ECLI:EU:T:2017:25

Provisional text

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

25 January 2017 (*)

(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 — Legal person supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine — Proportionality — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Fundamental rights — Manifest error of assessment)

In Case T-255/15,

Joint-Stock Company 'Almaz-Antey' Air and Space Defence Corp., formerly OAO Concern PVO Almaz-Antey, established in Moscow (Russia), represented by A. Haak, C. Stumpf, M. Brüggemann and B. Thiemann, lawyers,

applicant,

v

Council of the European Union, represented initially by N. Rouam and J.-P. Hix, and subsequently by J.-P. Hix and P. Mahnič Bruni, acting as Agents,

defendant,

APPLICATION, based on Article 263 TFEU, for annulment of Council Decision (CFSP) 2015/432 of 13 March 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 70, p. 47), Council Implementing Regulation (EU) 2015/427 of 13 March 2015 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or

threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 70, p. 1), Council Decision (CFSP) 2015/1524 of 14 September 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 239, p. 157), Council Implementing Regulation (EU) 2015/1514 of 14 September 2015, implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 239, p. 30), Council Decision (CFSP) 2016/359 of 10 March 2016 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2016 L 67, p. 37), Council Implementing Regulation (EU) 2016/353 of 10 March 2016 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2016 L 67, p. 1) and the Council's letter of 31 July 2015, in so far as those measures concern the applicant and retain it on the list of entities subject to restrictive measures.

THE GENERAL COURT (Ninth Chamber),

composed of G. Berardis (Rapporteur), President, V. Tomljenović and D. Spielmann, Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 13 September 2016,

gives the following

Judgment

Background to the dispute

1 The applicant, Joint-Stock Company 'Almaz-Antey' Air and Space Defence Corp., formerly OAO Concern PVO Almaz-Antey, is a joint-stock company established in Moscow, Russia, operating, inter alia, in the defence sector and manufacturing, inter alia, anti-aircraft weaponry, including surface-to-air missiles.

2 On 17 March 2014, the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16). Article 6 of that decision provided initially that it would apply until 17 September 2014.

3 On the same date, the Council adopted, on the basis of Article 215(2) TFEU, Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions

undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6).

4 Subsequently, on 18 July 2014, the Council adopted Decision 2014/475/CFSP amending Decision 2014/145 (OJ 2014 L 214, p. 28) and Regulation (EU) No 783/2014 amending Regulation No 269/2014 (OJ 2014 L 214, p. 2), so as to extend the listing criteria to legal persons, entities or bodies materially or financially supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

5 Article 2(1) and (2) of Decision 2014/145, as amended, reads as follows:

‘1. All funds and economic resources belonging to, or owned, held or controlled by:

(a) natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them;

(b) legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;

(c) legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefited from such a transfer,

as listed in the Annex, 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 listed in the Annex.’

6 The detailed rules for the freezing of those funds are set out in the subsequent paragraphs of that article.

7 Regulation No 269/2014, as amended, requires the adoption of measures freezing funds and sets out the detailed rules for such freezing in terms essentially identical to those of Decision 2014/145, as amended. Article 3(1) of that regulation restates the same listing criteria as those laid down in Article 2(1) of that decision.

8 By Council Decision 2014/508/CFSP of 30 July 2014 amending Decision 2014/145 (OJ 2014 L 226, p. 23) and Council Implementing Regulation (EU) No 826/2014 of 30 July 2014 implementing Regulation No 269/2014 (OJ 2014 L 226, p. 16), the applicant’s name was added to the list of persons, entities and bodies subject to restrictive measures appearing in the annex to Decision 2014/145, on the following grounds:

‘Almaz-Ante[y] is a Russian state-owned company. It manufactures anti-aircraft weaponry including surface-to-air missiles which it supplies to the Russian army. The Russian authorities have been providing heavy weaponry to separatists in Eastern Ukraine, contributing to the destabilization of Ukraine. These weapons are used by the separatists, including for shooting down airplanes. As a state-owned company, Almaz-Ante[y] therefore contributes to the destabilization of Ukraine.’

9 By letter of 30 July 2014, the Council informed the applicant of the restrictive measures adopted, stating the reasons justifying those measures with regard to the applicant and informing it of the possibility of submitting a request for reconsideration to the Council and of challenging the measures adopted before the EU Courts.

10 By Council Decision 2014/658/CFSP of 8 September 2014, amending Decision 2014/145 (OJ 2014 L 271, p. 47), the application of the restrictive measures at issue was extended until 15 March 2015.

11 By Decision (CFSP) 2015/432 of 13 March 2015, amending Decision 2014/145 (OJ 2015 L 70, p. 47) and extending the restrictive measures at issue until 15 September 2015, on the one hand, and Implementing Regulation (EU) 2015/427 of 13 March 2015, implementing Regulation No 269/2014 (OJ 2015 L 70, p. 1), on the other (‘the March 2015 measures’), the Council maintained the applicant’s name on the lists at issue on the same grounds as those mentioned in paragraph 8 above.

12 By letter of 16 March 2015, the Council informed the applicant of the adoption of the March 2015 measures and drew its attention to the possibility of submitting a request for reconsideration to the Council and of challenging the measures adopted before the EU Courts.

13 By letter of 19 May 2015, the applicant asked the Council, through its lawyers, to provide it with the documents supporting the inclusion of its name on the list of designated persons and entities and requested it to review its assessment of the facts.

14 By application lodged at the Registry of the General Court on the same day, the applicant brought the present action.

15 By letter of 31 July 2015, the Council informed the applicant, in response to its letter of 19 May 2015, that it continued to meet the criteria for designation under Decision 2014/145 and Regulation No 269/2014 and that the restrictive measures were to be maintained against it. In an attachment to that letter, the Council also provided access to a series of documents concerning the applicant’s listing.

16 On 14 September 2015, by Decision (CFSP) 2015/1524 amending Decision 2014/145 (OJ 2015 L 239, p. 157) and by Implementing Regulation (EU) 2015/1514 implementing Regulation No 269/2014 (OJ 2015 L 239, p. 30) (‘the September 2015 measures’), the application of the restrictive measures at issue was extended by the

Council up to 15 March 2016, without any amendment to the statement of reasons in respect of the applicant's listing.

17 By letter of 15 September 2015, the Council informed the applicant of the adoption of the September 2015 measures and drew its attention to the possibility of submitting a request for reconsideration to the Council and of challenging the measures adopted before the EU Courts.

18 By email of 25 September 2015 addressed to the applicant's lawyers, the General Secretariat of the Council, in response to a request from the applicant in that regard, confirmed that the documents sent to the applicant and attached to the letter of 31 July 2015 could be used as evidence in proceedings before national or EU courts.

