JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

13 September 2018 (*)

(Common foreign and security policy — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Applicant's name included and retained in the list of entities to which the restrictive measures apply — Manifest error of assessment — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Right to property — Right to carry on an economic activity)

In Case T−734/14,

VTB Bank PAO, formerly VTB Bank OAO, established in Saint Petersburg (Russia), represented by J. Ruiz Calzado, lawyer, C. Claypoole, Solicitor, and M. Lester QC,

applicant,

v

Council of the European Union, represented by J.-P. Hix and S. Boelaert, acting as Agents,

defendant,

supported by

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

intervener,

APPLICATION under Article 263 TFEU seeking annulment, first, of Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13), as amended by Council Decision 2014/659/CFSP of 8 September 2014 (OJ 2014 L 271, p. 54), and, secondly, 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), in so far as those acts concern the applicant,

THE GENERAL COURT (Sixth Chamber),

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

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 8 November 2017,

gives the following

Judgment

Background to the dispute

1 The applicant, VTB Bank PAO, is a commercial bank registered as a joint stock company in Russia.

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 On 3 March 2014, an extraordinary meeting of 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 Rossikoï 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 the 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. The referendum asked the people of Crimea 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 Ukrainian Government 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. 16), 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 Crimean referendum held on 16 March 2014. Following that referendum, the Supreme Council of Crimea and Sevastopol City Council declared 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 having been granted a certificate of origin 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 despite the adoption in March 2014 of travel restrictions and asset freezes against certain natural and legal persons, 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), in order to introduce targeted restrictive measures on access to capital markets, defence, dual-use goods, and sensitive technologies, including in the energy sector.

14 Considering that those measures fell within the scope of the FEU Treaty and that giving them effect required regulatory action at EU level, the Council adopted, on the same date and on the basis of Article 215(2) 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), containing more detailed provisions to give effect to the requirements in Decision 2014/512, at both EU level and Member State level.

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

16 Subsequently, on 8 September 2014, the Council adopted Decision 2014/659/CFSP amending Decision 2014/512 (OJ 2014 L 271, p. 54) and Regulation (EU) No 960/2014 amending Regulation No 833/2014 (OJ 2014 L 271, p. 3) 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.

17 Article 1(1) of Decision 2014/512, as amended by Decision 2014/659 ('the contested decision'), reads as follows:

'1. 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 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:

(a) major credit institutions or finance development institutions established in Russia with over 50% public ownership or control as of 1 August 2014, as listed in Annex I;

(b) any legal person, entity or body established outside the Union owned for more than 50% by an entity listed in Annex I; or

(c) any legal person, entity or body acting on behalf, or at the direction, of an entity within the category referred to in point (b) of this paragraph or listed in Annex I,

shall be prohibited.'

18 The applicant's name is listed at point 2 of Annex I to the contested decision.

19 Article 5(1) of Regulation No 833/2014, as amended by Regulation No 960/2014 ('the contested regulation'), reads as follows:

'1. 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 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:

(a) a major credit institution, or other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, established in Russia with over 50% public ownership or control as of 1 August 2014, as listed in Annex III; or

(b) 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 Annex III; or

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

20 The applicant's name is listed in Annex III to the contested regulation.

21 Regulation No 960/2014 also inserted a new Article 5(3) in Regulation No 833/2014 pursuant to which:

'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 imports or exports of goods and non-financial services between the Union and Russia or for 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.'

22 By letter of 23 October 2014, the applicant requested access to the documents and evidence concerning it from the Council's file.

23 By letter of 9 December 2014, the Council answered the applicant's request and sent the applicant the evidence and documents relating to the contested decision which were in its file.

Procedure and forms of order sought

24 By application lodged at the Court Registry on 24 October 2014, the applicant brought the present action.

Intervention

25 By document lodged at the Court Registry on 23 February 2015, the Commission sought leave to intervene in the present proceedings in support of the form of order sought by the Council.

26 The applicant submitted its observations on that request on 3 March 2015.

27 By order of 26 May 2015, the President of the Ninth Chamber of the Court granted the Commission's request.

28 On 2 July 2015, the Commission lodged its statement in intervention.

29 The applicant and the Council lodged observations on that statement within the period prescribed.

Staying of proceedings

30 By decision of 12 March 2015, the President of the Ninth Chamber of the Court decided to seek observations from the parties on a possible stay of proceedings until the Court of Justice had given judgment in Case C−72/15, *Rosneft*. By letter of 23 March 2015 from the General Court Registry, the parties were given a period within which to submit their observations.

31 The Council and the applicant submitted observations on that possible stay of proceedings by documents lodged at the Court Registry on 1 and 9 April 2015 respectively.

