Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 December 2024*

(Reference for a preliminary ruling – Asylum policy – Temporary protection in the event of a mass influx of displaced persons – Directive 2001/55/EC – Articles 4 and 7 – Invasion of Ukraine by Russian armed forces – Implementing Decision (EU) 2022/382 – Article 2(3) – Option for a Member State to apply temporary protection to displaced persons not covered by that decision – Point in time when a Member State which has granted temporary protection to such persons may terminate that protection – Return of illegally staying third-country nationals – Directive 2008/115/EC – Article 6 – Return decision – Point in time when a Member State may adopt a return decision – Illegal stay)

In Joined Cases C-244/24 and C-290/24 [Kaduna],[i]

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands) (C-244/24), and from the Raad van State (Council of State, Netherlands) (C-290/24), made by decisions of 29 March 2024 and of 25 April 2024, received at the Court, respectively, on 4 April 2024 and on 25 April 2024, in the proceedings

P (C-244/24),

AI,

ZY,

BG (C-290/24)

v

Staatssecretaris van Justitie en Veiligheid,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, C. Lycourgos (Rapporteur), I. Jarukaitis, S. Rodin, A. Kumin, N. Jääskinen, D. Gratsias and M. Gavalec, Presidents of Chambers, E. Regan, J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

* Language of the case: Dutch.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any parties to the proceedings.

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 3 September 2024,

after considering the observations submitted on behalf of:

– P, by C.E. van Diepen, advocate,

– AI, by P. Krämer-Ograjensek, advocate,

– ZY, by R.H.T. van Boxmeer, advocaat,

– BG, by T.E. van Houwelingen-Boer, advocaat,

– the Netherlands Government, by M.K. Bulterman, A. Hanje and J. Langer, acting as Agents,

– the European Commission, by A. Baeckelmans, F. Blanc-Simonetti, M. Debieuvre and A. Katsimerou, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 October 2024,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation:

– of Article 4 and Article 7(1) of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ 2001 L 212, p. 12), of Article 2(3) of Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ 2022 L 71, p. 1), and of Article 1 of Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision 2022/382 (OJ L 2023/2409);

– of Article 6 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

2 The requests have been made in two sets of proceedings between, on the one hand, P (C-244/24) and AI, ZY and BG (C-290/24), third-country nationals, and, on the other hand, the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) ('the State Secretary') regarding the cessation of the temporary protection granted to those nationals and the legality of the return decisions adopted in respect of them.

Legal framework

European Union law

Provisions relating to temporary protection

– *Directive 2001/55*

3 Recitals 2, 8 and 13 of Directive 2001/55 state:

‘(2) Cases of mass influx of displaced persons who cannot return to their country of origin have become more substantial in Europe in recent years. In these cases it may be necessary to set up exceptional schemes to offer them immediate temporary protection.

…

(8) It is therefore necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons.

…

(13) Given the exceptional character of the provisions established by this Directive in order to deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, the protection offered should be of limited duration.’

4 Article 1 of that directive provides:

‘The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.’

5 Article 2 of that directive states:

‘For the purposes of this Directive:

(a) “temporary protection” means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

…

(g) “residence permit” means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State’s legislation, allowing a third country national or a stateless person to reside on its territory;

…’

6 In accordance with Article 3(1) of the directive:

‘Temporary protection shall not prejudge recognition of refugee status under the Convention [relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967].’

7 Article 4 of Directive 2001/55 provides:

‘1. Without prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.

2. Where reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to extend that temporary protection by up to one year.’

8 Under Article 5 of that directive:

‘1. The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

…

3. The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The Decision shall include at least:

(a) a description of the specific groups of persons to whom the temporary protection applies;

(b) the date on which the temporary protection will take effect;

…

4. The Council Decision shall be based on:

(a) an examination of the situation and the scale of the movements of displaced persons;

(b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

(c) information received from the Member States, the Commission, the [United Nations High Commissioner for Refugees (HCR)] and other relevant international organisations.

…’

9 Article 6 of that directive states:

‘1. Temporary protection shall come to an end:

(a) when the maximum duration has been reached; or

(b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States’ obligations regarding non-refoulement. The European Parliament shall be informed of the Council Decision.’

10 Article 7 of the directive provides:

‘1. Member States may extend temporary protection as provided for in this Directive to additional categories of displaced persons over and above those to whom the Council Decision provided for in Article 5 applies, where they are displaced for the same reasons and from the same country or region of origin. They shall notify the Council and the Commission immediately.

2. The provisions of Articles 24, 25 and 26 shall not apply to the use of the possibility referred to in paragraph 1, with the exception of the structural support included in the European Refugee Fund set up by [Council] Decision 2000/596/EC [of 28 September 2000 establishing a European Refugee Fund (OJ 2000 L 252, p. 12)], under the conditions laid down in that Decision.’

11 Chapter III of Directive 2001/55, entitled ‘Obligations of the Member States towards persons enjoying temporary protection’, contains Articles 8 to 16 of that directive.

12 Article 8(1) of that directive provides:

‘The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.’

13 Chapter IV of Directive 2001/55, entitled ‘Access to the asylum procedure in the context of temporary protection’, contains Articles 17 to 19 of that directive.

14 Article 17 of that directive states:

‘1. Persons enjoying temporary protection must be able to lodge an application for asylum at any time.

2. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.’

15 Chapter V of Directive 2001/55, entitled ‘Return and measures after temporary protection has ended’, contains Articles 20 to 23 of that directive.

16 Under Article 20 of that directive:

‘When the temporary protection ends, the general laws on protection and on aliens in the Member States shall apply, without prejudice to Articles 21, 22 and 23.’

17 Article 21 of the directive is worded as follows:

‘1. The Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity.

The Member State shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for exploratory visits.

2. For such time as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return.

3. At the end of the temporary protection, the Member States may provide for the obligations laid down in Chapter III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return.’

18 Article 22 of Directive 2001/55 provides:

‘1. The Member States shall take the measures necessary to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission is conducted with due respect for human dignity.

2. In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.’

19 According to Article 23 of that directive:

‘1. The Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel; where for example they would suffer serious negative effects if their treatment was interrupted. They shall not be expelled so long as that situation continues.

2. The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period.’

– *Implementing Decision 2022/382*

20 Recitals 7, 11 to 14 and 21 of Implementing Decision 2022/382 state:

‘(7) Those figures show that the Union is likely to be faced with a situation that is characterised by a mass influx of displaced persons from Ukraine who are unable to return to their country or region of origin because of Russian military aggression. The scale of the influx would likely be such that there is also a clear risk that the Member States’ asylum systems will be unable to process the arrivals without adverse effects on their efficient operation and on the interests of the persons concerned and on those of other persons requesting protection.

…

(11) The object of this Decision is to introduce temporary protection for Ukrainian nationals residing in Ukraine who have been displaced on or after 24 February 2022 as a result of the military invasion by Russian armed forces that began on that date. Temporary protection should also be introduced for nationals of third countries other than Ukraine, who have been displaced from Ukraine on or after 24 February 2022, and who were benefiting in Ukraine from refugee status or equivalent protection before 24 February 2022. In addition, it is important to preserve the unity of families and to avoid diverging statuses among members of the same family. Therefore, it is necessary to also introduce temporary protection for family members of those persons, where their families were already in, and residing in, Ukraine at the time of the circumstances surrounding the mass influx of displaced persons.

(12) It is also appropriate to provide for the protection of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin. This protection should take the form of either applying this Decision to them, or of other adequate protection under national law, to be decided upon by each Member State. Those seeking to benefit from the protection should be able to prove that they fulfil these eligibility criteria by presenting the relevant documents to the competent authorities in the Member State concerned. If they are unable to present the relevant documents, Member States should redirect them to the appropriate procedure.

(13) In accordance with Directive [2001/55], Member States may extend temporary protection to all other stateless persons or nationals of third countries other than Ukraine residing legally in Ukraine who are unable to return in safe and durable conditions to their country or region of origin. Such persons could include third-country nationals who were studying or working in Ukraine on a short-term basis at the time of the events leading to the mass influx of displaced persons. Such persons should in any event be admitted into the Union on humanitarian grounds without requiring, in particular, possession of a valid visa or sufficient means of subsistence or valid travel documents, to ensure safe passage with a view to returning to their country or region of origin.

