Reports of Cases

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

15 January 2025 *

(Common foreign and security policy – Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine – Lists of persons, entities and bodies subject to restrictive measures – Inclusion and maintenance of the applicant's name on the lists – Right to be heard – Obligation to state reasons – Error of assessment – Proportionality – Freedom to conduct a business – Action for annulment)

In Case T-193/23,

MegaFon OAO, established in Moscow (Russia), represented by V. Villante, D. Rovetta, M. Campa, M. Moretto, M. Pirovano and B. Bonafini, lawyers,

applicant,

v

Council of the European Union, represented by E. Nadbath and V. Piessevaux, acting as Agents,

defendant,

supported by

European Commission, represented by M. Carpus Carcea, C. Georgieva and L. Puccio, acting as Agents,

intervener,

THE GENERAL COURT (First Chamber, Extended Composition),

composed, at the time of the deliberations, of R. Mastroianni, acting as President, M. Brkan, I. Gâlea (Rapporteur), T. Tóth and S.L. Kalėda, Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure,

and further to the hearing on 3 July 2024,

gives the following

* Language of the case: French.

Judgment

1 By its action under Article 263 TFEU, the applicant, MegaFon OAO, seeks annulment (i) of Council Decision (CFSP) 2023/434 of 25 February 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2023 L 59 I, p. 593) and of Council Regulation (EU) 2023/427 of 25 February 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2023 L 59 I, p. 6) (together, 'the initial acts'); (ii) of Council Decision (CFSP) 2023/1517 of 20 July 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2023 L 184, p. 40, 'the July 2023 act'); and (iii) of Council Decision (CFSP) 2024/422 of 29 January 2024 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 2024/422, 'the January 2024 act'), in so far as all those acts ('the contested acts') include and maintain its name on the lists annexed to 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) and to Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1) ('the lists at issue').

I. Background to the dispute

2 The applicant is a public joint stock company established in Moscow (Russia), which operates in the telecommunications sector as a telecommunications and mobile telephone operator.

3 The present case has been brought in the context of the restrictive measures adopted in view of the actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine and, in particular, the Russian Federation's military aggression against Ukraine on 24 February 2022.

4 On 31 July 2014, in view of the gravity of the situation in Ukraine despite the adoption of travel restrictions and asset freezes against certain natural and legal persons in March 2014, the Council of the European Union, under Article 29 TEU, adopted Decision 2014/512 in order to introduce targeted restrictive measures on access to capital markets, defence, dual-use goods, and sensitive technologies.

5 On the same date, under Article 215 TFEU, the Council adopted Regulation No 833/2014, which contains more detailed provisions to give effect to the requirements of Decision 2014/512 at both EU level and Member State level.

6 The stated objective of those restrictive measures was to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis.

7 On 24 February 2022, the Russian Federation began a military operation in Ukraine.

8 In that context, under Article 29 TEU, the Council adopted, on 25 February 2022, Decision (CFSP) 2022/327 (OJ 2022 L 48, p. 1); on 8 April 2022, Decision (CFSP) 2022/578 (OJ 2022 L 111, p. 70); and, on 21 July 2022, Decision (CFSP) 2022/1271 (OJ 2022 L 193, p. 196). Those three decisions amend Decision 2014/512 ('Decision 2014/512, as amended'). In addition, under

Article 215 TFEU, it adopted, on 25 February 2022, Regulation (EU) 2022/328 (OJ 2022 L 49, p. 1); on 8 April 2022, Regulation (EU) 2022/576 (OJ 2022 L 111, p. 1); and, on 21 July 2022, Regulation (EU) 2022/1269 (OJ 2022 L 193, p. 1). Those three regulations amend Regulation No 833/2014 ('Regulation No 833/2014, as amended').

9 Article 3(1) and (2) of Decision 2014/512, as amended, provides as follows:

'1. The direct or indirect sale, supply, transfer or export of all dual-use goods and technology listed in Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council to any natural or legal person, entity or body in Russia or for use in 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 the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of those goods and technology, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia;

(b) to provide financing or financial assistance related to the goods and technology referred to in paragraph 1 for any sale, supply, transfer or export of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any natural or legal person, entity or body in Russia, or for use in Russia.'

10 Article 3(4) and (5) lays down the following authorisation regime, which is also reproduced identically in Article 3a(4) and (5) of Decision 2014/512, as amended:

'4. By way of derogation from paragraphs 1 and 2 of this Article, and without prejudice to the authorisation requirements pursuant to Regulation (EU) 2021/821, the competent authorities may authorise the sale, supply, transfer or export of dual-use goods and technology or the provision of related technical or financial assistance, for non-military use and for a non-military end user, after having determined that such goods or technology or the related technical or financial assistance are:

(a) intended for cooperation between the Union, the governments of Member States and the government of Russia in purely civilian matters;

(b) intended for intergovernmental cooperation in space programmes;

(c) intended for the operation, maintenance, fuel retreatment and safety of civil nuclear capabilities, as well as civil nuclear cooperation, in particular in the field of research and development;

(d) intended for maritime safety;

(e) intended for civilian non-publicly available electronic communications networks which are not the property of an entity that is publicly controlled or with over 50% public ownership;

(f) intended for the exclusive use of entities owned, or solely or jointly controlled by a legal person, entity or body which is incorporated or constituted under the law of a Member State or of a partner country;

(g) intended for the diplomatic representations of the Union, Member States and partner countries, including delegations, embassies and missions;

(h) intended for ensuring cyber-security and information security for natural and legal persons, entities and bodies in Russia except for its government and undertakings directly or indirectly controlled by that government.

…

5. By way of derogation from paragraphs 1 and 2 of this Article, and without prejudice to the authorisation requirements pursuant to Regulation (EU) 2021/821, the competent authorities may authorise the sale, supply, transfer or export of dual-use goods and technology or the provision of related technical or financial assistance, for non-military use and for a non-military end-user, after having determined that such goods or technology or the related technical or financial assistance are due under contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such a contract, provided that the authorisation is requested before 1 May 2022.'

11 Article 3(7) of Decision 2014/512, as amended, provides as follows:

'When deciding on requests for authorisations in accordance with paragraphs 4 and 5, the competent authorities shall not grant an authorisation if they have reasonable grounds to believe that:

(i) the end-user might be a military end-user, a natural or legal person, entity or body in Annex IV or that the goods might have a military end-use, unless the sale, supply, transfer or export of goods and technology referred to in paragraph 1 or the provision of related technical or financial assistance is allowed under paragraph 1(a) of Article 3b.'

12 Article 3a(1) of that decision provides as follows:

'1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology which might contribute to Russia's military and technological enhancement, or the development of the defence and security sector, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia.'

13 Article 3a(2) reproduces the wording of Article 3(2) of Decision 2014/512, as amended.

14 Article 3a(7) reproduces the wording of Article 3(7) of Decision 2014/512, as amended.

15 Article 3b(1) of Decision 2014/512, as amended, provides as follows:

'With regard to the natural or legal persons, entities or bodies listed in Annex IV, by way of derogation from Articles 3 and 3a of this Decision, and without prejudice to the authorisation requirements pursuant to Regulation (EU) 2021/821, the competent authorities of the Member

States may only authorise the sale, supply, transfer or export of dual-use goods and technology and the goods and technology referred to in Article 3a of this Decision, or the provision of related technical or financial assistance after having determined:

(a) that such goods or technology or the related technical or financial assistance are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment; or

(b) that such goods or technology or the related technical or financial assistance are due under contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such a contract, provided that the authorisation is requested before 1 May 2022.'

