Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

13 September 2018*

(Common foreign and security policy — Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine — Inclusion of the name of the entity owning the applicant in the list of entities to which the restrictive measures apply — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — EU-Turkey Association Agreement — Fundamental rights — Proportionality)

In Case T-798/14,

DenizBank A.Ş., established in Istanbul (Turkey), represented by O. Jones, D. Heaton, Barristers, R. Mattick, S. Utku, Solicitors, and M. Lester QC,

applicant,

v

Council of the European Union, represented initially by S. Boelaert and A. de Elera-San Miguel Hurtado, and subsequently by S. Boelaert and P. Mahnič Bruni, acting as Agents,

defendant,

supported by

European Commission, represented by D. Gauci, L. Havas and F. Ronkes Agerbeek, acting as Agents,

intervener,

APPLICATION under Article 263 TFEU seeking annulment, first, of Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13), as amended by Council Decision 2014/659/CFSP of 8 September 2014 (OJ 2014 L 271, p. 54), by Council Decision 2014/872/CFSP of 4 December 2014 (OJ 2014 L 349, p. 58), by Council Decision (CFSP) 2015/2431 of 21 December 2015 (OJ 2015 L 334, p. 22), by Council Decision (CFSP) 2016/1071 of 1 July 2016 (OJ 2016 L 178, p. 21) and by Council Decision (CFSP) 2016/2315 of 19 December 2016 (OJ 2016 L 345, p. 65) and, secondly, of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), as amended by Council Regulation (EU) No 960/2014 of 8 September 2014 (OJ 2014 L 271, p. 3) and by Council Regulation (EU) No 1290/2014 of 4 December 2014 (OJ 2014 L 349, p. 20), in so far as those acts concern the applicant,

* Language of the case: English.

THE GENERAL COURT (Sixth Chamber),

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

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 16 November 2017,

gives the following

Judgment

Background to the dispute

1 The applicant, DenizBank A.Ş., is a Turkish commercial bank established in Istanbul (Turkey), which is more than 50% owned by Sberbank of Russia OAO ('Sberbank'), a Russian retail bank established in Moscow (Russia).

2 On 20 February 2014, the Council of the European Union condemned in the strongest terms the use of violence in Ukraine. It called for an immediate end to the violence, and full respect for human rights and fundamental freedoms in Ukraine. The Council also envisaged the introduction of restrictive measures against those responsible for human rights violations, violence and use of excessive force.

3 On 3 March 2014, an extraordinary meeting of the Council condemned acts of aggression by the Russian armed forces, which constituted a clear violation of Ukrainian sovereignty and territorial integrity, as well as the authorisation given by the Soviet Federatsii Federal'nogo Sobrania Rossikoï Federatsii (Federation Council of the Federal Assembly of the Russian Federation) on 1 March 2014 for the use of the armed forces on the territory of Ukraine. The European Union called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with its international obligations.

4 On 5 March 2014, the Council adopted restrictive measures focused on the freezing and recovery of misappropriated Ukrainian State funds.

5 On 6 March 2014, the Heads of State or Government of the European Union endorsed the Council conclusions adopted on 3 March 2014. They strongly condemned the unprovoked violation of Ukrainian sovereignty and territorial integrity by the Russian Federation and called on the Russian Federation to immediately withdraw its armed forces to the areas of their permanent stationing, in accordance with the relevant agreements. The Heads of State or Government of the European Union stated that any further steps by the Russian Federation to destabilise the situation in Ukraine would lead to additional and far-reaching consequences for relations in a broad range of economic areas between the European Union and its Member States, on the one hand, and the Russian Federation, on the other hand. They called on the Russian Federation to enable immediate access for international monitors, emphasising that the solution to the crisis in Ukraine had to be based on the territorial integrity, sovereignty and independence of Ukraine, as well as the strict adherence to international standards.

6 On 16 March 2014, the legislature of the Autonomous Republic of Crimea and the local government of Sevastopol, both subdivisions of Ukraine, held a referendum on the status of Crimea. The referendum asked the people of Crimea whether they wished to join the Russian Federation as a federal subject, or

if they wished to restore the 1992 Constitution and Crimea's status as a part of Ukraine. The reported result from the Autonomous Republic of Crimea was a 96.77% vote for integration of the region into the Russian Federation with an 83.1% voter turnout.

7 On 17 March 2014, the Council adopted further conclusions with regard to Ukraine. The Council strongly condemned the referendum in Crimea on joining the Russian Federation, held on 16 March 2014, which it found to be in clear breach of the Ukrainian Constitution. It urged the Russian Federation to take steps to de-escalate the crisis, immediately withdraw its forces back to their pre-crisis numbers and garrisons in line with its international commitments, begin direct discussions with the Ukrainian Government and avail itself of all relevant international mechanisms to find a peaceful and negotiated solution, in full respect of its bilateral and multilateral commitments to respect Ukraine's sovereignty and territorial integrity. In this respect, the Council expressed regret that the United Nations Security Council was not able to adopt a resolution, owing to a veto by the Russian Federation. Furthermore, the Council urged the Russian Federation not to take steps to annex Crimea in breach of international law.

8 On the same day, the Council adopted, on the basis of Article 29 TEU, Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), and on the basis of Article 215 TFEU, Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), whereby it imposed travel restrictions and asset freeze measures targeting persons responsible for actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine as well as persons or entities associated with them.

9 On 17 March 2014, the Russian Federation officially recognised the results of the Crimean referendum held on 16 March 2014. Following that referendum, the Supreme Council of Crimea and Sevastopol City Council declared independence of Crimea from Ukraine and requested to join the Russian Federation. On the same day, the Russian President signed a decree recognising the Republic of Crimea as a sovereign and independent State.

10 On 21 March 2014, the European Council recalled the statement of the Heads of State or Government of the European Union of 6 March 2014 and asked the European Commission and the Member States to prepare possible further targeted measures.