19 On 10 March 2016, by Decision (CFSP) 2016/359 amending Decision 2014/145 (OJ 2016 L 67, p. 37) and by Implementing Regulation (EU) 2016/353 implementing Regulation No 269/2014 (OJ 2016 L 67, p. 1) ('the March 2016 measures'), the application of the restrictive measures at issue was extended by the Council up to 15 September 2016, without any amendment to the statement of reasons in respect of the applicant.

20 By letter of 14 March 2016, the Council informed the applicant of the adoption of the March 2016 measures and drew its attention to the possibility of submitting a request for reconsideration to the Council and of challenging the measures adopted before the EU Courts.

Procedure and forms of order sought

21 By application lodged at the Registry of the General Court on 19 May 2015, the applicant brought an action for annulment of the March 2015 measures, in so far as they concerned the applicant.

22 By document lodged at the Court Registry on 12 October 2015, the applicant requested leave to amend the form of order sought in order to include annulment of the September 2015 measures, in so far as they concerned the applicant, and the Council's letter of 31 July 2015.

23 The Council submitted observations on that application by document lodged at the Court Registry on 4 November 2015.

24 By document lodged at the Court Registry on 19 May 2016, the applicant requested leave to amend the form of order sought in order to include annulment of the March 2016 measures, in so far as they concerned the applicant, and the Council's letter of 31 July 2015.

25 The Council submitted observations on that application by document lodged at the Court Registry on 20 June 2016.

26 The applicant claims that the Court should:

– annul the March 2015 measures, the September 2015 measures and the March 2016 measures ('the contested measures'), in so far as they concern the applicant;

– declare that the Council has infringed the treaties by adopting the contested measures in so far as they concern the applicant;

– annul the Council's letter of 31 July 2015;

– order the Council to pay the costs.

27 The Council contends that the Court should:

– dismiss the application;

– order the applicant to pay the costs;

Law

28 In support of its action the applicant advances three pleas in law, the first alleging infringement of the principle of proportionality, the second alleging infringement of the legal rules applicable to restrictive measures, and the third alleging infringement of the second paragraph of Article 296 TFEU and of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union ('the Charter').

29 Before examining the substance of those various pleas, it is appropriate to examine the admissibility, partially contested by the Council, of the applicant's various heads of claim as they appear in the application and the various applications to amend the form of order sought.

Admissibility

30 In the first place, it should be observed that the action must be declared admissible inasmuch as it seeks annulment of the March 2016 measures, in so far as those measures concern the applicant, by maintaining its name on the list of persons subject to restrictive measures, and extend the application of those measures until 15 September 2016, since the admissibility of the action is not contested inasmuch as it seeks annulment of those measures.

31 On the other hand, the applicant's request in its applications to amend the form of order sought, asking the Court to declare that the Council infringed the treaties by adopting the contested measures, in so far as those measures concern the applicant, must be rejected at the outset. It is settled case-law that the Court does not have jurisdiction, in the context of a review of legality under Article 263 TFEU, to issue declaratory

judgments (see judgment of 12 February 2015, *Akhras* v *Council*, T-579/11, not published, EU:T:2015:97, paragraph 51 and the case-law cited).

32 For the rest, it is appropriate to examine separately the March 2015 and September 2015 measures, on the one hand, and the Council's letter of 31 July 2015, on the other.

The admissibility of the applications to amend the form of order sought by the applicant in so far as they are directed against the Council's letter of 31 July 2015.

33 In its observations on both the applicant's statements seeking to amend the form of order sought, the Council observes that the letter of 31 July 2015, even though it might constitute a challengeable act, was not covered by the applicant's initial action, nor does it modify or replace a measure covered by the application, for the purposes of Article 86 of the Rules of Procedure of the General Court. The applications to amend the form of order sought by the applicant must therefore be declared inadmissible in so far as they refer to that letter.

34 When questioned on this issue at the hearing, the applicant stated that it wished to maintain its application to annul the letter of 31 July 2015, given that, in its opinion, that letter constitutes a decision which confirms that the restrictive measures against the applicant are to be maintained.

35 It must be recalled that Article 86(1) of the Rules of Procedure provide that, where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

36 In accordance with the case-law, it would be contrary to the principle of due administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application. Moreover, it would be inequitable if the institution in question were able, in order to counter criticisms of a measure contained in an application to the Courts of the European Union, to amend the contested measure or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending its original pleadings to the later measure or of submitting supplementary pleadings directed against that measure (see judgment of 3 July 2014, *Alchaar* v *Council*, T-203/12, not published, EU:T:2014:602, paragraph 62 and the case-law cited).

37 In the present case, however, as the Council rightly points out, the letter of 31 July 2015 neither replaces nor amends any measure covered by the initial application, but rather is intended to reply to the applicant's letter of 19 May 2015 in which it sought, inter alia, access to information on which the listing of its name was based, whilst disputing that listing (see paragraphs 13 and 15 above).

38 Although it is true that, in its letter, the Council stated that it confirmed its position in relation to the applicant continuing to meet the criteria laid down in Decision 2014/145 and Regulation No 269/2014, and that the restrictive measures had to be maintained against it, that letter merely confirmed its assessment and was not intended either to replace or amend the reasons for listing referred to in the March 2015 measures (see, to that effect, judgment of 3 July 2014, *Alchaar* v *Council*, T-203/12, not published, EU:T:2014:602, paragraphs 58 and 59 and the case-law cited).

39 It must be held, therefore, that both applications to amend the form of order sought by the applicant must be declared inadmissible in so far as they seek annulment of the Council's letter of 31 July 2015.

The admissibility of the application relating to the March 2015 and September 2015 measures

40 The Council states that, in both statements seeking to amend the form of order sought, the applicant seeks annulment of the March 2015 and September 2015 measures 'in so far as they relate to the applicant and they still produce legal effects'. The action is therefore inadmissible in so far as it is directed against those measures which ceased to produce effects with regard to the applicant.

41 As a preliminary point, it must be recalled that the contested measures, in particular the March 2015 measures, are not the first measures to include the applicant's name on the lists of persons and entities subject to restrictive measures. The first listing of the applicant's name took place on 30 July 2014 through Decision 2014/508 and Implementing Regulation No 826/2014 (see paragraph 8 above), which the applicant did not challenge.

42 The applicant therefore challenges the contested measures inasmuch as those measures maintained its name on the list of persons and entities subject to restrictive measures by extending their application.

43 Even in a case in which the party concerned is not mentioned by name by a subsequent act amending the list on which its name has been entered, and even if that subsequent act does not alter the ground on which that party's name was initially entered on the list, such an act must be understood as evidence of the Council's intention to maintain the applicant's name on the list, which has the consequence that its funds remain frozen, given that the Council has a duty to examine that list at regular intervals (see judgment of 9 July 2014, *Al-Tabbaa* v *Council*, T-329/12 and T-74/13, not published, EU:T:2014:622, paragraph 44 and the case-law cited).