32 By decision of 29 October 2015, adopted on the basis of Article 69(a) of the Rules of Procedure of the General Court, the President of the Ninth Chamber of the Court decided to stay proceedings, on the ground that there was at least a partial overlap between the provisions whose scope and validity the Court of Justice had been called upon to rule on in Case C−72/15, *Rosneft*,and the provisions relevant to the present case.

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

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

Change in the composition of the Chambers of the Court

35 Following a change to the composition of the Chambers, 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.

Forms of order sought

36 The applicant claims, in essence, that the Court should:

– annul the contested decision and the contested regulation (taken together 'the contested acts'), insofar as they concern the applicant;

– order the Council to pay the costs.

37 The Council contends that the Court should:

– dismiss the action as partly outside the Court's jurisdiction and as inadmissible in its entirety or, in any event, as unfounded;

– order the applicant to pay the costs.

In its written response to the question of 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 contested decision, since it involves restrictive measures within the meaning of the second paragraph of Article 275 TFEU, which was confirmed at the hearing.

38 The Commission contends that the Court should:

– dismiss the action in its entirety;

– order the applicant to pay the costs.

Law

39 In support of its action for annulment, the applicant puts forward four pleas in law, the first alleging an infringement by the Council of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU, the second alleging that the Council committed a manifest error of assessment and acted ultra vires in listing it in the annexes to the contested acts, the third alleging an infringement of the applicant's rights of defence and right to effective judicial review, and the fourth alleging an infringement of the applicant's fundamental rights including its right to protection of its property, business and reputation, as guaranteed by Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter'). The applicant also advances a plea of illegality, based on Article 277 TFEU, as regards Article 1 of the contested decision and Article 5 of the contested regulation.

40 As a preliminary point, the admissibility of the action must be examined.

Admissibility

41 The Council contends that the applicant's claim for annulment of the contested decision must be dismissed on the ground that it does not satisfy the admissibility requirements laid down in the fourth paragraph of Article 263 TFEU. It contends that the same is also true of the claim for annulment of the contested regulation.

42 As a preliminary point, the Council notes that the applicant has not denied the fact that it was not an addressee of the contested acts. The first hypothesis in the fourth paragraph of Article 263 TFEU is not, therefore, applicable.

43 Next, as regards the second and third hypotheses and more specifically the conditions set out in the fourth paragraph of Article 263 TFEU, the Council maintains, first, that the applicant is not 'directly concerned' within the meaning of that provision.

44 In that regard, the Council maintains that the inclusion of the applicant's name in the list annexed to the contested regulation does not mean that the applicant is directly concerned by the contested measures provided for in that regulation, because of the nature of the activity prohibited. Article 5(1) of the contested regulation does not prohibit the issuing itself of financial instruments by the entities in question, but rather prohibits the purchase or sale of investment services or assistance in the issuing of the financial instruments in question, by the natural or legal persons coming under EU jurisdiction. The applicant is an entity that may issue financial instruments, but has not demonstrated that it is active in any of the prohibited services relating to the issuing of the financial instruments in question. It is not, therefore, directly concerned by the contested acts. The fact that the applicant's name is listed is not sufficient for the action to be admissible, because the contested regulation does not directly affect its legal situation. The same analysis applies, *mutatis mutandis*, to the applicant's standing to challenge the restrictions placed on new loans and credit with a maturity exceeding 30 days, set out in Article 5(3) of the contested regulation.

45 The Council contends, moreover, that the fact that the applicant is economically affected by the restrictive measures does not show that it is directly concerned by them. The contested acts may affect the trade of a large number of operators without this giving rise to the right to have the restrictive measures provided for by them set aside. The economic impact of the sectoral measures in question also tends to affect a wide range of professionals or businesses and not only entities established in the targeted third country.

46 Secondly, in so far as the categorisation of the measures at issue is concerned, the Council argues that the provisions of the contested decision require further implementing measures, which have, moreover, been introduced by the contested regulation. The Council accepts, however, that the provisions of the regulation itself constitute regulatory acts that do not require further implementing measures.

47 Thirdly, the Council maintains that the applicant is not individually concerned by the contested acts. The applicant has not demonstrated, nor can it demonstrate, that it is in a particular situation differentiating it from other bodies whose access to the EU capital and loan markets has been restricted by the contested acts. The Council observes in that respect that the contested acts may affect the business activities of a wide range of operators without this leading to a right to have the restrictive measures set aside. In addition, the economic impact of the measures at issue is not confined to financial institutions but affects a wide range of professionals or businesses, not only entities established in the targeted third country.

48 Fourthly, so far as concerns the application of Article 47 of the Charter, which guarantees the right to effective judicial protection, the Council notes that it is settled case-law that that provision may not be relied upon in order to have set aside the rules laid down in the EU Treaty and FEU Treaty regarding the judicial system of the Union or the rules on admissibility provided for in the fourth paragraph of Article 263 TFEU.

