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 — Obligation to state reasons — Manifest error of assessment — Rights of the defence and right to effective judicial protection — Partnership and Cooperation Agreement between the European Union and Russia — Right to property — Equal treatment — Proportionality — Misuse of powers — Legal certainty)

In Case T−715/14,

PAO Rosneft Oil Company, formerly NK Rosneft OAO, established in Moscow (Russia),

RN-Shelf-Arctic OOO, established in Moscow,

AO RN-Shelf-Far East, formerly RN-Shelf-Dalniy Vostok ZAO, established in Yuzhno-Sakhalinsk (Russia),

RN-Exploration OOO, established in Moscow,

Tagulskoe OOO, established in Krasnoyarsk (Russia),

represented initially by T. Beazley QC, subsequently by L. Van den Hende, J. Charles, lawyers, M. Schonberg and K. Krissinel, Solicitors,

applicants,

v

Council of the European Union, represented by S. Boelaert and B. Driessen, acting as Agents,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by C. Brodie, and subsequently by V. Kaye, and subsequently by S. Brandon, and subsequently by C. Crane, and finally by R. Fadoju, acting as Agents, and by 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 Article 1(2)(b) to (d) and Article 1(3) 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), by Council Decision 2014/872/CFSP of 4 December 2014 (OJ 2014 L 349, p. 58), by Council Decision (CFSP) 2015/971 of 22 June 2015 (OJ 2015 L 157, p. 50), by Council Decision (CFSP) 2015/2431 of 21 December 2015 (OJ 2015 L 334, p. 22), by Council Decision (CFSP) 2016/1071 of 1 July 2016 (OJ 2016 L 178, p. 21), and by

Council Decision (CFSP) 2016/2315 of 19 December 2016 (OJ 2016 L 345, p. 65), and also of Articles 3, 3a, Article 4(3) and (4), Annex II, Article 5(2)(b) to (d) and Article 5(3), Annex VI and Article 11 of 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 by 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 13 December 2017,

gives the following

Judgment

Background to the dispute

1 The applicants, PAO Rosneft Oil Company, RN-Shelf-Arctic OOO, AO RN-Shelf-Far East, RN-Exploration OOO and Tagulskoe OOO, are commercial companies governed by Russian law that belong to the Rosneft group of companies ('Rosneft'), which is established in Moscow, Russia, and specialises in the oil and gas sectors.

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, in view of the gravity of the situation in Ukraine, 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 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), in order to extend the prohibition decided on 31 July 2014 in relation to certain financial instruments and to impose additional restrictions on access to the capital market for certain Russian entities operating in the oil sector. It was also decided that the supply or transfer to certain entities and bodies in Russia of dual-use goods should be prohibited, as well as the provision of services relating to deep-water oil exploration and production, Arctic oil exploration and production and shale oil projects. Lastly, 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), by Council Decision (CFSP) 2015/971 of 22 June 2015 (OJ 2015 L 157, p. 50), by Council Decision (CFSP) 2015/2431 of 21 December 2015 (OJ 2015 L 334, p. 22), by Council Decision (CFSP) 2016/1071 of 1 July 2016 (OJ 2016 L 178, p. 21), and by Council Decision (CFSP) 2016/2315 of 19 December 2016 (OJ 2016 L 345, p. 65; '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').

15 The relevant provisions of Article 1 of the contested decision state:

'...

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.'

16 The Annex to Decision 2014/659 adds an Annex III to Decision 2014/512 which contains a list of the persons, entities and bodies referred to in Article 1(2)(b), and includes the name Rosneft.

17 The relevant provisions of Article 5 of the contested regulation state:

'...

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.'

18 Regulation No 960/2014 also adds an Annex VI to Regulation No 833/2014 which contains a list of the persons, entities and bodies referred to in Article 5(2)(b), and which includes the name Rosneft.

19 Article 8 of the contested regulation provides that:

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

2. Member States shall notify the rules referred to in paragraph 1 to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.'

20 Article 11 of the contested regulation provides that:

'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;

(b) any other Russian person, entity or body;

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

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

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

21 Article 3 of the contested regulation provides:

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

2. For all sales, supplies, transfers or exports for which an authorisation is required under this Article, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be in accordance with the detailed rules laid down in Article 11 of 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.'

22 Annex II to the contested regulation contains a list of items referred to in Article 3 thereof, 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.

23 Article 3a of the contested regulation provides that:

'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.'

24 Article 4(3) and (4) of the contested regulation provides that:

'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*.'

Procedure and forms of order sought

25 By application lodged at the Court Registry on 9 October 2014, the applicants brought the present action.

26 By separate document, lodged at the Court Registry on the same day, the applicants applied for the present action to be decided under an expedited procedure pursuant to Article 76a(1) of the Rules of Procedure of the General Court of 2 May 1991. The Council lodged its observations on that application. By decision of 13 November 2014, the General Court (Ninth Chamber) refused the application for an expedited procedure.

Stay of proceedings

27 By order of 26 March 2015, the President of the Ninth Chamber of the General Court, at the request of the applicants and having obtained the observations of the other parties, ordered that the proceedings be stayed until the Court of Justice had given its final ruling in Case C−72/15, *Rosneft*.

28 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.

29 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 put forward in the present action. They did so within the period prescribed.

Interventions

30 By document lodged at the Court Registry on 9 January 2015, the Commission sought leave to intervene in support of the form of order sought by the Council.

31 The applicants submitted their observations on that request on 16 February 2015.

32 By order of 12 March 2015, the President of the Ninth Chamber of the General Court granted the Commission's request.

33 On 17 May 2017, the Commission lodged its statement in intervention.

34 The applicants and the Council lodged their observations on that statement within the periods prescribed.

35 By document lodged at the Court Registry on 8 September 2015, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in the present proceedings in support of the form of order sought by the Council.

36 Following the resumption of the proceedings, the President of the Sixth Chamber of the General Court granted leave to intervene by decision of 18 May 2017, in accordance with Article 116(6) of the Rules of Procedure of 2 May 1991.

Modification of the application

37 By document lodged at the Court Registry on 12 February 2015, the applicants modified their application so as also to include (i) Decision 2014/872, and (ii) Regulation No 1290/2014, in so far as those acts supplement or amend certain provisions of Decision 2014/512 or of Regulation No 833/2014.

38 By document lodged at the Court Registry on 7 August 2015, the applicants modified their application so as also to include Decision 2015/971 in so far as it extends the applicability of Decision 2014/512 until 31 January 2016.

39 By document lodged at the Court Registry on 26 February 2016, the applicants modified their application so as also to include Decision 2015/2431 in so far as it extends the applicability of Decision 2014/512 until 31 July 2016.

40 By document lodged at the Court Registry on 7 September 2016, the applicants modified their application so as also to include Decision 2016/1071 in so far as it extends the applicability of Decision 2014/512 until 31 January 2017.

41 By document lodged at the Court Registry on 17 January 2017, the applicants modified their application so as also to include Decision 2016/2315 in so far as it extends the applicability of Decision 2014/512 until 31 July 2017.

42 By document lodged at the Court Registry on 11 May 2017, the Council submitted its observations on those requests to modify the application and raised no objection thereto.

Change in the composition of the Chambers of the Court and measure of organisation of procedure

43 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 case was consequently allocated in accordance with Article 27(5) of the Rules of Procedure.

44 By measure of organisation of procedure of 12 October 2017, the Court invited the parties, inter alia, to clarify their arguments with regard to the admissibility of the present action. The parties submitted their observations within the period prescribed.

Forms of order sought

45 The applicants claim, in essence, that the Court should:

– annul Article 3, Article 3a, Article 4(3) and (4), Article 5(2)(b) to (d), Article 5(3) and Article 11 of, and Annexes II and VI to, the contested regulation (‘the relevant provisions of the contested regulation’);

– annul Article 1(2)(b) to (d) and Article 1(3) of, and Annex III to, the contested decision (‘the relevant provisions of the contested decision’);

– in the alternative, annul the contested regulation and the contested decision (‘the contested acts’), in so far as these apply to the applicants;

– order the Council to pay the costs.

