Reports of Cases

JUDGMENT OF THE GENERAL COURT (Grand Chamber)

11 September 2024*

(Common foreign and security policy – Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Inclusion of the applicants' names on the list – Obligation to report funds or economic resources belonging to or owned, held or controlled by the applicants – Obligation to cooperate with the competent national authority – Participation in activities the object or effect of which is to circumvent restrictive measures – Article 9(2) and (3) of Regulation (EU) No 269/2014 – Action for annulment – *Locus standi* – Direct concern – Regulatory act not entailing implementing measures – Interest in bringing proceedings – Admissibility – Power of the Council – Proportionality)

In Case T-635/22,

Mikhail Fridman, residing in London (United Kingdom),

Petr Aven, residing in Virginia Water (United Kingdom),

German Khan, residing in London,

represented by T. Marembert and A. Bass, lawyers,

applicants,

v

Council of the European Union, represented by S. Van Overmeire and J. Rurarz, acting as Agents, and by B. Maingain, lawyer,

defendant,

supported by

Kingdom of Belgium, represented by C. Pochet, M. Van Regemorter and L. Van den Broeck, acting as Agents,

by

Republic of Latvia, represented by K. Pommere and J. Davidoviča, acting as Agents,

* Language of the case: French.

and by

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

interveners,

THE GENERAL COURT (Grand Chamber),

composed of M. van der Woude, President, S. Papasavvas, D. Spielmann (Rapporteur), M.J. Costeira, K. Kowalik-Bańczyk, S. Gervasoni, L. Madise, N. Półtorak, M. Brkan, I. Gâlea, I. Dimitrakopoulos, D. Kukovec, S. Kingston, T. Tóth and S.L. Kalėda, Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure,

further to the hearing on 11 January 2024,

gives the following

Judgment

1 By their action under Article 263 TFEU, the applicants, Mr Mikhail Fridman, Mr Petr Aven and Mr German Khan, seek the annulment of Council Regulation (EU) 2022/1273 of 21 July 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 194, p. 1; 'the contested regulation'), in so far as it concerns them, and refer more specifically to Article 1, point 4, of the contested regulation in so far as it amends Article 9 of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6) by inserting obligations to report funds and to cooperate with the competent authorities in that regard (Article 9(2) of Regulation No 269/2014, as amended) and by treating a failure to comply with those obligations as a circumvention of fund-freezing measures (Article 9(3) of Regulation No 269/2014, as amended) ('the contested provisions').

Background to the dispute

2 The applicants are businessmen who have Russian and Israeli nationality, in the case of Mr Fridman and Mr Khan, and Russian and Latvian nationality, in the case of Mr Aven.

3 In March 2014, the Russian Federation annexed the Autonomous Republic of Crimea and the city of Sevastopol and has since engaged in continued destabilisation actions in eastern Ukraine. At the same time, pro-Russian separatist movements entered into armed conflict with the Ukrainian Government in the regions of Donetsk and Luhansk.

4 On 17 March 2014, the Council of the European Union adopted, under Article 29 TEU in particular, 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). That same day, it adopted Regulation No 269/2014 under Article 215 TFEU. In the days that followed, Russian armed forces conducted war operations across Ukraine, which are still ongoing.

5 On 21 February 2022, the President of the Russian Federation signed a decree recognising the independence and sovereignty of the self-proclaimed 'Donetsk People's Republic' and 'Luhansk People's Republic' and ordered that Russian armed forces be deployed in those areas.

6 On 22 February 2022, the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') published a declaration on behalf of the European Union condemning those actions, since they constituted a serious violation of international law. The High Representative announced that the European Union would respond to those latest violations by the Russian Federation by adopting additional restrictive measures as a matter of urgency.

7 Against that background, the Council adopted several packages of restrictive measures. The applicants' names were added to the lists of persons, entities and bodies subject to restrictive measures set out in the annex to Decision 2014/145 and in Annex I to Regulation No 269/2014: the names of Mr Aven and Mr Fridman were added by Council Decision (CFSP) 2022/337 of 28 February 2022 amending Decision 2014/145 (OJ 2022 L 59, p. 1), and Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation No 269/2014 (OJ 2022 L 58, p. 1), and Mr Khan's name was added by Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145 (OJ 2022 L 87 I, p. 44), and Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation No 269/2014 (OJ 2022 L 87 I, p. 1). The applicants' names were then successively maintained on those lists. Those restrictive measures were the subject of actions for annulment before the Court (Case T-301/22, *Aven* v *Council*; Case T-304/22, *Fridman* v *Council*; and Case T-333/22, *Khan* v *Council*).