49 The applicant disputes those arguments.

50 It should be borne in mind, in that regard, 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).

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

52 In the present case, Article 1(1)(a) of the contested decision and Annex I to that decision and Article 5(1)(a) of the contested regulation and Annex III to that regulation (together ‘the relevant provisions of the contested acts’) prohibit all EU operators from carrying out certain types of financial transaction with credit institutions established in Russia which satisfy the conditions laid down in those articles and the names of which are listed in those annexes.

53 It must, therefore, be found that the applicant is directly concerned by the relevant provisions of the contested acts. The restrictive measures at issue apply directly to it, as an immediate consequence of the fact that it is an entity covered by those provisions, read in the light of the corresponding annexes, without leaving any discretion to their addressees, who are entrusted with the task of implementing them. It is immaterial, in that regard, that those provisions do not prohibit the applicant from carrying out the transactions concerned outside the European Union. Indeed, it is not in dispute that the relevant provisions of the contested acts impose restrictions on the applicant's access to the EU capital market.

54 Similarly, the Court must reject the Council's argument that the applicant's legal situation is not directly affected given that the measures imposed by the contested acts apply solely to bodies established in the European Union. Although the contested acts lay down prohibitions which apply in the first place to credit institutions and other financial bodies established in the European Union, the aim and the effect of those prohibitions is directly to affect the entities, such as the applicant, whose economic activity is limited as a result of the application of those measures in respect of them. Self-evidently it is for the bodies established in the European Union to apply those measures, given that the acts adopted by the EU institutions are not, as a rule, intended to apply outside the territory of the European Union. That does not, however, mean that the entities affected by the contested acts 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 persons listed 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.

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

56 It must, therefore, be concluded that the applicant is directly concerned by the relevant provisions of the contested acts in so far as those provisions concern it.

57 Secondly, it must be found, without needing to examine whether the relevant provisions of the contested acts entail implementing measures, that the condition relating to individual concern, provided for by the second hypothesis in the fourth paragraph of Article 263 TFEU, is also satisfied in the present case.

58 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 of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 103 and the case-law cited).

59 In the present case, since its name is mentioned in the lists in Annex I to the contested decision and in Annex III to the contested regulation among the entities subject to the restrictive measures provided for by the relevant provisions of the contested acts, the applicant must be considered to be individually concerned by those measures.

60 Any other solution would infringe the provisions of Article 263 TFEU and the second paragraph of Article 275 TFEU and would, therefore, be contrary to the system of judicial protection established by the FEU Treaty, and to the right to an effective remedy laid down in Article 47 of the Charter (see, to that effect, judgment of 16 July 2014, *National Iranian Oil Company* v *Council,* T−578/12, not published, EU:T:2014:678, paragraph 36).

61 Consequently, it must be concluded that the applicant is entitled to seek the annulment of the restrictive measures established by the relevant provisions of the contested acts in so far as they concern it.

Substance

The first plea in law, alleging, in essence, an infringement of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU

62 In the context of the first plea in law, the applicant submits that the Council failed to provide appropriate or sufficient reasons for listing it in the contested acts, in breach of the second paragraph of Article 296 TFEU.

63 In the first place, the applicant claims that neither the contested acts, nor any other document, provided any explanation as to why it was appropriate to apply restrictions to it and in what respect the Council considered that the criteria for listing were fulfilled. The Council has failed to indicate whether it alleged that the applicant was a public entity or owned or controlled by the State, or what it means by either of those expressions. Nor has it explained why it considers that the applicant might have an explicit mandate to promote the Russian economy. The applicant submits, in particular, that the recitals of the contested acts describe the genesis of the situation in Ukraine but contain no explanation as to why the Council decided to target the applicant or how restricting its access to the EU capital markets would help achieve the purported aim of those acts. In addition, the applicant maintains that the distinction between restrictive measures imposed on persons or entities ‘due to their conduct’ and measures intended to have general application that are imposed on entities ‘because they as a matter of status and fact, fulfil the relevant status based criteria, such as the 50% public ownership or control’, for the purpose of deciding whether or not the obligation to state reasons has been met, has no basis in the case-law of the Court and must be rejected.

64 Furthermore, the applicant received no letter or other notification from the Council informing it of the inclusion of its name in the lists annexed to the contested acts or the reasons for that inclusion. Moreover, no notice was published in the *Official Journal of the European Union* concerning the inclusion of its name in the annexes to the contested acts.

65 In the second place, the applicant considers that the documents that the Council appended to its letter of 9 December 2014 give no indication as to why it was included in the contested acts. In addition, the documents that the Council appended to its defence indicate that other relevant documents exist that could shed light on how the list of entities affected was drawn up but were not, however, sent to the applicant by the Council.

