



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

20 December 2023*

(Action for annulment – Common foreign and security policy – Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine – Prohibition on any non-Russian-registered aircraft owned, chartered or otherwise controlled by any Russian natural or legal person, entity or body, from landing in, taking off from, or overflying the territory of the European Union – Article 4e of Decision 2014/512/CFSP – Lack of jurisdiction of the General Court – Article 3d of Regulation (EU) No 833/2014 – Lack of *locus standi* – Inadmissibility)

In Case T-233/22,

Ekaterina Isentyeva, residing in Strassen (Luxembourg), represented by F. Moyse and V. Sulea, lawyers,

applicant,

v

Council of the European Union, represented by V. Piessevaux and M.-C. Cadilhac, acting as Agents,

defendant,

supported by

European Commission, represented by J.-F. Brakeland, C. Giolito, K. Simonsson, M. Carpus Carcea and B. Sasinowska, acting as Agents,

intervener,

THE GENERAL COURT (First Chamber, Extended Composition),

composed of D. Spielmann, President, R. Mastroianni, M. Brkan, I. Gâlea (Rapporteur) and S.L. Kalèda, Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure,

further to the hearing on 10 October 2023,

* Language of the case: French.

gives the following

Judgment

- 1 By her action under Article 263 TFEU, the applicant, Ms Ekaterina Islentyeva, seeks the annulment, first, of Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 57, p. 4; 'the contested decision') and, secondly, of Council Regulation (EU) 2022/334 of 28 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 57, p. 1; 'the contested regulation') (together 'the contested acts').

Background to the dispute

- 2 The present case arises in the context of restrictive measures adopted by the European Union in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
- 3 The applicant has dual Luxembourg and Russian nationality. She holds a private pilot licence issued by the Directorate for Civil Aviation of the Grand Duchy of Luxembourg (DAC). Prior to the adoption of the contested measures, she used aircraft belonging to the Luxembourg non-profit association Avia Sport II, established at Luxembourg Airport (Luxembourg) and flew over Luxembourg, France, Germany, Belgium and the United Kingdom. She flew alone or with an instructor, being at all times the commander within the meaning of point 93 of Annex I to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ 2012 L 296, p. 1). In 2021, she thus carried out 14 flights.
- 4 In March 2014, the Russian Federation illegally annexed the Autonomous Republic of Crimea and the city of Sevastopol and since then has engaged in ongoing destabilisation actions in eastern Ukraine. In response, the European Union has imposed restrictive measures in the light of the actions of the Russian Federation destabilising the situation in Ukraine, restrictive measures in the light of actions compromising or threatening the territorial integrity, sovereignty and independence of Ukraine, and restrictive measures in response to the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.
- 5 On 24 February 2022, the President of the Russian Federation announced a military operation in Ukraine and, on the same day, Russian armed forces attacked Ukraine at several locations in the country.
- 6 On 28 February 2022, in the context of a series of restrictive measures concerning, inter alia, the closure of EU air space to certain categories of aircraft, the SWIFT financial messaging system and the resources of the Russian Central Bank, the Council of the European Union adopted, on the basis of Article 29 TEU, the contested decision and, on the basis of Article 215 TFEU, the contested regulation.

- 7 Article 4e 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 inserted by Article 1(2) of the contested decision, reads as follows:

'1. Member States shall, in accordance with their national rules and laws and consistent with international law, in particular relevant international civil aviation agreements, deny to any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, to any Russian-registered aircraft, and to any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, permission to land in, take off from, or overfly the territory of the Union.

2. Paragraph 1 shall not apply in the case of an emergency landing or an emergency overflight.

3. By way of derogation from paragraph 1, the competent authorities may authorise an aircraft to land in, take off from, or overfly, the territory of the Union if the competent authorities have determined that such landing, take-off or overflight is required for humanitarian purposes or for any other purpose consistent with the objectives of this Decision.

4. The Member State or Member States concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 3 within two weeks of the authorisation.'

- 8 Article 3d 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 inserted by Article 1(2) of the contested regulation, reads as follows:

'1. It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian-registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union.

2. Paragraph 1 shall not apply in the case of an emergency landing or an emergency overflight.

3. By way of derogation from paragraph 1, the competent authorities may authorise an aircraft to land in, take off from, or overfly, the territory of the Union if the competent authorities have determined that such landing, take-off or overflight is required for humanitarian purposes or for any other purpose consistent with the objectives of this Regulation.

