JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

13 September 2018 (*)

(Common foreign and security policy — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Applicant's name included and retained on the list of entities to which the restrictive measures apply — Obligation to state reasons — Legal basis — Partnership and Cooperation Agreement between the European Union and Russia — Right to property — Right to carry on an economic activity — Proportionality)

In Cases T−735/14 and T−799/14,

Gazprom Neft PAO, formerly Gazprom Neft OAO, established in Saint Petersburg (Russia), represented by L. Van den Hende, J. Charles, lawyers, and S. Cogman, Solicitor,

applicant,

v

Council of the European Union, represented by M. Bishop and S. Boelaert, acting as Agents,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by C. Brodie and S. Simmons, and subsequently by C. Brodie and V. Kaye, and subsequently by C. Brodie, C. Crane and S. Brandon, and finally by C. Brodie, R. Fadoju and M. Brandon, acting as Agents, and by G. Facenna QC and C. Banner, Barrister,

and by

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

interveners,

APPLICATION under Article 263 TFEU seeking annulment of (i) Article 1(2)(b), (c) and (d), Article 1(3) and (4), Article 4, Article 4a and Article 7(1)(a) of, and Annex III to, 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 2014/659/CFSP of 8 September 2014 (OJ 2014 L 271, p. 54) and Council Decision 2014/872/CFSP of 4 December 2014 (OJ 2014 L 349, p. 58); and (ii) Article 3, Article 3a, Article 4(3) and (4), Article 5(2)(b), (c) and (d), Article 5(3) and (4) and Article 11(1)(a) of, and Annex 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 (OJ 2014 L 229, p. 1), as amended by Council Regulation (EU) No 960/2014 of 8 September 2014 (OJ 2014 L 271, p. 3) and Council Regulation (EU) No 1290/2014 of 4 December 2014 (OJ 2014 L 349, p. 20),

THE GENERAL COURT (Sixth Chamber),

composed of G. Berardis (Rapporteur), President, D. Spielmann and Z. Csehi, Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 14 December 2017,

gives the following

Judgment

Background to the dispute

1 The applicant, Gazprom Neft PAO, is a commercial company governed by Russian law and specialising in oil and gas exploration and production, the sale and distribution of crude oil and the production and sale of petroleum products. Its majority shareholder is Gazprom Joint Stock Company, which directly and indirectly holds 95.7% of its share capital. The Russian Government directly and indirectly holds 50.23% of the share capital of Gazprom Joint Stock Company.

2 On 20 February 2014, the Council of the European Union condemned in the strongest terms the use of violence in Ukraine. It called for an immediate end to the violence, and full respect for human rights and fundamental freedoms in Ukraine. The Council also envisaged the introduction of restrictive measures against those responsible for human rights violations, violence and use of excessive force.

3 At an extraordinary meeting held on 3 March 2014, the Council condemned acts of aggression by the Russian armed forces, which constituted a clear violation of Ukrainian sovereignty and territorial integrity, as well as the authorisation given by the Soviet Federatsii Federal'nogo Sobrania Rossiskoï Federatsii (Federation Council of the Federal Assembly of the Russian Federation) on 1 March 2014 for the use of the armed forces on the territory of Ukraine. The European Union called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with its international obligations.

4 On 5 March 2014, the Council adopted restrictive measures focused on the freezing and recovery of misappropriated Ukrainian State funds.

5 On 6 March 2014, the Heads of State or Government of the European Union endorsed the Council conclusions adopted on 3 March 2014. They strongly condemned the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the relevant agreements. The Heads of State or Government of the European Union stated 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 hand. They called on the Russian Federation to enable immediate access for international monitors, emphasising that the solution to the crisis in Ukraine had to be based on the territorial integrity, sovereignty and independence of Ukraine, as well as strict adherence to international standards.

6 On 16 March 2014, the legislature of the Autonomous Republic of Crimea and the local government of Sevastopol, both subdivisions of Ukraine, held a referendum on the status of Crimea. In that referendum, the people of Crimea were asked whether they wished to join the Russian Federation as a federal subject, or if they wished to restore the 1992 Constitution and Crimea's status as a part of Ukraine. The reported result from the Autonomous Republic of Crimea was a 96.77% vote for integration of the region into the Russian Federation, with an 83.1% voter turnout.

7 On 17 March 2014, the Council adopted further conclusions with regard to Ukraine. The Council strongly condemned the referendum in Crimea on joining the Russian Federation, held on 16 March 2014, which it found to be in clear breach of the Ukrainian Constitution. It urged the Russian Federation to take steps to de-escalate the crisis, immediately withdraw its forces back to their pre-crisis numbers and garrisons in line

with its international commitments, begin direct discussions with the Government of Ukraine and avail itself of all relevant international mechanisms to find a peaceful and negotiated solution, in full respect of its bilateral and multilateral commitments to respect Ukraine's sovereignty and territorial integrity. In this respect, the Council expressed regret that the United Nations Security Council was not able to adopt a resolution, owing to a veto by the Russian Federation. Furthermore, the Council urged the Russian Federation not to take steps to annex Crimea in breach of international law.

8 On the same day, the Council adopted, on the basis of Article 29 TEU, Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), and, on the basis of Article 215 TFEU, Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), whereby it imposed travel restrictions and asset freeze measures targeting persons responsible for actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine as well as persons or entities associated with them.

9 On 17 March 2014, the Russian Federation officially recognised the results of the referendum held in Crimea on 16 March 2014. Following that referendum, the Supreme Council of Crimea and Sevastopol City Council declared the independence of Crimea from Ukraine and requested to join the Russian Federation. On the same day, the Russian President signed a decree recognising the Republic of Crimea as a sovereign and independent State.

10 On 21 March 2014, the European Council recalled the statement of the Heads of State or Government of the European Union of 6 March 2014 and asked the European Commission and the Member States to prepare possible further targeted measures.

11 On 23 June 2014, the Council decided that the import into the European Union of goods originating in Crimea or Sevastopol should be prohibited, with the exception of goods originating in Crimea or Sevastopol for which a certificate of origin had been issued by the Ukrainian Government.

12 Following the crash and destruction of Malaysia Airlines flight MH17 at Donetsk (Ukraine) on 17 July 2014, the Council requested the Commission and the European External Action Service (EEAS) to finalise their preparatory work on possible targeted measures and to present, no later than 24 July 2014, proposals for taking action, including on access to capital markets, defence, dual-use goods, and sensitive technologies, including in the energy sector.

13 On 31 July 2014, the Council adopted, on the basis of Article 29 TEU, Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13). On the same date, the Council adopted, on the basis of Article 215 TFEU, Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1).

14 Annex II to Regulation No 833/2014 contains a list of the technologies referred to in Article 3 of that regulation, classified according to their combined nomenclature code. They include, mainly, line pipe of a kind used for oil or gas pipelines, rock-drilling or earth-boring tools, displacement pumps for liquids, liquid elevators, boring or sinking machinery for boring earth, and parts thereof, drilling or production platforms, mobile drilling derricks, sea-going light vessels, fire-floats, etc.

15 Subsequently, on 8 September 2014, the Council adopted Decision 2014/659/CFSP amending Decision 2014/512 (OJ 2014 L 271, p. 54), and Regulation (EU) No 960/2014 amending Regulation No 833/2014 (OJ 2014 L 271, p. 3). Those acts imposed additional restrictions on associated services necessary for deep-water oil exploration and production, Arctic oil exploration and production and shale oil projects in Russia. They also imposed additional restrictions on access to the EU capital markets and extended their scope to the three largest State-owned or State-controlled Russian companies active in the crude oil and petroleum products sector, including the applicant.

16 Last, Decision 2014/512, as amended by Decision 2014/659, was amended by Council Decision 2014/872/CFSP of 4 December 2014 (OJ 2014 L 349, p. 58; 'the contested decision'). Regulation No 833/2014, as amended by Regulation No 960/2014, was amended by Council Regulation (EU) No 1290/2014 of 4 December 2014 (OJ 2014 L 349, p. 20; 'the contested regulation').

