Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

10 September 2024*[i]

(Reference for a preliminary ruling – Common Foreign and Security Policy (CFSP) – Restrictive measures adopted in view of the actions of the Russian Federation destabilising the situation in Ukraine – Decision 2014/512/CFSP – Article 2(2)(a) – Jurisdiction of the Court – Final sentence of the second subparagraph of Article 24(1) TEU – Article 275 TFEU – Article 215 TFEU – Article 17 of the Charter of Fundamental Rights of the European Union – Right to property – Principle of legal certainty and principle that penalties must be defined by law – Brokering services in relation to military equipment – Prohibition on providing such services – Failure to notify the competent national authorities – Administrative offence – Fine – Automatic confiscation of the amounts received in consideration for the prohibited transaction)

In Case C-351/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul București (Regional Court, Bucharest, Romania), made by decision of 2 November 2021, received at the Court on 31 May 2022, in the proceedings

Neves 77 Solutions SRL

v

Agenția Națională de Administrare Fiscală – Direcția Generală Antifraudă Fiscală,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, T. von Danwitz (Rapporteur), Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, J.-C. Bonichot, S. Rodin, I. Jarukaitis, A. Kumin and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: K. Hötzel, Administrator,

having regard to the written procedure and further to the hearing on 27 June 2023,

after considering the observations submitted on behalf of:

– Neves 77 Solutions SRL, by S. Donescu, avocată,

* Language of the case: Romanian.

– the Romanian Government, by E. Gane, L. Ghiță and O.-C. Ichim, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, acting as Agent,

– the Austrian Government, by J. Schmoll, and E. Samoilova, acting as Agents, and by M. Meisel, expert,

– the Council of the European Union, by M. Bishop and A. Ștefănuc, acting as Agents,

– the European Commission, by J.-F. Brakeland, M. Carpus Carcea, L. Gussetti and Y. Marinova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 November 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(a) and Articles 5 and 7 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) ('Decision 2014/512'), read in the light of the principle of legal certainty and the principle that penalties must be defined by law.

2 The request has been made in proceedings between Neves 77 Solutions SRL ('Neves') and the Agenția Națională de Administrare Fiscală – Direcția Generală Antifraudă Fiscală (National Tax Administration Agency – Tax Fraud Department, Romania) ('ANAF') regarding an infringement notice imposing on that company a penalty and the confiscation of the amounts received in consideration for a brokering transaction for infringement of, inter alia, Article 2(2)(a) of Decision 2014/512.

Legal context

European Union law

The EU and FEU Treaties

3 Title V of the EU Treaty is headed 'General provisions on the [European] Union's external action and specific provisions on the common foreign and security policy'. Within Chapter 2 of that title, headed 'Specific provisions on the common foreign and security policy', the second subparagraph of Article 24(1) TEU states:

'The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council [of the European Union] acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the

Treaties. The specific role of the European Parliament and of the [European] Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 [TEU] and to review the legality of certain decisions as provided for by the second paragraph of Article 275 [TFEU].'

4 Also in Chapter 2, Article 40 TEU provides:

'The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 [TFEU].

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.'

5 Part Five of the FEU Treaty concerns the Union's external action. In Title IV, headed 'Restrictive measures', of Part Five, Article 215 TFEU provides:

'1. Where a decision, adopted in accordance with Chapter 2 of Title V of the [EU Treaty], provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the [EU Treaty] so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

…'

6 Part Six of the FEU Treaty contains institutional and financial provisions. Title I of Part Six is entitled 'Institutional provisions'. Section 5 of Title I, relating to the Court of Justice of the European Union, contains Article 275 TFEU, worded as follows:

'The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 [TEU] and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 [TFEU], reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the [EU Treaty].'

Decision 2014/512

7 Article 2 of Decision 2014/512 provides:

'1. The direct or indirect sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment,

and spare parts therefor, to Russia by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

(a) to provide technical assistance, brokering services or other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body in, or for use in Russia;

…'

8 Article 5 of that decision provides:

'In order to maximise the impact of the measures referred to in this Decision, the Union shall encourage third States to adopt restrictive measures similar to those provided for herein.'

9 Article 7 of that decision provides:

'1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

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

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

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

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

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

Regulation (EU) No 833/2014

10 Article 1 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) provides:

'For the purposes of this Regulation, the following definitions apply:

…

(d) "brokering services" means:
   (i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country, or
   (ii) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;

…'

11 Under Article 4(1)(a) of that regulation:

'It shall be prohibited:

(a) to provide, directly or indirectly, technical assistance related to the goods and technology listed in the Common Military List …, or related to the provision, manufacture, maintenance and use of goods included in that list, to any natural or legal person, entity or body in Russia or for use in Russia'.

Regulation (EU) 2023/1214

12 Point 19 of Article 1 of Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2023 L 159 I, p. 1), replaced the wording of Article 4(1)(a) of Regulation No 833/2014, adding the words 'and brokering services', as follows:

'It shall be prohibited:

(a) to provide, directly or indirectly, technical assistance and brokering services related to the goods and technology listed in the Common Military List …, or related to the provision, manufacture, maintenance and use of goods included in that list, to any natural or legal person, entity or body in Russia or for use in Russia'.

Common Position 2008/944/CFSP

13 Article 12 of Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ 2008 L 335, p. 99) provides:

'Member States shall ensure that their national legislation enables them to control the export of the technology and equipment on the EU Common Military List. The EU Common Military List shall act as a reference point for Member States' national military technology and equipment lists, but shall not directly replace them.'

