Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber, Extended Composition)

5 February 2025*

(Law governing the institutions – Partial failure to comply with an order of the Court of Justice imposing interim measures in the context of an action for failure to fulfil obligations – Periodic penalty payment – Recovery of amounts receivable by offsetting – Article 101(1) and Article 102 of Regulation (EU, Euratom) 2018/1046 – Jurisdiction of the General Court)

In Cases T-830/22 and T-156/23,

Republic of Poland, represented by B. Majczyna and S. Żyrek, acting as Agents,

applicant,

v

European Commission, represented by O. Verheecke, J. Estrada de Solà and K. Herrmann, acting as Agents,

defendant,

THE GENERAL COURT (Second Chamber, Extended Composition),

composed of A. Marcoulli, President, J. Schwarcz, V. Tomljenović, W. Valasidis (Rapporteur) and L. Spangsberg Grønfeldt, Judges,

Registrar: M. Zwozdziak-Carbonne, Administrator,

having regard to the written part of the procedure, in particular, in Case T-156/23:

– the plea of lack of jurisdiction raised by the Commission by document lodged at the Registry of the General Court on 8 June 2023;

– the observations of the Republic of Poland on the plea of lack of jurisdiction lodged at the Court Registry on 24 July 2023;

– the order of 25 October 2023 reserving the decision on the plea of lack of jurisdiction for the final judgment;

further to the hearing on 3 July 2024,

* Language of the case: Polish.

gives the following

Judgment

1 By its actions under Article 263 TFEU, the Republic of Poland seeks the annulment of the decisions of the European Commission of 12 October and 23 November 2022, in Case T-830/22, and of 13 January 2023, in Case T-156/23, to recover by way of offsetting the amounts payable by the Republic of Poland in respect of the daily penalty payment ordered by the Vice-President of the Court of Justice in the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), for the periods between, first, 15 July 2022 and 29 August 2022 and, secondly, 30 August 2022 and 28 October 2022 (together, 'the contested decisions').

Background to the dispute

2 Taking the view that by adopting the ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law relating to the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws), of 20 December 2019 (Dz. U. of 2020, item 190), the Republic of Poland had failed to fulfil its obligations under EU law, the Commission brought, on 1 April 2021, an action for failure to fulfil obligations before the Court of Justice under the second paragraph of Article 258 TFEU, which was registered under number C-204/21.

3 In parallel, the Commission lodged an application for interim measures under Article 279 TFEU.

4 By order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), the Vice-President of the Court of Justice granted that application, ordering the Republic of Poland, pending delivery of the judgment closing the proceedings in Case C-204/21, to suspend the application of certain national provisions introduced by the Law amending the Law relating to the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws and the effects of the decisions of the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland) authorising the initiation of criminal proceedings against or the arrest of a judge. The Vice-President of the Court also ordered the Republic of Poland to communicate to the Commission, no later than one month after notification of the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), all the measures adopted in order to comply in full with that order.

5 By separate document lodged at the Registry of the Court of Justice on 16 August 2021, the Republic of Poland applied for the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), to be cancelled. That application was dismissed by order of 6 October 2021, *Poland* v *Commission* (C-204/21 R, EU:C:2021:834).

6 Taking the view that the Republic of Poland had failed to adopt all the measures imposed by the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), the Commission brought, on 7 September 2021, a fresh application for interim measures requesting the Court to order the Republic of Poland to pay a periodic penalty payment.

7 By order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), the Vice-President of the Court of Justice ordered the Republic of Poland to pay the Commission a periodic penalty payment of EUR 1 000 000 per day, from the date on which that order was noti-

fied to the Republic of Poland and until such time as that Member State complied with the obligations arising from the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), or, if it should fail to do so, until the date of the delivery of the judgment closing the proceedings in Case C-204/21.