(14) Member States may also extend temporary protection to additional categories of displaced persons above and beyond those to whom this Decision applies, where those persons are displaced for the same reasons and from the same country or region of origin as referred to in this Decision. In that case, the Member States should notify the Council and the Commission immediately. In this context, Member States should be encouraged to consider extending temporary protection to those persons who fled Ukraine not long before 24 February 2022 as tensions increased or who found themselves in the territory of the Union (e.g. on holidays or for work reasons) just before that date and who, as a result of the armed conflict, cannot return to Ukraine.

…

(21) In accordance with Directive [2001/55], the duration of temporary protection should be for an initial period of one year. Unless terminated under the terms of Article 6(1), point (b), of that Directive, that period should be extended automatically by six monthly periods for a maximum of one year. The Commission will keep the situation under constant monitoring and review. At any time, it may propose to the Council to end the temporary protection, based on the fact that the situation in Ukraine is such as to permit the safe and durable return of those granted temporary protection, or propose that the Council extend the temporary protection by up to one year.'

21 Article 1 of that implementing decision provides:

'The existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict is hereby established.'

22 Article 2(1) to (3) of that implementing decision provides:

'1. This Decision applies to the following categories of persons displaced from Ukraine on or after 24 February 2022, as a result of the military invasion by Russian armed forces that began on that date:

(a) Ukrainian nationals residing in Ukraine before 24 February 2022;

(b) stateless persons, and nationals of third countries other than Ukraine, who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; and,

(c) family members of the persons referred to in points (a) and (b).

2. Member States shall apply either this Decision or adequate protection under their national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.

3. In accordance with Article 7 of Directive [2001/55], Member States may also apply this Decision to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin.'

23 In accordance with Article 4, Implementing Decision 2022/382 entered into force on the day of its publication in the *Official Journal of the European Union*, namely 4 March 2022.

– *Implementing Decision 2023/2409*

24 Recitals 3 and 7 of Implementing Decision 2023/2409 state:

‘(3) In accordance with Directive [2001/55], temporary protection first applied for an initial period of one year, until 4 March 2023, and was then automatically extended for one additional year until 4 March 2024.

…

(7) The high number of displaced persons in the Union that benefit from temporary protection is not likely to decrease as long as the war against Ukraine continues. Extending temporary protection is therefore necessary to address the situation of persons that currently benefit from temporary protection in the Union or who will need such protection as of 4 March 2024, as it provides for immediate protection and access to a harmonised set of rights whilst keeping formalities to a minimum in a situation of mass influx to the Union. Extending temporary protection will also help to ensure that the asylum systems of the Member States are not overwhelmed by a significant increase in the number of applications for international protection that could be lodged by persons that benefit from temporary protection until 4 March 2024, if temporary protection were to cease by then or by persons fleeing the war in Ukraine that arrive in the Union after that date and before 4 March 2025.’

25 Article 1 of that implementing decision provides:

‘The temporary protection given to persons displaced from Ukraine referred to in Article 2 of Implementing Decision [2022/382] is extended for a period of one year until 4 March 2025.’

– *Implementing Decision (EU) 2024/1836*

26 Article 1 of Council Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision 2022/382 (OJ L, 2024/1836), provides:

‘The temporary protection given to persons displaced from Ukraine referred to in Article 2 of Implementing Decision [2022/382] is extended for a further period of 1 year, until 4 March 2026.’

Other relevant provisions

– *Directive 2008/115*

27 Article 2(1) of Directive 2008/115 states:

‘This Directive applies to third-country nationals staying illegally on the territory of a Member State.’

28 According to Article 4(2) of that directive:

'This Directive shall be without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community acquis relating to immigration and asylum.'

29 Article 5 of that directive provides:

'When implementing this Directive, Member States shall take due account of:

(a) the best interests of the child;

(b) family life;

(c) the state of health of the third-country national concerned,

and respect the principle of non-refoulement.'

30 Article 6 of the directive provides:

'1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

…

6. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III and under other relevant provisions of Community and national law.'

– *Directive 2013/32/EU*

31 Article 2 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), provides:

'For the purposes of this Directive:

…

(q) "subsequent application" means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).'

32 Article 33(2) of that directive provides:

'Member States may consider an application for international protection as inadmissible only if:

…

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)] have arisen or have been presented by the applicant; or

…'

– *Regulation (EU) 2016/399*

33 Article 6 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) 2018/1240 of the European Parliament and of the Council of 12 September 2018 (OJ 2018 L 236, p. 1), lays down the conditions of entry to the territory of the European Union for third-country nationals for intended stays of a duration of no more than 90 days in any 180-day period. Those obligations include the requirement, to which nationals of certain third countries are subject, to be in possession of a valid visa.

– *Regulation (EU) 2018/1860*

34 Article 3(1) of Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ 2018 L 312, p. 1), provides:

'Member States shall enter into [the Schengen Information System (SIS)] alerts on third-country nationals subject to a return decision for the purpose of verifying that the obligation to return has been complied with and of supporting the enforcement of the return decisions. An alert on return shall be entered into SIS without delay following issue of a return decision.'

Netherlands law

Law of 2000 on foreign nationals

35 Article 8 of the Wet tot algehele herziening van de Vreemdelingenet (Vreemdelingenwet 2000) (Law on the general revision of the Law on foreign nationals (Law of 2000 on foreign nationals)) of 23 November 2000 (Stb. 2000, No 495), in the version applicable to the disputes in the main proceedings ('Law of 2000 on foreign nationals'), provides:

'A foreign national is lawfully resident in the Netherlands only:

…

(f) if, pending the decision on an application for a residence permit, as referred to in Articles 14 and 28, the present law, a provision adopted on the basis of the latter or a court order provides that the deportation of the foreign national is not to take place until a decision has been taken on the application;

…

(h) pending the decision on an objection or appeal, where, pursuant to this Law or a provision adopted under this Law or pursuant to a judicial decision, a provision adopted on the basis of that application or a court order, deportation of the applicant should be deferred until a decision has been taken on the objection or the appeal;

…'

Decision of 2000 on foreign nationals

36 Article 3.1a(1) of the Besluit tot uitvoering van de Vreemdelingenwet 2000 (Vreemdelingenbesluit 2000) (Decision implementing the Law of 2000 on foreign nationals (Decision of 2000 on foreign nationals)) of 23 November 2000 (Stb. 2000, No 497), in the version applicable to the disputes in the main proceedings ('Decision of 2000 on foreign nationals'), provides:

'A foreign national who makes an application for a temporary asylum residence permit cannot be removed while a decision referred to in Article 5(3) of Directive [2001/55] is in force if that foreign national:

(a) belongs to a specific group of foreign nationals defined in a decision of the Council of the European Union referred to in Article 5(3) of Directive [2001/55];

…

(e) belongs to the group, to be designated by ministerial regulation, of foreign nationals from the same country or region as the foreign national referred to in subparagraph (a), who has been displaced for the same reason and does not already benefit from protection in another country which is party to the [FEU] Treaty or the Agreement on the European Economic Area[, of 2 May 1992 (OJ 1994 L 1, p. 3)].'

Regulation of 2000 on foreign nationals and Regulations of 2022 and 2023

37 Article 3.9a of the Voorschrift Vreemdelingen 2000 (Regulation of 2000 on foreign nationals) lists the groups of foreign nationals referred to in Article 3.1a(1)(e) of the Decision of 2000 on foreign nationals.

38 That Article 3.9a was inserted into the Regulation of 2000 on foreign nationals with retroactive effect by Article 1 of the Regeling van de Staatssecretaris van Justitie en Veiligheid nummer 4123685, houdende wijziging van het Voorschrift Vreemdelingen 2000, in verband met het aanpassen van de doelgroep ontheemden uit Oekraïne, waaraan tijdelijke bescherming wordt verleend (Regulation of the State Secretary for Justice and Security No 4123685 amending the Regulation of 2000 on foreign nationals as regards the target group of persons displaced from

Ukraine who are granted temporary protection) of 17 August 2022 (Stcrt. 2022, No 22623; 'the Regulation of 2022'), which provides for two versions of that Article 3.9a, the first in force for the period from 4 March 2022 to 18 July 2022, the second in force from 19 July 2022.