The Common Military List of the European Union

14 On 26 February 2018, the Council adopted a new version of the Common Military List of the European Union (OJ 2018 C 98, p. 1) referred to in Article 12 of Common Position 2008/944. On 18 February 2019, the Council adopted an updated version of that list (OJ 2019 C 95, p. 1).

15 Point 'ML11' of that list, in those two versions, contained a list of electronic equipment, 'spacecraft' and components, not specified elsewhere on the EU Common Military List.

Romanian law

OUG No 202/2008

16 Article 1(1) of the Ordonanța de urgență a Guvernului nr. 202/2008 privind punerea în aplicare a sancțiunilor internaționale (Government Emergency Order No 202/2008 on the implementation of international sanctions) of 4 December 2008 (*Monitorul Oficial al României*, Part I, No 825 of 8 December 2008) ('OUG No 202/2008'), provides:

'The present order regulates the manner of implementation at national level of international sanctions imposed by:

(a) resolutions of the Security Council of the United Nations or other acts adopted on the basis of Article 41 of the Charter of the United Nations;

(b) regulations, decisions, common positions, joint actions and other legal instruments of the European Union.'

17 Article 3 of OUG No 202/2008 provides:

'1. The acts referred to in Article 1(1) are binding in national law on all Romanian public authorities and institutions and on natural and legal persons that are Romanian or situated on Romanian territory, in accordance with the legislation establishing the legal regime of each category of acts.

2. National legislative provisions cannot be relied on to justify non-application of the international sanctions referred to in Article 1(1).'

18 Article 7 of OUG No 202/2008 provides:

‘1. Any person in possession of data or information concerning designated persons or entities, which holds or controls goods or is in possession of data or information relating to those goods, to transactions related to goods or in which designated persons or entities are involved, is required to inform the competent authority in accordance with the present emergency order, as soon as that person becomes aware of the situation of which the competent authority must be informed.

2. Should the public authority or institution informed in accordance with paragraph 1 find itself not to be a competent authority under the present emergency order, it shall communicate the information to the competent authority within 24 hours. If it is not possible to identify the competent authority, the information shall be communicated to the Ministry of Foreign Affairs as coordinator of the interinstitutional committee referred to in Article 13.

3. The information must contain minimal particulars for its author to be able to be identified and contacted.’

19 Article 24(1) of OUG No 202/2008 is worded as follows:

‘Natural or legal persons who, having established a legal relationship or finding themselves in a factual situation in respect of any product subject to an international sanction, become aware of a situation requiring that the competent authority be informed or alerted under Article 7 or Article 18, respectively, are required, without delay or prior notification to the competent authorities, not to carry out any transaction in respect of that product other than those provided for by the present urgent order and to inform the competent authorities thereof immediately.’

20 Article 26(1)(b) of OUG No 202/2008 provides:

‘The following offences are administrative offences and shall be penalised by a fine of between 10 000 and 30 000 [Romanian lei (RON)] and the confiscation of the goods intended for the offence, used for the offence or resulting therefrom:

…

(b) Failure to comply with the obligation laid down in Article 24(1), if the act does not constitute a criminal offence’.

Decrees No 156/2018 and No 901/2019

21 Ordinul ministrului afacerilor externe nr. 156/2018 pentru aprobarea Listei cuprinzând produsele militare supuse regimului de control al exporturilor, importurilor și altor operațiuni (Decree No 156/2018 of the Minister for Foreign Affairs ratifying the list of military products subject to the system of control of exports, imports and other transactions), of 18 January 2018 (*Monitorul Oficial al României*, Part I, No 86 of 30 January 2018; ‘Decree No 156/2018’), in force from 5 March 2018 until 4 July 2019, was repealed and replaced by Ordinul ministrului afacerilor externe nr. 901/2019 pentru aprobarea Listei cuprinzând produsele militare supuse regimului de control al exporturilor, importurilor și altor operațiuni (Decree No 901/2019 of the Minister for

Foreign Affairs ratifying the list of military products subject to the system of control of exports, imports and other transactions), of 4 June 2019 (*Monitorul Oficial al României*, Part I, No 477 of 12 June 2019; 'Decree No 901/2019'), in force from 5 July 2019 until 6 October 2021.

22 Category 'ML11' of those decrees contained a list of electronic equipment, 'spacecraft' and components, not specified elsewhere on the list established by those decrees.

The dispute in the main proceedings and the questions referred for a preliminary ruling

23 Neves, whose primary activity is brokering in sales of goods in the field of aviation, acted as intermediary for a transaction between SFTE Spetstechnoexport ('SFTE'), a Ukrainian company, and an Indian company.

24 On 4 January 2019, Neves, as seller, entered into a contract with SFTE, as purchaser, to transfer the property rights of 32 R-800L2E radio sets to be delivered to the United Arab Emirates ('the contract of 4 January 2019'). On 8 January 2019, Neves purchased those 32 radio sets, 20 of which were manufactured in Russia and exported to the United Arab Emirates, from a Portuguese company. Subsequently, at SFTE's request, Neves transferred those 32 radio sets to that Indian company, which received them on 31 January 2019.