8 At the time when the acts referred to in paragraph 7 above were adopted, Article 2 of Regulation No 269/2014 provided as follows:

'1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.'

9 Article 9 of that regulation provided that 'it shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2'.

10 Article 15 of that regulation provided:

'1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the rules referred to in paragraph 1 to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.'

11 On 3 June 2022, the Council adopted Regulation (EU) 2022/880 amending Regulation No 269/2014 (OJ 2022 L 153, p. 75), taking the view, inter alia, that it was appropriate to clarify and strengthen the provisions on national penalties for breach of the measures in that regulation (recital 2 of Regulation 2022/880).

12 Article 15(1) of Regulation No 269/2014, as amended, provides:

'Member States shall lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall also provide for appropriate measures of confiscation of the proceeds of such infringements.'

13 On 21 July 2022, the Council adopted, under Article 29 TEU in particular, Decision (CFSP) 2022/1272 amending Decision 2014/145 (OJ 2022 L 193, p. 219). By that decision, it introduced further derogations from the asset freeze and the prohibition on making funds and economic resources available to designated persons and entities.

14 That same day, the contested regulation was adopted, in particular, under Article 215 TFEU. Recital 5 of that regulation reads as follows:

'In order to ensure effective and uniform implementation of Regulation (EU) No 269/2014, and in view of the increasing complexity of sanction evasion schemes, which hamper such implementation, it is necessary to oblige designated persons and entities with assets within the jurisdiction of a Member State to report these assets and to cooperate with the competent authority in the verification of this reporting. It is also appropriate to strengthen the provisions on reporting obligations for Union operators, with a view to preventing the breach and circumvention of the asset freezes. Failure to respect this obligation would constitute a circumvention of the freezing of assets and would be subject to penalties if the conditions for such penalties are met under applicable national rules and procedures.'

15 By the contested regulation, the Council amended Regulation No 269/2014 by laying down, in Article 1, points 1 to 3, the derogations provided for by Decision 2022/1272. Article 1, point 4, of the contested regulation states that Article 9 of Regulation No 269/2014 is replaced by the following:

'Article 9

1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

2. Natural or legal persons, entities or bodies listed in Annex I, shall:

(a) report before 1 September 2022 or within 6 weeks from the date of listing in Annex I, whichever is latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located; and

(b) cooperate with the competent authority in any verification of such information.

3. Failure to comply with paragraph 2 shall be considered as participation, as referred to in paragraph 1, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

…'

Forms of order sought

16 The applicants claim that the Court should:

– annul the contested regulation in so far as it concerns them, as specified in paragraph 1 above;

– order the Council to pay the costs.

17 The Council contends that the Court should:

– dismiss the action for annulment as inadmissible and, in the alternative, unfounded;

– order the applicants to pay the costs.

18 The Kingdom of Belgium, the Republic of Latvia and the European Commission contend that the action should be dismissed as inadmissible or, in the alternative, as unfounded.

Law

Admissibility of the action

19 The Council, supported by the Kingdom of Belgium, the Republic of Latvia and the Commission, submits that the contested provisions are not of direct and individual concern to the applicants. It argues that their names were added to the disputed lists imposing restrictive measures on them by Decision 2022/337 and Implementing Regulation 2022/336, as regards Mr Aven and Mr Fridman, and by Decision 2022/429 and Implementing Regulation 2022/427, as regards Mr Khan, those being the acts that are of direct and individual concern to them and that were the subject of actions for annulment (see paragraph 7 above).

20 The Commission adds that the contested regulation does not constitute a measure which is of direct concern to the applicants and does not entail implementing measures. In particular, Article 9(3) of Regulation No 269/2014, as amended, requires a case-by-case assessment and penalties to be applied under national law.

21 The Kingdom of Belgium adds that the applicants' assets that are within the jurisdiction of Member States are presumed to have been frozen already by means of the acts that were challenged in the actions in Cases T-301/22, *Aven* v *Council*, T-304/22, *Fridman* v *Council*, and T-333/22, *Khan* v *Council*. Consequently, the applicants have no interest in bringing the present action, unless they have circumvented the restrictive measures imposed on them and hope to be able to continue to do so by the present action.

22 The Republic of Latvia argued at the hearing that the contested provisions related to a category of persons envisaged in a general and abstract manner and that the applicants had not indicated anything else that would confirm that the contested act was of greater concern to them or that they were distinguished individually by it to a greater extent than the other persons in that category.

23 The applicants dispute those arguments.

24 It should be borne in mind that, under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person (first limb) or which is of direct and individual concern to them (second limb), and against a regulatory act which is of direct concern to them and does not entail implementing measures (third limb).

