



## Reports of Cases

### ORDER OF THE VICE-PRESIDENT OF THE COURT

28 September 2023 \*

(Appeal – Interim relief – Restrictive measures taken having regard to the situation in Ukraine – Freezing of funds and economic resources – Maintenance of the name of a natural person on the list of persons, entities and bodies subject to those measures – Suspension of the process of ‘re-listing’ that person – Publication of a note in the *Official Journal of the European Union* – Obligation to take measures on visas granted by Member States – Measures which may be adopted by the judge hearing the application for interim measures)

In Case C-564/23 P(R),

APPEAL under the second paragraph of Article 57 of the Statute of the Court of Justice of the European Union, brought on 13 September 2023,

**Council of the European Union**, represented by P. Mahnič, R. Meyer and J. Rurarz, acting as Agents,

appellant,

the other parties to the proceedings being:

**Nikita Dmitrievich Mazepin**, residing in Moscow (Russia), represented by A. Bass, T. Marembert, D. Rovetta, avocats, M. Campa, M. Moretto and V. Villante, avvocati,

applicant at first instance,

**Republic of Latvia**,

intervener at first instance,

THE VICE-PRESIDENT OF THE COURT,

after hearing the Advocate General, M. Szpunar,

makes the following

\* Language of the case: English.

## Order

- 1 By its appeal, the Council of the European Union seeks to have set aside the order of the President of the General Court of the European Union of 7 September 2023, *Mazepin v Council* (T-743/22 RIII; ‘the order under appeal’), by which the General Court upheld the application for interim measures brought by Mr Nikita Dmitrievich Mazepin.

### Legal context

#### *Decision 2014/145/CFSP*

- 2 Article 1(1), (6) and (7) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Council Decision (CFSP) 2023/1218 of 23 June 2023 (OJ 2023 L 159I, p. 526), provides:

‘1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:

...

- (e) leading businesspersons operating in Russia and their immediate family members, or other natural persons, benefitting from them, or businesspersons involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine; ...

...

and natural persons associated with them or with the legal persons, entities or bodies ... listed in the Annex.

...

6. Member States may grant exemptions from the measures imposed under paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, and those promoted or hosted by the [European] Union, or hosted by a Member State holding the Chairmanship in office of the [Organization for Security and Co-operation in Europe], where a political dialogue is conducted that directly promotes the policy objectives of the restrictive measures, including support for the territorial integrity, sovereignty and independence of Ukraine.

7. A Member State wishing to grant exemptions referred to in paragraph 6 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more of the Council members raises an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more of the Council members raise an objection, the Council, acting by qualified majority, may decide to grant the proposed exemption.’

### ***Regulation (EU) No 269/2014***

- 3 Article 2(1) of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as amended by Council Regulation (EU) No 476/2014 of 12 May 2014 (OJ 2014 L 137, p. 1) ('Regulation No 269/2014'), provides:

'All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen.'

- 4 Article 14(4) of that regulation provides:

'The list in Annex I shall be reviewed at regular intervals and at least every 12 months.'