8 Given the lack of information attesting to the compliance, by the Polish authorities, with all the obligations arising from the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), the Commission entered in the accounts an amount receivable of EUR 1 000 000 per day as of 3 November 2021, the date of notification of the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878).

9 By letter of 15 June 2022, the Republic of Poland informed the Commission that the adoption of the ustawa o zmianie ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law on the Supreme Court and certain other Laws), of 9 June 2022 (Dz. U., item 1259; 'the Law of 9 June 2022'), had enabled the implementation of the measures imposed by the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), and that, consequently, the Commission could no longer, as of 15 July 2022, the date of entry into force of that law, require the payment of the daily penalty payments imposed by the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878).

10 By letter of 20 July 2022, the Commission took the view that, despite the progress made on certain specific issues, the Republic of Poland had not fully complied with the obligations arising from the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593).

Procedure for payment of the amount receivable in respect of the daily penalty payments for the period from 15 July to 29 August 2022, corresponding to the debt contested by the Republic of Poland in Case T-830/22

11 By letters of 27 July and 29 August 2022, the Commission requested the Republic of Poland to pay the various amounts due in respect of the daily penalty payments ordered by the Court and stated to it that, if payment were not made, it would recover those amounts by means of offsetting, in accordance with Article 101(1) and Article 102 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the Financial Regulation').

12 The Commission then gave the Republic of Poland formal notice to pay those amounts together with default interest.

13 By the decisions of 12 October and 23 November 2022, the Commission informed the Republic of Poland that it was planning to offset its total debt of EUR 63 210 000 against various claims held by Poland with regard to the European Union.

Procedure for payment of the amount receivable in respect of the daily penalty payments for the period from 30 August to 28 October 2022, corresponding to the debt contested by the Republic of Poland in Case T-156/23

14 By letters of 30 September and 28 October 2022, the Commission requested that the Republic of Poland pay the various amounts due in respect of the daily penalty payments ordered by the Court of Justice.

15 The Commission then gave the Republic of Poland formal notice to pay those amounts together with default interest.

16 By the decision of 13 January 2023, the Commission informed the Republic of Poland that it intended to offset its debt totalling EUR 60 270 027.40 against a claim held by Poland with regard to the European Union under the European Agricultural Guarantee Fund (EAGF).

Events subsequent to the bringing of the actions

17 On 10 March 2023, taking the view that the entry into force of the Law of 9 June 2022 constituted a change in circumstances, the Republic of Poland applied to the Court to have cancelled or, in the alternative, varied the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), pursuant to Article 163 of the Rules of Procedure of the Court of Justice.

18 By order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), the amount of the periodic penalty payment imposed by the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), was reduced to EUR 500 000 per day, from the date on which the former order was signed.

19 By judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442), the Court upheld the action brought by the Commission under Article 258 TFEU and found that the Republic of Poland had failed to fulfil its obligations.

Forms of order sought

20 The Republic of Poland claims that the General Court should:

– annul the contested decisions;

– in the alternative, and following the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), partially annul the contested decisions, in so far as they relate to 50% of the offset amounts receivable;

– order the Commission to pay the costs.

21 The Commission contends, in essence, that the General Court should:

– dismiss the actions for having been brought before a court that has no jurisdiction to hear them;

– alternatively, dismiss the actions as unfounded;

– order the Republic of Poland to pay the costs.

Law

22 After hearing the parties' views in that regard at the hearing, the Court has decided to join the present cases for the purposes of the judgment, in accordance with Article 68(1) of the Rules of Procedure of the General Court.

The jurisdiction of the General Court

23 The Commission pleads that the Court lacks jurisdiction to hear and determine the present actions. It submits that, although the actions for annulment are directed against set-off decisions of the Commission, they do not relate to the formal conditions for offsetting the amounts provided for in Article 101(1) and Article 102 of the Financial Regulation, but seek, in reality, to have the Court determine whether, after the entry into force of the Law of 9 June 2022, a debt continued to arise in respect of the daily penalty payment of EUR 1 000 000 imposed by the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878).