16 Article 2(1), (2), (4) and (5) and Article 2a(1), (2), (4) and (5) of Regulation No 833/2014, as amended, repeat, in essence, the wording of Article 3(1), (2), (4) and (5) and of Article 3a(1), (2), (4) and (5) of Decision 2014/512, as amended, respectively. Similarly, Article 2(7), Article 2a(7) and Article 2b of Regulation No 833/2014, as amended, reproduce, in essence, the content of Article 3(7), of Article 3a(7) and of Article 3b of Decision 2014/512, as amended, respectively.

17 On 25 February 2023, the Council adopted the initial acts and the applicant's name was included at No 499 on the lists at issue in those acts.

18 According to recital 10 of Decision 2023/434, reproduced by recital 4 of Regulation 2023/427, '96 entries [have been added to the lists at issue], namely the [lists] of entities directly supporting Russia's military and industrial complex in its war of aggression against Ukraine, on whom tighter export restrictions regarding dual-use goods and technology as well as goods and technology which might contribute to the technological enhancement of Russia's defence and security sector are imposed'.

19 By letter of 1 March 2023, the applicant requested the Council to provide it with the information and evidence on the basis of which the restrictive measures concerning it had been adopted. The applicant also stated that it reserved the right to submit observations and to request that the Council review its decision to include its name on the lists at issue.

20 As the Council did not respond, the applicant repeated its request, by letter of 17 March 2023.

21 By letter of 31 March 2023, the Council stated that it was not obliged to notify the persons and entities on the lists at issue of the grounds for their inclusion on those lists and that all the information justifying the inclusion of the applicant's name on those lists was to be found in Articles 3 and 3b of Decision 2014/512, as amended, in Articles 2, 2a and 2b of Regulation No 833/2014, as amended, and in recital 10 of Decision 2023/434 and in recital 4 of Regulation 2023/427.

II. Events subsequent to the bringing of the action

22 Pursuant to Council Decision (CFSP) 2023/1217 of 23 June 2023 amending Decision 2014/512 (OJ 2023 L 159 I, p. 451) and to Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation No 833/2014 (OJ 2023 L 159 I, p. 1), the lists at issue were amended, including by the addition of the following introductory text:

'This Annex lists natural or legal persons, entities or bodies which are military end-users, form part of Russia's military-industrial complex or which have commercial or other links with or which otherwise support Russia's defence and security sector. These natural or legal persons, entities or bodies contribute to Russia's military and technological enhancement or to the development of Russia's defence and security sector. They include natural or legal persons, entities or bodies in third countries other than Russia. Their inclusion in this Annex does not entail any attribution of responsibility for their actions to the jurisdiction in which they are operating.'

23 On 20 July 2023, the Council adopted the July 2023 act.

24 On 24 July 2023, the Council sent a letter to the applicant informing it that the restrictive measures at issue against it had been extended.

25 On 30 November 2023, the applicant sent a letter to the Council, requesting it to reconsider its decision to extend those measures and requesting access to all the relevant documents.

26 On 29 January 2024, the Council adopted the January 2024 act, by which the applicant's name continued to appear on the lists at issue.

27 On 30 January 2024, the Council replied to the applicant's letter of 30 November 2023.

III. Forms of order sought

28 The applicant claims that the Court should:

– annul the contested acts, to the extent that those acts include and maintain its name on the lists at issue;

– order the Council to pay the costs of the proceedings and the European Commission to pay the costs relating to its intervention.

29 The Council, supported by the Commission, claims that the Court should:

– dismiss the action;

– in the alternative, in the event that the contested acts are annulled, maintain their effects until the date of expiry of the time limit for bringing an appeal laid down in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union, or, if an appeal is brought, until any dismissal of that appeal;

– order the applicant to pay the costs.

IV. Law

A. Admissibility of the additional evidence submitted by the applicant

30 By letter of 19 June 2024, the applicant submitted additional evidence, under Article 85(3) of the Rules of Procedure of the General Court. The Council and the Commission dispute the admissibility of that evidence.

31 It should be recalled that, according to Article 85(3) of the Rules of Procedure, the main parties may, exceptionally, produce or offer further evidence before the oral part of the procedure is closed or before the decision of the General Court to rule without an oral part of the procedure, provided that the delay in the submission of such evidence is justified.

32 In the present case, it must be noted that the applicant has not adduced any evidence capable of justifying the late production of the additional evidence in question, which is in the form of documents.

33 As observed by the Council, supported by the Commission, all those documents, with the exception of those contained in Annexes AE.9 and AE.11, were published or issued before the application was even lodged. As regards the document contained in Annex AE.9, this is a licence issued to the applicant on 9 November 2023. Similarly, the document contained in Annex AE.11 is a letter of 27 October 2023 sent to the applicant at its request. The applicant must therefore have been aware of those documents from the time they were issued and could have produced them, at the latest, annexed to its second statement of modification.

34 In those circumstances, it must be held that the applicant has failed to justify, within the meaning of Article 85(3) of the Rules of Procedure, the late production of the additional evidence submitted on 19 June 2024. Consequently, that evidence is inadmissible and the Court will not take it into account in the examination of the present action.

B. Substance

35 The applicant raises four pleas in law, alleging as follows: the first, an infringement of the rights of the defence and of the right to effective judicial protection; the second, an infringement of the obligation to state reasons; the third, error of assessment; and, the fourth, an infringement of the principle of proportionality.

36 The Court considers it appropriate to examine first the second plea, and then the first, third and fourth pleas.

1. The second plea in law, alleging infringement of the obligation to state reasons

37 The applicant claims that the Council did not put forward any individual ground to justify the inclusion of its name on the lists at issue and furthermore did not inform it of the specific grounds that led it to conclude that the applicant was an entity directly supporting the Russian military and industrial complex, with the result that the applicant was unable to ascertain the reasons for its name being included on those lists.

38 According to the applicant, a combined reading of recital 10 of Decision 2023/434 and of Article 3(7), Article 3a(7) and Article 3b of Decision 2014/512, as amended, provisions to which the Council has referred in its written pleadings, does not enable it to understand the reasons for its name being included on the lists at issue. There is no indication as to whether its name was included on the ground that it supplies dual-use goods and technology or on the ground that it supplies goods and technology which might contribute to Russia's military and technological enhancement or to the development of the defence and security sector.

39 The applicant also states that the present case differs from those that gave rise to the case-law cited by the Council.

40 The Council, supported by the Commission, disputes that line of argument.

41 Under the second paragraph of Article 296 TFEU 'legal acts shall state the reasons on which they are based'. Furthermore, under Article 41(2)(c) of the Charter of Fundamental Rights of the European Union (the 'Charter'), the right to good administration includes, in particular, 'the obligation of the administration to give reasons for its decisions'.

42 It should be recalled that the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act (see judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 102 and the case-law cited).

43 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 act 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 13 September 2018, *DenizBank* v *Council*, T-798/14, EU:T:2018:546, paragraph 70 and the case-law cited).