11 On 23 June 2014, the Council decided that the import into the European Union of goods originating in Crimea or Sevastopol should be prohibited, with the exception of goods originating in Crimea or Sevastopol having been granted a certificate of origin by the Ukrainian Government.

12 Following the crash and destruction of Malaysia Airlines flight MH17 at Donetsk (Ukraine) on 17 July 2014, the Council requested the Commission and the European External Action Service (EEAS) to finalise their preparatory work on possible targeted measures and to present, no later than 24 July 2014, proposals for taking action, including on access to capital markets, defence, dual-use goods, and sensitive technologies, including in the energy sector.

13 On 31 July 2014, in view of the gravity of the situation in Ukraine despite the adoption in March 2014 of travel restrictions and asset freezes against certain natural and legal persons, the Council adopted, on the basis of Article 29 TEU, Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13), in order to introduce targeted restrictive measures on access to capital markets, defence, dual-use goods, and sensitive technologies, including in the energy sector.

14 Considering that those measures fell within the scope of the FEU Treaty and that giving them effect required regulatory action at EU level, the Council adopted, on the same date and on the basis of Article 215(2) TFEU, Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), containing more detailed provisions to give effect to the requirements in Decision 2014/512, at both EU level and Member State level.

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

16 Subsequently, on 8 September 2014, the Council adopted Decision 2014/659/CFSP amending Decision 2014/512 (OJ 2014 L 271, p. 54) and Regulation (EU) No 960/2014 amending Regulation No 833/2014 (OJ 2014 L 271, p. 3) in order to extend the prohibition decided on 31 July 2014 in relation to certain financial instruments and to impose additional restrictions on access to the capital market.

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

'1. The direct or indirect purchase or sale of, the direct or indirect provision of investment services for or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:

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

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

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

shall be prohibited.'

18 Sberbank's name is listed at point 1 of Annex I to Decision 2014/512, as amended by Decision 2014/659.

19 Article 5(1) and (3) of Regulation No 833/2014, as amended by Regulation No 960/2014, reads as follows:

'1. It shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:

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

(b) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in Annex III; or

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

…

3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014 except for loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the Union and Russia or for loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50% by any entity referred to in Annex III.'

20 Sberbanks's name is listed in Annex III to Regulation No 833/2014.

21 On 4 December 2014, the Council adopted Decision 2014/872/CFSP amending Decision 2014/512 and Decision 2014/659 (OJ 2014 L 349, p. 58) and Regulation (EU) No 1290/2014 amending Regulation No 833/2014 and Regulation No 960/2014 (OJ 2014 L 349, p. 20).

22 Following the adoption of Regulation No 1290/2014, Article 5(3) of Regulation No 833/2014 was amended to read as follows:

'3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014.

The prohibition shall not apply to:

(a) loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the Union and any third State, including the expenditure for goods and services from another third State that is necessary for executing the export or import contracts; or

(b) loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50% by any entity referred to in Annex III.'

23 On 21 December 2015, the Council adopted Decision (CFSP) 2015/2431 amending Decision 2014/512 (OJ 2015 L 334, p. 22). On 1 July 2016, the Council adopted Decision (CFSP) 2016/1071 amending Decision 2014/512 (OJ 2016 L 178, p. 21). Lastly, on 19 December 2016, the Council adopted Decision (CFSP) 2016/2315 amending Decision 2014/512 (OJ 2016 L 345, p. 65).

Procedure and forms of order sought

24 By application lodged at the Court Registry on 5 December 2014, the applicant brought the present action.

Intervention

25 By document lodged at the Court Registry on 14 April 2015, the Commission sought leave to intervene in the present proceedings in support of the form of order sought by the Council.

26 By order of 30 June 2015, the President of the Ninth Chamber of the Court granted the Commission's request.

27 On 24 August 2015, the Commission lodged its statement in intervention.

28 The applicant and the Council lodged observations on that statement within the period prescribed, on 9 October and 1 September 2015, respectively.

Staying of proceedings

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

30 The Council and the applicant submitted observations on that possible stay of proceedings by documents lodged at the Court Registry on 27 March and 7 April 2015 respectively.

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

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

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

Modification of the application

34 By statement lodged at the General Court Registry on 16 February 2015, the applicant modified its application so as also to include the annulment of Decision 2014/872 and Regulation No 1290/2014.

35 The Council submitted observations on that statement by document lodged at the Court Registry on 24 February 2015.

36 By statement lodged at the Court Registry on 24 December 2015, the applicant modified its application so as also to include the annulment of Decision 2015/2431, in that that decision extended the applicability of the restrictive measures provided for in Decision 2014/512.

37 By statement lodged at the Court Registry on 13 April 2017, the applicant modified its application so as also to include the annulment of Decision 2016/1071 and Decision 2016/2315, in that those decisions extended the applicability of the restrictive measures provided for in Decision 2014/512.

38 The Council did not submit any observations on those statements.

Change in the composition of the Chambers of the Court

39 Following a change to the composition of the Chambers, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present case was consequently allocated, in accordance with Article 27(5) of the Rules of Procedure.

Forms of order sought

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

– annul (i) Decision 2014/512, as extended or amended by Decision 2014/659, Decision 2014/872, Decision 2015/2431, Decision 2016/1071 and Decision 2016/2315 ('the contested decision') and (ii) Regulation No 833/2014, as amended by Regulation No 960/2014 and Regulation No 1290/2014 ('the contested regulation'), insofar as the contested decision and the contested regulation (taken together, 'the contested acts') concern the applicant and in so far as they cannot be interpreted in such a way as to exclude the applicant from their scope;

– order the Council to pay the costs.

41 The Council contends that the Court should:

– dismiss the action as partially outside its jurisdiction and as inadmissible, or in any event as unfounded;

– order the applicant to pay the costs.