44 Furthermore, it is clear from the case-law that, if recognition of the alleged illegality of an act imposing restrictive measures is such as to procure an advantage for the applicant, it establishes that the applicant's interest in bringing proceedings for annulment is retained even where the contested act has ceased to have effect after it brought its action (see, to that effect, judgments of 28 May 2013, *Abdulrahim* v *Council*

and Commission, C-239/12 P, EU:C:2013:331, paragraph 79 and the case-law cited, and of 6 June 2013, *Ayadi* v *Commission*, C-183/12 P, not published, EU:C:2013:369, paragraphs 68 to 70).

45 Thus, the applicant retains an interest in bringing proceedings arising from the fact that recognition of the illegality of the March 2015 measures may form the basis of a subsequent action for compensation for material and non-material damage suffered as a result of those acts during the period of their application (see judgment of 28 January 2016, *Stavytskyi* v *Council*, T-486/14, not published, EU:T:2016:45, paragraphs 28 to 30 and the case-law cited).

46 In addition it must be recalled that, in the present case, the Council informed the applicant of the adoption of the March 2015 and September 2015 measures and drew its attention to the possibility of submitting a request for reconsideration to the Council and of challenging the measures adopted before the EU Courts (see paragraphs 12 and 17 above).

47 Finally, it must be noted that, in response to a question from the Court at the hearing, the applicant confirmed that it wished to pursue its application for annulment of the March 2015 and September 2015 measures, despite the fact that they no longer produce legal effects and despite the unfortunate wording of that head of claim in the documents amending the form of order sought.

48 Therefore, the present action must be declared admissible in so far as it relates to the annulment of the contested measures.

Substance

49 The Court considers it appropriate in the present case to examine, first of all, the third plea in law, then the first, and finally the second.

Third plea in law, alleging, in essence, infringement of the duty to state reasons and the rights enshrined in the Charter.

50 By its third plea, the applicant relies, in essence, first, on infringement of the obligation to state reasons, secondly, on infringement of the rights of defence and of its right of access to the file, thirdly, on infringement of the right to effective judicial protection, and fourthly, on lack of justification and infringement of the principle of proportionality in the restrictions placed on its fundamental rights.

51 It is appropriate to examine those various complaints in turn, while jointly examining the complaints alleging infringement of the rights of defence and of the right to effective judicial protection.

– The complaint alleging breach of the obligation to state reasons

52 The applicant submits that the reasons stated by the Council as justification for continuing to include its name in the annexes to Decision 2014/145 and Regulation No 269/2014 are altogether insufficient and cannot be regarded as proportionate. In particular, it argues that the Council failed to specify the exact type of weaponry which the applicant manufactured and which was supplied to the Russian Federation, or the dates or places of any incident demonstrating that it was or had been involved in the destabilisation of Ukraine.

53 The Council disputes those arguments.

54 It should be borne in mind that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for in the second paragraph of Article 296 TFEU and in Article 41(2)(c) of the Charter, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the act is well founded or whether it is vitiated by an error permitting its validity to be contested before the EU Courts and, second, to enable those Courts to review the lawfulness of the act. The obligation to state reasons thus laid down constitutes an essential principle of EU law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him, for failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the EU Courts (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 85 and the case-law cited).

55 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the disclosure of certain information, the Council is required to inform the person or entity covered by restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. It must thus state the matters of fact and law which constitute the legal basis of the measures concerned and the considerations which led it to adopt them (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 86 and case-law cited).

56 Further, the statement of reasons must be appropriate to the measure at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary that the statement of reasons specify all the relevant matters of fact and law, inasmuch as the adequacy or otherwise of the reasons is to be evaluated 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, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 87 and the case-law cited).

57 In the first place, it must be pointed out that, in the present case, the Council set out the general context which led it to adopt the sanctions regime in the recitals of Decision 2014/145 and in recitals 1 to 3 of Regulation No 269/2014. In recital 2 of Decision 2014/475, it explained the reasons which had led it to extend the scope *ratione personae* of the restrictive measures adopted to legal persons, entities or bodies materially or financially supporting actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. Since those measures are published in the *Official Journal of the European Union* and are explicitly referred to in the contested measures which were communicated individually to the applicant, it cannot claim that it was unaware of the context and of the general criteria for maintaining its name on the list.

58 In the second place, it must be pointed out that the specific reasons relied on against the applicant for its name being maintained on the list by the contested measures coincide with those set out in Decision 2014/508 and Implementing Regulation No 826/2014 which are the first measures to include its name on the list of persons and entities subject to the restrictive measures at issue (see paragraph 8 above).

59 Although those reasons do not expressly define the general criterion which the Council relied on in order to maintain the applicant's name on the lists at issue, it is sufficiently clear from the wording of those reasons that it is the criterion laid down in Article 2(1)(b) of Decision 2014/145 and in Article 3(1)(b) of Regulation No 269/2014, as amended ('the criterion at issue'), in that it refers to legal persons, entities or bodies materially or financially supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine (see paragraphs 5 and 7 above).

60 Therefore, it must be held that the reasons for the applicant's name being maintained on the lists by the contested measures is sufficient to enable the applicant to understand the reasons for his name being maintained on the lists and to enforce its rights, and to enable the EU Courts to exercise their power of review.

61 Inasmuch as the applicant contests the merits or proportionate nature of those reasons, it must be pointed out that the obligation to state the reasons on which an act is based is an essential procedural requirement, to be distinguished from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, those errors will vitiate the substantive legality of that measure, but not the statement of reasons, which may be adequate even though it sets out reasons which are incorrect (see, to that effect, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 96 and the case-law cited).

62 The present ground of complaint must therefore be rejected.

– The complaints alleging infringement of the rights of the defence and of the right to effective judicial protection

63 The applicant maintains that it enjoys full protection of the fundamental rights guaranteed by the Charter, which applies equally to foreign legal entities coming within its scope. It submits that, in order to safeguard the applicant's rights of defence, the Council should have given it access to the file and provided it with sufficient information supporting the measures taken against it. It argues that, by failing to identify any specific actions of the applicant that might have contributed to the destabilisation of Ukraine, the Council infringed those rights.

64 According to the applicant, the Council is required, additionally, in order to ensure effective judicial protection, to inform it of the grounds for the restrictive measures taken against it and the reasons for prolonging those measures. In the present case, it argues, those reasons are insufficient and based on mere speculation.

