders Code

16 Recitals 2 and 6 of the Schengen Borders Code state:

‘(2) The adoption of measures under Article 77(2)(e) [TFEU], with a view to ensuring the absence of any controls on persons crossing internal borders, forms part of the [European] Union’s objective of establishing an area without internal frontiers in which the free movement of persons is ensured, as set out in Article 26(2) TFEU.

…

(6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States’ internal security, public policy, public health and international relations.

…’

17 Article 1 of that code, entitled ‘Subject matter and principles’, provides:

‘This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the Union.

It lays down rules governing border control of persons crossing the external borders of the Member States of the Union.’

18 Points 1, 8, 10 to 12 and 21 of Article 2 of that code define the following concepts:

‘For the purposes of this Regulation the following definitions apply:

1. “internal borders” means:

(a) the common land borders, including river and lake borders, of the Member States;

(b) the airports of the Member States for internal flights;

(c) sea, river and lake ports of the Member States for regular internal ferry connections;

…

8. “border crossing point” means any crossing-point authorised by the competent authorities for the crossing of external borders;

…

10. “border control” means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;

11. “border checks” means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it;

12. “border surveillance” means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks;

…

21. “threat to public health” means any disease with epidemic potential as defined by the International Health Regulations of the [WHO] and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.’

19 Under Article 3 of that code, entitled ‘Scope’:

‘This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

(a) the rights of persons enjoying the right of free movement under Union law;

(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.’

20 Article 6(1)(e) of the Schengen Borders Code provides, inter alia, that third-country nationals who wish to enter the territory of a Member State by crossing an external border must not be considered to be a threat to public health.

21 In the context of external border controls, Article 8(2) and (3) of that code requires, in essence, checks to be carried out to ensure that persons enjoying the right of free movement under Union law and third-country nationals are not considered, inter alia, to be a threat to public policy, internal security or public health.

22 Under Article 22 of that code, entitled ‘Crossing internal borders’:

‘Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.’

23 Article 23 of that code, entitled ‘Checks within the territory’, states:

‘The absence of border control at internal borders shall not affect:

(a) the exercise of police powers by the competent authorities of the Member States under national law, in so far as the exercise of those powers does not have an effect equivalent to border checks; that shall also apply in border areas. Within the meaning of the first sentence, the exercise of police powers may not, in particular, be considered equivalent to the exercise of border checks when the police measures:

(i) do not have border control as an objective;

(ii) are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime;

(iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders;

(iv) are carried out on the basis of spot-checks;

…’

24 Article 25 of the Schengen Borders Code, entitled ‘General framework for the temporary reintroduction of border control at internal borders’, is worded as follows:

‘1. Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or for the foreseeable duration of the serious threat if its duration exceeds 30 days. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 27, 28 and 29. The criteria referred to, respectively, in Articles 26 and 30 shall be taken into account in each case where a decision on the reintroduction of border control at internal borders is considered pursuant, respectively, to Article 27, 28 or 29.

3. If the serious threat to public policy or internal security in the Member State concerned persists beyond the period provided for in paragraph 1 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 26 and in accordance with Article 27, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods of up to 30 days.

4. The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed six months. Where there are exceptional circumstances as referred to in Article 29, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article.’

25 Articles 26 to 28 of that code, entitled, respectively, ‘Criteria for the temporary reintroduction of border control at internal borders’, ‘Procedure for the temporary reintroduction of border control at internal borders under Article 25’ and ‘Specific procedure for cases requiring immediate action’, lay down the substantive and procedural conditions with which Member States must comply in order to be able to temporarily reintroduce border control at internal borders under Article 25 of that code.

Recommendation (EU) 2020/912

26 Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the [European Union] and the possible lifting of such restriction (OJ 2020 L 208I, p. 1) contains an Annex II, the content of which is as follows:

‘Specific categories of travellers with an essential function or need:

i. Healthcare professionals, health researchers, and elderly care professionals;

ii. Frontier workers;

iii. Seasonal workers in agriculture;

iv. Transport personnel;

v. Diplomats, staff of international organisations and people invited by international organisations whose physical presence is required for the well-functioning of these organisations, military personnel and humanitarian aid workers and civil protection personnel in the exercise of their functions;

vi. Passengers in transit;

vii. Passengers travelling for imperative family reasons;

viii. Seafarers;

ix. Persons in need of international protection or for other humanitarian reasons;

x. Third-country nationals travelling for the purpose of study;

xi. Highly qualified third-country workers if their employment is necessary from an economic perspective and the work cannot be postponed or performed abroad.'

Belgian law

27 Article 18 of the ministerieel besluit houdende dringende maatregelen om de verspreiding van het coronavirus COVID-19 te beperken (Ministerial Decree on emergency measures to limit the spread of the COVID-19 coronavirus) of 30 June 2020 (*Belgisch Staatsblad*, 30 June 2020, p. 48715), as amended by Article 3 of the ministerieel besluit houdende wijziging van het ministerieel besluit van 30 juni 2020 houdende dringende maatregelen om de verspreiding van het coronavirus COVID-19 te beperken (Ministerial Decree amending the Ministerial Decree of 30 June 2020 on emergency measures to limit the spread of the COVID-19 coronavirus) of 10 July 2020, (*Belgisch Staatsblad*, 10 July 2020, p. 51609) ('the amended Ministerial Decree'), provided:

'§1. Non-essential travel to and from Belgium is prohibited.

§2. By way of derogation from the first paragraph and without prejudice to Article 20, it is authorised:

1° to travel from Belgium to all countries of the European Union, the Schengen area and the United Kingdom, and to travel to Belgium from these countries, with the exception of territories designated as red zones, the list of which is published on the website of the Federal Public Service for Foreign Affairs;

…'

28 Article 22 of the amended Ministerial Decree stated:

'Infringements of the following articles shall be punishable by the penalties provided for in Article 187 of the Law of 15 May 2007 relating to civil security:

…

– Articles 11, 16, 18, 19 and 21*bis*.'

29 Article 187 of the Law of 15 May 2007 relating to civil security (*Belgisch Staatsblad*, 31 July 2007) provides:

‘Refusal or negligence to comply with the measures ordered pursuant to Articles 181(1) and 182 shall be punishable, in peacetime, by a term of imprisonment of eight days to three months and a fine of EUR 26 to EUR 500, or by one of those penalties only.

The Minister or, where applicable, the mayor or the police commander for the area may, in addition, have the said measures carried out *ex officio*, at the expense of the offending or defaulting parties.’

30 It is also apparent from the documents before the Court that the non-essential travel referred to in Article 18 of the amended Ministerial Decree was defined as that which was not essential, which was identified in a list of frequently asked questions available on the info-coronavirus.be website and corresponded to the list of essential travel contained in Recommendation 2020/912.

31 It is also apparent from the documents before the Court that any traveller from a red zone such as that referred to in Article 18 of the amended Ministerial Decree had to undergo testing and comply with quarantine. That obligation was laid down by provisions adopted by the Flemish Region, the Walloon Region, the Brussels-Capital Region and the German-speaking Community.

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

32 On 11 March 2020, the WHO classified the coronavirus COVID-19 epidemic as a pandemic before raising the level of the threat associated with that pandemic to its maximum level on 16 March 2020.

