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JUDGMENT OF THE COURT (Grand Chamber)
28 March 2017 (*)
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In Case C-72/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court), made by decision of 9 February 2015, received at the Court on 18 February 2015, in the proceedings

The Queen, on the application of:

PJSC Rosneft Oil Company, formerly OJSC Rosneft Oil Company,

v

Her Majesty's Treasury,
Secretary of State for Business, Innovation and Skills,
The Financial Conduct Authority,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič and J.L. da Cruz Vilaça, Presidents of Chambers, A. Rosas (Rapporteur), J.-C. Bonichot, A. Arabadjiev, C. Toader, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda, S. Rodin and F. Biltgen, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 23 February 2016,

after considering the observations submitted on behalf of:

PJSC Rosneft Oil Company, formerly OJSC Rosneft Oil Company, represented initially by T. Beazley QC, P. Saini QC, and S. Tulip and P. Farmer, Barristers, and subsequently by L. Van Den Hende, advocaat, and M. Schonberg and K. Krissinel, Solicitors,

the Financial Conduct Authority, by J. McClelland, Barrister, S. Tolaney QC, and A. Chapman, Solicitor,

the United Kingdom Government, by V. Kaye, acting as Agent, and by G. Facenna, Barrister,

the Czech Government, by M. Hedvábná, J. Vláčil, M. Smolek and E. Ruffer, acting as Agents,

the German Government, by T. Henze and A. Lippstreu, acting as Agents,

the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,

the French Government, by F. Fize, B. Fodda, G. de Bergues and D. Colas, acting as Agents,

the Polish Government, by A. Miłkowska and B. Majczyna, acting as Agents,

the Council of the European Union, by A. de Elera-San Miguel Hurtado and S. Boelaert, acting as Agents,

the European Commission, by T. Scharf, L. Havas and D. Gauci, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 May 2016,

gives the following

Judgment

This request for a preliminary ruling relates to the validity of certain provisions of Council Decision 2014/512/CFSP of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13), as amended by Council Decision 2014/872/CFSP of 4 December 2014 (OJ 2014 L 349, p. 58, and corrigendum, OJ 2014 L 350, p. 15) ('Decision 2014/512'), and the validity and interpretation of Council Regulation (UE) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1, and corrigendum, OJ 2014 L 246, p. 59) as amended by Council Regulation (EU) No 1290/2014 of 4 December 2014 (OJ 2014 L 349, p. 20, and corrigendum, OJ 2014 L 246, p. 79) ('Regulation No 833/2014') (together, 'the contested acts').

The request has been made in proceedings between, on the one hand, PJSC Rosneft Oil Company, formerly OJSC Rosneft Oil Company ('Rosneft'), a company registered in Russia, and, on the other, Her Majesty's Treasury, The Secretary of State for Business, Innovation and Skills and the Financial Conduct Authority ('the FCA'), concerning restrictive measures adopted by the European Union and imposed on certain Russian undertakings, including Rosneft.

Legal context

The EU and FEU Treaties

Under Title III of the EU Treaty, headed 'Provisions on the institutions', Article 19 provides :

'1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

...

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

...

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

...'

Title V of the EU Treaty is headed 'General provisions on the Union's external action and specific provisions on the common foreign and security policy'. Within Chapter 2 of that title, headed specific provisions on the common foreign and security policy, the second subparagraph of Article 24(1) states:

'The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of [the FEU Treaty].'

Within the same chapter, Article 29 TEU provides:

'The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions.'

Again within Chapter 2, Article 40 TEU provides:

'The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.'

Part Five of the FEU Treaty concerns the Union's external action. In Title IV of Part Five, headed 'Restrictive measures', Article 215 provides:

'1. Where a decision, adopted in accordance with Chapter 2 of Title V of [the EU Treaty], provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of [the EU Treaty] so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

...'

Part Six of the FEU Treaty contains institutional and financial provisions. Within Title I of Part Five, headed 'Institutional Provisions', Section 5, on the Court of Justice of the European Union, contains Article 267, which provides:

'The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

...'

Article 275 TFEU, again in Section 5, states:

'The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.'

The EU-Russia Partnership Agreement

The Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, signed in Corfu on 24 June 1994 and approved in the name of the European Communities by Council and Commission Decision 97/800/ECSC, EC, Euratom of 30 October 1997 (OJ 1997 L 327, p. 1; 'the EU-Russia Partnership Agreement') contains a Title XI, headed 'Institutional, general and final provisions', Article 99 therein providing:

'Nothing in this Agreement shall prevent a Party from taking any measures:

which it considers necessary for the protection of its essential security interests:

...

in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security;

...'

The contested acts

Decision 2014/512

Decision 2014/512 was adopted under Article 29 TEU.

Recitals 1 to 8 of Decision 2014/512 set out the circumstances that preceded the adoption of the restrictive measures laid down in that decision.

Article 1(2) and (3) of that decision provide:

'2. The direct or indirect purchase or sale of, the direct or indirect provision of investment services for, or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 30 days, issued after 12 September 2014 by:

...

entities established in Russia which are publicly controlled or with over 50% public ownership which have estimated total assets of over 1 trillion Russian Roubles and whose estimated revenues originate for at least 50% from the sale or transportation of crude oil or petroleum products as of 12 September 2014, as listed in Annex III [namely, Rosneft, Transneft and Gazprom Neft];

any legal person, entity or body established outside the Union owned for more than 50% by an entity within the category referred to [in point] ... (b); or

any legal person, entity or body acting on behalf, or at the direction, of an entity within the category referred to in point (c) or listed in Annex ... III [namely, Rosneft, Transneft and Gazprom Neft].

3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph … 2, after 12 September 2014 except for loans or credit that have a specific and documented objective to provide financing for non-prohibited direct or indirect imports or exports of goods and non-financial services between the Union and Russia or any other third State, or for loans that have a specific and documented objective to provide emergency funding to meet the solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50% by an entity referred to in Annex I [namely, the principal credit institutions or financial development institutions established in Russia, wholly or more than 50% owned or controlled by the Russian State on 1 August 2014: Sberbank, VTB Bank, Gazprombank, Vnesheconombank and Rosselkhozbank].'

Article 4 of Decision 2014/512 provides:

'1. The direct or indirect sale, supply, transfer or export of certain equipment suited to the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States, shall be subject to prior authorisation by the competent authority of the exporting Member State:

oil exploration and production in waters deeper than 150 metres;

oil exploration and production in the offshore area north of the Arctic Circle;

projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this paragraph.

2. The provision of:

technical assistance or other services related to the equipment referred to in paragraph 1;

financing or financial assistance for any sale, supply, transfer or export of the equipment referred to in paragraph 1 or for the provision of related technical assistance or training;

shall also be subject to prior authorisation by the competent authority of the exporting Member State.

3. The competent authorities of the Member States shall not grant any authorisation for any sale, supply, transfer or export of the equipment or the provision of the services, as referred to in paragraphs 1 and 2, if they determine that the sale, supply, transfer or export concerned or the provision of the service concerned is destined for one of the categories of exploration and production referred to in paragraph 1.

4. Paragraph 3 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of those contracts.

5. An authorisation may be granted where the sale, supply, transfer or export of the items or the provision of the services, as referred to in paragraphs 1 and 2, is necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment. In duly justified cases of emergency, the sale, supply, transfer or export or the provision of services, as referred to in paragraphs 1 and 2, may proceed without prior authorisation, provided that the exporter notifies the competent authority within five working days after the sale, supply, transfer or export or the provision of services has taken place, providing detail about the relevant justification for the sale, supply, transfer or export or the provision of services without prior authorisation.'

Article 4a of that decision provides:

'1. The direct or indirect provision of associated services necessary for the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States shall be prohibited:

oil exploration and production in waters deeper than 150 metres;

oil exploration and production in the offshore area north of the Arctic Circle;

projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

2. The prohibition set out in paragraph 1 shall be without prejudice to the execution of contracts or framework agreements concluded before 12 September 2014 or ancillary contracts necessary for the execution of such contracts.

3. The prohibition set out in paragraph 1 shall not apply where the services in question are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health or the environment.'

Article 7 of that decision provides:

'1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

entities referred to … in point (c) or (d) of Article 1(2), or listed in Annex ... III [namely, Rosneft, Transneft and Gazprom Neft] ...;

any other Russian person, entity or body; or

any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points (a) or (b) of this paragraph.

2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.

3. This article is without prejudice to the right of persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Decision.'

Regulation No 833/2014

Recital 2 of Regulation No 833/2014 states:

'… It is … considered appropriate to apply additional restrictive measures with a view to increasing the costs of Russia's actions to undermine Ukraine's territorial integrity, sovereignty and independence and to promoting a peaceful settlement of the crisis ...'

Article 1(f)(i) of that regulation defines 'transferable securities' as meaning, inter alia, shares in companies and other securities equivalent to shares in companies, partnerships or other entities and depositary receipts in respect of shares.

Article 3 of that regulation provides:

'1. A prior authorisation shall be required for the sale, supply, transfer or export, directly or indirectly, of items as listed in Annex II, whether or not originating in the Union, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or in any other State, if such items are for use in Russia, including its Exclusive Economic Zone and Continental Shelf.

2. For all sales, supplies, transfers or exports for which an authorisation is required under this Article, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be in accordance with the detailed rules laid down in Article 11 of [Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recasting) (OJ 2009 L 134, p. 1)] The authorisation shall be valid throughout the Union.

3. Annex II shall include certain items suited to the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf:

oil exploration and production in waters deeper than 150 metres;

oil exploration and production in the offshore area north of the Arctic Circle; or

projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

4. Exporters shall supply the competent authorities with all relevant information required for their application for an export authorisation.

5. The competent authorities shall not grant any authorisation for any sale, supply, transfer or export of the items included in Annex II, if they have reasonable grounds to determine that the sale, supply, transfer or export of the items are destined for any of the categories of exploration and production projects referred to in paragraph 3.

The competent authorities may, however, grant an authorisation where the sale, supply, transfer or export concerns the execution of an obligation arising from a contract concluded before 1 August 2014, or ancillary contracts necessary for the execution of such a contract.

The competent authorities may also grant an authorisation where the sale, supply, transfer or export of the items is necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment. In duly justified cases of emergency, the sale, supply, transfer or export may proceed without prior authorisation, provided that the exporter notifies the competent authority within five working days after the sale, supply, transfer or export has taken place, providing detail about the relevant justification for the sale, supply, transfer or export without prior authorisation.

6. Under the conditions set out in paragraph 5, the competent authorities may annul, suspend, modify or revoke an export authorisation which they have granted.

7. Where a competent authority refuses to grant an authorisation, or annuls, suspends, substantially limits or revokes an authorisation in accordance with paragraphs 5 or 6, the Member State concerned shall notify the other Member States and the Commission thereof and share the relevant information with them, while complying with the provisions concerning the confidentiality of such information in [Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ 1997 L 82, p. 1)].

8. Before a Member State grants an authorisation in accordance with paragraph 5 for a transaction which is essentially identical to a transaction which is the subject of a still valid denial issued by another Member State or by other Member States under paragraphs 6 and 7, it shall first consult the Member State or States which issued the denial. If, following such consultations, the Member State concerned decides to grant an authorisation, it shall inform the other Member States and the Commission thereof, providing all relevant information to explain the decision.'