17 Article 1(2)(b), (c) and (d) and Article 1(3) and (4) of the contested decision, as inserted or amended by Article 1(1) of Decision 2014/659, then by Article 1(1)(a) and (b) of Decision 2014/872, provides:

'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:

...

(b) 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;

(c) any legal person, entity or body established outside the Union owned for more than 50% by an entity referred to in points (a) and (b); or

(d) 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 II or III,

shall be prohibited.

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 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.

4. The prohibition in paragraph 3 shall not apply to drawdown or disbursements made under a contract concluded before 12 September 2014 if:

(a) all the terms and conditions of such drawdown or disbursements:

(i) were agreed before 12 September 2014; and

(ii) have not been modified on or after that date; and

(b) before 12 September 2014, a contractual maturity date had been fixed for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract.

The terms and conditions of drawdowns and disbursements referred to in this paragraph include provisions concerning the length of the repayment period for each drawdown or disbursement, the interest rate applied or the interest rate calculation method, and the maximum amount.'

18 The annex to Decision 2014/659 adds an Annex III to Decision 2014/512 which includes the applicant's name on the list of the legal persons, entities or bodies referred to in Article 1(2)(b) of that decision.

19 Article 5(2)(b), (c) and (d) and Article 5(3) and (4) of the contested regulation, as inserted or amended by Article 1(5) of Regulation No 960/2014, then by Article 1(6) and (7) of Regulation No 1290/2014, provides as follows:

‘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:

...

(b) 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;

(c) 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

(d) a legal person, entity or body acting on behalf 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:

(a) 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

(b) 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.

4. The prohibition in paragraph 3 shall not apply to drawdown or disbursements made under a contract concluded before 12 September 2014 provided that the following conditions are met:

(a) all the terms and conditions of such drawdown or disbursements:

(i) were agreed before 12 September 2014; and

(ii) have not been modified on or after that date; and

(b) before 12 September 2014 a contractual maturity date has been fixed for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract.

The terms and conditions of drawdowns and disbursements referred to in point (a) include provisions concerning the length of the repayment period for each drawdown or disbursement, the interest rate applied or the interest rate calculation method, and the maximum amount.’

20 Article 1(9) of Regulation No 960/2014 provides that Annex III thereto, which includes the applicant’s name on the list of the legal persons, entities and bodies referred to in Article 5(2)(b) of Regulation No 833/2014, is added as Annex VI to the latter regulation.

21 Article 4 of the contested decision, as amended by Decision 2014/872, 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:

(a) oil exploration and production in waters deeper than 150 metres;

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

(c) 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:

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

(b) 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 such 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.’

22 Similarly, Article 3 and Article 4(3) and (4) of Regulation No 833/2014, as amended by Regulation No 1290/2014, provide:

‘*Article 3*

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 Regulation (EC) No 428/2009. 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:

(a) oil exploration and production in waters deeper than 150 metres;

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

(c) 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.

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 4

...

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

(a) 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;

(b) 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 3 of this Article, Article 3, and in particular paragraphs 2 and 5 thereof, shall apply *mutatis mutandis*.'

23 Article 4a of the contested decision, as inserted by Article 1(3) of Decision 2014/659 and then amended by Article 1(6) of Decision 2014/872, 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:

(a) oil exploration and production in waters deeper than 150 metres;

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

(c) 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 and safety or the environment.'

24 Similarly, Article 3a of the contested regulation, as inserted by Article 1(3) of Regulation No 960/2014 and then amended by Article 1(4) of Regulation No 1290/2014, 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:

(a) oil exploration and production in waters deeper than 150 metres;

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

(c) 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 purpose 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.'

25 Article 7(1)(a) of the contested decision, as amended by Article 1(4) of Decision 2014/659, 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 Decision, 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:

(a) entities referred to in point (b) or (c) of Article 1(1) and in point (c) or (d) of Article 1(2), or listed in Annex I, II, III or IV'.

26 Similarly, Article 11(1)(a) of Regulation No 833/2014, as amended by Article 1(5a) of Regulation No 960/2014, 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:

(a) entities referred to in points (b) and (c) of Article 5(1) and points (c) and (d) of Article 5(2), or listed in Annexes III, IV, V and VI'.

Procedure and forms of order sought

27 By application lodged at the Court Registry on 24 October 2014, the applicant brought the action in Case T−735/14.

28 By application lodged at the Court Registry on 5 December 2014, the applicant brought the action in Case T−799/14.

29 By separate document lodged at the Court Registry on 2 January 2015, the applicant applied for the joinder of Cases T−735/14 and T−799/14 and modified its applications in those cases so as to take account of the adoption of Decision 2014/872 and Regulation No 1290/2014.

30 By decision of the President of the Ninth Chamber of the General Court of 12 March 2015, Cases T−735/14 and T−799/14 were joined for the purposes of the written and oral parts of the procedure, in accordance with Article 50 of the Rules of Procedure of the General Court of 2 May 1991.

31 By documents lodged at the Court Registry, the Commission and the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in the present proceedings in support of the form of order sought by the Council. By orders of 24 June 2015, the President of the Ninth Chamber of the General Court granted those applications. The interveners lodged their statements in intervention and the main parties lodged their observations thereon within the periods prescribed.

32 By decision of 29 October 2015, the President of the Ninth Chamber, having obtained the observations of the parties, ordered that the proceedings be stayed until the Court of Justice had delivered its judgment in Case C−72/15, *Rosneft*.

33 Following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the stay of proceedings came to an end, in accordance with Article 71(3) of the Rules of Procedure of the General Court.

34 In those circumstances, the main parties were invited to submit their observations on the conclusions to be drawn from the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236) with respect to the pleas in law and arguments submitted in the present actions. They did so within the period prescribed.

35 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present cases were consequently allocated in accordance with Article 27(5) of the Rules of Procedure.

36 By measure of organisation of procedure of 12 October 2017, the parties were invited to clarify certain arguments with regard to the admissibility of the action.

37 In Case T−735/14, the applicant claims that the Court should:

– annul Article 4 of the contested decision, as amended by Article 1(5) of Decision 2014/872;

– annul Article 3 and Article 4(3) and (4) of the contested regulation, as amended by Article 1(3) and (5) of Regulation No 1290/2014;

– order the Council to pay the costs.

38 In Case T−799/14, the applicant claims that the Court should:

– annul Article 4a of the contested decision, as inserted by Article 1(3) of Decision 2014/659 and amended by Article 1(6) of Decision 2014/872;

– annul Article 3a of the contested regulation, as inserted by Article 1(3) of Regulation No 960/2014 and amended by Article 1(4) of Regulation No 1290/2014;

– annul Article 1(2)(b), (c) and (d) and Article 1(3) and (4) of and Annex III to the contested decision, as inserted or amended by Article 1(1) of and the annex to Decision 2014/659 and by Article 1(1)(a) and (b) of Decision 2014/872, in so far as those provisions concern it;

– annul Article 5(2)(b), (c) and (d) and Article 5(3) and (4) of and Annex VI to the contested regulation, as inserted or amended by Article 1(5) and (9) of and Annex III to Regulation No 960/2014 and by Article 1(6) and (7) of Regulation No 1290/2014, in so far as those provisions concern it;

– annul Article 7(1)(a) of the contested decision, as amended by Article 1(4) of Decision 2014/659, in so far as that provision concerns it;

– annul Article 11(1)(a) of the contested regulation, as amended by Article 1(5a)(a) of Regulation No 960/2014;

– order the Council to pay the costs.