33 In that context, on 10 July 2020, the Kingdom of Belgium adopted Article 18 of the amended Ministerial Decree to prohibit non-essential travel having as its point of departure or arrival Belgium, on the one hand, and the countries of the European Union and the Schengen area and the United Kingdom, on the other, provided that those countries were designated as ‘red zones’ in the light of their epidemiological situation or the level of restrictive health measures taken by their authorities. Furthermore, any traveller coming from such a country classified as a red zone was required, in Belgium, to undergo screening tests and observe quarantine. The list of countries designated as red zones could be consulted for the first time on 12 July 2020 on the website of the Federal Public Service for Foreign Affairs. Sweden was one of the countries classified as a red zone.

34 According to its own statements, Nordic Info, a travel agency specialising in travel to and from Scandinavia, cancelled all scheduled trips from Belgium to Sweden during the summer season in order to comply with the Belgian legislation. It also states that it took steps to inform and assist travellers in Sweden to return to Belgium.

35 On 15 July 2020, the list referred to in paragraph 33 of this judgment was updated and Sweden was classified as an orange zone, which meant that travel to and from that country was no longer prohibited, but simply not recommended, and that other rules applied to the entry of travellers from that country into Belgian territory.

36 Taking the view that the Belgian State had acted wrongly in drawing up the amended Ministerial Decree, Nordic Info brought an action before the Nederlandstalige rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking), Belgium), the referring court, seeking compensation for the damage which it claims to have suffered as a result of the introduction

and subsequent amendment of the colour codes provided for by that Ministerial Decree. The Belgian State contended that the action should be dismissed as unfounded.

37 In particular, Nordic Info claims, inter alia, that the Belgian State infringed (i) Directive 2004/38 and the national provisions transposing Articles 27 to 31 of that directive and (ii) the Schengen Borders Code.

38 As regards the complaint alleging infringement of Directive 2004/38, the referring court notes that, although, in the description of its damage and in its arguments, Nordic Info refers, in a general manner, to the ban on leaving Belgian territory imposed on Belgian nationals and non-Belgian Union citizens residing in Belgium and on their family members and the ban on entering that territory imposed on all Union citizens, whether Belgian or non-Belgian, and on their family members, that company challenges however only the legality (i) of the abovementioned exit ban and (ii) of the restrictions on the right of entry to that territory imposed on non-Belgian Union citizens and their family members, as embodied in the obligation, for the latter citizens and their family members, to undergo screening tests when entering that territory and to observe quarantine.

39 In that context, it is necessary to clarify whether Article 27(1) and Article 29(1) of that directive must be read together in such a way that only restrictions on the right of entry are justified on public health grounds or whether, on the contrary, the two provisions set out independent justifications so that the first of those provisions would be sufficient, in itself, to justify restrictions on both the right of entry and the right of exit on such grounds.

40 Irrespective of the interpretation of Article 27(1) and Article 29(1) of Directive 2004/38, the referring court also wishes to know whether a Member State may, on the basis of those provisions, adopt, in the form of an act of general application, a non-discriminatory measure such as that introduced by Article 18 of the amended Ministerial Decree. Such a possibility could be inferred from the fact that the public health ground is not set out in Article 27(2) of that directive, but is dealt with separately in Article 29 of that directive.

41 If the latter question is answered in the negative, the referring court wonders whether such a non-discriminatory general restriction could be based on Articles 20 and 21 TFEU and/or on a general principle of EU law, in compliance with the principle of proportionality, for the purpose of achieving the legitimate objective of combating a pandemic.

42 In the context of its complaint alleging infringement of the Schengen Borders Code, Nordic Info submits that, by providing that restrictions on the right of exit and the right of entry could be checked and enforced *ex officio* by the competent Belgian authorities and failure to comply with those restrictions be sanctioned by those authorities, the amended Ministerial Decree amounted to introducing border control at internal borders in breach of Article 25 et seq. of that code. Those provisions allow border control at internal borders to be temporarily reintroduced only in the event of a serious threat to public policy and internal security, and not in the event of a serious threat to public health.

43 In addition, Nordic Info submits that the measures resulting from the amended Ministerial Decree cannot be regarded as falling within the scope of Article 23(a) of the Schengen Borders Code, given that it alleges that the exercise of police powers by the competent Belgian authorities had, in the present case, an effect equivalent to border checks and that, in any event, that power could be exercised only in the field of public security and not in the field of public health.

44 The referring court is uncertain, however, whether, in the light of the arguments put forward before it by the Belgian State, contagious disease may, in times of crisis, be equated with a threat to public policy or public/internal security within the meaning of Articles 23 and 25 of the Schengen Borders Code, with the result that, in such a situation, the exercise of police powers and the reintroduction of border control at internal borders might be possible on the basis of each of those provisions respectively.

45 In those circumstances, the Nederlandstalige rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking)) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Articles 2, 4, 5, 27 and 29 of [Directive 2004/38], which implement Articles 20 and 21 TFEU, be interpreted as not precluding the regulations of a Member State (in the present case, deriving from Articles 18 and 22 of the [amended] Ministerial Decree) which by way of a general measure:

– impose, in principle, on Belgian nationals and their family members as well as on Union citizens residing in Belgian territory and their family members an exit ban for non-essential travel from Belgium to countries within the [European Union] and the Schengen area that are coloured red in accordance with a colour code drawn up on the basis of epidemiological data;

– impose on non-Belgian Union citizens and their family members (who may or may not have the right to reside in Belgian territory) entry restrictions (such as quarantines and tests) for non-essential travel from countries within the [European Union] and the Schengen area to Belgium which are coloured red in accordance with a colour code drawn up on the basis of epidemiological data?

(2) Must Articles 1, 3 and 22 of the Schengen Borders Code be interpreted as not precluding the regulations of a Member State (in the present case, Articles 18 and 22 of the [amended] Ministerial Decree) which impose an exit ban on non-essential travel from Belgium to countries within the [European Union] and the Schengen area and an entry ban from those countries to Belgium which may not only be checked and sanctioned, but may also be enforced *ex officio* by the Minister, the mayor and the police commander?'

Consideration of the questions referred

The first question

46 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 31).

47 In the present case, it must be observed, first, that, in view of the fact that (i) Nordic Info bases, according to the explanations given by the referring court, its action for damages on the damage it allegedly suffered in connection with organised trips between Belgium and Sweden and that (ii) the first question refers to the Belgian legislation at issue in the main proceedings only in so far as it concerned Union citizens and their family members, there is no need, for the purposes of answering that question, to take account of the fact that that legislation covered, in addition to the

Member States of the European Union, the countries of the Schengen area which are not members of the European Union.

48 Second, although the referring court mentions, in the first question, Article 2 of Directive 2004/38, it should nevertheless be noted that the interpretation of that provision, which is limited to defining the concepts used in that directive, is not necessary as such in order to answer that question.

49 In those circumstances, it must be held that, by its first question, the referring court asks whether Articles 27 and 29 of Directive 2004/38, read in conjunction with Articles 4 and 5 thereof, must be interpreted as precluding legislation of general application of a Member State which, on public health grounds connected with combating the COVID-19 pandemic, (i) prohibits Union citizens and their family members, whatever their nationality, from engaging in non-essential travel from that Member State to other Member States classified by it as high-risk zones on the basis of the restrictive health measures or the epidemiological situation in those other Member States, and (ii) requires Union citizens who are not nationals of that Member State to undergo screening tests and to observe quarantine when entering the territory of that Member State from one of those other Member States.