46 The Council contends that the Court should:

– dismiss the action as falling partly outside the Court's jurisdiction so far as concerns the measures adopted under the European Union's common foreign and security policy (CFSP), and as inadmissible in its entirety;

– in the alternative, dismiss the action as unfounded;

– order the applicants to pay the costs.

47 In its written reply to the question put by the General Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the Council stated that it no longer disputed the jurisdiction of the General Court to review the legality of the relevant provisions of the contested decision, on the basis of the second paragraph of Article 275 TFEU, which was confirmed at the hearing.

48 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

Jurisdiction of the General Court

49 As regards the jurisdiction of the Court to review the relevant provisions of the contested decision, the Council indicated, 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 that judgment was binding with regard to the question of the Court's jurisdiction in the present proceedings.

50 At the hearing, the Council clarified the fact that it was no longer disputing the jurisdiction of the Court to review the legality of the relevant provisions of the contested decision, on the basis of the second paragraph of Article 275 TFEU, formal note of which was taken.

Admissibility

51 The Council submits that the application for annulment does not meet the admissibility criteria set out in the fourth paragraph of Article 263 TFEU.

52 In that regard, the Council contends that, although the contested regulation is a 'regulatory act' within the meaning of that provision, the restrictions contained in Articles 3, 3a and 4(3) and (4) thereof, and Annex II thereto, which relate to technologies for projects relating to deep-water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia ('the provisions of the contested regulation concerning export restrictions'), require implementing measures to be adopted by the Member States.

53 In any event, according to the Council, the applicants have not shown that they are directly concerned by any of those provisions, in accordance with the case-law.

54 According to the Council, first, Article 3 of the contested regulation concerns restrictions on the direct or indirect sale, supply, transfer or export of certain technologies intended for oil exploration in Russia and makes such transactions subject to prior authorisation by the competent authorities of the Member States of the European Union. Those authorities are not to grant such authorisation if they have reasonable grounds

to determine that the technologies are intended for specific oil industry projects in Russia, unless the exports relate to contracts or agreements concluded before 1 August 2014. In addition, the competent authorities may annul, suspend, modify or revoke an export authorisation which they have granted. The Council concludes from this that Article 3 of the contested regulation allows the national authorities a margin of discretion and that the applicants cannot, therefore, be directly concerned by that provision.

55 In addition, according to the Council, the applicants' legal situation is not directly affected by the provisions of the contested regulation concerning export restrictions, as required by case-law, since they do not carry on the precise activity prohibited by those measures. In the present case, the activities which are prohibited or restricted are not deep-water oil exploration and production, Arctic oil exploration and production or shale oil projects in Russia, but the supply for specific oil industry projects in Russia of technologies listed in an annex to the contested regulation from the European Union by natural or legal persons falling under EU jurisdiction. Therefore, while it may be true that the applicants are unable to source the listed technologies from EU suppliers, that does not mean that they are directly concerned within the meaning of the fourth paragraph of Article 263 TFEU.

56 The Council contends that, similarly, the applicants are not directly concerned by the measures set out in Article 3a of the contested regulation, introduced by Regulation No 960/2014, which prohibit the supply of services associated with the activities listed in paragraph 1 thereof in the same terms as those referred to in Article 3 of the contested regulation. The same is true, according to the Council, of the measures laid down by Article 4(3) and (4) of the contested regulation, which stipulate restrictions in the form of a prior authorisation requirement for technical assistance or brokering services and financing or financial assistance relating to technologies for the oil sector in Russia.

57 Secondly, as regards the restrictions contained in Article 5(2)(b) to (d), Article 5(3) and Article 11 of the contested regulation and Annex VI thereto ('the provisions of the contested regulation on access to the capital market'), the Council maintains that, even though the applicants' names were included on the list set out in Annex VI to that regulation, that does not mean that they are directly concerned by those provisions within the meaning of the fourth paragraph of Article 263 TFEU.

58 Indeed, the provisions of the contested regulation on access to the capital market in no way prohibit the entities included on the list from issuing financial instruments. Instead they prohibit natural and legal persons falling under EU jurisdiction from directly or indirectly purchasing, selling, providing investment services for or lending assistance in the issuing of, or otherwise dealing with the financial instruments concerned. Nor, moreover, can possible economic consequences, whether upstream or downstream, of the prohibited activity be regarded as resulting directly from the provisions of the contested regulation on access to the capital market. Since the applicants are entities that issue the financial instruments in question and since they have not demonstrated that they are active in any of the prohibited services relating to the issuing of securities, they are not directly concerned by those measures.

59 Likewise, as regards the measure contained in Article 11 of the contested regulation, which is a prohibition on satisfying civil claims relating to contracts, transactions or activities affected by the adopted measures, the Council argues that this is a standard clause that has been included in all instruments imposing restrictive measures since 2012 so as to ensure that entities cannot circumvent those measures by demanding execution of the prohibited transaction or performance of the prohibited contract or service or obtain a remedy under civil law for non-performance or non-execution. As long as the restrictive measures apply, such claims are affected either by *force majeure* or a similar doctrine such as supervening illegality or 'act of God'. Thus, Article 11 of the contested regulation does not add to or alter the rights which the applicants have or do not have under the contested regulation. In addition, Article 11 cannot be applied without first being implemented by national authorities. Therefore, according to the Council, the applicants' legal situation is not directly affected by Article 11 of the contested regulation.

60 For all those reasons, the Council maintains that the applicants have no standing under the fourth paragraph of Article 263 TFEU. It contends that the action should, therefore, be declared inadmissible in its entirety.

61 The Commission endorses the Council's arguments and further submits that, while Rosneft Oil Company might have standing, the other applicants have not demonstrated that they are directly and individually concerned by the relevant provisions of the contested regulation and the relevant provisions of the contested decision ('the relevant provisions of the contested acts'), which, for the most part, require implementing measures.

62 The applicants dispute those arguments.

63 It is necessary to draw a distinction in that respect between the question of the applicants' standing, on the one hand, to bring proceedings against the relevant provisions of the contested decision and against the provisions of the contested regulation on access to the capital market (together 'the provisions on access to the capital market') and, on the other, against the provisions of the contested regulation concerning export restrictions.

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

64 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).

65 First, as regards the condition relating to direct concern to the applicants, 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).

66 In the present case, it should be borne in mind 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 1 trillion Russian Roubles (RUB) 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 15 to 20 above). Article 1(2)(c) of the contested decision and Article 5(2)(c) of the contested regulation also prohibit those operators from carrying out those transactions with any legal person, entity or body established outside the European Union whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in Article 1(2)(a) or (b) of the contested decision or Article 5(2)(a) or (b) of the contested regulation.

67 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 applicants. The restrictive measures which are derived from them apply directly to them, as an immediate consequence of the fact that more than 50% of their proprietary rights are directly or indirectly owned by Rosneft, which 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 applicants 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 access to the EU capital market which apply to the applicants.

68 Similarly, the Court must reject the Council's argument that the applicants' 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 applicants, whose economic activity is limited as a result of the application to them of those measures. 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.

69 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 applicants are 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 applicants to carry out certain prohibited financial transactions with bodies established in the European Union, although they would have been entitled to carry out such transactions in the absence of those provisions.

70 Likewise, it should be borne in mind that Article 11(1)(a) of the contested regulation provides 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 regulation are to be satisfied where such a claim is made, inter alia, by an entity referred to in Article 5(2)(c) of the contested regulation. It must be held, therefore, that Article 11(1)(a) of the contested regulation is of direct concern to the applicants, since they are among the entities whose capacity to be a party to judicial proceedings has been limited.

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

72 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.

73 It should be borne in mind in that regard that 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, in accordance with the fourth paragraph of Article 263 TFEU, to which the second paragraph of Article 275 TFEU refers (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).

