ECLI:EU:T:2016:689

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

30 November 2016 (*)

(Common foreign and security policy — Restrictive measures in respect of actions undermining or threatening Ukraine — Freezing of funds — Restrictions on admission to the territories of the Member States — Natural person actively supporting or implementing actions undermining or threatening Ukraine — Natural person benefiting from Russian decision-makers responsible for the annexation of Crimea — Rights of defence — Obligation to state reasons — Manifest errors of assessment — Right to property — Freedom to conduct a business — Right to respect for private life — Proportionality)

In Case T-720/14,

Arkady Romanovich Rotenberg, residing in Saint Petersburg (Russia), represented initially by D. Pannick QC, M. Lester, Barrister, and M. O'Kane, Solicitor, subsequently by D. Pannick and M. Lester, by S. Hey and H. Brunskill, Solicitors, and by Z. Al-Rikabi, Barrister, and finally by D. Pannick, M. Lester and Z. Al-Rikabi,

applicant,

v

Council of the European Union, represented by J.-P. Hix and B. Driessen, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU for annulment in part of (i) Council Decision 2014/145/CFSP 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. 16), as amended, first, by Council Decision 2014/508/CFSP of 30 July 2014 (OJ 2014 L 226, p. 23), secondly, by Council Decision (CFSP) 2015/432 of 13 March 2015 (OJ 2015 L 70, p. 47), thirdly, by Council Decision (CFSP) 2015/1524

of 14 September 2015 (OJ 2015 L 239, p. 157), and, fourthly, by Council Decision (CFSP) 2016/359 of 10 March 2016 (OJ 2016 L 67, p. 37), and (ii) 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), as implemented, first, by Council Implementing Regulation (EU) No 826/2014 of 30 July 2014 (OJ 2014 L 226, p. 16), secondly, by Council Implementing Regulation (EU) 2015/427 of 13 March 2015 (OJ 2015 L 70, p. 1), thirdly, by Council Implementing Regulation (EU) 2015/1514 of 14 September 2015 (OJ 2015 L 239, p. 30), and, fourthly, by Council Implementing Regulation (EU) 2016/353 of 10 March 2016 (OJ 2016 L 67, p. 1), in so far as those acts concern the applicant,

THE GENERAL COURT (Ninth Chamber),

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

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure and further to the hearing on 29 June 2016,

gives the following

Judgment

Background to the dispute

1 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).

2 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).

3 Subsequently, on 25 July 2014, the Council adopted Decision 2014/499/CFSP amending Decision 2014/145 (OJ 2014 L 221, p. 15) and Regulation (EU) No 811/2014 amending Regulation No 269/2014 (OJ 2014 L 221, p. 11) in order, inter alia, to amend the criteria by which natural or legal persons, entities or bodies could be made subject to the restrictive measures at issue.

4 Article 2(1) and (2) of Decision 2014/145, as amended by Decision 2014/499 (‘Decision 2014/145, as amended’), is worded 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; or

(d) natural or legal persons, entities or bodies actively supporting, materially or financially, or benefiting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine,

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.’

5 The detailed rules governing that freezing of funds are laid down in the subsequent paragraphs of that article.

6 Article 1(1)(a) and (b) of Decision 2014/145, as amended, prohibits the entry into or transit through the territories of Member States of natural persons meeting criteria substantially identical to those set out in Article 2(1)(a) and (d) of that decision.

7 Regulation No 269/2014, as amended by Regulation No 811/2014 (‘Regulation No 269/2014, as amended’), requires the adoption of measures to freeze funds and lays down the detailed rules governing that freezing in terms essentially identical to those of Decision 2014/145, as amended. Article 3(1)(a) to (d) of that regulation largely reproduces Article 2(1)(a) to (d) of that decision.

8 On 30 July 2014, in view of the gravity of the situation in Ukraine, the Council adopted (i) Decision 2014/508/CFSP amending Decision 2014/145 (OJ 2014 L 226, p. 23), and (ii) Implementing Regulation (EU) No 826/2014 implementing Regulation No 269/2014 (OJ 2014 L 226, p. 16) (‘the July 2014 measures’).

9 By those two measures, the name of the applicant, Mr Arkady Romanovich Rotenberg, was added to the list annexed to Decision 2014/145, as amended, and to that

contained in Annex I to Regulation No 269/2014, as amended ('the lists at issue'), on the following grounds ('the first statement of reasons'):

'Mr Rotenberg is a long-time acquaintance of President Putin and his former judo sparring partner.