25 By letters of 26 and 29 July 2019, the Departamentul pentru Controlul Exporturilor (ANCEX) din cadrul Ministerului Afacerilor Externe (Department of Export Control (ANCEX) of the Ministry of Foreign Affairs, Romania) ('ANCEX') informed Neves that the R-800L2E radio sets came within category ML11 of the list of military products approved by Decree No 901/2019, that the commercial transactions relating to those goods could be made only on the basis of a registration and licences issued by that department, in accordance with Ordonanța de urgență a Guvernului nr. 158/1999 privind regimul de control al exporturilor, importurilor și altor operațiuni cu produse militare (Government Emergency Order No 158/1999 on the system of control of exports, imports and other transactions relating to military products), and that that brokering transaction relating to those radio sets came within the scope of Decision 2014/512.

26 In response to those letters, Neves disputed that those radio sets were military in nature and claimed that Decree No 901/2019 did not apply at the time when those radio sets were delivered. Neves added that Article 2(2)(a) of Decision 2014/512 did not apply either, as those radio sets had not been sold in Russia and had been delivered to India.

27 On 6 and 9 August 2019, Neves received from SFTE, respectively, the amounts of EUR 577 746.08 as a down payment and EUR 2 407 215.32 as payment for the goods delivered under the contract of 4 January 2019.

28 On 12 May 2020, ANAF drew up an infringement notice in accordance with Article 26(1)(b) of OUG No 202/2008 imposing on Neves, primarily, an administrative fine in the amount of RON 30 000 (approximately EUR 6 066) and, in addition, the confiscation of the total amount of RON 14 113 003 (approximately EUR 2 984 961.40) received on 6 and 9 August 2019 under the contract of 4 January 2019.

29 ANAF found that Neves had infringed Article 2(2)(a) of Decision 2014/512 and Article 3(1), Article 7(1) and Article 24(1) of OUG No 202/2008. In an annex to that notice, it set out, inter alia, that, although, by letter of 27 June 2019, Neves had informed ANCEX that the country of origin of the radio sets was the Russian Federation, it had performed that contract and received that payment, the letters from ANCEX of 26 and 29 July 2019 notwithstanding.

30 Neves brought an action for annulment of that infringement notice before the Judecătoria Sectorului 1 București (Court of First Instance, Sector 1, Bucharest, Romania), which dismissed the action by a judgment of 2 November 2020.

31 Neves brought an appeal against that judgment before the Tribunalul București (Regional Court, Bucharest, Romania), the referring court. Neves disputes, primarily, that it committed the administrative offence as set out in the findings of ANAF and argues, in the alternative, that the confiscation measure imposed on it on account of that offence is disproportionate and constitutes a breach of its right to property as guaranteed by Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Paris on 20 March 1952 ('Protocol No 1').

32 The referring court considers that, in its case-law, the judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236) in particular, the Court has not yet interpreted Article 2(2)(a) of Decision 2014/512 and that it is necessary to clarify, more specifically, whether that decision allows a full confiscation measure such as that at issue in the main proceedings. That court is also uncertain whether that measure is proportionate, in the light of the case-law of the European Court of Human Rights in particular.

33 In those circumstances, the Tribunalul București (Regional Court, Bucharest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can [Decision 2014/512], in particular Articles 5 and 7 thereof, in the light of the [principle] of legal certainty and [the principle that penalties must be defined in law (*nulla poena sine lege*)], be interpreted as permitting (by way of a civil penalty) a national measure authorising the confiscation of the entire proceeds of a transaction, such as the one referred to in Article 2(2)(a) of [Decision 2014/512], in the event that an act categorised by domestic law as a summary offence is found to have been committed?

(2) Is Article 5 of [Decision 2014/512] to be interpreted as allowing Member States to adopt national measures providing for the automatic confiscation of any proceeds resulting from a breach of the obligation to notify a transaction falling within the scope of Article 2(2)(a) of [Decision 2014/512]?

(3) Is the prohibition laid down in Article 2(2)(a) of [Decision 2014/512] applicable where goods constituting military equipment, which were the subject of brokering transactions, were never physically imported into the territory of the Member State?'

The jurisdiction of the Court

34 The Romanian and Netherlands Governments and the Council are of the view that, under the final sentence of the second subparagraph of Article 24(1) TEU and Article 275 TFEU, the Court does not have jurisdiction to interpret a provision of general scope relating to the common foreign

and security policy (CFSP), on which national sanction measures are based, such as Article 2(2)(a) of Decision 2014/512. Neves, the Austrian Government and the Commission are of the view that the Court has jurisdiction to interpret such a provision.

35 In that regard, in accordance with the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, the Court does not, in principle, have jurisdiction with respect to the provisions relating to the CFSP or with respect to legal acts adopted on the basis of those provisions. Those provisions introduce a derogation from the rule of general jurisdiction which Article 19 TEU confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed, and they must, therefore, be interpreted narrowly (judgments of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraphs 69 and 70; of 19 July 2016, *H* v *Council and Others*, C-455/14 P, EU:C:2016:569, paragraphs 39 and 40; and of 6 October 2020, *Bank Refah Kargaran* v *Council*, C-134/19 P, EU:C:2020:793, paragraphs 26 and 32).

36 Further, the final sentence of the second subparagraph of Article 24(1) TEU and the second paragraph of Article 275 TFEU establish expressly two exceptions to that principle, namely the Court's jurisdiction to, first, monitor compliance with Article 40 TEU and, second, review the lawfulness of decisions of the Council adopted on the basis of provisions governing the CFSP, which provide for restrictive measures against natural or legal persons (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 60 and 81).