44 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 is sufficient 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. In particular, first, the reasons given for a decision adversely affecting a person are sufficient if that decision was adopted in circumstances known to the party concerned which enable him or her to understand the scope of the measure concerning him or her. Second, 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 judgments of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraphs 103 and 104 and the case-law cited, and of 20 September 2023, *Mordashov* v *Council*, T-248/22, not published, EU:T:2023:573, paragraphs 46 and 47 and the case-law cited).

45 It should be noted that, in the present case, the relevant provisions of the contested acts constitute, vis-à-vis the applicant, restrictive measures of individual application (see, to that effect, judgment of 13 September 2018, *Almaz-Antey* v *Council*, T-515/15, not published, EU:T:2018:545, paragraph 86).

46 It has been made clear in the case-law that the statement of reasons for an act of the Council which imposed a restrictive measure had not to identify only the legal basis for that measure but also the actual and specific reasons why the Council had considered, in the exercise of its discretion, that such a measure had to be adopted in respect of the person concerned (judgment of 3 July 2014, *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraph 38; see also, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T-255/15, not published, EU:T:2017:25, paragraph 55).

47 In the first place, it should be borne in mind that all the restrictive measures at issue form part of the context of international tension, known to the applicant, which preceded the adoption of the relevant provisions of Decision 2014/512, which are set out in paragraphs 9 to 16 above. It is apparent from recitals 1 to 8 of Decision 2014/512 that the stated objective of those measures is to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis. Decision 2014/512 accordingly indicates the overall situation that led to its adoption and the general objectives it intends to achieve (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 123).

48 In the second place, it should be recalled that Article 3(1) and (2) and Article 3a(1) and (2) of Decision 2014/512, as amended, provide, under the conditions set out in those provisions, for the prohibition of the sale, supply, transfer or export of dual-use goods and technology, and for the prohibition of the provision of technical assistance, brokering services or other services, and of financing or financial assistance related to the goods and technology referred to, to any person, entity or body in Russia. In addition, under Article 3(7) and Article 3a(7) of that decision, no authorisation derogating from those prohibitions is to be granted, in essence, where an end-user might be a member of the military or a natural or legal person, entity or body listed in Annex IV or where the goods in question might have a military end-use.

49 In that regard, it is apparent from recital 12 of Decision 2022/327, which amended Articles 3 and 3a of Decision 2014/512, that, in view of the gravity of the situation in Ukraine, the Council considered it appropriate to adopt further restrictive measures in response to the Russian Federation's destabilising actions. In that context, the Council found it to be appropriate to establish further restrictions relating to the export, supply or transfer of dual-use goods and of certain goods and technology which might contribute to the technological enhancement of the Russian defence and security sector.

50 In addition, it is clear from recital 5 of Council Decision (CFSP) 2022/430 of 15 March 2022 amending Decision 2014/512 (OJ 2022 L 87 I, p. 56) that, in view of the worsening situation in Ukraine, the Council considered it necessary to strengthen the export restrictions relating to dual-use goods and to the goods referred to in Article 3a of Decision 2014/512, as amended.

51 Moreover, as noted in paragraph 18 above, it is apparent from recital 10 of Decision 2023/434 and from recital 4 of Regulation 2023/427 that 96 entries, relating to the applicant among others, as entities directly supporting the military and industrial complex of the Russian Federation in its war of aggression against Ukraine, were added to the lists at issue.

52 As regards the July 2023 act and the January 2024 act (together, 'the maintaining acts'), that statement is reinforced by the wording of the introductory text of Annex IV to Decision 2014/512 and to Regulation No 833/2014, as amended by Decision 2023/1217 and by Regulation 2023/1214 respectively, which is quoted in paragraph 22 above.

53 It must be held 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 with respect to the applicant, within the meaning of the case-law referred to in paragraph 46 above, correspond, in the present case, to the criteria set out in the relevant provisions and in the recitals of the contested acts.

54 Consequently, the applicant's name was included on the lists at issue because that entity satisfied the actual and specific conditions laid down in the relevant provisions and in the recitals of the contested acts, that is to say, it was considered to be an entity directly supporting the Russian military and industrial complex.

55 In that regard, it is necessary to clarify that the fact that the same considerations were relied on in order to adopt restrictive measures aimed at more than one person does not mean that those considerations cannot give rise to a sufficiently specific statement of reasons for each of the persons concerned (see judgment of 13 September 2018, *Vnesheconombank* v *Council*, T-737/14, not published, EU:T:2018:543, paragraph 76 and the case-law cited).

56 As noted in paragraphs 18 and 51 above, it is apparent from recital 10 of Decision 2023/434 and from recital 4 of Regulation 2023/427 that 96 entries were added to the lists at issue. The aforementioned recital 10 makes clear that those lists include 'entities directly supporting Russia's military and industrial complex in its war of aggression against Ukraine, on whom tighter export restrictions regarding dual-use goods and technology as well as goods and technology which might contribute to the technological enhancement of Russia's defence and security sector are imposed'. Those restrictions are established in Article 3(7) and in Article 3a(7) of that decision.

57 Given the political context existing at the time the restrictive measures at issue were adopted and the importance of preventing entities which directly support the military and industrial complex of the Russian Federation in its war of aggression against Ukraine from buying dual-use goods or goods referred to in Article 3a of Decision 2014/512, as amended, in the light of the objective of those measures, which is to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, and to promote a peaceful settlement of the crisis, the Council's decision to adopt such measures against entities belonging to the telecommunications sector can be readily understood in the light of the stated objective of those measures (see, to that effect and by analogy, judgment of 13 September 2018, *Almaz-Antey* v *Council*, T-515/15, not published, EU:T:2018:545, paragraph 96 and the case-law cited).

58 It follows that, in the context of the establishment of the further restrictions under Article 3(7) and Article 3a(7) of Decision 2014/512, as amended, the applicant was in a position to understand that it had been included on the lists at issue because it was considered to be an entity which directly supported Russia's military and industrial complex in its war of aggression against Ukraine, having regard to the fact that it was one of the principal mobile telephone and telecommunications operators in Russia and to the political context at the time the contested acts were adopted.

59 In that regard, as the Council submits in its written pleadings, restrictions were imposed on the applicant in relation to dual-use goods and certain goods and technology which might contribute to the technological enhancement of the Russian defence and security sector, so that the applicant could not acquire those goods and, through their use, help the Russian Federation's aggression against Ukraine, either by providing telecommunications services to the Russian army or by offering telecommunications services to civilian customers in the areas of Ukraine occupied by the Russian Federation.

60 Similarly, the reason justifying the extension of those measures, by the maintaining acts, could readily be understood in the light of recitals 2 and 3 of those acts and of the introductory text of Annex IV, which reiterate the condemnation of the war of aggression conducted by the Russian Federation against Ukraine. As a result of the continuation of those illegal acts, it was appropriate to maintain the measures imposed and to take further measures.

61 In the light of the foregoing, it must be held that the Council did not infringe the obligation to state reasons and, accordingly, the second plea must be rejected.

2. The first plea in law, alleging infringement of the rights of the defence and of the right to effective judicial protection

(a) Admissibility

62 Although it does not explicitly raise a plea of inadmissibility, the Council claims that the first plea is unstructured and can be regarded as not complying with the requirements of Article 76(d) of the Rules of Procedure.

63 It should be noted at the outset that, under Article 76(d) of the Rules of Procedure, any application must state the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law, and that that statement must be sufficiently clear and precise as to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any other supporting information (judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144, paragraph 191).