He has developed his fortune during President Putin's tenure. He has been favoured by Russian decision-makers in the award of important contracts by the Russian State or by State-owned enterprises. His companies were notably awarded several highly lucrative contracts for the preparations of the Sochi Olympic Games.

He is a major shareholder of Giprotransmost, a company which has received a public procurement contract by a Russian State-owned Company to conduct the feasibility study of the construction of a bridge from Russia to the illegally annexed Autonomous Republic of Crimea, therefore consolidating its integration into the Russian Federation which in turn further undermines the territorial integrity of Ukraine.'

10 The Council published a notice for the attention of the persons and entities subject to the July 2014 measures in the *Official Journal of the European Union* of 31 July 2014.

11 That notice stated, inter alia, that the persons and entities concerned could submit a request to the Council, together with supporting documentation, that the decision to include them on the lists annexed to the July 2014 measures be reconsidered.

12 By letters of 4 and 17 September and 2 October 2014, the applicant made a request to the Council for access to the information and documents justifying the inclusion of his name on the lists at issue and a request for reconsideration of that listing ('the request for reconsideration').

13 By letter of 16 October 2014, the Council replied to the applicant's requests referred to in paragraph 12 above. It stated, inter alia, that the request for reconsideration was under examination and that the applicant could have access to certain documents which were enclosed with that letter.

14 By letter of 19 December 2014, the Council refused the request for reconsideration, granted the applicant access to further documents and notified him of the new draft statement of reasons which it intended to adopt in order to maintain the restrictive measures against him, whilst setting a time limit within which he could submit his observations. That draft statement of reasons reads as follows:

'Mr Rotenberg is a long-time acquaintance of President Putin and his former judo sparring partner.

He has developed his fortune during President Putin's tenure. His level of economic success is attributable to the influence of key decision-makers favouring him, notably in the award of public contracts.

He has benefited from his close personal relationship with Russian decision-makers as he was awarded important contracts by the Russian State or by State-owned enterprises. His companies were notably awarded several highly lucrative contracts for the preparations of the Sochi Olympic Games.

He is the beneficial owner of the company Volgomost, which in turn through the company "MIK" controls the company Giprotransmost. Giprotransmost has received a public procurement contract by a Russian State-owned Company to conduct the feasibility study of the construction of a bridge from Russia to the illegally annexed Autonomous Republic of Crimea, therefore consolidating its integration into the Russian Federation which in turn further undermines the territorial integrity of Ukraine.

He is the chairman of the board of directors of publishing house Prosvescheniye, which has notably implemented the project "To the Children of Russia: Address — Crimea", a public relations campaign that was designed to persuade Crimean children that they are now Russian citizens living in Russia, and thereby supporting the Russian Government's policy to integrate Crimea into Russia.'

15 By letter of 14 January 2015, the applicant submitted observations to the Council on, inter alia, that draft statement of reasons.

16 By letter of 13 February 2015, the Council informed the applicant of its intention to renew the measures in Decision 2014/145, as amended, and Regulation No 269/2014, as amended, and to maintain his name on the lists at issue, on the basis of a new amended statement of reasons which responded to the observations submitted by the applicant. The Council also attached to its letter publicly available supporting documents and invited the applicant to comment on the new statement of reasons before 26 February 2015.

17 On 13 March 2015, by adopting Decision (CFSP) 2015/432 amending Decision 2014/145 (OJ 2015 L 70, p. 47), and Implementing Regulation (EU) 2015/427 implementing Regulation No 269/2014 (OJ 2015 L 70, p. 1) ('the March 2015 measures'), the Council extended until 15 September 2015 the application of the restrictive measures provided for in the July 2014 measures and amended the lists at issue.

18 Following those amendments, the applicant's name was maintained on the lists at issue with the following statement of reasons ('the second statement of reasons'):

'Mr Rotenberg is a long-time acquaintance of President Putin and his former judo sparring partner.

He has developed his fortune during President Putin's tenure. His level of economic success is attributable to the influence of key decision-makers favouring him, notably in the award of public contracts.

He has benefited from his close personal relationship with Russian decision-makers as he was awarded important contracts by the Russian State or by State-owned enterprises. His companies were notably awarded several highly lucrative contracts for the preparations for the Sochi Olympic Games.