74 In the present case, since the applicants are more than 50% owned by Rosneft, whose name is listed in Annex III to the contested decision and in Annex VI to the contested regulation, they are among the entities to which the restrictive measures laid down by the provisions on access to the capital market apply.

75 Furthermore, it should be noted that, where a measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure inasmuch as they form part of a limited class of economic operators (see, to that effect, judgment of 13 March 2008, *Commission* v *Infront WM*, C−125/06 P, EU:C:2008:159, paragraph 71 and the case-law cited).

76 In the present case, the applicants form part of a limited class of operators whose rights were affected by the adoption of the provisions on access to the capital market, since those provisions apply to them by virtue of the fact that they are legal persons established outside the European Union, more than 50% of whose proprietary rights are owned directly or indirectly by Rosneft, which is listed in Annex III to the contested decision and in Annex VI to the contested regulation.

77 Consequently, it must be concluded that the applicants are 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 applicants.

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

78 As regards the applicants' standing to bring proceedings against the provisions of the contested regulation concerning export restrictions, it must be held, first, that, even though those provisions are provisions of general application, they affect the applicants directly.

79 It should be borne in mind 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 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'.

80 It must be held, therefore, that the provisions of the contested regulation concerning export restrictions are of direct concern to the applicants, or at least Rosneft Oil Company, given that they have established, by means of documents produced to the Court, that they were active 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 69 above).

81 As a result of the adoption of the provisions of the contested regulation concerning export restrictions, the applicants are 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 applicants 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).

82 Next, as regards the Council's argument that the national authorities have a margin of discretion, and that the applicants are 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 those authorities must implement the prohibitions laid down, they do not in fact have any margin of discretion in that regard.

83 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) of the contested regulation. They cannot, however, issue any authorisation if they have reasonable grounds to determine that that is the case.

84 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 items referred to 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.

85 Article 3a of the contested regulation affords the national authorities even less of a 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.

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

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

88 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).

89 In the present case, as the Council and the Commission acknowledged at the hearing, it is not clear that the applicants can themselves ask the national authorities to issue an authorisation to them and that they 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.

90 In addition, as the applicants submitted in their 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).

91 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. Consequently, the applicants merely had to establish that they were directly affected by those provisions, which they have done in the present case. Accordingly, their action must be declared admissible, including in so far as it relates to the provisions of the contested regulation concerning export restrictions.

92 In any event, if, as the Commission contends, only one of the applicants had standing to bring proceedings in the present case against the provisions of the contested regulation concerning export restrictions, that would not mean that the action could be declared inadmissible for that reason. Where one and the same action is involved, as soon as one of the applicants has *locus standi*, there is no need to consider whether or not other applicants are entitled to bring proceedings (see, to that effect, judgment of 9 June 2016, *Magic Mountain Kletterhallen and Others* v *Commission*, T−162/13, not published, EU:T:2016:341, paragraph 41 and the case-law cited).

93 In conclusion, the action must be declared admissible in its entirety.

Substance

94 The applicants put forward nine pleas in law in support of their action, alleging (i) a failure to state reasons and infringement of the rights of the defence and of the right to effective judicial protection; (ii) the lack of any legitimate aim behind the adoption of the measures at issue; (iii) infringement of the European Union's international obligations under 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 the General Agreement on Tariffs and Trade (GATT); (iv) the lack of any rational connection between the objective pursued and the means of giving effect to it; (v) that the provisions of the contested regulation on authorisation are not an appropriate means of giving effect to the contested decision; (vi) breach of the principle of equal treatment and non-arbitrariness; (vii) that the measures are disproportionate as they unduly encroach upon EU legislative competences, and infringement of the applicants' fundamental rights; (viii) misuse of powers; and (ix) breach of constitutional guarantees of legal certainty.

95 As a preliminary point, it should be noted that, in its reply to the question put by the General Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the Council made the general argument that the pleas for annulment in the present action were identical to those put forward in the case which gave rise to the judgment in *Rosneft* referred to above. It consequently contends that, since

the Court of Justice ruled on those pleas in its judgment, they are covered by the authority of *res judicata* and must therefore necessarily be rejected.

96 In that regard, the Court of Justice has already drawn attention to the importance, both for the EU legal order and national legal systems, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question. According to settled case-law, a judgment's status as *res judicata* is such as to bar the admissibility of an action if the proceedings disposed of by the judgment in question were between the same parties, had the same subject matter and the same cause of action (see judgment of 25 June 2010, *Imperial Chemical Industries* v *Commission*, T−66/01, EU:T:2010:255, paragraphs 196 and 197 and the case-law cited).

97 As regards the conditions relating to the subject matter and the cause of action in a case, it must be noted that the subject matter of an action corresponds to the claims of the person concerned, whereas the cause of action corresponds to the legal and factual basis of the claims relied on (see, to that effect, judgment of 25 October 2013, *Commission* v *Moschonaki*, T−476/11 P, EU:T:2013:557, paragraph 84).

98 While it is true that the pleas in law and arguments relied on by the applicants in the present case largely overlap with those at issue in the case giving rise to the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), it must nevertheless be noted that the procedural context — by nature adversarial — and the legal basis of the action for annulment, namely Article 263 TFEU, differ from those of a reference for a preliminary ruling introduced by Article 267 TFEU. Furthermore, unlike in the case of a reference for a preliminary ruling, where the Court depends on the facts as presented by the referring national court, the General Court has jurisdiction to find and to assess the facts in the context of disputes brought before it pursuant to Article 263 TFEU (see, to that effect, judgment of 1 February 2017, *Portovesme* v *Commission*, C−606/14 P, not published, EU:C:2017:75, paragraph 62 and the case-law cited).

99 Therefore, in the light of the significant differences between an action for annulment under Article 263 TFEU and the mechanism of the reference for a preliminary ruling under Article 267 TFEU, the conditions relating to the cause of action and subject matter of the dispute cannot be regarded as being fulfilled in the present case, for the purpose of a finding that the authority of *res judicata* attaches to the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236).

100 However, while not bound, in the strict sense, in terms of the authority of *res judicata*, as the Council contends, this Court cannot entirely disregard the reasoning set out by the Court of Justice in a case involving the same parties and raising largely the same legal issues. The appellate principle itself and the hierarchical judicial structure which is its corollary generally advise against the General Court revisiting points of law which have been decided by the Court of Justice. That is a fortiori the case when, as here, the Court of Justice was sitting in Grand Chamber formation and clearly intended to deliver a judgment establishing certain principles (see, by analogy, judgment of 30 September 2010, *Kadi* v *Commission*, T−85/09, EU:T:2010:418, paragraph 121).

101 It is in the light of those considerations that this Court will examine the various pleas in law put forward by the applicants.

The first plea in law, alleging a failure to state reasons and infringement of the rights of the defence and of the right to effective judicial protection

102 According to the applicants, the Council was under a duty properly to state the grounds for the relevant provisions of the contested acts and must present the evidence it has to the General Court. The statements of reasons given in the contested acts are not sufficient to enable the legality of the measures at issue to be assessed. Thus, the contested acts give no indication as to how the targeting of the oil sectors concerned would further the aim pursued by those acts, and they remain silent on the selection criteria used in targeting the oil sector and the goods and services affected rather than other sectors, goods and services.

103 According to the applicants, in the absence of a sufficient statement of reasons for the contested acts, there is no basis for concluding that the Council did not, in adopting the disputed provisions in the contested acts, exceed its competences under Article 215 TFEU. Moreover, the Council had not established that it checked the relevance and validity of whatever evidence it relied on in order to adopt those acts.

104 Even though the Council had belatedly, shortly before the present action was brought, disclosed around 80 documents to the applicants, those documents shed no light on the Council's reasoning regarding the application of the criteria which led it to target certain sectors or certain goods in particular, and contained no form of regulatory impact assessment or cost-benefit analysis of the measures at issue. Moreover, the applicants argue that the right of access to the file is distinct from the public's right of access under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), so that the Council was wrong to have refused the applicants access to certain documents on the ground that they were supposedly linked to the Russian Government. They maintain that that refusal is contrary to Article 41(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), which provides for the right of every person to have access to his or her file.