39 The Council contends, in Case T−735/14, that the Court should:

– dismiss the action in so far as it concerns Article 4 of the contested decision on grounds of lack of jurisdiction or, in the alternative, as inadmissible;

– dismiss the action in so far as it concerns Article 3 and Article 4(3) and (4) of the contested regulation as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

40 The Council contends, in Case T−799/14, that the Court should:

– dismiss the action in so far as it concerns the contested decision on grounds of lack of jurisdiction or, in the alternative, as inadmissible;

– dismiss the action in so far as it concerns the contested regulation as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

41 In its written reply to the question put by the Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the Council made clear that it disputed the jurisdiction of the General Court on the basis of the second paragraph of Article 275 TFEU only with regard to Articles 4 and 4a of the contested decision.

42 The Commission contends that the Court should, in Joined Cases T−735/14 and T−799/14, dismiss the actions in their entirety.

43 The United Kingdom contends that the Court should dismiss the actions in Joined Cases T−735/14 and T−799/14.

Law

44 As a preliminary point, the Court has decided to join Cases T−735/14 and T−799/14 for the purposes of the judgment, pursuant to Article 68(1) of the Rules of Procedure.

45 Next, it is appropriate to examine the jurisdiction of the Court and the admissibility of the action, which are contested by the Council.

Jurisdiction of the General Court

46 As regards the jurisdiction of the General Court to rule on the application for annulment of Article 1(2)(b), (c) and (d), Article 1(3) and (4), Article 4, Article 4a, Article 7(1)(a) of, and Annex III to, the contested decision, the Council stated, in its written reply to the question put by the Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), that it no longer disputed the Court's jurisdiction to rule on the legality of those provisions on the basis of the second paragraph of Article 275 TFEU, with the exception of Articles 4 and 4a of the contested decision.

47 The Court of Justice had confirmed that those provisions were of general application, since they sought to prohibit the supply, transfer or export of certain equipment listed in an annex to the contested decision or other associated services for certain categories of exploration and production projects in Russia, regardless of the identities or number of companies that might use those technologies or services, and with no mention being made of the applicant's name in that regard. Consequently, in the Council's submission, those provisions do not constitute restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU.

48 In addition, the Council submits that the fact that the applicant is one of the two main operators in Russia that use the technologies referred to in Article 4 of the contested decision is not sufficient to render that provision sufficiently individual in character to qualify as a decision providing for restrictive measures against the applicant, for the purposes of the second paragraph of Article 275 TFEU.

49 The applicant disputes those arguments and claims, in any event, that the Court has jurisdiction to review all the provisions of the contested regulation.

50 In that regard, it must be borne in mind that, under the second paragraph of Article 275 TFEU, the Court of Justice and, consequently, the General Court, have jurisdiction 'to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 [TFEU], 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 [TEU]'.

51 However, the first paragraph of Article 275 TFEU provides that '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'.

52 According to the case-law, 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 judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 102 and the case-law cited).

53 It must, moreover, be recalled that, as regards measures adopted on the basis of provisions relating to the common foreign and security policy (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 judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 103 and the case-law cited).

54 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 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 by the Courts of the

European Union (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 104).

55 In the present case, it should be borne in mind that Article 1(2)(b), (c) and (d) and Article 1(3) of the contested decision prohibit all EU operators from carrying out certain types of financial transaction or from concluding certain types of agreement with 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 (RUB) (approximately 13 billion euro) and at least 50% of whose estimated revenues originate from the sale or transportation of crude oil or petroleum products as of 12 September 2014, as listed in Annex III to that decision, or with any legal person, entity or body established outside the European Union owned for more than 50% by an entity listed in Annex III to that decision or which acts on behalf, or at the direction, of an entity falling within the two categories referred to above.

56 Therefore, it must be concluded that, by establishing the criteria laid down in Article 1(2)(b) to (d) of the contested decision, enabling the applicant to be identified, and by naming the applicant in Annex III to that decision, the Council adopted restrictive measures against that particular legal person.

57 Article 1(3) and (4) of the contested decision also enables the applicant to be identified directly, in so far as it refers to entities and bodies referred to in paragraph 1 or 2 of that article, which include the applicant.

58 Similarly, Article 7 of the contested decision also expressly refers to entities listed in Annex III to the contested decision, which include the applicant.

59 By contrast, in the case of Articles 4 and 4a of the contested decision, it must be held that the review of the legality of those provisions falls outside the jurisdiction of the Court.

60 Those provisions do not target identified natural or legal persons, but are applicable generally to all operators involved in the sale, supply, transfer or export of equipment that is subject to the prior authorisation requirement and to all the suppliers of associated services. In those circumstances, the measures provided for in Articles 4 and 4a of the contested decision 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, with respect to which neither the Court of Justice nor the General Court has jurisdiction (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraphs 97 to 99).

61 That outcome is not altered by the fact that the applicant indicated that it was challenging those provisions only in so far as they concerned the applicant or that it is one of two oil companies that have obtained the necessary licences to operate on the Russian continental shelf, and therefore that the effects of those provisions are the same vis-à-vis the applicant as those of restrictive measures. The fact that those provisions were applied to the applicant does not alter their legal nature as an act of general application. In the present case, ‘decisions providing for restrictive measures against natural or legal persons’, within the meaning of the second paragraph of Article 275 TFEU, are to be found in the provisions by which the applicant’s name was listed in Annex III to the contested decision (see, to that effect, judgments of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 104, and of 4 June 2014, *Sina Bank* v *Council*, T−67/12, not published, EU:T:2014:348, paragraph 39). That is consistent with the case-law according to which, 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 paragraph 53 above).

62 It must be concluded, therefore, that this Court has jurisdiction to rule on the applicant’s action for annulment of Article 1(2)(b), (c) and (d), Article 1(3) and (4) and Article 7(1)(a) of and Annex III to the contested decision (‘the disputed provisions of the contested decision’), in so far as they provide for restrictive measures against the applicant. By contrast, this Court does not have jurisdiction to rule on the action for annulment in so far as it is directed against Articles 4 and 4a of the contested decision.

63 In any event, the Court also has jurisdiction to rule on the action for annulment in so far as it is directed against the contested regulation, under the first paragraph of Article 263 TFEU, which the Council does not dispute. Notwithstanding the fact that it is intended to implement the contested decision, which was adopted in the context of the CFSP, the contested regulation is not a '[provision] relating to the common foreign and security policy' within the meaning of the first paragraph of Article 275 TFEU, which falls outside the jurisdiction of the Court of Justice of the European Union.

Admissibility

64 The Council argues that the action is inadmissible both as regards Articles 3, 3a, Article 4(3) and (4), Article 5(2)(b), (c) and (d), Article 5(3) and (4) and Article 11(1)(a) of, and Annex VI to, the contested regulation, and as regards the disputed provisions of the contested decision (together, 'the disputed provisions'), given that the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU, to which the second paragraph of Article 275 TFEU expressly refers, are not fulfilled, in particular the requirement that the applicant be directly affected.

65 First, the applicant is not directly concerned by the disputed provisions, since they necessarily require implementation by the competent authorities of the Member States of the European Union, which enjoy a broad discretion in that regard. Under Article 4(3) of the contested decision, it is those authorities that must determine whether the sale, supply, transfer or export of the equipment in question, or the provision of the services concerned, is intended for deep-water or Arctic oil exploration or production, or shale oil projects in Russia. Similarly, Article 3 and Article 4(3) and (4) of the contested regulation require prior authorisation to be obtained from the competent authorities of the Member States for any supply or export of certain technologies intended for deep-water or Arctic oil exploration or production, or shale oil projects in Russia, and for the provision of technical assistance or brokering services or financing or financial assistance in connection with those technologies.

66 The Council also notes that, when the disputed provisions were first adopted, the precise meaning of certain key terms was not specified, their meaning being clarified only later, in Decision 2014/872 and Regulation No 1290/2014. Nevertheless, the Member States' authorities still enjoy a certain discretion.