66 The Council disputes the applicant’s claims and contends that the jurisprudential standards on the obligation to state reasons to which the applicant refers are not applicable. It argues that the measures at

issue are not in the nature of an asset freeze, but are measures or acts of general application. In that context, the obligation to state reasons is fulfilled when the preamble of those acts indicates the general situation which led to their adoption, on the one hand, and the general objectives which they intend to achieve, on the other. The Council maintains that the preamble of the contested regulation meets those jurisprudential standards.

67 In the alternative, should the Court find that the jurisprudential standards apply to the particular measures which mention the applicant's name, the Council contends that it has met the obligation to state reasons arising therefrom.

68 The Commission shares the Council's view that the contested acts satisfy the obligation to state reasons. It contends that the reasons for the adoption of the restrictive measures with regard to the applicant are detailed in recitals 1 to 12 of the contested decision. The Commission also claims that there is a distinction between restrictive measures imposed on persons or entities 'due to their conduct' and measures intended to have general application that are imposed on entities 'because they as a matter of status and fact, fulfil the relevant status based criteria, such as the 50% public ownership or control'. The inclusion of the applicant is justified by the fact that, as a matter of status and fact, it fulfils the criteria set out in Article 5(1) of the contested regulation. Only the fact that it meets those conditions is relevant and no individual reasons for the inclusion of the entities concerned in the annex are, therefore, required.

69 Under 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'.

70 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).

71 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 meets the requirements of Article 296 TFEU and Article 41(2)(c) of the Charter 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. Thus, first, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to the person concerned and which enables him to understand the scope of the measure concerning him. Secondly, 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).

72 First, as regards the applicant's argument that the contested acts ought to have been communicated individually, it must be pointed out that such a complaint relates more to the plea in law alleging an infringement of the rights of the defence and will, therefore, be examined in the context of the third plea in law.

73 Secondly, as regards the scope of the Council's obligation to state reasons in the present case, it must be borne in mind that the applicant seeks the annulment of the contested acts only in so far as they concern it in that they provide for its name to be included in the lists annexed to those acts.

74 In that regard, it must be pointed out that the persons and entities subject to the restrictive measures stemming from the relevant provisions of the contested acts are defined by reference to specific entities, given that those provisions prohibit, inter alia, the carrying out of various financial transactions with regard

to entities listed in Annex I to the contested decision and Annex III to the contested regulation, one of those entities being the applicant. As regards the applicant, this is, therefore, a question of individual restrictive measures (see, to that effect and by analogy, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraphs 100 and 119).

75 It has been made clear 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).

76 Consequently, the Court must reject the Council's argument that the jurisprudential standards relating to the obligation to state reasons for acts imposing individual restrictive measures are not applicable to the present case.

77 It is nonetheless appropriate, in accordance with the case-law laid down in paragraph 71 above, to take into account the context in which the restrictive measures were adopted and all the legal rules governing the matter in question.

78 In the present case, first, it must be borne in mind that all those measures form part of the context, known to the applicant, of the international tension which preceded the adoption of the contested acts, referred to in paragraphs 2 to 12 above. It is also apparent from recitals 1 to 8 of the contested decision and recital 2 of the contested regulation that the stated objective of the contested acts is to increase the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis. The contested acts accordingly describe the overall situation that led to their adoption and the general objectives they are intended to achieve (judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 123).

79 Secondly, it must be borne in mind that the relevant provisions of the contested acts prohibit EU operators from directly or indirectly purchasing, selling or providing investment services for or assistance in the issuance of, or otherwise dealing with bonds, equity, or similar financial instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by legal persons more than 50% owned or controlled by the Russian State and listed in Annex I to the contested decision and Annex III to the contested regulation (see paragraphs 17 and 19 above). Those annexes themselves do not include any specific reasoning as to each of the entities listed.

80 It must, however, be found that the 'actual and specific reasons' why the Council considered, in the exercise of its discretion, that the measures at issue had to be adopted in respect of the applicant, within the meaning of the case-law cited above, correspond in the present case to the criteria which are laid down in the relevant provisions of the contested acts.

81 The applicant was affected solely because it satisfied the actual and specific conditions provided for in the relevant provisions of the contested acts.

82 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).

83 In addition, it is apparent from the information in the file that, in response to the applicant's letter of 23 October 2014, the Council stated, by letter of 9 December 2014, that it was indeed in its capacity as a 'a major credit institution, or other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, established in Russia with

over 50% public ownership or control as of 1 August 2014' that the applicant had been listed in the annexes to the contested acts.