24 The Commission submits that the examination of the actions would amount, for the Court, to assessing whether the Republic of Poland complied, by means of the Law of 9 June 2022, with the interim measures imposed on it by the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), in the context of an action for failure to fulfil obligations under Article 258 TFEU. According to the Commission, it follows from the provisions of the FEU Treaty that any assessment of compliance with interim measures falls within the exclusive jurisdiction of the judge hearing the application for interim measures. At the hearing, in response to a question from the Court, the Commission submitted that the derogation of jurisdiction applicable to actions relating to failure to comply with a judgment of the Court of Justice delivered under Article 260(2) TFEU applied, by analogy, in the present case.

25 The Republic of Poland disputes the Commission's arguments.

26 In that regard, it should be noted that the areas of jurisdiction of the General Court are those set out in Article 256 TFEU, as specified in Article 51 of the Statute of the Court of Justice of the European Union. As is apparent from the first sentence of the first subparagraph of Article 256(1) TFEU, the General Court has jurisdiction, in particular, to hear and determine at first instance actions or proceedings referred to in Article 263 TFEU, with the exception of those reserved in that statute to the Court of Justice.

27 Furthermore, under Article 51(c) of the Statute of the Court of Justice, by way of derogation from the rule laid down in Article 256(1) TFEU, actions for annulment under Article 263 TFEU are reserved to the Court of Justice where they are brought by a Member State against an act of the Commission relating to a failure to comply with a judgment delivered by the Court under the second subparagraph of Article 260(2) or the second subparagraph of Article 260(3) TFEU.

28 In the present case, it should be noted that the Republic of Poland seeks the annulment of the decisions by which the Commission offset amounts payable by that Member State in respect of the penalty payments imposed by the judge of the Court of Justice hearing the application for

interim measures in the exercise of that judge's jurisdiction under Article 279 TFEU. The periodic penalty payments were therefore imposed in interim proceedings ancillary to an action for failure to fulfil obligations brought on the basis of Article 258 TFEU.

29 The present actions, brought on the basis of Article 263 TFEU, fall within the jurisdiction of the General Court since the derogations provided for in Article 256 TFEU, as specified in Article 51 of the Statute of the Court of Justice, do not apply in the present case.

30 In particular, contrary to what the Commission maintained at the hearing, the derogation concerning actions for annulment brought against an act of the Commission relating to a failure to comply with a judgment delivered by the Court of Justice under the second subparagraph of Article 260(2) TFEU is not applicable, by analogy, in the present case. As a derogation from the general principle of the jurisdiction of the General Court under Article 256(1) TFEU, Article 51(c) of the Statute of the Court of Justice must be interpreted strictly.

31 Consequently, the plea of lack of jurisdiction raised by the Commission is unfounded and must be rejected.

Substance

The main head of claim, seeking annulment of the contested decisions in their entirety

32 In support of its claim seeking the annulment of the contested decisions in their entirety, the Republic of Poland relies on a single plea in law, alleging infringement of Articles 101 and 102 of the Financial Regulation, read in conjunction with Article 98 of that regulation, in so far as the Commission applied a procedure for recovery by offsetting despite the absence of the Republic of Poland's debt.

33 In order to establish that one of the conditions for offsetting, namely the existence of the debt itself, is not satisfied, the Republic of Poland puts forward two sets of arguments.

34 In the first place, the Republic of Poland relies on the judgment of the Trybunał Konstytucyjny (Constitutional Court, Poland) in Case P 7/20, in which that court held that by adopting, on the basis of Article 279 TFEU, interim measures concerning the organisation and jurisdiction of the Polish courts, as well as the procedure before them, and thereby imposing obligations on the Republic of Poland, the Court of Justice ruled *ultra vires*. Consequently, such measures are not covered by the principles of the primacy and direct applicability of EU law set out in Article 91(1) to (3) of the Constitution of the Republic of Poland.