50 In that regard, it should be recalled that, under Article 27(1) of Directive 2004/38, which falls within Chapter VI of that directive, entitled 'Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health', and gives concrete expression to Article 1(c) thereof, Member States may, subject to the provisions of that chapter, restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health, provided that those grounds are not invoked to serve economic ends.

51 Article 29(1) of that directive which is devoted more specifically to measures restricting freedom of movement on public health grounds, states that only certain diseases, namely diseases with epidemic potential as defined by the relevant instruments of the WHO and other infectious diseases or contagious parasitic diseases, may justify such measures, provided that they are the subject of protection provisions applying to nationals of the host Member State, that is to say, in accordance with point 3 of Article 2 of that directive, the Member State to which a Union citizen moves in order to exercise his or her right of free movement and residence.

52 As regards, in the first place, diseases capable of justifying, on the basis of Article 27(1) and Article 29(1) of Directive 2004/38, measures restricting freedom of movement on public health grounds, it is apparent from the wording of those two provisions that a Member State may, for non-economic ends and in compliance with the conditions laid down in Chapter VI of that directive, adopt such measures solely on account of certain diseases which are the subject of protection provisions applying to its own nationals, namely diseases with epidemic potential as defined by the relevant instruments of the WHO or other infectious diseases or contagious parasitic diseases.

53 In that context, a Member State may, a fortiori, adopt, on the basis of those provisions, measures restricting freedom of movement in order to respond to a threat linked to a contagious infectious disease which is of a pandemic nature recognised by the WHO.

54 In the case in the main proceedings, it is apparent from the documents before the Court that the measures contained in Article 18 of the amended Ministerial Decree and those referred to in paragraph 31 of the present judgment were adopted not to serve economic ends, but in order to prevent the spread, on the territory of the Member State concerned, of the infectious and contagious

COVID-19 disease, which had been classified as a pandemic by the WHO on 11 March 2020 and was still classified as such during the period at issue in the main proceedings. Subject to verification by the referring court, it also appears that those measures formed part of a series of measures designed, at the material time, to protect the population of that Member State against the spread of that disease on the national territory. Such a disease thus appears, subject to that reservation, to satisfy the conditions set out in Article 29(1) of Directive 2004/38 to justify measures restricting freedom of movement on public health grounds.

55 As regards, in the second place, the rights which may be affected by measures restricting freedom of movement falling within the scope of Articles 27 to 32 of Directive 2004/38, it is apparent from a reading of Article 1(a) in conjunction with Articles 4 and 5 of Directive 2004/38 and Articles 20 and 21 TFEU, which that directive implements, that 'freedom of movement' includes the right to leave the territory of a Member State to travel to another Member State ('right of exit') and the right to be admitted to the territory of a Member State ('right of entry').

56 In that regard, it should be noted, as the Advocate General stated in point 61 of his Opinion, that, by virtue of their clear wording expressly mentioning 'freedom of movement', Article 27(1) and Article 29(1) of Directive 2004/38 cover both components of that freedom, namely the right of entry and the right of exit, within the meaning of Articles 4 and 5 of that directive (see, to that effect, judgment of 4 October 2012, *Byankov*, C-249/11, EU:C:2012:608, paragraphs 30 to 36 and the case-law cited). Consequently, neither the fact that Articles 27 and 29 fall within Chapter VI of that directive, entitled 'Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health', nor the fact that Article 29(2) and (3) of that directive is devoted more specifically to restrictions on the right of entry can lead to the scope of Article 27(1) and Article 29(1) of Directive 2004/38 being restricted solely to the component of freedom of movement relating to the right of entry.

57 That is all the more so given that restrictions on the right of entry and the right of residence on public health grounds might prove ineffective if corresponding restrictions could not be imposed on the right of exit. In such a case, the objective pursued by Article 27(1) and Article 29(1) of Directive 2004/38, which is to allow Member States to restrict, within the limits and under the conditions laid down by that directive, freedom of movement in order to prevent, contain or curb the spread or risk of the spread of a disease falling within the second of those provisions, could, depending on the circumstances, be jeopardised.

58 Moreover, it is apparent from the Court's case-law that all measures which prohibit, impede or render less attractive the exercise of the freedom of movement of Union citizens and their family members must be regarded as 'restrictions' on that freedom (see, by analogy, judgments of 12 July 2012, *Commission* v *Spain*, C-269/09, EU:C:2012:439, paragraph 54 and the case-law cited, and of 21 December 2016, *Commission* v *Portugal*, C-503/14, EU:C:2016:979, paragraph 40).

59 In those circumstances, the measures restricting freedom of movement which a Member State may adopt on public health grounds under Article 27(1) and Article 29(1) of Directive 2004/38 do not encompass only total or partial bans on entering or leaving the national territory, such as a ban on leaving that territory in order to engage in non-essential travel. Such measures may also include, a fortiori, measures which have the effect of impeding or rendering less attractive the right of the persons concerned to enter or leave that territory, such as an obligation for travellers entering that territory to undergo screening tests and to observe quarantine.

60 As regards, in the third place, persons in respect of whom measures restricting freedom of movement may be imposed on the basis of Directive 2004/38, it should be recalled that that

directive governs the conditions under which not only nationals of other Member States may leave the territory of a Member State but also those under which nationals of that Member State may do so (see, to that effect, judgment of 4 October 2012, *Byankov*, C-249/11, EU:C:2012:608, paragraphs 30 and 32). On the other hand, it governs the conditions of entry into the territory of a Member State only by nationals of other Member States (see, inter alia, judgment of 6 October 2021, *A (Crossing of borders in a pleasure boat)*, C-35/20, EU:C:2021:813, paragraphs 67 to 69).

61 In the present case, the categories of persons mentioned by the referring court in its first question concerning, respectively, the ban on leaving the territory of the Member State concerned and restrictions on entry into that territory fall within the scope *ratione personae* of Directive 2004/38.

62 As regards, in the fourth place, the form of measures restricting freedom of movement which may be adopted on the basis of Directive 2004/38 on public health grounds, it must be observed that neither Article 27(1) nor Article 29(1) of that directive precludes such measures from being laid down in the form of an act of general application.

63 Given that neither of those two provisions states, unlike Article 27(2) of that directive, that restrictions on that freedom must 'be based exclusively on the personal conduct of the individual concerned' and that any justification for such restrictions must be '[directly related to] the particulars of the case', it must be stated that restrictions on that freedom justified on grounds of public health may, depending on the circumstances and in particular the health situation, be adopted in the form of an act of general application which applies without distinction to any person in a situation covered by that act.

64 Such an interpretation is supported by the fact that the diseases covered by Article 29(1) of Directive 2004/38 - the only diseases that may justify measures restricting freedom of movement being taken on the basis of that directive - are liable, on account of their very characteristics, to affect entire populations irrespective of individual behaviour.

65 As regards, in the fifth place, the conditions and safeguards which must be attached to measures restricting freedom of movement adopted on the basis of Directive 2004/38, it should be noted, first, that, under Article 27(1) of that directive, a Member State which adopts such measures on public health grounds is required to comply with the provisions of Chapter VI of that directive, namely, in particular, Articles 30 to 32 thereof.

66 It is true that the terms and expressions used in Articles 30 to 32 call to mind restrictive measures laid down in the form of an individual decision.