### **Background to the dispute**

- 5 On 9 March 2022, the Council adopted Decision (CFSP) 2022/397 amending Decision 2014/145 (OJ 2022 L 80, p. 31), by which Mr Mazepin's name was added to the list of persons, entities and bodies subject to restrictive measures set out in the annex to Decision 2014/145.
- 6 On the same date, the Council adopted Implementing Regulation (EU) 2022/396 implementing Regulation No 269/2014 (OJ 2022 L 80, p. 1), by which Mr Mazepin's name was added to the list of natural and legal persons, entities and bodies in Annex I to Regulation No 269/2014.
- 7 On 14 September 2022, the Council adopted Decision (CFSP) 2022/1530 amending Decision 2014/145 (OJ 2022 L 239, p. 149), by which it decided to maintain Mr Mazepin's name on the list of persons, entities and bodies subject to restrictive measures in the annex to Decision 2014/145, amending the reasons for his inclusion on that list.
- 8 On the same date, the Council adopted Implementing Regulation (EU) 2022/1529 implementing Regulation No 269/2014 (OJ 2022 L 239, p. 1), by which Mr Mazepin's name was maintained, with the same amendment to the reasons referred to in the preceding paragraph, on the list of natural and legal persons, entities and bodies in Annex I to Regulation No 269/2014.
- 9 On 13 March 2023, the Council adopted Decision (CFSP) 2023/572 amending Decision 2014/145 (OJ 2023 L 75I, p. 134), by which it decided to maintain Mr Mazepin's name on the list of persons, entities and bodies subject to restrictive measures in the annex to Decision 2014/145, amending the reasons for his inclusion on that list and his identifying information.
- 10 On the same date, the Council adopted Implementing Regulation (EU) 2023/571 implementing Regulation No 269/2014 (OJ 2023 L 75I, p. 1), by which Mr Mazepin's name was maintained, with the same amendments to the reasons and identifying information as those referred to in the preceding paragraph, on the list of natural and legal persons, entities and bodies in Annex I to Regulation No 269/2014.

## The proceedings before the General Court and the order under appeal

- 11 By an application lodged at the Registry of the General Court on 25 November 2022, Mr Mazepin brought an action for annulment of Decision 2022/1530 and Implementing Regulation 2022/1529, in so far as those measures concern him (together, ‘the first contested measures’).
- 12 By a separate document lodged at the Registry of the General Court on 9 December 2022, Mr Mazepin brought a first application for interim measures seeking, in essence, suspension of the operation of the first contested measures. By order of 1 March 2023, *Mazepin v Council* (T-743/22 R, EU:T:2023:102), the President of the General Court granted that application and ordered, in part, suspension of the operation of those measures, in so far as they concern Mr Mazepin.
- 13 By a separate document lodged at the Registry of the General Court on 4 April 2023, Mr Mazepin, on the basis of Article 86 of the Rules of Procedure of the General Court, modified the application referred to in paragraph 11 of the present order, so that it also seeks annulment of Decision 2023/572 and of Implementing Regulation 2023/571 (together, ‘the second contested measures’).
- 14 By a separate document lodged at the Registry of the General Court on the same day, Mr Mazepin brought a second application for interim measures seeking, in essence, suspension of the operation of the second contested measures. By order of the President of the General Court of 19 July 2023, *Mazepin v Council* (T-743/22 RII, EU:T:2023:406), the President of the General Court granted that application and ordered, in part, suspension of the operation of those measures, in so far as they concern Mr Mazepin.
- 15 By a separate document lodged at the Registry of the General Court on 7 September 2023, Mr Mazepin brought a third application for interim measures.
- 16 By the order under appeal, the President of the General Court granted that application and ordered, in essence:
  - in point 1 of the operative part of that order, the suspension of operation of Mr Mazepin’s announced ‘re-listing’ under the same conditions as those laid down in points 1 and 2 of the operative part of the order of the President of the General Court of 19 July 2023, *Mazepin v Council* (T-743/22 RII, EU:T:2023:406);
  - in point 2 of that operative part, the publication in the *Official Journal of the European Union* of a note clearly indicating the suspension of that announced ‘re-listing’;
  - in point 3 of that operative part, the Council to take the necessary measures to ensure that the Member States comply, in an effective and complete manner, with the order of the President of the General Court of 19 July 2023, *Mazepin v Council* (T-743/22 RII, EU:T:2023:406), and, in particular, to ensure that the visa issued to Mr Mazepin on 7 August 2023 or any other visa which might become necessary covers at least the territory of the Member States of the Schengen area and remains valid for the time necessary to enable Mr Mazepin to exercise effectively the rights granted by that order; and
  - in point 4 of that operative part, the Council to inform the President of the General Court of the measures adopted.