39 In the version in force between 4 March 2022 and 18 July 2022, Article 3.9a(1)(c) of the Regulation of 2000 on foreign nationals provided:

'The persons designated as foreign nationals covered by Article 3.1a(1)(e) of the Decision [of 2000 on foreign nationals] are foreign nationals who:

…

(c) held a valid residence permit in Ukraine on 23 February 2022 and are likely to have left Ukraine after 26 November 2021'.

40 In the version in force from 19 July 2022, Article 3.9a(1) of the Regulation of 2000 on foreign nationals is worded as follows:

'The persons designated as foreign nationals covered by Article 3.1a(1)(e) of the Decision [of 2000 on foreign nationals] are foreign nationals who:

(c) held a valid permanent residence permit in Ukraine on 23 February 2022 and in respect of whom:
   1. it is likely that they left Ukraine after 26 November 2021; and
   2. it has not been demonstrated that they returned to their country of origin after 23 February 2022.'

41 Article 2 of the Regulation of 2022 provides for a transitional regime, stating as follows:

'Article 3.9a(1)(c) [of the Regulation of 2000 on foreign nationals], in the version in force until 19 July 2022, shall continue to apply until 4 March 2023 to foreign nationals who:

(a) did not hold a valid permanent residence permit in Ukraine on 23 February 2022; and

(b) were registered in the [personal records database] before 19 July 2022.'

42 That transitional regime was extended by Article 2 of the Regeling van de Staatssecretaris van Justitie en Veiligheid, nummer 4507236, in verband met de verlenging van de duur van tijdelijke bescherming aan een groep ontheemden uit Oekraïne (Regulation of the State Secretary for Justice and Security No 4507236 extending the duration of temporary protection to a group of persons displaced from Ukraine) of 1 March 2023 (Stcrt. 2023, No 7194; 'the Regulation of 2023'), which provides:

'Article 3.9a(1)(c) of the Regulation of 2000 on foreign nationals, in the version in force until 19 July 2022, shall continue to apply until 4 September 2023 to foreign nationals who:

(a) did not hold a valid permanent residence permit in Ukraine on 23 February 2022; and

(b) were registered in the [personal records database] before 19 July 2022.'

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

Case C-244/24

43 P is a Nigerian national who had a temporary residence permit in Ukraine until 31 January 2023. Following the invasion of Ukrainian territory by Russian armed forces, he fled to the Netherlands and was registered, on 1 June 2022, in the personal records database of that Member State. On that date, the Netherlands authorities granted temporary protection, within the meaning of Directive 2001/55, inter alia, to third-country nationals placed in a situation such as that of P, without assessing the possibility of their return to their countries of origin. The State Secretary therefore granted P such protection.

44 On 9 August 2022, P lodged an application for asylum. By decision of 24 August 2023, the State Secretary decided to discontinue the examination of his asylum application. No appeal was lodged against that decision.

45 That same 24 August 2023, the State Secretary terminated P's temporary protection with effect from 4 September 2023. That decision was subsequently withdrawn on the ground that, by a judgment of 17 January 2024, the Raad van State (Council of State, Netherlands) had held that, with effect from 4 September 2023, the Netherlands authorities could not terminate the temporary protection of third-country nationals who were in a situation such as that of P and that the temporary protection granted to those nationals would end automatically on 4 March 2024, of which the State Secretary informed P by a letter of 24 January 2024.

46 On 7 February 2024, the State Secretary issued a return decision to P, on the ground that his legal stay in the territory of the Kingdom of the Netherlands would automatically end on 4 March 2024. That decision ordered P to leave the territory of the European Union within a period of four weeks after the latter date.

47 P brought an action before the rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, Netherlands), which is the referring court in Case C-244/24, contesting the legality of that decision. In support of his action, P claimed, in particular, that the decision was not only premature but also unlawful, since he had to be granted temporary protection, under EU law, until 4 March 2025, on the basis of the extension of temporary protection provided for in Implementing Decision 2023/2409. Moreover, he had not been heard, before the adoption of the return decision, on its compatibility with Articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

48 As a preliminary point, the referring court states, first, that, under the Netherlands legislation transposing Directive 2001/55, the displaced person must lodge an application for asylum in order to obtain a right of residence in the Netherlands, in accordance with Article 8(f) or (h) of the Law of 2000 on foreign nationals. It also points out that Article 3.1a(1) of the Decision of 2000 on foreign nationals transposes Article 7 of Directive 2001/55 under which Member States may extend temporary protection to other persons ('optional temporary protection').

49 Second, that court observes that, by a letter addressed to the President of the Tweede Kamer der Staten-Generaal (Second Chamber of Parliament, Netherlands) on 30 March 2022, the State Secretary stated that he intended to apply Article 2(3) of Implementing Decision 2022/382 by extending temporary protection to stateless persons and third-country nationals who held a valid

temporary residence permit in Ukraine on 23 February 2022, without requiring that it be established that those persons cannot return to their countries or regions of origin in safe and durable conditions. However, by a letter of 18 July 2022, the State Secretary announced his intention to terminate that optional temporary protection with effect from 19 July 2022, whilst providing for a transitional regime for persons enjoying such protection until then. The termination was justified, according to the State Secretary, by the existence of possible abuses and secondary movements to the Netherlands.

50 The referring court states that, on 17 August 2022, by the Regulation of 2022, the State Secretary inserted an Article 3.9a into the Regulation of 2000 on foreign nationals, providing, first, that optional temporary protection would no longer be granted with effect from 19 July 2022 and, second, that persons who, on that date, had already been granted such optional temporary protection would have their protection terminated on 4 March 2023.

51 The Regulation of 2023 extended that transitional regime until 4 September 2023. That extension was justified by the fact that it had to be expected that a not insignificant number of those persons would initiate asylum proceedings, resulting in the risk of a lack of reception places.

52 By its judgment of 17 January 2024, le Raad van State (Council of State) considered, however, that it follows in particular from Articles 4 and 7 of Directive 2001/55 that the transitional regime covering persons who had already been granted optional temporary protection had to continue until 4 March 2024. According to that court, once a Member State has granted such optional temporary protection, it cannot withdraw it during the period referred to in Article 4(1) of Directive 2001/55, except where the Council decides, during that period, to terminate the temporary protection early under Article 6 of that directive. On the other hand, the beneficiaries of the optional temporary protection granted by that Member State are covered by the extension of temporary protection decided by the Council under Article 4(2) of that directive only if that Member State was still granting such optional temporary protection on the date of adoption of that decision to that group of beneficiaries. However, in the present case, the State Secretary decided on 19 July 2022, that is, a date preceding the date of the adoption by the Council of Implementing Decision 2023/2409, to no longer grant temporary protection to stateless persons and third-country nationals who held a temporary residence permit in Ukraine.

53 In the first place, as regards the argument that the return decision at issue in the main proceedings is premature, the referring court considers that it appears to follow from Article 2(1) and Article 6(1) and (6) of Directive 2008/115 that, as long as a third-country national is not staying illegally, no return decision can be issued in respect of that person.

54 However, that court points out that, in its judgment of 17 January 2024, the Raad van State (Council of State) held that it was up to the State Secretary to determine how he would inform the persons benefiting from optional temporary protection that that protection would end automatically on 4 March 2024. In order to guarantee their judicial protection, those persons received a letter informing them of the subsequent stages of the procedure. Ultimately, a decision was made to issue all the return decisions in respect of those persons on 7 and 23 February 2024, in order to inform them as early as possible of the consequences of the ending of their legal stay. According to the referring court, that approach also made it easier for the Netherlands authorities to remove those persons as soon as possible. Moreover, it follows from the return decision itself that that decision does not take effect until the date on which legal stay ends, since the decision clearly indicates that P's stay in the Netherlands would become illegal from 5 March 2024, and

that the period for voluntary departure would not start to run until that date. That being so, the court notes that the time limit for bringing an appeal against that decision starts to run from the date on which the decision is issued.

55 The referring court therefore asks whether the State Secretary was competent to issue a return decision to the appellant in the main proceedings as early as 7 February 2024, even though, on that date, the appellant in those proceedings was still lawfully resident in the territory of the Kingdom of the Netherlands.

56 In the second place, as regards the argument that the return decision at issue in the main proceedings is unlawful, the referring court has doubts as to whether the temporary protection granted to the appellant at issue in the main proceedings under Article 7 of Directive 2001/55 automatically ended on 4 March 2024, as follows from the judgment of the Raad van State (Council of State) of 17 January 2024.