25 The condition of direct concern is common to both the second and third limbs of the fourth paragraph of Article 263 TFEU and, according to the case-law, has the same meaning for each of those limbs (see, to that effect, judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 73). According to settled case-law, the condition that the measure forming the subject matter of the proceedings must be of direct concern to a natural or legal person requires the fulfilment of two cumulative criteria, namely that the contested measure should, first, directly affect the legal situation of the individual and, secondly, leave no discretion to the addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 61 and the case-law cited; judgment of 13 September 2018, *Rosneft and Others* v *Council*, T-715/14, not published, EU:T:2018:544, paragraph 65).

26 Furthermore, according to settled case-law of the Court of Justice, the expression 'does not entail implementing measures' within the meaning of the third limb of the fourth paragraph of Article 263 TFEU must be interpreted in the light of the objective of that provision, which, as is apparent from its drafting history, is to ensure that individuals do not have to break the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he or she does not have a legal remedy before the EU judicature for the purpose of challenging the lawfulness of the regulatory act. In the absence of implementing measures, a natural or legal person, although directly concerned by the act in question, would be able to obtain judicial review of the act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national court (judgments of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 27, and of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 58). The Court of Justice has, moreover, repeatedly held that the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the third limb of the fourth paragraph of Article 263 TFEU (see judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 61 and the case-law cited).

27 In the present case, the contested provisions are regulatory in nature within the meaning of the last limb of the fourth paragraph of Article 263 TFEU in that they are of general application and were adopted on the basis of Article 215 TFEU, under the non-legislative procedure laid down in that provision (see, to that effect, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 92).

28 In addition, the contested provisions concern the natural or legal persons, entities or bodies listed in Annex I to Regulation No 269/2014, as amended.

29 When the applicants brought their action, their names had been included in Annex I since 28 February 2022, in the case of Mr Aven and Mr Fridman, and since 15 March 2022, in the case of Mr Khan (see paragraph 7 above).

30 Therefore, since 21 July 2022, being the date on which the contested regulation entered into force, the applicants have been subject to the obligations at issue, that is, the obligation to report their funds or economic resources before 1 September 2022 and the obligation to cooperate with the competent national authorities pursuant to Article 9(2) of Regulation No 269/2014, as amended. Furthermore, pursuant to Article 9(3) of that regulation, failure to comply with those obligations is to be regarded as participation in activities the object or effect of which is to circumvent restrictive measures involving the freezing of funds.

31 It must therefore be held that the contested provisions are of direct concern to the applicants since they directly affect their legal situation. The reporting and cooperation obligations and the effects of failing to comply with them apply to the applicants as persons included on the list set out in Annex I to Regulation No 269/2014 when those provisions came into force. Moreover, the application of the provisions in question vis-à-vis the applicants does not require any implementing measure to be adopted at EU or Member State level, which the Council acknowledged at the hearing, and leaves no discretion to the addressees who are entrusted with the task of implementing those provisions, with the result that they affect the applicants' legal situation in a purely automatic fashion.

32 It follows that the contested provisions constitute regulatory acts which are of direct concern to the applicants and do not entail implementing measures within the meaning of the applicable case-law.

33 The Council's reference to the judgment of 28 January 2016, *Azarov* v *Council* (T-332/14, not published, EU:T:2016:48, paragraphs 59 and 60) and the Court's ruling of inadmissibility in that judgment for lack of direct concern to the applicant do not invalidate that finding. In that judgment, the action was directed inter alia against acts which amended the designation criteria for the freezing of funds targeting persons responsible for the misappropriation of Ukrainian State funds. The Court held that the action was inadmissible in so far as it was directed against those acts since, in essence, they produced legal effects only in relation to categories of persons and entities envisaged in a general and abstract manner and were of neither individual nor direct concern to the applicant in that case.

34 By contrast, in the present case, the contested provisions directly and immediately affect the applicants' legal situation, without requiring the adoption of implementing measures by the authorities entrusted with the task of implementing the obligations at issue. The applicants could thus be denied effective judicial protection if they did not have a legal remedy before the EU judicature for the purpose of challenging the lawfulness of those provisions.

35 Accordingly, the applicants have standing to bring an action for annulment of the contested provisions.

36 The Kingdom of Belgium contends that the applicants have no standing to bring the present action, since all of their assets are presumed to have been frozen already, unless they have circumvented the restrictive measures imposed on them and hope to be able to continue to do so by the present action.

37 It should be noted that, according to settled case-law, the admissibility of an action for annulment brought by a natural or legal person is subject to the condition that the person concerned has an interest in having the contested act annulled. Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it (see, to that effect, judgment of 27 February 2014, *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 54 and the case-law cited, and order of 18 January 2023, *Seifert* v *Council*, T-166/22, not published, EU:T:2023:13, paragraph 22 and the case-law cited). An applicant's interest in bringing proceedings must be vested and current and may not concern a future and hypothetical situation (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 56 and the case-law cited).