67 However, as the Advocate General stated in points 73 and 115 of his Opinion, the conditions and safeguards laid down in those Articles 30 to 32 must also be applied in the case of restrictive measures adopted in the form of an act of general application.

68 In that regard, it should be noted that recitals 25 to 27 of Directive 2004/38, which reflect Articles 30 to 32 thereof, set out the principles and reasons underlying the conditions and safeguards referred to in those articles. It is thus stated, in recital 25 of that directive, that those conditions and safeguards are intended to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being denied leave to enter or reside in another Member State, as well as 'to uphold the principle' that any action taken by the authorities 'must be properly justified'. Recitals 26 and 27 of that directive state, in that context, that judicial redress procedures should be available 'in all events' and that, in accordance with the case-law of

the Court of Justice, it must always be possible to review a measure of exclusion from the territory of a Member State with a view to its bring lifted.

69 Those recitals thus confirm that, where a Member State lays down measures restricting freedom of movement on grounds of public policy, public security or public health by implementing an EU measure such as Directive 2004/38, it must in particular comply, first, with the principle of legal certainty, which requires that legal rules be clear and precise and that their application be foreseeable by those subject to them, so that those concerned may know precisely the extent of the obligations which the legislation in question imposes on them and that they may be able to ascertain unequivocally what their rights and obligations are and take steps accordingly (see, to that effect, judgments of 21 March 2019, *Unareti*, C-702/17, EU:C:2019:233, paragraph 34 and the case-law cited, and of 17 November 2022, *Avicarvil Farms*, C-443/21, EU:C:2022:899, paragraph 46 and the case-law cited). Second, that Member State must comply with the general principle of EU law relating to good administration, which lays down, inter alia, the obligation to state reasons for acts and decisions adopted by national authorities (judgment of 7 September 2021, *Klaipėdos regiono atliekų tvarkymo centras*, C-927/19, EU:C:2021:700, paragraph 120 and the case-law cited). Third, and in accordance with Article 51(1) of the Charter of Fundamental Rights ('the Charter'), it must respect the right to an effective judicial remedy enshrined in the first paragraph of Article 47 thereof, which provides, inter alia, for the right of access to a court or tribunal with the power to ensure respect for the rights guaranteed by EU law and, to that end, to consider all the issues of fact and of law that are relevant for resolving the case (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 66 and the case-law cited).

70 All the conditions and safeguards laid down in Articles 30 to 32 of Directive 2004/38 thus give effect to the principle of legal certainty, the principle of good administration and the right to an effective judicial remedy; those principles and that right apply to restrictive measures adopted both in the form of individual decisions and in the form of acts of general application. In that context and since, as is apparent from paragraph 62 of the present judgment, Article 27(1) and Article 29(1) of that directive allow Member States to lay down measures restricting freedom of movement on grounds of public health in the form of an act of general application, the fact that Articles 30 to 32 contain terms and expressions calling to mind such measures laid down in the form of an individual decision cannot call into question the scope of Article 27(1) and Article 29(1) of that directive or imply that they cannot apply to restrictive measures taken in the form of an act of general application.

71 In those circumstances, it must first of all be held that, pursuant to Article 30(1) and (2) of Directive 2004/38, any act of general application laying down measures restricting freedom of movement on public health grounds must be brought to the attention of the public by an official publication of the Member State which adopts it and by means of sufficient official media coverage so that the content and effects of that act can be understood, as well as the specific and full public health grounds relied on in support of that act, and that the remedies and time limits for challenging it are specified.

72 Next, in order to comply with the procedural safeguards referred to in Article 31 of that directive, the act of general application must be open to challenge in judicial and, where appropriate, administrative redress procedures. In that regard, it must be stated that, where national law does not allow persons covered by a situation defined in general terms by that act to challenge directly the validity of such an act in an independent action, it must at least provide, as appears to be the case here, for the possibility of challenging that validity incidentally in an action the outcome of which depends on whether that act is valid.

73 Furthermore, it follows from Article 30(3) of that directive that the public must be informed, either in the act itself or by means of official publications or websites which are free of charge and easily accessible, of the court or administrative authority before which the act of general application may, where applicable, be appealed and of the time limits for the respective appeals.

74 Second, as is stated in recital 31 of Directive 2004/38, the Member States should implement that directive in compliance with the principle of the prohibition of discrimination laid down in the Charter. In the case in the main proceedings, it is not apparent from the file before the Court, and it has not been argued by any party during the proceedings before it, that the restrictive measures at issue in the main proceedings were adopted or applied in disregard of that principle.

75 In the sixth and last place, Article 31(1) and (3) of Directive 2004/38 provides that the persons concerned must have access to judicial and, where appropriate, administrative redress procedures in the host Member State to challenge, inter alia, the proportionality of a decision taken against them on grounds of public health.

76 It is thus apparent from those provisions that any measure restricting freedom of movement adopted on public health grounds on the basis of Article 27(1) and Article 29(1) of Directive 2004/38 must be proportionate. That requirement also follows from the Court's settled case-law according to which observance of the principle of proportionality, which constitutes a general principle of EU law, is binding on Member States when they are implementing a Union act such as Directive 2004/38 (see, to that effect, judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 31).

77 The requirement of proportionality specifically requires verification that measures such as those at issue in the main proceedings, first, are appropriate for attaining the objective of general interest pursued, in this case the protection of public health, second, are limited to what is strictly necessary, in the sense that that objective could not reasonably be achieved in an equally effective manner by other means less prejudicial to the rights and freedoms guaranteed to the persons concerned, and, third, are not disproportionate to that objective, which implies, in particular, a balancing of the importance of the objective and the seriousness of the interference with those rights and freedoms (see, to that effect, judgment of 8 December 2022, *Orde van Vlaamse Balies and Others*, C-694/20, EU:C:2022:963, paragraph 42 and the case-law cited).

78 In order to assess whether a Member State has observed the principle of proportionality in the area of public health, account must be taken of the fact that the health and life of humans rank foremost among the assets and interests protected by the TFEU and that it is for the Member States to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved. Since that level may vary from one Member State to another, Member States should be allowed some measure of discretion. Consequently, the fact that a Member State imposes less strict rules than another Member State does not mean that the latter's rules are disproportionate (see, to that effect, judgments of 25 October 2018, *Roche Lietuva*, C-413/17, EU:C:2018:865, paragraph 42 and the case-law cited, and of 10 March 2021, *Ordine Nazionale dei Biologi and Others*, C-96/20, EU:C:2021:191, paragraph 36 and the case-law cited).

79 It is also apparent from the Court's case-law that if there is uncertainty as to the existence or extent of risks to human health, a Member State must be able, under the precautionary principle, to take protective measures without having to wait until the reality of those risks becomes fully apparent. In particular, Member States must be able to take any measure capable of reducing, as far as possible, a health risk (see, to that effect, judgments of 1 March 2018, *CMVRO*, C-297/16,

EU:C:2018:141, paragraph 65 and the case-law cited, and of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))*, C-663/18, EU:C:2020:938, paragraph 90).

80 Furthermore, when imposing restrictive measures on public health grounds, Member States must be able to adduce appropriate evidence to show that they have indeed carried out an analysis of the appropriateness, necessity and proportionality of the measures at issue and to present any other evidence substantiating their arguments. Such a burden of proof cannot, however, extend to creating the requirement that the competent national authorities must prove, positively, that no other conceivable measure could enable the legitimate objective pursued to be attained under the same conditions (see, to that effect, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraphs 54 and 55 and the case-law cited).