57 The referring court states, first, that, in the event of shared competence between the European Union and the Member States in a particular area, as is the case in the area of asylum and immigration, the Member States may no longer exercise their competence in that area once the European Union has exercised its competence.

58 In so far as the Kingdom of the Netherlands made use of the option provided for in Article 2(3) of Implementing Decision 2022/382 in granting optional temporary protection to certain persons, those persons fall fully within the scope of Directive 2001/55 by virtue of Article 7 thereof. According to the referring court, the optional temporary protection thereby granted by a Member State must, inter alia, comply with Articles 4 and 6 of that directive, which lay down mandatory and exhaustive rules on the duration and termination options of temporary protection.

59 Consequently, that optional temporary protection can only end when the maximum duration of the temporary protection has been reached, or earlier if the Council decides to terminate that protection. The EU legislature has exercised its competence as regards the duration of temporary protection and the arrangements for its termination in respect of all the beneficiaries under Directive 2001/55.

60 Second, the referring court considers that Implementing Decision 2023/2409 does not distinguish between the different groups of persons benefiting from temporary protection. It further notes that the proposal for Implementing Decision 2023/2409 states that Directive 2001/55 must ensure that the same standards and a harmonised set of rights are applied across the European Union to persons who are received there at the time of the extension of temporary protection, which is also confirmed by recital 7 of that implementing decision.

61 Third, according to the referring court, the fact that the extension of temporary protection is decided by the Council, pursuant to Article 4(2) of Directive 2001/55, does not lead to the conclusion that Member States should, at that point, reassess the categories of beneficiaries of that protection, since the situation for persons benefiting from optional temporary protection has not changed any more than it has for the persons who are directly covered by that directive.

62 Therefore, the referring court considers that there is sufficient reason to assume that the persons who, by application of Article 7 of Directive 2001/55, fall within the scope of that directive also fall within the scope of Implementing Decision 2023/2409 and are thus entitled to temporary protection under that directive until 4 March 2025.

63 In those circumstances, the rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam), decided to stay the proceedings and to refer to the Court of Justice the following questions for a preliminary ruling:

‘(1) Is Article 6 of [Directive 2008/115] to be interpreted as precluding the issuing of a return decision on a date when a foreign national is still lawfully resident on the territory of a Member State?

(2) Does it make any difference to the answer to the foregoing question if the return decision contains a date on which the lawful residence ends, where that date is in the near future and, moreover, where the legal consequences of the return decision do not take effect until that later date?

(3) Is Article 1 of [Implementing Decision 2023/2409] to be interpreted as meaning that [the] extension [of the protection provided by it] also covers a group of third-country nationals who have already been brought within the scope of [Directive 2001/55] by a Member State via the optional provision of Article 2(3) of [Implementing Decision 2022/382], even though the Member State has chosen at a later point in time to no longer grant temporary protection to that group of third-country nationals?’

Case C-290/24

64 AI, ZY and BG are third-country nationals who held valid temporary residence permits in Ukraine on 24 February 2022. After their departure from Ukraine following the invasion of the territory of that country by Russian armed forces, those nationals registered in the Netherlands personal records database and applied for asylum at a time when the Netherlands authorities were granting temporary protection to third-country nationals holding temporary residence permits in Ukraine, without it being assessed whether those third-country nationals were able to return to their country or region of origin in safe and durable conditions. The State Secretary therefore granted those nationals temporary protection under Directive 2001/55.

65 By three decisions of 7 February 2024, the State Secretary ordered AI, ZY and BG to leave the territory of the European Union within four weeks starting from 4 March 2024.

66 By judgments of 19 March 2024 and 27 March 2024, the appeals brought by AI and BG against the decisions concerning them were upheld and those decisions were annulled. The State Secretary brought appeals against those judgments before the Raad van State (Council of State), which is the referring court in Case C-290/24.

67 By a judgment of 27 March 2024, the appeal brought by ZY against the decisions concerning him was dismissed as unfounded. ZY brought an appeal against that judgment before the referring court.

68 The referring court considers that the State Secretary’s decisions of 7 February 2024 mentioned in paragraph 65 of the present judgment must be regarded as constituting return decisions within the meaning of Directive 2008/115.

69 It also states that the outcome of the disputes brought before it means determining the date on which the optional temporary protection granted by the Netherlands authorities ends.

70 In that regard, that court states, in the first place, that the Netherlands legislation transposing Directive 2001/55 provides for temporary protection to be granted pursuant to the Law of 2000 on foreign nationals and upon submission of an application for asylum by the person concerned, the period for a decision in respect of that application being suspended for as long as the protection lasts.

71 In the second place, the referring court states that the State Secretary justified the decision to terminate the optional temporary protection because of possible abuses, the existence of secondary movements to the Netherlands and the fact that the beneficiaries of that protection could usually return to their countries of origin in safe and durable conditions.

72 In the third place, that court states that, in its judgment of 17 January 2024, it held, for the reasons set out in paragraph 52 of the present judgment, that the State Secretary could not withdraw, from 4 September 2023, the optional temporary protection from persons to whom it had already been granted, but that that protection would automatically end on 4 March 2024, the date on which the temporary protection granted by the Council would have ceased in the absence of Implementing Decision 2023/2409.

73 It emphasises, in that regard, that paragraphs 1 and 2 of Article 4 of Directive 2001/55 refer to different situations, since paragraph 1 provides for the initial duration of the temporary period and its automatic extension, whereas paragraph 2 refers to a new situation in which the Council reassesses whether there are still reasons for maintaining the temporary protection.

74 Since a Member State must be able to terminate the optional application of a provision of EU law, the referring court considers that the extension of temporary protection, arising from a Council Decision adopted on the basis of that Article 4(2), such as Implementing Decision 2023/2409, applies to the beneficiaries of optional temporary protection only if the Member State concerned was still making use, at the time of adoption of that decision, of the possibility offered by Article 7(1) of Directive 2001/55 and by Article 2(3) of Implementing Decision 2022/382. However, that was not the case with the Kingdom of the Netherlands.

75 In the fourth place, the referring court states that, notwithstanding the delivery of its judgment of 17 January 2024, divergences in judicial decisions persist in the Netherlands regarding the interpretation of Article 4(1) and (2) of Directive 2001/55 where a Member State terminates the optional temporary protection which it granted under Article 7(1) of that directive. In that regard, the referring court considers it important, for the sake of legal uniformity, that the Court answer the third question for a preliminary ruling raised by the referring court in Case C-244/24. However, the answer to the first two questions raised in that case may render examination of the third question redundant.

76 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer to the Court of Justice the following questions for a preliminary ruling:

‘(1) Must Article 4 of [Directive 2001/55] be interpreted as meaning that, where a Member State has made use of the possibility offered by Article 7(1) of that directive also to grant temporary protection under that directive to additional categories of displaced persons (“the optional group”), the temporary protection given to that optional group continues not only in the case of an automatic extension as referred to in Article 4(1) for the period specified in that provision, but also in the case of a decision to extend the period as referred to in Article 4(2) for the period specified in that provision?

(2) Does it make any difference to the answer to the question of whether the temporary protection given to the optional group continues in the event of a decision to extend it as referred to in Article 4(2) that a Member State has decided to terminate the temporary protection given to the optional group before the Council has decided to extend the temporary protection for one year as referred to in Article 4(2)?'

Procedure before the Court

The joinder of Cases C-244/24 and C-290/24

77 By decision of the President of the Court of 7 May 2024, Cases C-244/24 and C-290/24 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

The applications for an expedited procedure

78 The referring courts have requested that the present references for preliminary rulings be dealt with under an expedited procedure laid down in Article 105 of the Rules of Procedure of the Court of Justice.

79 By order of the President of the Court of 12 June 2024, *Kaduna* (C-244/24 and C-290/24, EU:C:2024:491), those requests were granted.

The questions referred for a preliminary ruling

The third question in Case C-244/24 and the questions in case C-290/24

80 By the third question in Case C-244/24 and the two questions in Case C-290/24, which should be examined together, the referring courts ask the Court, in essence, whether Articles 4 and 7 of Directive 2001/55 must be interpreted as precluding a Member State which has granted temporary protection to categories of persons other than those referred to in Article 2(1) and (2) of Implementing Decision 2022/382 from depriving those categories of persons of the benefit of temporary protection during the period of that protection decided by the Council pursuant to Article 4(2) of that directive.