Article 3a of that regulation provides:

'1. It shall be prohibited to provide, directly or indirectly, associated services necessary for the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf:

oil exploration and production in waters deeper than 150 metres;

oil exploration and production in the offshore area north of the Arctic Circle; or

projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

For the purposes of this paragraph, "associated services" shall mean:

(i) drilling;

(ii) well testing;

iii) logging and completion services;

(iv) supply of specialised floating vessels.

2. The prohibitions in paragraph 1 shall be without prejudice to the execution of an obligation arising from a contract or a framework agreement concluded before 12 September 2014 or ancillary contracts necessary for the execution of such a contract.

3. The prohibitions in paragraph 1 shall not apply where the services in question are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.

The service provider shall notify the competent authority within five working days of any activity undertaken pursuant to this paragraph, providing detail about the relevant justification for the sale, supply, transfer or export.'

Article 4 of Regulation No 833/2014 is worded as follows:

'...

3. The provision of the following shall be subject to an authorisation from the competent authority concerned:

technical assistance or brokering services related to items listed in Annex II and to the provision, manufacture, maintenance and use of those items, directly or indirectly, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or, if such assistance concerns items for use in Russia, including its Exclusive Economic Zone and Continental Shelf, to any person, entity or body in any other State;

financing or financial assistance related to items referred to in Annex II, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of those items, or for any provision of related technical assistance, directly or indirectly, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or, if such assistance concerns items for use in Russia, including its Exclusive Economic Zone and Continental Shelf, to any person, entity or body in any other State.

In duly justified cases of emergency referred to in Article 3(5), the provision of services referred to in this paragraph may proceed without prior authorisation, on condition that the provider notifies the competent authority within five working days after the provision of services.'

4. Where authorisations are requested pursuant to paragraph 2 of this Article, Article 3, and in particular paragraphs 2 and 5 thereof, shall apply mutatis mutandis.'

Article 5 of that regulation provides:

'...

2. It shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 30 days, issued after 12 September 2014 by:

...

a legal person, entity or body established in Russia, which are publicly controlled or with over 50% public ownership and having estimated total assets of over 1 trillion Russian Roubles and whose estimated revenues originate for at least 50% from the sale or transportation of crude oil or petroleum products, as listed in Annex VI [namely, Rosneft, Transneft and Gazprom Neft];

a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in point (a) or (b) of this paragraph; or

a legal person, entity or body acting on behalf of or at the direction of an entity referred to in point (a), (b) or (c) of this paragraph.

3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014.

The prohibition shall not apply to:

loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the Union and any third State, including the expenditure for goods and services from another third State that is necessary for executing the export or import contracts; or

loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50% by any entity referred to in Annex III [namely, Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank].

...'

Article 8(1) of that regulation provides:

'Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.'

Article 11 of Regulation No 833/2014 provides:

'1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

entities referred to in … points (c) and (d) of Article 5(2), or listed in [Annex] ... VI [namely, Rosneft, Transneft and Gazprom Neft];

any other Russian person, entity or body;

any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points (a) or (b) of this paragraph.

2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.

3. This Article is without prejudice to the right of the persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.'

Annex II to Regulation No 833/2014 lists the items of which sale, supply, transfer or export to Russia is subject to the obtaining of a prior authorisation, in accordance with Article 3 of that regulation.

Facts in the main proceedings and the questions referred for a preliminary ruling

On 6 March 2014 the Heads of State or Government of the Member States of the European Union condemned the 'unprovoked infringement of Ukrainian sovereignty and territorial integrity by the Russian Federation', decided to suspend bilateral talks with the Russian Federation on visas and on the new comprehensive agreement which was to replace the EU-Russia Partnership Agreement, and declared that any further steps by the Russian Federation to destabilise the situation in Ukraine would lead to additional and far reaching consequences for relations in a broad range of economic areas between the European Union and its Member States, on the one hand, and the Russian Federation, on the other.

Thereafter, in the course of 2014, the Council established, within the framework of the Common Foreign and Security Policy (CFSP), a set of restrictive measures in response to the actions of the Russian Federation that were regarded as destabilising the situation in Ukraine. In view of the gravity of the situation in Ukraine notwithstanding the adoption, in March 2014, of travel restrictions and a freeze on the assets of certain natural and legal persons, the Council

adopted, on 31 July 2014, Decision 2014/512, which was subsequently amended in September and December of 2014, in order to introduce targeted restrictive measures concerning the areas of access to capital markets, defence, dual-use goods, and sensitive technologies, including in the energy sector.

The Council considered that the latter measures fell within the scope of the FEU Treaty and that their implementation required regulatory action at the Union level, and therefore adopted Regulation No 833/2014, which contains more detailed provisions to give effect, both at Union level and in the Member States, to the requirements of Decision 2014/512. Adopted initially on the same day as that decision, that regulation was adjusted in parallel with that decision so as to reflect the amendments subsequently made to that decision.

The declared objective of those restrictive measures was to increase the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence and to promote a peaceful settlement of the crisis. To that end, Decision 2014/512 established, in particular, prohibitions on the export of certain sensitive products and technologies to the oil sector in Russia and restrictions on the access of certain operators in that sector to the European capital market.

Rosneft is a company incorporated in Russia, specialising in the oil and gas sectors. According to the information provided by the referring court, 69.5% of the capital of that company is owned by OJSC Rosneftegaz, a body owned by the Russian State. A minority shareholding in Rosneft (19.75%) is owned by BP Russian Investments Ltd., a subsidiary of the British oil company BP plc. The remaining 10.75% of Rosneft's issued share capital is publicly traded. According to the order for reference, the activities of Rosneft and its group companies include hydrocarbon exploration and production, upstream offshore projects, hydrocarbon refining and crude oil, gas and product marketing in Russia and abroad. Its exploration activities include operations in waters deeper than 150 metres, in the Arctic, and in shale formations.

Since 8 September 2014, Decision 2014/512 and, consequently, Regulation No 833/2014, have made specific reference to Rosneft in their annexes as an entity that is subject to some of the restrictions imposed by those acts.

Rosneft brought actions against the restrictive measures both before the Courts of the European Union and before the national courts in the United Kingdom. On 9 October 2014 Rosneft brought an action, currently pending, before the General Court of the European Union, seeking the annulment of the contested acts. Subsequently, on 20 November 2014 Rosneft brought an application for judicial review before the High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court). In the context of the latter proceedings, Rosneft claims that both the restrictive measures adopted by the Council and the national measures to implement them are invalid.

According to the referring court, the application for judicial review brought before it concerns, primarily, the national measures adopted by the defendants in the main proceedings in order to implement the European Union acts imposing the restrictive measures at issue. That judicial review concerns, first, the legality of the legislation imposing criminal penalties for breach of the provisions of Regulation No 833/2014 relating to financial services and the oil sector and, second, the accuracy of certain statements of the FCA concerning the concept of 'financial assistance' and the application of that regulation to transferable securities that are issued in the form of Global Depositary Receipts ('GDRs').

However, the referring court states that that action also concerns the validity of acts of EU law. In that regard, it considers, by reference to the judgment of 22 October 1987, *Foto-Frost* (314/85, EU:C:1987:452), that it has no jurisdiction to review the validity of those acts. While not wishing to express any view on the jurisdiction of the Court to carry out such a review with respect to, inter alia, acts adopted within the framework of the CFSP, the referring court states, however, that the measures adopted in that field can have a serious impact on natural and legal persons and that the principle of access to a court to review the legality of acts of the executive is a fundamental right.

According to the referring court, Rosneft considers, in essence, that: (i) the contested acts infringe a number of articles of the EU-Russia Partnership Agreement; (ii) they do not comply with the obligation to state reasons, laid down in Article 296 TFEU, and, consequently, the right to a fair hearing and to effective judicial protection; (iii) the provisions in those acts relating to the oil sector are incompatible with the principle of equal treatment and their adoption constitutes a misuse of powers by the Council; (iv) those provisions are disproportionate with respect to the objective pursued by those acts and interfere with Rosneft's freedom to conduct business and right to property; (v) Regulation No 833/2014 fails to give proper effect to Decision 2014/512; (vi) to the extent that the Member States are obliged to impose penalties in order to ensure the implementation of the contested acts, the lack of clarity in their provisions is contrary to the principles of legal certainty and *nulla poena sine lege certa*.

In the event that the Court finds that the contested acts are valid, the referring court is doubtful as to their interpretation. The referring court considers that it is important to interpret the terms of the restrictive measures at issue in the main proceedings uniformly throughout the European Union and explains that it has discovered, in the course of the proceedings before it, that the practices of the authorities of other Member States diverge with respect to the interpretation to be adopted of certain provisions of the contested acts.

The referring court concludes by stating that it has examined the arguments of the parties in the main proceedings concerning the appropriateness of sending a request for a preliminary ruling to the Court in these proceedings, since, in particular, Rosneft had already brought an action before the General Court for the annulment of the contested acts. The referring court considers, however, that, pursuant to the case-law stemming from the judgment of 14 December 2000,

Masterfoods and HB (C-344/98, EU:C:2000:689), it falls to it to assess whether it should stay proceedings until a final decision is delivered on such an action for annulment or whether it should refer questions for a preliminary ruling to the Court.

In those circumstances, the High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

Having regard in particular to Article 19(1) TEU, Article 24 TEU, Article 40 TEU, Article 47 [of the Charter of Fundamental Rights of the European Union ('the Charter')] and the second paragraph of Article 275 TFEU, does the Court of Justice have jurisdiction to give a preliminary ruling under Article 267 TFEU on the validity of Article l(2)(b) to (d), Article 1(3), Article 4, Article 4(a) and Article 7 of, and Annex III to, Decision 2014/512?

Are one or more of the following provisions ("the Relevant Measures") of Regulation No 833/2014 and, to the extent that the Court has jurisdiction, Decision 2014/512 invalid:

Article 4 and Article 4a of Decision 2014/512;

ticles 3, 3a, 4(3) and (4) of, and Annex II to, Regulation No 833/2014;

(together, "the Oil Sector Provisions") ;

rticles l(2)(b) to (d) and 1(3) of, and Annex III to, Decision 2014/512;

rticles 5(2)(b) to (d), 5(3) of, and Annex VI to, Regulation No 833/2014;

(together, "the Securities and Lending Provisions");

Article 7 of Decision 2014/512; and

Article 11 of Regulation No 833/2014?

In so far as the Relevant Measures are valid, is it contrary to the principles of legal certainty and *nulla poena sine lege certa* for a Member State to impose criminal penalties, pursuant to Article 8 of the EU Regulation, before the scope of the relevant offence has been sufficiently clarified by the Court of Justice?

In so far as the relevant prohibitions or restrictions referred to in Question 2(a) are valid:

Does the term 'financial assistance' in Article 4(3) of Regulation No 833/2014 include the processing of a payment by a bank or other financial institution?