He is also the owner of the company Stroygazmontazh which has been awarded a State contract for the construction of a bridge from Russia to the illegally annexed Autonomous Republic of Crimea, therefore consolidating its integration into the Russian Federation which in turn further undermines the territorial integrity of Ukraine.

He is the chairman of the board of directors of publishing house Prosvescheniye, which has notably implemented the project "To the Children of Russia: Address — Crimea", a public relations campaign that was designed to persuade Crimean children that they are now Russian citizens living in Russia and thereby supporting the Russian Government's policy to integrate Crimea into Russia.'

19 On 14 March 2015, the Council published a notice in the *Official Journal of the European Union* for the attention of the persons and entities subject to the restrictive measures provided for in Decision 2014/145, as amended by Decision 2015/432, and in Regulation No 269/2014, as implemented by Implementing Regulation 2015/427 (OJ 2015 C 88, p. 3). The content of that notice was essentially the same as that of the notice referred to in paragraphs 10 and 11 above.

20 On the same date, the Council published a second notice for the attention of the natural persons (data subjects) to whom the restrictive measures provided for in Regulation No 269/2014, as implemented by Implementing Regulation 2015/427 (OJ 2015 C 88, p. 4), apply, in which it informed those persons of the means and purposes of the processing of their personal data and of the fact that they could refer the matter to the European Data Protection Supervisor (EDPS) in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p.1).

21 The March 2015 measures were communicated to the lawyers representing the applicant in the present case by a letter from the Council dated 16 March 2015.

22 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 Council extended the application of the restrictive measures at issue until 15 March 2016, without amending the statement of reasons concerning the applicant.

23 The September 2015 measures were communicated to the lawyers representing the applicant in the present case by a letter from the Council dated 15 September 2015.

24 On the same day, the Council published two notices in the *Official Journal of the European Union* which were essentially identical to those referred to paragraphs 19 and 20 above.

25 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 Council extended the application of the restrictive measures at issue until 15 September 2016, without amending the statement of reasons concerning the applicant.

26 The March 2016 measures were communicated to the lawyers representing the applicant in the present case by a letter from the Council dated 14 March 2016.

27 On 12 March 2016, the Council published two notices in the *Official Journal of the European Union* which were essentially identical to those referred to in paragraphs 19 and 20 above.

Procedure and forms of order sought

28 By application lodged at the Court Registry on 10 October 2014, the applicant brought an action for annulment of the July 2014 measures, in so far as they concern him. That action was registered as Case T-720/14.

29 In the defence, lodged at the Court Registry on 19 December 2014, the Council claimed, inter alia, that the present action was inadmissible on the grounds of *lis pendens* in so far as it was identical in every respect to another action, registered as Case T-717/14, which the applicant had brought on the same date as that on which the present action was lodged.

30 The written part of the procedure was closed on 14 April 2015.

31 By a statement lodged at the Court Registry on 26 May 2015, the applicant sought to modify the application so as to cover also annulment of the March 2015 measures, in so far as they concern him.

32 The Council submitted observations on that request by document lodged at the Court Registry on 2 July 2015. It argued that the statement was partially inadmissible in that certain grounds and arguments relied on in the application challenging the July 2014 measures could not be transposed to the claim for annulment of the March 2015 measures.

33 By a statement lodged at the Court Registry on 2 November 2015, the applicant sought to modify the application so as to cover also annulment of the September 2015 measures, in so far as they concern him.

34 The Council submitted observations on that request by document lodged at the Court Registry on 11 December 2015. It essentially raised the same plea of inadmissibility as that set out in paragraph 32 above.

35 By a statement lodged at the Court Registry on 24 March 2016, the applicant sought to modify the application so as to cover also annulment of the March 2016 measures, in so far as they concern him.

36 The Council submitted observations on that request by document lodged at the Court Registry on 11 May 2016.

37 Acting upon a proposal of the Judge-Rapporteur, the General Court (Ninth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure under Article 89(3) of the Rules of Procedure of the General Court, put a question to the Council for written reply and asked it to produce a document.

38 The Council complied with those measures within the prescribed period.

39 The parties presented oral argument and replied to the questions put by the Court at the hearing on 29 June 2016.

40 At that hearing, the Council, in reply to a question from the Court, withdrew its plea of inadmissibility based on the existence of a situation of *lis pendens*, in view in particular of the fact that Case T-717/14 had been removed from the register by order of the President of the Ninth Chamber of the General Court of 14 November 2014, following the applicant's discontinuance of the action, and of the case-law on which the applicant relied (see judgment of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraphs 31 and 32 and the case-law cited).