- 17 On 14 September 2023, Mr Mazepin applied, pursuant to Article 164 of the Rules of Procedure of the General Court, for rectification of the order under appeal.
- 18 By order of 19 September 2023, *Mazepin v Council* (T-743/22 RIII), the President of the General Court adopted interim measures in essence comparable to those set out in paragraph 16 of the present order and cancelled the order under appeal.

### **Forms of order sought**

- 19 The Council claims that the Court should:
- set aside the order under appeal;
  - dismiss the application for interim measures; and
  - reserve the costs.
- 20 Mr Mazepin contends that the Court should:
- declare that there is no longer any need to adjudicate on the present interlocutory proceedings;  
or
  - dismiss the appeal and, in any event;
  - order the Council to pay the costs.

### **Whether the case should proceed to judgment**

#### ***Arguments***

- 21 Mr Mazepin submits that, in so far as, by order of 19 September 2023, *Mazepin v Council* (T-743/22 RIII), the President of the General Court cancelled the order under appeal, the present appeal has become devoid of purpose and that, consequently, there is no longer any need to adjudicate on it.

#### ***Assessment***

- 22 It is apparent from the very wording of the operative part of the order of the President of the General Court of 19 September 2023, *Mazepin v Council* (T-743/22 RIII), that the order under appeal is cancelled.
- 23 In that regard, Article 159 of the Rules of Procedure of the General Court states that, on application by a party, an order ruling on an application for interim measures may at any time be varied or cancelled on account of a change in circumstances.

- 24 It follows from the case-law of the Court of Justice that a decision of the judge hearing an application for interim measures cancelling an order granting an interim measure does not entail the retroactive setting aside of that order, but only its amendment or revocation, since the judge hearing the application for interim measures may reconsider such an order solely for the future (see, to that effect, order of 14 February 2002, *Commission v Artegodan*, C-440/01 P(R), EU:C:2002:95, paragraph 65, and order of the Vice-President of the Court of 19 May 2022, *Czech Republic v Poland (Turów mine)*, C-121/21 R, EU:C:2022:408, paragraph 22).
- 25 That decision cannot therefore have the effect of calling into question the past effects of an order granting an interim measure (see, to that effect, order of the Vice-President of the Court of 19 May 2022, *Czech Republic v Poland (Turów mine)*, C-121/21 R, EU:C:2022:408, paragraph 23).
- 26 It follows that, from the date on which it was served on the parties, the order of the President of the General Court of 19 September 2023, *Mazepin v Council* (T-743/22 RIII), may, at most, deprive the order under appeal of any effect, but does not remove it from the EU legal order, in so far as it allows the effects produced by the latter order to continue to exist between the date of service of the order and the date of service of the order which cancelled it.
- 27 Accordingly, it must be held that the present appeal retains a purpose, such that it is appropriate to rule on it.

## **The appeal**

- 28 In support of its appeal, the Council relies on five grounds of appeal, alleging, first, infringement of the obligation to state reasons, second and fourth, manifest errors of law as regards the scope of the jurisdiction of the judge hearing the application for interim measures, third, manifest errors in the application of the conditions governing the grant of interim measures and, fifth, manifest errors of law vitiating point 3 of the operative part of the order under appeal.

## ***The fifth plea in law***

### *Arguments*

- 29 By its fifth ground of appeal, which it is appropriate to examine in the first place, the Council claims that point 3 of the operative part of the order under appeal is vitiated by several manifest errors of law.
- 30 First of all, according to the Council, the measure imposed on it in that point 3 fails to have regard to the division of competencies reflected in Article 266 TFEU. It is not for the EU courts, but for the Council, to take the necessary measures to comply with that order.
- 31 Next, that point 3 is vitiated by an error of law in so far as it orders the Council to adopt a measure which does not fall within its competence. Thus, the Council does not have the power to ensure the application of EU law by the Member States. In particular, neither EU primary law nor Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1) allows it to interfere in the issuing of visas by the Member States. In accordance with Article 13(2) TEU, the Council is to act only within the limits of its powers.