Does Article 5 of Regulation No 833/2014 prohibit the issuing of, or other dealings with, Global Depositary Receipts ('GDRs') issued on or after 12 September 2014 under a deposit agreement with one of the entities listed in Annex VI, in respect of shares in one of those entities which were issued before 12 September 2014?

If the Court considers that there is a lack of clarity which can appropriately be resolved by the Court providing further guidance, what is the correct interpretation of the terms "shale" and "waters deeper than 150 metres" in Article 4 of Decision 2014/512 and Article 3 and 3a of Regulation No 833/2014? In particular, if the Court considers it necessary and appropriate, can it provide a geological interpretation of the term "shale" to be used in implementing the regulation, and clarify whether the measurement of "waters deeper than 150 metres" is to be taken from the point of drilling or elsewhere?'

The request to have the written procedure reopened

By document lodged on 10 August 2016, Rosneft requested the reopening of the oral procedure.

In support of that request, Rosneft argues, first, that the analysis carried out in this case by the Advocate General, in his Opinion of 31 May 2016, is in error with respect to the obligation incumbent on the Council to state reasons for the adoption of the restrictive measures at issue. That analysis also reveals a misunderstanding of the differences that exist between those restrictive measures and those adopted by the European Union in relation to the Iranian nuclear programme and it is therefore necessary that the Court seek further information on that subject. Further, the Advocate General's analysis of the concept of 'legislative acts', within the meaning of Article 31 TEU, differs in its approach from that recommended in the Opinion of Advocate General Wahl in the case that gave rise to the judgment of 19 July 2016, *H* v *Council and Commission* (C-455/14 P, EU:C:2016:212), delivered after the date of the oral hearing in the present case. Last, the oral procedure should be re-opened since both the jurisdiction of the Court and the enforceability of its judgments are likely to change rapidly following the result of the referendum which took place on 23 June 2016 in the United Kingdom on that State's membership of the European Union.

It is a matter of settled case-law that the Court may, of its own motion, on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure under Article 83 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be decided on the basis of an argument which has not been debated between the parties (judgment of 15 September 2011, *Accor*, C-310/09, EU:C:2011:581, paragraph 19 and the case-law cited). However, the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for parties to submit observations in response to the Advocate General's Opinion (judgment of 16 December 2010, *Stichting Natuur en Milieu and Others*, C-266/09, EU:C:2010:779, paragraph 28 and the case-law cited).

As regards the observations of Rosneft on the arguments contained in the Opinion of the Advocate General in the present case, it must be noted that those observations consist, primarily, in criticism of that Opinion. However, it follows from the case-law cited in the preceding paragraph that there is no provision in the texts governing procedure before the Court for the lodging of such observations.

As regards, further, the request to reopen the oral procedure because of the referendum of 23 June 2016 in the United Kingdom on that State's membership of the European Union, Rosneft fails to explain how that event could, in itself, affect the jurisdiction of the Court or the binding nature of its judgments.

That being so, the Court considers, having heard the Advocate General, that it has, in this case, all the information necessary to enable it to reply to the questions put by the referring court, and that all the arguments required for the decision on this case have been debated by the parties.

The application for the oral procedure to be reopened must therefore be dismissed.

Consideration of the questions referred

Question 1

By question 1, the referring court seeks, in essence, to ascertain whether Articles 19, 24 and 40 TEU, Article 275 TFEU, and Article 47 of the Charter must be interpreted as meaning that the Court has jurisdiction to give a preliminary ruling, under Article 267 TFEU, on the validity of an act adopted on the basis of provisions relating to the CFSP, such as Decision 2014/512.

Before giving a ruling on the substance of that question, the Court must examine the objections, made by a number of the interested parties, in respect of the question's admissibility.

Admissibility

The Estonian and Polish Governments and the Council consider that Question 1 is inadmissible. They contend that the referring court has not explained the connection between that question and the legal proceedings at the national level, and are sceptical as to whether an answer to that question is necessary. Further, the Council argues that questions raised in the dispute in the main proceedings can be resolved in the light of Regulation No 833/2014 alone, there being no need to give a ruling on the validity of Decision 2014/512.

In that regard, it must be borne in mind that when a question on the validity of a measure adopted by the institutions of the European Union is raised before a national court or tribunal, it is for that court or tribunal to decide whether a preliminary ruling on the matter is necessary to enable it to give judgment and consequently whether it should ask the Court to rule on that question. Consequently, where the questions referred by the national court or tribunal concern the validity of a provision of EU law, the Court is, as a general rule, obliged to give a ruling (judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraph 31 and the case-law cited).

The Court may refuse to give a ruling on a question referred by a national court for a preliminary ruling, under Article 267 TFEU, only where, for instance, the requirements concerning the content of a request for a preliminary ruling, set out in Article 94 of the Rules of Procedure, are not satisfied or where it is quite obvious that the interpretation of a provision of European Union law, or the assessment of its validity, which is sought by the national court bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical (see, to that effect, judgments of 10 December 2002, *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraph 35; of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 19, and of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 54).

In this case, it is clear from the order for reference that the validity of certain provisions of Decision 2014/512 is challenged by Rosneft in the procedure at issue in the main proceedings. According to the referring court, the arguments made before it related, inter alia, to the proposition that, if the Court does not have jurisdiction to give a ruling on the validity of that decision, it is for the national court to ensure that there exist legal remedies sufficient to ensure effective judicial protection in the field of the CFSP, in accordance with the second subparagraph of Article 19(1) TEU.

Since the referring court considers that the analysis of its own jurisdiction must depend on that of the Court, the first question, which concerns the jurisdiction of the Court, has a direct connection to the subject matter of the main proceedings.

Further, it is clear that, if the Court were to examine solely the questions raised in the main proceedings in the light of Regulation No 833/2014, that would be likely to provide an inadequate answer to the concerns of the referring court with respect to the validity of the relevant restrictive measures.

The referring court considers that were decisions of the Council adopted within the framework of the CFSP not to be open to challenge, that could undermine the fundamental right of access to justice, and states that it is a requirement of Article 19 TEU that effective judicial protection be ensured in the fields covered by EU law.

Accordingly, since a prerequisite for the validity of a regulation adopted on the basis of Article 215 TFEU is the prior adoption of a valid decision in accordance with the provisions relating to the CFSP, the question of the validity of Decision 2014/512 is clearly relevant in the context of the present case.

It should be recalled, further, that the Member States must, pursuant to Article 29 TEU, ensure that their national policies conform to the Union position adopted under the CFSP. It follows that were Regulation No 833/2014 to be declared invalid, that would, as a matter of principle, have no effect on the obligation of Member States to ensure that their national policies conform to the restrictive measures established pursuant to Decision 2014/512. Accordingly, to the extent that the Court has jurisdiction to examine the validity of Decision 2014/512, such an examination is required in order to determine the scope of the obligations resulting from that decision, irrespective of whether Regulation No 833/2014 is valid.

It follows from all the foregoing that the first question submitted by the referring court is admissible.

Substance

The United Kingdom Government, the Czech, Estonian, French and Polish Governments, and the Council consider that, pursuant to the last sentence of the second subparagraph of Article 24(1) TEU and Article 275 TFEU, the Court does not have jurisdiction to give a preliminary ruling on the validity of Decision 2014/512.

According to the Commission, Article 24(1) TEU and Article 275 TFEU do not preclude the Court from also having jurisdiction to rule on the validity of Decision 2014/512 in the context of a request for a preliminary ruling. However, if the Court is to have jurisdiction in such a situation, it is necessary, first, that the applicant in the main proceedings who brings an action before the national court satisfies the conditions laid down in the fourth paragraph of Article 263 TFEU and, second, that the aim of the proceedings is to examine the legality of restrictive measures against natural or legal persons. The Commission considers that, in this case, those conditions are not met.

As a preliminary point, while, pursuant to the last sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, the Court does not, as a general rule, have jurisdiction with respect to the provisions relating to the CFSP and the acts adopted on the basis of those provisions (see judgment of 19 July 2016, *H* v *Council and Commission*, C-455/14 P, EU:C:2016:569, paragraph 39), it must however be recalled that the Treaties explicitly establish two exceptions to that rule. First, both the last sentence of the second subparagraph of Article 24(1) TEU and the second paragraph of Article 275 TFEU provide that the Court has jurisdiction to monitor compliance with Article 40 TEU. Second, the last sentence of the second subparagraph of Article 24(1) TEU confers on the Court jurisdiction to review the legality of certain decisions referred to in the second paragraph of Article 275 TFEU. The latter provision confers on the Court jurisdiction to give rulings on actions, brought subject to the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning the review of the legality of Council decisions, adopted on the basis of provisions relating to the CFSP, which provide for restrictive measures against natural or legal persons.

Accordingly, the view can be taken that Question 1 encompasses, in essence, two issues. First, the question seeks to determine whether the Court has jurisdiction to monitor, pursuant to a request for a preliminary ruling submitted by a national court or tribunal under Article 267 TFEU, compliance, by the Council, with Article 40 TEU when the Council adopted Decision 2014/512. Second, the aim of the question is to ascertain whether the Court has jurisdiction to review the legality of restrictive measures against natural or legal persons, the adoption of those measures being prescribed by that decision, not only where those persons bring an action for the annulment of those measures before the Courts of the European Union, under Articles 256 and 263 TFEU, but also in circumstances where the Court is seised, under the preliminary ruling procedure provided for in Article 267 TFEU, of a request by a national court or tribunal which has doubts as to the validity of such measures.

In that regard, with respect, in the first place, to the jurisdiction of the Court to monitor compliance with Article 40 TEU, it must be observed that the Treaties do not make provision for any particular means by which such judicial monitoring is to be carried out. That being the case, that monitoring falls within the scope of the general jurisdiction that Article 19 TEU confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed. In establishing this general jurisdiction, Article 19(3)(b) TEU states, further, that the Court is to give preliminary rulings, at the request of national courts or tribunals, on, inter alia, the validity of acts adopted by the institutions of the European Union.

Consequently, the Court has jurisdiction to give a ruling on a request for a preliminary ruling concerning the compliance of Decision 2014/512 with Article 40 TEU.

In the second place, the issue arises whether the Court has jurisdiction to give preliminary rulings on the validity of decisions adopted in relation to the CFSP, such as Decision 2014/512, where they prescribe restrictive measures against natural or legal persons.

In accordance with the wording of the last sentence of the second subparagraph of Article 24(1) TEU and the second paragraph of Article 275 TFEU, the Treaties have conferred on the Court the jurisdiction to review the legality of Council decisions providing for the imposition of restrictive measures on natural or legal persons. Accordingly, whereas Article 24(1) TEU empowers the Court to review the legality of certain decisions as provided for in the second paragraph of Article 275 TFEU, the latter article provides that the Court has jurisdiction to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning that review of legality.

The review of the legality of acts of the Union that the Court is to ensure under the Treaties relies, in accordance with settled case-law, on two complementary judicial procedures. The FEU Treaty has established, by Articles 263 and 277, on the one hand, and Article 267, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the Courts of the European Union (judgments of 23 April 1986, *Les Verts* v *Parliament*, 294/83, EU:C:1986:166, paragraph 23; of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 40, and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 92).