84 Such an additional statement of reasons cannot be considered out of time, since it seeks merely to supplement the statement of reasons already provided relying on information which was known to the applicant when the contested acts were adopted (see, to that effect, judgment of 22 April 2015, *Tomana and Others* v *Council and Commission*, T−190/12, EU:T:2015:222, paragraph 152). In addition, the applicant cannot validly claim that it was unaware of the reasons for which it was subject to the restrictive measures at issue, while it is apparent from its own internet site that the Russian Government owns 60.9% of its shares. In those circumstances, the statement of reasons provided made it possible for the applicant to ascertain, with sufficient clarity, the justification given for the restrictive measures to which it was subject and to challenge it. Similarly, that statement of reasons enables the Court to review the legality of the contested acts (see, to that effect, judgment of 8 September 2015, *Ministry of Energy of Iran* v *Council*, T−564/12, EU:T:2015:599, paragraph 45).

85 In the light of those considerations, the first plea in law must be rejected as unfounded.

The second plea in law, alleging, in essence, that the Council committed an error of assessment in considering that the applicant met all the conditions for being listed in the annexes to the contested acts

86 In the context of the second plea in law, the applicant submits that the Council committed a manifest error by considering that it met the criteria set out in Article 5(1)(a) of the contested regulation for listing it in the annexes to the contested acts. It submits, in that regard, that the criteria for listing apply cumulatively. The English-language version, which has a comma between the two sets of criteria, thus indicating that they do not apply cumulatively, is not supported by the other language versions of the contested regulation.

87 In particular, the applicant submits that it does not fulfil the criteria for listing, given that it has no explicit mandate to promote the competitiveness of the Russian economy, its diversification and encouragement of investment in Russia. It observes that neither its articles of association nor any other company document nor indeed Russian law give it an explicit mandate. In addition, the applicant submits that, as an investment bank, it is obliged to act in the interests of its shareholders, and its day-to-day operations are managed, not by the Russian Government, but by its Board of Directors composed of banking executives, including international experts, not in any way associated with the Russian Government.

88 The Council, supported by the Commission, disputes the applicant's arguments.

89 First of all, it must be found that the applicant must be regarded as pleading an error of law and an error of assessment, not a manifest error of assessment.

90 The effectiveness of the judicial review guaranteed by Article 47 of the Charter requires, inter alia, that the Courts of the European Union ensure that the decision by which restrictive measures were adopted or maintained, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (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 119).

91 In the first place, it must be examined whether the 'explicit mandate' condition set out in Article 5(1)(a) of the contested regulation is an alternative condition to the concept of 'major credit institution', as the Council and the Commission contend, or a cumulative condition to that concept, as the applicant submits.

92 It should be borne in mind, in that regard, that the wording of Article 5(1)(a) of the contested regulation, which is slightly more precise and detailed than that of Article 1(1)(a) of the contested decision, provides

that ‘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 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by … a major credit institution, or other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, established in Russia with over 50% public ownership or control as of 1 August 2014, as listed in Annex III’.

93 It is true that a literal reading of several of the language versions of Article 5(1)(a) of the contested regulation might suggest that the alternative is between, on the one hand, ‘a major credit institution’ and, on the other, ‘other major institution’ and that both types of institution must, in all cases, have an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, as the applicant submits.

94 In addition, reading the different language versions of Article 5(1)(a) of the contested regulation cannot, as such, support the Council’s argument that there is in fact an alternative between, on the one hand, ‘a major credit institution’ and, on the other, ‘other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment’. Moreover, as the Council acknowledged at the hearing, certain language versions are ambiguous and could be interpreted in the sense put forward by the applicant, that is to say as requiring, even for a major credit institution, the existence of an ‘explicit mandate’.

95 However, it must be noted in that regard that it is settled case-law that provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all the languages of the European Union. Where there is divergence between the various language versions of an EU text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see judgment of 8 December 2005, *Jyske Finans*, C−280/04, EU:C:2005:753, paragraph 31 and the case-law cited; see also, to that effect, judgment of 21 November 1974, *Moulijn* v *Commission*, 6/74, EU:C:1974:129, paragraphs 10 and 11).

96 In the present case, given that the objective of Article 5(1) of the contested regulation is, in accordance with Article 215 TFEU, the adoption of measures necessary to give effect to Article 1(1) of the contested decision, the terms of that regulation must be interpreted, so far as possible, in the light of that decision (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 141).

97 Article 1(1)(a) of the contested decision refers to ‘major credit institutions or finance development institutions established in Russia with over 50% public ownership or control as of 1 August 2014, as listed in Annex I’ (paragraph 17 above). There is indeed an alternative, therefore, between ‘major credit institutions’ and ‘finance development institutions’, the latter being defined more precisely in Article 5(1)(a) of the contested regulation as being ‘other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment’.

98 Consequently, the applicant incorrectly argues that ‘a major credit institution’ also had to have an ‘explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment’, in addition to satisfying the other conditions laid down in Article 5(1)(a) of the contested regulation, in order to be able to listed in Annex III to that regulation.