64 It should also be noted that, in particular, it is necessary, for an action before the Court to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144, paragraph 192).

65 It should be noted that the matters of fact and law on which the applicant bases its arguments are intelligible from a reading of the application. The application sets out the matters of law on which the applicant relies and, sufficiently, albeit concisely, the matters of fact that it invokes, including those alleging that it was at no time informed or heard in relation to the inclusion of its name on the lists at issue. Similarly, the Council was able, in its written pleadings, to respond to those arguments. The Court was also able to identify the applicant's arguments. The first plea is therefore admissible.

(b) Substance

66 The applicant claims that the Council infringed the notification obligation and its right to be heard. It states that it was not informed that its name had been included on the lists at issue and that the Council neither published a Notice of the contested acts in the *Official Journal of the European Union* nor communicated them individually.

67 In particular, the applicant claims that the Council failed to give it an opportunity to submit observations and that the evidence in support of its inclusion on the lists at issue, which was disclosed only by means of the defence, was disclosed unlawfully.

68 In the statements of modification, the applicant adds that, when it adopted the maintaining acts, the Council similarly failed to offer the applicant an opportunity to submit its observations on the renewal of the restrictive measures against it, and that the evidence must be found to be inadmissible for the purposes of determining the merits of the contested acts. In the alternative, the applicant indicates, in the first statement of modification, that, were the Court to hold that the Council was not obliged to inform it, before adopting the July 2023 act, of its intention to maintain its name on the lists at issue, or to provide it with the evidence on which that act is based, it raises a plea of illegality under Article 277 TFEU in respect of Decision 2014/512 and of Regulation No 833/2014.

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

70 It should be recalled that the right to be heard in all proceedings, laid down in Article 41(2)(a) of the Charter, which is inherent in respect for the rights of the defence, guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of a decision in relation to that person that is liable to affect his or her interests adversely (see, to that effect, judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 75 and the case-law cited).

71 In proceedings relating to the adoption of a decision to list the name of an individual in the annex to an act imposing restrictive measures, respect for the rights of the defence requires that the competent EU authority disclose to the individual concerned the grounds and the evidence against that person on which that authority proposes to base its decision. When that disclosure takes place, the competent EU authority must ensure that that individual is placed in a position in which he or she may effectively make known his or her views on the grounds advanced against him or her (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, paragraphs 111 and 112).

72 Article 52(1) of the Charter nevertheless allows limitations on the exercise of the rights enshrined in the Charter, subject to the conditions that the limitation concerned respects the essence of the fundamental right in question and, subject to the principle of proportionality, that it is necessary and genuinely meets objectives of general interest recognised by the European Union. In that regard, the Court of Justice has held on a number of occasions that the rights of the defence might be subject to limitations or derogations, including in the sphere of the restrictive measures adopted in the context of the common foreign and security policy (see judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 77 and the case-law cited).

73 Furthermore, the question whether there is a breach of the rights of the defence must be examined in relation to the specific circumstances of each particular case, including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (see 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 102 and the case-law cited).

74 It should also be noted that the EU Courts distinguish between, on the one hand, the initial entry of a person's name on the lists at issue and, on the other, the maintenance of that person's name on those lists (see, to that effect, judgment of 30 April 2015, *Al-Chihabi* v *Council*, T-593/11, EU:T:2015:249, paragraph 40).

75 It is in the light of those principles of case-law that the Court must examine the present plea.

(1) The initial acts

76 In the first place, as regards the applicant's argument that the Council should have notified it individually of the contested acts, since those acts provide for restrictive measures against the applicant, it should be noted that while the absence of individual communication of those acts may have an impact as regards when time started to run for the purposes of bringing an action, it does not in itself justify annulment of the contested acts. In that regard, the applicant has failed to put forward any arguments to demonstrate that, in the present case, the failure to communicate those acts individually resulted in a breach of its rights that would justify annulment of those acts in so far as they concern that party (see, to that effect, judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 82 and the case-law cited).

77 In the second place, it must be borne in mind that, as regards respect for the right to be heard, it is apparent from the case-law that, in the case of the initial decision placing a person's or an entity's name on the list of persons and entities whose funds are frozen, the Council is not required to inform the person or entity concerned beforehand of the grounds on which it intends to rely in order to list that person or entity. So that its effectiveness may not be jeopardised, such a measure must, by its very nature, be able to take advantage of the element of surprise and to apply immediately. Upon application to the Council, the person or entity concerned also has the right to make known his or her views on that evidence after the measure has been adopted (see judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 80 and the case-law cited).

78 Such a derogation from the fundamental right to be heard during a procedure preceding the adoption of restrictive measures is justified by the need to ensure that the freezing measures are effective and, in short, by overriding considerations to do with safety or the conduct of the international relations of the European Union and of its Member States (see judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 81 and the case-law cited).

79 In addition, it should be noted that neither the relevant provisions of the acts establishing restrictive measures nor the general principle of respect for the rights of the defence give the persons concerned a right to a formal hearing, since it is sufficient that they can make representations in writing (see, to that effect and by analogy, judgment of 12 February 2020, *Amisi Kumba* v *Council*, T-163/18, EU:T:2020:57, paragraph 75 and the case-law cited).

80 In the present case, as the Council has stated in its written pleadings and at the hearing, it must be observed that the initial acts had to take advantage of an element of surprise in order to ensure their effectiveness and to prevent the applicant from being able, in particular, to obtain export authorisations for the goods and technology referred to in Articles 3 and 3a of Decision 2014/512, as amended, or to conclude contracts giving rise to the application of one of the exceptions under Article 3b(1) of that decision. The Council was therefore not obliged to hear the applicant before its initial listing, for the purposes of the case-law cited in paragraph 79 above, and there was accordingly no infringement of the applicant's right to be heard in that regard.

81 In the third place, as regards the Council's failure to inform the applicant of the grounds justifying adoption of the restrictive measures against it before the restrictive measures at issue were adopted, it is clear from the case-law cited in paragraph 77 above that, on application by the applicant, since the restrictions imposed on it under the relevant provisions of the initial acts constitute restrictive measures of individual application in relation to the applicant, the Council had an obligation to communicate the grounds for applying those measures in respect of the applicant immediately after those acts were adopted.

82 In that regard, it must be recalled that 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 grounds 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 grounds, 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 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 100 and the case-law cited).

83 In the present case, it is clear from the documents before the Court that, following the applicant's letters of 1 and 17 March 2023, the Council replied, by letter of 31 March 2023, that all the information justifying the inclusion of its name on the lists at issue was to be found in recital 10 of Decision 2023/434, in Articles 3 and 3b of Decision 2014/512, as amended, and in recital 4 and Articles 2, 2a and 2b of Regulation No 833/2014, as amended.

84 Accordingly, it should be noted that the ground on the basis of which the Council imposed the restrictive measures on the applicant, which is contained in the relevant provisions of the initial acts themselves, consists, essentially, in the fact that the applicant is an entity which directly supports the Russian military and industrial complex.

85 Therefore, as is clear from paragraph 58 above, the applicant was able to understand the grounds for the inclusion of its name on the lists at issue, which enabled it to defend its rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there was any point in its applying to the court having jurisdiction, within the meaning of the case-law cited in paragraph 82 above.