It is inherent in that complete system of legal remedies and procedures that persons bringing proceedings must, when an action is brought before a national court or tribunal, have the right to challenge the legality of provisions contained in European Union acts on which a decision or national measure adopted in respect of them is based, pleading the invalidity of that decision or measure, in order that the national court or tribunal, having itself no jurisdiction to declare such invalidity, consults the Court on that matter by means of a reference for a preliminary ruling, unless those persons unquestionably had the right to bring an action against those provisions on the basis of Article 263 TFEU and failed to exercise that right within the period prescribed (see, to that effect, judgments of 15

February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraphs 35 and 36, and of 29 June 2010, *E and F*, C-550/09, EU:C:2010:382, paragraphs 45 and 46).

Accordingly, requests for preliminary rulings which seek to ascertain the validity of a measure constitute, like actions for annulment, a means for reviewing the legality of European Union acts (see judgments of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 16; of 21 February 1991, *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, C-143/88 and C-92/89, EU:C:1991:65, paragraph 18; of 6 December 2005, *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 103, and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 95).

That essential characteristic of the system for judicial protection in the European Union extends to the review of the legality of decisions that prescribe the adoption of restrictive measures against natural or legal persons within the framework of the CFSP.

Neither the EU Treaty nor the FEU Treaty indicates that an action for annulment brought before the General Court, pursuant to the combined provisions of Articles 256 and 263 TFEU, constitutes the sole means for reviewing the legality of decisions providing for restrictive measures against natural or legal persons, to the exclusion, in particular, of a reference for a preliminary ruling on validity. In that regard, the last sentence of the second subparagraph of Article 24(1) TEU refers to the second paragraph of Article 275 TFEU in order to determine not the type of procedure under which the Court may review the legality of certain decisions, but rather the type of decisions whose legality may be reviewed by the Court, within any procedure that has as its aim such a review of legality.

However, given that the implementation of a decision providing for restrictive measures against natural or legal persons is in part the responsibility of the Member States, a reference for a preliminary ruling on the validity of a measure plays an essential part in ensuring effective judicial protection, particularly, where, as in the main proceedings, both the legality of the national implementing measures and the legality of the underlying decision adopted in the field of the CFSP itself are challenged within national legal proceedings. Having regard to the fact that the Member States must ensure that their national policies conform to the Union position enshrined in Council decisions, adopted under Article 29 TEU, access to judicial review of those decisions is indispensable where those decisions prescribe the adoption of restrictive measures against natural or legal persons.

As is apparent from both Article 2 TEU, which is included in the common provisions of the EU Treaty, and Article 21 TEU, concerning the European Union's external action, to which Article 23 TEU, relating to the CFSP, refers, one of the European Union's founding values is the rule of law (see, to that effect, judgment of 19 July 2016, *H* v *Council and Commission*, C-455/14 P, EU:C:2016:569, paragraph 41 and the case-law cited).

It may be added that Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. It must be recalled that the very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law (see judgments of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 45, and of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650, paragraph 95).

While, admittedly, Article 47 of the Charter cannot confer jurisdiction on the Court, where the Treaties exclude it, the principle of effective judicial protection nonetheless implies that the exclusion of the Court's jurisdiction in the field of the CFSP should be interpreted strictly.

Since the purpose of the procedure that enables the Court to give preliminary rulings is to ensure that in the interpretation and application of the Treaties the law is observed, in accordance with the duty assigned to the Court under Article 19(1) TEU, it would be contrary to the objectives of that provision and to the principle of effective judicial protection to adopt a strict interpretation of the jurisdiction conferred on the Court by the second paragraph of Article 275 TFEU, to which reference is made by Article 24(1) TEU (see, by analogy, judgments of 27 February 2007, *Gestoras Pro Amnistía and Others* v *Council*, C-354/04 P, EU:C:2007:115, paragraph 53; of 27 February 2007, *Segi and Others* v *Council*, C-355/04 P, EU:C:2007:116, paragraph 53; of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 70; of 12 November 2015, *Elitaliana* v *Eulex Kosovo*, C-439/13 P, EU:C:2015:753, paragraph 42, and of 19 July 2016, *H* v *Council and Commission*, C-455/14 P, EU:C:2016:569, paragraph 40).

In those circumstances, provided that the Court has, under Article 24(1) TEU and the second paragraph of Article 275 TFEU, jurisdiction *ex ratione materiae* to rule on the validity of European Union acts, that is, in particular, where such acts relate to restrictive measures against natural or legal persons, it would be inconsistent with the system of effective judicial protection established by the Treaties to interpret the latter provision as excluding the possibility that the courts and tribunals of Member States may refer questions to the Court on the validity of Council decisions prescribing the adoption of such measures.

Last, the Court must reject the argument that it falls to national courts and tribunals alone to ensure effective judicial protection if the Court has no jurisdiction to give preliminary rulings on the validity of decisions in the field of the CFSP that prescribe the adoption of restrictive measures against natural or legal persons.

The necessary coherence of the system of judicial protection requires, in accordance with settled case-law, that when the validity of acts of the European Union institutions is raised before a national court or tribunal, the power to declare such acts invalid should be reserved to the Court under Article 267 TFEU (see, to that effect, judgments of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 17, and of 6 October 2015, *Schrem*s, C-362/14, EU:C:2015:650,

paragraph 62). The same conclusion is imperative with respect to decisions in the field of the CFSP where the Treaties confer on the Court jurisdiction to review their legality.

Moreover, the Court is best placed to give a ruling on the validity of acts of the Union, given that it is open to the Court, within the preliminary ruling procedure, on the one hand, to obtain the observations of Member States and the institutions of the Union whose acts are challenged and, on the other, to request that Member States and the institutions, bodies or agencies of the Union which are not parties to the proceedings provide all the information that the Court considers necessary for the purposes of the case before it (see, to that effect, judgment of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 18).

That conclusion is confirmed by the essential objective of Article 267 TFEU, which is to ensure that EU law is applied uniformly by the national courts and tribunals, that objective being equally vital both for the review of legality of decisions prescribing the adoption of restrictive measures against natural or legal persons and for other European Union acts. With respect to such decisions, differences between courts or tribunals of the Member States as to the validity of a European Union act would be liable to jeopardise the very unity of the European Union legal order and to undermine the fundamental requirement of legal certainty (see, by analogy, judgments of 22 February 1990, *Busseni*, C-221/88, EU:C:1990:84, paragraph 15; of 6 December 2005, *Gaston Schul Douane-expediteur*, C-461/03, EU:C:2005:742, paragraph 21, and of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraph 47).

In the light of the foregoing, the answer to Question 1 is that Articles 19, 24 and 40 TEU, Article 275 TFEU, and Article 47 of the Charter must be interpreted as meaning that the Court has jurisdiction to give preliminary rulings, under Article 267 TFEU, on the validity of an act adopted on the basis of provisions relating to the CFSP, such as Decision 2014/512, provided that the request for a preliminary ruling relates either to the monitoring of that decision's compliance with Article 40 TEU, or to reviewing the legality of restrictive measures against natural or legal persons.

Question 2(a)

By question 2(a), the referring court seeks a ruling from the Court on the validity of Article 1(2)(b) to (d) and (3) and Articles 4, 4a and 7 of, and Annex III to, Decision 2014/512, and of Articles 3, 3a, Article 4(3) and (4), Article 5(2)(b) to (d) and (3), and Article 11 of, and Annexes II and VI to, Regulation No 833/2014.

It is apparent from the order for reference and from Rosneft's written observations that Rosneft challenges the validity of those provisions on a number of grounds, the first being that the adoption of Decision 2014/512 was in breach of Article 40 TEU. The second ground is that those provisions are incompatible with the EU-Russia Partnership Agreement. The third ground is that the Council, when it adopted those provisions, failed to respect the obligation to state reasons, the rights of the defence, the right to effective judicial protection and the right of access to the file. Rosneft's fourth ground is that there was a breach of the principle of equal treatment. The fifth and sixth grounds are respectively that the provisions at issue in the main proceedings are invalid because of the Council's misuse of powers and because the wording of Decision 2014/512 is contradicted by that of Regulation No 833/2014. The seventh ground is that the Council infringed the principle of proportionality and the fundamental rights on which Rosneft can rely, in particular its freedom to conduct business and its right to property.

Whether Decision 2014/512 and Regulation No 833/2014 comply with Article 40 TEU

Rosneft considers that the Council infringed Article 40 TEU when it defined, by means of Decision 2014/512, the Union position on the restrictive measures at issue in the main proceedings in excessive detail, thereby encroaching on the joint power of proposal of the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') and the Commission.

As regards acts adopted on the basis of a provision relating to the CFSP, it is the task of the Court to ensure, in particular, under the first clause of the second paragraph of Article 275 TFEU and under Article 40 TEU, that the implementation of that policy does not impinge upon the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union's competences under the FEU Treaty (judgment of 14 June 2016, *Parliament* v *Council*, C-263/14, EU:C:2016:435, paragraph 42).

In order to ascertain whether or not the adoption of Decision 2014/512 by the Council, under Article 29 TEU, a provision relating to the CFSP, encroaches on the powers and procedures provided under the FEU Treaty, the Court must examine the content of that decision in the light of the powers and procedures provided for in Article 215 TFEU.

It is clear, in that regard, that the content of Decision 2014/512 is certainly detailed. However, the objective of that decision was to introduce, as stated in recital 7, targeted restrictive measures concerning fields that are clearly technical in nature, such as access to capital markets, defence, dual-use goods and sensitive technologies, particularly in the energy sector.

It is apparent from Articles 24 and 29 TEU that, as a general rule, the Council is called upon, acting unanimously, to determine the persons and entities that are to be subject to the restrictive measures that the Union adopts in the field of the CFSP. Taking account of the wide scope of the aims and objectives of the CFSP, as set out in Article 3(5) TEU and Article 21 TEU and in the specific provisions relating to the CFSP, in particular, in Articles 23 and 24 TEU, the Council has a broad discretion in determining such persons and entities.

However, Article 215 TFEU, which serves as a bridge between the objectives of the EU Treaty in matters of the CFSP and the actions of the Union involving economic measures falling within the scope of the FEU Treaty (see, to that effect, judgment of 19 July 2012, *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraph 59), permits the adoption of legislation by the Council, acting by a qualified majority on a joint proposal from the High Representative and the Commission, in order to give effect to restrictive measures where such measures fall within the scope of the FEU Treaty, and, in particular, to ensure their uniform application in all the Member States. With respect to Regulation No 833/2014, while it essentially reproduces the content of Decision 2014/512, it also contains definitions and clarification on the application of the restrictive measures prescribed by that decision.

Having regard to the different functions of those two types of act, the one declaring the Union's position with respect to the restrictive measures to be adopted and the other constituting the instrument giving effect to those measures at Union level, the fact that a decision, adopted by the Council under Article 29 TEU, describes in detail the persons and entities that are to be subject to the restrictive measures cannot, as a general rule, be regarded as encroaching on the procedure, laid down in Article 215 TFEU, for the implementation of that decision. In particular, when the measures relate to a field where there is a degree of technicality, it may prove to be appropriate for the Council to use detailed wording when establishing restrictive measures. In such circumstances, the Council cannot be criticised for having predetermined, by the adoption of Decision 2014/512, part of the content of Regulation No 833/2014.