38 As it is, in the present case, irrespective of whether or not the applicants or other persons have reported or frozen the funds or economic resources in question and, as the case may be, cooperated with the competent authorities, or of whether or not those funds or economic resources have been frozen, the applicants retain an interest in securing the annulment of the contested provisions, which impose on them reporting and cooperation obligations non-compliance with which may have serious consequences for them. An applicant's interest in bringing proceedings does not disappear because he or she has performed the obligations which he or she is challenging (see, to that effect, judgments of 19 September 1985, *Hoogovens Groep* v *Commission*, 172/83 and 226/83, EU:C:1985:355, paragraph 19, and of 15 December 1999, *Kesko* v *Commission*, T-22/97, EU:T:1999:327, paragraphs 55 to 65), or because those obligations were performed by a third party (see, to that effect, judgment of 6 March 1979, *Simmenthal* v *Commission*, 92/78, EU:C:1979:53, paragraph 32). Consequently, the applicants' interest in bringing proceedings persists without them having to demonstrate, as implied by the Kingdom of Belgium's argument, that they infringed their obligations. Accordingly, the Kingdom of Belgium's argument must be rejected.

39 Furthermore, it is common ground that compliance with the reporting obligation does not entail the discharge of all the obligations laid down in the contested provisions. Once funds or economic resources have been reported to the competent national authority, Article 9(2) of Regulation No 269/2014, as amended, requires the persons who have reported the funds or economic resources owned, held or controlled by them to cooperate with that national authority in any verification. It follows that the applicants retain a vested and current interest in bringing proceedings against Article 9(2) of Regulation No 269/2014, as amended.

40 As regards Article 9(3) of Regulation No 269/2014, as amended, the treatment of participation in circumvention of the restrictive measures provided for therein is an integral part of the obligations laid down in Article 9(2) of that regulation, so that the applicants have a vested and current interest in bringing proceedings against those provisions.

41 Therefore, the argument of the Kingdom of Belgium that the applicants do not have an interest in bringing the present action must be rejected.

42 It follows from all of the foregoing that the present action is admissible.

Substance

43 The applicants raise two pleas in law, the first alleging lack of any legal basis, infringement of Article 215 TFEU and breach of the principles of proportionality and legal certainty, and the second alleging lack of any legal basis and infringement of Articles 4, 5, 25 and 40 TEU and of Articles 3, 4, 82, 83 and 215 TFEU, on the ground that the Council acted as a legislative authority in criminal matters.

First plea in law: lack of any legal basis, infringement of Article 215 TFEU and breach of the principles of proportionality and legal certainty

44 The applicants claim, in essence, that even if the wording of Article 215 TFEU is not exhaustive, it must be interpreted strictly and the Council cannot impose any positive obligations on persons subject to sanctions on the basis of that provision. The obligation to disclose their financial position is a form of sanction and not a 'restrictive measure' within the meaning of Article 215 TFEU. Furthermore, assuming that the Council can impose positive obligations, the reporting and cooperation obligations in question exceed its competence *ratione materiae*.

45 They also maintain that the obligations in question are invasive of privacy, excessive and uncertain, as the terms on which they are based are vague and undefined. They argue that those obligations are also extraterritorial in scope.

46 The Council, supported by the Kingdom of Belgium, the Republic of Latvia and the Commission, disputes those arguments.

47 It should be recalled that, under the second subparagraph of Article 24(1) TEU, the common foreign and security policy (CFSP) is subject to specific rules and procedures and is to be 'defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise'. Furthermore, that policy is to be put into effect by the High Representative and by Member States, in accordance with the Treaties. Pursuant to Article 29 TEU, the Council 'shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature'.

48 Restrictive measures are adopted, within the framework of the CFSP, by a Council decision taken unanimously under Article 29 TEU and they are implemented, within the framework of the FEU Treaty, by means of a regulation adopted pursuant to Article 215 TFEU, by the Council, acting by a qualified majority, on a joint proposal from the High Representative and the Commission. Article 215(1) TFEU concerns the adoption by the Council of measures necessary for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, as provided for by a decision adopted in accordance with Chapter 2 of Title V of the EU Treaty. Moreover, under Article 215(2) TFEU, where a decision adopted in accordance with Chapter 2 of Title V of the EU Treaty so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

49 According to the case-law, it is apparent from Articles 24 and 29 TEU that, as a general rule, the Council is called upon, acting unanimously, to determine the persons and entities that are to be subject to the restrictive measures that the European Union adopts in the field of the CFSP. Taking account of the wide scope of the aims and objectives of the CFSP, as set out in Article 3(5) TEU and Article 21 TEU and in the specific provisions relating to the CFSP, in particular, in Articles 23 and 24 TEU, the Council has a broad discretion in determining such persons and entities (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 88).