(2) The maintaining acts

86 In relation to decisions consisting in maintaining restrictive measures against persons already subject to such measures, the Council is obliged to disclose to those persons the evidence available to it and relied on as the basis of its decision, and must place them in a position to effectively make known their views on the grounds advanced against them before that decision is adopted. Compliance with that dual procedural obligation must precede the adoption of that 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 62 and the case-law cited, and 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, paragraphs 111 to 113 and the case-law cited).

87 However, it must be pointed out that the right to be heard prior to the adoption of acts which maintain restrictive measures against persons already subject to those measures applies where the Council has admitted new evidence against those persons and not where those measures are maintained on the basis of the same grounds as those that justified the adoption of the initial act imposing the restrictive measures in question (judgments of 28 July 2016, *Tomana and Others* v *Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraph 67, and of 7 June 2023, *Shakutin* v *Council*, T-141/21, EU:T:2023:303, not published, paragraph 74).

88 Thus, while the continued inclusion of the applicant's name on the lists at issue, decided in the maintaining acts, is based, as in the present case, on the same grounds as those which justified the adoption of the initial acts imposing the restrictive measures in question, the Council is required, during the periodic review of the restrictive measures imposed on the applicant, to disclose to him, where appropriate, new evidence on which the Council relies in order to update the information concerning not only his personal situation but also the situation in the third country at issue and to obtain that person's comments on that evidence before adopting a retention decision (see judgment of 7 June 2023, *Shakutin* v *Council*, T-141/21, not published, EU:T:2023:303, paragraph 76 and the case-law cited).

89 In the present case, the grounds of the maintaining acts do not differ from those of the initial acts, with the result that, pursuant to the case-law cited in paragraph 86 above, the Council was not required to hear the applicant before adopting those acts.

90 The applicant's argument that the Council, wrongly, did not inform it of the grounds for the maintaining acts must therefore be rejected. Similarly, pursuant to the case-law referred to in paragraphs 86 and 87 above, in the present case the Council was not obliged to inform the applicant of its intention to maintain its name on the lists at issue.

91 It must also be pointed out that, first, by letter of 24 July 2023, the Council replied to the applicant's request of 13 June 2023 that its name be removed from the lists at issue. In that letter, the Council stated that the reason for the applicant's name being included on those lists, that is to say, the fact that it directly supported the Russian military and industrial complex in its war of aggression against Ukraine, had been clearly stated in the relevant provisions of the maintaining acts and in recital 10 of Decision 2023/434. Since the arguments put forward by the applicant were, in essence, a summary of the arguments set out in the application in the present case, the Council referred the applicant to the defence. Second, the Council informed the applicant that it had decided to maintain its name on the lists at issue and that the applicant could submit further observations until 1 December 2023.

92 In relation to the January 2024 act, by letter of 30 January 2024, the Council replied to the applicant's letter of 6 December 2023, stating that, for the reasons set out in its observations on the first statement of modification, the arguments set out in that letter of 6 December 2023 were unfounded.

93 The Council noted, in particular, first, that the mere fact that the Council did not have a separate evidence file on the applicant did not signify that, at the time the applicant's name was included on the lists at issue, the Council ignored or was unaware of the information widely available in the public domain concerning its activities and its previous contracts with the Russian army and, second, that the documents requested had already been disclosed to the applicant, annexed to the defence in the present case.

94 Furthermore, as regards the applicant's argument criticising the Council for disclosing the documents supporting the maintenance of its inclusion on the lists at issue to the applicant only in the defence, it must be noted that, first, those documents, which were notified on 10 July 2024, are not 'new evidence' within the meaning of the case-law cited in paragraph 87 above, since the applicant's name was maintained on the lists at issue on the same grounds as those forming the basis of the initial listing. Second, as regards the maintaining acts, those documents were in any event disclosed within a reasonable time, which was sufficient for the purposes of enabling the applicant, in the specific circumstances of the present case, to assert its rights of defence.

95 The first plea must therefore, be rejected in its entirety.

96 As regards the plea of illegality raised in the alternative by the applicant in respect of Decision 2014/512 and Regulation No 833/2014, that party claims that those acts would be unlawful if they were interpreted as meaning that the Council could decide to continue to include the name of a person or entity on the lists at issue without previously informing that person or entity of the grounds of that decision or of its intention to continue that inclusion. In that regard, as the Council acknowledges, it flows from Article 41(2)(a) of the Charter that the right to be heard must be observed in all proceedings which are liable to culminate in a measure adversely affecting the person concerned, even where the applicable legislation does not expressly provide for such a procedural requirement (see judgment of 12 May 2022, *Boshab* v *Council*, C-242/21 P, not published, EU:C:2022:375 paragraph 62 and the case-law cited). However, as is apparent from paragraphs 87 and 90 above, the right to be heard before the adoption of acts maintaining restrictive measures in respect of persons already subject to such measures does not apply where that maintenance is based on the same grounds as those justifying the adoption of the initial act imposing the restrictive measures in question.

97 It follows that the applicant's right to be heard had to be respected even if the contested acts do not expressly confer such a right, with the effect that the present plea of illegality must be rejected.

3. The third plea in law, alleging error of assessment

98 The applicant claims that the Council has failed to establish that its name was included on the lists at issue on a sufficiently solid factual basis.

99 In the first place, it is clear from recital 10 of Decision 2023/434 that the Council relied on the presumption that the applicant directly supports the military and industrial complex of the Russian Federation in its war of aggression against Ukraine. The applicant states that it is for the

Council to prove that it supports that military and industrial complex. Moreover, when examining a request to that effect, the Council is obliged to disclose all the evidence on which the acts adopted are based. The Council did not comply with those obligations.

100 The applicant disputes that it is an entity providing direct support to the military and industrial complex of the Russian Federation in its war of aggression against Ukraine and claims that, despite its repeated requests, the Council has failed to provide any evidence capable of supporting that assertion.

101 In the second place, the applicant states in the reply, in response to the evidence submitted by the Council in the annexes to the defence, that, since certain newspaper articles predate the contested acts, if they had been in the Council's possession, the Council would have failed to fulfil its obligation to provide the evidence available to it. If they were not in its possession, the evidence could not amount to an a posteriori justification.

102 In the third place, the evidence annexed to the defence does not clarify the criteria according to which the applicant was included on the lists at issue and is inadmissible because it was submitted late, at the stage of the defence, and because it is unreliable.

103 In the fourth place, the applicant disputes that the evidence produced by the Council is sufficient to establish that it provides direct support to the military and industrial complex of the Russian Federation.

104 First, the applicant disputes that the provision of roaming services in the Kherson, Zaporizhzhia, Donetsk and Luhansk regions and in Crimea facilitates the integration of those areas into the Russian Federation. The press articles provided by the Council do not prove otherwise.

105 Second, the applicant disputes that it provides telecommunications services in Crimea and sells SIM cards. It also disputes the reliability of the screenshots of press articles and webpages submitted by the Council in support of that allegation.

106 Third, the applicant disputes that it installed infrastructure in the Kharkiv region. In that regard, the extracts of the articles on which the Council relied do not constitute reliable evidence.

107 Fourth, the applicant disputes the Council's allegation that the applicant concluded contracts with the Russian military authorities, thereby proving a close link with those authorities. In that regard, it submits (i) that the website to which the Council refers is not an official website listing the contracts concluded by the Russian State and (ii) that the contracts listed in the documents provided by the Council predate the invasion of Ukraine and that their subject matter has no connection with military operations.