- 32 Finally, according to the Council, in that point 3, the President of the General Court, in practice, imposed an injunction on the Member States and thus exceeded the limits of his jurisdiction.
- 33 Mr Mazepin submits that the Council is required to implement the measures set out in the operative part of the order under appeal, in order to comply with Article 13(2) TEU and with Article 266 TFEU.
- 34 In addition, it has competence, as defined in Article 16(1) and Article 32 TEU, for the purpose of coordinating the action of the Member States in the framework of the common foreign and security policy. Thus, as regards the application, by the Member States, of the order of the President of the General Court of 19 July 2023, *Mazepin v Council* (T-743/22 RII, EU:T:2023:406), the Council could, for example, encourage them to adopt a common approach consisting of issuing a uniform visa to Mr Mazepin, whilst leaving the Member State concerned to assess whether the reasons relied on by him to enter its territory satisfy the conditions laid down in that order.

#### *Assessment*

- 35 In accordance with Article 13(2) TEU, the EU institutions are to act only within the limits of the powers conferred on them by the Treaties (see, to that effect, judgment of 23 October 2007, *Parliament v Commission* (C-403/05, EU:C:2007:624, paragraph 49).
- 36 That provision, which is binding on all the EU institutions, precludes the judge hearing the application for interim measures from ordering the Council to adopt one or more measures which are not within the competence of that institution.
- 37 In that regard, it must be borne in mind that, in point 3 of the operative part of the order under appeal, the President of the General Court ordered the Council to take the necessary measures to ensure that the Member States comply, in an effective and complete manner, with the order of the President of the General Court of 19 July 2023, *Mazepin v Council* (T-743/22 RII, EU:T:2023:406), and, in particular, to ensure that the visa issued to Mr Mazepin on 7 August 2023 or any other visa which might become necessary covers at least the territory of the Member States of the Schengen area and remains valid for the time necessary to enable Mr Mazepin to effectively exercise the rights granted by that order.
- 38 In the first place, it must be stated that primary EU law does not confer on the Council a general competence to adopt measures circumscribing the application, by the Member States, of measures such as the first or the second contested measures. In particular, the obligation imposed on Member States by Article 32 TEU to consult each other within the European Council and the Council on any matter of foreign and security policy of general interest cannot be understood as authorising the Council to take measures to encourage Member States to issue a visa under the conditions laid down in the order under appeal.
- 39 Moreover nor does that right confer on the Council the power to take individual measures to ensure that a visa is issued by a Member State or to guarantee that such a visa would have a specified geographical and temporal scope.
- 40 In the second place, such a power is also not conferred on the Council by acts of the European Union harmonising the visa policies pursued by the Member States. In particular, no such power is provided for in Regulation No 810/2009.

- 41 In the third place, it should, admittedly, be noted that Article 1(7) of Decision 2014/145, as amended by Decision 2023/1218, provides that the Council is to decide, in certain cases, on the possibility for a Member State to issue a visa, by way of derogation from the restrictive measures stemming from Article 1(1) of that decision.
- 42 However, that Article 1(7) does not allow the Council to intervene on its own initiative in relation to a Member State or to issue instructions to a Member State concerning the issue or scope of a visa, but merely gives that institution the power to decide whether a Member State wishing to issue a visa may be exempt from those restrictive measures, where one or more of the Council members have raised an objection to that visa being issued.
- 43 It follows from the foregoing that the Council is not competent to adopt the measures referred to in point 3 of the operative part of the order under appeal and that the President of the General Court could not therefore, without infringing Article 13(2) TEU, order the Council to adopt such measures.
- 44 It follows that the fifth ground of appeal must be upheld.
- 45 In so far as that ground of appeal relates only to point 3 of the operative part of the order under appeal, it is also necessary to examine the second ground of appeal.