37 The Court has stated that, 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 (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 103 and the case-law cited).

38 However, Article 2(2)(a) of Decision 2014/512, the scope of which is defined by reference to objective criteria, not to identified natural or legal persons, is, in any event, a measure of general scope that does not come within the scope of a restrictive measure under the second paragraph of Article 275 TFEU (see, by analogy, judgments of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, Rec, EU:C:2013:776, paragraph 99, and of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 97 and 98).

39 Furthermore, it is settled case-law that the jurisdiction of the Court is in no way restricted with respect to a regulation, adopted on the basis of Article 215 TFEU, which gives effect to the positions adopted by the European Union in the context of the CFSP. Such regulations constitute EU acts adopted on the basis of the FEU Treaty and in respect of which the Courts of the European Union have full jurisdiction conferred on them by primary EU legislation (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 106 and the case-law cited).

40 This applies, inter alia, to Regulation No 833/2014 (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 105 and 107).

41 That being said, given that the prohibition on providing brokering services laid down in Article 2(2)(a) of Decision 2014/512, which forms the basis for the national sanctions imposed on Neves, had not been implemented in Regulation No 833/2014 at the time of the facts in the main proceedings, it must be ascertained whether the Court has jurisdiction to interpret Article 2(2)(a).

42 In that context, it is appropriate to examine whether the Court has jurisdiction to interpret a restrictive measure of general scope, such as that Article 2(2)(a), where that measure, which forms the basis for national sanctions imposed on a natural or legal person, should have been implemented in a regulation under Article 215 TFEU in order to ensure uniform application of that measure at EU level.

43 In the first place, with respect to the jurisdiction of the Court to monitor compliance with Article 40 TEU, 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 comes 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 (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 62). In establishing this general jurisdiction, Article 19(3)(b) TEU states, moreover, that the Court is to give preliminary rulings at the request of national courts or tribunals on the interpretation of EU law or the validity of acts adopted by the institutions of the European Union.

44 In the context of that review under the first paragraph of Article 40 TEU, it is the Court's responsibility to ensure that implementation of the CFSP by the Council does not impinge upon the application of the procedures and the extent of the respective powers of the institutions laid down by the Treaties for the exercise of the European Union's competences under the FEU Treaty.

45 This involves, in particular, ensuring that, regarding the implementation of Article 215 TFEU, which serves as a bridge between the objectives of the EU Treaty in matters of the CFSP and the actions of the European Union involving restrictive measures falling within the scope of the FEU Treaty (see, to that effect, judgments of 19 July 2012, *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraph 59, and of 6 October 2020, *Bank Refah Kargaran* v *Council*, C-134/19 P, EU:C:2020:793, paragraph 38), the Council cannot circumvent the Court's jurisdiction regarding a regulation under that article.

46 In that regard, it is apparent from the clear wording of Article 215(1) TFEU, particularly the use of 'shall adopt', distinct from the terms 'may adopt' used in paragraph 2 of that article, that it falls to the Council to adopt the necessary measures referred to in paragraph 1 of that article to give effect to a CFSP decision setting out the European Union's position regarding the interruption or reduction of economic and financial relations with a third country. That institution therefore has, in the situation covered by that paragraph, circumscribed powers.

47 In the second place, it is also clear from the Court's case-law that, as far as EU acts producing legal effects on third parties are concerned, the power of judicial review conferred upon the Court by the Treaties is not limited by the classification, nature or form of those acts. Accordingly, as regards actions for annulment provided for under Article 263 TFEU, given that that form of action is intended to ensure that in the interpretation and application of the Treaties the law is observed, it is available in the case of all measures adopted by the institutions, bodies, offices and agencies of the Union, whatever their nature or form, which are intended to have binding legal effects (see, to that effect, judgments of 31 March 1971, *Commission* v *Council*, 22/70, EU:C:1971:32, paragraphs 40, 42 and 55, and of 14 July 2022, *Parliament* v *Council (Seat of the European Labour Authority)*, C-743/19, EU:C:2022:569, paragraph 36 and the case-law cited).

48 It follows from the foregoing considerations that the jurisdiction conferred upon the Court by the Treaties to ensure the judicial protection of third parties cannot be impaired by the Council's failure to take all necessary measures on the basis of Article 215(1) TFEU while, as pointed out in paragraph 46 of the present judgment, its powers in that respect are circumscribed.

49 Consequently, the possibility provided for by the Treaties of making a reference to the Court for a preliminary ruling regarding a regulation adopted on the basis of Article 215(1) TFEU must be available in respect of all the provisions that the Council should have included in such a regulation and which form the basis for a national sanction adopted against third parties (see, by analogy, judgment of 31 March 1971, *Commission* v *Council*, 22/70, EU:C:1971:32, paragraphs 38 to 40).

50 That interpretation is borne out by the essential objective of Article 267 TFEU, which is to ensure that EU law is applied uniformly by the national courts and tribunals. Regarding measures of general scope for the Council to implement in a regulation under Article 215 TFEU, differences between courts or tribunals of the Member States as to the interpretation of such a measure of general scope would be liable to jeopardise the very unity of the EU legal order and to undermine the fundamental requirement of legal certainty (see, by analogy, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 80).