99 In the second place, it must be pointed out that the applicant does not deny that it is more than 50% owned by the Russian State, given that, in the present case, 60% of its shares are owned by the Russian Federal Agency for State Property Management.

100 The Council did not, therefore, err in law or commit an error of assessment when it considered that the applicant was a ‘major credit institution … established in Russia with over 50% public ownership or control as of 1 August 2014’, thus satisfying the conditions provided for in Article 5(1)(a) of the contested regulation in order to be able to be listed in Annex III to that regulation.

101 The applicant's second plea in law must, therefore, be rejected as unfounded.

The third plea in law, alleging, in essence, an infringement of the rights of the defence and of the right to effective judicial protection

102 In the context of its third plea in law, the applicant alleges an infringement of its rights of defence and of the right to effective judicial protection, in the light, first, of the fact that the Council failed to publish a notice in the Official Journalor send a letter notifying it of its inclusion in the contested acts and, secondly, of the fact that the Council failed to provide any evidence to support the reasons justifying that inclusion.

103 The applicant also submits that the Council may not rely upon the evidence attached to its letter of 9 December 2014, for that evidence had not been sent to the applicant before it brought its action. Consequently, the applicant has not been given an opportunity of effectively making known its views on the evidence relied upon by the Council in taking its decision to include it in the contested acts. Moreover, those documents contain no explanation of the reasons for listing the applicant's name in the contested acts.

104 The Council, supported by the Commission, disputes those arguments and contends that, because the contested acts are not 'targeted' restrictive measures and do not directly and individually concern the applicant, it was not obliged to notify the applicant individually. Furthermore, the applicant has not demonstrated how the lack of individual notification has hampered its rights of defence in the present case. The Council argues, in addition, that it is not obliged automatically and spontaneously to give a listed entity access to the documents on the Council's file. Nonetheless, it responded to the applicant's request on 9 December 2014 and provided the applicant with the evidence and documents on the Council's file relating to the contested decision.

105 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).

106 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).

107 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).

108 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).

109 The applicant's arguments must be examined in the light of those principles.

110 First of all, the Council's argument that the case-law on individual restrictive measures is not applicable in the present case, since the measures are of general application and are not targeted restrictive measures, must be rejected. The jurisdiction of the General Court as regards the contested decision arises precisely from the fact that the present action concerns the review of the legality of restrictive measures against natural or legal persons, within the meaning of the second paragraph of Article 275 TFEU, as the Court of Justice held in the case giving rise to the judgment of 28 March 2017, *Rosneft* (C−72/15, EU:C:2017:236).

111 In the first place, as regards the applicant's argument that the Council ought to have notified it individually of the contested acts, since those acts provide for restrictive measures against it, it must be noted that while the absence of individual communication of the contested acts has an impact on the point at which time starts to run for the purposes of the bringing of an action, it does not in itself justify the annulment of the acts at issue. The applicant does not put forward any arguments that would demonstrate that, in the present case, the failure to communicate those acts individually resulted in a breach of its rights that would justify the annulment of those acts in so far as they concern it (see, to that effect, judgment of 5 November 2014, *Mayaleh* v *Council*, T−307/12 and T−408/13, EU:T:2014:926, paragraph 122 and the case-law cited).

112 In the second place, as regards the alleged failure by the Council to communicate the evidence supporting the applicant's listing in the contested acts, the Court must examine separately (i) the initial acts by which the applicant was included in the lists of the entities subject to the restrictive measures for the first time ('the initial acts') and (ii) the subsequent acts which confirm that listing and maintain its name in those lists.

113 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 or entity's name in the relevant list. So that its effectiveness may not be jeopardised, such a measure must be able to take advantage of a surprise effect and to apply 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).

114 When questioned on that matter at the hearing, the Council argued that the case-law cited in paragraph 113 above did not apply in the present case, given that the restrictive measures at issue concerned restrictions on the access to the EU capital market, of general application, not fund freezing measures in the strict sense. In the alternative, the Council considers that, even if that case-law did apply to the present case, it was under no obligation to hear the applicant prior to the adoption of the initial acts or to communicate to it the evidence concerning it at that stage.

115 Such an interpretation cannot be upheld.

116 Indeed, it must be borne in mind that the fundamental right of 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 106 above).

117 Consequently, since the restrictions imposed on the applicant under the relevant provisions of the contested acts constitute restrictive measures that are of individual application to it 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 applicant prior to the adoption of the contested acts.

118 It must, however, be borne in mind that, in the present case, the grounds on which the Council imposed restrictive measures on the applicant, which are set out in the relevant provisions of the contested acts themselves, are the fact that the applicant is a credit institution established in Russia, with over 50% public ownership or control as of 1 August 2014.