### ***The second ground of appeal***

#### *Arguments*

- 46 By its second ground of appeal, which it is appropriate to examine in the second place, the Council claims that, in ordering the measures set out in points 1 to 3 of the operative part of the order under appeal, the President of the General Court committed a manifest error of law as regards the scope of his jurisdiction as the judge hearing the application for interim measures.
- 47 According to the Council, the judge hearing an application for interim measures of the General Court is authorised, pursuant to Article 157(2) of the Rules of Procedure of the General Court, to adopt interim measures in order to protect the effectiveness of the future decision on an application for interim measures, the purpose of which is to preserve the effectiveness of the decision to be given in a main action to which that application is ancillary.
- 48 In the Council's view, in the present case, the main action brought by Mr Mazepin relates to four EU measures. Consequently, in the present proceedings, the President of the General Court may adopt interim measures only in order to preserve the effectiveness of any decision annulling those measures. Therefore, the measures adopted under Article 157(2) of the Rules of Procedure of the General Court should seek only to preserve the effectiveness of such interim measures.
- 49 According to the Council, the President of the General Court, by the order under appeal, adopted measures relating to measures which are not covered by the main action brought by Mr Mazepin and which have not even been adopted. In so doing, he exceeded the limits of his jurisdiction.



- 50 In the Council's view, that analysis is supported by the wording of Article 278 TFEU and Article 156(1) of the Rules of Procedure of the General Court, from which it is apparent that the President of the General Court may only suspend the operation of a measure challenged in a main action before the General Court.
- 51 Although it is true that Article 279 TFEU and Article 156(2) of the Rules of Procedure of the General Court allow that court to adopt other types of provisional measures, those provisions nevertheless require those measures to be linked to a main action brought before that court by the applicant concerned, which is not the case here.
- 52 Mr Mazepin submits, primarily, that, by the order under appeal, the President of the General Court ordered the suspension of operation, not of a future measure, but of an administrative procedure which was ongoing on the date on which that order was signed. Such a measure could be adopted, under Article 279 TFEU, to ensure compliance by the Council with the interim orders already adopted by the President of the General Court in the present case, in a context in which the Council manifestly disregards the obligations arising from the latter orders.
- 53 Mr Mazepin claims, in the alternative, that the measures adopted by the President of the General Court are essential in order to ensure effective judicial protection for him.
- 54 In the further alternative, he submits that any defect based on the anticipated nature of the order under appeal is now remedied, in so far as, after service of the order, he adapted the form of order sought in his action for annulment.

#### *Assessment*

- 55 At the outset, it should be noted that, although the second ground of appeal concerns points 1 to 3 of the operative part of the order under appeal, the irregularity of point 3 of that operative part is already apparent from paragraph 43 of the present order. Accordingly, it is necessary to examine that ground of appeal only in so far as it relates to points 1 and 2 of that operative part.
- 56 In that regard, it should be noted that the first paragraph of Article 39 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 of that statute, provides that, for the purposes of examining applications to prescribe measures pursuant to Articles 278 and 279 TFEU, the President may adjudicate 'by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in [that] Statute and which shall be laid down in the Rules of Procedure'.
- 57 In that context, Article 157(1) of the Rules of Procedure of the General Court authorises the President of the General Court to prescribe a short time limit within which the opposite party is to submit written or oral observations. Article 157(2) of those Rules of Procedure provides, however, that the President of the General Court may grant an application for interim measures made by a party even before the observations of the opposite party have been submitted.
- 58 It follows from those provisions that the President of the General Court, acting as the judge hearing an application for interim measures, is empowered to rule on the application without first hearing the parties in their observations (see, to that effect, order of the Vice-President of the Court of 8 December 2020, *Price v Council*, C-298/20 P(R), EU:C:2020:1006, paragraph 26 and the case-law cited).