35 The Republic of Poland submits, in essence, that, in the light of the judgment of the Trybunał Konstytucyjny (Constitutional Court) in Case P 7/20, the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), is contrary to the Polish constitutional order. Consequently, the Republic of Poland was not obliged to comply with the interim measures imposed on it by that order. It adds that the interpretation according to which the constitutional courts of the Member States are competent to review *ultra vires* acts of the European Union, including judgments of the Court of Justice, has been endorsed by the constitutional courts of many Member States.

36 In that regard, suffice it to recall that national provisions on the organisation of justice in the Member States may be subject to review in the light of the second subparagraph of Article 19(1) TEU in the context of an action for failure to fulfil obligations, and, consequently, to interim measures aimed, in particular, at their suspension that are ordered by the Court, under Article 279 TFEU, in the same context (order of 14 July 2021, *Commission* v *Poland*, C-204/21 R, EU:C:2021:593, paragraph 54). As the Vice-President of the Court of Justice has already noted in paragraph 23 of the order of 6 October 2021, *Poland* v *Commission* (C-204/21 R, EU:C:2021:834), the fact that a national constitutional court declares that such interim measures are contrary to the constitutional order of the Member State concerned in no way alters that assessment.

37 It follows from the foregoing that the judgment of the Trybunał Konstytucyjny (Constitutional Court) in Case P 7/20 is not such as to call into question the assessments made in the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), or, therefore, the reality of the amounts receivable at issue.

38 In the second place, the Republic of Poland submits that, as a result of the entry into force, on 15 July 2022, of the Law of 9 June 2022, the national provisions referred to in the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), ceased to apply and that, therefore, the Commission's entry in the accounts of daily penalty payments for periods after 15 July 2022 has no basis in the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878).

39 It should be noted that, by that line of argument, the Republic of Poland submits, in essence, that the adoption of the Law of 9 June 2022 was sufficient to comply with all the interim measures set out in the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593).

40 That question has already been examined by the judge hearing the application for interim measures in the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334). In particular, the Vice-President of the Court held that the measures put in place by the Republic of Poland further to the signature of the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), were capable of ensuring, to a significant degree, the implementation of the interim measures set out in the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593). It thus concluded that, despite the adoption of the Law of 9 June 2022, the Republic of Poland had not fully complied with the obligations arising from that order.

41 Therefore, in the light of the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), the Republic of Poland's arguments based on the Law of 9 June 2022 must be rejected.

42 It follows that an examination of the main arguments put forward by the Republic of Poland seeking annulment of the contested decisions in their entirety has not revealed any infringement by the Commission of Articles 101 and 102 of the Financial Regulation, read in conjunction with Article 98 thereof.

43 Consequently, the head of claim seeking annulment of the contested decisions in their entirety must be rejected.

Head of claim, put forward in the alternative, seeking partial annulment of the contested decision

44 In the alternative, further to the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), the Republic of Poland requests the General Court to annul the contested decisions in so far as they relate to 50% of the offset amounts receivable. As the Republic of Poland confirmed at the hearing in response to a question put by the Court, that head of claim must be understood as an application for partial annulment of the contested decisions.

45 The Republic of Poland relies on two pleas in law, alleging (i) infringement of Article 279 TFEU and breach of the principles of proportionality, equality before the law and effective judicial protection and (ii) infringement of Articles 101 and 102 of the Financial Regulation, read in conjunction with Article 98 of that regulation, in that the Commission applied a procedure for recovery by offsetting, although the measures put in place by the Republic of Poland largely ensured compliance with the interim measures imposed by the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593). In view of the overlaps between the two pleas, it is appropriate to examine them together.