105 That lack of reasoning also, according to the applicants, amounts to an infringement of the rights of the defence and of their right to effective judicial protection, in particular their right to be heard. Those principles require the EU authority in question to disclose the grounds for a restrictive measure to the entity concerned, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible thereafter, in order to enable the entity concerned to exercise its right to bring an action within the prescribed periods. The applicants therefore consider that the circumstances under which they brought their action are not consistent with the principle of equality of arms and the principle *audi alteram partem*, as guaranteed by Article 47 of the Charter, which are the corollary of the concept of a fair hearing. The proceedings are undeniably lopsided, in that the applicants had to challenge the sanctions very swiftly, under difficult, time-sensitive conditions, while the sanctions will continue to apply throughout the duration of the proceedings before the General Court.

106 The applicants also observe that, while the contested regulation states that the application of restrictive measures is intended to increase the costs of the Russian Federation's actions to undermine the territorial integrity of Ukraine, the Council relies in its defence on a different set of reasons in relation to the provisions of the contested regulation concerning export restrictions, arguing that those measures are aimed at 'affecting Russia's interests and capabilities in the sector of oil exploration and production which generate substantial revenues for Russia, and thereby reducing its power to threaten countries which depend on it for their energy supplies'. The applicants are therefore unable to ascertain the real reasons why the Council adopted the measures at issue.

107 Lastly, in their reply to the question put by the General Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the applicants make the general argument that the General Court is not bound by the considerations voiced by the Court of Justice in that judgment, which diverged from its own case-law on restrictive measures. As regards, in particular, the principle of observance of their rights of defence and the Council's obligation to disclose to them information concerning them, the applicants state that the Court of Justice did not rule on those arguments.

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

109 The Court considers it appropriate to examine separately the complaint alleging infringement of the obligation to state reasons and the complaint alleging infringement of the rights of the defence and of the right to effective judicial protection.

– *The complaint alleging infringement of the obligation to state reasons*

110 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'.

111 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).

112 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).

113 In the light of the foregoing considerations, 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 applicants, to restrictive measures of individual application.

114 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).

115 By contrast, as regards the provisions on access to the capital market, it should be recalled that those provisions constitute, vis-à-vis the applicants, inasmuch as they concern them, restrictive measures of individual application (see paragraph 74 above).

116 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).

117 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 relevant provisions of the contested acts in the present case.

118 First, as regards, in particular, the provisions of the contested regulation concerning export restrictions, it must be borne in mind that all those provisions form part of the context, known to the applicants, of the international tension which preceded the adoption of the contested acts, referred to in paragraphs 2 to 14 above. Recitals 1 to 8 of the contested decision set out the relevant factors of the political context within which the restrictive measures at issue were adopted. Further, it is apparent from recital 2 of 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. 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).

119 Secondly, with regard to the provisions on access to the capital market, it must be recalled that they impose restrictive measures on the applicants, in so far as these are more than 50% owned by Rosneft whose name is 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) of the contested decision and in Article 5(2) of the contested regulation.

120 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.

121 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 Rosneft, 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.

122 The applicants do not deny being '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)', within the meaning of Article 5(2)(c) of the contested regulation, or that Rosneft is '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', within the meaning of Article 5(2)(b) of that regulation. Accordingly, no additional statement of reasons can be required for the purposes of applying to the applicants the restrictive measures imposed by the provisions on access to the capital market.

123 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).

124 The applicants nevertheless claim that the Council should have set out the specific reasons why the oil sector was targeted and how targeting that sector would promote the objective pursued by the measures at issue. They also submit that the Council should have explained which criteria it applied in order to prohibit certain specific services.

125 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 112 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.

126 In addition, it must be noted that the applicants, which are all part of the Rosneft group, 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 by the Russian State, could not reasonably have been unaware of the reasons why the Council had adopted measures targeting them. 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 measures (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 124).

127 Accordingly, it must be concluded that the reasons for the contested acts given by the Council are sufficient, and the first complaint of the first plea in law must be rejected.

– *The complaint alleging infringement of the rights of the defence and of the right to effective judicial protection*

128 It must be borne in mind that respect for the rights of the defence and the right to effective judicial protection are fundamental rights, forming an integral part of the EU legal order, in the light of which the Courts of the European Union must ensure the review — which in principle should be a full review — of the lawfulness of all EU acts (see, to that effect, judgment of 24 May 2016, *Good Luck Shipping* v *Council*, T−423/13 and T−64/14, EU:T:2016:308, paragraphs 47 and 48 and the case-law cited).

129 Respect for the rights of the defence, which is expressly affirmed in Article 41(2)(a) of the Charter, includes during a procedure preceding the adoption of restrictive measures the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (see, to that effect, judgments of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C−280/12 P, EU:C:2013:775, paragraph 60, and of 15 June 2017, *Kiselev* v *Council*, T−262/15, EU:T:2017:392, paragraph 139 and the case-law cited).

130 The right to effective judicial protection, which is affirmed in Article 47 of the Charter, requires that the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question (see judgment of 24 May 2016, *Good Luck Shipping* v *Council*, T−423/13 and T−64/14, EU:T:2016:308, paragraph 50 and the case-law cited).

131 When that disclosure takes place, the competent EU authority must ensure that that individual is placed in a position in which he may effectively make known his views on the grounds advanced against him (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraph 112).

132 The applicants' arguments must be examined in the light of those principles.

133 In the first place, as regards the provisions of the contested regulation concerning export restrictions, in so far as the applicants submit that the Council should have given them access to all the relevant documents in its possession relating to its decision to adopt sanctions against the Russian Federation in general and its oil sector in particular, it is sufficient to note that the right to be heard in an administrative procedure taken against a specific person, which must be observed, even in the absence of any rules governing the procedure in question, cannot be transposed to the procedure provided for in Article 29 TEU and in Article 215 TFEU leading, in the case of the provisions of the contested regulation concerning export restrictions, to the adoption of measures of general application (see, to that effect, judgment of 17 February

2017, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T−14/14 and T−87/14, EU:T:2017:102, under appeal, paragraph 97 and the case-law cited).

134 In addition, it must be borne in mind that, in any event, overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations may preclude the disclosure of some information or some evidence to the person concerned (judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C−280/12 P, EU:C:2013:775, paragraph 70).

135 Moreover, in so far as the applicants seem to wish to contest certain Council decisions adopted under Regulation No 1049/2001, it should be pointed out that it was open to them to bring an action for annulment against them, on the basis of the fourth paragraph of Article 263 TFEU, if those decisions are addressed to them, within the prescribed time limit (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 128).

136 In the second place, in the case of the provisions on access to the capital market, as regards the applicants' right of access to the relevant documents held by the Council as a result of the adoption of restrictive measures against them and, in particular, the right to disclosure of the incriminating evidence and the right to be heard before the adoption of the contested acts, it is necessary to distinguish the acts by which Rosneft's name was entered on the lists of entities covered by the restrictive measures for the first time and, in consequence thereof, by which the restrictive measures were applied to the applicants ('the initial acts'), and the subsequent acts confirming that listing and maintaining Rosneft's name on the list.

137 First, as regards the initial acts, it should be borne in mind that it has been acknowledged in the case-law that, in the case of an initial decision to freeze funds, the Council was not obliged to inform the person or entity concerned beforehand of the grounds on which that institution intended to rely in order to include that person's or entity's name in the relevant list. So that its effectiveness may not be jeopardised, such a measure must, by its very nature, be able to benefit from a surprise effect and to be applied immediately. In such a case, it is, as a rule, enough if the institution notifies the person or entity concerned of the grounds and affords it the right to be heard at the same time as, or immediately after, the decision is adopted (judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C−27/09 P, EU:C:2011:853, paragraph 61).