65 The Council disputes those arguments.

66 It must be recalled that respect for the rights of the defence and the right to effective judicial protection are fundamental rights which form an integral part of the European Union legal order, in the light of which the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all EU acts (see, to that effect, judgment of 24 May 2016, *Good Luck Shipping* v *Council*, T-423/13 and T-64/14, EU:T:2016:308, paragraphs 47 to 48 and the case-law cited).

67 Respect for the rights of the defence, which is expressly laid down in Article 41(2)(a) of the Charter, includes, in a procedure preceding the adoption of restrictive measures, the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (see, to that effect, judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 60 and the case-law cited).

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

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

70 The case-law states that, as regards a decision to maintain the listing of the name of the individual concerned in the annex to the act containing restrictive measures, compliance with that dual procedural obligation must, contrary to the position in respect of an initial listing, precede the adoption of that decision (see, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 113).

71 The Court of Justice considered that, in the case of a subsequent decision to freeze funds by which the inclusion of the name of a person or entity already appearing on the list was maintained, the surprise effect was no longer necessary in order to ensure that the measure was effective, with the result that the adoption of such a decision must, in principle, be preceded by notification of the incriminating evidence and by allowing the person or entity concerned an opportunity of being heard (judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 62).

72 However, that right to a prior hearing has to be respected where the Council has admitted new evidence against the person who is subject to the restrictive measures and who is maintained on the list at issue (see, to that effect, judgments of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 63, and of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 43).

73 In that context, it must be noted that, in the present case, Article 3(2) and (3) of Decision 2014/145 and Article 14(2) and (3) of Regulation No 269/2014 provide that the Council is to communicate its decision, including the grounds for listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or by the publication of a notice, providing the opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly. In addition, it must be pointed out that, in accordance with the third paragraph of Article 6 of Decision 2014/145, that decision is kept under constant review.

74 In the present case, it is clear from the correspondence between the applicant and the Council which was produced in the proceedings before the Court that, first of all, the Council informed the applicant of the adoption of the first restrictive measures against it by letter of 30 July 2014.

75 Next, by letter of 16 March 2015, the Council informed the applicant that its name was being maintained on the lists of persons and entities subject to the restrictive measures following the adoption of the March 2015 measures. The applicant made observations by letter of 19 May 2015. The Council replied to that correspondence by letter of 31 July 2015 in which it set out the reasons why it considered that the applicant's name should remain on the list of persons subject to the restrictive measures, and provided it with supporting evidence.

76 Following the adoption of the September 2015 measures, the Council notified the applicant of those measures and informed it again of the possibility of submitting a request for the Council to reconsider its decision to include its name on the lists and to challenge those measures before the Court.

77 Furthermore, by email of 25 September 2015 addressed to the applicant's lawyers, the General Secretariat of the Council confirmed that the documents sent to the applicant and attached to the letter of 31 July 2015 could be used as evidence in proceedings before national or EU courts.

78 Finally, by letter of 14 March 2016, the Council notified the applicant of the March 2016 measures and informed it again of the possibility of submitting a request for the Council to reconsider its decision to include its name on the lists and to challenge those measures before the Court.

79 It must be held, therefore, that the Council respected the applicant's rights of defence in the present case in the light of the case-law referred to in paragraph 72 above, in that the Council's decision in the contested measures to maintain the restrictive measures against the applicant did not rely on any new information and was based on the same reasons as those which had been used against it at the time of the initial listing of its name in September 2014 (see paragraph 8 above). In such a situation, the Council was entitled, therefore, merely to inform the applicant of the adoption of new measures confirming the listing of its name, without hearing the applicant beforehand, as it did in the present case by the letters of 16 March 2015, 15 September 2015 and 14 March 2016, informing it of the adoption, respectively, of the March 2015, September 2015 and March 2016 measures.

80 As regards, in particular, access to the documents and to the evidence supporting the listing of the applicant's name, communicated by the Council as an attachment to the letter of 31 July 2015, it must be recalled that, when sufficiently precise information has been communicated, enabling the person concerned effectively to state its point of view on the evidence adduced against it by the Council, the principle of respect for the rights of the defence does not mean that that institution is obliged spontaneously to grant access to the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 97 and the case-law cited; see also, to that effect, judgment of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 92).

81 In accordance with that case-law, the Council allowed access to the documents in its file justifying the listing of the applicant's name by letter of 31 July 2015, in reply to the applicant's observations and request to that effect in its letter of 19 May 2015.

82 Therefore, the communication of the documents in the file, enclosed with the letter of 31 July 2015, was not late and was sufficient to enable the applicant to exercise its

rights in the light of the statement of reasons in the contested measures (see paragraph 8 above).

83 In any event, it must be recalled that, before an infringement of the rights of the defence can result in the annulment of an act, it must be demonstrated that, had it not been for that irregularity, the outcome of the procedure might have been different. In the present case, the applicant has not explained what arguments and evidence it could have relied on if it had received the documents in question earlier, nor has it demonstrated that such arguments and evidence could have led to a different result in its case, that is to say, to the restrictive measures in question not being renewed (see, to that effect and by analogy, judgment of 18 September 2014, *Georgias and Others* v *Counciland Commission*, T-168/12, EU:T:2014:781, paragraphs 106 to 108 and the case-law cited). Thus, the present plea in law could not in any event lead to the annulment of the March 2015 measures, and still less the September 2015 and March 2016 measures, since the applicant had in its possession the documents attached to the Council's letter of 31 July 2015 when the latter measures were adopted.

84 As regards the right to effective judicial protection, it must be noted that it also requires that the EU Courts are to ensure that the decision 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 (see judgment of 24 May 2016, *Good Luck Shipping* v *Council*, T-423/13 and T-64/14, EU:T:2016:308, paragraph 51 and case-law cited).

85 The question whether the Council's decision to maintain the applicant's name on the list of persons and entities subject to restrictive measures was taken on a sufficiently solid factual basis will be examined under the second plea below.

86 The present complaint must, therefore, also be rejected.

– The complaint alleging lack of justification in the restrictions placed on the applicant's fundamental rights and infringement of the principle of proportionality

87 The applicant asserts that the restrictions on its fundamental rights are not justified on the basis that they do not accord with the principle of proportionality. It argues that, in the present case, it is impossible to know whether the continuation of the restrictive measures would in fact assist in preventing the destabilisation of Ukraine, given that the Council failed to specify the applicant's involvement in any action directed against Ukraine or the international order as such. Therefore, the restrictions on its rights do not comply with Article 52(1) of the Charter.

88 The Council disputes those claims.

89 It must be observed, as was submitted by the Council, that, by this complaint, the applicant merely reiterates the arguments already presented under the other complaints in the present plea and in the first and second pleas.

90 As regards, in particular, the principle of proportionality of the restrictive measures in the present case, it is necessary to refer to the examination of the first plea below. As regards respect for the rights of the defence and the right to effective judicial protection, it is necessary to refer to paragraphs 66 to 86 above.