119 The applicant has not explained to what extent the absence of prior communication by the Council of certain evidence in the file concerning those grounds may have affected its rights of defence or its right to effective judicial protection so as to result in the annulment of the initial acts.

120 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).

121 In the present case, the applicant has not explained which arguments or information it could have relied on if it had received the documents at issue earlier, nor has it demonstrated that those arguments or that information could have led to a different outcome in its case. The applicant cannot validly claim that it was unaware, at the time the initial acts were adopted, that it was a credit institution established in Russia, with over 50% public ownership or control. In addition, although the applicant denied, in the context of its second plea in law, that it met the criteria laid down in the relevant provisions of the contested acts, it has not explained how the failure to communicate those criteria beforehand could have affected its rights of defence in the present case. The present complaint cannot, therefore, result in the annulment of the initial acts.

122 Secondly, as regards the successive acts by which the restrictive measures were maintained with regard to the applicant, 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 in 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).

123 In the present case, the criteria accepted in order to maintain the applicant's name in the lists annexed to the contested acts have appeared from the outset in Article 1(1)(a) of the contested decision and Article 5(1)(a) of the contested regulation. It is because of its status as a major credit institution established in Russia, with over 50% public ownership or control as of 1 August 2014, that the applicant was listed in Annex I to the contested decision and Annex III to the contested regulation. Those factors were well known to the applicant and cannot, therefore, be considered new evidence, within the meaning of the abovementioned case-law.

124 It must be borne in mind, lastly, 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 on 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).

125 In the present case, it is clear that the Council complied with that obligation and replied to the applicant's request for information of 23 October 2014 by letter of 9 December 2014. In that context, the Council granted access to the documents in its possession relating to its decision to impose restrictive measures on the applicant.

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

127 The applicant's second complaint must, therefore, be rejected, as must the third plea in law in its entirety.

The fourth plea in law, alleging, in essence, an infringement of the applicant's fundamental rights, including the right to property, business and reputation

128 The applicant submits that the Council's decision to adopt the restrictive measures at issue amounts to an unjustified and disproportionate infringement of its fundamental rights, including its rights to property, business and reputation, which arise from Articles 16 and 17 of the Charter and Article 1 of Protocol No 1 in annex to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.

129 The applicant submits, in the first place, that it is an international commercial bank and has had no involvement with recent events in Ukraine.

130 In the second place, the applicant maintains that the contested acts are causing significant harm to it and to its subsidiaries outside Russia, including those in Ukraine, for example its Ukrainian subsidiary VTB Bank PJSC. A document confirming the extent of its losses was, moreover, annexed to the reply.

131 In the third place, the applicant claims that the adverse effects of the contested acts extend far beyond the intended purpose of those acts. The applicant observes that, in accordance with the case-law, the Council must demonstrate that the stated purpose of the contested acts is or may be achieved by cutting off the applicant's access to an integral source of finance necessary for its on-going business operations. The Council is, however, unable to do this.

132 In the applicant's view, the measures at issue have in particular had disproportionate, unjustified effects on its EU subsidiaries. It has also experienced significant delays in the settlement of payments and exchange of information which have had a negative impact on its business operations and those of its subsidiaries, their clients and partners. Given the scale of the bank and its subsidiaries in Central and Eastern Europe, the adoption of the contested acts has had adverse effects on the economies of those regions and on their populations. Furthermore, its shareholders, which include various private investors, have also been affected by those acts, in particular because the value of shares has declined.

133 Lastly, the applicant submits that qualifications to the fundamental right to the peaceful enjoyment and use of its property guaranteed by Article 17 of the Charter and Article 1 of Additional Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, are permitted only if the restrictions in question are not disproportionate. The measures provided for by the contested acts are, however, a disproportionate and ineffectual means of securing the stated aims of those acts.

134 The Council, supported by the Commission, disputes those arguments.

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

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

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

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

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

139 In that regard, it should be borne in mind that, under Article 52(1) of the Charter, first, any limitation on the exercise of the rights and freedoms recognised by the Charter must be 'provided for by law' and 'respect the essence of those rights and freedoms' and, secondly, subject to the principle of proportionality, limitations may be made only if they are 'necessary' and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

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

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

142 In the first place, the restrictive measures at issue are 'provided for by law', since they are set out in acts which are, in particular, of general application, have a clear legal basis in EU law and are sufficiently reasoned (see paragraphs 69 to 85 above).

143 In the second place, it is apparent from recitals 1 to 8 of the contested decision and from recital 2 of the contested regulation that the stated objective of those acts is to increase the costs to be borne by the Russian Federation for its 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).

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

145 In that connection, it is made clear in the case-law that, with regard to judicial review of compliance with the principle of proportionality, the EU legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. Consequently, the legality of a measure adopted in those areas can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 146 and the case-law cited).