81 As stated in Article 1, the purpose of Directive 2001/55 is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons. As is clear from Article 2(a) of that directive, the implementation of that protection aims, in particular, to prevent the system used to grant international protection from being inundated by the mass and simultaneous submission of applications for refugee status, in the interests of the persons displaced and other persons requesting international protection.

82 That immediate and temporary mechanism, which is a manifestation of the principle of solidarity and fair sharing of responsibility between the Member States in implementing asylum policy referred to in Article 80 TFEU, as emphasised in recitals 2 and 13 and Article 2(a) of that directive, is, however, of exceptional character and must be reserved for mass influxes of

displaced persons (see, to that effect, judgment of 21 December 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 93). It also confers on its beneficiaries more limited rights than those conferred by the granting of international protection, within the meaning of Directive 2011/95 (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 257).

83 Under Article 5 of Directive 2001/55, the existence of a mass influx of displaced persons is established by a Council Decision adopted by a qualified majority on a proposal from the Commission. That decision is based, inter alia, on an examination of the situation and the scale of the movements of displaced persons and on an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures. That decision results in the implementation of temporary protection in all the Member States bound by Directive 2001/55 in respect of the specific groups of persons described in that decision, from the date laid down therein ('mandatory temporary protection').

84 Pursuant to Article 5 of Directive 2001/55, the Council adopted, on 4 March 2022, Implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine. The entry into force of that implementing decision, which occurred on the same date, had the effect of introducing, from that date, mandatory temporary protection for the categories of persons specified in Article 2(1) of that implementing decision and for the categories of persons referred to in Article 2(2) of that implementing decision, unless Member States have granted to the latter categories of persons adequate protection under their national law.

85 More particularly, it follows from Article 2(1) of Implementing Decision 2022/382 that that decision applies to three categories of persons displaced from Ukraine on 24 February 2022 or after that date, following the Russian military invasion, namely, first, Ukrainian nationals residing in Ukraine before that date, second, stateless persons and nationals of third countries other than Ukraine who enjoyed international protection or an equivalent national protection in Ukraine before that same date and, third, the family members of persons falling within those first two categories.

86 Moreover, under Article 2(2) of that implementing decision, Member States must apply either that decision or adequate protection under their national law to stateless persons and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.

87 However, it is apparent from the orders for reference that the third-country nationals in question in the main proceedings do not fall within any of the categories referred to in Article 2(1) and (2) of Implementing Decision 2022/382. They are neither Ukrainian nationals, nor beneficiaries of international protection or equivalent protection in Ukraine, nor family members of those nationals or beneficiaries. Moreover, they held only one temporary residence permit in Ukraine.

88 It should be stated, however, that, under Article 7(1) of Directive 2001/55, Member States may extend temporary protection to any category of persons not provided for in the Council Decision implementing that protection, in so far as those persons were displaced for the same reasons and from the same country or region of origin. Article 2(3) of Implementing Decision 2022/382 draws attention to that power conferred on Member States, stating that, in accordance with Article 7 of

that directive, they may also apply that implementing decision to other persons, including to stateless persons and to nationals of third countries other than Ukraine, who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin.

89 As is apparent from paragraphs 37 to 42, 49 and 50 of the present judgment, the Netherlands authorities initially intended to exercise that power by extending temporary protection to a category of third-country nationals and stateless persons who were not fully covered by Article 2(1) and (2) of Implementing Decision 2022/382, namely all holders of a Ukrainian residence permit, including a temporary residence permit, valid on 23 February 2022 who were likely to have left Ukraine after 26 November 2021, without it being assessed whether those third-country nationals were able to return to their country or region of origin in safe and durable conditions.

90 However, those authorities later decided, pursuant to Article 3.9a(1)(c) of the Regulation of 2000 on foreign nationals, in the version in force from 19 July 2022, to limit such protection to a more restricted category of persons, namely holders of a valid permanent residence permit in Ukraine on 23 February 2022 and in respect of whom (i) it is likely that they left Ukraine after 26 November 2021 and (ii) it has not been demonstrated that they returned to their country of origin after 23 February 2022.

91 As regards persons such as those in the dispute in the main proceedings who are not holders of such a permanent residence permit in Ukraine but to whom optional temporary protection had already been granted before 19 July 2022, a transitional regime was established providing for the protection for those persons to end on 4 March 2023. That transitional regime was extended until 4 September 2023 by the Regulation of 2023. Moreover, as is apparent from paragraphs 45, 52 and 72 of the present judgment, the Raad van State (Council of State) held, in its judgment of 17 January 2024, that the State Secretary could not withdraw, from 4 September 2023, the optional temporary protection from the persons to whom it had already been granted, but that that protection would automatically end on 4 March 2024, the date on which mandatory temporary protection would have ceased in the absence of Implementing Decision 2023/2409.

92 In order to provide an answer which will be of use to the referring courts, it must, therefore, be determined, first, whether that category of persons could be granted optional temporary protection on the basis of Article 7 of Directive 2001/55, before examining whether, under that directive, read in conjunction with Implementing Decisions 2022/382 and 2023/2409, it was open to the Netherlands authorities to withdraw that protection even though the mandatory temporary protection implemented by Implementing Decision 2022/382 had not ended.

Persons eligible for optional temporary protection

93 In the first place, as was pointed out in paragraph 88 of the present judgment, Article 7(1) of Directive 2001/55 authorises Member States to extend the benefit of temporary protection provided for in that directive to categories of persons other than those designated by the Council in so far as those persons were displaced for the same reasons and from the same country or region of origin.

94 It follows that a Member State which makes use of the possibility offered by that provision is implementing EU law, and therefore it cannot grant optional temporary protection to persons who have not been displaced for the same reasons and from the same country or region of origin

as persons who have been granted mandatory temporary protection. However, that finding does not preclude a Member State from granting a right of residence on the sole basis of their national law, in particular for humanitarian reasons, to categories of persons falling outside the scope of that provision (see, by analogy, judgments of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 116 to 118, and of 12 September 2024, *Changu*, C-352/23, EU:C:2024:748, paragraph 48).

95 In the second place, it follows from Article 3.9a(1)(c) of the Regulation of 2000 on foreign nationals, in the version in force between 4 March 2022 and 18 July 2022, that the Netherlands authorities granted temporary protection to all holders of a Ukrainian residence permit, including a temporary permit, valid on 23 February 2022 who were likely to have left Ukraine after 26 November 2021, that is, 90 days before the beginning of the invasion of Ukraine by Russian armed forces, as stated in Implementing Decision 2022/382. Moreover, that provision did not require it to be assessed whether those persons were able to return to their country or region of origin in safe and durable conditions. It must therefore be examined whether the Netherlands authorities were allowed, under EU law, to grant such temporary protection to all those persons.

96 In that regard, it is apparent, first, from Article 2(1) of Implementing Decision 2022/382 that that decision applies to categories of persons listed by that provision who were displaced from Ukraine on or after 24 February 2022 following the military invasion by Russian armed forces which began from that date. It follows that the reason for implementing the mandatory temporary protection specified by the Council in that implementing decision is the invasion of Ukraine by Russian armed forces which began on 24 February 2022.

97 It appears from the file submitted to the Court that the 90-day-period referred to in paragraph 95 of the present judgment was adopted by the Netherlands authorities in order to correspond to the period of residence in EU territory to which third-country nationals or stateless persons can have access under the conditions laid down in Article 6 of Regulation 2016/399, as amended by Regulation 2018/1240.

98 However, third-country nationals or stateless persons who, because of the very limited period of their right of residence on the territory of the European Union, would have been required to return to Ukraine shortly after the beginning of the invasion of that third country by Russian armed forces, may be treated, for the purposes of applying Article 7 of Directive 2001/55 and Article 2(3) of Implementing Decision 2022/382, in the same way as persons displaced as a result of such an invasion.

99 Moreover, that interpretation is supported by recital 14 of Implementing Decision 2022/382, which encourages Member States to consider extending temporary protection to those persons who fled Ukraine not long before 24 February 2022 as tensions increased or who found themselves in the territory of the European Union just before that date and who, as a result of the armed conflict, cannot return to Ukraine.