91 Therefore, subject to the examination of the proportionality of the restrictive measures in the present case, which will be examined under the first plea below, it is necessary also to reject the present complaint and the third plea in its entirety.

First plea in law, alleging, in essence, infringement of the principle of proportionality

92 In relation to its first plea, the applicant claims that the Council infringed the principle of proportionality and exceeded its powers in accusing it of having contributed to the destabilisation of Ukraine. It submits that the requirement that restrictive measures be necessary must be interpreted as meaning that sanctions may be imposed only on bodies or persons that are known to have an influence on the policy of the country and are known to have, or at least very probably have, been involved in the destabilisation of Ukraine. Accordingly, the applicant argues that measures against a person who is not responsible are not suitable for attaining the objective of imposing sanctions on those responsible and preventing the destabilisation of Ukraine.

93 The Council contests those claims.

94 By the present plea, it appears that the applicant seeks to call into question the proportionality of the general criteria, laid down by the Council, for imposing restrictive measures in view of Russia's actions destabilising the situation in Ukraine, in particular the criterion at issue laid down in Article 2(1)(b) of Decision 2014/145 and in Article 3(1)(b) of Regulation No 269/2014, as amended (see paragraphs 5 and 7 above), whereby the funds of legal persons, entities or bodies materially or financially supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine are frozen. That criterion thus broadly covers all entities which materially or financially support actions that may have been committed by third parties which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and not merely entities which have been proven to be directly responsible for such actions.

95 It should be borne in mind in that regard that, according to the case-law, as regards the general rules defining the procedures for giving effect to the restrictive measures, the Council has a broad discretion as to what to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Article 215 TFEU, consistent with a decision adopted on the basis of Chapter 2 of Title V of the EU Treaty, in particular Article 29 TEU. Because the EU Courts may not substitute their assessment of

the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review which those Courts carry out must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate and that there has been no manifest error of assessment of the facts or misuse of power. That limited review applies, especially, to the assessment of the considerations of appropriateness on which such measures are based (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 127 and the case-law cited).

96 As the Council makes clear, it has never accused the applicant of having directly contributed to the destabilisation of Ukraine by selling arms to the separatists, but included its name, then maintained its name, on the lists on the ground that it supplied arms to the Russian Federation, thus materially supporting the Russian Federation and its actions aimed at undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

97 The idea of 'support' under Decision 2014/475 and Regulation No 783/2014, amending respectively Decision 2014/145 and Regulation No 269/2014, is wider than that of 'actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine' and was introduced by those measures specifically to extend the criteria for listing legal persons, entities or bodies materially or financially 'supporting' actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

98 Since the criterion at issue, set out in Article 2(1)(b) of Decision 2014/145 and Article 3(1)(b) of Regulation No 269/2014, as amended (see paragraphs 5 and 7 above), forms part of a legal framework clearly delimited by the objectives pursued by the rules governing the restrictive measures against Russia, the applicant is wrong in submitting that the Council had to demonstrate that the applicant had individually threatened or undermined, and that it continued to threaten or undermine, directly the territorial integrity, sovereignty and independence of Ukraine for the Council to be able to include its name on the list of persons subject to the restrictive measures (see, to that effect, judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraphs 79 to 83).

99 However, although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, it is for the Court to ascertain, where appropriate, whether those general criteria, as interpreted and implemented by the EU institutions, comply with the general principles of EU law and the treaties and, in particular, the objective of preserving peace, preventing conflicts and strengthening international security, laid down in Article 21(2)(c) TEU. A consequence of that interpretation is that the broad discretion enjoyed by the Council in relation to the definition of the general listing criteria can be respected, while the review, in principle the full review, of the lawfulness of EU acts in the light of fundamental rights is ensured.

100 In that regard, it must be recalled that the principle of proportionality is one of the general principles of EU law and requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary to achieve them (see judgment of 21 January 2016, *Makhlouf* v *Council*, T-443/13, not published, EU:T:2016:27, paragraph 106 and the case-law cited).

101 It is appropriate, therefore, to examine, in accordance with the case-law referred to in paragraph 95 above, whether the criterion at issue, applied to the applicant in the present case, is not manifestly unsuitable to achieve its objectives set out under Article 21 TEU, as applied to the particular situation in Ukraine, and whether it does not go manifestly beyond what is necessary to achieve those objectives.

102 In the present case, first, it must be observed that the criterion at issue pursues one of the objectives of the common foreign and security policy. The adoption of the restrictive measures against, in particular, persons materially or financially supporting actions of the Russian Government which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine meets the objective set out in Article 21(2)(c) TEU of preserving peace, preventing conflicts and strengthening international security, in accordance with the purposes and principles of the United Nations Charter. In that respect, it must be pointed out that, on 27 March 2014, the United Nations General Assembly adopted Resolution 68/262, entitled 'Territorial integrity of Ukraine', in which it recalled the obligation of all States, under Article 2 of the UN Charter, to refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state, and to settle international disputes by peaceful means. It welcomed the continued efforts, in particular, by international and regional organisations to support de-escalation of the situation in Ukraine. In the operative part of that resolution, the General Assembly, inter alia, reaffirmed the importance of the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognised borders and urged all parties to pursue immediately the peaceful resolution of the situation with respect to Ukraine, to exercise restraint, to refrain from unilateral actions that may increase tensions and to engage fully with international mediation efforts.

103 In addition, it must be recalled that, in the present case, while Decision 2014/145 initially provided that the restrictive measures should be imposed on persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine and against persons or entities associated with them, recital 2 of Decision 2014/475 amending Decision 2014/145 states, inter alia, that, in view of the gravity of the situation in Ukraine, the conditions for freezing of funds and economic resources should be expanded to target legal persons, entities or bodies materially or financially supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

104 It is therefore as a result of the persistence, even worsening, of the situation in Ukraine following the first restrictive measures adopted that the Council took the view

that it had to extend the circle of persons and entities covered by those measures in order to achieve the objectives pursued. It follows from that approach, which is based on the progressive impairment of rights according to the effectiveness of the measures, that the proportionality of those measures is established (judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 126).

105 Therefore, the Court shares the Council's view that the criterion at issue does not appear to be manifestly inappropriate in order to reach the objective to prevent the escalation of the conflict in Ukraine and actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. By applying also to persons and entities materially or financially supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, the Council could legitimately expect that such actions cease or that they become more costly for those who undertake them, in order to promote a peaceful settlement of the crisis (see, to that effect, Opinion of Advocate General Wathelet in *Rosneft*, C-72/15, EU:C:2016:381, points 146 and 147).