- 59 It follows from the case-law of the Court of Justice relating to Article 160(7) of the Rules of Procedure of the Court of Justice, a provision which corresponds to Article 157(2) of the Rules of Procedure of the General Court, that the judge hearing an application for interim measures may adopt such measures as a protective measure, even before the other party has submitted its observations, either until an order has been made terminating those interlocutory proceedings or until the main proceedings are terminated, if those proceedings are held earlier, where the adoption of those measures is in the interests of the proper administration of justice, in particular with a view to ensuring the effectiveness of the interlocutory proceedings (see, to that effect, order of the Vice-President of the Court of 27 July 2023, *VC v EU-OSHA*, C-456/23 P(R)-R, EU:C:2023:612, paragraph 4 and the case-law cited).
- 60 The procedure established by Article 157(2) of the Rules of Procedure of the General Court thus constitutes a derogation procedure designed to enable interim measures to be ordered as swiftly as possible, in order to ensure that the passage of time necessary to give a ruling, following *inter partes* proceedings, on an application for interim measures does not have the effect of depriving the party which has brought that application of sufficient judicial protection.
- 61 The fact remains that that derogation procedure constitutes a specific means of implementing Articles 278 and 279 TFEU and the first paragraph of Article 39 of the Statute of the Court of Justice of the European Union. Therefore, it must be held that, as the Council maintains, that procedure does not allow the judge hearing the application for interim measures to take measures which he or she would not be authorised to adopt pursuant to Articles 278 and 279 TFEU.
- 62 In so far as the order under appeal does not specify whether the measures ordered in points 1 and 2 of its operative part are based on Article 278 TFEU or on Article 279 TFEU, it is necessary to examine whether those measures fall within the jurisdiction conferred on the judge hearing the application for interim measures by the one or the other of those articles.
- 63 As regards, in the first place, Article 278 TFEU, that article provides that actions brought before the Court of Justice are not to have suspensory effect, but that the Court may, if it considers that circumstances so require, order that application of the contested measure be suspended.
- 64 That article is implemented by Article 156(1) of the Rules of Procedure of the General Court, which states that an application under Article 278 TFEU to suspend the operation of any measure adopted by an institution is to be admissible only if the applicant has challenged that measure in an action before the General Court.
- 65 In the present case, on the date on which the order under appeal was signed, in the context of the action for annulment brought before that court by Mr Mazepin, the form of order sought before the General Court covered Decisions 2022/1530 and 2023/572 and Implementing Regulations 2022/1529 and 2023/571 (together, ‘the contested measures’).
- 66 In that context, it must be stated that points 1 and 2 of the operative part of that order are not formally presented as declaring the suspension of the operation of one or more of the measures contested by Mr Mazepin before the General Court.
- 67 Nor can those points be regarded as ordering, in essence, the suspension of some of the effects of those measures.

- 68 The ‘re-listing’ process, of which point 1 of the operative part of the order under appeal orders the suspension, seeks to amend, first, Decision 2014/145 by extending that decision and, second, Regulation No 269/2014 by implementing the obligation, set out in Article 14(4) of that regulation, to review at regular intervals the list in Annex I to that regulation.
- 69 Therefore, given that the contested measures also merely amend Decision 2014/145 and Regulation No 269/2014, without however obliging the Council to initiate a new ‘re-listing’ process in the future, the process referred to in that point 1 cannot be regarded as constituting an effect or a measure implementing those measures.
- 70 As for point 2 of the operative part of the order under appeal, it orders the publication of a note in the *Official Journal of the European Union*, a publication which is neither provided for nor prohibited by those measures.
- 71 It follows that points 1 and 2 of that operative part could not validly be based on Article 278 TFEU.
- 72 As regards, in the second place, Article 279 TFEU, that article states that, in any cases before it, the Court of Justice may prescribe any necessary interim measures.
- 73 That article confers on the judge hearing an application for interim measures a wide discretion to decide on the measures to be ordered, which may, inter alia, consist of appropriate injunctions and ancillary measures intended to ensure the effectiveness of the interim measures ordered by that judge (see, to that effect, order of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, EU:C:2008:252, paragraph 19, and order of 20 November 2017, *Commission v Poland*, C-441/17 R, EU:C:2017:877, paragraphs 96, 97 and 99).
- 74 However, it is clear from the case-law of the Court that such interim measures must have a direct link with the subject matter of the main action (see, to that effect, order of 19 October 1976, *Société pour l’Exportation des Sucres v Commission*, 88/76 R, EU:C:1976:140, paragraph 5, and of 16 December 1980, *Metallurgica Rumi v Commission*, 258/80 R, EU:C:1980:296, paragraph 21), a requirement which is, in essence, recalled in Article 156(2) of the Rules of Procedure of the General Court, which provides that an application relating to one of the interim measures referred to in Article 279 TFEU is to be admissible only if it is made by a main party to a case before the General Court and relates to that case.
- 75 In that context, interim measures adopted under Article 279 TFEU must not go beyond the scope of the dispute as determined by the main action, in so far as they may have no purpose other than to safeguard the interests of one of the parties to an action before the General Court in order not to render the final judgment in the main proceedings illusory by depriving it of practical effect (see, to that effect, order of 17 May 1991, *CIRFS and Others v Commission*, C-313/90 R, EU:C:1991:220, paragraph 24, and order of the President of the Court of 24 April 2008, *Commission v Malta*, C-76/08 R, EU:C:2008:252, paragraph 15).
- 76 Therefore, given that a judgment annulling a measure has the effect of retroactively eliminating the annulled measure from the EU legal order (see, to that effect, judgment of 31 March 1971, *Commission v Council*, 22/70, EU:C:1971:32, paragraph 60), the judge hearing an application for interim measures may, inter alia, on the basis of Article 279 TFEU, order an EU institution not to adopt a measure which would constitute a form of implementation of the annulled measure or which would have the consequence of rendering certain effects of that measure definitive.

