



## Reports of Cases

**Case C-72/15**

**PJSC Rosneft Oil Company**  
**v**  
**Her Majesty's Treasury and Others**

(Request for a preliminary ruling  
from the High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court))

(Reference for a preliminary ruling — Common Foreign and Security Policy (CFSP) — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Provisions of Decision 2014/512/CFSP and Regulation (EU) No 833/2014 — Validity — Jurisdiction of the Court — EU-Russia Partnership Agreement — Obligation to state reasons — Principles of legal certainty and *nulla poena sine lege certa* — Access to capital markets — Financial assistance — Global Depositary Receipts — Oil sector — Request for interpretation of concepts of 'shale' and 'waters deeper than 150 metres' — Inadmissibility)

Summary — Judgment of the Court (Grand Chamber), 28 March 2017

1. *Questions referred for a preliminary ruling — Assessment of validity — Admissibility — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions bearing no relation to the subject matter of the case in the main proceedings*

(Art. 267 TFEU; Council Decision 2015/512/ CFSP; Council Regulation No 833/2014)

2. *Questions referred for a preliminary ruling — Assessment of validity — Jurisdiction of the Court — Act adopted on the basis of provisions relating to the CFSP — Restrictive measures taken having regard to the situation in Ukraine — Judicial review limited to the monitoring of compliance with Article 40 TEU and reviewing the legality of restrictive measures against natural or legal persons*

(Arts 19(1) TEU, 24(1) TEU and 40 TEU; Art. 267 TFEU and 275, second para., TFEU; Charter of Fundamental Rights of the European Union, Art. 47 ; Council Decisions No 2014/512/CFSP and 2014/872/CFSP)

3. *Fundamental rights — Right to effective judicial protection — Review of legality of EU measures — Procedures — Protection of that right by the EU judiciary or by the national courts according to the legal nature of the contested measure — Possibility of using an annulment action or reference for a preliminary ruling on validity — Review of the legality of decisions that prescribe the adoption of restrictive measures against natural or legal persons within the framework of the CFSP*

(Arts 19(1) TEU, 24(1), second para., TEU and 29 TEU; Arts 263, fourth para., TFEU, 267 TFEU and 277 TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

4. *Common foreign and security policy — Restrictive measures taken having regard to the situation in Ukraine — Freezing of funds of certain persons and entities having regard to the situation in Ukraine — Validity of restrictive measures against natural or legal persons, laid down by Decision 2014/512/CFSP and Regulation No 833/2014 — Imposition, by a Member State, of criminal penalties that are to be applied in the event of an infringement of the provisions of Regulation No 833/2014 — Breach of the principles of legal certainty and nulla poena sine lege certa — No breach — Conditions*

*(Charter of Fundamental Rights of the European Union, Art. 49 ; Council Decisions 2014/512/CFSP, Arts 1(2)(b) and (d), and 3, and 7, Annex III, and 2014/872/CFSP; Council Regulations No 833/2014, Arts 3, 3a, 4(3) and (4), 5(2)(b) to (d), and 3, 8(1) and 11, Annexes II and VI, and No 1290/2014)*

5. *Common foreign and security policy — Restrictive measures taken having regard to the situation in Ukraine — Freezing of funds of certain persons and entities having regard to the situation in Ukraine — Concept of ‘financial assistance’ — Processing of a payment by a bank or other financial institution — Not included*

*(Council Regulations No 833/2014, Art. 4(3)(b) and No 1290/2014)*

6. *Common foreign and security policy — Restrictive measures taken having regard to the situation in Ukraine — Freezing of funds of certain persons and entities having regard to the situation in Ukraine — Issuance, after 12 September 2014, of international certificates representative of share ownership (Global Depositary Receipts) — Not permissible*

*(Council Regulations No 833/2014, Art. 5(2) and No 1290/2014)*

1. See the text of the judgment.

(see paras 49-56)

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

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

In the second place, the issue arises whether the Court has jurisdiction to give preliminary rulings on the validity of decisions adopted in relation to the CFSP, such as Decision 2014/512, where they prescribe restrictive measures against natural or legal persons. While, admittedly, Article 47 of the Charter cannot confer jurisdiction on the Court, where the Treaties exclude it, the principle of

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

In those circumstances, provided that the Court has, under Article 24(1) TEU and the second paragraph of Article 275 TFEU, jurisdiction *ex ratione materiae* to rule on the validity of European Union acts, that is, in particular, where such acts relate to restrictive measures against natural or legal persons, it would be inconsistent with the system of effective judicial protection established by the Treaties to interpret the latter provision as excluding the possibility that the courts and tribunals of Member States may refer questions to the Court on the validity of Council decisions prescribing the adoption of such measures. The necessary coherence of the system of judicial protection requires, in accordance with settled case-law, that when the validity of acts of the EU institutions is raised before a national court or tribunal, the power to declare such acts invalid should be reserved to the Court under Article 267 TFEU (see, to that effect, judgments of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 17, and of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650, paragraph 62). The same conclusion is imperative with respect to decisions in the field of the CFSP where the Treaties confer on the Court jurisdiction to review their legality.