46 The Republic of Poland points out that, by order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), the amount of the periodic penalty payment imposed by the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), was reduced to EUR 500 000 per day, from the date on which the former order was signed, namely 21 April 2023. It submits that the circumstances which led to the finding that, to a significant degree, the interim measures set out in the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), had been implemented, and which justified the reduction by half of the amount of that daily penalty payment existed before the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334). According to the Republic of Poland, the enforcement of the penalty payment in its full amount for the period from 15 July 2022 to 28 October 2022 was, consequently, contrary to the principle of proportionality and to the objective of the interim measures, which was to ensure compliance with the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), and the effectiveness of the future judgment of the Court of Justice.

47 In particular, the Republic of Poland submits that, by entering in the accounts a penalty payment of EUR 1 000 000 per day for the period from 15 July to 28 October 2022, despite the progress made in implementing the interim measures, the Commission went beyond what was necessary to achieve the objective of the effectiveness of the future judgment of the Court of Justice. Thus, the daily penalty payments entered in the accounts by the Commission are in the nature of a 'half-penalty', which is contrary to Article 279 TFEU. The Republic of Poland adds that 50% of the offset amount receivable no longer constituted an existing debt within the meaning of Articles 101 and 102 of the Financial Regulation.

48 According to the Republic of Poland, the Commission was required, by virtue of the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), imposing the penalty payment at issue, to monitor continuously the degree of implementation of the interim measures and to take it into account in its set-off decisions.

49 The Commission disputes the Republic of Poland's arguments.

50 By its arguments, the Republic of Poland criticises the Commission, in essence, for recovering all the amounts payable in respect of the daily penalty payments for the period from 15 July to 28 October 2022, even though, as confirmed by the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), the Republic of Poland largely complied, by means of the Law of 9 June 2022, with the interim measures imposed on it by the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593).

51 As a preliminary point, in so far as the Republic of Poland refers to the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), which postdates the contested decisions and could not therefore be taken into consideration when those decisions were adopted, it must be borne in mind that an application submitted under Article 163 of the Rules of Procedure of the Court of Justice seeks to obtain from the judge hearing the application for interim measures not the retroactive annulment of an order granting an interim measure, but only its variation or cancellation, since the judge hearing the application for interim measures may reconsider, for the future only, such an order, including, where appropriate, by reassessing, in the light of the circumstances existing at the date of his or her decision, the pleas of fact and law which justified prima facie the grant of the interim measure at issue (see order of 19 May 2022, *Czech Republic* v *Poland (Turów mine)*, C-121/21 R, not published, EU:C:2022:408, paragraph 22 and the case-law cited).

52 It follows that an application made under that provision cannot seek to call into question the past effects of an order granting an interim measure (order of 19 May 2022, *Czech Republic* v *Poland (Turów Mine)*, C-121/21 R, not published, EU:C:2022:408, paragraph 23).

53 As noted in paragraph 18 above, by paragraph 113 of the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), the amount of the penalty payment imposed by the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), was reduced to EUR 500 000 per day for the future, from 21 April 2023, the date of signature of the order in *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334).

54 In the present case, the parties acknowledge that the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334), takes effect *ex nunc*. The reduction of the penalty payment imposed by the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), took effect only with regard to the future. That reduction therefore concerns only the amounts payable from 21 April 2023 and not those payable in respect of the preceding period.

55 However, the parties disagree on the extent of the role of the Commission, as the institution responsible for implementing the EU budget in accordance with Article 317 TFEU, in implementing the penalty payments ordered under Article 279 TFEU. The Republic of Poland takes the view that the Commission was required, under the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), imposing the penalty payment at issue, to review the degree to which the interim measures had been implemented and to take it into account in its set-off decisions, whereas, according to the Commission, it was not entitled unilaterally to abstain from entering in the accounts a daily penalty payment or to reduce the amount thereof.

56 In that regard, as regards the Commission's obligations, it must be pointed out that the FEU Treaty does not lay down detailed rules for the payment of periodic penalty payments imposed under Article 279 TFEU.