81 It will be for the referring court, which has sole jurisdiction to assess the facts of the main proceedings and interpret the national legislation, to verify whether the restrictive measures referred to in the first question referred satisfied the requirement of proportionality recalled in paragraph 77 of the present judgment. However, the Court of Justice, which is called on to provide answers of use to that court, may provide guidance based on the documents relating to the main proceedings and on the written observations which have been submitted to it, in order to enable the court in question to give judgment (see, to that effect, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 72 and 73 and the case-law cited).

82 As regards, first, the appropriateness of such measures for attaining the objective of protecting public health in the context of a disease classified as a pandemic by the WHO, the referring court will have to ascertain whether, in the light of the scientific data commonly accepted at the time of the facts in the main proceedings, namely in July 2020, concerning the COVID-19 virus, of the trend in cases of infection and mortality due to that virus and in view of the degree of uncertainty that might prevail in that regard, the adoption of those measures and the criteria for their implementation were appropriate, having regard to the national healthcare system being overwhelmed or the risk thereof and to the summer period characterised by an increase in leisure travel and tourism, which are conducive to an increase in infections, to contain or curb the spread of that virus within the population of the Member State concerned, as the scientific community, the EU institutions and the WHO appeared to accept.

83 That court will also have to take into account the fact that the restrictive measures at issue in the main proceedings were adopted in the context of similar measures adopted by the other Member States, accompanied and coordinated by the European Union under its supporting competences, under Article 168 TFEU, in relation to monitoring, early warning of and combating serious cross-border threats and major health scourges.

84 It must also be borne in mind that restrictive measures such as those at issue in the main proceedings can be regarded as capable of ensuring the public health objective pursued only if they genuinely reflect a concern to attain it and are implemented in a consistent and systematic manner (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 75 and the case-law cited).

85 In that regard, as the Advocate General observed in points 103 to 105 of his Opinion, it should be noted, subject to verification by the referring court, that the restrictive measures referred to in the first question referred appear to have addressed the concern to achieve that objective in that they were part of a broader strategy to limit the spread of COVID-19 within the population of the Member State concerned which included other measures such as, as is apparent from the order for reference and from the written observations of the Belgian Government, measures to isolate

infected persons and trace their contacts, measures to limit travel within the territory of that Member State and the closure of entertainment and leisure venues and of certain shops.

86 Moreover, the abovementioned restrictive measures appear to have been implemented in a consistent and systematic manner in so far as it is not disputed that all non-essential travel was in principle prohibited between Belgium and any other Member State classified as a high-risk zone according to criteria applicable without distinction to those States and in so far as any traveller entering Belgian territory from such a Member State was required to undergo screening tests and to observe quarantine.

87 As regards, second, the need for restrictive measures such as those at issue in the main proceedings in the light of the public health objective pursued, the referring court will have to ascertain whether those measures were limited to what was strictly necessary and whether there were means less prejudicial to the free movement of persons but equally effective for achieving that objective.

88 In that regard, as regards the question of limiting those measures to what is strictly necessary, it must be observed that the measure imposing a ban on leaving the national territory concerned not all travel by the persons concerned, but only non-essential travel by those persons, and solely to Member States regarded as high-risk zones, the list of those countries being, as is apparent from the order for reference, frequently updated in the light of the latest data available at the time. Therefore, any person in that territory could still freely engage in, on the one hand, non-essential travel to Member States which were not classified as high-risk zones and, on the other, essential travel, within the meaning of the list set out in paragraph 26 of the present judgment, to Member States classified as high-risk zones. At the hearing, the Belgian Government stated that other journeys, including cross-border journeys, which were not included in that list, such as journeys for the purpose of food shopping, were also regarded as essential travel, which it is nevertheless for the referring court to verify.

89 In addition, the screening and quarantine measures imposed on any traveller entering the national territory from a Member State classified as a high-risk zone appear to have been limited to what was strictly necessary in so far as they were aimed, on a preventive and temporary basis, at travellers coming from Member States in which they had been exposed to an increased risk of infection so as to detect, when they entered the national territory, infected persons and to prevent the spread of the virus by potentially contagious persons.

90 As regards, moreover, the question of whether measures that were less restrictive but equally effective existed, it is necessary to bear in mind the measure of discretion enjoyed by the Member States in the field of the protection of public health, on account of the precautionary principle referred to in paragraph 79 of the present judgment. In those circumstances, the referring court must confine itself to ascertaining whether it is evident that, in the light, in particular, of the available information on the COVID-19 virus at the time of the facts in the main proceedings, measures such as the obligation to maintain social distancing and/or wear a mask and the obligation for any person to regularly carry out screening tests would have sufficed to give the same result as the restrictive measures referred to in the first question referred for a preliminary ruling (see, by analogy, judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 70).

91 In that regard, the referring court will have to take into account the epidemiological situation in Belgium at the time of the facts in the main proceedings, the extent to which the Belgian health system was overstretched or overwhelmed, the risk of an uncontrollable or severe resumption of infections in the absence of the restrictive measures referred to in the first question referred, the fact

that certain persons carrying the disease could be asymptomatic, incubating or testing negative in screening tests, the need to target as many people as possible in order to curb the spread of the disease within the population and to isolate infected persons and the combined effects, in terms of the protection of the population, of the restrictive measures at issue in the main proceedings and those referred to in the previous paragraph.

92 Third, as regards the question of proportionality, in the strict sense, of restrictive measures such as those referred to in the first question referred, the referring court will have to ascertain whether they were disproportionate in relation to the public health objective pursued, having regard to the impact that those measures may have had on the free movement of Union citizens and their family members, on the right to respect for their private and family life guaranteed by Article 7 of the Charter and on the freedom to conduct a business, enshrined in Article 16 thereof, of legal persons such as Nordic Info.

93 It should be borne in mind that an objective of general interest, such as the objective of protecting public health referred to in Article 27(1) and Article 29(1) of Directive 2004/38, may not be pursued by a national measure without having regard to the fact that it must be reconciled with the fundamental rights and principles affected by that measure as enshrined in the Treaties and the Charter, by properly balancing that objective of general interest against the rights and principles at issue, in order to ensure that the disadvantages caused by that measure are not disproportionate to the aims pursued. Thus, the question whether a limitation on the rights guaranteed in Articles 7 and 16 of the Charter and on the principle of freedom of movement enshrined in Article 3(2) TEU, in Articles 20 and 21 TFEU, as implemented by Directive 2004/38, and in Article 45 of the Charter may be justified must be assessed by measuring the seriousness of the interference which such a limitation entails and by verifying that the importance of the objective of general interest pursued by that limitation is proportionate to that seriousness (see, to that effect, judgments of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912, paragraph 64 and the case-law cited, and of 26 April 2022, *Poland* v *Parliament and Council*, C-401/19, EU:C:2022:297, paragraph 66 and the case-law cited).