51 The interpretation set out in paragraph 49 of the present judgment also makes it possible to ensure the necessary consistency of the system of judicial protection provided for by EU law. As is apparent from both Article 2 TEU, which is included in the common provisions of the EU Treaty, and Article 21 TEU, concerning the European Union's external action, to which Article 23 TEU, relating to the CFSP, refers, one of the European Union's founding values is the rule of law. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law (see, to that effect, judgment of 6 October 2020, *Bank Refah Kargaran* v *Council*, C-134/19 P, EU:C:2020:793, paragraphs 35 and 36 and the case-law cited).

52 The preliminary ruling procedure provided for in Article 19(3)(b) TEU and Article 267 TFEU, which is the keystone of the judicial system within the European Union, is essential to preserving that value (see, to that effect, Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraph 176 and the case-law cited).

53 The Court therefore considers that, having regard to Articles 19, 24 and 40 TEU and Article 215(1) TFEU, read in the light of Articles 2 and 21 TEU, it has jurisdiction to give a preliminary ruling under Article 267 TFEU on the interpretation of a measure of general scope contained in an act adopted in the context of the CFSP, where the Council should have implemented that measure, which serves as a basis for national sanctions imposed on a natural or legal person, by a regulation adopted under Article 215 TFEU.

54 The Court's jurisdiction to interpret Article 2(2)(a) of Decision 2014/512 must be assessed in the light of those considerations.

55 Accordingly, the Court must ascertain whether the prohibition on providing brokering services in relation to military equipment provided for in Article 2(2)(a) of Decision 2014/512 is a necessary measure, within the meaning of Article 215(1) TFEU, which it falls to the Council to adopt – as is

apparent from paragraph 46 of the present judgment, where such a decision provides for the interruption or reduction, in part or completely, of economic and financial relations with a third country – in order to give effect to that decision.

56 In that connection, it is sufficient to note that that prohibition is intended to restrict the ability of economic operators to carry out transactions that come within the scope of the FEU Treaty, so that it can be enforced at EU level only where it is followed by the adoption of a regulation under Article 215 TFEU in order to ensure that it is applied uniformly in all the Member States (see, by analogy, judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraph 54).

57 The weapons and military equipment referred to in Article 2(2)(a) of Decision 2014/512 and related services come within the scope of the FEU Treaty. More specifically, as set out by the Commission at the hearing, trade in those weapons, equipment and services falls within the remit of the European Union under Articles 114 and 207 TFEU. Those weapons and equipment, set out in the EU Common Military List referred to in Article 12 of Common Position 2008/944 and which acts as a reference point for Member States' national military technology and equipment lists, are accordingly subject to the common customs tariff, as confirmed by Council Regulation (EC) No 150/2003 of 21 January 2003 suspending import duties on certain weapons and military equipment (OJ 2003 L 25, p. 1).

58 Moreover, that finding cannot be called into question by the possibility afforded to the Member States in Article 346(1)(b) TFEU, which allows any Member State, under certain conditions, to take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of, or trade in, arms, ammunition and war materiel. As submitted by the Commission at the hearing, that possibility does not restrict the circumscribed power of the Council, flowing from Article 215(1) TFEU, to take the necessary measures to effect the interruption or reduction in the European Union of economic and financial relations with a third country laid down in the decision setting out the position of the European Union in that connection.

59 Moreover, the Court observes that, by adopting Regulation 2023/1214, the Council gave effect to the prohibition on providing brokering services in relation to military equipment referred to in Article 2(2)(a) of Decision 2014/512, which supports the finding that such a measure forms part of those which must be adopted in a regulation based on Article 215(1) TFEU.

60 It follows that that prohibition on providing brokering services in relation to military equipment is a necessary measure for the purposes of Article 215(1) TFEU to give effect to that decision at EU level, which the Council was responsible for implementing in Regulation No 833/2014.

61 The Court therefore has jurisdiction to answer the questions referred for a preliminary ruling.

Consideration of the questions referred

The third question

62 By its third question, which it is appropriate to examine in the first place, the referring court asks, in essence, whether Article 2(2)(a) of Decision 2014/512 must be interpreted as meaning that the prohibition on providing brokering services laid down in that provision is applicable even where the military equipment that was the subject of the brokering transaction concerned was never imported into the territory of a Member State.

63 That provision is worded as follows: 'it shall be prohibited … to provide technical assistance, brokering services or other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body in, or for use in Russia'.

64 It is apparent from the wording of that provision, the use of the terms 'directly or indirectly' in particular, that the prohibition which it lays down applies broadly, inter alia, where brokering services in relation to military equipment are provided to a natural or legal person, entity or body in Russia, without that wording requiring that that equipment be imported into the territory of a Member State. According to that wording, it is sufficient that those services are provided, directly or indirectly, to an operator in Russia, irrespective of the final destination of that equipment, contrary to Neves' submissions.

65 That interpretation is borne out by the context and objectives of the legislation of which Article 2(2)(a) of Decision 2014/512 forms part.

66 In that regard, although that decision does not contain a provision defining 'brokering services', Regulation No 833/2014, which implements that decision at EU level, defines that term in Article 1(1)(d), the wording of which makes clear that there is no requirement that the goods which are the subject of the brokering transaction in question be imported into the territory of a Member State.

67 According to that provision, brokering services include the negotiation or arrangement of transactions for the purchase, sale or supply of goods, 'including from a third country to any other third country', or the purchase or sale of goods, 'including where they are located in third countries for their transfer to another third country'.