67 Secondly, the Council, supported by the Commission, argues that the applicant is not directly concerned by the disputed provisions in so far as they do not directly affect its legal situation within the meaning of the case-law. In the present case, suppliers and exporters from the European Union of the technologies and related services are subject to the export restrictions laid down by the disputed provisions, but those restrictions do not apply to the applicant or to the oil industry in Russia. Moreover, nothing in those provisions prohibits the applicant from carrying out deep-water or Arctic oil exploration and production or shale oil projects in Russia. Even though the applicant may no longer be able to procure the listed technologies from EU suppliers for use in such projects, or to obtain technical or financial assistance relating to such projects, that does not mean that the applicant's legal situation has been directly affected. The same considerations also apply with regard, in particular, to the provisions restricting access to the EU capital markets and those restricting new loans and credit with a maturity exceeding 30 days.

68 Thirdly, in reply to a question put by the Court, the Council and the Commission indicated that Article 3 and Article 4(3) and (4) of the contested regulation entail implementing measures, since they provide for a system of prior authorisation. The applicant would therefore have to show not only that it is directly concerned, but also that it is individually concerned by those provisions, which is not the case here.

69 The applicant disputes those arguments.

70 It is necessary to draw a distinction between the question of the applicant's standing to bring proceedings against the disputed provisions of the contested decision and Article 5(2)(b), (c) and (d), Article 5(3) and (4) and Article 11(1)(a) of, and Annex VI to, the contested regulation ('the provisions on access to the capital market'), on the one hand, and against Article 3, Article 3a and Article 4(3) and (4) of the contested regulation ('the provisions of the contested regulation concerning export restrictions'), on the other.

The applicant's standing to bring proceedings against the provisions on access to the capital market

71 It should be borne in mind that, under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures. The second limb of the fourth paragraph of Article 263 TFEU specifies that if the natural or legal person who brings the action for annulment is not a person to whom the contested act is addressed, the admissibility of the action is subject to the condition that the act is of direct and individual concern to that person. By means of the Treaty of Lisbon, there was also added to the fourth paragraph of Article 263 TFEU a third limb which relaxed the conditions of admissibility of actions for annulment brought by natural and legal persons. Since the effect of that limb is that the admissibility of actions for annulment brought by natural and legal persons is not subject to the condition of individual concern, it renders possible such legal actions against 'regulatory acts' which do not entail implementing measures and are of direct concern to the applicant (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C−583/11 P, EU:C:2013:625, paragraphs 56 and 57).

72 First, as regards the condition relating to direct concern to the applicant, it should be borne in mind that, in accordance with settled case-law, the condition that there must be direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 263 TFEU, requires the contested EU measure to affect directly the legal situation of the individual and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see, to that effect, judgment of 13 March 2008, *Commission* v *Infront WM*, C−125/06 P, EU:C:2008:159, paragraph 47 and the case-law cited).

73 In the present case, it should be noted that the provisions on access to the capital market notably prohibit all EU operators from carrying out certain financial transactions or from concluding agreements with entities established in Russia which are publicly controlled or with over 50% public ownership which have estimated total assets of over RUB 1 trillion and at least 50% of whose estimated revenues originate from the sale or transportation of crude oil or petroleum products as of 12 September 2014, and whose names are listed in Annex III to the contested decision or Annex VI to the contested regulation (see paragraphs 17 to 20 above).

74 It must be held, therefore, that the provisions on access to the capital market, which leave no discretion to the addressees entrusted with their implementation, are of direct concern to the applicant. The resulting restrictive measures apply directly to the applicant, as an immediate consequence of the fact that it is an entity referred to in Article 1(2)(b) and (3) of the contested decision and Article 5(2)(b) and (3) of the contested regulation, and that its name is listed in Annex III to the contested decision and in Annex VI to the contested regulation. It is immaterial, in that regard, that those provisions do not prohibit the applicant from carrying out the transactions concerned outside the European Union. Indeed, it is not in dispute that the provisions on access to the capital market impose restrictions on the applicant's access to the EU capital market.

75 Similarly, the Court must reject the Council's argument that the applicant's legal situation is not directly affected given that the measures imposed by the provisions on access to the capital market apply solely to bodies established in the European Union. Although those provisions lay down prohibitions which apply in the first place to credit institutions and other financial bodies established in the European Union, the aim and the effect of those prohibitions is directly to affect the entities, such as the applicant, whose economic activity is limited as a result of the application of those measures to them. Self-evidently it is for the bodies established in the European Union to apply those measures, given that the acts adopted by the EU institutions are not, as a rule, intended to apply outside the territory of the European Union. That does not, however, mean that the entities affected by the provisions on access to the capital market are not directly concerned by the restrictive measures applied with regard to them. Indeed, the fact of prohibiting EU operators from carrying out certain types of transaction with entities established outside the European

Union amounts to prohibiting those entities from carrying out the transactions in question with EU operators. In addition, accepting the Council's argument in that regard would be tantamount to considering that, even in cases of individual fund freezes, the listed persons subject to the restrictive measures are not directly concerned by such measures, given that it is primarily for the EU Member States and the natural or legal persons under their jurisdiction to apply them.

76 Moreover, the Council relies to no avail, in that regard, on the case giving rise to the order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (T−18/10, EU:T:2011:419). In that case, the Court held that Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36) affected only the legal situation of the applicants who were active in placing seal products on the EU market and affected by the general prohibition of the placing of those products on the market, unlike the applicants whose business activity was not placing those products on the market or those who were covered by the exception provided for by Regulation No 1007/2009 since, in principle, the placing on the EU market of seal products which resulted from hunts traditionally conducted by Inuit and other indigenous communities and contributed to their subsistence continued to be permitted (see, to that effect, order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T−18/10, EU:T:2011:419, paragraph 79). In the present case, by contrast, it is clear that the applicant is also active on the market in financial services caught by the provisions on access to the capital market, and not merely on a market upstream or downstream of those services, as the Council contends. It is because of the provisions on access to the capital market that it was impossible for the applicant to carry out certain prohibited financial transactions with bodies established in the European Union, although it would have been entitled to carry out such transactions in the absence of those measures.

77 Likewise, it should be borne in mind that Article 7 of the contested decision and Article 11 of the contested regulation provide that 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 that decision or regulation are to be satisfied where such a claim is made, inter alia, by an entity referred to in Annex III to the contested decision or Annex VI to the contested regulation. It must be held, therefore, that those provisions are of direct concern to the applicant, since it is among the entities listed in the annex whose capacity to be a party to judicial proceedings has been limited.

78 It must be concluded, therefore, that the provisions on access to the capital market are of direct concern to the applicant.

79 Secondly, without there being any need to examine whether the provisions on access to the capital market entail implementing measures, it must be found that the condition relating to individual concern, provided for in the second limb of the fourth paragraph of Article 263 TFEU, is also satisfied in the present case.

80 It should be borne in mind in that regard that, in accordance with the fourth paragraph of Article 263 TFEU, to which the second paragraph of Article 275 TFEU refers, any inclusion in a list of persons or entities subject to restrictive measures allows that person or entity access to the Courts of the European Union, in that it is similar in that respect to an individual decision (see, to that effect, judgments of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C−348/12 P, EU:C:2013:776, paragraph 50; of 1 March 2016, *National Iranian Oil Company* v *Council*, C−440/14 P, EU:C:2016:128, paragraph 44 and the case-law cited; and of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 103 and the case-law cited).

81 In the present case, since the applicant's name is mentioned in the lists in Annex III to the contested decision and Annex VI to the contested regulation among the entities to which the restrictive measures provided for by Article 1(2) of that decision and Article 5(2) of the contested regulation apply, the applicant must be considered to be individually concerned by those measures.

82 Any other approach would infringe Article 263 and the second paragraph of Article 275 TFEU and would therefore be contrary to the system of judicial protection established in the FEU Treaty, and to the right to

an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') (see, to that effect, judgment of 16 July 2014, *National Iranian Oil Company* v *Council*, T−578/12, not published, EU:T:2014:678, paragraph 36).

83 Consequently, it must be concluded that the applicant is entitled to seek annulment of the restrictive measures established by the provisions on access to the capital market, in so far as they concern the applicant.