138 In that regard, it must be borne in mind that the fundamental right to respect for the rights of the defence during a procedure preceding the adoption of a restrictive measure stems directly from Article 41(2)(a) of the Charter (see paragraph 129 above).

139 Consequently, since the restrictions imposed under the provisions on access to the capital market constitute restrictive measures that are of individual application to the applicants (see paragraph 74 above) and in the absence of the proven need to give a surprise effect to those measures in order to ensure their effectiveness, the Council ought to have communicated the grounds concerning the application of those measures with regard to the applicants prior to the adoption of the contested acts.

140 It should, however, be noted that, in the present case, the reasons given by the Council for imposing restrictive measures on the applicants, which are set out in the provisions on access to the capital market, consist in the fact that the applicants are more than 50% owned by Rosneft, which is one of the entities referred to in the annexes to the contested acts, established in Russia and publicly controlled or with over 50% public ownership and having estimated total assets of over RUB 1 trillion 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.

141 The applicants have not explained to what extent the lack of a prior hearing or of prior communication by the Council of certain evidence in the file concerning those grounds may have affected their rights of defence or their right to effective judicial protection so as to result in the annulment of the initial acts.

142 It should be borne in mind that before an infringement of the rights of the defence can result in the annulment of an act, it must be demonstrated that, had it not been for that irregularity, the outcome of the procedure might have been different (see, to that effect, judgments of 18 September 2014, *Georgias and Others* v *Council and Commission*, T−168/12, EU:T:2014:781, paragraph 106, and of 15 June 2017, *Kiselev* v *Council*, T−262/15, EU:T:2017:392, paragraph 153).

143 In the present case, the applicants have not explained which arguments and information they could have relied on if they had received the documents in question earlier, nor have they demonstrated that those arguments and that information could have led to a different outcome in their case. The applicants cannot properly claim that they were unaware, at the time the initial acts were adopted, that they met the criteria laid down in Article 1(2)(c) of the contested decision or Article 5(2)(c) of the contested regulation. Nor, moreover, have they argued, in the context of this action, that they did not meet those criteria in the present case.

144 Secondly, as regards the acts maintaining Rosneft's name on the lists of entities subject to such measures (see paragraphs 37 to 41 above) and, in consequence, maintaining the restrictive measures with regard to the applicants, it has been made clear in the case-law that, in the context of the adoption of a decision to maintain the name of a person or an entity on a list of persons or entities subject to restrictive measures, the Council had to respect the right of that person or entity to have communicated to itself the incriminating evidence against it and the right to be heard before the adoption of that decision where that institution was including new evidence against that person or entity, namely evidence which was not included in the initial listing decision (see, to that effect, judgments of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C−27/09 P, EU:C:2011:853, paragraph 63, and of 18 June 2015, *Ipatau* v *Council*, C−535/14 P, EU:C:2015:407, paragraph 26 and the case-law cited).

145 In the present case, the criteria used in order to impose the restrictive measures at issue on the applicants have appeared from the outset in the provisions on access to the capital market. It is because of their status as subsidiaries of Rosneft, which is itself an entity established in Russia that is publicly controlled or with over 50% public ownership, that has estimated total assets of over RUB 1 trillion 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, and whose name is listed in the annexes to the contested acts, that the applicants were made subject to the restrictive measures at issue. Those grounds have remained unchanged since Decision 2014/512 and Regulation No 833/2014 were adopted, and the applicants cannot, therefore, claim that the Council infringed the obligation to communicate to them any new evidence that may have been used to maintain Rosneft's name on the lists annexed to the contested acts and, in consequence, to maintain the restrictive measures at issue in their case.

146 In addition, it must be borne in mind that when sufficiently precise information has been communicated, enabling the person concerned to make known its point of view effectively on the evidence adduced against it by the Council, the principle of respect for the rights of the defence does not mean that that institution is obliged spontaneously to grant access to the documents in its file. It is only at the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T−390/08, EU:T:2009:401, paragraph 97 and the case-law cited).

147 In the present case, it is clear that the Council complied with that obligation and replied to the applicants' various requests for information of 20 August, 15 October and 12 November 2014. In that context, the Council granted access to numerous documents relating to its decision to impose restrictive measures in view of the Russian Federation's actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

148 Consequently, it must be found that that information was communicated within a reasonable time and was sufficient to enable the applicants to exercise their rights effectively and for their rights of defence to be respected.

149 The applicants' second complaint must, therefore, be rejected, as must the first plea in law in its entirety.

The second and fourth pleas in law, alleging the lack of any legitimate or legal aim underpinning the measures at issue and the lack of any rational connection between the objective pursued and the means of giving effect to it

150 The applicants maintain, in connection with their second plea, that the General Court's review of the legality of an act adopted under Article 215 TFEU must, in principle, extend to whether the act in question is intended to implement a legitimate CFSP aim. However, the Council had produced no material that proved that the measures at issue have a legitimate or legal aim. In addition, the Council's actions had been taken autonomously, without the support of the United Nations Security Council. Lastly, assuming that the aim pursued is that of putting pressure on the Russian Federation, that is also not a legitimate aim that could be pursued by the Council by means of CFSP measures.

151 The applicants also submit, in the context of their fourth plea, that the Council lacked competence to adopt the provisions of the contested regulation concerning export restrictions or that those provisions are unlawful, because there is no rational connection between the objective pursued by those measures and the means chosen to further it.

152 As regards Article 215(1) TFEU, the Court of Justice requires sanctions to be sufficiently targeted and to have a sufficient connection with the third-country regime and the aims pursued by the sanctions. Consequently, such measures may be adopted only against the leaders of such countries and persons associated with them. Similarly, in the context of Article 215(2) TFEU, it is necessary to demonstrate a sufficient connection between the persons targeted by restrictive measures and the aim pursued by those measures.

153 In the present case, however, the applicants argue that there is no such connection, since numerous Russian businesses having no connection with the Russian Government have been targeted by the provisions of the contested regulation concerning export restrictions. In addition, the goods and technologies to which those measures apply have no military application and no connection with Crimea or eastern Ukraine, and it is impossible to understand why that sector and those goods and technologies in particular have been targeted rather than others.

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

155 It must be noted 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).

156 In the present case, it should be noted 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).

157 However, as the Court has already noted and contrary to what is claimed by the applicants, 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).

158 In that regard, first, the applicants cannot properly claim that the Council declared it was promoting a different objective when it adopted the contested acts, notably that of 'affecting Russia's interests and capabilities in the sector of oil exploration and production which generate substantial revenues for Russia, and thereby reducing its power to threaten countries which depend on it for their energy supplies'. No such objective is included in the recitals of the contested acts. In any event, even if such an objective is in fact established, it can readily be related to the principal objective of putting pressure on the Russian Federation by increasing the costs of its actions to undermine or threaten Ukraine's territorial integrity, sovereignty and independence (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 105).

159 Secondly, the applicants are wrong to argue that the restrictive measures at issue could not be adopted because they had not been endorsed by the United Nations Security Council. Nothing in Article 29 TEU or Article 215 TFEU permits the inference that the powers conferred on the European Union by those provisions are limited to the implementing of measures decided by the United Nations Security Council. On the contrary, those Treaty provisions give the Council the power to adopt the contested acts, containing independent restrictive measures, distinct from measures specifically recommended by the United Nations Security Council (see, to that effect, judgment of 20 September 2016, *Alsharghawi* v *Council*, T−485/15, not published, EU:T:2016:520, paragraphs 20 and 21 and the case-law cited).

160 Thirdly, as regards the applicants' arguments contesting their direct or indirect involvement in the conflict in eastern Ukraine or their links with the Russian Government, it should be borne in mind that the objective of the restrictive measures at issue 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.

161 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 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).

162 Lastly, as regards the applicants' argument that 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 (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 132).