68 In addition, the Court emphasised the importance of the objectives pursued by Decision 2014/512 and Regulation No 833/2014, that is, 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 (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 150).

69 The interpretation of Article 2(2)(a) of that decision, according to which the prohibition laid down therein applies even where the brokering services relate to weapons and military equipment which, irrespective of the final destination of those weapons or that equipment, were not imported into the territory of a Member State, ensures the effectiveness of that prohibition and contributes to achieving the objectives of that decision recalled in the preceding paragraph of the

present judgment. Such a prohibition could be circumvented easily if it were sufficient, in order to escape it, for those weapons and that equipment to be routed without passing through EU territory.

70 The interpretation in paragraph 64 of the present judgment also ensures that the interpretation of EU law is consistent, giving the same definition to the term 'brokering services' in various measures relating to the CFSP.

71 It follows that the answer to the third question is that Article 2(2)(a) of Decision 2014/512 must be interpreted as meaning that the prohibition on providing brokering services laid down in that provision is applicable even where the military equipment that was the subject of the brokering transaction concerned was never imported into the territory of a Member State.

The first and second questions

72 The Court observes at the outset that, by its first and second questions, which it is appropriate to answer together and in the second place, the national court referred to Article 2(2)(a) of Decision 2014/512 and to Articles 5 and 7 thereof. However, it is apparent from the request for a preliminary ruling that Articles 5 and 7 are not relevant in the light of the facts in the main proceedings.

73 Article 5 merely states that the European Union encourages third States to adopt restrictive measures similar to those provided for in that decision. Article 7 concerns claims in connection with any contract or transaction, the performance of which has been affected by the measures imposed under Decision 2014/512, made by one of the categories of persons or entities listed in Article 7(1)(a) to (c). According to the information provided by the referring court, the main proceedings do not concern such a claim and Neves does not come within any of those categories.

74 Moreover, it is apparent from the request for a preliminary ruling that that court is also uncertain whether a confiscation measure such as that imposed on Neves is consistent with the right to property guaranteed under Article 1 of Protocol No 1 and enshrined in the EU legal order in Article 17 in the Charter of Fundamental Rights of the European Union ('the Charter').

75 Consequently, the Court finds that, by its first and second questions, the referring court asks, in essence, whether Article 2(2)(a) of Decision 2014/512, read in the light of the right to property enshrined in Article 17 of the Charter and of the principle of legal certainty and the principle that penalties must be defined by law, must be interpreted as precluding a national measure confiscating the entire proceeds of a brokering transaction referred to in Article 2(2)(a), which is implemented automatically following a finding by the competent national authorities of an infringement of the prohibition on carrying out that transaction and of the obligation to notify that transaction.

76 In that connection, the Court recalls, in the first place, that, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under such legislation are not complied with, while the choice of penalties remains within their discretion, Member States must ensure that infringements of EU law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make

the penalty effective, proportionate and dissuasive (see, to that effect, judgments of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 21, and of 2 May 2018, *Scialdone*, C-574/15, EU:C:2018:295, paragraph 28 and the case-law cited).

77 More specifically, sanctions laid down under national legislation must not go beyond what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation and must not be disproportionate to those objectives; in addition, the severity of the penalties must be commensurate with the gravity of the infringements for which they are imposed, in particular by ensuring that their effect is genuinely dissuasive (see, to that effect, judgment of 24 February 2022, *Agenzia delle dogane e dei monopoli and Ministero dell'Economia e delle Finanze*, C-452/20, EU:C:2022:111, paragraphs 37 to 39 and the case-law cited).

78 In the second place, regarding the right to property enshrined in Article 17 of the Charter, paragraph 1 thereof provides that '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.'

79 As the Court has previously held, Article 17 of the Charter is a rule of law intended to confer rights on individuals (judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 68 and the case-law cited).

80 In accordance with Article 52(3) of the Charter, in so far as the Charter contains rights which correspond to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, the meaning and scope of those rights are to be the same as those laid down by that convention. This provision does not, however, prevent EU law from providing more extensive protection. It follows that, for the purposes of interpreting Article 17 of the Charter, it is necessary to take into account the case-law of the European Court of Human Rights relating to Article 1 of Protocol No 1, which establishes the protection of the right to property, as the minimum threshold of protection (see, to that effect, judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 72 and the case-law cited).

81 As consistently held by the European Court of Human Rights as regards Article 1 of Protocol No 1, Article 17(1) of the Charter contains three distinct rules. The first rule, set out in the first sentence of that provision, is of a general nature and gives concrete expression to the principle of respect for property. The second, set out in the second sentence of that provision, refers to a person being deprived of property and subjects that deprivation to certain conditions. The third, which is contained in the third sentence of that provision, recognises States' power, inter alia, to regulate the use of property in so far as is necessary for the general interest. These rules are not, however, unrelated. The second and third rules relate to specific examples of infringements of the right to property and are to be interpreted in the light of the principle enshrined in the first rule (judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 38).