In its written response to the question of the General Court following the judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236), the Council stated that it no longer disputed the jurisdiction of the General Court to review the legality of the contested decision, since it involves restrictive measures within the meaning of the second paragraph of Article 275 TFEU, which was confirmed at the hearing.

42 The Commission contends that the Court should dismiss the action.

Law

43 In support of its action, the applicant puts forward four pleas in law, the first alleging an infringement by the Council of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU, the second alleging an infringement of the applicant's rights of defence and right to effective judicial review, the third alleging that the Council has infringed the Agreement establishing an Association between the European Economic Community and Turkey, signed on 12 September 1963 ('the Ankara agreement') and the Additional Protocol and Financial Protocol signed on 23 November 1970 (together 'the Ankara agreements'), and the fourth alleging that the Council has committed an unjustified infringement of fundamental rights and of the principles of non-discrimination and proportionality. The applicant relies, in addition, on a plea of illegality based on Article 277 TFEU, as regards Article 1 of the contested decision and Article 1(5) of Regulation No 960/2014.

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

Admissibility

45 The Council contends that the applicant's claim for annulment of the contested acts must be dismissed on the ground that it does not satisfy the admissibility requirements laid down in the fourth paragraph of Article 263 TFEU.

46 First, the Council considers that the applicant is not 'directly concerned' by the measures provided for in Article 1(1)(a) and (b) of the contested decision and Article 5(1)(a) and (b) of the contested regulation (together 'the relevant provisions of the contested acts') within the meaning of the fourth paragraph of Article 263 TFEU. In that regard it contends that the fact that the applicant falls within the scope of those measures does not mean that it is directly affected by them. It submits that what is prohibited pursuant to Article 5(1) of the contested regulation is not the issuance of financial instruments by the entities concerned, but the purchase or sale of investment services or of assistance in the issuance of the financial instruments in question by natural or legal persons coming under EU jurisdiction. The applicant is an entity that may issue financial instruments but has not demonstrated that it is active on the market for the prohibited services, relating to the issuance of the financial instruments in question, like the case which gave rise to the order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (T-18/10, EU:T:2011:419).

47 Secondly, the Council contends, in the alternative, that the applicant is not individually concerned by the relevant provisions of the contested acts either. Indeed, it is not named in the annexes to those acts. In addition, the fact that the entities to which measures apply are identifiable is not determinative. Furthermore, the fact that an act of general application is applicable to a small number of entities, or that certain market participants are affected to a greater extent than their competitors, is not sufficient to show that the entities in question are individually concerned by the measure.

48 The applicant disputes those arguments.

49 It should be borne in mind, in that regard, that under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures. The second limb of the fourth paragraph of Article 263 TFEU specifies that if the natural or legal person who brings the action for annulment is not a person to whom the contested act is addressed, the admissibility of the action is subject to the condition that the act is of direct and individual concern to that person. By means of the Treaty of Lisbon, there was also added to the fourth paragraph of Article 263 TFEU a third limb which relaxed the conditions of admissibility of actions for annulment brought by natural and legal persons. Since the effect of that limb is that the admissibility of actions for annulment brought by natural and legal persons is not subject to the condition of individual concern, it renders possible such legal actions against 'regulatory acts' which do not entail implementing measures and are of direct concern to the applicant (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 56 and 57).

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

51 In the present case, Article 1(1)(a) of the contested decision and Article 5(1)(a) of the contested regulation prohibit all EU operators from carrying out certain types of financial transaction with credit institutions established in Russia which satisfy the conditions laid down in those articles and are listed in Annex I to the contested decision and Annex III to the contested regulation. Article 1(1)(b) of the contested decision and Article 5(1)(b) of the contested regulation prohibit those operators from carrying out those transactions with any legal person, entity or body established outside the European Union more than 50% owned by an entity listed in the corresponding annexes to the contested acts.

52 It must, therefore, be found that the applicant is directly concerned by the relevant provisions of the contested acts. The restrictive measures at issue apply directly to it, as an immediate consequence of the fact that it is more than 50% owned by Sberbank, whose name is listed in the annexes to those acts, without leaving any discretion to their addressees, who are entrusted with the task of implementing them. It is immaterial, in that regard, that those provisions do not prohibit the applicant from carrying out the transactions concerned outside the European Union. Indeed, it is not in dispute that the relevant provisions of the contested acts impose restrictions on the applicant's access to the EU capital market.

53 Similarly, the Court must reject the Council's argument that the applicant's legal situation is not directly affected given that the measures imposed by the contested acts apply solely to bodies established in the European Union. Although the contested acts lay down prohibitions which apply in the first place to credit institutions and other financial bodies established in the European Union, the aim and the effect of those prohibitions is directly to affect the entities, such as the applicant, whose economic activity is limited as a result of the application of those measures in respect of them. Self-evidently it is for the bodies established in the European Union to apply those measures, given that the acts adopted by the EU institutions are not, as a rule, intended to apply outside the territory of the European Union. That does not, however, mean that the entities affected by the contested acts are not directly concerned by the restrictive measures applied with regard to them. Indeed, the fact of prohibiting EU operators from carrying out certain types of transaction with entities established outside the European Union amounts to prohibiting those entities from carrying out the transactions in question with EU operators. In addition, accepting the Council's argument in that regard would be tantamount to considering that, even in cases of individual fund freezes, the persons listed subject to the restrictive measures are not directly concerned by such measures, given that it is primarily for the EU Member States and the natural or legal persons under their jurisdiction to apply them.

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

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

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

57 It should be borne in mind in that regard that any inclusion in a list of persons or entities subject to restrictive measures allows that person or entity access to the Courts of the European Union, in that it is similar in that respect to an individual decision, in accordance with the fourth paragraph of Article 263 TFEU, to which the second paragraph of Article 275 TFEU refers (see, to that effect, judgments of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 50; of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraph 44; and of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 103 and the case-law cited).