As regards, further, Rosneft's argument that Decision 2014/512 does not comply with Article 40 TEU since that decision constitutes a 'legislative act', within the meaning of Articles 24 and 31 TEU, which preclude the adoption of such acts in CFSP matters, that argument must also be rejected. Article 289(3) TFEU provides that legal acts adopted by legislative procedure constitute legislative acts. The exclusion of the right to adopt legislative acts in the area of the CFSP reflects the intention that that policy should be subject to specific rules and procedures, as is clear from Article 24 TEU. Since those rules and procedures, defined by, inter alia, the provisions relating to the CFSP within Title V, Chapter 2, of the EU Treaty, establish a specific division of tasks among the institutions of the Union in that field, it follows that the adoption of legislative acts, within the meaning of Article 289(3) TFEU, is, in that context, necessarily excluded.

It is, however, common ground that Decision 2014/512 was adopted not under the FEU Treaty, but following the procedure laid down in Article 24 TEU. That decision is therefore not capable of being a legislative act. Consequently, in adopting that decision, the Council could not have infringed Article 40 TEU.

In the light of the foregoing, there is no reason to find that the determination by Decision 2014/512 of the persons and entities subject to the restrictive measures undermines the procedure provided for in Article 215 TFEU and the exercise of powers that that article confers on the High Representative and the Commission. That being the case, an examination of Decision 2014/512 in the light of Article 40 TEU has disclosed nothing capable of affecting the validity of that decision.

The validity of the restrictive measures against natural or legal persons, prescribed by Decision 2014/512 and Regulation No 833/2014

– Preliminary observations

The Council submits that the Court has no jurisdiction to review the legality of the provisions of Decision 2014/512 and Regulation No 833/2014, since the essential objective of the claims of illegality relied on by Rosneft is to challenge the decision of principle taken by the Union to effect a partial interruption of its economic and financial relations with Russia. Similarly, the United Kingdom Government, the Estonian, French and Polish Governments, and the Commission dispute the argument that Decision 2014/512 contains restrictive measures against natural or legal persons, since, in their opinion, the measures contained in that decision apply to situations that are objectively determined and to a category of persons that is described in a general manner.

The Court must examine whether the provisions of Decision 2014/512 prescribe restrictive measures against natural or legal persons, within the meaning of the second paragraph of Article 275 TFEU.

As regards, in the first place, Articles 4 and 4a of Decision 2014/512, it is clear that those articles provide, on the one hand, for a system of prior authorisation for the sale, supply, transfer or export of certain technologies suited to specific categories of oil exploration and production projects in Russia and, on the other, a prohibition on the provision of associated services necessary for those projects.

Accordingly, those articles prescribe measures the scope of which is determined by reference to objective criteria, in particular, categories of oil exploration and production projects. On the other hand, those measures do not target identified natural or legal persons, but are applicable generally to all operators involved in the sale, supply, transfer or export of certain technologies that are subject to the prior authorisation requirement and to all the suppliers of associated services.

In those circumstances, as also stated by the Advocate General in point 85 of his Opinion, the measures provided for in Articles 4 and 4a of Decision 2014/512 do not constitute restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU, but rather measures of general application.

Consequently, the Court has no jurisdiction to review the validity of those provisions.

In the second place, as regards the restrictive measures introduced pursuant to the other provisions of Decision 2014/512 that are at issue, namely Article 1(2)(b) to (d) and (3), Article 7 and Annex III, it is clear that the persons and entities subject to those measures are defined by reference to specific entities. Those provisions prohibit, inter alia, the carrying out of various financial transactions with respect to entities listed in Annex III to that decision, one of those entities being Rosneft.

In the opinion of the United Kingdom Government, the fact that there are only three energy undertakings which fall within the scope of those measures does not, however, mean that those measures target specified natural or legal persons within the meaning of the second paragraph of Article 275 TFEU. In particular,

the fact that few such entities are listed, due to the very limited number of operators present in the sector of the Russian energy market concerned that can be characterised as an oligopoly, does not alter the fact that the restrictions are based on objective criteria. The entities listed in Annex III to Decision 2014/512 are those to whom those objective criteria apply, and that list is purely declaratory.

In that regard, it is necessary to bear in mind the Court's settled case-law that restrictive measures resemble both measures of general application, in that they impose on a category of addressees determined in a general and abstract manner a prohibition on making available funds and economic resources to entities listed in their annexes, and also individual decisions affecting those entities (see, to that effect, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 241 to 244, and of 23 April 2013, *Gbagbo and Others* v *Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 56).

It must, moreover, be recalled that, as regards measures adopted on the basis of provisions relating to the CFSP, it is the individual nature of those measures which, in accordance with the second paragraph of Article 275 TFEU, permits access to the Courts of the European Union (see, to that effect, judgment of 23 April 2013, *Gbagbo and Others* v *Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 57).

In the main proceedings, by establishing the criteria laid down in Article 1(2)(b) to (d) of Decision 2014/512, allowing the identification of Rosneft, and by naming that company in Annex III to that decision, the Council adopted restrictive measures against the legal person concerned. Notwithstanding the fact that such measures may also target, individually, other entities in a particular industry in a non-Member State, the fact remains that it follows from the nature of those measures, as described in paragraphs 102 and 103 of this judgment, that, if the legality of those measures is challenged, it must be possible for those measures to be subject, in accordance with the second paragraph of Article 275 TFEU, to judicial review.

Last, the Court must reject the argument, advanced in particular by the Council, that the Court has no jurisdiction to review the legality of the provisions of Regulation No 833/2014 since the aim of the pleas of illegality raised by Rosneft is essentially to challenge the decisions of principle, falling entirely within the field of the CFSP, that the Council adopted by means of Decision 2014/512.

In that regard, it must be held, as stated by the Advocate General in point 103 of his Opinion, that the jurisdiction of the Court is in no way restricted with respect to a regulation, adopted on the basis of Article 215 TFEU, which gives effect to the positions adopted by the Union in the context of the CFSP. Such regulations constitute European Union acts, adopted on the basis of the FEU Treaty, and the Courts of the European Union must, in accordance with the powers conferred on them by the Treaties, ensure the review, in principle the full review, of the legality of those acts (see judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 326).

In the light of the foregoing, the Court has jurisdiction to rule on the validity of Article 1(2)(b) to (d) and (3) and Article 7 of, and Annex III to, Decision 2014/512. However, the Court does not have jurisdiction to review the validity of Articles 4 and 4a of that decision. As regards Regulation No 833/2014, the Court has jurisdiction to review the validity of all the provisions mentioned by the referring court in the request for a preliminary ruling. Within those limits on its jurisdiction, the Court must examine the validity of the provisions cited by the referring court.

– The compatibility of the contested acts with the EU-Russia Partnership Agreement

It is apparent from the order for reference and from the observations submitted by Rosneft that it considers that certain provisions of the contested acts relating to the oil sector and to securities and lending, namely Article 1(2)(b) to (d) and (3) of, and Annex III to, Decision 2014/512, as well as Article 3(1), (3) and (5), Article 3a(1), and Article 5(2)(b) to (d) and (3) of, and Annexes II and VI to, Regulation No 833/2014, are in breach of the EU-Russia Partnership Agreement.

In that regard, contrary to the argument put forward by the United Kingdom Government, the Council and the Commission, the possibility for a litigant to rely on the provisions of that agreement cannot be automatically ruled out, even where no further implementing measures have been adopted (see, to that effect, judgment of 12 April 2005, *Simutenkov*, C-265/03, EU:C:2005:213, paragraph 23), as also stated by the Advocate General in point 116 of his Opinion.

However, there is no need, in this case, to give a ruling on that question, since it suffices to state that, even if the restrictive measures at issue in the main proceedings were not compatible with certain provisions of that agreement, Article 99 of that agreement permits their adoption.

Under Article 99(1)(d) of the EU-Russia Partnership Agreement, nothing in that agreement is to prevent a party from taking measures that it considers necessary for the protection of its essential security interests, particularly in time of war or serious international tension constituting a threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Further, the wording of that provision does not require that the 'war' or 'serious international tension constituting a threat of war' refer to a war directly affecting the territory of the European Union. Accordingly, events which take place in a country bordering the European Union, such as those which have occurred in Ukraine and which have given rise to the restrictive measures at issue in the main proceedings, are capable of justifying measures designed to protect essential European Union security interests and to maintain peace and international security, in accordance with the specified objective, under the first subparagraph of Article 21(1) and Article 21(2)(c) TEU, of the Union's external action, with due regard to the principles and purposes of the Charter of the United Nations.

As regards the question whether the adoption of the restrictive measures at issue in the main proceedings was necessary for the protection of essential European Union security interests and the maintenance of peace and international security, it must be borne in mind that the Council has a broad discretion in

areas which involve the making by that institution of political, economic and social choices, and in which it is called upon to undertake complex assessments (judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraph 77 and the case-law cited).

As stated by the Advocate General in point 150 of his Opinion, at the time when the restrictive measures at issue in the main proceedings were adopted, the Council stated, in the preambles of the contested acts, that the Heads of State or Government of the European Union condemned the unprovoked infringement of Ukrainian sovereignty and territorial integrity by the Russian Federation, that the Council urged the Russian Federation actively to use its influence over the illegally armed groups in order, inter alia, to permit full, immediate, safe and secure access to the site of the downing of the Malaysia Airlines flight MH17 in Donetsk (Ukraine), and that the Union had previously adopted measures in response to the illegal annexation of the Crimea and Sebastopol (Ukraine). In view of those factors, the Council concluded, in recital 8 of Decision 2014/512, that the situation remained grave and that it was appropriate to adopt restrictive measures in response to the Russian Federation's actions destabilising the situation in Ukraine.

Further, as is stated in recital (2) of Regulation No 833/2014, it is apparent from those statements that the aim of the restrictive measures prescribed by the contested acts was to promote a peaceful settlement of the crisis in Ukraine. That objective is consistent with the objective of maintaining peace and international security, in accordance with the objectives of the Union's external action set out in Article 21 TEU.

In those circumstances, taking into consideration the broad discretion enjoyed by the Council in this area, that institution could take the view that the adoption of the restrictive measures at issue in the main proceedings was necessary for the protection of essential European Union security interests and for the maintenance of peace and international security, within the meaning of Article 99 of the EU-Russia Partnership Agreement.

Consequently, an examination of the contested acts in the light of that agreement has disclosed nothing capable of affecting their validity.

– The obligation to state reasons and respect for the rights of the defence, the right to effective judicial protection and the right to access to the file

It is apparent from the order for reference that, in Rosneft's opinion, the Council was in breach of its obligation under the second subparagraph of Article 296 TFEU to state reasons for the contested acts.

In that regard, it should be noted that, while the restrictive measures concerning the oil sector, established by Articles 3 and 3a and Article 4(3) and (4) of, and Annex II to, Regulation No 833/2014, constitute acts of general application, it is apparent from, in particular, paragraph 100 of the present judgment that the provisions cited by the referring court relating to securities and lending, namely Article 1(2)(b) to (d) and (3) of, and Annex III to, Decision 2014/512, and Article 5(2)(b) to (d) and (3) of, and Annex VI to, Regulation No 833/2014, target individual entities.