41 The applicant claims that the Court should:

– annul the July 2014 measures in so far as they concern him;

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

– order the Council to pay the costs.

42 The Council contends that the Court should:

– dismiss the action;

– dismiss the requests to modify the application;

– order the applicant to pay the costs;

– in the alternative, in the event of annulment, maintain the effects of Decision 2016/359, on the basis of Article 264 TFEU, until the annulment of Implementing Regulation 2016/353 takes effect.

Law

43 In support of his action, the applicant relies on five pleas in law, alleging, first, infringement of the obligation to state reasons; secondly, manifest errors of assessment; thirdly, breach of the principle of protection of personal data; fourthly, infringement of the rights of the defence and of the right to effective judicial protection; and, fifthly, infringement, without justification or proportion, of his fundamental rights, including the right to property, the right to privacy and the freedom to conduct a business.

44 It is appropriate to rule first of all on the claim for annulment of the July 2014 measures, and subsequently on the applicant's other claims.

The claim for annulment of the July 2014 measures

The first plea in law, alleging infringement of the obligation to state reasons

45 The applicant claims that the statement of reasons for including his name on the lists annexed to the July 2014 measures is vague and not particularised. Thus, it was impossible for him to understand by which criterion that listing was decided. In particular, the Council had not specified whether the applicant was regarded as being responsible for actions or policies undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as being a person associated with persons falling within that category, or as actively supporting, materially or financially, or benefiting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine. The Council had also failed to identify which decision-makers were being referred to, or how they had favoured the applicant.

46 The Council disputes the applicant's arguments.

47 It must 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, 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 Courts of the European Union and, secondly, to enable those Courts to review the lawfulness of the act. The obligation to state reasons thus imposed 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 Courts of the European Union (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).

48 Accordingly, unless there are compelling reasons pertaining to the security of the European Union or of its Member States or to 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 the case-law cited).

49 Furthermore, the statement of reasons must be appropriate to the act at issue and to 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 act in question, the nature of the reasons given and the interest which the addressees of the act, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for an act 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).

50 In the present case, the reasons relied on in relation to the applicant in the July 2014 measures are those set out in paragraph 9 above.

51 It should be noted that although the first statement of reasons does not explicitly state which of the relevant criteria the Council took as a basis for entering the applicant's name on the lists at issue, it is sufficiently clear on reading that statement of reasons that the Council applied the criteria concerning:

– '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' (criterion laid down in Article 2(1)(a) of Decision 2014/145, as amended, in Article 3(1)(a) of Regulation No 269/2014, as amended, and, in essence, in Article 1(1)(a) of Decision 2014/145, as amended; 'the first relevant criterion');

– 'natural or legal persons, entities or bodies actively supporting, materially or financially, or benefiting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine' (criterion laid down in Article 2(1)(d) of Decision 2014/145, as amended, in Article 3(1)(d) of Regulation No 269/2014, as amended, and, in essence, in Article 1(1)(b) of Decision 2014/145, as amended; 'the second relevant criterion').

52 As regards the first relevant criterion, as the Council correctly contends, the third paragraph of the first statement of reasons constitutes an application of that criterion, since it refers to the role allegedly played by the applicant within the company Giprotransmost, which is considered to have obtained a State contract to conduct a feasibility study of the construction of a bridge between Russia and Crimea, and states that the construction of that bridge consolidates the integration of Crimea into the Russian Federation.

53 It is therefore possible to understand from this part of the first statement of reasons that one of the grounds for entering the applicant's name on the lists at issue is that the Council considered the applicant, by virtue of his alleged role as a major shareholder of Giprotransmost, to have been among those who were actively supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

54 It must be noted, again as does the Council, that the third paragraph of the first statement of reasons gives actual and specific reasons for the applicant's listing, in so far as it refers to a specific company and a specific State contract relating to a project which is deemed to help consolidate the integration of Crimea into the Russian Federation, thereby undermining the territorial integrity, sovereignty and independence of Ukraine.

55 As regards the second relevant criterion, it follows from the first two paragraphs of the first statement of reasons that the Council considered the applicant to have been benefiting from his personal relationship with President Putin, in so far as the applicant was able, during President Putin's presidency, to secure important contracts awarded by the Russian State and by State-owned enterprises, in particular in connection with preparations for the Olympic Games in Sochi (Russia).