100 Second, the condition laid down in Article 7(1) of Directive 2001/55 that the beneficiaries of optional temporary protection must have been displaced for the same reasons and from the same country or region of origin as persons who have been granted mandatory temporary protection is not disregarded either by the decision of the Netherlands authorities to initially grant such temporary protection to stateless persons and third-country nationals who held a temporary residence permit in Ukraine regardless of whether they were able to return to their country or region of origin in safe and durable conditions. In the latter regard, it should be noted that,

although Article 2(3) of Implementing Decision 2022/382 expressly includes, among the potential beneficiaries of optional temporary protection, stateless persons and third-country nationals who were legally staying in Ukraine and who are not able to return to their country or region of origin in safe and durable conditions, it must be stated that that category is referred to in that Article 2(3) only as an example.

101 It follows that Article 7 of Directive 2001/55 and Article 2(3) of Implementing Decision 2022/382 must be interpreted as meaning that they allow a Member State to grant optional temporary protection to third-country nationals or stateless persons who held valid temporary residence permits in Ukraine on 23 February 2022 and were likely to have left that country after 26 November 2021 without it being assessed whether those third-country nationals were able to return to their country or region of origin in safe and durable conditions.

The period of optional temporary protection

102 As a preliminary point, it should be noted, first, that, according to Article 4(1) of Directive 2001/55, the initial period of mandatory temporary protection is, in principle, one year and that, at the end of that one-year period, the mandatory temporary protection may be extended automatically by six monthly periods for a maximum of one year.

103 Moreover, it follows from Article 4(2) of Directive 2001/55 that, where reasons persist for maintaining the mandatory temporary protection beyond the period of two years provided for in Article 4(1) of that directive, the Council may decide by qualified majority, on a proposal from the Commission, to extend that temporary protection by one year.

104 However, according to Article 6(1)(b) of Directive 2001/55, the Council may decide, at any time, to terminate mandatory temporary protection. It follows from that Article 6 that such a Council decision is (i) adopted by qualified majority, on a proposal from the Commission, and (ii) based on the finding that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement.

105 Second, following the entry into force of Implementing Decision 2022/382, pursuant to Article 4 thereof, on 4 March 2022, mandatory temporary protection was first applied for an initial period of one year until 4 March 2023 under Article 4(1) of Directive 2001/55. According to that latter provision, that protection was automatically extended by two successive periods of six months, that is, initially until 4 September 2023, then until 4 March 2024. Lastly, pursuant to Article 4(2) of that directive, that protection was extended by the Council on two occasions, each for a one-year period, firstly until 4 March 2025 under Article 1 of Implementing Decision 2023/2409, then until 4 March 2026 under Article 1 of Implementing Decision 2024/1836.

106 Third, as stated in paragraph 91 of the present judgment, as regards persons such as those in the dispute in the main proceedings who had been granted optional temporary protection on the basis of the Netherlands arrangements applicable between 4 March 2022 and 18 July 2022, but who did not fulfil the conditions laid down in Article 3.9a(1)(c) of the Regulation of 2000 on foreign nationals, in the version in force from 19 July 2022, a transitional regime was established. That transitional regime initially provided that, in the case of those persons, the optional temporary protection already agreed would end on 4 March 2023, a date which coincided with the initial period of application of Implementing Decision 2022/382. That transitional regime was subsequently extended until 4 September 2023, the date on which the first automatic extension

of that decision was to end. By a judgment of 17 January 2024, the Raad van State (Council of State) held, however, that the State Secretary could not withdraw the optional temporary protection from those persons from the latter date, but that that protection would automatically end on 4 March 2024, namely the final date under Article 4(1) of Directive 2001/55 on which the temporary protection would have ceased in the absence of a decision adopted by the Council pursuant to Article 4(2) of that directive.

107 The optional temporary protection granted to third-country nationals such as those in the main proceedings by the Netherlands therefore ceased to have effect before the mandatory temporary protection ended.

108 In the light of those preliminary clarifications, it must be determined whether Articles 4 and 7 of Directive 2001/55 require the optional protection granted by the Netherlands authorities to such third-country nationals to continue as long as the mandatory temporary protection implemented by the Council under Article 5 of that directive has effect or at least until the end of the automatic extension of the initial period of that mandatory temporary protection referred to in Article 4(1) of that directive.

109 In the first place, it must be noted that it follows from the wording of Article 7(1) of Directive 2001/55 that that article leaves it to the discretion of each Member State to decide to implement optional temporary protection, for the reasons that it deems appropriate, including for humanitarian, charitable or organisational reasons. Also, as follows from paragraphs 93 to 101 of the present judgment, that provision gives the Member States a broad discretion in determining the categories of persons eligible for such protection, on condition that those persons were displaced for the same reasons and from the same country or the same region of origin.

110 In the absence of other clarifications in that regard, Article 7(1) of Directive 2001/55 equally allows Member States the freedom to set the date from which they intend to grant optional temporary protection, since that date falls between the date on which mandatory temporary protection enters into force and that on which it ceases to have effect.

111 In the second place, as the Advocate General observed in points 118 to 122 of his Opinion, the Member States retain control over the duration of the optional temporary protection they wish to grant, provided that this duration falls within the time frame for implementation of the temporary protection mechanism defined at EU level. In so far as the temporary protection granted under Article 7(1) of Directive 2001/55 does not arise from an obligation laid down in EU law, but from the autonomous decision of a Member State to enlarge the circle of beneficiaries of that protection, that Member State should also be able to make an autonomous decision to withdraw that protection.

112 That finding is not called into question by the fact that Article 7(1) of Directive 2001/55 states that Member States may extend temporary protection to categories of persons other than those referred to in the Council decision ‘provided for in this Directive’. By that clarification, that Article 7 aims solely to ensure that, without prejudice to paragraph 2 thereof, the rights granted to beneficiaries of mandatory temporary protection in Chapters III and IV of that directive are also granted to beneficiaries of optional temporary protection until that protection is terminated by the Member State which granted it.

113 In the third place, the interpretation of Article 7(1) of Directive 2001/55 adopted in paragraphs 109 to 112 of the present judgment is supported both by the objective pursued by that article, which is to encourage Member States to extend the categories of displaced persons eligible for temporary protection, and by the more general objective of that directive stated in paragraph 81 of the present judgment of preventing the system for granting international protection from being inundated. By making use of the possibility provided for in that article, even for limited categories of displaced persons or for a period shorter than that of mandatory temporary protection, the Member State concerned contributes to the achievement of those objectives.

114 As the Advocate General pointed out in point 127 of his Opinion, prohibiting a Member State from withdrawing, for its own reasons, the optional temporary protection before the end of the mandatory temporary protection set at EU level would have the effect of discouraging Member States from making use of the possibility provided for in Article 7 of Directive 2001/55, thereby thwarting the objectives pursued by that article and that directive.

115 It follows that, under Article 7(1) of Directive 2001/55, Member States may freely decide to terminate the optional temporary protection which they have granted before the end of the mandatory temporary protection set at EU level. They are not therefore required to align the duration of the optional temporary protection with the initial period of mandatory temporary protection or with its automatic extension provided for in Article 4(1) of that directive or, where applicable, with the optional extension period referred to in Article 4(2) of that directive.

116 The disparities which may follow from the fact that each Member State is therefore free to determine the period of optional temporary protection which it intends to grant to additional categories of displaced persons are perfectly reconcilable with the scope and objective of Article 7 of Directive 2001/55. As is apparent from paragraphs 109 to 115 of the present judgment, that article was conceived by the EU legislature as an optional provision the implementation of which leaves the Member States a discretion, so that disparities in the national laws implementing such an option flow naturally from that legislature's choice (see, by analogy, judgment of 12 December 2019, *Bevándorlási és Menekültügyi Hivatal (Family reunification – Sister of a refugee)*, C-519/18, EU:C:2019:1070, paragraph 57 and the case-law cited).

117 In the fourth place, although it is true that, when adopting Directive 2001/55, the EU legislature exercised the competence conferred on it by Article 63(2)(a) and (b) EC (now Article 78(2)(c) TFEU), which is a shared competence, as confirmed by Article 4(2)(j) TFEU, the fact remains that, by means of Article 7 of that directive, that legislature expressly gave Member States the option to designate or not to designate persons who, beyond those designated by the Council, may enjoy the rights arising from that directive.