58 In the present case, since the applicant is more than 50% owned by Sberbank, whose name is listed in Annex I to the contested decision and Annex III to the contested regulation, it is one of the entities to which the restrictive measures provided for in the relevant provisions of the contested acts apply.

59 In addition, it must be borne in mind that where an act affects a group of persons who were identified or identifiable when that act was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that act inasmuch as they form part of a limited class of traders (see, to that effect, judgment of 13 March 2008, *Commission* v *Infront WM*, C-125/06 P, EU:C:2008:159, paragraph 71 and the case-law cited).

60 In the present case, the applicant forms part of a limited class of traders whose rights have been affected by the adoption of the contested acts, since the restrictions on the access to the EU capital market apply to it because it is a legal person, entity or body established outside the European Union more than 50% owned by an entity listed in Annex I to the contested decision and in Annex III to the contested regulation.

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

Substance

62 As regards the pleas for annulment, the Court considers it appropriate to examine, first of all, the first plea in law, alleging an infringement of the obligation to state reasons, then the second plea in law, alleging an infringement of the rights of the defence and of the right to effective judicial review, followed by the fourth plea in law, alleging an unjustified infringement of the applicant's fundamental rights and of the principles of non-discrimination and proportionality and, lastly, the third plea in law, alleging the infringement of the Ankara agreements.

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

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

64 The applicant claims, first, to have received no letter or notification from the Council informing it of its inclusion within the scope of the contested acts, still less informing it of the grounds on which the Council intended to include it within the scope of those acts, with evidence in support. In that regard, the applicant maintains that it is irrelevant that the relevant provisions of the contested acts are not asset-freezing measures, for they amount to restrictive measures adversely affecting targeted individual natural or legal persons. The Council was, therefore, obliged to provide the applicant with reasons for including it within the scope of the contested acts, and publication of the measures at issue in the *Official Journal of the European Union* does not suffice.

65 The Council contends, principally, that the jurisprudential standards on the obligation to state reasons to which the applicant refers are not applicable in the present case. It argues that the measures at issue are not in the nature of an asset freeze, but are measures or acts of general application. In that context, the obligation to state reasons is fulfilled when the preamble of the act indicates the general situation which led to its adoption, on the one hand, and the general objectives which it intends to achieve, on the other. The Council maintains that the preamble of the contested regulation meets those jurisprudential standards.

66 In the alternative, the Council states that it met the obligation to state reasons, in accordance with the case-law cited by the applicant. The Council contends that the claims made by the applicant throughout its application show that it was perfectly aware of the context in which the measures were adopted and the reasons which led it to include the applicant within the scope of the contested acts.

67 The Commission shares the Council's view that the contested acts satisfy the obligation to state reasons. It contends that the reasons for the adoption of the restrictive measures with regard to the applicant are detailed in recitals 1 to 12 of the contested decision. The Commission also contends that the application of the restrictive measures to the applicant is justified by the fact that, as a matter of status and fact, it fulfils the criteria set out in the relevant provisions of the contested acts. According to the Commission, the only relevant consideration is the fact that the applicant fulfils those criteria, and it is thus unnecessary to give individual reasons for the listing of the entities concerned in the annexes to the contested acts.

68 Under the second paragraph of Article 296 TFEU, 'legal acts shall state the reasons on which they are based …'.

69 In addition, under Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter'), which Article 6(1) TEU recognises as having the same legal value as the Treaties, the right to good administration includes, inter alia, 'the obligation of the administration to give reasons for its decisions'.

70 It has consistently been held that the statement of reasons required by Article 296 TFEU and Article 41(2)(c) of the Charter must be appropriate to the nature of the contested act and to the context in which it was adopted. It must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case (see judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 94 and the case-law cited).

71 It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU and Article 41(2)(c) of the Charter must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. Thus, first, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to the person concerned and which enables him to understand the scope of the measure

concerning him. Secondly, the degree of precision of the statement of the reasons for a measure must be weighed against practical realities and the time and technical facilities available for taking the measure (see judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 95 and the case-law cited).

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

73 Secondly, as regards more specifically the scope of the Council's obligation to state reasons in the present case, it must be borne in mind that the applicant seeks only the annulment of the relevant provisions of the contested acts in so far as they concern it. In that regard, it must be pointed out that the persons and entities subject to the restrictive measures stemming from those provisions are defined by reference to specific entities, given that those provisions prohibit, inter alia, the carrying out of various financial transactions with regard to entities listed in Annex I to the contested decision and Annex III to the contested regulation, one of those entities being Sberbank, and also with regard to legal persons, entities or bodies more than 50% owned by an entity listed in those annexes, which is clearly the case of the applicant in relation to Sberbank. As regards the applicant, this is, therefore, a question of individual restrictive measures (see, to that effect and by analogy, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 100 and 119).

74 It has been made clear in the case-law that the statement of reasons for an act of the Council which imposed an individual restrictive measure had not only to identify the legal basis for that measure but also the actual and specific reasons why the Council considered, in the exercise of its discretion, that such a measure had to be adopted in respect of the person concerned (see, to that effect, judgment of 3 July 2014, *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraph 38 and the case-law cited).

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

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

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

78 Secondly, as regards more specifically the relevant provisions of the contested acts, it must be borne in mind that they prohibit EU operators from directly or indirectly purchasing, selling or providing investment services for or assistance in the issuance of, or otherwise dealing with bonds, equity, or similar financial instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by (i) legal persons satisfying the conditions laid down in those provisions — those conditions including over 50% ownership or control by the Russian State and being listed in Annex I to the contested

decision and Annex III to the contested regulation — or (ii) by legal persons, entities or bodies more than 50% owned by an entity listed in those annexes (see paragraphs 17 and 19 above). Those annexes themselves do not include any specific reasoning as to each of the entities listed.

79 It must, however, be found that the 'actual and specific reasons' why the Council considered, in the exercise of its discretion, that the measures at issue had to be adopted in respect of the applicant, within the meaning of the case-law mentioned in paragraph 74 above, correspond in the present case to the criteria which are laid down in the relevant provisions of the contested acts.