50 Article 215 TFEU, which serves as a bridge between the objectives of the EU Treaty in matters of the CFSP and the actions of the European Union involving economic measures falling within the scope of the FEU Treaty (see, to that effect, judgment of 19 July 2012, *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraph 59), permits the adoption of regulations by the Council, acting by a qualified majority on a joint proposal from the High Representative and the Commission, in order to give effect to restrictive measures where such measures fall within the scope of the FEU Treaty, and, in particular, to ensure their uniform application in all Member States (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 89).

51 Thus, decisions adopted under Article 29 TEU declare the position of the European Union with respect to the restrictive measures to be adopted, while regulations adopted on the basis of Article 215 TFEU relate, in the light of their objectives and content, to those decisions and constitute the instrument giving effect to them at EU level (see, to that effect, judgments of 19 July 2012, *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraphs 72 and 76, and of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 90).

52 In the present case, the contested provisions were adopted under Article 215 TFEU, specifically Article 215(2) TFEU, as acknowledged by the main parties.

53 It should be borne in mind that, according to recital 5 of the contested regulation, the contested provisions were adopted in order to tackle 'the increasing complexity of sanction evasion schemes, which hamper [the] implementation [of restrictive measures]'. Therefore, in order to ensure the effective and uniform implementation of that regulation, the Council underlined the need 'to oblige designated persons and entities with assets within the jurisdiction of a Member State to report these assets and to cooperate with the competent authority in the verification of this reporting'.

54 In that regard, the Council stated, first, that compared with the schemes of restrictive measures implemented in view of the situation in other countries, the number of persons targeted by the restrictive measures adopted under the scheme relating to the situation in Ukraine had never been so large and, secondly, that those restrictive measures had been circumvented, or even breached, in order to prevent their effective application. Moreover, as is apparent from the discussions that took place at the hearing, the adoption of the obligations at issue was also motivated by the fact that, previously, very few Member States had adopted national provisions laying down such obligations, in particular the reporting obligation.

55 It follows that the contested provisions were, in the present case, established in order to ensure the uniform application of Regulation No 269/2014 throughout the European Union and to thwart strategies to circumvent restrictive measures, strategies made possible, in particular, by recourse to complex legal and financial arrangements.

56 They are, therefore, not restrictive measures as such, but measures that relate to Decision 2014/145 in that they are such as to ensure, at EU level, the effective and uniform implementation of the restrictive measures provided for in that decision.

57 Accordingly, the Council was fully entitled to adopt the contested provisions under Article 215 TFEU.

58 That finding is not invalidated by the applicants' arguments.

59 First, the applicants maintain that the Council cannot impose positive obligations on persons subject to sanctions on the basis of Article 215(2) TFEU.

60 However, even though, as the applicants state, the Council does not have unlimited freedom to impose any measures it wishes to impose in respect of the CFSP, Article 215 TFEU is not exhaustive, as the applicants accept. The mere reference to restrictive measures in Article 215(2) TFEU does not have the effect of limiting the measures provided for therein to obligations not to act. As pointed out in paragraph 50 above, the purpose of that provision is to enable the Council to implement a decision adopted in the field of the CFSP, in order to ensure its uniform application in all Member States. Thus, while restrictive measures are characterised, in principle, by prohibitory measures or limitations, the fact remains that their implementation may involve obligations to act, such as those in the present case, which cannot be ruled out as a matter of principle solely on the ground that they are positive obligations.

61 Secondly, the applicants' assertion that the contested provisions, in particular the obligation to disclose their financial position, is a form of sanction and not a restrictive measure must be rejected.

62 It is apparent from paragraphs 52 to 57 above that the contested provisions impose an obligation to report funds or economic resources and an obligation to cooperate, which are not sanctions, but measures the object of which is to implement restrictive measures involving the freezing of funds. Moreover, those provisions do not introduce sanctions in themselves. It is true, as the applicants submit, that Article 9(3) of Regulation No 269/2014, as amended, provides that failure to comply with those reporting and cooperation obligations is to be regarded as participation in activities the object or effect of which is to circumvent fund-freezing measures, participation itself being prohibited by Article 9(1). However, that provision characterises the failure to comply with those obligations in legal terms, without imposing sanctions.

63 It follows that the applicants' argument that the contested provisions constitute a form of sanction must be rejected.