94 In the case in the main proceedings, as regards the proportionality of the measure imposing a ban on leaving Belgian territory in order to engage in non-essential travel, the referring court will have to take account of the fact that the restriction thus imposed on freedom of movement and on the right to respect for private and family life did not prevent all exits from Belgian territory, in that the ban was limited solely to non-essential travel, such as, in the present case, leisure travel or tourist trips, that it did not prohibit, as is apparent from the list of essential travel set out in paragraph 26 of this judgment, travel justified by imperative family reasons and that the exit bans were lifted as soon as the Member State of destination concerned was no longer classified as a high-risk zone on the basis of a regular re-evaluation of its situation.

95 Moreover, as regards legal persons such as Nordic Info whose freedom to conduct a business was restricted, in particular their freedom to offer leisure travel and tourist trips between Belgium and Member States classified as high-risk zones, it must be held, subject to verification by the referring court, that a measure prohibiting any exit from Belgian territory in order to engage in non-essential travel appears proportionate in the light of the objective of protecting public health pursued, in so far as, in view of the serious public health context resulting from the COVID-19 pandemic, it did not seem unreasonable to prohibit on a temporary basis non-essential travel to such Member States until their public health situation improved in such a way as to prevent exits from the national territory and, as the case may be, the return of sick persons to that territory and, consequently, the uncontrolled spread of that pandemic between the various Member States and within that territory.

96 As regards the proportionality of the compulsory screening and quarantine measures for travellers entering Belgian territory from a Member State classified as a red zone, it should be observed that, on account of the rapidity of the tests, screening measures such as those at issue in the main proceedings were liable to encroach only to a limited extent on the right to respect for the private and family life of those travellers and on the right of free movement whereas those measures helped to identify persons carrying the COVID-19 virus and, therefore, to achieve the objective of containing and curbing the spread of that virus.

97 Moreover, it is true that a compulsory quarantine imposed on every traveller entering Belgian territory from a Member State classified as a high-risk zone, whether or not that traveller had been infected by that virus, severely restricted the right to respect for private and family life and the freedom of movement which that traveller in principle enjoys in pursuance of the exercise of his or her right of free movement. However, such quarantine appears, subject to verification by the referring court, to be also proportionate in the light of the precautionary principle, in so far as (i) there was a significant probability that such a traveller would carry the same virus and, in particular where he or she was incubating or asymptomatic, would infect other persons outside his or her household in the absence of such quarantine and (ii) the screening tests may have proved to be falsely negative.

98 In the light of the foregoing, the answer to the first question is that Articles 27 and 29 of Directive 2004/38, read in conjunction with Articles 4 and 5 thereof, must be interpreted as not precluding legislation of general application of a Member State which, on public health grounds connected with combating the COVID-19 pandemic, (i) prohibits Union citizens and their family members, whatever their nationality, from engaging in non-essential travel from that Member State to other Member States classified by it as high-risk zones on the basis of the restrictive health measures or the epidemiological situation in those other Member States, and (ii) requires Union citizens who are not nationals of that Member State to undergo screening tests and to observe quarantine when entering the territory of that Member State from one of those other Member States, provided that that national legislation complies with all the conditions and safeguards referred to in Articles 30 to 32 of that directive, the fundamental rights and principles enshrined in the Charter, in particular the principle of the prohibition of discrimination and the principle of proportionality.

The second question

99 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court may find it necessary to consider provisions of EU law to which the national court has not referred in its questions. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 20 April 2023, *BVAEB (Adjustment of retirement pensions)*, C-52/22, EU:C:2023:309, paragraph 38 and the case-law cited).

100 It is apparent from the explanations provided by the referring court that the second question is raised in the context of two arguments put forward by Nordic Info, according to which the control of the restrictions on the right of entry and exit imposed by the Belgian legislation in respect of

persons engaging in non-essential travel from or to other States in the Schengen area classified as high-risk zones (i) amounted to a border check and was carried out on public health grounds in breach of Article 23 of the Schengen Borders Code and (ii) amounted to the reintroduction of border control at internal borders in the Schengen area in breach of Article 25 of that code.

101 In those circumstances, it must be held that, by that second question, the referring court asks, in essence, whether Articles 22, 23 and 25 of the Schengen Borders Code must be interpreted as precluding legislation of a Member State which, on public health grounds connected with combating the COVID-19 pandemic, prohibits, under the control of the competent authorities and on pain of a penalty, the crossing of the internal borders of that Member State in order to engage in non-essential travel from or to States in the Schengen area classified as high-risk zones.

102 In that regard, it should be recalled that Article 67(2) TFEU, which falls within Title V of the FEU Treaty concerning the area of freedom, security and justice, provides that the Union is to ensure the absence of internal border controls for persons. Article 77(1)(a) TFEU states that the Union is to develop a policy with a view to ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders. The abolition of internal border controls forms, as is apparent from recital 2 of the Schengen Borders Code, part of the Union's objective, stated in Article 26 TFEU, of establishing an area without internal borders in which the free movement of persons is ensured by acts of the Union adopted on the basis of Article 77(2)(e) TFEU, such as the Schengen Borders Code (see, by analogy, judgments of 19 July 2012, *Adil*, C-278/12 PPU, EU:C:2012:508, paragraphs 48 and 49, and of 21 June 2017, *A*, C-9/16, EU:C:2017:483, paragraphs 30 and 31).

103 In that context, Article 22 of the Schengen Borders Code reiterates the principle that internal borders, within the meaning of point 1 of Article 2 of that code, may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.

104 Under the heading 'Checks within the territory', Article 23(a) of the Schengen Borders Code provides that the absence of border control at internal borders is not to affect the exercise of police powers by the competent authorities of the Member States under national law, in so far as the exercise of those powers does not have an effect equivalent to border checks and that that is also to apply in border areas. Thus, although that provision, read in conjunction with point 11 of Article 2 and Article 22 of that code, prohibits the competent authorities of the Member States from exercising their police powers to carry out controls at border crossing points, within the meaning of point 8 of Article 2 of that code, in order to verify that persons, including their means of transport and the objects in their possession, are authorised to enter or leave the national territory, it nevertheless preserves the right of the Member States to carry out, within the national territory, including in border areas, controls justified by the exercise of police powers provided that that exercise does not have an effect equivalent to such checks.

105 Furthermore, it should be noted that Article 25 of the Schengen Borders Code provides for the possibility of reintroducing border control at the internal borders of the European Union as an exception to the principle laid down in Article 22 of that code, as is noted in paragraph 103 of the present judgment. On the basis of that Article 25, the Member States may thus temporarily reintroduce controls, during certain maximum periods, at all or specific parts of their internal borders, as those internal borders are defined in point 1 of Article 2 of that code, in the event of a serious threat to their public policy or internal security, such reintroduction being possible only as a last resort. In all cases, the duration of such a temporary reintroduction must not exceed what is strictly necessary to respond to that threat and must be proportionate to it, it being specified that the type of assessment which must be carried out for that purpose and the procedure that must be

followed are, inter alia, governed by a detailed framework laid down in Articles 26 to 28 of that code (see, to that effect, judgment of 26 April 2022, *Landespolizeidirektion Steiermark (Maximum duration of internal border control)*, C-368/20 and C-369/20, EU:C:2022:298, paragraphs 54, 63, 67 and 68).

106 In the present case, it is apparent from the documents before the Court and from the statements made by the Belgian Government in its written observations and at the hearing that, at the time of the facts in the main proceedings, controls were carried out by the national authorities in order to verify compliance with the ban on crossing internal borders laid down in Article 18 of the amended Ministerial Decree.