80 Indeed, it is because of its status as an entity more than 50% owned by an entity listed in the annexes to the contested acts, in this case Sberbank, that the applicant was made subject to restrictive measures pursuant to those acts.

81 In that regard, it must be pointed out that the fact that the same considerations were resorted to in order to adopt restrictive measures aimed at several persons does not mean that those considerations cannot give rise to a sufficiently specific statement of reasons for each of the persons concerned (see, to that effect and by analogy, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 115).

82 It is apparent, moreover, from the evidence provided by the applicant in annex to the application that it understood perfectly well that it was because of its status as an entity more than 50% owned by Sberbank that it was made subject to the restrictive measures at issue.

83 In the light of those considerations, it must be concluded that the Council gave sufficient reasons for the relevant provisions of the contested acts in so far as those provisions apply to the applicant, so that the first plea in law must be rejected as unfounded.

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

84 In the second plea in law, the applicant alleges an infringement of its rights of defence, including the right to be heard and the right to effective judicial review by the Court, in that, first, it did not receive individual notification of the contested acts and, secondly, the Council has not provided any evidence to support any reason it might have had for imposing the restrictive measures on the applicant, and did not give it the opportunity to comment in that regard. It submits that the Council has disclosed documents relating to the decision to include the applicant within the scope of the contested acts which do not provide the slightest factual basis for that decision.

85 The Council disputes the applicant's arguments and contends that because the relevant provisions of the contested acts are not 'targeted' restrictive measures and do not directly and individually concern the applicant, it was not obliged to notify the applicant individually. In addition, the applicant has not demonstrated how the lack of individual notification has hampered its rights of defence in the present case. Furthermore, it requested access to the documents concerning it the very day on which it brought proceedings, that is on 5 December 2014. The Council responded to that request on 29 January 2015, namely a month and a half after receiving it. The Council contends, therefore, that it can rely on the case-law of the Court under which documents disclosed to the applicant after the bringing of the action may be taken into account.

86 It must be borne in mind that respect for the rights of the defence and the right to effective judicial protection are fundamental rights, forming an integral part of the EU legal order, in the light of which the Courts of the European Union must ensure the review — which in principle should be a full

review — of the lawfulness of all EU acts (see, to that effect, judgment of 24 May 2016, *Good Luck Shipping* v *Council*, T-423/13 and T-64/14, EU:T:2016:308, paragraphs 47 and 48 and the case-law cited).

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

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

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

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

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

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

93 In the second place, as regards the alleged failure by the Council to communicate the evidence supporting the adoption of restrictive measures with regard to it, the Court must examine separately (i) the initial acts by which the applicant was made subject to restrictive measures for the first time, because of the inclusion of Sberbank's name on the lists in annex to the contested acts ('the initial acts') and (ii) the subsequent acts confirming those measures.

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

95 When questioned on that matter at the hearing, the Council argued that the case-law cited in paragraph 94 above did not apply in the present case, given that the restrictive measures at issue concerned restrictions on the access to the EU capital market, of general application, not individual fund freezing measures in the strict sense. In the alternative, the Council considers that, even if that case-law did apply to the present case, it was under no obligation to hear the applicant prior to the adoption of the initial acts or to communicate to it the evidence concerning it at that stage.

96 Such an interpretation cannot be upheld.

97 Indeed, it must be borne in mind that the fundamental right of respect for the rights of the defence during a procedure preceding the adoption of a restrictive measure stems directly from Article 41(2)(a) of the Charter (see paragraph 87 above and the case-law cited).

98 Consequently, since the restrictions imposed on the applicant under the relevant provisions of the contested acts constitute restrictive measures that are of individual application to it (see paragraph 73 above) and in the absence of the proven need to give a surprise effect to those measures in order to ensure their effectiveness, the Council ought to have communicated the grounds concerning the application of those measures with regard to the applicant prior to the adoption of the contested acts.

99 It must, however, be borne in mind that, in the present case, the grounds on which the Council imposed restrictive measures on the applicant, which are set out in the relevant provisions of the contested acts themselves, are the fact that the applicant is a legal person, entity or body established outside the European Union whose proprietary rights are at least 50% owned by an entity listed in the annexes to the contested acts.

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

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

102 In the present case, the applicant has not explained which arguments or information it could have relied on if it had received the documents at issue earlier, nor has it demonstrated that those arguments or that information could have led to a different outcome in its case. The applicant cannot validly claim that it was unaware, at the time the initial acts were adopted, that it was more than 50% owned by Sberbank. The present complaint cannot, therefore, result in the annulment of the initial acts.

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

104 In the present case, the criteria accepted in order to impose restrictive measures on the applicant have appeared from the outset in Article 1(1)(b) of the contested decision and Article 5(1)(b) of the contested regulation. It is because it is more than 50% owned by Sberbank, which is itself a major credit institution established in Russia with over 50% public ownership or control as of 1 August 2014 and listed in Annex I to the contested decision and Annex III to the contested regulation, that the applicant is caught by the restrictive measures at issue. Those factors were well known to the applicant and cannot, therefore, be considered new evidence within the meaning of the abovementioned case-law.

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

106 In the present case, it is clear that the Council complied with that obligation and replied to the applicant's request for information of 5 December 2014 by letter of 29 January 2015. In that context, the Council granted access to the documents in its possession relating to its decision to impose restrictive measures on the applicant.

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

108 The third plea in law must, therefore, be rejected in its entirety.

The fourth plea in law, alleging an infringement of the principles of non-discrimination and proportionality and an unjustified and disproportionate interference with the applicant's fundamental rights

109 The applicant submits that the burden is on the Council to establish that the contested acts are a non-discriminatory and proportionate means of meeting a legitimate aim. Furthermore, the applicant submits that the restrictive measures stemming from the contested acts constitute a disproportionate interference with its fundamental rights, on the basis that they interfere with its freedom to pursue an economic activity, and that that limitation is not necessary or appropriate in order to achieve the aims pursued by the Council.