It must, however, be recalled that, in accordance with settled case-law, the extent of the requirement to state reasons depends on the nature of the measure in question, and that, in the case of measures intended to have general application, the statement of reasons may be limited to indicating the general situation which led to the measure's adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (judgment of 19 November 1998, *Spain* v *Council*, C-284/94, EU:C:1998:548, paragraph 28 and the case-law cited).

As regards restrictive measures affecting individuals, respect for the rights of the defence and the right to effective judicial protection requires that the competent Union authority disclose to the individual concerned the evidence against that person available to that authority and which is relied on as the basis of its decision (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 111).

That said, while the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review, that statement of reasons must, however, be adapted to the nature of the act at issue and to the context in which it was adopted. In that regard, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question and, in particular, in the light of the interest which the addressees of the measure may have in obtaining explanations. Consequently, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the scope of the measure concerning him (see, to that effect, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraphs 50, 53 and 54, and the case-law cited).

It is clear that recitals 1 to 8 of Decision 2014/512 set out the relevant factors of the political context within which the restrictive measures at issue were adopted. Further, it is apparent from recital 2 of Regulation No 833/2014 that the declared objective of the contested acts was to increase the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence and to promote a peaceful settlement of the crisis. The contested acts accordingly describe the overall situation that led to their adoption and the general objectives they were intended to achieve.

Likewise, the Court must hold, as stated by the Advocate General in points 158 and 159 of his Opinion, that Rosneft, a major player in the Russian oil sector, whose share capital, on the date of adoption of Decision 2014/512, was predominantly owned by the Russian State, could not reasonably have been unaware of the reasons why the Council adopted measures targeted against it. In accordance with the objective of increasing the costs of the actions of the Russian Federation vis-à-vis Ukraine, Article 1(2)(b) of Decision 2014/512 establishes restrictions against certain oil sector entities controlled by the Russian State on the

basis of, inter alia, their total assets, with an estimated value of 1 000 billion Russian Roubles. Since both the political background at the time of the adoption of those measures and the importance of the oil sector for the Russian economy were also well known, the fact that the Council chose to adopt restrictive measures against the players in that industry can be readily understood in the light of the declared objective of those acts.

Consequently, the Council has, in this case, stated reasons for the contested acts that are sufficient.

In addition, Rosneft has argued before the referring court that there was an infringement of its right of access to the file and of its rights of defence and right to effective judicial protection. In that regard, it is clear from the written observations lodged with the Court that Rosneft submitted, to the Council, requests for access to documents, seeking, in particular, access to the file in order to be able to state its case in the action before the General Court for annulment of the restrictive measures at issue in the main proceedings. According to Rosneft, the Council was under an obligation to grant it access to all non-confidential official documents concerning those measures on the basis of, inter alia, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) and the case-law stemming from paragraphs 59 and 60 of the judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian* (C-280/12 P, EU:C:2013:775), case-law which relates to respect for the rights of the defence, including the right of access to the file, subject to legitimate interests in maintaining confidentiality, and the right to effective judicial protection. The Council responded to those requests by granting partial access to the documents requested.

However, although Rosneft claims, in that regard, both an infringement of the rights of the defence and of the right to effective judicial protection and also an additional infringement of the obligation to state reasons, it is clear that the arguments that Rosneft puts forward are predominantly intended to challenge the validity of the decisions whereby the Council refused, on the basis of Regulation No 1049/2001, to grant it full access to all the documents requested.

As regards those decisions by the Council, adopted under Regulation No 1049/2001, Rosneft was the person to whom those decisions were addressed, within the meaning of the fourth paragraph of Article 263 TFEU. Since it is patent that an action by it for annulment of those decisions would have been admissible under that article, it cannot plead the invalidity of those decisions in the context of a preliminary ruling procedure (see, to that effect, judgments of 9 March 1994, *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraphs 23 to 25; 15 February 2001, *Nachi Europe*, C-239/99, EU:C:2001:101, paragraphs 36 and 37, and of 29 June 2010, *E and F*, C-550/09, EU:C:2010:382, paragraph 46).

Last, while Rosneft also states that the Council ought not to have relied on Regulation No 1049/2001 when it analysed the request for access to the file, Rosneft does not, however, explain, in any way, how that error is such as to affect the validity of the provisions of the contested acts.

In the light of all the foregoing, an examination of the contested acts with regard to the obligation to state reasons, the rights of the defence, including the right of access to the file, and the right to effective judicial protection, has disclosed nothing capable of affecting the validity of those acts.

– The principle of equal treatment

Rosneft has claimed before the referring court and in its written observations submitted to the Court that the Council infringed the principle of equal treatment when it targeted, by means of Articles 3 and 3a and Article 4(3) and (4) of, and Annex II to, Regulation No 833/2014, undertakings operating in certain parts of the oil sector but not undertakings operating in other sectors, and the declared objective of those restrictive measures does not explain or justify that difference in treatment.

As is stated in paragraph 88 of the present judgment, the Council has a broad discretion when it determines the purpose of restrictive measures, particularly where such measures prescribe, in accordance with Article 215(1) TFEU, the interruption or reduction, in whole or in part, of economic and financial relations with one or more third countries. In that regard, the Court concurs with the United Kingdom Government and holds that, with respect to the restrictive measures at issue in the main proceedings which target the oil sector, it is open to the Council, inter alia, to impose, if the Council deems it appropriate, restrictions which target undertakings active in specific sectors of the Russian economy in which products, technologies or services imported from the European Union are particularly significant. The choice of targeting undertakings or sectors that are reliant on cutting-edge technology or expertise mainly available within the European Union is consistent with the objective of ensuring the effectiveness of the restrictive measures at issue in the main proceedings and ensuring that the effect of those measures is not offset by the importation, into Russia, of substitute products, technologies or services from third countries.

In the light of the above, an examination of the contested acts in the light of the principle of equal treatment has disclosed nothing capable of affecting the validity of those acts.

– Misuse of powers

Rosneft has claimed before the referring court and in these proceedings that the Council, by adopting the restrictive measures at issue in the main proceedings, misused its powers when it stated that those measures were adopted, according to recital 2 of Regulation No 833/2014, with a view ‘to increasing the costs of Russia’s actions to undermine Ukraine’s territorial integrity, sovereignty and independence and to promoting a peaceful settlement of the crisis’, whereas the objective of those measures was, in reality, to cause long-term harm to the energy sector of the Russian Federation and thereby to reduce its power to threaten countries which depend on it for their energy supplies.

According to the Court’s settled case-law, a measure is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken solely, or at the very least chiefly, for ends other than those for which the power in question was conferred or with the aim of

evading a procedure specifically prescribed by the Treaties for dealing with the circumstances of the case (judgment of 16 April 2013, *Spain and Italy* v *Council*, C-274/11 and C-295/11, EU:C:2013:240, paragraph 33 and the case-law cited).

It is however clear that, in this case, with the exception of a reference by Rosneft, in its written observations, to a Commission Working Document, which is held to be irrelevant for the reasons stated by the Advocate General in points 180 to 182 of his Opinion, Rosneft has in no way substantiated its argument that the restrictive measures at issue in the main proceedings were adopted for ends other than those stated in the contested acts, still less provided objective, relevant and consistent evidence to that effect.

In the light of the foregoing, an examination of the question of an alleged misuse of powers by the Council has disclosed nothing capable of affecting the validity of the contested acts.

– Contradiction between Decision 2014/512 and Regulation No 833/2014

In the main proceedings, Rosneft claimed that the wording of Article 4(4) of Decision 2014/512 contradicts that of Article 3(5) of Regulation No 833/2014. While Article 4(4) does not allow the Member States any discretion with respect to the prohibition on refusing authorisations for the sale, supply, transfer or export of articles listed in Annex II to Regulation No 833/2014 with respect to contracts concluded before 1 August 2014, Article 3(5) permits them to authorise, and therefore refuse, the execution of an obligation stemming from such contracts.

As stated by Rosneft in its written observations, the wording of Article 4(4) of Decision 2014/512 differs from that of the second subparagraph of Article 3(5) of Regulation No 833/2014. Under Article 4(4) of Decision 2014/512, the prohibition imposed on the competent authorities with respect to the granting of authorisation for the sale, supply, transfer or export of certain equipment for certain categories of oil exploration and production projects 'shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts'.

Admittedly, the wording employed in Article 3(5) of Regulation No 833/2014 is not as categorical as that used in Decision 2014/512. That cannot however in itself entail that Article 3(5) of Regulation No 833/2014 is invalid.

Given that the objective of Regulation No 833/2014 is, in accordance with Article 215 TFEU, the adoption of measures necessary to give effect to Decision 2014/512, the terms of that regulation must be interpreted, so far as possible, in the light of that decision. In this instance, it is not obvious that the difference in wording of the two EU law instruments is such that they cannot be interpreted consistently. Accordingly, the words, in the second subparagraph of Article 3(5) of that regulation, to the effect that the competent authorities 'may' grant an authorisation, must be understood as meaning that those authorities must, when doing so, ensure that the application of the first subparagraph of Article 3(5) of that regulation is, inter alia, without prejudice to the execution of contracts concluded before 1 August 2014.

It follows that the difference in the wording of Article 4(4) of Decision 2014/512 and Article 3(5) of Regulation No 833/2014 cannot affect the validity of the latter provision.

– The principle of proportionality and Rosneft's fundamental rights

According to the order for reference, Rosneft has claimed that Article 1(2)(b) to (d) and (3) and Article 7 of, and Annex III to, Decision 2014/512 as well as Articles 3 and 3a, Article 4(3) and (4), Article 5(2)(b) to (d) and (3), and Article 11 of, together with Annexes II and VI to, Regulation No 833/2014 are invalid on the ground that the restrictive measures that are imposed are disproportionate with respect to the declared objective and constitute a disproportionate interference in its freedom to conduct a business and in its right to property, enshrined, respectively, in Articles 16 and 17 of the Charter.

Referring to the judgments of 14 October 2009, *Bank Melli Iran* v *Council* (T-390/08, EU:T:2009:401), and of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft* (C-348/12 P, EU:C:2013:776), Rosneft considers that the restrictive measures at issue in the main proceedings are neither necessary nor appropriate since there is no reasonable relationship between the aims pursued by those measures and the means for giving effect to them. Accordingly, those measures amount to a disproportionate interference in Rosneft's freedom to conduct business.

Rosneft submits, further, that Article 7(1) of Decision 2014/512 and Article 11(1) of Regulation No 833/2014 permit the confiscation of its assets and interference with its accrued contractual rights, that is to say, with its property rights. Those provisions exceed what is necessary by providing, in essence, that non-Russian parties to contracts can be relieved of any obligations under contracts concluded with the entities that are subject to those provisions, even where the obligation involved is to supply a wide range of equipment of which only a small part relates to technologies referred to in Annex II to that regulation.