107 Furthermore, the Belgian Government specified, in reply to a question from the Court, that controls on bans on entering and leaving Belgian territory were carried out, at the time of the facts in the main proceedings, as follows: at airports and railway stations, travellers on flights and routes between Belgium and States in the Schengen area classified as high-risk zones were the subject of random controls, while, on roads, random border controls were carried out by mobile teams during normal working hours, with particular attention being paid to the transport of passengers by bus.

108 For its part, during the proceedings before the Court, the European Commission stated that it had received, on 4 June 2020, notification from the Kingdom of Belgium to the effect that that Member State had ceased to carry out internal border controls during the period at issue in the main proceedings.

109 In those circumstances, the referring court will have to ascertain (i) whether, when the controls to prohibit the crossing of borders referred to in paragraph 33 of the present judgment were carried out within Belgian territory, including border areas, the exercise of the police powers under which those controls were carried out did not have an effect equivalent to border checks, within the meaning of Article 23(a) of the Schengen Borders Code, and (ii) whether, when those controls were carried out at the internal borders, the Kingdom of Belgium complied with all the conditions referred to in Articles 25 to 28 of that code for the temporary reintroduction of border controls at internal borders.

110 In that regard, the Court, when giving a preliminary ruling on a reference, may give clarifications to guide the national court in its decision (see, to that effect, judgment of 5 May 2022, *Victorinox*, C-179/21, EU:C:2022:353, paragraph 49 and the case-law cited).

111 As regards, in the first place, Article 23(a) of the Schengen Borders Code, it is apparent from the Court's case-law that compliance with EU law, in particular Articles 22 and 23 of that code, must be ensured by setting up and complying with a framework of rules guaranteeing that the practical exercise of police powers which is referred to in that Article 23(a) cannot have an effect equivalent to border checks (see, by analogy, judgments of 19 July 2012, *Adil*, C-278/12 PPU, EU:C:2012:508, paragraph 68 and the case-law cited, and of 21 June 2017, *A*, C-9/16, EU:C:2017:483, paragraph 37).

112 The second sentence of Article 23(a), items (i) to (iv), of that code provides, on account of the expression 'in particular' at the beginning of that sentence, indicia to guide the Member States in implementing their police powers and the framework of rules referred to in the previous paragraph in such a way that the exercise of those powers does not have an effect equivalent to border checks.

113 First, as regards the indicator in the second sentence of Article 23(a), item (i), of the Schengen Borders Code relating to the fact that the police measures must not have 'border control

as an objective', the Court has already held that it is apparent from points 10 to 12 of Article 2 of that code that that objective is intended (i) to ensure that persons may be authorised to enter the territory of the Member State or authorised to leave it and (ii) to prevent persons from circumventing border checks. The checks concerned may be carried out systematically or randomly (see, by analogy, judgment of 13 December 2018, *Touring Tours und Travel and Sociedad de transportes*, C-412/17 and C-474/17, EU:C:2018:1005, paragraph 55 and the case-law cited).

114 In the present case, the objectives pursued by the controls carried out to ensure compliance with Article 18 of the amended Ministerial Decree appear to differ in certain essential respects from those pursued by border checks. It is true that the purpose of those controls was, as stated in paragraph 106 of the present judgment, to ascertain whether persons intending to cross or who had crossed the borders were authorised to leave or enter Belgian territory. However, according to the actual wording of the amended Ministerial Decree, the main objective of those controls was to limit, as a matter of urgency, the spread of COVID-19 in that territory and, in view of the obligation laid down moreover for every traveller entering that territory from a State in the Schengen area classified as a red zone to undergo screening tests and observe quarantine, to ensure that those travellers were identified and monitored.

115 In the light of that main objective, the controls carried out to ensure compliance with Article 18 of the amended Ministerial Decree cannot be regarded as having had an effect equivalent to border checks, prohibited by Article 23(a) of the Schengen Borders Code (see, by analogy, judgment of 21 June 2017, *A*, C-9/16, EU:C:2017:483, paragraphs 46 and 51).

116 Furthermore, although it appears that, in the present case, roadside controls were mainly carried out in border areas, that fact alone is not sufficient for a finding that the exercise of police powers had an effect equivalent to border checks. The first sentence of Article 23(a) of the Schengen Borders Code refers expressly to the exercise of police powers by the competent authorities of the Member States under national law, also in border areas (see, by analogy, judgment of 21 June 2017, *A*, C-9/16, EU:C:2017:483, paragraph 52 and the case-law cited).

117 Second, as regards the indicator in the second sentence of Article 23(a), item (ii), of the Schengen Borders Code, relating to the fact that the police measures must be 'based on general police information and experience regarding possible threats to public security', it must be recalled that, even though that provision refers only to 'threats to public security', the fact remains that Article 23(a) of that code provides, on account of the expression 'in particular' at the beginning of its second sentence, neither an exhaustive list of the conditions which must be satisfied by police measures in order not to be considered as having an effect equivalent to border checks, nor an exhaustive list of the objectives which those police measures may pursue or of the subject matter to which they may relate (see, by analogy, judgment of 21 June 2017, *A*, C-9/16, EU:C:2017:483, paragraph 48). This must all the more be so since police powers are defined, as provided in Article 23(a) of that code, 'under national law' and may therefore cover fields other than that of public security which is referred to in the second sentence of Article 23(a), item (ii), thereof.

118 Accordingly, the fact that threats to public health are not expressly referred to in the second sentence of Article 23(a), item (ii), of the Schengen Borders Code does not mean, in itself, that, while public health matters may fall within the scope of police powers under national law and the measures taken pursuant to those powers may be based on general police information and experience relating to possible or proven threats to public health, such as a pandemic or a risk of a pandemic, the area of public health could not be relied on by a Member State under Article 23(a) of that code.

119 As regards the fact that police measures must, under the second sentence of Article 23(a), item (ii), of the Schengen Borders Code, be based on ‘general police information and experience’ in the area concerned, namely, in the present case, a threat to public health, it should be recalled that that requirement is not satisfied where the controls are imposed on the basis of a general prohibition, irrespective of the conduct of the persons concerned or of circumstances giving rise to a risk of harm in that area (see, by analogy, judgment of 13 December 2018, *Touring Tours und Travel and Sociedad de transportes*, C-412/17 and C-474/17, EU:C:2018:1005, paragraph 61 and the case-law cited).

120 Although it is apparent from the documents before the Court that, at the time of the facts in the main proceedings, the controls concerned were carried out on the basis of a prohibition of such a general nature and irrespective of the conduct of travellers, it must nevertheless be noted that the national legislation at issue in the main proceedings was enacted in the context of a serious threat to public health, namely a pandemic characterised by a virus liable to cause death among various categories of the population and to overstretch or even overwhelm the national healthcare system. Account must also be taken (i) of the main objective pursued both by that prohibition and by the control measures accompanying it, namely to contain or curb the spread or risk of the virus spreading in such a way as to preserve as many human lives as possible, and (ii) of the extreme difficulty, or even the impossibility, of determining in advance which persons using various modes of transport came from Member States classified as high-risk zones or travelled to such Member States. In those circumstances, it is sufficient, for the purposes of the second sentence of Article 23(a), item (ii), of the Schengen Borders Code, that the controls were decided on and implemented in the light of circumstances objectively giving rise to a risk of grave and serious harm to public health and on the basis of the authorities’ general knowledge of the areas of entry to and exit from the national territory through which a large number of travellers targeted by that prohibition were likely to transit.