56 While it is true that that part of the first statement of reasons does not indicate who the relevant decision-makers are and refers only to the example of contracts relating to the Olympic Games, the express reference to President Putin and the example mentioned above permit the inference that the Council did provide sufficient details.

57 Since the first statement of reasons enabled the applicant to understand the reasons for the inclusion of his name on the lists at issue and the Court is in a position to carry out its review as to whether that statement of reasons is well founded, it must be concluded that the Council has fulfilled the obligation laid down by Article 296 TFEU.

58 The question whether that statement of reasons is well founded falls within the assessment of the second, rather than the present plea. In that regard, it must be borne in mind that the obligation to state adequate reasons in an act is an essential procedural requirement which must be distinguished from the question whether the reasons are well founded, which is concerned with the substantive legality of the act at issue. The reasoning on which an act is based consists in a formal statement of the grounds on which that act is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the act, but not the statement of reasons in it, which may be

adequate even though it sets out reasons which are incorrect (see 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).

59 Consequently, the first plea in law must be rejected, so far as concerns the July 2014 measures.

The second plea in law, alleging manifest errors of assessment

60 The applicant submits that the Council made manifest errors of assessment in considering that there was a sufficient factual basis to justify the inclusion of his name on the lists at issue on the basis of the first and second relevant criteria. In that context, he observes that the Council bears the burden of proof and that it cannot rely on assumptions.

61 As regards the first relevant criterion, the applicant maintains that the Council failed to establish, before adopting the July 2014 measures, that he was a shareholder, or indeed a majority shareholder, in Giprotransmost. Therefore, according to the applicant, that criterion does not apply to him.

62 As regards the second relevant criterion, the applicant argues that it has not in any way been proved that he is associated with Russian decision-makers responsible for the situation in Ukraine and the annexation of Crimea and Sevastopol, decision-makers who, moreover, are not themselves subject to the restrictive measures at issue. The Council's references to his relations with President Putin, his fortune and the State contracts which he was awarded are not relevant, since it has not been established that those circumstances are linked to the events giving rise to the adoption of the restrictive measures.

63 In particular, the applicant states that the contracts to which the July 2014 measures refer, including those relating to the preparations for the Sochi Olympic Games, were concluded several years before those events took place, so that it would have been impossible for the companies awarded those contracts and for their shareholders to have known that, by entering into them, they risked having restrictive measures imposed on them in reaction to a situation entirely unconnected to those contracts. Such an outcome is, in his view, contrary, inter alia, to the principle of legal certainty.

64 The Council contends that the first statement of reasons is based on open-source material which it already had at its disposal when the July 2014 measures were adopted.

65 With regard to the first relevant criterion, the Council observes that open sources make it possible to establish that, although the applicant is not directly a shareholder in Giprotransmost, he controls that company through the company OAO Volgomost, of which he is the beneficial owner. In view of that open-source material, the applicant cannot simply deny his status as a beneficial owner of Volgomost.

66 With regard to the second relevant criterion, the Council contends that it does not require that the designated persons benefit personally from the situation in Ukraine and the annexation of Crimea or Sevastopol. It is sufficient that they benefit from the decision-makers responsible for those events. According to the Council, if it were otherwise, that second criterion could be confused with the first.

67 Furthermore, the political and economic situation in Russia permits the inference that the applicant's economic success, due in particular to the award of a number of State contracts from which he does not deny having benefited, demonstrates that he benefits from the regime and the decision-makers responsible for the situation in Ukraine and the annexation of Crimea and Sevastopol. Those decision-makers clearly include President Putin, whom the applicant does not deny having known for a long time, and other high-ranking Russian office-holders. The fact that President Putin and those high-ranking office-holders are not themselves subject to restrictive measures does not affect the appropriateness of adopting such measures against the applicant.

68 With regard to the applicant's argument concerning the lack of legal certainty, the Council contends that that issue is irrelevant. The crucial factor is that the award of the contracts referred to in the July 2014 measures, which were highly lucrative for the applicant, could not have come about without the agreement of high-ranking office-holders in the Russian Government. They are responsible for the situation in Ukraine and the annexation of Crimea and Sevastopol, either because of their general responsibility, or because of specific decisions which they took in that context. There is no need for a temporal link between the advantages obtained by the applicant and those events.