In so far as Rosneft challenges the proportionality of the general rules on the basis of which it was decided that it should be listed in the annexes to the contested acts, it must be noted, first, that, with regard to judicial review of compliance with the principle of proportionality, the Court has held that the European Union legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. The Court has concluded that the legality of a measure adopted in those areas can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited).

Contrary to what is claimed by Rosneft, there is a reasonable relationship between the content of the contested acts and the objective pursued by them. In so far as that objective is, inter alia, to increase the costs to be borne by the Russian Federation for its actions to undermine Ukraine's territorial integrity,

sovereignty and independence, the approach of targeting a major player in the oil sector, which is moreover predominantly owned by the Russian State, is consistent with that objective and cannot, in any event, be considered to be manifestly inappropriate with respect to the objective pursued.

Second, the fundamental rights relied on by Rosneft, namely the freedom to conduct a business and the right to property, are not absolute, and their exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union, provided that such restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very essence of the rights guaranteed (see, to that effect, judgments of 14 May 1974, *Nold* v *Commission*, 4/73, EU:C:1974:51, paragraph 14; of 30 July 1996, *Bosphorus*, C-84/95, EU:C:1996:312, paragraph 21, and of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraphs 113 and 114).

In that regard, it is clear, as the Court stated in the context of the implementation of the embargo against the Federal Republic of Yugoslavia (Serbia and Montenegro), that restrictive measures, by definition, have consequences which affect rights to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions (see, to that effect, judgment of 30 July 1996, *Bosphorus*, C-84/95, EU:C:1996:312, paragraph 22). That is *a fortiori* the case with respect to the consequences of targeted restrictive measures on the entities subject to those measures.

In the main proceedings, it must be observed that the importance of the objectives pursued by the contested acts, namely the protection of Ukraine's territorial integrity, sovereignty and independence and the promotion of a peaceful settlement of the crisis in that country, the achievement of which, as is apparent from the factors mentioned in paragraphs 113 to 115 of the present judgment, is part of the wider objective of maintaining peace and international security, in accordance with the objectives of the Union's external action stated in Article 21 TEU, is such as to justify the possibility that, for certain operators, the consequences may be negative, even significantly so. In those circumstances, and having regard, inter alia, to the fact that the restrictive measures adopted by the Council in reaction to the crisis in Ukraine have become progressively more severe, interference with Rosneft's freedom to conduct a business and its right to property cannot be considered to be disproportionate.

In the light of all the foregoing, it must be held that an examination of Question 2(a) has disclosed nothing capable of affecting the validity of Article 1(2)(b) to (d) and (3) and Article 7 of, and Annex III to, Decision 2014/512, or of Articles 3 and 3a, Article 4(3) and (4), Article 5(2)(b) to (d) and (3), and Article 11 of, and Annexes II and VI to, Regulation No 833/2014.

Question 2(b)

By Question 2(b), the referring court seeks, in essence, to ascertain whether the principles of legal certainty and *nulla poena sine lege certa* must be interpreted as precluding a Member State from imposing criminal penalties that are to apply in the event of an infringement of the provisions of Regulation No 833/2014, in accordance with Article 8(1) of that regulation, before the scope of those provisions and, therefore, of the associated criminal penalties, has been clarified by the Court.

Admissibility

The United Kingdom Government and the Council submit that the reference of this question for a preliminary ruling is inadmissible. The United Kingdom Government considers that the question is hypothetical since Rosneft is not an EU exporter or service provider whose conduct is restricted by Regulation No 833/2014 and, consequently, Rosneft is not at risk of incurring any criminal penalty under the national legislation at issue in the main proceedings. The Council considers, moreover, that that question relates, in fact, to the validity of that legislation.

It must be observed, in that regard, that, in so far as the question referred for a preliminary ruling concerns the penalties to be imposed in the event of an infringement of the provisions of Regulation No 833/2014 and the principles of legal certainty and *nulla poena sine lege certa*, the question manifestly concerns not the validity of the national measures adopted by the United Kingdom Government, but the limitations that stem from those principles that must be respected by the Member States when implementing Article 8(1) of Regulation No 833/2014.

In addition to the conditions governing the admissibility of questions referred for a preliminary ruling set out in paragraph 50 of this judgment, it must be recalled that questions referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgment of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39, paragraph 22 and the case-law cited).

As regards the claim that this question is hypothetical, it must be observed, first, that Rosneft maintained, at the hearing before the Court, that, if there were an infringement of the restrictive measures, it could be held to be criminally liable as an accessory, an assertion that was not challenged by the other interested parties. Second, even if Rosneft could not be subject to criminal penalties laid down by the national legislation at issue in the main proceedings for an infringement of the provisions of Regulation No 833/2014, that does not necessarily mean that the question is hypothetical, since, as stated by the Advocate General in point 211 of his Opinion, it is not apparent from the order for reference that Rosneft has no right to challenge the measures adopted by the United Kingdom Government on the basis of Article 8(1) of Regulation No 833/2014.

In those circumstances, given that, inter alia, this question concerns the conditions governing the implementation of Article 8(1) of Regulation No 833/2014 and that it is not hypothetical, it is admissible.

Substance

It is apparent from the order for reference and from Rosneft's written observations that Rosneft considers that the fact that certain provisions of Regulation No 833/2014 are not clear and precise means that individuals are not in a position to ascertain unequivocally what their rights and obligations are. That being the case, the Council was in breach of the principle of legal certainty and the principle of *nulla poena sine lege certa* by prescribing, in Article 8 of that regulation, that Member States must adopt penalties, including criminal penalties, necessary to ensure that the restrictive measures at issue in the main proceedings are implemented.

First, as regards the expression 'waters deeper than 150 metres', under Article 3(3)(a) and Article 3a(1)(a) of Regulation No 833/2014, it is claimed that it is unclear from what point a depth of 150 metres is to be measured. Second, as regards the concept of 'shale', under Article 3(3)(c) and Article 3a(1)(c) of that regulation, it is claimed there is no consensus, even among geologists, as to the scope of the term. Third, the expression 'financial assistance', as used in Article 4(3)(b) of that regulation, is alleged to be unclear, and, fourth, the expression 'transferable securities' in Article 5(2) of Regulation No 833/2014 allegedly renders impossible any confidence as to whether the prohibition imposed in that provision also affects GDRs that were issued after 12 September 2014, but represented shares that were issued before that date.

In any event, Rosneft claims that a Member State cannot impose criminal penalties that are to apply to an infringement of Regulation No 833/2014 before the Court has given a ruling on how the provisions of that regulation are to be interpreted.

As regards, first, the general principle of legal certainty, it must be recalled that this fundamental principle of EU law requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly (judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 68 and the case-law cited).

With respect to, second, the principle of *nulla poena sine lege certa*, cited by the referring court, it is clear that that principle, which falls within the scope of Article 49 of the Charter, headed 'Principles of legality and proportionality of criminal offences and penalties', and which, according to the Court's case-law, constitutes a specific expression of the general principle of legal certainty (see judgment of 3 June 2008, *Intertanko and Other*s, C-308/06, EU:C:2008:312, paragraph 70), implies, inter alia, that legislation must clearly define offences and the penalties which they attract. That condition is met where the individual concerned is in a position, on the basis of the wording of the relevant provision and, if necessary, with the help of the interpretation made by the courts, to know which acts or omissions will make him criminally liable (judgment of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 50).

It is apparent that, in this case, the expressions which Rosneft claims are unclear, as set out in paragraph 159 of the present judgment, are general in nature. However, the concept of 'transferable securities' is defined in Article 1(f) of Regulation No 833/2014, while examples of the concept of 'financial assistance' are given in Article 4(3)(b) of that regulation.

In accordance with the case-law of the European Court of Human Rights ('ECtHR') relating to Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which establishes rights corresponding to those guaranteed in Article 49 of the Charter (judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 57), since legislation must be of general application, its wording cannot be absolutely precise. It follows that, while the use of the legislative technique of referring to general categories, rather than to exhaustive lists, often leaves grey areas at the fringes of a definition, those doubts in relation to borderline cases are not sufficient, in themselves, to make a provision incompatible with Article 7 of that convention, provided that the provision proves to be sufficiently clear in the large majority of cases (see, to that effect, inter alia, ECtHR, 15 November 1996, *Cantoni v*. *France*, ECLI:CE:ECHR:1996:1115JUD001786291, §§ 31 and 32).

Since those considerations are equally valid, under Article 52(3) of the Charter, with respect to Article 49 of the Charter, the Court must hold that the choice made by the European Union legislature to use, in the provisions referred to by Rosneft, expressions or terms such as 'financial assistance', 'waters deeper than 150 metres', 'shale', or 'transferable securities', cannot, in itself, constitute a breach of the principle of *nulla poena sine lege certa*.

That conclusion is supported by the fact that the requirement that the law should be foreseeable does not mean that the persons concerned should not have to take appropriate legal advice in order to assess, to a degree that is reasonable in the particular circumstances, the consequences which a given action may entail (see ECtHR, 18 March 2014, *Öcalan v. Turkey*, ECLI:CE:ECHR:2014:0318JUD002406903, § 174 and the case-law cited). In this case, the Court must hold that the terms which are claimed by Rosneft to be lacking in precision, while they are not absolutely precise, are not such that it is impossible for an individual to know for which acts and omissions he may be criminally liable.

Further, the case-law of the Court states that the principle of *nulla poena sine lege certa* cannot be interpreted as prohibiting the gradual clarification of rules of criminal liability by means of interpretations in the case-law, provided that those interpretations are reasonably foreseeable (see, to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 217 and 218).

Accordingly, contrary to what is claimed by Rosneft, the fact that the terms used in Regulation No 833/2014 may be subject to clarification, gradually and subsequently, by the Court does not prevent a Member State from establishing penalties, on the basis of Article 8(1) of that regulation, in order to ensure its effective implementation.

Consequently, the Court must hold that, in this case, the expressions and terms in Regulation No 833/2014, referred to in paragraph 159 of the present judgment, do not preclude a Member State from imposing criminal penalties that are to be applied in the event of an infringement of the provisions of Regulation No 833/2014, in accordance with Article 8(1) of that regulation.

In the light of the foregoing, the answer to Question 2(b) is that the principles of legal certainty and *nulla poena sine lege certa* must be interpreted as meaning that they do not preclude a Member State from imposing criminal penalties that are to be applied in the event of an infringement of the provisions of Regulation No 833/2014, in accordance with Article 8(1) of that regulation, before the scope of those provisions and, therefore, the scope of the associated criminal penalties, has been clarified by the Court.

Question 3(a)

By Question 3(a), the referring court seeks to ascertain whether the expression 'financial assistance', in Article 4(3)(b) of Regulation No 833/2014, must be interpreted as including the processing of payments by a bank or other financial institution.

Rosneft and the German Government consider that, in using that expression, Regulation No 833/2014 refers not to acts which involve the mere processing of payments, but to acts of financing which provide active and substantive support. In that regard, the German Government argues, in particular, that payment services are services supplied to carry out payments on behalf of third party payers, as is apparent from the definition given in Article 4(3) of Directive 2007/64/EC of the European Parliament and the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1), read together with the annex to that directive. By contrast, services the supply of which requires authorisation under Article 4(3) of Regulation No 833/2014, such as the provision of grants, loans and export credit insurance, are services which the bank concerned provides using its own funds to the benefit of a third party.