4. The Member State or Member States concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 3 within two weeks of the authorisation.'

- 9 Following the adoption of the contested acts, the European Commission and the European Aviation Safety Agency (EASA) each dedicated a document or a section on their website intended to answer frequently asked questions relating to those acts. According to the document published by the Commission on 21 March 2022, the prohibition introduced by the contested acts covered persons with dual nationality of Russia and a Member State, as well as private flights. Similarly, according to the answers to the frequently asked questions which were published on

EASA's website on 15 March 2023, that prohibition applied to persons with dual nationality of Russia and a Member State. In addition, it was also stated that it applied where a Russian national flew privately as a pilot and therefore controlled when and where the aircraft flew, except in the event that that person flew as an employee of a non-Russian air carrier, since, in such a situation, he or she did not control the aircraft.

- 10 The authorities of Luxembourg Airport published a 'notice to airmen' (NOTAM) communicating the information on the restrictive measures concerning the aviation sector adopted in the contested acts.
- 11 On 21 April 2022, in response to a question from the applicant's representative, the DAC stated, inter alia, that the explanations provided on the EASA website were based on a common approach within the European Union and a uniform interpretation adopted by the Commission's departments. The DAC also stated that the term 'control' was interpreted broadly, which included the effective and material control of an aircraft and was not limited solely to economic and financial control.

Forms of order sought

- 12 The applicant, after clarifying her claims in response to a question put at the hearing, claims that the Court should:
 - declare the application admissible;
 - annul the contested regulation, in so far as it inserts Article 3d of Regulation No 833/2014, and the contested decision, in so far as it inserts Article 4e of Decision 2014/512;
 - recognise the applicant's right to use her private pilot licence and to land in, take off from or overfly the territory of the European Union;
 - order the Council to pay the costs.
- 13 The Council, supported by the Commission, contends that the Court should:
 - primarily, dismiss the application as inadmissible;
 - in the alternative, dismiss the action as unfounded;
 - order the applicant to pay the costs.

Law

The jurisdiction of the Court to hear the action in so far as it requests the Court to recognise the applicant's right to use her private pilot licence and to land in, take off from or overfly the territory of the European Union

- 14 By one of her heads of claim, the applicant claims that the Court should recognise her right to use her private pilot licence and to land in, take off from or overfly the territory of the European Union.
- 15 In that regard, it is sufficient to state that, when exercising judicial review of legality under Article 263 TFEU, the Court does not have the jurisdiction to deliver declaratory or confirmatory judgments (see, to that effect, order of 9 December 2003, *Italy v Commission*, C-224/03, not published, EU:C:2003:658, paragraphs 20 and 21, and judgment of 4 February 2009, *Omya v Commission*, T-145/06, EU:T:2009:27, paragraph 23).
- 16 It follows from the foregoing that, in so far as it requests the Court to recognise the applicant's right to use her private pilot licence and to land in, take off from or overfly the territory of the European Union, the action must be dismissed as having been brought before a court that has no jurisdiction to hear it.

The jurisdiction of the Court to hear the action in so far as it seeks annulment of the contested decision

- 17 The Council claims that the Court has no jurisdiction to rule on the legality of the contested decision. It submits that, under Article 275 TFEU, the Courts of the European Union do not have jurisdiction to hear actions for annulment of restrictive measures imposed by a decision falling within the common foreign and security policy (CFSP) which constitute measures of general application. In the present case, it contends that the prohibition laid down in Article 4e of Decision 2014/512, as amended by the contested decision, is a general measure whose scope is determined by reference to objective criteria, in particular the categories of aircraft, and that it does not target identified natural or legal persons.
- 18 The Commission contends that the Court has jurisdiction to review the legality of all measures adopted pursuant to Article 215 TFEU and to review the legality of restrictive measures adopted on the basis of Article 29 TEU. It considers that the Council bases its reasoning on a 'mechanistic' reading of the wording of Article 275 TFEU and that there are exceptions to the lack of jurisdiction of the Courts of the European Union in CFSP matters. Furthermore, those Courts also have jurisdiction to review the legality of regulations adopted on the basis of Article 215(1) TFEU and of decisions in CFSP matters adopted on the basis of Article 29 TEU. Lastly, the jurisdiction of the Courts of the European Union is not based on the alleged subjectivity of the criterion of 'control'.
- 19 The applicant contests the Council's arguments. She submits that the exclusion of the CFSP from the jurisdiction of the Court of Justice of the European Union provided for in Article 275 TFEU must be interpreted restrictively. She asserts that the application of the restrictive measure at issue is not determined by reference to objective criteria. According to the applicant, first, the measures adopted by the contested acts have an impact not only on the Russian Federation, but also on third parties such as Russian citizens and, secondly, the concept of 'control' of the