163 The fact that the non-conventional oil 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.

164 Consequently, the applicants' second and fourth pleas in law must be rejected.

The third plea in law, alleging infringement of the European Union's international obligations under the EU-Russia Partnership Agreement

165 The applicants submit that, with the exception of certain provisions, the measures at issue are not sanctions in the usual form of targeted asset-freezing measures, but rather a partial trade embargo applicable to a large number of entities that have no direct connection to the Russian Government. Such an embargo is contrary to the European Union's obligations under international treaties and is, as such, unlawful.

166 As regards the EU-Russia Partnership Agreement, the applicants state that the Court has held that the provisions of that agreement were capable of having direct effect. They maintain that Articles 10, 12, 15 and Article 52(1), (2), (5) and (9) of the EU-Russia Partnership Agreement are sufficiently clear, precise and unconditional to have direct effect. The measures at issue infringe those articles and cannot be justified under Articles 19 and 99 of that agreement.

167 First, the applicants argue that Article 10 of the EU-Russia Partnership Agreement, by which the parties accord to one another the general most-favoured-nation treatment, read together with Article I(1) of GATT, prohibits the giving of less favourable treatment to goods originating in or destined for Russia than is accorded to goods originating in or destined for the territories of all the other contracting parties. The measures introduced by Articles 3 and 4 of the contested regulation therefore amount to a breach of Article 10 of the EU-Russia Partnership Agreement, since they impose conditions and limitations on the export of certain categories of goods.

168 Secondly, in restricting the sale, supply, transfer and export of the specified technologies to the Russian oil sector, whether or not originating in the European Union, Article 3 of the contested regulation infringes Article 12 of the EU-Russia Partnership Agreement and the rules described in Article V(2) to (5) of GATT, which provide for freedom of transit for goods destined for or originating in the territory of one contracting party through the territory of the other contracting party.

169 Thirdly, the prohibitions contained in Article 3 of the contested regulation are quantitative restrictions which infringe Article 15 of the EU-Russia Partnership Agreement.

170 Fourthly, the applicants argue that the measures at issue prohibiting the purchase and sale of securities and the grant of loans are contrary to Article 52 of the EU-Russia Partnership Agreement, which, in addition to most-favoured-nation treatment for all categories of capital movement and payments, provides for the free movement of payments and capital movements taking the form of direct investment, and a standstill clause in relation to non-direct investment after a transitional period of five years.

171 Fifthly, in so far as the EU-Russia Partnership Agreement was intended to implement certain provisions of GATT and makes express reference thereto, the applicants also rely directly on GATT to contest the legality of the measures at issue.

172 Sixthly, the applicants submit that the exclusions provided for in the EU-Russia Partnership Agreement are not applicable in the present case. They acknowledge that Article 19 thereof provides that the agreement does not preclude prohibitions or restrictions on imports, exports or goods in transit, inter alia, on grounds of public security. Nevertheless, as an exception to the principle of free trade, that provision must be construed strictly and is not a self-judging exception.

173 According to the applicants, the public security measures taken must be proportionate to the aim pursued. In the present case, the provisions of the contested regulation concerning export restrictions, which relate

to certain goods and certain technologies in particular, cannot be justified by or proportionate to the objective of ensuring public security, since those goods are not used for any military purposes.

174 The exception provided for in Article 99(1) of the EU-Russia Partnership Agreement, in accordance with which 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, is not applicable either. The wording of that provision corresponds to that of Articles 346 and 347 TFEU, which have been construed strictly by the Court of Justice as meaning that it is for the Member State which seeks to rely on Article 346 TFEU to prove that it is necessary to have recourse to that derogation in order to protect its essential security interests. The Commission has also emphasised the limited scope of the concept of essential security interests in its interpretative communication on the application of Article [346 TFEU] in the field of defence procurement (COM(2006) 779 final).

175 Articles 19 and 99 of the EU-Russia Partnership Agreement must therefore, according to the applicants, be interpreted as concerning only serious internal threats or direct external threats to the security of the European Union. However, the events in Ukraine do not qualify as such threats. In addition, the applicants submit that, in order to apply the measures at issue, the Council should have suspended the EU-Russia Partnership Agreement or denounced it in accordance with the procedure laid down in Article 218(9) TFEU, while at the same time observing the rules of customary international law.

176 Lastly, in their reply to the question put by the General Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the applicants argue that the Court of Justice did not rule on the question of whether the measures provided for in the contested acts were consistent with the provisions of GATT, and it is therefore for the General Court to examine that question.

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

178 In the first place, it should be noted that the question whether the restrictive measures and other restrictions imposed by the Council in the contested acts are compatible with the EU-Russia Partnership Agreement has already been settled by the Court of Justice in the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236). In paragraphs 110 to 117 of that judgment, the Court ruled as follows:

‘110 … it suffices to state that, even if the restrictive measures at issue in the main proceedings were not compatible with certain provisions of [the EU-Russia Partnership Agreement], Article 99 of that agreement permits their adoption.

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

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

113 As regards the question whether the adoption of the restrictive measures at issue in the main proceedings was necessary for the protection of essential European Union security interests and the maintenance of peace and international security, it must be borne in mind that the Council has a broad discretion in areas which involve the making by that institution of political, economic and social choices,

and in which it is called upon to undertake complex assessments (judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C−440/14 P, EU:C:2016:128, paragraph 77 and the case-law cited).

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

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

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

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

179 It must be noted that no new argument has been put forward by the applicants before this Court that might call in question that conclusion.

180 In the second place, as regards the compatibility with GATT of the restrictions imposed by the contested acts, it must also be noted that, even if GATT were directly applicable and could usefully be relied on by the applicants in the present case, that agreement also contains a provision relating to 'security exceptions'.

181 Article XXI of GATT provides that:

'Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.'

182 Consequently, in the light of the broad discretion which the Council has in this area, it must be held that the Council was entitled to consider that the actions of the Russian Federation undermining or threatening Ukraine's territorial integrity, sovereignty and independence could amount to a case of an 'other emergency in international relations' and that the restrictive measures at issue were 'necessary for the protection of [the] essential security interests [of the Member States of the European Union]', within the meaning of Article XXI of GATT.

183 Accordingly, the third plea in law must be rejected as unfounded.

The fifth plea in law, alleging that the provisions of the contested regulation concerning authorisation are not an appropriate means of giving effect to the contested decision

184 The applicants maintain that there is no valid reason for refusing to authorise the execution of grandfathered contracts. The second subparagraph of Article 3(5) of the contested regulation, which allows national authorities discretion in this regard, is therefore incompatible with Article 4(4) of the contested decision. It is not possible to interpret the second subparagraph of Article 3(5) of the contested regulation in a manner consistent with Article 4(4) of the contested decision, other than by giving it a *contra legem* interpretation. In addition, allowing the national authorities discretion is contrary to the principle of legal certainty enshrined in Article 17 of the Charter and Article 1 of the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('ECHR').

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

186 It should be recalled, in that regard, that Article 4(3) and (4) of the contested decision provides that:

'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.'

187 The second subparagraph of Article 3(5) of the contested regulation provides that:

'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.'

188 The applicants claim that there is a contradiction between the wording of Article 4(4) of the contested decision and that of Article 3(5) of the contested regulation. While Article 4(4) of the contested decision does not allow the Member States any discretion with respect to the prohibition on refusing authorisations for the sale, supply, transfer or export of articles listed in Annex II to the contested regulation with respect to contracts concluded before 1 August 2014, Article 3(5) of the contested regulation permits them to authorise, and therefore to refuse, the execution of an obligation stemming from such contracts.

189 It should be recalled in that regard that, in paragraphs 139 to 142 of the judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236), the Court of Justice examined similar arguments and ruled as follows:

'139 As stated by Rosneft in its written observations, the wording of Article 4(4) of Decision 2014/512 differs from that of the second subparagraph of Article 3(5) of Regulation No 833/2014. Under Article 4(4) of Decision 2014/512, the prohibition imposed on the competent authorities with respect to the granting of authorisation for the sale, supply, transfer or export of certain equipment for certain categories of oil

exploration and production projects “shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts”.