118 As the Advocate General stated in point 132 of his Opinion, the very fact that such an option is offered by that legislature to the Member States makes it possible to reject the argument that, once the European Union has exercised its competence in an area of shared competence between the European Union and the Member States, the Member States lose their competence to act in that area. It follows that, contrary to what the third-country nationals in question in the main proceedings maintain, the adoption of Directive 2001/55 did not have the effect of depriving the Member States of the possibility of limiting the period during which they intend to grant optional temporary protection to certain categories of third-country nationals and stateless persons.

119 In the fifth place, the fact that, under Article 1 of Implementing Decision 2023/2409, the extension of temporary protection provided for in that implementing decision refers to all persons displaced from Ukraine falling within Article 2 of Implementing Decision 2022/382, therefore including the persons benefiting from optional temporary protection referred to in paragraph 3 of that Article 2, is equally irrelevant.

120 Article 1 of that implementing decision is limited to implementing Directive 2001/55, and therefore it cannot be inconsistent with the objective pursued by Article 7 of that directive or alter the normative content of that directive (see, by analogy, judgment of 28 February 2023, *Fenix International*, C-695/20, EU:C:2023:127, paragraphs 49 and 50). It follows that that Article 1 cannot restrict the margin of discretion conferred on the Member States by that Article 7.

121 Therefore, Article 2(3) of Implementing Decision 2022/382 refers to the beneficiaries of optional temporary protection only in so far as the Member State concerned has not terminated that protection, and the extension of temporary protection provided for in Article 1 of Implementing Decision 2023/2409 is binding on the Member States only in respect of the beneficiaries of mandatory temporary protection.

122 The fact that Article 1 of Implementing Decision 2023/2409 refers to all the persons referred to in Article 2 of Implementing Decision 2022/382, without excluding those falling within paragraph 3 of that article, must therefore be understood as meaning that the beneficiaries of optional temporary protection granted by a Member State enjoy, in principle, all the rights arising from Directive 2001/55 until 4 March 2025, provided that that Member State does not terminate that protection early.

123 It follows from all the foregoing considerations that EU law authorises, in principle, a Member State to withdraw the optional temporary protection granted on a date earlier than that on which the mandatory temporary protection ceases to have effect.

124 However, it should be remembered that, in exercising the option given to them by Article 7 of Directive 2001/55, the Member States are implementing EU law, including when they decide to withdraw the optional temporary protection previously granted to certain third-country nationals or stateless persons. It follows that such a withdrawal decision cannot undermine the objectives or effectiveness of that directive, and that it must respect the general principles of EU law, which include, inter alia, the principles of legal certainty and protection of legitimate expectations (see, to that effect, judgments of 12 December 2019, *Bevándorlási és Menekültügyi Hivatal (Family reunification – Sister of a refugee)*, C-519/18, EU:C:2019:1070, paragraphs 62 and 64, and of 17 November 2022, *Avicarvil Farms*, C-443/21, EU:C:2022:899, paragraph 38).

125 In that respect, as regards, first, the safeguarding of the objectives and effectiveness of Directive 2001/55, it is apparent from Article 2(a) of that directive that the purpose of the temporary protection mechanism is, inter alia, to maintain the efficient operation of the international protection system in the Member States.

126 Article 3 of that directive states, moreover, that temporary protection must not prejudge recognition of refugee status under the Convention relating to the Status of Refugees referred to in paragraph 6 of the present judgment, while Article 17 of that directive provides that persons enjoying temporary protection must be able to lodge an application for asylum at any time and that the examination of any asylum application not processed before the end of the period of temporary protection must be completed subsequently.

127 Therefore, Directive 2001/55 safeguards, in particular, the effective possibility for third-country nationals and stateless persons benefiting from temporary protection of obtaining international protection following an appropriate examination of their individual situation, whilst guaranteeing them immediate protection of more limited scope, as stated in paragraph 82 of the present judgment.

128 It would therefore be contrary to that objective and to the effectiveness of Directive 2001/55 for the examination of the applications for international protection made, where applicable, by those third-country nationals and stateless persons, and on which a final decision has not yet been taken, not to be completed in strict compliance with the requirements arising from Directive 2013/32 following the expiry of the optional temporary protection.

129 Also, once the temporary protection has ended, those third-country nationals and stateless persons cannot be prevented from effectively exercising their right to make an application for international protection, which is an essential step in the procedure for granting international protection (see, to that effect, judgment of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 99).

130 In that regard, the mere fact that a beneficiary of temporary protection did not respond positively to the request of the authorities of the Member State concerned aimed at determining whether the beneficiary wished the examination of his or her application for international protection to be continued cannot have the consequence that any application for international protection made by him or her afterwards is classified as a subsequent application within the meaning of Article 2(q) of Directive 2013/32 likely to be regarded as inadmissible under Article 33(2)(d) of that directive. In particular, such a lack of response cannot be treated as an explicit withdrawal of that application within the meaning of Article 2(q) of that directive.

131 As regards, second, the principle of the protection of legitimate expectations relied on by the Commission, it must be borne in mind that the right to rely on that principle extends to any person in a situation in which a national administrative authority has caused him or her to entertain expectations which are justified by precise assurances provided to him or her. However, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation on the part of a person of beneficial treatment contrary to EU law. A practice of a Member State which is contrary to EU rules cannot give rise to a legitimate expectation on the part of an individual who benefits from that situation (see, to that effect, judgments of 14 June 2012, *ANAFE*, C-606/10, EU:C:2012:348, paragraph 81, and of 17 November 2022, *Avicarvil Farms*, C-443/21, EU:C:2022:899, paragraphs 39 to 41 and the case-law cited).

132 Moreover, according to settled case-law, individuals are not justified in having a legitimate expectation that an existing situation, which is capable of being altered by the EU institutions in the exercise of their discretionary power, will be maintained (see, to that effect, judgment of 4 May 2023, *Kapniki A. Michailidis*, C-99/22, EU:C:2023:382, paragraph 29 and the case-law cited).

133 In the present case, as stated in paragraphs 104 and 111 of the present judgment, it follows, first, from Article 6(1)(b) of Directive 2001/55 that the Council can terminate mandatory temporary protection at any time and, second, from Article 7 of that directive that Member States cannot prolong the optional temporary protection which they have, where applicable, established after

the date on which mandatory temporary protection ended. It follows that, in the present case, the Netherlands authorities could not have given the beneficiaries of optional temporary protection specific assurances which complied with EU law as to the minimum period of that protection other than the assurance that those authorities undertook not to terminate the optional temporary protection before the mandatory temporary protection ceased to have effect.

134 However, it is not apparent from the file submitted to the Court that the Netherlands authorities gave such an assurance to the third-country nationals in question in the main proceedings, which it is, nonetheless, for the referring courts to verify.

135 It follows from the foregoing considerations that Articles 4 and 7 of Directive 2001/55 must be interpreted as not precluding a Member State which has granted temporary protection to categories of persons other than those referred to in Article 2(1) and (2) of Implementing Decision 2022/382, from depriving those categories of persons of the benefit of temporary protection during the period of that protection decided by the Council pursuant to Article 4(2) of that directive. That Member State may withdraw the temporary protection which it granted to those categories of persons on a date preceding that on which the temporary protection decided by the Council ceases to have effect provided that that Member State does not undermine the objectives or effectiveness of Directive 2001/55 and that it respects the general principles of EU law.

The first and second questions in Case C-244/24

136 By its first two questions, which should be examined together, the referring court in Case C-244/24 asks the Court, in essence, whether Article 6 of Directive 2008/115 must be interpreted as precluding the issuing of a return decision to a third-country national legally staying on the territory of a Member State by virtue of the option exercised by that Member State to grant optional temporary protection to that third-country national before the date on which that protection ends, where it appears that that protection will cease to have effect in the near future and where the effects of that decision are suspended until that date.

137 In the first place, it should be noted that, under Article 2(1) of Directive 2008/115, that directive applies to all third-country nationals staying illegally on the territory of a Member State. It follows that the scope of that directive is defined by reference solely to the situation of the illegal stay in which a third-country national finds him- or herself, irrespective of the reasons for that situation or the measures that may be adopted in respect of that national (judgment of 17 October 2024, *Ararat*, C-156/23, EU:C:2024:892, paragraphs 31 and 32 and the case-law cited).