The applicant's standing to bring proceedings against the provisions of the contested regulation concerning export restrictions

84 As a preliminary point, it should be recalled, first of all, that the Court has no jurisdiction to rule on the action for annulment in so far as it is directed against the provisions of the contested decision concerning export restrictions, namely Articles 4 and 4a of the contested decision, since these are measures of general application adopted in the context of the CFSP (see paragraphs 59 to 62 above). The Court does, however, have jurisdiction to examine the legality of the equivalent provisions of the contested regulation (see paragraph 63 above).

85 The applicant's standing to bring proceedings against the provisions of the contested regulation concerning export restrictions must, therefore, be examined having regard to the provisions of the fourth paragraph of Article 263 TFEU (see paragraph 71 above).

86 First, it must be held that, even though the provisions of the contested regulation concerning export restrictions constitute provisions of general application, they affect the applicant directly.

87 It should be recalled that the provisions of the contested regulation concerning export restrictions provide that 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 European 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' (Article 3(1)). It is also made clear that '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' (Article 3(5)). Under Article 3a of the contested regulation, the prohibition also extends to the associated services listed in that article. Article 4(3) and (4) of that regulation provides for the same prior authorisation procedure as that provided for in Article 3 to be applied to 'technical assistance or brokering services related to items listed in Annex II and to the provision, manufacture, maintenance and use of those items' and to 'financing or financial assistance related to items referred to in Annex II, including in particular grants, loans and export credit insurance'.

88 It must be held, therefore, that the provisions of the contested regulation concerning export restrictions are of direct concern to the applicant, given that it established, by means of documents produced to the Court, that it is involved in exploration and production projects in Russia, such as those referred to in Article 3(3) of the contested regulation, namely oil exploration and production in waters deeper than 150 metres, offshore oil exploration and production in the 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 ('non-conventional projects') and not on a market upstream or downstream of those activities (see the case-law cited in paragraph 76 above).

89 As a result of the adoption of the provisions of the contested regulation concerning export restrictions, the applicant is unable, in practice and in law, to conclude new contracts or to require the performance of contracts concluded with EU operators after 1 August 2014 in relation to items included in Annex II to the contested regulation, if these are intended for non-conventional projects. The applicant must, moreover,

seek and obtain prior authorisation for grandfathered contracts and permitted-use contracts (Article 3(1) and the second subparagraph of Article 3(5), Article 3a(2) and Article 4(3) of the contested regulation).

90 Next, as regards the Council's argument that the national authorities have a margin of discretion, and that the applicant is not, therefore, directly concerned by the provisions of the contested regulation concerning export restrictions, it must be stated that, while it is true that those provisions establish a system of prior authorisation under which the authorities must implement the prohibitions laid down, they do not in fact have any margin of discretion in that regard.

91 Thus, Article 3(5) of the contested regulation provides, for example, that 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 of that article. The only — purely factual and upstream — assessment which the national authorities may make consists, therefore, of determining whether the transaction involves items destined for any of the categories of non-conventional project referred to in Article 3(3). They cannot therefore issue any authorisation if they have reasonable grounds to determine that that is the case.

92 The same applies to Article 4(3) and (4) of the contested regulation, which makes the provision of certain technical assistance or brokering services, financing or financial assistance related to the technologies listed in Annex II subject to prior authorisation from the authority concerned, in so far as it is provided that Article 3 of that regulation, and in particular paragraphs 2 and 5 thereof, are to apply *mutatis mutandis* where authorisations are requested.

93 Article 3a of the contested regulation also affords the national authorities no margin of discretion, providing as it does that it is to be prohibited to provide, directly or indirectly, associated services necessary for the categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, referred to in Article 3(3) of the contested regulation. The Council acknowledged, moreover, that that provision did not entail any implementing measure, which necessarily implies that the national authorities have no margin of discretion.

94 It must be concluded, therefore, that the provisions of the contested regulation concerning export restrictions are of direct concern to the applicant.

95 In answer to a question put by the Court at the hearing, the Council and the Commission argued, however, that the concept of direct concern within the meaning of the fourth paragraph of Article 263 TFEU should be interpreted more narrowly in the field of the CFSP than in other areas of EU activity, such as competition law or State aid.

96 That suggestion cannot, however, be accepted.

97 The conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU are the same for all actions brought by natural or legal persons against acts of the European Union, irrespective of the type of act or the matter in question. Thus, while it is true that, according to the case-law, the condition that an EU act must be of direct concern to a natural or legal person means that that act must affect directly the legal situation of the individual, in case-law, actions for annulment brought by individuals against EU acts have been admitted repeatedly where the effects of those acts on the respective applicants are not legal, in the strict sense, but merely factual, for example because they are directly affected in their capacity as market participants in competition with other market participants. It is appropriate, therefore, for the purpose of determining direct concern to a person, for consideration to be given not only to the effects of an EU act on a person's legal situation, but also to its factual effects on that person, and such effects must be more than merely indirect. This must be determined specifically in each individual case having regard to the regulatory content of the EU act in question (see, to that effect, Opinion of Advocate General Kokott in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C−583/11 P, EU:C:2013:21, points 70 to 72 and the case-law cited).

98 Secondly, the Court must examine whether or not the provisions of the contested regulation concerning export restrictions provide for implementing measures.

99 In that regard, it should be noted that, according to the case-law, the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the final limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (judgment of 19 December 2013, *Telefónica* v *Commission*, C−274/12 P, EU:C:2013:852, paragraph 30).

100 In the present case, as the Council and the Commission acknowledged at the hearing, it is not clear that the applicant can itself ask the national authorities to issue an authorisation to it and that it can challenge the act granting or refusing such authorisation before the national courts, particularly as regards transactions concerning non-conventional projects, that is to say, those concerning the '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' (Article 3(5) of the contested regulation). The same applies to the associated services referred to in Article 3a of the contested regulation.

101 Therefore, contrary to what was suggested by the Council at the hearing, it cannot be concluded that those provisions entail implementing measures in relation to the applicant merely because the applicant could potentially ask its counterparties established in the European Union to submit requests for authorisation to the competent national authorities, in order to be able to challenge the decisions taken by those authorities in the national courts.

102 In addition, as the applicant submitted in its reply to a question put by the Court, even on the assumption that an authorisation may perhaps be sought, such a request cannot but be refused if it concerns any of the transactions relating to the non-conventional projects mentioned in Article 3(3) of the contested regulation, in accordance with Article 3(5), Article 3a and Article 4(3) and (4) of that regulation. In that situation, it would be artificial or excessive to demand that an operator request an implementing measure merely in order to be able to challenge that measure in the national courts, where it is clear that such a request will necessarily be refused and would not, therefore, have been made in the ordinary course of business (see, to that effect, judgment of 14 January 2016, *Doux* v *Commission*, T−434/13, not published, EU:T:2016:7, paragraphs 59 to 64).

103 It must be concluded, therefore, that the provisions of the contested regulation concerning export restrictions are regulatory provisions that do not entail implementing measures, within the meaning of the third limb of the fourth paragraph of Article 263 TFEU. The applicant, therefore, merely had to establish that it was directly affected by those provisions, which it has done in the present case. Accordingly, its action must be declared admissible, including in so far as it relates to the provisions of the contested regulation concerning export restrictions.

104 In conclusion, the action is admissible in so far as it is directed against the provisions on access to the capital market and against the provisions of the contested regulation concerning export restrictions.

Substance

105 In Case T−735/14, the applicant puts forward three pleas in law alleging (i) infringement of the obligation to state reasons; (ii) lack of any appropriate legal basis; and (iii) breach of the principle of proportionality and of fundamental rights.

106 In Case T−799/14, the applicant puts forward four pleas in law alleging (i) infringement of the obligation to state reasons; (ii) lack of any appropriate legal basis for the provisions of the contested regulation concerning export restrictions and the provisions on access to the capital market; (iii) infringement of 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 on 24 June 1994

and approved on behalf 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'); and (iv) breach of the principle of proportionality and of fundamental rights.