108 Furthermore, the applicant submits an audit report as an annex to the first statement of modification, and claims that the audit in question refutes the Council's allegation that the applicant has infrastructure in the Kharkiv region. In addition, according to the applicant, first, the fact that the report was prepared for the purposes of the proceedings before the Court does not affect its reliability and, second, the Council's reading of that report is speculative. By contrast, the applicant submits that the Council's allegations in respect of that infrastructure are based only on evidence from a single source and lack credibility.

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

110 According to settled case-law, while it is true that the Council has a degree of discretion to determine, on a case-by-case basis, whether the legal criteria on which the restrictive measures at issue are based are satisfied, the fact remains that the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all EU acts (see judgments of 3 July 2014, *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraphs 54 and 55 and the case-law cited, and of 26 October 2022, *Ovsyannikov* v *Council*, T-714/20, not published, EU:T:2022:674, paragraph 61 and the case-law cited).

111 It should also be borne in mind that the effectiveness of the judicial review guaranteed by Article 47 of the Charter requires, inter alia, that the Courts of the European Union are to ensure that the decision by which restrictive measures were adopted or maintained, which affects [the person or entity concerned] individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119).

112 The assessment of whether those reasons are well founded must be carried out by examining the evidence and information not in isolation but in its context. The Council discharges the burden of proof borne by it if it presents to the EU Courts a sufficiently concrete, precise and consistent body of evidence to establish that there is a sufficient link between the entity subject to a restrictive measure and the regime or, in general, the situations, being combated (judgment of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 124).

113 It is for the competent EU authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (see judgment of 15 June 2017, *Kiselev* v *Council*, T-262/15, EU:T:2017:392, paragraph 63 and the case-law cited).

114 In addition, the review of substantive legality incumbent on the General Court must be carried out, as regards in particular cases involving restrictive measures, in the light not only of the material set out in the statements of reasons of the acts at issue, but also in the light of the material provided by the Council, in the event of challenge, to the General Court in order to establish that the facts alleged are made out (see, to that effect, judgment of 22 April 2021, *Council* v *PKK*, C-46/19 P, EU:C:2021:316, paragraph 64).

115 It is in the light of those principles of case-law that the Court must examine the merits of the applicant's arguments.

(a) The initial acts

116 In relation to the initial acts, it is necessary to determine, in the first place, whether the evidence submitted by the Council in the annexes to its written pleadings could be relied on in favour of the inclusion of the applicant's name on the lists at issue and, in the second place, whether the Council made an error of assessment in finding that the applicant directly supported the Russian military and industrial complex.

117 In that regard, it needs to be made clear at the outset that the Council relies on four allegations, that is to say, first, that the applicant provides roaming services in the Donetsk, Luhansk, Zaporizhzhia and Kherson regions and in Crimea; second, that it provides telecommunications services in Crimea; third, that it has infrastructure in the Kharkiv region; and, fourth, that it concluded contracts with the Russian army for the provision of telecommunications services.

(1) Whether the Council can refer to evidence submitted at the stage of the defence

118 First of all, as regards the ground used by the Council in support of the inclusion of the applicant's name on the lists at issue – that the applicant directly supports the military and industrial complex of the Russian Federation – it must be noted that, following the applicant's request, the Council answered that all the information justifying that inclusion was to be found in the relevant provisions of the initial acts. The Council submitted the evidence in question only at the stage of the defence. It is therefore necessary to determine whether the Council was entitled to refer to it.

119 It is clear from the case-law that non-disclosure by the Council of the evidence on the basis of which it included a person's name on a list for the purposes of restrictive measures is not capable of undermining that person's rights of defence where that evidence constitutes a known context, that is to say, it is publicly available and, accordingly, may be presumed to be known to all (see, to that effect, judgments of 7 April 2016, *Central Bank of Iran* v *Council*, C-266/15 P, EU:C:2016:208, paragraph 37, and of 25 March 2015, *Central Bank of Iran* v *Council*, T-563/12, EU:T:2015:187 paragraphs 85 and 97).

120 In the present case, the fact that, in a time of war, one of the major telecommunications operators of the Russian Federation, which include the applicant, as the latter does not dispute, participates in directly supporting that country's military and industrial complex may be presumed to be known to all.

121 The applicant nevertheless disputes the fact that the Council, in order to substantiate the allegation that the applicant directly supports the Russian industrial and military complex, submitted a number of items of evidence as annexes to the defence.

122 In that regard, it should be noted that the Council was not required to communicate to the applicant the documents which served as a basis for the initial decision to include its name on the lists at issue, since the facts invoked could be presumed to be known to all, as set out in paragraph 120 above. The Council was therefore not required to provide any documents or evidence in that respect (see, to that effect and by analogy, judgments of 7 April 2016, *Central Bank of Iran* v *Council*, C-266/15 P, EU:C:2016:208, paragraph 38, and of 25 March 2015, *Central Bank of Iran* v *Council*, T-563/12, EU:T:2015:187 paragraph 97).

123 Accordingly, while it is in principle the task of the Council to establish in its decisions the accuracy of the facts supporting the inclusion of a person's name on the lists of restrictive measures, such is not the case where it relies on facts known to all, the accuracy of which can be challenged before the General Court by a person subject to restrictive measures. In such a situation, it follows from the principle of equality of arms that the Council is entitled to submit documents which are widely available in the public domain to the Court in order to support the accuracy of a fact known to all which was not established in the decision contested before the Court, thereby enabling the Court to examine that fact and its accuracy on the basis of concrete evidence and to rule on the

applicant's challenge (see, to that effect and by analogy, judgment of 10 November 2011, *LG Electronics* v *OHIM*, C-88/11 P, not published, EU:C:2011:727, paragraphs 27 to 29 and the case-law cited).

124 As the Council stated at the hearing and in its written pleadings, it did not ignore and was not unaware of the general context or the information widely available in the public domain concerning the entities the names of which it decided to include on the lists at issue, including the applicant. Accordingly, in the present case, although the Council did not compile an evidence file at the time it adopted the initial acts, it was entitled, in the event of a challenge, to refer to evidence widely available in the public domain in order to support its allegations concerning a fact which could be presumed to be known to all.

(2) Assessment of the facts

125 It is necessary to examine, initially, the applicant's allegations disputing the reliability of certain items of evidence, and then whether the Council erred in its assessment of the facts.

(i) The reliability of the evidence

126 As regards the credibility of the evidence, which the applicant disputes in part, it should be noted that, in the absence of investigative powers in third countries, the assessment of the EU authorities must rely on publicly available sources of information, reports, articles in the press, intelligence reports or other similar sources of information (judgments of 14 March 2018, *Kim and Others* v *Council and Commission*, T-533/15 and T-264/16, EU:T:2018:138, paragraph 107, and of 16 December 2020, *Haswani* v *Council*, T-521/19, not published, EU:T:2020:608, paragraph 142).

127 In that regard, it would be excessive and disproportionate to require the Council itself to investigate on the ground the accuracy of facts which are relayed by numerous media (judgments of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T-255/15, not published, EU:T:2017:25, paragraph 148, and of 1 June 2022, *Prigozhin* v *Council*, T-723/20, not published, EU:T:2022:317, paragraph 59).