106 Secondly, the criterion at issue and the restrictive measures deriving from it are necessary in order to achieve and implement the objectives referred to in Article 21 TEU, given that alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, *a posteriori*, how the funds transferred were used, are not as effective in achieving the goal pursued, particularly given the possibility of circumventing such restrictions (see, to that effect, judgment of 21 January 2016, *Makhlouf* v *Council*, T-443/13, not published, EU:T:2016:27, paragraph 112 and the case-law cited).

107 Thirdly, it must be recalled that the contested measures, which implement the criterion at issue as regards the applicant, contain all the guarantees enabling the applicant to exercise its rights of defence.

108 Thus, the Council's letters addressed to the applicant, informing it of the adoption of the new measures maintaining its name on the list of persons covered by restrictive measures, referred to in paragraphs 12, 17 and 20 above, expressly informed it of the possibility of submitting a request for reconsideration of its inclusion on the lists at issue and of bringing an action for annulment before the Court. Moreover, the applicant was able to bring such an action in accordance with the conditions laid down in the second paragraph of Article 275 TFEU and the fourth and sixth paragraphs of Article 263 TFEU.

109 In addition, it must be noted that Decision 2014/145 and Regulation No 269/2014, as amended, provide for the possibility to grant specific authorisation to unfreeze funds, other financial assets or other economic resources and to revise periodically the inclusion of the names of the persons or entities concerned on the lists at issue so as to allow the removal from those lists of persons or entities no longer meeting the necessary criteria for inclusion.

110 Finally, it must be recalled that the restrictive measures adopted under Article 215 TFEU are not penalties, but prospective precautionary measures (see, to that effect, judgment of 13 September 2013, *Anbouba* v *Council*, T-592/11, not published, EU:T:2013:427, paragraph 40 and the case-law cited). Therefore, the mere existence of a risk that an entity may act reprehensibly may be sufficient to impose restrictive measures on that entity (see, to that effect, judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 85).

111 In the light of all the foregoing considerations, it does not appear that the criterion at issue as defined by the Council in Article 2(1)(b) of Decision 2014/145 and in Article 3(1)(b) of Regulation No 269/2014, as amended (see paragraphs 5 and 7 above), is manifestly disproportionate in the light of the objectives pursued, in accordance with Article 21 TEU, of preventing the escalation of the conflict in Ukraine and actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

112 The first plea in law must therefore be dismissed.

Second plea in law, alleging infringement of the legal principles applicable to the restrictive measures

113 By its second plea, the applicant claims, in the first place, that the grounds on which it was included in the annexes to Decision 2014/145 and Regulation No 269/2014 do not meet the standards for the quality of grounds required for the inclusion of a legal person's name on the lists. It expresses the view in this regard that those acts aim solely to sanction natural or legal persons that are — as evidenced by robust facts — responsible for actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

114 The applicant argues that, given the intensity of the measures and their objective of preventing the further destabilisation of Ukraine, the Council would have needed to show that the applicant had in fact undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, or still undermines and threatens its territorial integrity, sovereignty or independence, mere speculation and guesswork being insufficient in this regard.

115 The Council disputes those arguments.

116 As regards the proportionality of the criterion at issue, it is clear from the examination of the first plea above that the Council did not infringe the principle of proportionality by providing in Article 2(1)(b) of Decision 2014/145 and in Article 3(1)(b) of Regulation No 269/2014, as amended (see paragraphs 5 and 7 above), that the funds of legal persons, entities or bodies which materially or financially support actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine were frozen.

117 The applicant's reading of the criterion at issue is thus erroneous in requiring the Council to demonstrate that the applicant is responsible for actions undermining or threatening the territorial integrity, sovereignty or independence of Ukraine or that it actually undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, in order for it to be able to include the applicant's name on the list of persons and entities covered by the restrictive measures.

118 In the second place, the applicant challenges the soundness of the grounds stated in the contested measures in relation to it, as set out in paragraph 8 above.

119 First, while it acknowledges that its sole shareholder is the Russian Federation, it asserts that it is a separate legal entity and that the Russian Government cannot exert a decisive influence on decision-making in relation to its daily commercial activities. Under Russian law, the majority of decisions are taken by executive bodies consisting of a Director General and a Management Board, not by the General Meeting of Shareholders, the approval of which is required only for major transactions representing more than 25% of the book value of the applicant's assets. Shareholder rights are exercised in practice by the Rosimushchestvo (Federal Agency for State Property Management, Russian Federation), which is totally independent of the Ministry of Defence and is also responsible for selecting the professional directors on the applicant's Board of Directors. In the area of exports of military goods, the function of the State organs, that is to say, the Government of the Russian Federation and the Federal Service for Military and Technical Cooperation, is limited to granting authorisation for any export of military goods by the applicant.

120 Secondly, while it acknowledges that it manufactures, inter alia, anti-aircraft weaponry such as surface-to-air missiles, it asserts that it also delivers military products to countries and customers other than the Russian Federation, and that over 30% of its production is represented by a range of products for civil use. It further states that it did not begin manufacturing until 2002, with the result that the production or sale of older weapons, such as the BUK surface-to-air missile, cannot be imputed to it.

121 Thirdly, while it admits supplying weaponry to Russian governmental authorities, it states that it has never delivered weapons on Ukrainian territory since its establishment in 2002. It further states that orders for military goods and equipment from the Russian State must be approved by the Duma and ratified by the President of the Russian Federation, and that the suppliers and prices of the goods ordered are determined on a competitive basis. As far as the export of military goods and equipment is concerned, a list of the countries to which such goods and equipment may be exported has been established by a federal law and a decree of the President of the Russian Federation. The export of military goods to countries not appearing on those lists must be approved by the Russian President himself. In consequence, it is prohibited for a Russian company such as the applicant to supply military goods to any person or body not appearing on those lists, let alone to paramilitary organisations.

122 Fourthly, the applicant denies supplying or having supplied weapons to Russian separatists in Eastern Ukraine or to any recipient in Ukrainian territory. It states that the BUK anti-aircraft missiles used by the Ukrainian army pre-date 1997 and thus cannot have been produced by the applicant.

123 Fifthly, the applicant denies having supplied any weaponry used by separatists, and particularly any weaponry used to shoot down aircraft. In particular, it denies any involvement in the flight incident concerning Malaysia Airlines flight MH17 from Amsterdam (Netherlands) to Kuala Lumpur (Malaysia) and states that there is no evidence of any such involvement. The precise causes of the destruction of that aircraft remain unknown and, even if it were ultimately established that a BUK surface-to-air missile was involved, this would not necessarily point to any involvement on the part of the applicant, given that, first, none of the military equipment which it manufactures has been used in Ukraine and, secondly, the Ukrainian army is still in possession of older models of BUK missiles. On that basis, until the findings of the official investigation are published, the possibility that the aircraft was brought down by such weapons cannot be excluded.