The first plea in law in Cases T−735/14 and T−799/14, alleging a failure to state reasons

107 By its first plea in the two joined cases, the applicant alleges infringement of Article 296 TFEU, in that the statements of reasons given for the contested decision and the contested regulation ('the contested acts') do not meet the requisite legal standard. It submits that the sanctions imposed by those acts are unusual measures, the reasoning for which was therefore required to be extensive. However, the contested acts do not even attempt to explain why the non-conventional projects are the subject of targeted restrictive measures. It argues that those projects are, for the most part, at the development stage and will not generate any taxable profits for the Russian Government for at least twenty years. Similarly, no explanation is given as to why the categories of equipment covered by the provisions of the contested regulation concerning export restrictions should be deemed to be 'sensitive' goods and technology.

108 As regards the provisions on access to the capital market, the applicant also submits that the statements of reasons for the contested acts do not enable it to understand how those provisions will serve the purported objective of those acts, which is to exert pressure on the Russian Government. In addition, the reasons given by the Council in its defence were late and do not, in any event, justify the imposition of such restrictions on the applicant.

109 The applicant also argues that there is a lack of reasoning regarding the required connection between it and the Russian Government, or the proportionality of the restrictive measures or their impact on the applicant's fundamental rights, all of which makes it harder for the applicant to contest the legality of those measures. This lack of reasoning stands in sharp contrast to the reasoning provided to the individuals and entities targeted by the other restrictive measures, such as asset-freezing measures. To allow the Council to adopt any kind of restrictive measures, without providing any rational statement of reasons, would be unacceptable and would fundamentally undermine the rule of law.

110 The Council, supported by the Commission and the United Kingdom, disputes those arguments.

111 As provided in the second paragraph of Article 296 TFEU, 'legal acts shall state the reasons on which they are based'. In addition, under Article 41(2)(c) of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties, the right to good administration includes, inter alia, 'the obligation of the administration to give reasons for its decisions'.

112 It has consistently been held that the statement of reasons required by Article 296 TFEU and Article 41(2)(c) of the Charter must be appropriate to the nature of the contested act and to the context in which it was adopted. It 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 measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case (see judgment of 14 April 2016, *Ben Ali* v *Council*, T−200/14, not published, EU:T:2016:216, paragraph 94 and the case-law cited; see also, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T−255/15, not published, EU:T:2017:25, paragraph 56).

113 Thus, 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. In particular, 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. Moreover, the degree of precision of the statement of the reasons for a measure must be weighed against practical realities and the time and technical facilities available for taking the measure (see judgment of 14 April 2016, *Ben Ali* v *Council*, T−200/14, not published, EU:T:2016:216, paragraph 95 and

the case-law cited; see also, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T−255/15, not published, EU:T:2017:25, paragraph 56).

114 In the light of that case-law, a distinction should be drawn between a statement of reasons for the contested acts that concerns provisions of general application and one that concerns provisions that amount, for the applicant, to restrictive measures of individual application.

115 As regards provisions of general application such as the provisions of the contested regulation concerning export restrictions, the Council is justified in maintaining that the statement of reasons may be limited to indicating the general situation which led to the adoption of the measures, on the one hand, and the general objectives which they are intended to achieve, on the other (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 120 and the case-law cited).

116 By contrast, as regards the provisions on access to the capital market, it should be recalled that those provisions constitute, vis-à-vis the applicant, inasmuch as they concern it, restrictive measures of individual application (see paragraphs 56 and 81 above).

117 It has been made clear in that respect in the case-law that the statement of reasons for an act of the Council which imposed a restrictive measure had not only to identify the legal basis for that measure but also the actual and specific reasons why the Council considered, in the exercise of its discretion, that such a measure had to be adopted in respect of the person concerned (see judgment of 3 July 2014, *National Iranian Tanker Company* v *Council*, T−565/12, EU:T:2014:608, paragraph 38 and the case-law cited; see also, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T−255/15, not published, EU:T:2017:25, paragraph 55).

118 It is appropriate to examine in the light of these considerations whether the Council has discharged its obligation to state, to the requisite legal standard, the reasons for the disputed provisions in the present case.

119 First, as regards, in particular, the provisions of the contested regulation concerning export restrictions, it must be borne in mind that all the provisions concerned form part of the context, known to the applicant, of the international tension which preceded the adoption of the contested acts, referred to in paragraphs 2 to 16 above. It is apparent from recitals 1 to 8 of the contested decision and recital 2 of the contested regulation that the stated objective of the contested acts was to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis. Recital 12 of the contested decision states, moreover, that the sale, supply, transfer or export of certain sensitive goods and technologies should be prohibited when they are destined for deep water oil exploration and production, Arctic oil exploration and production or shale oil projects. The contested acts accordingly describe the overall situation that led to their adoption and the general objectives they are intended to achieve (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 123).

120 Secondly, with regard to the provisions on access to the capital market, it must be recalled that these impose restrictive measures on the applicant, in so far as its name was listed in Annex III to the contested decision and in Annex VI to the contested regulation, in connection with the prohibited activities referred to in Article 1(2)(b) to (d) of the contested decision and in Article 5(2)(b) to (d) of the contested regulation, respectively.

121 Consequently, the Court must reject the Council's argument that the criteria laid down in the case-law, relating to the obligation to state reasons for acts imposing individual restrictive measures, are not applicable to the present case.

122 It must, however, be found that the 'actual and specific reasons' why the Council considered, in the exercise of its discretion, that such measures had to be adopted in respect of the applicant, within the

meaning of the case-law mentioned above, correspond in the present case to the criteria which are laid down in the provisions on access to the capital market.

123 Since the applicant is one of the entities referred to, that is 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', no additional statement of reasons can be required for the purposes of listing its name in the annexes to the contested acts.

124 In that regard, it must be pointed out that the fact that the same considerations were resorted to in order to adopt restrictive measures aimed at several persons does not mean that those considerations cannot give rise to a sufficiently specific statement of reasons for each of the persons concerned (see, to that effect and by analogy, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 115).

125 The applicant nevertheless claims that the Council should have set out the specific reasons why the oil sector was targeted and how targeting that sector would enable the objective pursued by the measures at issue to be promoted.

126 It must be recalled, however, that it is not necessary for the reasoning to go into all the relevant facts and points of law (see paragraph 113 above). Consequently, the Council was not required to set out in further detail the reasons underpinning its decision to impose restrictive measures targeting certain sectors of the economy and to prohibit the export of certain goods and services that were considered 'sensitive'. Furthermore, the question whether such measures are compatible with the objectives of the CFSP and whether they are appropriate to and necessary for the attainment of those objectives relates more to the substantive examination of those measures.

127 In addition, it must be noted that the applicant, which is a major player in the Russian oil sector and whose share capital, on the date of adoption of Decision 2014/512, was predominantly owned, even indirectly, by the Russian State, could not reasonably have been unaware of the reasons why the Council had adopted measures targeting 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 over RUB 1 trillion. 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 124).

128 Accordingly, it must be concluded that the reasons for the contested acts given by the Council are sufficient, and the first plea in law raised in Cases T−735/14 and T−799/14 must be rejected as unfounded.

The second plea in law in Cases T−735/14 and T−799/14, alleging lack of an appropriate legal basis

129 The applicant argues that Article 215 TFEU, which enables the Council to adopt economic sanctions against third countries, can only be used exceptionally to target particular persons or entities, and only where there is a sufficient connection (i) between the sanctioned entity and the government of the third country concerned and (ii) between the entity targeted by the measure and the objective of the measure. Those principles are also apparent from the Council's Guidelines of 2 December 2005 on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU CFSP. The applicant claims that those requirements are not met in the present case.

130 First, the ties between the applicant and the Russian Government are insufficient, in that the former is in no way an emanation of the Russian State and does not participate in the exercise of governmental powers or run a public service under government control. The fact that the applicant is a private-law company

which is part of the Gazprom group, 50.23% of whose shares are owned by the Russian State, is not sufficient in this regard. In addition, it cannot be presumed that there are ties with the Russian Government unless the entity concerned is given an opportunity to present its views on that subject.