The German Government considers, moreover, that financial institutions do not have sufficient information, having regard in particular to Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (OJ 2006 L 345, p. 1), to assess whether a payment does or does not in fact pursue an objective that is contrary to Regulation No 833/2014.

In the view of the United Kingdom Government, the Estonian Government and the Commission, the expression 'financial assistance' encompasses, on the contrary, payment services provided by a bank or other financial institution, and those services are prohibited where they are linked to a commercial transaction that is prohibited under Regulation No 833/2014. Referring to the Commission's Guidance Note of 16 December 2014 on the implementation of certain provisions of Regulation (EU) No 833/2014 (C(2014) 9950 final), those interested parties consider that that expression must be interpreted broadly.

The French Government, for its part, considers that the concept of 'financial assistance' must be confined solely to transactions that constitute the provision of fresh resources by a financial institution. That concept may, however, include the processing of payments where those payments are linked to a commercial transaction that is prohibited under Regulation No 833/2014, provided that such processing of payments leads to the transfer of fresh resources by financial institutions to the recipients of those payments.

It must be noted that, pursuant to the restrictive measures established by Article 3 and Article 4(3) of Regulation No 833/2014, not only is any export to Russia of products intended for the oil industry, as listed in Annex II to that regulation, subject to the requirement of prior authorisation, but any supply of certain associated services in connection with the products concerned, including, inter alia, financing or financial assistance for the export of such products, must also be authorised by the competent authority. The restrictions concerning such associated services are addressed therefore, in particular, to financial institutions capable of providing financial assistance, including, inter alia, grants, loans and export credit insurance, to the exporters of those products.

Accordingly, in the light of the purpose of the restrictive measures at issue in the main proceedings, the Court must hold that, by Question 3(a), the referring court seeks, in essence, to ascertain whether Article 4(3) of Regulation No 833/2014, where it refers to 'financial assistance', must be interpreted as meaning that it imposes, on financial institutions among others, an obligation to obtain authorisation for the processing of any payment related to a transaction involving the sale, supply, transfer or export to Russia of products listed in Annex II to that regulation, particularly where those institutions find that the payment, the processing of which is requested, is related to such a transaction.

In that regard, it must be observed that none of the language versions of Article 4(3)(b) of Regulation No 833/2014 expressly refers to the 'processing of payments'. That being the case, reference must be made to the general structure and objectives of that regulation.

The contextual interpretation of Article 4(3)(b) of Regulation No 833/2014 shows, as argued in particular by the German Government in its written observations, that, by the use of the expression 'financial assistance', the European Union legislature envisaged measures comparable to grants, loans and export credit insurance. While those measures require the financial institution concerned to use its own resources, payment services are provided, by contrast, by that institution acting as an intermediary, transmitting third party client funds to a particular recipient, without any commitment of that institution's own resources.

In those circumstances, Article 4(3) of Regulation No 833/2014 cannot be interpreted as imposing on financial institutions an obligation to obtain, for the processing of any payment related to a sale, supply, transfer or export to Russia of products listed in Annex II to that regulation, an authorisation in addition to that required, under Article 3 of Regulation No 833/2014, for such transactions, where those institutions find that the payment, the processing of which is requested, constitutes, in whole or in part, the consideration for such a transaction.

Taking into consideration the fact that it is not the aim of Article 4(3)(b) of that regulation either to establish a freezing of assets or restrictions on the transfer of funds, the Court must hold that if the European Union legislature had intended that the processing of any bank transfer related to the products referred to in Annex II to Regulation No 833/2014 should be subject to a request for a further authorisation in addition to that required under Article 3 of Regulation No 833/2014 for a transaction of the kind mentioned in the preceding paragraph of the present judgment, it would have used an expression other than 'financial assistance' in order to establish and define such an obligation.

Finally, if one of the objectives of Regulation No 833/2014 is to increase the costs of the actions of the Russian Federation vis-à-vis Ukraine, it is clear that Article 4(3)(b) of that regulation is consistent with the pursuit of that objective by establishing restrictions on financial assistance for the export to Russia of products to be used in the oil industry, yet without subjecting the processing of payments as such to the prior authorisation requirement.

The foregoing interpretation is without prejudice to the prohibition that applies to any processing of payments that is related to a commercial transaction that is itself prohibited under Article 3(5) of Regulation No 833/2014.

In the light of the foregoing, the answer to Question 3(a) is that the expression 'financial assistance' in Article 4(3)(b) of Regulation No 833/2014 must be interpreted as meaning that it does not include the processing of a payment, as such, by a bank or other financial institution.

Question 3(b)

By Question 3(b), the referring court seeks, in essence, to ascertain whether Article 5(2) of Regulation No 833/2014 must be interpreted as meaning that it prohibits the issue, after 12 September 2014, of GDRs, pursuant to a depositary agreement concluded with one of the entities listed in Annex VI to that regulation, where those GDRs represent shares issued by one of those entities before 12 September 2014.

Rosneft considers that this question should be answered in the negative. According to Rosneft, an interpretation to the effect that the holders of shares in the entities targeted by the restrictive measures at issue in the main proceedings could not re-package their shares as GDRs would be at odds with the objective pursued by Regulation No 833/2014, which is to apply pressure on the Russian Federation by restricting the capacity of the targeted entities to raise capital, in so far as that interpretation affects, in particular, the shareholders of those entities.

It is stated in Article 5(2)(b) of Regulation No 833/2014, inter alia, that any transaction consisting in purchasing, selling, providing investment services or assistance in the issuance of certain transferable securities, issued after 12 September 2014, and any transaction consisting in dealing in such transferable securities, carried out by the entities listed in Annex VI to that regulation, one of those entities being Rosneft, is prohibited. In that regard, it must be noted that the expression 'transferable securities' includes, in accordance with the definition in Article 1(f) of Regulation No 833/2014, depositary receipts in respect of shares.

As regards Rosneft's argument that that prohibition is contrary to the objective of that regulation in that it penalises the holders of shares in the entities listed in Annex VI to that regulation, the Court must concur with the view of the FCA that restrictive measures, in so far as they affect a company, are inherently liable to have a negative effect on the interests of that company's shareholders. In this case, since the objective of those restrictive measures was precisely to increase the cost of the actions of the Russian Federation, which is Rosneft's majority shareholder, that argument is wholly unfounded.

It may be added that it is plain that Article 5(2) of Regulation No 833/2014 prohibits the issuance, after 12 September 2014, of GDRs in respect of the shares of the entities listed in Annex VI to that regulation, irrespective of the date of issue of those shares.

In those circumstances, the answer to Question 3(b) is that Article 5(2) of Regulation No 833/2014 must be interpreted as meaning that it prohibits the issuance, after 12 September 2014, of GDRs pursuant to a depositary agreement concluded with one of the entities listed in Annex VI to that regulation, where those GDRs represent shares issued by one of those entities before 12 September 2014.

Question 3(c)

By Question 3(c), the referring court asks the Court to provide an interpretation, if considered necessary, of the concepts of 'waters deeper than 150 metres' and 'shale', in Articles 3 and 3a of Regulation No 833/2014.

On reading the order for reference, it is apparent that the submission of this question complements the submission to the Court of Question 2(b), whereby the referring court seeks to ascertain whether Regulation No 833/2014 is invalid because of an alleged lack of clarity. The referring court does no more than state, in this regard, that it is open to the Court, if the Court considers it appropriate, to provide the parties to the proceedings with more detailed definitions of those concepts.

The referring court does not, however, explain in what way the provision by the Court of precise definitions of those concepts is necessary for the resolution of the dispute before it.

In that regard, while it is true that questions referred for a preliminary ruling on EU law enjoy a presumption of relevance (judgment of 28 July 2011, *Lidl & Companhia*, C-106/10, EU:C:2011:526, paragraph 25 and the case-law cited), it must be emphasised that, in accordance with settled case-law, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 20 January 2005, *García Blanco*, C-225/02, EU:C:2005:34, paragraph 28 and the case-law cited).

In this case, however, it is not clear from the order for reference in what way this question differs from, in particular, Question 2(b), whereby the referring court sought to ascertain whether Regulation No 833/2014 is invalid because of its alleged lack of clarity. Since the answer given to Question 2(b) is that an examination of Articles 3 and 3a of Regulation No 833/2014, in the light of the principles of legal certainty and *nulla poena sine lege certa*, disclosed nothing capable of calling into question the validity of those provisions, it is not apparent, on the basis of the information in the order for reference, that the referring court needs, in addition, an interpretation of the abovementioned concepts in order to make a decision on the dispute at issue in the main proceedings.

In the absence of further information on that point, there is no need to give a ruling on the requested interpretation.

Costs

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:

Articles 19, 24 and 40 TEU, Article 275 TFEU, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Court of Justice of the European Union has jurisdiction to give preliminary rulings, under Article 267 TFEU, on the validity of an act adopted on the basis of provisions relating to the Common Foreign and Security Policy (CFSP), such as Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended by Council Decision 2014/872/CFSP of 4 December 2014, provided that the request for a preliminary ruling relates either to the monitoring of that decision's compliance with Article 40 TEU, or to reviewing the legality of restrictive measures against natural or legal persons.

Examination of the second question has disclosed nothing capable of affecting the validity of Article 1(2)(b) to (d) and (3), and Article 7 of, and Annex III to, Decision 2014/512, as amended by Decision 2014/872, or of Articles 3 and 3a, Article 4(3) and (4), Article 5(2)(b) to (d) and (3), and Article 11 of, and Annexes II and VI to, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended by Council Regulation (EU) No 1290/2014 of 4 December 2014.

The principles of legal certainty and *nulla poena sine lege certa* must be interpreted as meaning that they do not preclude a Member State from imposing criminal penalties that are to be applied in the event of an infringement of the provisions of Regulation No 833/2014, as amended by Regulation No 1290/2014, in accordance with Article 8(1) of that regulation, before the scope of those provisions and, therefore, the scope of the associated criminal penalties, has been clarified by the Court of Justice of the European Union.

The expression 'financial assistance' in Article 4(3)(b) of Regulation No 833/2014, as amended by Regulation No 1290/2014, must be interpreted as meaning that it does not include the processing of a payment, as such, by a bank or other financial institution.

Article 5(2) of Regulation No 833/2014, as amended by Regulation No 1290/2014, must be interpreted as meaning that it prohibits the issuance, after 12 September 2014, of international certificates representative of share ownership (*Global Depositary Receipts)*, pursuant to a depositary agreement concluded with one of the entities listed in Annex VI to Regulation No 833/2014, as amended by Regulation No 1290/2014, including cases where those certificates represent shares issued by one of those entities before that date.

Lenaerts Tizzano Silva de Lapuerta

Ilešič Da Cruz Vilaça Rosas

Bonichot Arabadjiev Toader

Safjan Jarašiūnas Fernlund

Vajda Rodin Biltgen

Delivered in open court in Luxembourg on 28 March 2017.

A. Calot Escobar K. Lenaerts

Registrar President

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* Language of the case: English.