64 Thirdly, as the applicants note, those obligations are unprecedented as far as they are concerned, as was argued at the hearing.

65 However, Article 215(2) TFEU permits the adoption of such positive – even unprecedented as far as they are concerned – obligations by the Council, in so far as they relate to the restrictive measures to which the applicants are subject, in that they are capable of giving effect to such measures in all the Member States to ensure their effective and uniform application in a situation which, as in the present case, is characterised by the increasing complexity of schemes enabling persons and entities targeted by those restrictive measures to evade sanctions.

66 It follows from the foregoing that the contested provisions are not sanctions but measures to ensure the implementation of restrictive measures that have been properly adopted under Article 215(2) TFEU. Accordingly, the applicants are mistaken when they claim that the Council is not competent *ratione materiae*, under that provision, to adopt the obligations at issue.

67 Fourthly, the applicants claim that the reporting and cooperation obligations at issue are invasive of their private lives, of which assets are an essential component, and excessive because they 'go beyond the mere assets of the persons sanctioned'. They also argue that the objective of ensuring that restrictive measures are effective cannot justify imposing such obligations on the persons subject to those measures.

68 It must be borne in mind that fundamental rights are not absolute, and their exercise may be subject to restrictions justified by the objectives of general interest pursued by the European Union, provided that such restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very essence of the rights guaranteed (judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 148, and of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraph 220).

69 In order to comply with EU law, an interference with the fundamental rights in question must be provided for by law, respect the essence of those rights, refer to an objective of general interest recognised as such by the European Union and not be disproportionate (see, to that effect, judgment of 27 July 2022, *RT France* v *Council*, T-125/22, EU:T:2022:483, paragraphs 145 and 222 and the case-law cited).

70 In the present case, in the first place, the obligations at issue are 'provided for by law', since they are set out in the contested regulation, have a clear legal basis in EU law, namely Article 215 TFEU, and are sufficiently foreseeable.

71 In the second place, the obligations at issue, which are limited to funds or economic resources within the jurisdiction of a Member State, are imposed on the applicants because their names appear in Annex I to Regulation No 269/2014, as amended, and they are, as a result, subject to fund-freezing measures. However, as the listing of their names is a temporary measure that is reversible and subject to constant monitoring, the obligations at issue, which are linked to that listing of their names, are themselves temporary and reversible. Consequently, it must be held that those obligations do not interfere with the essence of the right to privacy that has been invoked.

72 In the third place, the objective of the restrictive measures is to increase the costs of the Russian Federation's actions to undermine Ukraine's territorial integrity, sovereignty and independence, to promote a peaceful settlement of the crisis and to safeguard international peace and security, in accordance with the objectives of the European Union's external action set out in Article 21 TEU. In that context, the objective of the obligations at issue is to enable the funds and economic resources owned, held or controlled by the persons and entities subject to restrictive measures to be identified, and thereby to implement those measures effectively and uniformly, that being an objective which is part of the broader objective of the restrictive measures. As it is, the importance of the objectives thus pursued is such as to justify the adverse consequences relating to the interference with the right to privacy alleged by the applicants.

73 In the fourth place, as to the appropriateness and necessity of the obligations at issue, it must be noted that, as the Council, the Kingdom of Belgium, the Republic of Latvia and the Commission observe, new arrangements for implementing restrictive measures were warranted by the need to ensure the effectiveness and uniform application of the restrictive measures regime concerning the situation in Ukraine, notably in the light of the circumvention of restrictive measures as a result of the establishment of increasingly complex schemes. The Council refers in that regard to the numerous means of circumvention, with assets concealed through family members, shell companies or nominees. The Commission also underlined the gravity of the situation in Ukraine, the unprecedented risks for the security of the European Union and of its Member States and the fact that the regime of restrictive measures against the Russian Federation has reached proportions not reached by any other regime, taking into account the number of persons and entities targeted by those measures, the significance of the funds and economic resources covered by the fund-freezing measures and the growing complexity of the legal and financial arrangements by which those funds and economic resources are held or controlled, making it particularly difficult for the competent national authorities to identify them. In addition, the applicants have not demonstrated that alternative and less onerous measures are possible that would have enabled the objectives pursued to be achieved just as effectively. The reporting and cooperation obligations at issue would appear, therefore, to be implementing the freezing of funds in a manner that is both appropriate and necessary.

74 As regards more particularly the question whether the obligations at issue are proportionate, a weighing up of the interests involved shows that the resultant serious disadvantages for the applicants are not in fact disproportionate to the objectives of general interest pursued, which are recalled in paragraph 72 above. In the light of the paramount importance of those objectives of the restrictive measures, and of the fact that the disputed obligations ensure that those measures are implemented effectively and uniformly, the alleged interference with the applicants' private life cannot be considered to be disproportionate.