110 The Council, supported by the Commission, disputes those claims.

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

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

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

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

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

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

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

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

118 In the first place, the restrictive measures at issue are 'provided for by law', since they are set out in acts which are, in particular, of general application, have a clear legal basis in EU law and are sufficiently reasoned (see paragraphs 78 to 93 above).

119 In the second place, it is apparent from recitals 1 to 8 of the contested decision and from recital 2 of the contested regulation that the stated objective of those acts is to increase the costs to be borne by the Russian Federation for its actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis in Ukraine. Such an objective is consistent with the objective of maintaining peace and international security, in accordance with the objectives of the Union's external action set out in Article 21 TEU (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 115).

120 In the third place, with regard to the principle of proportionality, it must be noted that, as a general principle of EU law, this requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation

in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 30 November 2016, *Rotenberg* v *Council*, T-720/14, EU:T:2016:689, paragraph 178 and the case-law cited).

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

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

123 However, the fact that the applicant did not play the slightest role in the actions of the Russian Federation destabilising the situation in Ukraine is irrelevant, since restrictive measures were not imposed on it for that reason, but because of the fact that it is over 50% owned by Sberbank, which is itself a State-owned Russian bank listed in annex to the contested acts.

124 In addition, it is true that restrictive measures, by definition, have consequences which affect rights to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions. That is a fortiori the case with respect to the consequences of targeted restrictive measures on the entities subject to those measures (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 149 and the case-law cited).

125 However, the importance of the objectives pursued by the contested acts, namely the protection of Ukraine's territorial integrity, sovereignty and independence and the promotion of a peaceful settlement of the crisis in that country, the achievement of which is part of the wider objective of maintaining peace and international security, in accordance with the objectives of the Union's external action stated in Article 21 TEU, is such as to justify the possibility that, for certain operators, which are in no way responsible for the situation which led to the adoption of the sanctions, the consequences may be negative, even significantly so (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 149 and 150 and the case-law cited).

126 Secondly, contrary to what is claimed by the applicant, there is a reasonable relationship between the restrictive measures at issue and the objective pursued by the Council in adopting them. In so far as that objective is, in particular, to increase the costs to be borne by the Russian Federation for its actions to undermine Ukraine's territorial integrity, sovereignty and independence, the approach of targeting Russian State-owned banks is consistent with that objective and cannot, in any event, be considered to be manifestly inappropriate with respect to the objective pursued (see, to that effect and by analogy, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 147).

127 The Council could legitimately find that, in order to attain that objective, it was appropriate to target not only the major credit institutions or finance development institutions established in Russia with over 50% public ownership or control as of 1 August 2014, and listed in Annex I (Article 1(1)(a) of the contested decision), but also any legal person, entity or body established outside the European Union owned for more than 50% by an entity listed in Annex I (Article 1(1)(b) of the contested decision) or any legal person, entity or body acting on behalf, or at the direction, of an entity

envisaged in Article 1(1)(b) of the contested decision or listed in Annex I (Annex 1(1)(c) of the contested decision). If entities such as the applicant were not included in the scope of the measures provided for by the contested acts, the Russian entities referred to in annex to those acts could easily circumvent those prohibitions by having them carried out by their subsidiaries or by entities acting on their behalf (see, to that effect, judgment of 13 March 2012, *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137, paragraph 58).

128 It is irrelevant in that regard that the applicant cannot carry out transfers of funds in favour of Sberbank since it is supervised by the Turkish banking regulator. Assuming that is true, it remains the case that the Council could legitimately find that the fact of restricting the access of Sberbank and the entities more than 50% owned by it, such as the applicant, to the EU capital market was likely to contribute to achieving the objective of the contested acts, namely increasing the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence, and promoting a peaceful settlement of the crisis. In the event of financial difficulties incurred by the applicant because of the restrictive measures at issue, it would be for its shareholders and, as a last resort, the Russian State to bail it out, which would accord with that objective.

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

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

131 None of the other arguments put forward by the applicant is capable of calling into question that conclusion.

132 First, the applicant submits that it was not capable of benefiting from the exception contained in Article 5(3) of the contested regulation, given that the exception applied only to imports or exports between the European Union and Russia. This confirms that it ought not to have been included within the scope of the restrictive measures and that those measures discriminate against it in relation to Sberbank and are disproportionate.

133 In that regard, it is true that the exception provided for in Article 5(3)(a) of Regulation No 833/2014 applied, in the version resulting from Regulation No 960/2014 (see paragraph 19 above), only to loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the European Union and Russia, not between the European Union and other third countries such as the Republic of Turkey. However, it must be pointed out that that provision remained in force, in its initial version, from 8 September to 6 December 2014 only, the date on which Regulation No 1290/2014 entered into force. By that regulation, the Council decided that the text of that provision should be amended in order to broaden its scope and include within it also loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the European Union and any third State. Assuming that that provision could have been, in the version resulting from Regulation No 960/2014, discriminatory or disproportionate, the applicant does not explain how its application over less than three months would be capable of resulting in the annulment of the relevant provisions of the contested acts, since those provisions are consistent with, and proportionate to, their objective (see paragraphs 121 to 130 above). Such a complaint must therefore, in any event, be rejected as ineffective.

134 In addition, even if such an argument were effective, the applicant incorrectly contends that the version of Article 5(3)(b) of the contested regulation, as amended by Regulation No 1290/2014 (see paragraph 22 above), is discriminatory insofar as it would permit an EU-based subsidiary of Sberbank to receive emergency funding, yet prohibit a subsidiary of the applicant from receiving such funding. It must be pointed out that such an argument is based upon a hypothetical reading of that provision, under which only the EU entities directly owned by an entity referred to in the annexes to the contested acts would be covered, not entities indirectly owned. It must be borne in mind that where several interpretations of the same provision are possible, that provision must be interpreted, so far as possible, in the light of its objectives and in a manner consistent with EU law (see, to that effect, judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 141, and of 13 July 2011, *Schindler Holding and Others* v *Commission*, T-138/07, EU:T:2011:362, paragraph 149 and the case-law cited).