128 Furthermore, the activity of the EU Courts is governed by the principle of the unfettered assessment of the evidence, and it is only the reliability of the evidence before the Court which is decisive when it comes to the assessment of its value. In that regard, in order to assess the probative value of a document, regard should be had to the credibility of the account it contains and, in particular, to the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the document appears to be sound and reliable (see judgment of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 114 and the case-law cited).

129 In the present case, the applicant disputes the reliability of certain items of evidence relied on by the Council.

130 In particular, first, as regards the provision of telecommunications services, including roaming services, in Crimea, the applicant states that the 'Fans de MegaFon' website and the 'Help-Desk MegaFon' webpage, which indicate that it provides Internet services in Crimea, are unreliable in the light of their non-official origins; second, as regards the presence of its infrastructure in the Kharkiv region, the applicant disputes the probative value of the article, dated 25 April 2022, by

the Centre for Eastern Studies think tank, which specialises in central and eastern Europe, and of the article in the online newspaper *Ukrainska Pravda*, dated 24 April 2022, in so far as those articles do not give their sources and their independence is debatable; third, as regards the link between it and the Russian army, the applicant states that the extracts from a webpage containing lists of contracts for telecommunications services that it concluded with the Russian army between 2013 and 2021 are not from an official webpage.

131 In accordance with the case-law cited in paragraphs 126 to 128 above, the evidence used by the Council comes from various sources, comprises, inter alia, press articles, and is in all cases publicly available.

132 Accordingly, as regards the articles from the 'Fans de MegaFon' and 'Help-Desk MegaFon' webpages and the extract from the webpage containing a list of the contracts between the applicant and the Russian army, the arguments put forward by the applicant, to the effect that those sources lack credibility because they are not pages from its official websites, must be rejected since there is no evidence disputing the reliability of those sources.

133 Similarly, in relation to the articles by the Centre for Eastern Studies and in the newspaper *Ukrainska Pravda*, the applicant's argument that those two articles, of which one reproduces the other, do not give their sources and that their independence is debatable is not substantiated by concrete evidence, other than the audit report prepared at the applicant's request, but which was drawn up on the basis of data provided by the applicant itself. Specifically, as regards the Centre for Eastern Studies, it is an independent research institute established in a Member State, in Warsaw (Poland), and there is nothing such as to cast doubt on the credibility of the articles it publishes. The assertions made by the applicant are therefore not such as to call into question the reliability of that evidence.

134 Furthermore, the applicant does not dispute that it provides roaming services in order to serve its customers in the Donetsk, Luhansk, Zaporizhzhia and Kherson regions and in Crimea.

135 In the light of the foregoing and in the absence of any evidence in the documents before the Court capable of calling into question the reliability of the sources used by the Council, they must be regarded as reliable and therefore as having some probative value within the meaning of the case-law referred to in paragraph 128 above.

(ii) The relevance and sufficiency of the evidence adduced by the Council

136 As regards the applicant's argument that the evidence provided by the Council is not such as to confirm the latter's allegations set out in paragraphs 103 to 107 above, it is necessary to examine whether that evidence is such as to establish that the applicant directly supports the Russian military and industrial complex.

137 First, as regards the roaming services offered in the Donetsk, Luhansk, Zaporizhzhia and Kherson regions and in Crimea, the applicant disputes that the provision of those services constitutes evidence of its alleged support for the Russian military and industrial complex. However, it does not dispute that it provides those services in the regions in question.

138 As the Council states, in the context in which that evidence is to be assessed, that is to say, an ongoing war of aggression by Russia against Ukraine, the provision of roaming services is likely to facilitate and consolidate the 'integration' of those regions into the Russian Federation.

Admittedly, the provision of roaming services would not, in itself, pose any problems in a different context. However, the provision of those services to its customers, on the basis of a collaboration with a 'local operator', facilitates their activities in those Russian-controlled regions of Ukraine, since they can continue to use their Russian SIM cards in the occupied regions and to make calls, send SMS and connect to the Internet while they are in those regions without having to take out a contract with a local mobile telephone operator. That service provision thus facilitates communication by Russian users between Russia and the occupied territories of Ukraine. Those conclusions are borne out by the fact that the applicant only began to provide the services in question after the military aggression in Ukraine had started.

139 It follows that the Council was correct to consider that, in view of the political and military developments in the regions in question and in the context of the ongoing war, the provision of roaming services was likely further to undermine Ukraine's territorial integrity and, therefore, constituted evidence confirming the applicant's support for the Russian military and industrial complex.

140 Second, as regards the provision of telecommunications services in Crimea, which the applicant disputes, it must be noted that the Council has produced an article from the 'Fans de MegaFon' webpage and from the 'Help-Desk MegaFon' webpage. For the same reasons as those set out in paragraphs 138 and 139 above, the provision of those services contributes all the more to supporting the Russian military and industrial complex. In any event, even if it had to be found that the applicant did not provide such services in Crimea, it is common ground that it provided roaming services in that place.

141 Third, it should be pointed out that the articles published by the Centre for Eastern Studies and by the newspaper *Ukrainska Pravda*, which have been produced by the Council, refer to the presence of infrastructure belonging to the applicant in the Kharkiv region.

142 Fourth, in respect of the contracts concluded between the Russian army and the applicant between 2013 and 2021, the applicant states (i) that those contracts predated the invasion of Ukraine and (ii) that the services in question are not such as to be used during military operations.

143 In that regard, the Council adduces extracts of the 'ClearSpending' webpage which show those contracts with the term of each. Even though the evidence adduced by the Council shows that the applicant and the Russian army concluded contracts between 2013 and 2021, those contracts testify to the existence of a long-term link between the applicant and that army. Moreover, despite there being no evidence of any continuation of those contracts, it must be held that the almost decade-long contractual relationship between the applicant and the Russian army bears out the line of argument that, following Russia's aggression in Ukraine, the applicant has been an entity which directly supports the military and industrial complex of the Russian Federation.

144 In the light of all the foregoing, it must be found that the evidence provided by the Council constitutes a sufficiently concrete, precise and consistent body of evidence confirming the fact that the applicant directly supports the Russian military and industrial complex. Accordingly, the Council did not make an error of assessment.

(b) The maintaining acts

145 As regards the maintaining acts, in the first place, it should be noted that, as stated in paragraph 124 above, the Council is entitled to rely on the evidence it submitted in the proceedings before the General Court, as annexes to the defence, in response to the challenges by the applicant, in order to substantiate the accuracy of a fact that can be presumed to be known to all.

146 It must also be noted that, in any event, as regards the maintaining acts, the Council, inter alia, sent the applicant a letter on 24 July 2023 informing it that the contested acts had been extended in relation to it, and referring explicitly to the evidence submitted as annexes to the defence lodged on 28 June 2023. The Council may therefore rely on that evidence in order to substantiate the facts alleged in connection with the applicant.

147 In the second place, for the same reasons as those set out in paragraphs 129 to 144 above, the Council's allegations are based on reliable and relevant evidence.

148 Accordingly, it must be held that the Council has adduced a sufficiently concrete, precise and consistent body of evidence demonstrating that the applicant met the listing criterion in question.

149 In the third place, in relation to the general context associated with the situation in Ukraine, it must be held that, on the date on which the maintaining acts were adopted, the situation in that country remained grave and that the objective pursued by the initial acts, that is to say, to apply pressure on the Russian Government to end its actions and policies destabilising Ukraine, remained relevant.