(see paras 62, 64, 74-76, 78, operative part 1)

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

That essential characteristic of the system for judicial protection in the European Union extends to the review of the legality of decisions that prescribe the adoption of restrictive measures against natural or legal persons within the framework of the CFSP. Neither the EU Treaty nor the FEU Treaty indicates that an action for annulment brought before the General Court, pursuant to the combined provisions of Articles 256 and 263 TFEU, constitutes the sole means for reviewing the legality of decisions providing for restrictive measures against natural or legal persons, to the exclusion, in particular, of a reference for a preliminary ruling on validity. In that regard, the last sentence of the second subparagraph of Article 24(1) TEU refers to the second paragraph of Article 275 TFEU in order to determine not the type of procedure under which the Court may review the legality of certain decisions, but rather the type of decisions whose legality may be reviewed by the Court, within any procedure that has as its aim such a review of legality. However, given that the implementation of a decision providing for restrictive measures against natural or legal persons is in part the responsibility of the Member States, a reference for a preliminary ruling on the validity of a measure plays an essential part in ensuring effective judicial protection, particularly, where, as in the main proceedings, both the legality of the national implementing measures and the legality of the underlying decision adopted in the field of the CFSP itself are challenged within national legal proceedings. Having regard

to the fact that the Member States must ensure that their national policies conform to the Union position enshrined in Council decisions, adopted under Article 29 TEU, access to judicial review of those decisions is indispensable where those decisions prescribe the adoption of restrictive measures against natural or legal persons.

(see paras 68-71)

4. Examination of the second question has disclosed nothing capable of affecting the validity of Article 1(2)(b) to (d) and (3), and Article 7 of, and Annex III to, Decision 2014/512, as amended by Decision 2014/872, or of Articles 3 and 3a, Article 4(3) and (4), Article 5(2)(b) to (d) and (3), and Article 11 of, and Annexes II and VI to, Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended by Council Regulation (EU) No 1290/2014 of 4 December 2014. The principles of legal certainty and *nulla poena sine lege certa* must be interpreted as meaning that they do not preclude a Member State from imposing criminal penalties that are to be applied in the event of an infringement of the provisions of Regulation No 833/2014, as amended by Regulation No 1290/2014, in accordance with Article 8(1) of that regulation, before the scope of those provisions and, therefore, the scope of the associated criminal penalties, has been clarified by the Court of Justice of the European Union.

As regards, first, the general principle of legal certainty, it must be recalled that this fundamental principle of EU law requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly (judgment of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 68 and the case-law cited). With respect to, second, the principle of *nulla poena sine lege certa*, cited by the referring court, it is clear that that principle, which falls within the scope of Article 49 of the Charter, headed 'Principles of legality and proportionality of criminal offences and penalties', and which, according to the Court's case-law, constitutes a specific expression of the general principle of legal certainty (see judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraph 70), implies, inter alia, that legislation must clearly define offences and the penalties which they attract. That condition is met where the individual concerned is in a position, on the basis of the wording of the relevant provision and, if necessary, with the help of the interpretation made by the courts, to know which acts or omissions will make him criminally liable (judgment of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 50). Further, the case-law of the Court states that the principle of *nulla poena sine lege certa* cannot be interpreted as prohibiting the gradual clarification of rules of criminal liability by means of interpretations in the case-law, provided that those interpretations are reasonably foreseeable (see, to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 217 and 218).

(see paras 161, 162, 167, operative part 2)

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

The contextual interpretation of Article 4(3)(b) of Regulation No 833/2014 shows, as argued in particular by the German Government in its written observations, that, by the use of the expression 'financial assistance', the EU legislature envisaged measures comparable to grants, loans and export credit insurance. While those measures require the financial institution concerned to use its own resources, payment services are provided, by contrast, by that institution acting as an intermediary, transmitting third party client funds to a particular recipient, without any commitment of that institution's own resources. In those circumstances, Article 4(3) of Regulation No 833/2014 cannot be interpreted as imposing on financial institutions an obligation to obtain, for the processing of any payment related to a sale, supply, transfer or export to Russia of products listed in Annex II to that



regulation, an authorisation in addition to that required, under Article 3 of Regulation No 833/2014, for such transactions, where those institutions find that the payment, the processing of which is requested, constitutes, in whole or in part, the consideration for such a transaction. Taking into consideration the fact that it is not the aim of Article 4(3)(b) of that regulation either to establish a freezing of assets or restrictions on the transfer of funds, the Court must hold that if the EU legislature had intended that the processing of any bank transfer related to the products referred to in Annex II to Regulation No 833/2014 should be subject to a request for a further authorisation in addition to that required under Article 3 of Regulation No 833/2014 for a transaction of the kind mentioned in the preceding paragraph, it would have used an expression other than ‘financial assistance’ in order to establish and define such an obligation. Finally, if one of the objectives of Regulation No 833/2014 is to increase the costs of the actions of the Russian Federation vis-à-vis Ukraine, it is clear that Article 4(3)(b) of that regulation is consistent with the pursuit of that objective by establishing restrictions on financial assistance for the export to Russia of products to be used in the oil industry, yet without subjecting the processing of payments as such to the prior authorisation requirement. The foregoing interpretation is without prejudice to the prohibition that applies to any processing of payments that is related to a commercial transaction that is itself prohibited under Article 3(5) of Regulation No 833/2014.

(see paras 179-183, operative part 3)

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

(see operative part 3)