135 In addition, in so far as the applicant submits that such a limitation of the scope of that exception means that the applicant should not fall within the scope of the relevant provisions of the contested acts, it must be found that such a claim involves a finding or declaration by the Court. However, it is clear from settled case-law that the Court, in the context of a review of legality based on Article 263 TFEU, does not have jurisdiction to give declaratory judgments (see judgment of 12 February 2015, *Akhras* v *Council*, T-579/11, not published, EU:T:2015:97, paragraph 51 and the case-law cited).

136 Secondly, as regards the applicant's argument that, regardless of any legitimate aim of those measures, the particular far-reaching negative impact on the applicant, having a damaging effect on its competitive position in Turkey, is in any event disproportionate, it is sufficient to point out the mere fact that the restrictive measures at issue may have a negative impact on the applicant, and in particular on its competitive position in Turkey, cannot suffice to show that they are disproportionate (see paragraph 124 above).

137 Thirdly, the applicant submits that there is no need to impose such damaging measures, since any entity acting on behalf or at the direction of Sberbank is subject to restrictions by virtue of Article 5(1)(c) of the contested regulation. The mere fact that the applicant is more than 50% owned by Sberbank cannot, therefore, justify the imposition of restrictive measures on it.

138 In that regard, that fact that, pursuant to Article 5(1)(c) of the contested regulation, any entity acting on behalf, or at the direction, of Sberbank is subject to restrictions is not sufficient to conclude that the Council could not also provide, in Article 5(1)(b) of that regulation, that any entity more than 50% owned by one of the entities listed in Annex III to that regulation would also be caught by the restrictive measures at issue. In view of the Council's broad discretion in that regard, it was not manifestly disproportionate to restrict the access to the EU capital market of Sberbank and the entities whose proprietary rights are more than 50% owned by it, in the light of the objective of the contested acts (see paragraph 15 above).

139 Fourthly, the applicant incorrectly argues that the exception provided for in Article 5(3)(b) of the contested regulation is discriminatory in relation to entities established in the European Union. Indeed, it must be found that the applicant's situation is not comparable to that of EU entities or bodies. The latter fall directly within the scope of EU law and are obliged to comply with and implement the provisions of the contested regulation, which is binding in its entirety and directly applicable in all Member States. They cannot therefore, in particular, take measures intended to circumvent the prohibitions laid down in those acts, in accordance with Article 12 of the contested regulation, which is not the case of entities, such as the applicant, which do not fall within the scope of EU law. In any event, even if an infringement of the principle of equal treatment may be established, it must be noted that the principle of equal treatment must be reconciled with the principle of legality, according to which no one may rely, to his own benefit, on an unlawful act committed in favour of another (see judgment of 16 October 2014, *LTTE* v *Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 71 and the case-law cited).

140 Fifthly, the applicant incorrectly contends that the Council was under an obligation to take into account its particular situation, because it operates from Turkey. Since it is an entity more than 50% owned by Sberbank, which is listed in annex to the contested acts, the Council was fully entitled to include the applicant within the scope of the restrictive measures at issue, in accordance with the relevant provisions of the contested acts. Moreover, the question whether the provisions of the Ankara agreements relied on by the applicant are likely to call in question the validity of the contested acts will be examined in the context of the third plea in law.

141 Sixthly, it is apparent from examining the first and second pleas in law above that the Council has not infringed its obligation to state reasons or the applicant's rights of defence and its right to effective judicial review, in imposing the restrictive measures at issue. It cannot, therefore, be concluded that there has by the same token been a disproportionate interference with the applicant's rights.

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

143 In the light of the foregoing considerations, the fourth plea in law must be rejected.

The third plea in law, alleging the infringement of the Ankara agreements

144 By its third plea, the applicant alleges an infringement of Article 19 of the Ankara agreement, of Articles 41(1), 50(3) and 58 of the Additional Protocol, and of Article 6 of the Financial Protocol. Those provisions have direct effect, inasmuch as the obligations arising under them are sufficiently clear and precise and are not conditional, in terms of their implementation or their effect, on any further measure.

145 First, the applicant submits that the freedom to provide services encapsulated in Article 41(1) of the Ankara agreement is analogous to Article 56 TFEU, and is undermined wherever a measure is liable to hinder or make less attractive the exercise of that freedom, which, it claims, is clearly the case in the present proceedings. Secondly, the applicant maintains that, to the extent that any derogation is permitted, it must be applied in a non-discriminatory manner in accordance with Article 9 of the Ankara agreement and Article 58 of the Additional Protocol, which prohibit any discrimination on grounds of nationality. Thirdly, the restrictive measures at issue infringe the provisions on the free movement of capital within the meaning of Article 50(3) of the Additional Protocol to the Ankara agreement. Fourthly, those measures undermine Article 6(1) of the Financial Protocol to the Ankara agreement, concerning access to financing provided by the European Investment Bank ('EIB').

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

147 It is clear from Article 216(2) TFEU that the agreements concluded by the European Union, such as the Ankara agreement and the additional protocols thereto, bind the EU institutions and the Member States. Consequently, those agreements have primacy over secondary EU legislation. It follows that the

validity of a measure of secondary EU legislation may be affected by the fact that it is incompatible with such rules of international law (see, by analogy, judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraphs 42 and 43 and the case-law cited).