82 In that connection, it is apparent from the case-law of the European Court of Human Rights that confiscation measures relating to the proceeds of an infringement or unlawful activity or an instrument having been used to commit an infringement which does not belong to a third party in good faith constitute, as a general rule, regulation of the use of property, even if they deprive, by their very nature, a person of his or her property (see, inter alia, ECtHR, 24 October 1986, *Agosi*

v. the United Kingdom, CE:ECHR:1986:1024JUD000911880, § 51; ECtHR, 12 May 2015, *Gogitidze and Others v. Georgia*, CE:ECHR:2015:0512JUD003686205, § 94; and ECtHR, 15 October 2020, *Karapetyan v. Georgia*, CE:ECHR:2020:1015JUD006123312, § 32).

83 In the present case, the confiscation measure imposed on Neves concerned the money received by Neves as payment under the contract of 4 January 2019 for the delivery of radio sets regarded as military equipment. That measure is intended to ensure compliance with the prohibition on providing brokering services in relation to military equipment laid down in Decision 2014/512 as a restrictive measure of general scope in response to Russia's actions destabilising the situation in Ukraine. Accordingly, that measure is connected to the prohibition on the purchase from and sale to Russia of arms and military equipment also laid down by that decision and, more generally, to the regulation of the arms trade.

84 In those circumstances, such a confiscation measure is a limitation on the exercise of the right to property, relating to how the use of property is governed for the purposes of the third sentence of Article 17(1) of the Charter.

85 It must be borne in mind that the right to property guaranteed by Article 17 of the Charter is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69).

86 However, in accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms and, subject to the principle of proportionality, be necessary and actually correspond to an objective of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

87 First, a confiscation measure such as that imposed on Neves is provided for by law, within the meaning of Article 52(1) of the Charter. That measure is based on OUG No 202/2008 and the national military technology and equipment list referred to in Article 12 of Common Position 2008/944 and established, as regards Romania, by Decrees No 156/2018 and No 901/2019.

88 Second, since it follows from the case-law referred to in paragraph 82 of the present judgment that that measure relates to how the use of property is governed for the purposes of the third sentence of Article 17(1) of the Charter and does not constitute deprivation of property for the purposes of the second sentence of Article 17(1), it respects the essence of the right to property (see, to that effect, judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 53).

89 Third, the purpose of that measure is to achieve the objectives pursued by Decision 2014/512, the importance of which has been emphasised by the Court, as recalled in paragraph 68 of the present judgment, and thus corresponds to an objective of general interest recognised by the European Union within the meaning of Article 52(1) of the Charter.

90 Fourth, regarding compliance with the principle of proportionality, it is apparent, first of all, that the limitation on the exercise of the right to property contained in that measure is suitable for attaining those objectives.

91 It is apparent from the request for a preliminary ruling that the confiscation measure in the main proceedings, in addition to a fine, was imposed following a finding by the competent Romanian authorities of non-compliance with (i) the prohibition on carrying out a transaction in relation to a product subject to an international sanction resulting, in the present case, from Decision 2014/512 and (ii) the obligation to notify immediately those authorities of that transaction. The nature of any such confiscation measure imposed is such as to dissuade the operators concerned from carrying out such transactions and to encourage them to comply with that prohibition and that notification requirement, which facilitates the monitoring by the competent authorities of the Member States of transactions relating to the goods concerned, in this case military equipment.

92 Next, regarding the necessity for such a confiscation measure, the maximum amount of the fine provided for as a primary penalty by the national legislation in the main proceedings is RON 30 000 (approximately EUR 6 066). Given the low ceiling of that fine in comparison with the potential economic advantage accrued through brokering transactions in relation to military equipment, a fine alone is not sufficient to dissuade economic operators from infringing the prohibition on providing brokering services in relation to that equipment and the obligation to notify the competent national authorities. This is illustrated by the facts of the main proceedings, since, according to the information provided by the referring court, the consideration for the brokering transaction in the main proceedings was close to EUR 3 million.

93 In those circumstances, the confiscation of all the proceeds of the prohibited brokering transaction thus appears necessary in order to dissuade effectively and efficiently economic operators from infringing the prohibition on providing brokering services in relation to military equipment.

94 Similarly, the automatic application of a confiscation measure via a notice drawn up by the competent administrative authority is necessary to ensure full effectiveness of a sanction for infringement of the prohibition on carrying out a brokering operation referred to in Article 2(2)(a) of Decision 2014/512 and of the obligation to notify that operation, subject to the right to an effective remedy in order to review the lawfulness of that notice and, where appropriate, to recover the amounts confiscated, in particular if it becomes ultimately apparent that the transaction concerned is not caught by that prohibition.

95 Regarding such an action, the Court observes that it is apparent from the case-law of the European Court of Human Rights on Article 1 of Protocol No 1 that, where a confiscation sanction is imposed separately from a criminal penalty, the procedure as a whole must give the party concerned the opportunity to put his or her case to the national authorities which have imposed that sanction and to the courts hearing the action against the decisions of those authorities, so that they may carry out an overall examination of the interests at stake (see, to that effect, ECtHR, 15 October 2020, *Karapetyan v. Georgia*, CE:ECHR:2020:1015JUD006123312, § 35).

96 In that connection, the person concerned must, inter alia, be given an appropriate opportunity to argue his or her case before the competent authorities in order to allow the measures in question to be challenged effectively (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 368).

97 It is therefore for the referring court to satisfy itself that Neves enjoys sufficient procedural safeguards in the main proceedings, inter alia regarding the determination of whether the administrative offence for which it is being held liable has actually been committed. More specifically, in so far as that company challenges that the radio sets in question in the main proceedings constitute military equipment, the national court must satisfy itself that those radio sets are included in the EU Common Military List referred to in Article 12 of Common Position 2008/944 and which acts as a reference point for the national equipment list established by Decrees No 156/2018 and No 901/2019.