aircraft, as interpreted by the EU institutions, is a subjective criterion. Furthermore, the applicant submits that the jurisdiction of the Court is also based on Article 47 of the Charter of Fundamental Rights of the European Union, which allows the existing provisions to be interpreted, in compliance with the Treaties, in such a way that they can ensure respect for fundamental rights and freedoms. The applicant adds that it is imperative that the restrictive measures provided for by the contested acts be subject to review in order to determine whether they respect fundamental rights and the principle of proportionality.

- 20 It should be borne in mind that, although, pursuant to the last sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, the Court of Justice of the European Union does not, in principle, have jurisdiction with respect to the provisions relating to the CFSP or with respect to acts adopted on the basis of those provisions, the Treaties nevertheless expressly establish two exceptions to that principle. First, both the last sentence of the second subparagraph of Article 24(1) TEU and the second paragraph of Article 275 TFEU provide that the Court of Justice of the European Union has jurisdiction to review compliance with Article 40 TEU. Secondly, the last sentence of the second subparagraph of Article 24(1) TEU confers on the Court of Justice jurisdiction to review the legality of certain decisions referred to in the second paragraph of Article 275 TFEU. In turn, the latter provision confers on the Court of Justice of the European Union jurisdiction to give rulings on actions, brought subject to the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning the review of the legality of Council decisions, adopted on the basis of provisions relating to the CFSP, which provide for restrictive measures against natural or legal persons (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 60).
- 21 Thus, as regards measures adopted on the basis of provisions relating to the CFSP, it is the individual nature of those measures which, in accordance with the second paragraph of Article 275 TFEU, permits access to the Courts of the European Union (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 103 and the case-law cited; judgment of 13 September 2018, *Gazprom Neft v Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraph 53).
- 22 In that regard, it should be noted that the Court of Justice held that Articles 4 and 4a of Decision 2014/512 provided for measures the scope of which was determined by reference to objective criteria, in particular categories of oil production and exploration projects. On the other hand, those measures did not target identified natural or legal persons, but were applicable generally to all operators involved in the sale, supply, transfer or exports that are subject to the prior authorisation requirement and to all the suppliers of associated services (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 97). Thus, the Court of Justice held that those measures did not constitute measures against natural or legal persons, within the meaning of the second paragraph of Article 275 TFEU, but rather measures of general application, and that it did not have jurisdiction to review their validity (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 98 and 99).
- 23 Furthermore, as regards Article 1(2)(b) to (d) and (3) and Article 7 of, and Annex III to, Decision 2014/512, the Court of Justice found that the purpose of those measures was defined by reference to specific entities. It held that those provisions prohibited, inter alia, the carrying out of various financial transactions with respect to entities listed in Annex III to that decision and that it had jurisdiction to rule on their validity (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 100 and 107).