131 Secondly, the contested acts in no way set out the requisite connection between the entities targeted by the restrictive measures and the objective of those measures. It is difficult to see how the provisions of the contested regulation concerning export restrictions, which target non-conventional projects, or the provisions on access to the capital market might further the objectives of the contested acts. The Council cannot impose such measures, which cause considerable harm to the entities targeted and to their commercial partners in the European Union, in a completely arbitrary manner.

132 The Council, supported by the Commission and the United Kingdom, disputes those arguments.

133 First, as regards the applicant's argument that there is not a sufficient connection to the Russian Government in the present case, it should be noted, first of all, that, according to Article 215 TFEU, where a decision, adopted in accordance with Chapter 2 of Title V of the EU Treaty, provides for 'the interruption ..., in part or completely, of economic and financial relations with one or more third countries', the Council is to adopt the necessary measures and, moreover, that where a decision adopted in accordance with Chapter 2 of Title V of the EU Treaty so provides, the Council may adopt 'restrictive measures ... against natural or legal persons and groups or non-State entities'. Article 215(2) TFEU thus provides for the possibility of adopting restrictive measures against non-State entities in order to implement a CFSP decision adopted on the basis of Chapter 2 of Title V of the EU Treaty.

134 As noted above, the provisions on access to the capital market constitute restrictive measures with respect to the applicant (paragraphs 56 and 81 above). So far as concerns those measures, the applicant cannot properly claim, therefore, that they necessarily have to be imposed on entities that have a sufficient connection to the Russian Government.

135 Next, as regards the provisions of the contested regulation concerning export restrictions, it should be borne in mind that the objectives of those measures is not to penalise certain entities because of their links with the situation in Ukraine, but to impose economic sanctions on the Russian Federation, in order to increase the costs of its actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis.

136 In so far as those measures cover a particular sector of the economy, because of its importance to the Russian economy or its connection with the Russian Federation's actions to destabilise Ukraine, it is not required that the undertakings targeted should be Russian public undertakings (see, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T−255/15, not published, EU:T:2017:25, paragraph 135).

137 The judgment of 13 March 2012, *Tay Za* v *Council* (C−376/10 P, EU:C:2012:138) cannot usefully be relied on by the applicant. In that judgment, the Court did indeed take care to recall that the concept of a third country, within the meaning of Articles 60 and 301 EC, which correspond, in essence, to Article 215(1) TFEU, might include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them (see judgment of 13 March 2012, *Tay Za* v *Council*, C−376/10 P, EU:C:2012:138, paragraph 43 and the case-law cited). It therefore concluded that, by finding that it could be presumed that the family members of leading business figures benefited from the functions exercised by those businessmen, so that such family members also benefited from the economic policies of the government, and that there was therefore a sufficient link between the appellant and the military regime of Myanmar, the General Court had erred in law (see, to that effect, judgment of 13 March 2012, *Tay Za* v *Council*, C−376/10 P, EU:C:2012:138, paragraph 71).

138 It should be pointed out, however, that, in the case that gave rise to the judgment of 13 March 2012, *Tay Za* v *Council* (C−376/10 P, EU:C:2012:138), the restrictive measures adopted by the Council were based on Council Common Position 2006/318/CFSP of 27 April 2006 renewing restrictive measures against

Burma/Myanmar (OJ 2006 L 116, p. 77). Those measures provided in particular for the funds and economic resources of members of the Government of Myanmar or of any natural or legal person, entity or body associated with them to be frozen. The name of the appellant, Mr Pye Phyo Tay Za, had been entered on the list of persons subject to the restrictive measures, under heading J of Annex II to Common Position 2006/318 entitled 'Persons who benefit from Government economic policies and other persons associated with the regime', together with the information 'Son of Tay Za' (judgment of 13 March 2012, *Tay Za* v *Council*, C−376/10 P, EU:C:2012:138, paragraphs 4 to 11). It was therefore a matter of determining, in that case, whether the General Court and the Council had rightly concluded that, as a member of the family of the businessman Tay Za, Mr Tay Za could be considered to benefit personally from the policies of the Government and could, as a result, be considered to be associated with that regime, in accordance with the basic criteria laid down in Common Position 2006/318. The Court of Justice did not call in question, however, the possibility of adopting economic sanctions against third countries, nor did it require that the entities affected by such measures, without being targeted individually, should be 'emanations of the State', as the applicant claims.

139 On the contrary, it is apparent from the case-law that 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 132). Any measure of that kind has, by definition, consequences which affect the right 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 its adoption (see, to that effect, judgment of 30 July 1996, *Bosphorus*, C−84/95, EU:C:1996:312, paragraph 22).

140 In any event, even on the assumption that a connection between the entities allegedly targeted by the restrictive measures concerned and the Russian Government is required, it is sufficient to note that, since the applicant is, even indirectly, more than 50%-owned by the Russian State, it must be regarded as an undertaking under the control of the Russian State. The fact that the applicant is not an emanation of the State, within the meaning of the case-law of the European Court of Human Rights (see, to that effect, judgment of 6 September 2013, *Bank Melli Iran* v *Council*, T−35/10 and T−7/11, EU:T:2013:397, paragraph 71 and the case-law cited), is irrelevant in that regard, since there is no requirement that the applicant should be an entity which participates in the exercise of governmental powers or which runs a public service under government control in order for it to be affected by the economic sanctions adopted by the Council on the basis of Article 215(1) TFEU.

141 Secondly, as regards the alleged lack of any connection between the measures adopted in the present case and the objectives pursued by the contested acts, it must be borne in mind that, according to settled case-law, the Council enjoys a broad discretion in its assessment of the matters to be taken into consideration for the purpose of adopting economic and financial sanctions on the basis of Article 29 TEU and Article 215 TFEU. Because the Courts of the European Union may not substitute their assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review which those Courts carry out must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate and that there has been no manifest error of assessment of the facts or misuse of power. That limited review applies, especially, to the assessment of the considerations of appropriateness on which such measures are based (see judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T−255/15, not published, EU:T:2017:25, paragraph 95 and the case-law cited).

142 In the present case, it is apparent from recitals 1 to 8 of the contested decision and recital 2 of the contested regulation that the stated objective of the contested acts is to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis. Such an 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 115).

143 However, as the Court has already noted and contrary to what is claimed by the applicant, there is in fact a rational connection between the targeting of undertakings in the Russian oil sector, on the basis notably of their estimated total assets of over RUB 1 trillion, in view of the importance of that sector for the Russian economy, and the objective of the restrictive measures in the present case, which is to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 147).

144 Thirdly, as regards the applicant's argument that the measures resulting from the provisions of the contested regulation concerning export restrictions targeted only non-conventional projects in the oil sector and not the oil sector generally, which continues to generate substantial revenues for the Russian economy, it must be noted that it is open to the Council to impose, if it 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 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 132).

145 The fact that the non-conventional projects targeted by some of those measures may not generate immediate revenues for the Russian State does not call that conclusion into question since, by undermining investment and future revenues of entities active in the oil sector targeted by those measures, the Council could reasonably expect that this would help to put pressure on the Russian Government and increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence.

146 In the light of all of those considerations, the second plea in law raised in Cases T−735/14 and T−799/14 must be rejected as unfounded.

The third plea in law in Case T−799/14, alleging infringement of the EU-Russia Partnership Agreement

147 By its third plea, which is put forward only in Case T−799/14, the applicant alleges infringement of Article 52(5) and (9), Article 98(1) and Article 36 of the EU-Russia Partnership Agreement. It maintains that those provisions have direct effect in so far as they contain obligations which are sufficiently clear and precise and are not subject, in their implementation or effects, to the adoption of any subsequent measures.