- 77 In contrast, the judge hearing an application for interim measures cannot, without exceeding the scope of a dispute relating to an action for annulment, order an EU institution to suspend a procedure which does not depend on the contested measure, in order to prevent the measure adopted at the end of that procedure from containing the same illegality as that complained of in that action.
- 78 It is true that the Court has held that, in the event of annulment of a regulation whose effect is limited to a clearly defined period, the institution which adopted that regulation is under an obligation to exclude from new legislation which was to be adopted after the judgment annulling that regulation, in order to govern periods subsequent to that judgment, any provision having the same content as that held to be unlawful (see, to that effect, judgment of 26 April 1988, *Asteris and Others v Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 29).
- 79 However, first, although the authority *erga omnes* exerted by an annulling judgment attaches to both the operative part and the *ratio decidendi* of the judgment, it cannot entail annulment of an act not challenged before the EU judicature but alleged to be vitiated by the same illegality (see, to that effect, judgment of 14 September 1999, *Commission v AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 54). Second, it is not for those courts to indicate, in a judgment annulling a measure, the measures to be adopted by the institution concerned in order to comply with that judgment (see, to that effect, judgments of 24 June 1986, *AKZO Chemie and AKZO Chemie UK v Commission*, 53/85, EU:C:1986:256, paragraph 23, and of 25 May 1993, *Foyer Cultural du Sart-Tilman v Commission*, C-199/91, EU:C:1993:205, paragraph 17).
- 80 It follows that a judgment annulling a measure cannot directly call into question the validity of a measure subsequent to the annulled measure on the ground that that subsequent measure is vitiated by the same illegality as that vitiating the annulled measure.
- 81 In those circumstances, an order of the judge hearing an application for interim measures ordering an EU institution to suspend a procedure which may lead to the adoption of such a subsequent measure would be tantamount to providing the applicant concerned not with protection against the effects of measures adopted by an institution, as provided for by primary EU law, but with preventive protection of an entirely different order.
- 82 In order to guarantee such protection, the judge hearing an application for interim measures would thus be obliged to assess questions on which the institution concerned has not yet had the opportunity to state its position, which would have the consequence of anticipating the arguments on the substance of the case, confusing different procedural stages both administrative and judicial (see, by analogy, judgment of 11 November 1981, *IBM v Commission*, 60/81, EU:C:1981:264, paragraph 20), whereas it is not for that judge to take the place of that institution (see, to that effect, order of 5 October 1969, *Germany v Commission*, 50/69 R, EU:C:1969:42, p. 451).
- 83 In addition, the fact that the judge hearing an application for interim measures does not have jurisdiction to order an EU institution to suspend a procedure which does not depend on a contested measure, in order to prevent the measure adopted at the end of that procedure from containing the same illegality as that complained of in an action for annulment, is not, contrary to Mr Mazepin's submissions, such as to deprive him of the judicial protection granted to him by primary EU law, in so far as the latter measure may be the subject of an action for annulment accompanied by an application for interim measures, which may, where appropriate, seek interim measures pursuant to Article 156(2) of the Rules of Procedure of the General Court.