124 The Council contests those claims.

125 It must be recalled that, by the contested measures, the applicant's name was maintained on the list of persons and entities covered by restrictive measures for the same reasons as those set out in paragraph 8 above.

126 The applicant claims, in essence, that the grounds advanced against it are not sufficiently supported by evidence and that they do not justify the inclusion of its name on the lists of persons and entities covered by the restrictive measures.

127 In that regard, it should be recalled that, although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the effectiveness of the judicial review guaranteed by Article 47 of the Charter requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to include or to maintain a person's name on the list of entities subject to restrictive measures, the Courts of the European Union are to ensure that that decision, which affects that person 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, are substantiated by sufficiently specific and concrete evidence (judgment of 26 October 2015, *Portnov* v *Council*, T-290/14, EU:T:2015:806, paragraph 38; see, to that effect, judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 41 and 45).

128 It is for the competent European Union 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 (judgments 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 121, and of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 128).

129 In the first place, as regards the grounds that the applicant is a Russian state-owned company which manufactures anti-aircraft weaponry, including surface-to-air missiles, which it supplies to the Russian army, it is sufficient to state, as the Council did, that the applicant does not deny being owned by the Russian State, or manufacturing anti-aircraft weaponry, such as surface-to-air missiles, which it supplies to the Russian army.

130 First, the fact that the General Meeting of Shareholders did not have a dominant position by virtue to Article 47 of the federalnij zakon ob akcionernih obshestvah (Russian Law on Joint-Stock Companies, No 208-FZ, 26.12.1995) is not such as to call into question the finding that the applicant is a Russian state-owned company, owned and controlled by the Russian State. As the applicant itself admits, the General Meeting is made up of representatives of the Russian Federation, as sole shareholder, and is responsible, not only for approving the applicant's annual reports and annual accounts, but also for giving its agreement to every transaction of more than 25% of the book value of the applicant's assets. The fact that the Russian Federation's shareholder rights are in practice exercised by the Federal Agency of State Property Management confirms that the Russian Government controls the applicant, irrespective of the State Department which is directly responsible in that regard.

131 In addition, as a company active in the defence sector, the applicant is particularly dependent on the Russian Federation for all exports of military equipment, since the exports have to be authorised by the Russian Government or by the President of the Russian Federation directly where those exports are to a country which is not on the list of recipient countries approved by the Russian Parliament. As the Council submitted at the hearing, it is clear from Article 2 of the applicant's new statutes that its corporate purpose is, inter alia, to ensure national defence and the security of the Russian Federation. That demonstrates that the applicant, in fact, has very limited freedom of action compared with the Russian Federation and that the applicant is largely dependent on it for its activities.

132 Secondly, the documents which the Council forwarded to the applicant, attached to the letter of 31 July 2015 also demonstrate that it manufactures anti-aircraft weaponry, including BUK M1-2 and M2E surface-to-air missiles and Aistenok radars. That information is taken directly from the applicant's website. The fact that the applicant is also active in the civil sector is irrelevant in that respect, given that, as the applicant admits, the share of products for civilian use does not exceed 30% of its total production.

133 Thirdly, the documents provided by the Council also demonstrate that the applicant supplies the Russian Federation with weaponry, something which it also acknowledges in the present proceedings.

134 It is therefore sufficiently clear from the evidence provided by the Council that the applicant is a Russian state-owned company and that it manufactures anti-aircraft weaponry, including surface-to-air missiles, which it supplies to the Russian army, as is indicated in the statement of reasons for the applicant's name being maintained on the lists by the contested measures.

135 In any event, the fact that the applicant is a Russian state-owned company cannot be decisive as regards the legality of the inclusion of its name on the list of persons and entities covered by restrictive measures, since, as was acknowledged by the parties at the hearing, the determining factor was that, by manufacturing weapons and military equipment and supplying them to Russia, the applicant materially supports actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

136 In the second place, as regards the ground that the Russian authorities supplied heavy weaponry to separatists in Eastern Ukraine, contributing to the destabilisation of Ukraine, it must be observed that the applicant does not in any way call into question that conclusion, but merely denies that it was itself responsible for supplying the separatists or any recipient in Ukrainian territory.

137 As the Council rightly states, the reason relied on against the applicant in the contested measures is not based on the fact that the applicant delivered weapons directly to the separatists in Ukraine, but rather on the fact that, by selling arms to the Russian Federation which itself supplies weapons to the separatists in Eastern Ukraine, the applicant materially supports actions taken by the Russian Federation seeking to undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

138 In that regard, the documents provided by the Council are sufficient to demonstrate that the Russian Federation actually supplied weapons to the separatists in Eastern Ukraine. Thus it is clear, in particular from what the US European Command Commander, NATO Supreme Allied Commander, declared at a press briefing on 30 June 2014, that several types of heavy weaponry had crossed the border between Russia and Ukraine and had been used on the western side of that border.

139 In addition, it is clear from the documents provided by the Council that the Pantsir S-1/SA-22 Greyhound, which is one of the latest air defence systems, has been seen in the Donetsk region of Ukraine and has been used by the separatists. Since that air defence system has been ordered and exported from Russia only to Jordan, Syria and the United Arab Emirates, it is very likely that the one which has been seen in Eastern Ukraine came from Russia, as is submitted by the Council.

140 The applicant, however, denies that the Pantsir system is manufactured by it or by any of its subsidiaries, as is alleged by the Council. The applicant claims that it is in fact produced by another company, which is apparent from the documents provided by the Council.

141 In that regard, the Court shares the Council's view that it is irrelevant that the Pantsir which was seen in Eastern Ukraine is actually manufactured by the applicant or by another company, given that the grounds for maintaining its name on the list of persons and entities covered by restrictive measures are not based on the applicant's direct involvement in the actions seeking to destabilise Ukraine or on the applicant delivering weapons to the separatists, but on the fact that the applicant is a Russian state-owned company manufacturing heavy weaponry which it supplies to the Russian Federation, which in turn supplies weapons to the separatists, and that, accordingly, it materially supports actions taken by the Russian Federation seeking to undermine or threaten the territorial integrity, sovereignty and independence of Ukraine (see paragraphs 5, 8 and 59 above). The fact that the Pantsir system seen in Eastern Ukraine is not included in the range of the applicant's products is, therefore, irrelevant in that regard.

142 It must be stated, in any event, that other Russian weaponry and military equipment have been seen in the Donetsk region of Eastern Ukraine, or crossing the border between Russia and Ukraine, including the Aistenok radar station, which is manufactured by the applicant and has been used by the separatists, as is apparent from the documents provided by the Council.