- 24 Accordingly, by establishing criteria for identifying a natural or legal person and by mentioning the name of that person in the annex to a decision taken under the provisions relating to the CFSP, the Council adopts restrictive measures against the natural or legal person concerned, despite the fact that such measures may also target, individually, other entities (see, to that effect, judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 104, and of 13 September 2018, *Gazprom Neft v Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraph 54).
- 25 In the present case, the prohibition laid down in Article 4e of Decision 2014/512, as inserted by Article 1(2) of the contested decision, covers ‘any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked space arrangements, ... any Russian-registered aircraft, and ... any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body’.
- 26 In that regard, it must be held that the scope of the measure at issue is determined by reference to objective criteria, namely categories of aircraft. The measures at issue concern aircraft operated by Russian air carriers, including as marketing carriers under code-share or blocked space arrangements, Russian-registered aircraft and non-Russian-registered aircraft which are owned, chartered or otherwise controlled by a Russian natural or legal person, entity or body. Accordingly, the restrictive measures at issue do not target identified natural or legal persons, but apply to all aircraft that meet the criteria set out above.
- 27 Moreover, it is apparent from the case-law that restrictive measures resemble both measures of general application, in that they impose on a category of addressees determined in a general and abstract manner a prohibition on making available funds and economic resources to entities listed in their annexes, and also individual decisions affecting those entities (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 102 and the case-law cited). However, in the present case, it must be noted that the restrictive measures imposed under Article 4e of Decision 2014/512, as amended by the contested decision, are not designed in such a way and that that article makes no reference to any annex. According to the case-law referred to in paragraph 21 above, it is the individual nature of measures which, in accordance with the second paragraph of Article 275 TFEU, permits access to the Courts of the European Union.
- 28 In those circumstances, it must be observed that the measures imposed by Article 4e of Decision 2014/512, as amended by the contested decision, do not constitute restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU, but measures of general application.
- 29 That conclusion cannot be called into question by the applicant’s argument that the Courts of the European Union have jurisdiction because of an alleged infringement of the principle of proportionality and fundamental rights, since, according to the case-law, arguments relating exclusively to the substance of the action cannot call into question the Court’s lack of jurisdiction to hear and determine an action for annulment of a provision of the contested decision (see, to that effect, order of 3 July 2007, *Commune de Champagne and Others v Council and Commission*, T-212/02, EU:T:2007:194, paragraph 217).
- 30 In the light of the foregoing considerations, it must be held that the Court does not have jurisdiction to review the validity of Article 4e of Decision 2014/512, as amended. Consequently, in so far as it seeks the annulment of the contested decision, the action must be dismissed as having been brought before a court that has no jurisdiction to hear it.

Admissibility of the action in so far as it seeks the annulment of the contested regulation

- 31 The Council contends that the action is inadmissible in so far as it seeks the annulment of the contested regulation. Although it accepts that Article 3d(1) of Regulation No 833/2014, as amended, is a regulatory act which is of direct concern to the applicant, in that that provision prevents her from using her private pilot licence, it maintains that that provision does however entail implementing measures. Thus, the applicant must establish that she is not only directly, but also individually concerned by the contested regulation. According to the Council, the applicant is not individually concerned by the contested regulation.
- 32 Furthermore, as regards the applicant's claims relating to the consequences for her situation arising from the interpretation of Article 3d(1) of Regulation No 833/2014 as amended, the Council contends that, in adopting that provision, its intention was not to prohibit Russian citizens holding a private pilot's licence from using that licence to fly, on a private basis, a non-Russian-registered aircraft which is not owned or chartered by them. According to the Council, the expression 'otherwise controlled' in Article 3d(1) of Regulation No 833/2014, as amended, must be understood only in the sense of economic or financial control. It submits that that interpretation corresponds to the objective of the contested acts, namely to exert pressure on the President of the Russian Federation and the Russian Government to cease their actions to destabilise Ukraine. The Council states that such an objective cannot be achieved by restrictions imposed on Russian natural persons on the sole ground that they fly an aircraft. In addition, it points out that, where a text is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with the Treaties. Thus, it submits that, under the interpretation which it proposes, Article 3d(1) of Regulation No 833/2014, as amended, is not capable of infringing provisions of the Treaties or of the Charter of Fundamental Rights.
- 33 The Commission submits that, although the contested regulation is a regulatory act, it involves implementing measures, with the result that the applicant must show that she is directly and individually concerned. Like the Council, the Commission asserts that the applicant is not individually concerned by that regulation.
- 34 As regards the interpretation to be given to Article 3d(1) of Regulation No 833/2014, as amended, the Commission submits that the concept of 'control' must be interpreted broadly, as meaning that a person is regarded as 'controlling' the aircraft where he or she has technical or operational control of the aircraft, inter alia when flying privately as a pilot. According to the Commission, the reference to 'otherwise controlled' confirms the non-restrictive nature of the concept of control. It states that the legislation on restrictive measures uses the concepts of 'possession, ownership and control' in relation to the freezing of funds, in order to determine the personal scope of a measure, and that, in that context, the concept of 'control' is used in a financial sense. However, that interpretation cannot be transposed to the present case, where the question of control is relevant for the purpose of determining which aircraft is prohibited from land in the territory of the European Union. Lastly, the adoption of a broad interpretation is consistent with the objective of preventing the circumvention of restrictive measures.
- 35 The applicant submits that her action is admissible in so far as it seeks the annulment of the contested regulation. Although she accepts that she is not the addressee thereof, the applicant contends that she is directly concerned by the provisions of that regulation which she is challenging. She submits that the interpretation of Article 3d(1) of Regulation No 833/2014, as amended, adopted by the Commission, EASA and the DAC, according to which she controls an