57 Nevertheless, inasmuch as, under Article 279 TFEU, the judge hearing an application for interim measures orders a Member State to pay the Commission a daily penalty payment and as, under Article 317 TFEU, the Commission implements the EU budget, it is for the Commission to recover the sums which would be due to the EU budget pursuant to the order imposing that penalty payment, in accordance with the provisions of the regulations adopted to implement Article 322 TFEU.

58 In the present case, the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), fixed the amount of the daily penalty payment, which remained unchanged until 21 April 2023, and the period for which that penalty payment ran. In particular, it set, as the starting point of the penalty payment, the date of notification of that order and, as the date on which that penalty payment stopped running, the day on which the Republic of Poland had fully complied with the obligations arising from the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), or, failing that, the day on which the judgment closing the proceedings in Case C-204/21 was delivered.

59 It is thus apparent from the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), that the penalty payment is payable and that, therefore, the Commission is required to ensure its recovery, as long as the Republic of Poland has not complied in full with the obligations listed in point 1(a) to (e) of the operative part of the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593).

60 By contrast, it is not apparent from the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), that the Commission was entitled to reduce the amount of the daily penalty payment in the event of partial compliance. In addition, to acknowledge that the Commission has the option, or even the obligation, to adjust the amount of the daily penalty payment according to the level of compliance, by the Republic of Poland, with the obligations arising from the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), would call into question the authority of the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), by which the Vice-President of the Court set the amount of the daily penalty payment at EUR 1 000 000.

61 As noted in paragraph 10 above, the Commission took the view, in the letter of 20 July 2022, that, despite the progress made, the Law of 9 June 2022 did not ensure full compliance with the obligations arising from the order of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), which was, moreover, confirmed by the judge hearing the application for interim measures in the order of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334). In the absence of a finding that the abovementioned obligations had been complied with in full, the Commission was fully entitled to enforce the full amount of the penalty payment for the period from 15 July to 28 October 2022.

62 In addition, the Republic of Poland's arguments that enforcement of the full amount of the penalty payment for the period from 15 July to 28 October 2022 was contrary to the principles of proportionality and equality before the law must also be rejected. Such arguments would imply that the Commission was entitled to carry out a review of proportionality in relation to an interim order of the Vice-President of the Court of Justice and to adjust the amount of the

penalty payment imposed, thus calling into question the authority of such an order. No provision of the Treaty or of secondary legislation can be interpreted as conferring such a power on the Commission.

63 Moreover, in so far as the Republic of Poland alleges breach of the principle of effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, it must be recalled that it had, from 15 July 2022, the date of entry into force of the Law of 9 June 2022, a legal remedy enabling it to apply to the judge hearing the application for interim measures for the removal or reduction of the daily penalty payment under Article 163 of the Rules of Procedure of the Court of Justice. However, it did not make an application for the cancellation or variation of the order of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878), pursuant to that provision immediately after the entry into force of the Law of 9 June 2022, but only on 10 March 2023.

64 Having regard to the foregoing considerations, it must be concluded that the examination of the pleas in law put forward by the Republic of Poland in support of its claim, made in the alternative, that the contested decisions be annulled in part has not revealed any infringement of Article 279 TFEU or of Articles 101 and 102 of the Financial Regulation, read in conjunction with Article 98 of that regulation, or breach of the principles of proportionality, equality before the law or effective judicial protection.

65 Accordingly, the head of claim seeking partial annulment of the contested decisions must be rejected and the actions must be dismissed in their entirety.

Costs

66 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

67 Since the Republic of Poland has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Second Chamber, Extended Composition)

hereby:

1. Joins Cases T-830/22 and T-156/23 for the purposes of the judgment;

2. Dismisses the actions;

3. Orders the Republic of Poland to pay the costs.

Marcoulli Schwarcz Tomljenović

Valasidis Spangsberg Grønfeldt

Delivered in open court in Luxembourg on 5 February 2025.

[Signatures]