143 The Council therefore did not err in its assessment when it stated in the grounds for listing the applicant that 'the Russian authorities [had] supplied heavy weaponry to separatists in Eastern Ukraine, contributing to the destabilisation of Ukraine'.

144 In the third place, it is necessary to examine whether the third ground in the contested measures, that is to say, the fact that the weapons supplied by the Russian Federation are used by the separatists, including for shooting down aeroplanes (see point 8 above), is founded on a sufficiently solid factual basis.

145 In that regard, the Council produced numerous press articles reporting on the shooting down of Ukrainian army aircraft and helicopters by the separatists, including, in particular, a military cargo-plane transporting 49 soldiers. It is clear from those articles that, in some cases, the separatists claimed direct responsibility for those acts.

146 The applicant, however, disputes the reliability and objectivity of those articles.

147 It must be pointed out in that regard that, as is clear from the case-law, press articles may be used in order to corroborate the existence of certain facts — in the present case the fact that the weapons provided by Russia were used by the separatists in Eastern Ukraine, including for shooting down aeroplanes — where they come from several different sources and they are sufficiently specific, precise and consistent as regards the facts there described, as in the present case (see, to that effect, judgments of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraphs 141 and 142, and of 22 September 2015, *First Islamic Investment Bank* v *Council*, T-161/13, EU:T:2015:667, paragraph 59).

148 It would be excessive and disproportionate to require the Council itself, as the applicant seeks, to investigate on the ground the accuracy of facts which are re-laid by numerous media. Although it is possible to accept, as the applicant does, that the media coverage of the Ukrainian conflict by the western media may also be partially biased, genuine objectivity is impossible, and the fact remains that the press articles provided by the Council corroborate the existence of Russian involvement in the Ukrainian conflict, including the supply of weapons and military equipment to the separatists in Eastern Ukraine. Moreover, the applicant has not called into question the purely factual information reported in those articles in that regard, nor has it even sought to establish in what way they are manifestly incorrect.

149 Finally, as regards the applicant's argument that the Council has not in any way demonstrated that weapons which it produced had been used by separatists, it is important to recall again that the grounds relied on against it are not in any way based on the existence of such a link between the applicant and the separatists, but on the fact that it supplies weapons to the Russian government, which itself contributes to the destabilisation of Ukraine by supplying weapons, of all kinds, to the separatists (see paragraphs 8 and 137 above).

150 It must also be pointed out, as was observed by the parties at the hearing, that there was no final conclusion concerning the causes of the destruction of Malaysia Airlines flight MH17 killing 298 people when the contested measures were adopted. Although it is true that the contention that the aeroplane was shot down by separatists in Eastern Ukraine was a serious line of enquiry followed by the investigators, the investigation was still ongoing and no final report had been adopted by the time the restrictive measures were adopted, and subsequently maintained, concerning the applicant, as the Council rightly observes.

151 It is important to recall that the evidence which the Council relies on in order to justify the inclusion of the applicant's name on the list of persons and entities covered by restrictive measures must necessarily have been available and brought to the attention of the Council at the latest when it adopted the restrictive measures concerning the applicant, otherwise the effective control exercised by the Court over the legality of that listing would be deprived of its substance (see, to that effect, judgments of 26 October 2012, *Oil Turbo Compressor* v *Council*, T-63/12, EU:T:2012:579, paragraph 29, and of 26 October 2015, *Portnov* v *Council*, T-290/14, EU:T:2015:806, paragraph 47).

152 In any event, it must be pointed out, in that regard, that the applicant's argument that Malaysia Airlines flight MH17 was shot down by the Ukrainian army, and not by the separatists, given that it also possesses outdated BUK missiles which caused the destruction of the aeroplane, according to the report from the Dutch Safety Board published in October 2015, is irrelevant, given that that evidence is not decisive for the purposes of listing its name.

153 In the grounds for listing the applicant's name, the Council considered only that 'these weapons [supplied by the Russian Federation to the separatists were] used by the separatists, including for shooting down airplanes' (see paragraph 8 above).

154 The merits of that ground are sufficiently supported by the numerous documents provided by the Council in that regard, from which it is clear that several aeroplanes were shot down by the separatists and that, in some cases, the separatists claimed responsibility for those acts.

155 Therefore, it must be held that the ground that 'these weapons are used by the separatists, including for shooting down airplanes' is founded on a sufficiently solid factual basis and that the Council committed no error of assessment in that regard.

156 In the fourth place, it is still necessary to ascertain whether the Council was fully entitled to conclude from all the grounds set out above that 'as a state-owned company, Almaz-Ante[y] therefore contribute[d] to the destabilization of Ukraine'.

157 As the Council submits, it is necessary to read that ground with reference to the preceding grounds, inasmuch as it constitutes the logical conclusion of those grounds. It is not merely in its capacity as a state-owned company that the applicant is subject to the restrictive measures, but as a state-owned company supplying weapons, such as surface-to-air missiles, to the Russian Federation, which itself supplies weapons to the separatists in Eastern Ukraine, who in turn use them in particular to shoot down aeroplanes.

158 Consequently, since the other grounds are substantiated by sufficiently specific and concrete evidence and are founded on a sufficiently solid factual basis, the Council was fully entitled to conclude that the applicant contributed to the destabilisation of Ukraine, in that it materially supported Russia's actions seeking to undermine the territorial integrity, sovereignty and independence of Ukraine. That ground must be read in the light of the objectives of the restrictive measures at issue, as set out in recital 2 and in Article 1 of Decision 2014/475 which, in amending Decision 2014/145, makes provision for the freezing of funds of legal persons, entities or bodies which materially or financially support actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine (see paragraph 4 above).

159 In that regard, it is important to note that, contrary to what the applicant claims, the Council was not required to demonstrate positively that the weapons which the applicant produced had been used in Ukraine by the separatists. Such evidence would be difficult to provide, in particular in a conflict situation where it is sometimes difficult to establish exactly the specific responsibilities and the types of weapons used by each of the warring parties.

160 In addition, according to the case-law, the existence merely of a risk that an entity may act reprehensibly may be sufficient to impose restrictive measures (see paragraph 110 above).

161 Therefore, it must be held that the Council has not committed any error of assessment by including, then maintaining, the applicant's name on the list of persons and entities subject to restrictive measures, given that that assessment meets the listing criteria provided for in Article 2(1)(b) of Decision 2014/145 and in Article 3(1)(b) of Regulation No 269/2014, as amended.

162 In view of the foregoing, the second plea must be rejected and the application dismissed in its entirety.

Costs

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

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Joint-Stock Company 'Almaz-Antey' Air and Space Defence Corp. to pay the costs.**

Berardis Tomljenović Spielmann

Delivered in open court in Luxembourg on 25 January 2017.

E. Coulon G. Berardis

Registrar President

* Language of the case: English.