148 First, the applicant submits that the provisions on access to the capital market infringe Article 52(5) of the EU-Russia Partnership Agreement, which stipulates that 'the Parties shall not introduce any new restrictions on the movement of capital and current payments connected therewith between resident[s] of the [European Union] and Russia and shall not make the existing arrangements more restrictive'. Secondly, those provisions are contrary to Article 52(9) of the EU-Russia Partnership Agreement, which stipulates that the European Union and Russia 'shall accord to one another most-favoured-nation treatment in respect of freedom of current payments and capital movements and in respect of methods of payment'. Thirdly, the provision precluding the satisfaction of claims is contrary to Article 98(1) of that agreement, which requires the European Union 'to ensure that natural and legal persons of [Russia] have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the [European Union] to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property'. Fourthly, the export restrictions are contrary to Article 36 of the EU-Russia Partnership Agreement, which also stipulates most-favoured-nation treatment with regard to the conditions affecting the cross-border supply of services.

149 The Council, supported by the Commission and the United Kingdom, disputes those arguments.

150 As regards the EU-Russia Partnership Agreement, the Court has held that a provision in an agreement concluded by the European Union with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (judgment of 12 April 2005, *Simutenkov*, C−265/03, EU:C:2005:213, paragraph 21).

151 In the present case, even if the provisions invoked by the applicant are directly applicable and the restrictive measures in question are not compatible with some of those provisions, Article 99 of the EU-Russia Partnership Agreement permits their adoption in any event. Under Article 99(1)(d) of the agreement, nothing in that agreement is to prevent a party from taking any measures which it considers necessary for the protection of its essential security interests, notably in time of war or serious international tension constituting threat of war or in order to carry out obligations accepted for the purpose of maintaining peace and international security (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraphs 110 and 111).

152 In the present case, as is apparent from recital 2 of the contested regulation, the aim of the restrictive measures prescribed by the contested acts was to promote a peaceful settlement of the crisis in Ukraine. Such an 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 115).

153 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 was necessary for the protection of essential EU security interests and for the maintenance of peace and international security, within the meaning of Article 99 of the EU-Russia Partnership Agreement (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 116).

154 The third plea in law raised in Case T−799/14 must, therefore, be rejected.

The third plea in law in Case T−735/14 and the fourth plea in law in Case T−799/14, alleging breach of the principle of proportionality and of the applicant's fundamental rights

155 The applicant alleges infringement of the freedom to conduct a business and of the right to property, guaranteed by Articles 16 and 17 of the Charter, and breach of the principle of proportionality, as provided for in Article 52(1) of the Charter and as a general principle of EU law. In accordance with that principle, any measure laid down in an EU act must pursue a legitimate objective, be an appropriate means of achieving that objective, and be necessary and not impose a burden which outweighs the benefits of the measure. In the present case, in the applicant's submission, the disputed provisions impose sanctions which specifically target the applicant's non-conventional projects in a context in which there has been no allegation of wrongdoing on the applicant's part and in which it has not been given the opportunity to present its views, and the Court's review of the observance of fundamental rights and the principle of proportionality should therefore be particularly strict.

156 The Council, supported by the Commission and the United Kingdom, disputes those arguments.

157 According to the applicant, the measures resulting from the contested acts constitute a disproportionate restriction of its fundamental rights protected, in particular, by Articles 16 and 17 of the Charter, on the basis that they interfere with its freedom to pursue an economic activity, and that such interference is not necessary or appropriate in order to achieve the aims pursued by the Council.

158 First, it should be recalled that, under Article 16 of the Charter, 'the freedom to conduct a business in accordance with Union law and national laws and practices is recognised'.

159 Secondly, Article 17(1) of the Charter provides as follows:

‘Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.’

160 It is indeed true that restrictive measures such as those at issue in the present case undeniably limit the rights which the applicant enjoys under Articles 16 and 17 of the Charter (see, to that effect and by analogy, judgment of 22 September 2016, *NIOC and Others* v *Council*, C−595/15 P, not published, EU:C:2016:721, paragraph 50 and the case-law cited).

161 However, the fundamental rights relied on by the applicant are not absolute, and may, therefore, be subject to limitations, as provided in Article 52(1) of the Charter (see, to that effect, judgments of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C−348/12 P, EU:C:2013:776, paragraph 121, and of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 195 and the case-law cited).

162 It should be noted in that regard that, according to Article 52(1) of the Charter, ‘any limitation on the exercise of the rights and freedoms recognised by [the] Charter must be provided for by law and respect the essence of those rights and freedoms’, and, moreover, ‘subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others’.

163 Consequently, in order to comply with EU law, a limitation on the exercise of the fundamental rights concerned must satisfy three conditions. First, the limitation must be provided for by law. In other words, the measure in question must have a legal basis. Secondly, the limitation must refer to an objective of general interest, recognised as such by the European Union. Thirdly, the limitation may not be excessive. It must be necessary and proportional to the aim sought, and the ‘essential content’, that is the substance, of the right or freedom at issue must not be impaired (see judgment of 30 November 2016, *Rotenberg* v *Council*, T−720/14, EU:T:2016:689, paragraphs 170 to 173 and the case-law cited).

164 It is clear that those three conditions are met in the present case.

165 In the first place, the restrictive measures at issue are ‘provided for by law’, since they are set out in acts which are, in particular, of general application, have a clear legal basis in EU law and are sufficiently reasoned (see paragraphs 111 to 128 above).

166 In the second place, it is apparent from recitals 1 to 8 of the contested decision and recital 2 of the contested regulation that the stated objective of those acts is to increase the costs of the Russian Federation’s actions to undermine Ukraine’s territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis. Such an 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 115).

167 In the third place, with regard to the principle of proportionality, it must be noted that, as a general principle of EU law, this requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 30 November 2016, *Rotenberg* v *Council*, T−720/14, EU:T:2016:689, paragraph 178 and the case-law cited).

168 The case-law makes clear in that respect that, with regard to judicial review of compliance with the principle of proportionality, the EU 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. Therefore, the legality of a measure adopted in those areas may be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 146 and the case-law cited).

169 It must be held, in that regard, that there is a reasonable relationship between the content of the contested acts and their objective. 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 (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 147).

170 In addition, it is indeed the case 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. That is a fortiori the case with respect to the consequences of targeted restrictive measures on the entities subject to those measures (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 149 and the case-law cited).

171 However, 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 is part of the wider objective of maintaining peace and international security, in accordance with the objectives of the Union's external action set out in Article 21 TEU, is such as to justify the possibility that, for certain operators, which are in no way responsible for the situation which led to the adoption of the sanctions, the consequences may be negative, even significantly so (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraphs 149 and 150 and the case-law cited).

172 In those circumstances, and having regard, in particular, 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 the applicant's freedom to conduct a business and its right to property cannot be considered to be disproportionate (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 150).

173 While, as the applicant claims, some of its partners and contractors may have been forced to withdraw from doing business with it, resulting in a postponement of the applicant's non-conventional oil projects, and while those measures may have had a negative impact on the right to property of the applicant's shareholders and its parent company, that is precisely the aim of the measures introduced by the contested acts, and therefore any interference with the applicant's right to property and its right to carry on an economic activity cannot be described as disproportionate in that regard.

174 Accordingly, the third plea in law in Case T−735/14 and the fourth plea in law in Case T−799/14 must be rejected, and the action dismissed in its entirety.

Costs

175 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to bear its own costs, and to pay those incurred by the Council, in accordance with the form of order sought by the Council.

176 Furthermore, in accordance with Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Commission and the United Kingdom shall therefore each bear their own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Orders that Cases T−735/14 and T−799/14 be joined for the purposes of the judgment;

2. Dismisses the action;

3. Orders Gazprom Neft PAO to bear its own costs and to pay those incurred by the Council of the European Union;

4. Orders the European Commission and the United Kingdom of Great Britain and Northern Ireland each to bear their own costs.

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 13 September 2018.

E. Coulon

Registrar President

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* Language of the case: English.