148 Consequently, the validity of the contested acts in the present case may be assessed in the light of the Ankara agreement and the additional protocols thereto, provided however that, first, the nature and the broad logic of the agreement in question do not preclude this and, secondly, the provisions relied upon appear, as regards their content, to be unconditional and sufficiently precise (see, to that effect, judgments of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraphs 43 and 45, and of 4 February 2016, *C & J Clark International and Puma*, C-659/13 and C-34/14, EU:C:2016:74, paragraph 84).

149 In the present case, assuming that the broad logic of the Ankara agreement and of the additional protocols thereto does not preclude the validity of the contested acts from being examined in the light of those agreements and all the provisions relied upon appear, as regards their content, to be unconditional and sufficiently precise, the applicant's arguments must be rejected.

150 It is settled case-law that international agreements concluded by the European Union pursuant to the provisions of the Treaties constitute, as far as the European Union is concerned, acts of the EU institutions (see, to that effect, judgments of 16 June 1998, *Racke*, C-162/96, EU:C:1998:293, paragraph 41, and of 25 February 2010, *Brita*, C-386/08, EU:C:2010:91, paragraph 39). In that respect, such agreements form, from the coming into force thereof, an integral part of EU law (see, to that effect, judgment of 30 April 1974, *Haegeman*, 181/73, EU:C:1974:41, paragraph 5). Accordingly, their provisions must be entirely compatible with the provisions of the Treaties and with the constitutional principles stemming therefrom (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 285). Thus, the primacy of the international agreements concluded by the European Union over EU secondary legislation does not extend to EU primary law (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 308).

151 Consequently, even in the absence of an express provision in the Ankara agreements enabling a party to take such measures as it considers necessary for the protection of the essential interests of its security, it is possible for the Council to restrict the rights stemming from the Ankara agreements as a result of its powers under Article 29 TEU and Article 215 TFEU, provided that such restrictions are non-discriminatory and proportionate, as the applicant itself indeed concedes.

152 In that regard, first, the argument based on Article 9 of the Ankara agreement and Article 58 of the Additional Protocol, that the measures at issue are discriminatory, cannot succeed. The applicant's situation, as an entity more than 50% owned by Sberbank, is not comparable to that of other banks operating in Turkey which are not owned by a Russian entity caught by the restrictive measures at issue. In addition, nor can the applicant's situation be compared to that of other financial institutions established in the European Union (see paragraph 139 above).

153 Secondly, as regards the applicant's arguments relating to restrictions on the freedom of establishment, the freedom to provide services and the free movement of capital, based on Article 19 of the Ankara agreement, Article 41(1) and Article 50(3) of the Additional Protocol and Article 6(1) of the Financial Protocol, those arguments cannot succeed either.

154 The Court must ascertain, in that context, whether the Council acted in accordance with the principle of proportionality, as defined in the case-law (see, to that effect and by analogy, judgment of 4 December 2015, *Emadi* v *Council*, T-274/13, not published, EU:T:2015:938, paragraph 206).

155 It must be stated that the restrictions relied on in the present case, even if established, are justified by the objectives pursued by the contested acts, adopted on the basis of Article 29 TEU and Article 215 TFEU, namely increasing the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence and promoting a peaceful settlement of the crisis. That objective is consistent with the objective of maintaining peace and international security, in accordance with the objectives of the Union's external action set out in Article 21 TEU (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 115).

156 In addition, it must be pointed out that the restrictive measures at issue do not provide for the interruption, in part or completely, of economic and financial relations with the Republic of Turkey, but with the Russian Federation, as a legitimate foreign policy instrument, in accordance with the European Union's external action objectives laid down in Article 21 TEU. In other words, the restrictive measures apply to the applicant solely because it is an entity more than 50% owned by Sberbank, which is itself a Russian entity whose name is included in the lists in annex to the contested acts, not in its capacity as an undertaking established in Turkey.

157 Since such measures are targeted and time limited, the applicant cannot claim that the negative effects stemming therefrom should be considered disproportionate. The importance of the aims pursued under Article 29 TEU is such as to justify negative consequences, even of a substantial nature, for some operators who are in no way responsible for the situation which led to the adoption of those measures (see, to that effect, judgment of 30 July 1996, *Bosphorus*, C-84/95, EU:C:1996:312, paragraph 23). Moreover, it is apparent from examining the fourth plea in law above that the restrictive measures at issue are suitable to achieve the legitimate objective pursued and do not go beyond what is necessary in order to attain it (see paragraphs 115 to 142 above).

158 Consequently, the infringements by the European Union of the relevant provisions of the Ankara agreements advanced in the present case, even if established, are justified in the light of the objectives pursued by the measures at issue and proportionate to those objectives.

159 The third plea in law must, therefore, be rejected as unfounded.

The plea of illegality in respect of Article 1 of the contested decision and Article 1(5) of Regulation No 960/2014

160 The applicant claims that the Court should, pursuant to Article 277 TFEU, declare Article 1 of the contested decision and Article 1(5) of Regulation No 960/2014, amending Article 5 of Regulation No 833/2014, unlawful.

161 The Council, supported by the Commission, contests that claim.

162 The Court has consistently held that where an entity seeks to dispute the proportionality of the restrictive measures against it, it is required to invoke, within an action aimed at the annulment of the acts whereby those measures were adopted or continued, the inapplicability of the general provisions on which those acts are based, by means of a plea of illegality under Article 277 TFEU (see, to that effect, judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 57 and the case-law cited).

163 In the present case, it must be pointed out, however, that the applicant has not put forward any argument separate from those already advanced earlier.

164 Accordingly, there is no need to examine whether the present plea is admissible and reference must necessarily be made to the considerations set out above and the applicant's plea of illegality rejected on the same grounds.

165 Consequently, the plea of illegality must be rejected and the action dismissed in its entirety, and there is no need to adjudicate on the admissibility of the modification of the application requested.

Costs

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

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

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders DenizBank A.Ş. to bear its own costs and to pay those incurred by the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 13 September 2018.

E. Coulon
Registrar

G. Berardis
President