98 Subject to compliance with those conditions, which it is for the referring court to ascertain, a confiscation measure such as that in the main proceedings does not appear to go beyond what is necessary in order to attain the legitimate objectives pursued.

99 Regarding, last, whether such a measure is proportionate *stricto sensu* and, in particular, whether its severity is commensurate with the seriousness of the infringement for which it is imposed, the Court observes that, although that measure relates to all the proceeds of the prohibited brokering transaction and is imposed automatically, the amount of the fine accompanying that measure is, by contrast, variable. Moreover, those sanctions apply only to persons who have become aware of being in a situation in respect of which the national competent authorities must be informed or alerted with regard to a product subject to an international sanction, as is apparent from Article 24(1) and Article 26(1)(b) of OUG No 202/2008. In such circumstances, those persons are required, without delay or prior notification to those authorities, not to carry out any transaction in respect of that product other than those provided for by that order. The persons caught are thus only those who, while being fully aware of the situation, failed to send such an alert or carried out such a transaction all the same.

100 It is apparent from the above that the severity of the sanctions provided for by national legislation such as that at issue in the main proceedings appears to be commensurate with the seriousness of the infringement for which they are imposed, bearing in mind the significance of the legitimate objectives pursued.

101 Consequently, the limitation on the exercise of the right to property contained in such a confiscation measure appears to comply with the principle of proportionality and, as a result, to be justified in the light of the conditions laid down in Article 52(1) of the Charter, which it is for the referring court to verify.

102 In the third place, regarding the general principle of legal certainty, which is part of the general principles of EU law, that principle requires that rules of law be clear, precise and predictable in their effect. Whilst that principle precludes a new legal rule from applying retroactively, namely to a situation established prior to its entry into force, that same principle requires that any factual situation should normally, in the absence of any express contrary provision, be examined in the light of the legal rules existing at the time when the situation obtained (see, to that effect, judgment of 25 January 2022, *VYSOČINA WIND*, C-181/20, EU:C:2022:51, paragraph 47 and the case-law cited).

103 The principle that offences and penalties must be defined by law, which constitutes specific expression of the general principle of legal certainty and is enshrined in Article 49 of the Charter, means, inter alia, that legislation must clearly define offences and the penalties which they attract in order to ensure foreseeability as regards both the definition of the offence and the determination of the penalty (see, to that effect, judgments of 8 March 2022,

Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect), C-205/20, EU:C:2022:168, paragraph 47 and of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 104 and the case-law cited).

104 Regarding those principles, the referring court stated merely that Neves had submitted that Decree No 901/2019, which established, as regards Romania, the national military technology and equipment list referred to in Article 12 of Common Position 2008/944, was not in force at the material time in the main proceedings, so that it was not applicable to the radio sets at issue in the main proceedings, which could not therefore be regarded as military equipment in Category ML11 of that list.

105 In that regard, the Court notes that, at that date, Article 2(2)(a) of Decision 2014/512, which prohibits the provision of brokering services in relation to that equipment, and the EU Common Military List referred to in paragraph 14 of the present judgment, were in force. According to the information set out in the order for reference, it appears that Category ML11 of Decree No 901/2019, which repealed and replaced Decree No 156/2018, in force from 5 March 2018 to 4 July 2019, was identical to Category ML11 of the latter decree, with the result that, as observed by the Commission, this case does not seem to involve the retroactive application of a new rule of law within the meaning of the case-law cited in paragraph 102 of the present judgment.

106 It is for the referring court to ascertain – in accordance with the rules of Romanian law applicable at the date of the facts in the main proceedings, the determination and assessment of which is within that court's exclusive jurisdiction – whether the provisions of that law containing that list were in force on that date and whether the requirements of clarity and foreseeability recalled in paragraphs 102 and 103 of the present judgment have been met.

107 Having regard to the foregoing, the answer to the first and second questions is that Article 2(2)(a) of Decision 2014/512, read in the light of the right to property enshrined in Article 17 of the Charter and of the principle of legal certainty and the principle that penalties must be defined by law, must be interpreted as not precluding a national measure confiscating the entire proceeds of a brokering transaction referred to in Article 2(2)(a), which is implemented automatically following a finding by the competent national authorities of an infringement of the prohibition on carrying out that transaction and of the obligation to notify that transaction.

Costs

108 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 2(2)(a) of 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 2014/659/CFSP of 8 September 2014,**

   must be interpreted as meaning that the prohibition on providing brokering services laid down in that provision is applicable even where the military equipment that was

the subject of the brokering transaction concerned was never imported into the territory of a Member State.

2. **Article 2(2)(a) of Decision 2014/512, as amended by Decision 2014/659, read in the light of Article 17 of the Charter of Fundamental Rights of the European Union and of the principle of legal certainty and the principle that penalties must be defined by law,**

   must be interpreted as not precluding a national measure confiscating the entire proceeds of a brokering transaction referred to in Article 2(2)(a), which is implemented automatically following a finding by the competent national authorities of an infringement of the prohibition on carrying out that transaction and of the obligation to notify that transaction.

[Signatures]

[i] The wording of paragraph 53 of this document has been amended since it was first put online.