aircraft in the sense that she can decide when and where that aircraft flies, has the consequence, pursuant to that provision, of preventing her from using her private pilot licence. The applicant also submits that she is individually concerned by the contested regulation and, in any event, that it is a regulatory act which does not entail implementing measures.

- 36 Furthermore, as regards the interpretation to be given to Article 3d(1) of Regulation No 833/2014, as amended, the applicant submits that the term ‘control’ must mean economic or financial control of the aircraft, with the result that she is not concerned by the prohibition laid down in that provision and she may continue to use her private pilot licence.
- 37 It should be borne in mind that, under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.
- 38 Since the condition of direct concern is common to both the second and third limbs of the fourth paragraph of Article 263 TFEU and since, according to the case-law, that condition has the same meaning for each of those limbs (see, to that effect, judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 73), it must be examined whether that condition is satisfied.
- 39 According to settled case-law, the condition that the measure forming the subject matter of the proceedings must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 263 TFEU, requires the fulfilment of two cumulative criteria, namely the contested measure should, first, directly affect the legal situation of the individual and, secondly, should leave no discretion to the addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see judgment of 22 June 2021, *Venezuela v Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 61 and the case-law cited).
- 40 In the present case, in order to determine whether the applicant is directly concerned by the restrictive measures at issue, it is necessary first to examine whether she falls within the scope of Article 3d(1) of Regulation No 833/2014, as amended.
- 41 To that end, it is necessary to determine the interpretation to be given to the concept of ‘control’ of an aircraft.
- 42 According to the case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 10 July 2014, *D. and G.*, C-358/13 and C-181/14, EU:C:2014:2060, paragraph 32 and the case-law cited).
- 43 In the first place, it is apparent from the very wording of Article 3d(1) of Regulation No 833/2014, as amended, that the prohibition laid down by that provision covers any aircraft operated by Russian air carriers, any Russian-registered aircraft and any non-Russian-registered aircraft which is owned, chartered or otherwise controlled by a Russian natural or legal person, entity or body.

- 44 In that regard, a literal interpretation of the concept of ‘otherwise control[ling]’ a non-Russian-registered aircraft may lead to the conclusion that that concept refers, as the Council contends, only to economic or financial control or, as the Commission submits, also to ‘technical or operational’ control, with the result that the prohibition could concern an aircraft piloted by a natural person of Russian nationality.
- 45 In the second place, as regards the contextual interpretation of the concept of an ‘otherwise controlled’ non-Russian-registered aircraft, first, it should be noted that the contested regulation amends Regulation No 833/2014, which provides for sectoral restrictive measures of an economic nature adopted on the basis of Article 215(1) TFEU. Secondly, it must be observed that the expression ‘otherwise controlled’ follows on from the terms ‘owned’ and ‘chartered’, which are terms designating concepts that are relevant from an economic or financial view. Thirdly, as acknowledged by the Commission, the concept of ‘control’ is used in an economic or financial sense in other provisions of Regulation No 833/2014 to define the scope *ratione personae* of sectoral restrictive measures (see, for example, Article 2(4)(e) and (f) and Article 3(6)(b) of that regulation) or of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), with regard to individual restrictive measures in relation to the freezing of funds or economic resources (see Article 2(1) of that regulation).
- 46 In the third place, as regards the teleological interpretation of the concept of a non-Russian-registered aircraft being ‘otherwise controlled’, first, it should be noted that the objective pursued by the contested regulation is, inter alia, to exert maximum pressure on Russian authorities, in order for them to put an end to their actions and policies destabilising Ukraine and to the military aggression against that country (see, to that effect and by analogy, judgment of 27 July 2022, *RT France v Council*, T-125/22, EU:T:2022:483, paragraph 163).
- 47 In the present case, it must be held that, as the Council submits, the imposition of restrictions on non-Russian-registered aircraft that are owned, chartered or otherwise economically or financially controlled contributes to exerting such pressure on Russian authorities. Such restrictions, in so far as they affect the Russian aviation sector economically, contribute to the objective of increasing the costs of the Russian Federation’s actions to undermine Ukraine’s territorial integrity, sovereignty and independence (see, to that effect, judgment of 13 September 2018, *Rosneft and Others v Council*, T-715/14, not published, EU:T:2018:544, paragraph 157 and the case-law cited).
- 48 Secondly, as regards the possible need to adopt a broad interpretation of Article 3d(1) of Regulation No 833/2014, as amended, in order to avoid any risk of circumvention of the restrictive measures inherent in the numerous existing possibilities of benefiting from air transport while concealing the identity and the nationality of the beneficiary, it is sufficient to note that, contrary to the Commission’s submissions (see paragraph 33 above), the possibility of concealing the identity and the nationality of the beneficiary concerns the concept of ‘control’ in the economic or financial sense and not in the ‘technical’ or ‘operational’ sense.
- 49 Thirdly, it should be recalled that, according to settled case-law, the principle of proportionality, which is one of the general principles of EU law and is reproduced in Article 5(4) TEU, requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (judgments of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122, and of 24 November 2021, *Assi v Council*, T-256/19, EU:T:2021:818, paragraph 194 (not published)).