75 It follows that the applicants' arguments concerning the disproportionate nature of the obligations at issue, notably with regard to their private life, must be rejected.

76 As regards, lastly, the applicants' claim that the contested obligations are excessive because they go beyond the mere assets of the persons sanctioned, it must be noted that it is not otherwise substantiated and must therefore be rejected.

77 Fifthly, the applicants maintain that the contested obligations breach the principle of legal certainty because the terms on which they are based are vague and undefined, notably as regards the scope of the notion of 'control'.

78 It should be recalled that the principle of legal certainty requires that EU legislation be clear and precise and that its application be foreseeable for all interested parties (judgment of 5 March 2015, *Europäisch-Iranische Handelsbank* v *Council*, C-585/13 P, EU:C:2015:145, paragraph 93; see, to that effect, judgment of 15 November 2023, *OT* v *Council*, T-193/22, EU:T:2023:716, paragraph 42).

79 In the present case, the persons whose funds are to be frozen must, according to Article 9(2)(a) of Regulation No 269/2014, report 'funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located'.

80 It does not appear that the use of the concepts of 'belonging to, owned, held or controlled' in Article 9(2) of Regulation No 269/2014, as amended, is so ambiguous as to prevent persons subject to fund-freezing measures from resolving with sufficient certainty any doubts as to the scope or meaning of those concepts. In that regard, with respect to companies and in the specific context of restrictive measures, it has thus been held that a company may be classified as a 'company owned or controlled by another entity' where it is in a situation in which that other entity is in a position to influence its decisions, even in the absence of any legal tie between the two economic entities, or any link in terms of ownership or equity participation (see, to that effect, judgment of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 75).

81 It follows that the reference in Article 9(2) of Regulation No 269/2014, as amended, to the concepts of 'belonging to, owned, held or controlled' in relation to funds or economic resources is sufficiently clear and comprehensible as regards what is covered by those concepts, thus enabling the persons targeted to comply with the reporting obligation.

82 Sixthly, the applicants maintain that the obligations at issue are extraterritorial in scope, since a person subject to restrictive measures who is outside the European Union may be prosecuted if that person does not reply to a question from a national authority.

83 It must be borne in mind that, according to Article 9(2) of Regulation No 269/2014, as amended, the applicants are obliged, first, to report their funds or economic resources within the jurisdiction of a Member State to the competent authority of the Member State where those funds or economic resources are located and, secondly, to cooperate with that authority in any verification of information. It follows that assets that are not within the jurisdiction of a Member State are not covered by those obligations. Furthermore, in the case of persons outside the European Union, only their assets in the territory of the European Union are covered, which constitutes a sufficient link to the European Union. Consequently, the argument relating to the extraterritorial scope of the obligations at issue must be rejected.

84 It follows from all of the above that the obligations at issue cannot be regarded as restrictive measures, but as measures to ensure the implementation of restrictive measures applied to the applicants. Therefore, in view of the context and the objective of ensuring the effectiveness of those measures, the Council disregarded neither the extent of its competence *ratione materiae*, nor the principle of proportionality, nor the principle of legal certainty when it adopted the contested provisions.

85 It follows that the first plea in law must be rejected as unfounded.

Second plea in law: lack of any legal basis and infringement of Articles 4, 5, 25 and 40 TEU, and Articles 3, 4, 82, 83 and 215 TFEU, on the ground that the Council acted as a legislative authority in criminal matters

86 As a preliminary point, it must be noted that the wording of the second plea refers to the lack of any legal basis for the contested provisions. However, it follows from the examination of the first plea that Article 215 TFEU constitutes the relevant legal basis for the contested provisions in the present case. Accordingly, that line of argument relating to the lack of any legal basis for the contested provisions must be rejected.

87 As to the remainder of the second plea, while the applicants refer to infringement of various provisions of the EU Treaty and FEU Treaty, their arguments seek, in essence, to demonstrate that, by adopting the contested provisions when it was aware that the circumvention of sanctions was a criminal offence in 25 of the 27 Member States, the Council acted as a legislative authority in criminal matters, although that competence lies with the Member States.

88 The Council, supported by the Kingdom of Belgium, the Republic of Latvia and the Commission, disputes those arguments.

89 It must be recalled that, as regards acts adopted on the basis of a provision relating to the CFSP, it is the task of the EU judicature to ensure, in particular, under Article 40 TEU and the first clause of the second paragraph of Article 275 TFEU, that the implementation of that policy does not impinge upon the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the European Union's competences under the FEU Treaty (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 85 and the case-law cited).