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

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

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

190 Consequently, since no new argument has been put forward by the applicants before this Court that might call in question that conclusion, the fifth plea in law must be rejected as unfounded.

The sixth plea in law, alleging breach of the principle of equal treatment and non-arbitrariness

191 In the context of their sixth plea, the applicants reiterate their argument that the Council had no competence to adopt the provisions of the contested regulation concerning export restrictions because they breach the fundamental principle of equal treatment and non-arbitrariness. In the present case, neither the selection of the affected oil sectors, nor the sector criteria, goods criteria and services criteria follow from the objective pursued, since those measures are not based on the existence of a connection with the Russian State, and no other basis is put forward to explain that selectivity. In addition, businesses operating in sectors that have no particular connection with the events in Ukraine cannot be targeted simply because the sector is of economic importance to Russia. Any number of businesses operating in other sectors would be in a similar position, and so should receive the same treatment.

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

193 It must be noted that, by their sixth plea, the applicants reiterate in essence the same arguments as those already raised in the context of the second and fourth pleas examined above. They must, therefore, be rejected on the same grounds.

194 Furthermore, in response to the complaint specifically alleging breach of the principle of equal treatment, it should be noted that the Court of Justice has held that, with respect to the restrictive measures at issue targeting the oil sector, it was open to the Council, inter alia, to impose, if the Council deemed it appropriate, restrictions which targeted undertakings active in specific sectors of the Russian economy in which products, technologies or services imported from the European Union were 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).

195 Therefore, if the Council’s decision to impose restrictive measures targeting certain sectors of the economy could be regarded as being contrary to the principle of equal treatment, in so far as the oil sector would be discriminated against by comparison with other sectors of the Russian economy not targeted by those measures and which are in a similar situation, such a breach would, in any event, be justified by the

nature of the economic sanctions that may be imposed by the Council under Article 215(1) TFEU and by the Council's broad discretion in that respect.

196 Consequently, the sixth plea in law must be rejected.

The seventh plea in law, alleging, in essence, disproportionate encroachment upon EU legislative competences, in breach of the applicants' fundamental rights

197 By their seventh plea, the applicants argue that the Council could not lawfully adopt the provisions of the contested regulation concerning export restrictions because they are not, or have not been shown to be, proportionate to the aim pursued by the contested decision. In addition, according to the applicants, as a consequence of their disproportionate nature, those provisions encroach upon the European Union's legislative competences under the common commercial policy and constitute an impermissible interference with their fundamental rights to property and their freedom to conduct a business.

198 First, the applicants maintain that the measures at issue, whether taken separately or viewed cumulatively, amount to a far-reaching and fundamental interference with their right, and with the right of EU nationals with whom they deal, to pursue their business, as protected by Article 16 of the Charter. The provisions of the contested regulation concerning export restrictions are not aimed at the applicants on the basis of a connection with the Russian Government, but instead impose a form of sectoral trade embargo. Accordingly, such measures are lawful only in so far as they meet the requirements of the principle of proportionality. The provisions of the contested regulation concerning export restrictions amount to an unjustified and disproportionate restriction of their right to property, in particular in view of the following:

– those provisions are not in accordance with the law;

– the Council has not shown that the provisions are appropriate and necessary and has not established the existence of a sufficient connection between the Russian oil sector and the objective pursued by the Council;

– where there is a choice between several appropriate measures, recourse must be had to the least onerous. That was not the case in this instance. In addition, some of the provisions of the contested regulation concerning export restrictions are too broad in scope and do not provide for the exemption of framework agreements or ancillary contracts necessary for the execution of such agreements, or an exception for supplies of goods 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, which is manifestly disproportionate;

– the disadvantages are disproportionate to the aims pursued by the European Union. The measures impair the substance or essential content of the right guaranteed.

199 Secondly, the applicants submit that the provisions of the contested regulation concerning export restrictions and Article 11 of the contested regulation, read together, amount to a far-reaching interference with their right to property, since those measures apply wherever acquired rights relating to the supply of relevant goods or ancillary services are subject to the requirement for prior authorisation.

200 According to the applicants, such a set of provisions is neither lawful nor proportionate, since in practice it denies them their right of access to the courts as enshrined in Article 6 of the ECHR.

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

202 By this plea, the applicants rely, in essence, on the one hand, on a breach of the general principle of proportionality, and, on the other, on infringement of their right to property and of the principle of the freedom to conduct business as a fundamental right. Although the heading of this plea also refers to encroachment upon EU legislative competences under the common commercial policy, the applicants did

not advance any specific arguments concerning any infringement of Article 40 TEU in the present case. In addition, in so far as, by this plea, the applicants may also be invoking an infringement of their rights of defence and their right to effective judicial protection, reference must be made to the examination of the second complaint of the first plea in law (see paragraphs 128 to 149 above).

203 In the first place, it must be noted that, according to settled case-law, the principle of proportionality is one of the general principles of EU law and requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (judgments of 12 May 2011, *Luxembourg* v *Parliament and Council*, C−176/09, EU:C:2011:290, paragraph 61, and of 15 November 2012, *Al-Aqsa v Council* and *Netherlands* v *Al-Aqsa*, C−539/10 P and C−550/10 P, EU:C:2012:711, paragraph 122).

204 In so far as the applicants challenge the proportionality of the general rules on the basis of which it was decided that Rosneft should be listed in the annexes to the contested acts, it must be noted that, with regard to judicial review of compliance with the principle of proportionality, the Court has held that 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. It concluded from this that the legality of a measure adopted in those areas could be affected only if the measure was manifestly inappropriate having regard to the objective which the competent institution was seeking to pursue (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 146 and the case-law cited).

205 Contrary to what is claimed by the applicants, 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).

206 In so far as the applicants also challenge the proportionality of Article 11 of the contested regulation, as the Council contends, the provision precluding the satisfaction of claims laid down in that article is intended to prevent an entity targeted by the restrictive measures at issue from being able to procure performance of a prohibited transaction, contract or service or from obtaining a remedy under civil law for non-performance of such transactions, contracts or services. Such a provision thus ensures the effectiveness of the restrictive measures at issue, by reflecting in private law the effects of measures that have been properly adopted by the European Union, for so long as those measures are applicable. In that sense, Article 11 of the contested regulation must be considered a proportionate means of achieving the objective of the contested acts.

207 In the second place, as regards the fundamental rights relied on by the applicants, namely the freedom to conduct a business and the right to property, it should be noted that those rights are not absolute, and that their exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union, provided that such restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very essence of the rights guaranteed (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 148 and the case-law cited).

208 It is true 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).

209 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).

210 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 applicants' freedom to conduct a business and their 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).

211 Lastly, as regards the right of access to the courts under Article 6 of the ECHR, it is sufficient to note that the applicants were able not only to bring the present action before the General Court but also to bring an action before the national courts which, following a request for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court) (United Kingdom), gave rise to the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236). The applicants cannot properly claim, therefore, that that right has not been observed in the present case.

212 Having regard to those considerations, the Court must reject the complaint regarding the disproportionate nature of the interference with the applicants' freedom to conduct a business and their right to property, notably in the light of Article 11 of the contested regulation, and must, in consequence, reject the seventh plea in law as unfounded.

The eighth plea in law, alleging misuse of powers

213 The applicants submit that, in the absence of any proper explanation with regard to the measures at issue, and given that they are in the nature of a partial trade embargo, at least part of the purpose of those measures could be to serve an aim other than the stated aim, such as obtaining a competitive advantage in the sectors concerned. In addition, the fact that the goods to which the provisions of the contested regulation concerning export restrictions relate are not all sensitive also indicates a misuse of powers. Lastly, the Council concedes as much in the explanations which it has given in its defence regarding the alleged aims of the measures at issue (see paragraph 106 above).

214 In addition, in their reply to the question put by the General Court following the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236), the applicants argue that the Court of Justice did not rule on the existence of a misuse of powers in connection with the description of the goods identified in Annex II to the contested regulation as 'sensitive' goods.