138 Therefore, a Member State may issue a return decision under Article 6 of Directive 2008/115 to a third-country national only if he or she is staying illegally on its territory (see, to that effect, judgments of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 37, 38 and 59, and of 9 November 2023, *Odbor azylové a migrační politiky MV (Scope of the Return Directive)*, C-257/22, EU:C:2023:852, paragraph 39).

139 Article 6(6) of that directive allows, at most, adoption of a decision on the ending of a legal stay together with a return decision, in a single administrative act, as the possibility of aggregating those two decisions in a single administrative act enables Member States to ensure the parallel treatment, or even the joint handling, of the administrative proceedings leading to such decisions and of the appeal proceedings brought against them, as well as to overcome practical difficulties relating to the notification of return decisions (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 49).

140 It follows that Directive 2008/115 precludes a Member State from issuing a return decision in respect of a third-country national legally staying on its territory.

141 As the Advocate General noted in point 151 of his Opinion, the fact that the competent national authority expressly specifies in the return decision that that decision has no effect as long as the legal stay of the person in question has not ended does not affect that conclusion.

142 First, it follows from Article 3(1) of Regulation 2018/1860 that an alert on all return decisions must, as soon as they are issued, be entered into SIS without delay by the Member State concerned for the purpose of 'verifying that the obligation to return has been complied with and of supporting the enforcement of the return decisions', including where that decision has no immediate effect. However, in the latter case, on the date when that alert is entered, the person concerned is still legally staying on the territory of that Member State and may have the right to move to other Member States.

143 Second, such an early return decision would be issued by the competent national authority without it being able to take into account any change in circumstances which would occur between the issuing of that decision and the end of the legal stay of the person concerned and which would have a significant impact on the assessment of that person's situation in the light of Directive 2008/115, in particular Article 5 thereof.

144 Finally, it should be noted that, contrary to what the Netherlands Government maintains, the issuing of a return decision in breach of the substantive requirement stated in paragraph 140 of the present judgment does not constitute an infringement of a procedural obligation such as the right to be heard, which was at issue in the case giving rise to the judgment of 10 September 2013, *G. and R.* (C-383/13 PPU, EU:C:2013:533). The infringement of such a substantive requirement must therefore be penalised, without it being necessary to examine whether the competent authority could have reached a different decision if it had not committed that irregularity.

145 In the second place, it follows, first, from Article 8 of Directive 2001/55, in conjunction with Article 2(g) thereof, that the beneficiary of temporary protection must be issued by the Member State concerned with a residence permit allowing him or her to reside in that Member State.

146 Second, as stated in paragraph 112 of the present judgment, the beneficiaries of the optional temporary protection implemented by a Member State must enjoy, under Article 7 of that directive, all the rights granted by that directive to beneficiaries of mandatory temporary protection. Therefore, that Member State must grant to the beneficiaries of the optional temporary protection a residence permit allowing them to reside on its territory as long as that protection is not withdrawn from them.

147 It follows that, as long as those persons continue to enjoy optional temporary protection, they are legally residing on the territory of the Member State concerned and cannot, therefore, be issued with a return decision within the meaning of Directive 2008/115.

148 That conclusion does not conflict with the provisions of Directive 2001/55 specifically dedicated to return.

149 Thus, Article 20 of that directive provides, when the temporary protection ends, for the application of the general laws on protection and on aliens in the Member States 'without prejudice to Articles 21, 22 and 23' of that directive. However, those articles do not affect the principle that a return decision, within the meaning of Directive 2008/115, requiring the person concerned to leave the territory of the European Union, can be issued only to an illegally staying third-country national or stateless person.

150 In any event, it must be emphasised that, under Article 4(2) of Directive 2008/115, that directive applies without prejudice to any provision laid down in the Community *acquis* relating to immigration and asylum, including the provisions of Directive 2001/55, provided that those provisions are more favourable for the third-country national. However, that would not be the case with a provision allowing the Member States to issue return decisions early.

151 Therefore, contrary to what the Netherlands Government claims, there is nothing to indicate that the early issuing of a return decision would ensure better judicial protection for the persons concerned. That is all the more so since, as is apparent from the order for reference in Case C-244/24, the period for lodging an appeal against such a decision begins to run from the date of its adoption and not from the date on which it begins to have effect.

152 In the third and last place, although, as the Netherlands Government states, when the optional temporary protection expires, the national authorities responsible for issuing return decisions may be confronted with a considerable number of individual situations that have to be examined at the same time, which might disrupt the functioning of those authorities, such a risk cannot suffice on its own to allow a derogation from the principle stated in paragraph 147 of the present judgment.

153 First of all, in accordance with the Court's settled case-law, a Member State cannot plead difficulties in its domestic legal order to justify a failure to observe obligations arising under EU law (judgment of 8 June 2023, *UFC – Que choisir and CLCV*, C-407/21, EU:C:2023:449, paragraph 72 and the case-law cited).

154 Next, the residence in the Member State concerned of all persons who have been granted optional temporary protection does not automatically become illegal from the date on which that protection is terminated. Some of those persons may, in particular, have submitted an application for international protection and have, in principle, on that basis, a right to remain in the Member State concerned, which precludes a return decision from being issued to them, at least so long as no decision has been given on their application (see, to that effect, judgment of 16 November 2021, *Commission* v *Hungary (Criminalisation of assistance to asylum seekers)*, C-821/19, EU:C:2021:930, paragraph 137).

155 Moreover, although it is true that the third-country national or stateless person has the right to express, before the adoption of a return decision concerning him, his point of view on the legality of his stay, on the possible application of Articles 5 and 6(2) to (5) of Directive 2008/115 and on the detailed arrangements for his return, it is open to the Member State concerned to hear that person at a time when he is still not staying illegally on its territory, provided that the ability of that person to submit his observations effectively is not called into question (see, to that effect, judgments of 5 November 2014, *Mukarubega*, C-166/13, EU:C:2014:2336, paragraphs 69 to 71, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 68).

156 Lastly, although the purpose of Directive 2008/115 is the establishment of an effective removal and repatriation policy, and therefore the removal of an illegally staying third-country national must, in principle, be a matter of priority for the Member States (see, to that effect, judgment of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 43), the fact remains that the Member States must ensure compliance with the substantive and procedural requirements imposed on them by EU law in order for those nationals to be returned in a humane manner and with full respect for their fundamental rights and dignity (see, to that effect, judgment of 27 April 2023, *M.D. (Ban on Entering Hungary)*, C-528/21, EU:C:2023:341, paragraph 72).

157 In other words, where the authorities of a Member State responsible for issuing return decisions are confronted with a very significant number of individual cases that have to be examined simultaneously owing to the expiry of the optional temporary protection granted by that Member State, Directive 2008/115 precludes those authorities merely from deferring, beyond a reasonable period of time given such a situation, the issuing of return decisions to be taken in respect of third-country nationals and stateless persons staying illegally in that Member State as a result of the termination of the optional temporary protection granted to them.

158 It follows from the foregoing considerations that Article 6 of Directive 2008/115 must be interpreted as precluding the issuing of a return decision to a third-country national, who is legally staying in the territory of a Member State by virtue of the option exercised by that Member State to grant optional temporary protection to that third-country national, before that protection has ended, even where it appears that that protection will cease to have effect on a date in the near future and where the effects of that decision are suspended until that date.

Costs

159 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 4 and 7 of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof**

   must be interpreted as not precluding a Member State which has granted temporary protection to categories of persons other than those referred to in Article 2(1) and (2) of Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55, and having the effect of introducing temporary protection, from depriving those categories of persons of the benefit of temporary protection during the period of that protection decided by the Council of the European Union pursuant to Article 4(2) of that directive. That Member State may withdraw the temporary protection which it granted to those categories of persons on a date preceding that on which the temporary protection decided by the Council ceases to

have effect provided that that Member State does not undermine the objectives or effectiveness of Directive 2001/55 and that it respects the general principles of EU law.

2. Article 6 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

must be interpreted as precluding the issuing of a return decision to a third-country national, who is legally staying in the territory of a Member State by virtue of the option exercised by that Member State to grant optional temporary protection, as provided for in Article 7 of Directive 2001/55, to that third-country national, before that protection has ended, even where it appears that that protection will cease to have effect on a date in the near future and where the effects of that decision are suspended until that date.

[Signatures]