90 In the present case, Article 9(2) of Regulation No 269/2014, as amended, introduces the reporting and cooperation obligations at issue. Article 9(3) of Regulation No 269/2014, as amended, provides that failure to comply with those obligations is to be considered as participation in activities the object or effect of which is to circumvent the restrictive measures. It refers in that regard to Article 9(1) of that regulation, under which it is prohibited to participate, knowingly and intentionally, in such circumvention activities.

91 Those provisions cannot be regarded as laying down criminal provisions, even taking into account the fact that, as the applicants emphasise, at the time of the adoption of the contested regulation, the circumvention of restrictive measures was a criminal offence in the majority of Member States.

92 In that regard, the applicants state that, as is apparent from the Commission's proposal of 25 May 2022 for a Council decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) [TFEU] (COM(2022)247 final), the Council was aware that the circumvention of sanctions was a criminal offence in all but two of the Member States. However, it cannot be inferred from this that, by adopting the contested provisions, the Council obliged the Member States to make the circumvention of the freezing of funds a criminal offence. The fact that, in the Member States in which the circumvention of restrictive measures is already a criminal offence, the penalties for breach of the two obligations at issue are, in consequence, also criminal stems not from the contested provisions but from the Member States' choice of penalties.

93 Therefore, the argument that, by adopting the contested provisions, the Council adopted obligations that fall within the scope of criminal law at EU level and that, in so doing, the Council acted as a legislative authority in criminal matters must be rejected.

94 That finding is not altered by a combined reading of Article 9 of Regulation No 269/2014, as amended, and Article 15 of that regulation. It is clear from Article 15(1) of that regulation that it is the Member States that are to lay down the rules on penalties applicable to infringements of the provisions of that regulation and take all measures necessary to ensure that they are implemented. It follows that, in the event of a failure to comply with the obligations at issue, treated as a circumvention of restrictive measures, the power to decide on the rules on penalties, 'including

as appropriate criminal penalties' (Article 15(1) of Regulation No 269/2014, as amended), still rests with the Member States. Furthermore, the obligation imposed on the Member States to adopt rules on penalties in the event of a failure to comply with those obligations is linked, by its objectives and its content, to Decision 2014/145, in so far as it seeks to implement the uniform application of the restrictive measures provided for by that decision. Moreover, under Article 15 of that regulation the national authorities are entirely free to choose the nature of the penalty to be attached to infringements of that regulation and whether it is to be a criminal penalty or not.

95 Lastly, that finding is not altered by the adoption, on 28 November 2022, of Council Decision (EU) 2022/2332 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) [TFEU] (OJ 2022 L 308, p. 18), or by the Commission's adoption, on 2 December 2022, of a proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures (COM(2022) 684 final). Apart from the fact that that decision and that proposal had not been adopted on 21 July 2022, the date of adoption of the contested provisions, it must be noted that those legislative steps towards harmonisation of the criminal law of the Member States are precisely distinguishable from the approach taken in the contested regulation in the present case, based on Article 215(2) TFEU, which is merely intended to ensure the effective and uniform implementation of Regulation No 269/2014. Unlike a directive, defining criminal offences and criminal penalties in respect of the circumvention of restrictive measures and adopted on the basis of Article 83(1) TFEU, which would bind the Member States to which it is addressed as to the outcome to be achieved in criminal matters, the rules on penalties laid down in Article 15(1) of Regulation No 269/2014, as amended, leave the Member States free to choose the nature – whether criminal, administrative or civil – of the penalties to be adopted in the event of any breach of the prohibition on circumvention of restrictive measures.

96 Accordingly, since the disputed obligations do not fall within the scope of criminal law, the Council cannot be accused of having infringed Article 83 TFEU; nor, therefore, contrary to the applicants' contention, has the Council infringed Article 40 TEU.

97 It follows from all of the foregoing that the second plea in law must be rejected, and, therefore, the action must be dismissed in its entirety.

Costs

98 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council.

99 In accordance with Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of Belgium, the Republic of Latvia and the Commission must bear their own costs.

On those grounds,

THE GENERAL COURT (Grand Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Mikhail Fridman, Mr Petr Aven and Mr German Khan to bear their own costs and to pay those incurred by the Council of the European Union;**

3. **Orders the Kingdom of Belgium, the Republic of Latvia and the European Commission to bear their own costs.**

Van der Woude	Papasavvas	Spielmann
Costeira	Kowalik-Bańczyk	Gervasoni
Madise	Półtorak	Brkan
Gâlea	Dimitrakopoulos	Kukovec
Kingston	Tóth	Kalėda

Delivered in open court in Luxembourg on 11 September 2024.

[Signatures]