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

216 It should be borne in mind that, according to settled case-law, a measure is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken solely, or at the very least chiefly, for ends other than those for which the power in question was conferred or with the aim of evading a procedure specifically prescribed by the Treaties for dealing with the circumstances of the case (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 135 and the case-law cited).

217 In the present case, however, it must be noted that the applicants did not produce any evidence to support their claim that the imposition of restrictive measures targeting the oil sector in Russia pursued an aim other than that of putting pressure on the Russian Federation in order to end its actions undermining or

threatening Ukraine's territorial integrity, sovereignty and independence, in accordance with the objectives of the Union's external action set out in Article 21 TEU.

218 With regard, in particular, to the applicants' argument that the Council had acknowledged that the objective pursued by the restrictive measures at issue and, in particular, the provisions covering the oil sector in Russia had in fact been to '[affect] Russia's interests and capabilities in the sector of oil exploration and production which generate substantial revenues for Russia, and thereby [reduce] its power to threaten countries which depend on it for their energy supplies', that argument must be rejected for the same reasons as those set out in paragraph 158 above.

219 Therefore, the eighth plea in law must be rejected.

The ninth plea in law, alleging, in essence, breach of the principle of legal certainty

220 The applicants argue, in essence, that the contested acts use a variety of key terms which remain undefined both in the contested decision and in the contested regulation. They include 'deep water oil exploration and production', 'Arctic oil exploration and production' (Article 3(3) of Regulation No 833/2014), 'an obligation arising from a contract or an agreement concluded before 1 August 2014' (second subparagraph of Article 3(5) and Article 4(4) of Regulation No 833/2014), 'transferable securities and money-market instruments ... issued after 12 September 2014' (Article 5(2) of Regulation No 833/2014), as well as the concepts of 'shale oil project' (Article 3(3) of Regulation No 833/2014), 'financing' or 'financial assistance' (Article 4(3)(b) of Regulation No 833/2014) and the safety exemption (Article 3a(3) of Regulation No 833/2014). Given that none of the relevant provisions has been uniformly interpreted by the national authorities, this creates profound legal uncertainty, in breach of Article 7 of the ECHR and Article 49 of the Charter. The fact that the Council has sought to clarify some of these key terms in subsequent acts confirms that they are ambiguous and thus unlawful.

221 In addition to the unlawful or uncertain status of the exception laid down in the second subparagraph of Article 3(5) of the contested regulation and, more generally, of Article 11 thereof, the applicants rely in particular on Article 8 of the contested regulation, which calls for the adoption of penalties that are effective, proportionate and dissuasive. Such a provision in fact calls for the adoption of criminal penalties, according to the case-law of the European Court of Human Rights, as followed by the Court of Justice. Consequently, given that certain key terms are ambiguous or vague, the principle *nullum crimen, nulla poena sine lege*, as enshrined in Article 49(1) of the Charter, has been breached in the present case. In addition, even if the penalties were not criminal penalties, the secondary effects flowing from those provisions as a result of their ambiguity would be unlawful.

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

223 By this plea, the applicants claim, in essence, a lack of legal certainty as a result of the lack of precision of certain terms in the relevant provisions of the contested acts.

224 It should be noted that, by their arguments, the applicants seem to be claiming that, given that Article 8 of the contested regulation provides for the adoption of effective, proportionate and dissuasive penalties for infringements of the provisions of that regulation, there has been a breach of the principle *nullum crimen, nulla poena sine lege*, as enshrined in Article 49(1) of the Charter, in this case.

225 In that regard, it should be recalled that the principle of legal certainty, a fundamental principle of EU law, requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 161 and the case-law cited).

226 As regards the principle *nulla poena sine lege certa*, it is clear that that principle, which falls within the scope of Article 49 of the Charter, headed 'Principles of legality and proportionality of criminal offences and penalties', and which, according to the Court's case-law, constitutes a specific expression of the

general principle of legal certainty, implies, inter alia, that legislation must clearly define offences and the penalties which they attract. That condition is met where the individual concerned is in a position, on the basis of the wording of the relevant provision and, if necessary, with the help of the interpretation made by the courts, to know which acts or omissions will make him criminally liable (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 162 and the case-law cited).

227 It is apparent that, in this case, the expressions which the applicants claim are unclear, as set out in paragraph 220 above, are general in nature. However, the concept of 'transferable securities' is defined in Article 1(f) of the contested regulation, while examples of the concept of 'financial assistance' are given in Article 4(3)(b) of that regulation.

228 In accordance with the case-law of the European Court of Human Rights relating to Article 7 of the ECHR, which establishes rights corresponding to those guaranteed in Article 49 of the Charter, since legislation must be of general application, its wording cannot be absolutely precise. It follows that, while the use of the legislative technique of referring to general categories, rather than to exhaustive lists, often leaves grey areas at the fringes of a definition, those doubts in relation to borderline cases are not sufficient, in themselves, to make a provision incompatible with Article 7 of the ECHR, provided that the provision proves to be sufficiently clear in the large majority of cases (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 164 and the case-law cited).

229 Since those considerations are equally valid, under Article 52(3) of the Charter, with respect to Article 49 thereof, the Court must hold that the choice made by the EU legislature to use, in the provisions referred to by the applicants, expressions or terms such as 'deep water oil exploration and production', 'Arctic oil exploration and production', 'financial assistance' or 'transferable securities' cannot, in itself, constitute a breach of the principle *nulla poena sine lege certa* (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 165).

230 That conclusion is supported by the fact that the requirement that the law should be foreseeable does not mean that the persons concerned should not have to take appropriate legal advice in order to assess, to a degree that is reasonable in the particular circumstances, the consequences which a given action may entail. In this case, the Court must hold that the terms which are claimed by the applicants to be lacking in precision, while they are not absolutely precise, are not such that it is impossible for an individual to know for which acts and omissions he may be criminally liable (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 166 and the case-law cited).

231 Further, the case-law of the Court states that the principle *nulla poena sine lege certa* cannot be interpreted as prohibiting the gradual clarification of rules of criminal liability by means of interpretations in the case-law, provided that those interpretations are reasonably foreseeable (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 167 and the case-law cited).

232 In the present case, it must be borne in mind that 'financial assistance' was interpreted by the Court in paragraph 184 of the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236) as meaning that it does not include the processing of a payment, as such, by a bank or other financial institution.

233 It should further be noted that, by means of Regulation No 1290/2014 and Decision 2014/872, the Council considered it necessary to clarify certain terms initially contained in Decision 2014/512 and Regulation No 833/2014. Thus, the concepts of 'deep water oil exploration and production', 'Arctic oil exploration and production' or 'shale oil projects in Russia' in Article 3(3) of Regulation No 833/2014 were clarified and replaced by the following: 'oil exploration and production in waters deeper than 150 metres', 'oil exploration and production in the offshore area north of the Arctic Circle' and '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'.

234 In their first statement of modification of the application, the applicants submitted that those definitions remained vague and continued to breach the principle of legal certainty. Alternatively, they argue that those definitions were not reasonably foreseeable at the time of the adoption of Decision 2014/512 and Regulation No 833/2014.

235 It should be noted, however, that, in accordance with the case-law cited in paragraph 230 above, the terms which are claimed by the applicants to be lacking in precision, as gradually clarified and interpreted by the case-law and by the amending acts adopted by the Council, are not such that it is impossible for an individual to know for which acts and omissions he may be criminally liable.

236 Consequently, the ninth plea in law must be rejected, and the action dismissed in its entirety.

Costs

237 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 applicants have been unsuccessful, they should be ordered to bear their own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council.

238 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. Dismisses the action;

2. Orders PAO Rosneft Oil Company, RN-Shelf-Arctic OOO, AO RN-Shelf-Far East, RN-Exploration OOO and Tagulskoe OOO to bear their own costs and to pay those incurred by the Council of the European Union;

3. 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 G. Berardis

Registrar President

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* Language of the case: English.