- 84 In the present case, as is apparent from paragraph 65 of the present order, on the date on which the order under appeal was signed, the forms of order sought in the action for annulment brought before the General Court by Mr Mazepin related to the contested measures.
- 85 First, for the reasons set out in paragraphs 68 and 69 of the present order, the measures that may be adopted by the Council in the context of the ‘re-listing’ process at issue in the present case must be regarded as resulting from a procedure which does not depend on the contested measures and, in particular, as not implementing the latter measures.
- 86 Second, the measures that may be adopted by the Council in the context of that process are intended, in the light of that institution’s practice, to be applicable for a period subsequent to that governed by the contested measures, with the result that they are not capable of rendering definitive the effects of those measures.
- 87 It follows that the measure ordered in point 1 of the operative part of the order under appeal has no direct link with the subject matter of the action for annulment brought by Mr Mazepin before the General Court. In the absence of such a link, that measure cannot be regarded as constituting an ancillary measure intended to ensure the effectiveness of the interim measures already ordered by the President of the General Court in the earlier orders which he made in the present case, referred to in paragraphs 12 and 14 of the present order, since, by those orders, the President of the General Court ordered the partial suspension of operation of the measures targeted by that action for annulment. It follows that the measure ordered in that point 1 of the operative part could not validly be adopted under Article 279 TFEU.
- 88 The same is true of the measure ordered in point 2 of the operative part of the order under appeal, since it merely ensures publication of the measure ordered in point 1 of that order.
- 89 The fact that, after the date of signature of the order under appeal, Mr Mazepin submitted to the General Court a statement modifying the form of order sought in his application is, in any event, irrelevant to the foregoing considerations, in so far as that statement seeks the annulment of new measures adopted by the Council, measures which are not directly targeted by the measures set out in the operative part of that order.
- 90 It follows that the second ground of appeal must be upheld and that it is appropriate, without it being necessary to rule on the first, third and fourth grounds of appeal, to set aside the order under appeal in its entirety, in so far as point 4 of the operative part of that order is not severable from points 1 to 3 thereof.

### **The application for interim measures brought before the General Court**

- 91 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, where the Court of Justice sets aside a decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment. That provision also applies to appeals brought under the second paragraph of Article 57 of that statute (order of the Vice-President of the Court of 24 May 2022, *Puigdemont i Casamajó and Others v Parliament and Spain*, C-629/21 P(R), EU:C:2022:413, paragraph 172 and the case-law cited).

- 92 In the present case, the President of the General Court gave his ruling before the other parties to the proceedings had been given an opportunity to submit their observations, in accordance with Article 157(1) of the Rules of Procedure of the General Court.
- 93 In those circumstances, it appears that the state of the proceedings does not permit final judgment to be given in the matter and that it is therefore appropriate to refer the case back to the General Court.

### **Costs**

- 94 Since the case has been referred back to the General Court, the costs must be reserved.

On those grounds, the Vice-President of the Court hereby orders:

- 1. The order of the President of the General Court of the European Union of 7 September 2023, *Mazepin v Council* (T-743/22 RIII) is set aside.**
- 2. The case is referred back to the General Court of the European Union.**
- 3. The costs are reserved.**

Luxembourg, 28 September 2023.

A. Calot Escobar  
Registrar

L. Bay Larsen  
Vice-president