150 In the fourth place, as regards the audit report submitted by the applicant annexed to the first statement of modification in order to establish that it has no infrastructure in the Kharkiv region, it must be noted that, in the light of the case-law cited in paragraph 128 above, that document has little probative value. First, the report was drawn up at the applicant's request for the purposes of the present case and, second, although the report states that the auditor was not able to identify any records of assets belonging to the applicant that were attributable, inter alia, to the Kharkiv region, that did not necessarily mean that the applicant had no infrastructure in that region. Moreover, the report states that it was prepared on the basis of procedures agreed with the applicant and that it could not be guaranteed that, had additional procedures been carried out, the results could have been different.

151 In the light of all the foregoing considerations, it must be found that the Council made no error of assessment when it considered the applicant to be an entity which directly supported the Russian military and industrial complex or, therefore, when it maintained its name on the lists at issue.

152 In the light of all the foregoing, the third plea should be rejected in its entirety.

4. The fourth plea in law, alleging an infringement of the principle of proportionality, interference with the freedom to conduct a business and damage to the applicant's reputation

153 The applicant submits that the contested acts interfere with its freedom to conduct a business, enshrined in Article 16 of the Charter, and damage its reputation. It cannot benefit from any derogation and those acts preclude the essential part of its business. The applicant also states

that the inclusion of its name on the lists at issue cannot be regarded as a necessary and appropriate measure for the purposes of the objective of combating the Russian Federation's destabilisation actions in Ukraine.

154 Moreover, in the first place, the applicant adds that the other major Russian telecommunications operators have not been subject to any restrictive measures. In the second place, it states that internet access is regarded as a human right and that restrictions on that access may affect its users' rights to freedom of expression, to private life and to education.

155 The Council and the Commission dispute those arguments.

156 It should be noted that the principle of proportionality, which is one of the general principles of EU law and is referred to in Article 5(4) TEU, requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (see judgment of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 190 and the case-law cited).

157 In the present case, it should be noted that the applicant's freedom to conduct a business is restricted and that respect for its reputation is affected to a certain extent as a result of the restrictive measures taken against it.

158 While respect for fundamental rights is a condition for the legality of EU acts, according to established case-law the fundamental rights relied on by the applicant, that is to say, the right to conduct a business and the right to respect for reputation, do not enjoy absolute protection under EU law. Consequently, the exercise of those rights may be restricted, provided that those restrictions in fact correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights thus guaranteed (see, to that effect, judgment of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 193 and the case-law cited).

159 Accordingly, in order to comply with EU law, a limitation on the fundamental rights at issue must be provided for by law, it must respect the essential content of that freedom and it must refer to an objective of general interest, recognised as such by the European Union, and it must not be disproportionate (see judgment of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 194 and the case-law cited).

160 It is clear that those four conditions are satisfied in the present case.

161 In the first place, the restrictive measures at issue are 'provided for by law', since they are laid down in acts which are, in particular, of general application and which have a clear legal basis in EU law and are sufficiently foreseeable.

162 In the second place, the contested acts apply for six months and are to be kept under constant review. Since the measures in question are temporary and reversible, it must be held that they do not undermine the essential content of the freedoms relied on.

163 In the third place, they satisfy an objective of general interest as fundamental for the international community as that of increasing the costs of the actions of the Russian Federation designed to undermine Ukraine's territorial integrity, sovereignty and independence, and of promoting a peaceful settlement of the crisis (see, to that effect, judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 147, and of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 198).

164 In the fourth place, as regards whether the restrictive measures at issue are appropriate, it should be noted that, in the light of objectives of general interest as fundamental for the international community as those referred to in paragraph 163 above, those measures cannot, in themselves, be regarded as inappropriate. Furthermore, as regards whether those measures are necessary, it must be observed that the contested acts contain a prohibition in respect of certain products, that is to say, dual-use goods and technology and the goods and technology referred to in Article 3a(7) of Decision 2014/512, as amended, and that that prohibition applies only to European operators. Other less restrictive measures, such as a system of prior authorisation, are not as effective in achieving the objective pursued.

165 The contested acts relate not to all goods, but only to dual-use goods and technology and to the goods and technology referred to in Article 3a(7) of Decision 2014/512, as amended, and they provide that derogations can be granted from the restrictive measures applied. In particular, Article 3b(1) of Decision 2014/512, as amended, provides for derogations from the restrictive measures at issue in relation to entities the names of which are included on the lists at issue, such as the applicant. Specifically, the competent national authorities may, in relation to both categories of goods and technology, authorise the sale, supply, transfer or export of dual-use goods and technology, even if they have reasonable grounds to believe that the end user might be an entity referred to in Annex IV, where such goods and technology or the related technical or financial assistance are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment, and where such goods or technology or the related technical or financial assistance are due under a contract concluded before 26 February 2022, or under an ancillary contract necessary for the execution of such a contract, provided that the authorisation is requested before 1 May 2022.

166 In the fifth place, on a weighing up of the interests involved, the disadvantages entailed by restrictions on exports of dual-use goods and technology are shown not to be disproportionate in the light of the objectives pursued. In that regard, the importance of the objectives pursued by the contested acts, which form part of the broader objective of maintaining peace and international security, in accordance with the objectives of the European Union's external action set out in Article 21 TEU, is such as to outweigh any, even considerable, negative consequences for certain operators. Accordingly, the applicant has not established that the contested acts had disproportionately interfered with its freedom to conduct a business and with respect for its reputation.

167 Moreover, in so far as the applicant states, in the reply, first, that the other major Russian telecommunications operators have not been subject to any restrictive measures and, second, that the restrictions relating to it may affect its users' rights to freedom of expression, to private life and to education, it is necessary to point out that those arguments are not substantiated.

168 In any event, as regards the applicant's argument that the other major Russian telecommunications operators have not been subject to any restrictive measures, it must be pointed out that, even assuming that the Council did in fact omit to adopt restrictive measures in

respect of certain persons or entities in the telecommunications sector in the Russian Federation and that the situation of those persons or entities is comparable to that of the applicant, any such argument would have to be rejected. The principles of equal treatment and non-discrimination and the principle of good administration must be reconciled with the principle of legality (see judgments of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 59 and the case-law cited, and of 3 May 2016, *Post Bank Iran* v *Council*, T-68/14, not published, EU:T:2016:263, paragraph 135).

169 As regards the argument that restrictions relating to it may affect its users' rights to freedom of expression, to private life and to education, it must be found that the applicant has not substantiated that argument by means of any specific reasoning and, in particular, has not explained in what respect application of a strict regime governing the export of dual-use goods and technology would be liable to affect those rights.

170 In the light of the foregoing, the fourth plea must be rejected and, therefore, the action must be dismissed in its entirety.

V. Costs

171 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.

172 Under Article 138(1) of the Rules of Procedure, the Member States and the institutions which have intervened in the proceedings are to bear their own costs.

173 In the present case, since the applicant has been unsuccessful, it must be ordered to pay the costs. Furthermore, as an intervening institution, the Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders MegaFon OAO 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.

Mastroianni Brkan Gâlea

Tóth Kalėda

Delivered in open court in Luxembourg on 15 January 2025.

[Signatures]