121 Third, as regards the indicators set out in the second sentence of Article 23(a), items (iii) and (iv), of the Schengen Borders Code, relating to the fact that police measures must be ‘devised and executed in a manner clearly distinct from systematic checks on persons at the external borders [of the European Union]’ and ‘carried out on the basis of spot-checks’, it is apparent from the explanations provided by the Belgian Government in response to a written question from the Court that all the controls at issue in the main proceedings were carried out randomly and, therefore, ‘[on the spot]’, which it is, however, for the referring court to verify. However, that court will still have to examine whether those controls were devised and executed in a manner clearly distinct from systematic checks on persons at the external borders of the European Union, which entails examining closely the detailed rules and limitations provided for by the national legislation at issue in the main proceedings concerning the intensity, frequency and selectivity of those controls (see, by analogy, judgment of 13 December 2018, *Touring Tours und Travel and Sociedad de transportes*, C-412/17 and C-474/17, EU:C:2018:1005, paragraph 64 and the case-law cited).

122 Although the Court does not have information in that regard, it should at least be observed that, in the context of a pandemic such as that described in paragraph 120 of the present judgment and taking into account the fact, already noted in that paragraph, that it may be extremely difficult or even impossible to determine in advance which persons using various modes of transport come from Member States classified as high-risk zones or travel to such Member States, the Member State concerned must be allowed some measure of discretion, which is also justified by the precautionary principle, in devising and executing the controls as regards their intensity, frequency and selectivity. That measure of discretion may not however extend to such a point that the controls thus devised and executed cannot be distinguished ‘clearly’ from systematic checks on persons at the external borders of the European Union and are of such a systematic nature.

123 As regards, in the second place, the question relating to the temporary reintroduction of border controls at internal borders, within the meaning of Article 25 et seq. of the Schengen Borders Code, it should be noted that, while the wording of Article 23(a) of that code is, as stated in paragraph 117 of the present judgment, open in so far as it preserves the right of Member States to exercise police powers also in the field of public health, Article 25(1) of that code refers expressly to the possibility for Member States to temporarily reintroduce border controls in the event of a serious threat to public policy or internal security.

124 Since the exception introduced by the latter provision to Article 22 of the Schengen Borders Code must be interpreted strictly (see, to that effect, judgment of 26 April 2022, *Landespolizeidirektion Steiermark (Maximum duration of internal border control)*, C-368/20 and C-369/20, EU:C:2022:298, paragraphs 64 and 66 and the case-law cited), a threat to public health cannot, as such, justify the reintroduction of internal border controls.

125 That being so, it must be held, as the Advocate General observed in point 154 of his Opinion, that, if a health threat constitutes a serious threat to public policy and/or internal security, a Member State may temporarily reintroduce border controls at its internal borders in response to that serious threat, provided that the other conditions laid down in Article 25 et seq. of the Schengen Borders Code are complied with.

126 It is apparent from the concepts of 'public policy' and 'internal security', as clarified in the case-law of the Court, that a health threat may, in certain cases, constitute a serious threat to public policy and/or internal security (see, to that effect, judgment of 16 December 2010, *Josemans*, C-137/09, EU:C:2010:774, paragraph 65). Thus, first, the concept of 'public policy' entails the existence – in addition to the disturbance of the social order which any infringement of the law involves – of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Second, the concept of 'internal security' corresponds to the internal aspect of the public security of a Member State and covers, inter alia, a threat to the functioning of institutions and essential public services and the survival of the population, as well as a risk to military interests or direct threats to the calm and physical security of the population (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 65 and 66 and the case-law cited, and of 2 May 2018, *K. and H.F. (Right of residence and alleged war crimes)*, C-331/16 and C-366/16, EU:C:2018:296, paragraph 42 and the case-law cited).

127 A pandemic of a scale such as that of COVID-19, characterised by a contagious disease capable of causing death among various categories of the population and overstretching or even overwhelming national healthcare systems, is liable to affect one of the fundamental interests of society, namely that of ensuring the lives of citizens while preserving the proper functioning of the healthcare system and the provision of care appropriate to the population, and also affects the very survival of a part of the population, in particular the most vulnerable. In those circumstances, such a situation may be classified as a serious threat to public policy and/or internal security within the meaning of Article 25(1) of the Schengen Borders Code.

128 In the present case, should the referring court find that the Belgian authorities carried out checks or border controls at internal borders during the period at issue in the main proceedings, it will be for that court to ascertain, in view of the fact that those checks or controls were intended, as stated in the previous paragraph of the present judgment, to respond to a serious threat to public policy or internal security, whether the other conditions referred to in Articles 25 to 28 of the Schengen Borders Code and summarised in essence in paragraph 105 of this judgment were satisfied.

129 In the light of the foregoing, the answer to the second question is that Articles 22, 23 and 25 of the Schengen Borders Code must be interpreted as not precluding legislation of a Member State which, on public health grounds connected with combating the COVID-19 pandemic, prohibits, under the control of the competent authorities and on pain of a penalty, the crossing of the internal borders of that Member State in order to engage in non-essential travel from or to States in the Schengen area classified as high-risk zones, provided that those control measures fall within the exercise of police powers which is not to have an effect equivalent to border checks, within the meaning of Article 23(a) of that code, or that, where those measures constitute border controls at internal borders, that Member State has complied with the conditions referred to in Articles 25 to 28 of that code for the temporary reintroduction of such controls, given that the threat posed by such a pandemic corresponds to a serious threat to public policy or internal security within the meaning of Article 25(1) of that code.

Costs

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

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

1. **Articles 27 and 29 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, read in conjunction with Articles 4 and 5 thereof,**

must be interpreted as not precluding legislation of general application of a Member State which, on public health grounds connected with combating the COVID-19 pandemic, (i) prohibits Union citizens and their family members, whatever their nationality, from engaging in non-essential travel from that Member State to other Member States classified by it as high-risk zones on the basis of the restrictive health measures or the epidemiological situation in those other Member States, and (ii) requires Union citizens who are not nationals of that Member State to undergo screening tests and to observe quarantine when entering the territory of that Member State from one of those other Member States, provided that that national legislation complies with all the conditions and safeguards referred to in Articles 30 to 32 of that directive, the fundamental rights and principles enshrined in the Charter of Fundamental Rights of the European Union, in particular the principle of the prohibition of discrimination and the principle of proportionality.

2. **Articles 22, 23 and 25 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017,**

must be interpreted as not precluding legislation of a Member State which, on public health grounds connected with combating the COVID-19 pandemic, prohibits, under the control of the competent authorities and on pain of a penalty, the crossing of the internal borders of that Member State in order to engage in non-essential travel from or to States in the Schengen area classified as high-risk zones, provided that those control measures fall within the exercise

of police powers which is not to have an effect equivalent to border checks, within the meaning of Article 23(a) of that code, or that, where those measures constitute border controls at internal borders, that Member State has complied with the conditions referred to in Articles 25 to 28 of that code for the temporary reintroduction of such controls, given that the threat posed by such a pandemic corresponds to a serious threat to public policy or internal security within the meaning of Article 25(1) of that code.

[Signatures]

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* Language of the case: Dutch.