- 50 In that regard, as the Council contends, it must be noted that, although the imposition of restrictions on Russian persons and entities controlling, from an economic or financial view, a non-Russian-registered aircraft contributes to exerting pressure on the Russian President and his government, the same is not true of restrictions taken against Russian natural persons who merely ‘pilot’ such an aircraft. Consequently, it must be held that a prohibition on landing, take-off or overflying the territory of the European Union applicable to any aircraft controlled on a ‘technical or operational’ basis by a Russian citizen, in so far as it includes Russian citizens holding a private pilot’s licence, would be manifestly inappropriate in the light of the objective of exerting pressure on the Russian President and his government capable of stopping the violations of international law and preserving the territorial integrity of Ukraine.
- 51 Thus, according to the case-law, if the wording of secondary legislation is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with the Treaty rather than to the interpretation which leads to its being incompatible with the Treaty (see judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 70 and the case-law cited). Therefore, it must be held that Article 3d of Regulation No 833/2014, as amended, must be interpreted as meaning that the prohibition on landing in, taking off from or overflying the territory of the European Union, applicable to ‘any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body’ covers any non-Russian-registered aircraft which is economically or financially controlled by a Russian natural or legal person, entity or body, without affecting the situation where, as in the present case, a Russian citizen holding a private pilot licence uses that licence to pilot a non-Russian-registered aircraft, which is not owned or chartered by a Russian natural or legal person, entity or body.
- 52 It follows that the situation of the applicant, who neither owns nor charters a non-Russian-registered aircraft and does not have any economic or financial control over such an aircraft, does not fall within the scope of Article 3d of Regulation No 833/2014 as amended. Therefore, she is not directly concerned by the prohibition laid down in that article, with the result that she does not have standing to bring an action for annulment of that provision (see, to that effect and by analogy, judgment of 21 December 2016, *Council v Front Polisario*, C-104/16 P, EU:C:2016:973, paragraphs 132 and 133).
- 53 Consequently, in so far as the applicant seeks the annulment of the contested regulation, the action must be dismissed as inadmissible.
- 54 In the light of all the foregoing, the action must be dismissed in its entirety, in part as having been brought before a court which has no jurisdiction to hear it and in part as inadmissible.

Costs

- 55 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. However, according to Article 135(1) of the Rules of Procedure, if equity so requires, the Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his or her own, or even that he or she is not to be ordered to pay any.

- 56 In the present case, the Court considers that – in view of the difficulties in interpreting the concept of an aircraft being ‘otherwise controlled’, which may have contributed, to a certain extent, to the emergence of the present dispute – although the applicant has been unsuccessful, a fair assessment of all the circumstances justifies ordering the applicant and the Council each to bear their own costs.
- 57 According to Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

- 1. Dismisses the action;**
- 2. Orders Ms Ekaterina Islentjeva and the Council of the European Union each to bear their own costs;**
- 3. Orders the European Commission to bear its own costs.**

Spielmann

Mastroianni

Brkan

Gâlea

Kalêda

Delivered in open court in Luxembourg on 20 December 2023.

[Signatures]