146 First, the applicant considers that the restrictive measures imposed on it by means of the contested acts cannot achieve the aim pursued by the latter, which is to impose pressure on the Russian Government by restricting access to capital markets by the Russian State-owned banks identified by the Council, since the applicant has no role whatsoever in the Russian Federation's actions destabilising the situation in Ukraine.

147 However, the fact that the applicant did not play the slightest role in the actions of the Russian Federation destabilising the situation in Ukraine is irrelevant, since restrictive measures were not imposed on it for that reason, but because of the fact that it is a major credit institution established in Russia, with over 50% public ownership or control as of 1 August 2014.

148 In addition, 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).

149 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 stated 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).

150 Secondly, contrary to what is claimed by the applicant, there is a reasonable relationship between the restrictive measures at issue and the objective pursued by the Council in adopting them. In so far as that objective is, in particular, 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 Russian State-owned banks is consistent with that objective and cannot, in any event, be considered to be manifestly inappropriate with respect to the objective pursued (see, to that effect and by analogy, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 147).

151 The Council could legitimately find that the fact of restricting the applicant's access to the EU capital market was capable of contributing to the objective of the contested acts, which consisted in increasing the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence and in promoting a peaceful settlement of the crisis (see paragraph 15 above). In that regard, as the Council argued at the hearing, it is apparent from the evidence provided by the applicant that, following the adoption of the restrictive measures at issue, it had to seek alternative sources of funding, which tends to show that those measures enable their objective to be attained, since, in the event of financial difficulties, it is for the Russian State as a last resort to bail the applicant out.

152 The Council could, therefore, legitimately find that in order to achieve that objective, it was appropriate to target major credit institutions or finance development institutions established in Russia with over 50% public ownership or control as of 1 August 2014.

153 Thirdly, it must be pointed out that the measures adopted by the Council in the present case consist in targeted economic sanctions, which cannot be considered a total interruption of economic and financial relations with a third country, although the Council has such a power under Article 215 TFEU.

154 In those circumstances, and having regard, in particular, to the fact that the restrictive measures adopted by the Council in reaction to the crisis in Ukraine have become progressively more severe, interference with the applicant's freedom to conduct a business and its right to property cannot be considered to be disproportionate (see, to that effect, judgment of 28 March 2017, *Rosneft*, C−72/15, EU:C:2017:236, paragraph 150).

155 As regards, lastly, the right to reputation, relied upon by the applicant, it should be noted, first, that damage caused to the reputation of a person subject to restrictive measures as a result of the reasons given to justify those measures cannot, by itself, amount to a disproportionate interference with that person's right to property and freedom to conduct a business. Thus, in the absence of details of the link between the

damage which the applicant claims has been caused to his reputation and the abovementioned interference with fundamental rights to which this plea relates, that argument is ineffective. Secondly, and in any event, it must be borne in mind that, according to settled case-law, like the right to property and the freedom to conduct a business, the right to the protection of one's reputation is not an absolute right and its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union. The importance of the aims pursued by the restrictive measures at issue is such as to justify negative consequences, even of a substantial nature, for the reputation of the persons or entities concerned (see judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 167 and 168 and the case-law cited).

156 In view of the foregoing considerations, the fourth plea in law must be rejected.

The plea of illegality in respect of Article 1 of the contested decision and Article 5 of the contested regulation

157 The applicant claims that the Court should, pursuant to Article 277 TFEU, declare Article 1 of the contested decision and Article 5 of the contested regulation unlawful.

158 The applicant submits that the Council may include only criteria for listing that are appropriate and proportionate to the measures at issue. The applicant considers that, in the present case, the Council has failed to demonstrate how imposing prohibitions relating to transferable securities and money-market instruments on the institutions covered by the contested measures is justified by the purposes of those acts, still less how it is a proportionate way of achieving those aims.

159 The Council, supported by the Commission, contends that the plea of illegality must be declared inadmissible or, in any event, unfounded.

160 It must be pointed out that the arguments relied on in support of such a plea, alleging that the restrictive measures at issue are inappropriate and disproportionate, are identical to or overlap considerably with those which have already been examined in the context of the fourth plea in law above.

161 Accordingly, reference must necessarily be made to the considerations set out in paragraphs 145 to 156 above and the applicant's plea of illegality rejected on the same grounds.

162 Consequently, the plea of illegality raised by the applicant must be rejected, there being no need to rule on whether it is admissible, and the action must be dismissed in its entirety.

Costs

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

164 In addition, under Article 138(1) of the Rules of Procedure, the Member States and the institutions which intervened in the proceedings are to bear their own costs. The Commission must, therefore, bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders VTB Bank PAO to bear its own costs and to pay those incurred by the Council of the European Union;

3. Orders the European Commission to bear its 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.