69 Furthermore, the State contract awarded to Giprotransmost is a further example of the contracts on which the Council relied when it applied the second relevant criterion to the applicant.

70 It must be borne in mind 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 Courts of the European Union may not substitute their assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review carried out by those Courts 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).

71 However, although the Council thus 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 of Fundamental Rights of the European Union 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 persons 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 (judgments of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 41 and 45, and of 26 October 2015, *Portnov* v *Council*, T-290/14, EU:T:2015:806, paragraph 38).

72 It is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (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).

73 In the present case, the applicant's name was entered on the lists at issue pursuant to the first and second relevant criteria.

– The application of the first relevant criterion to the applicant

74 With regard to the first relevant criterion, it must be observed that this implies that a direct or indirect link is established between the activities or the actions of the person or entity targeted and the situation in Ukraine underpinning the adoption of the restrictive measures concerned. In other words, those persons or entities must, by their conduct, have been responsible for actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

75 The ground relied on vis-à-vis the applicant which relates to the first relevant criterion concerns the fact that he was considered to be a major shareholder, indeed a majority shareholder, in Giprotransmost, which was awarded the conduct of a feasibility study of the construction of a bridge between Russia and Crimea. According to the Council, the very award of that contract supports the conclusion that the applicant is supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine.

76 The applicant, however, denies being a shareholder, let alone a majority shareholder, in Giprotransmost, with which he claims to have no connection.

77 It must be noted that the Council does not even attempt to show that it had evidence to prove that the applicant was himself a shareholder, or majority shareholder, in Giprotransmost, as indicated in the first statement of reasons.

78 Furthermore, after the applicant had, in the letters mentioned in paragraph 12 above, challenged his alleged status as shareholder of Giprotransmost, the Council adopted a different explanation, which consisted in maintaining that the applicant controlled that company through its parent company, Volgomost, of which he was considered to be the 'beneficial owner', as was apparent from a press report referred to by the Council, which reads as follows:

'According to the Interfax report, OAO Giprotransmost's majority shareholder is OOO MIK, which is fully owned by OAO Volgomost. OAO Volgomost itself is majority owned by five Cypriot companies: Tevaryso Trading Limited (19.91%), Eltores Investments Ltd (19.91%), Chrysanthemum Services Limited (19.69%), Sormenia Investments Ltd (19.63%) and E.C.C.P. Investments Limited (14.57%). The entrepreneur Arkadiy Rotenberg has been named in the press as the beneficial owner of Volgomost. According to information from the Kommersant newspaper, he is the beneficial owner of Volgomost.'

79 First, it must be observed that that article merely refers to other articles, no details of which are given, from which it appears that the applicant is the beneficial owner of Volgomost.

80 Such indirect evidence is not a sufficient basis on which to conclude that the Council has satisfied the burden of proof it bears in accordance with the case-law (see paragraph 72 above).

81 Secondly, it will be recalled that, in its letter of 19 December 2014 referred to in paragraph 14 above, the Council confirmed that it wished to amend the part of the first statement of reasons relating to Giprotransmost as follows:

'[The applicant] is the beneficial owner of the company Volgomost, which in turn through the company "MIK" controls the company Giprotransmost. Giprotransmost has received a public procurement contract by a Russian State-owned Company to conduct the feasibility study of the construction of a bridge from Russia to the illegally annexed Autonomous Republic of Crimea, therefore consolidating its integration into the Russian Federation which in turn further undermines the territorial integrity of Ukraine.'

82 In his letter of 14 January 2015 referred to in paragraph 15 above, the applicant disputed the accuracy of that amendment and any suggestion that it was supported by sufficient evidence. He stated that he had no connection with Volgomost and that the press reports on which the Council was relying were merely reporting rumours in that respect.

83 Faced with those objections, the Council, in its letter of 13 February 2015 referred to in paragraph 16 above, adopted a new statement of reasons, which does not refer to the applicant's role in Volgomost or Giprotransmost, but to another company, Stroygazmontazh. It is that statement of reasons that was ultimately relied on with effect from the March 2015 measures (see paragraph 18 above).

84 In those circumstances, the Council's own conduct confirms that it did not have sufficient proof of the fact that the applicant controlled Giprotransmost, at the time of the adoption of the July 2014 measures. It must admittedly be noted in that regard, as the Council pointed out at the hearing, that the first and second statements of reasons are not mutually contradictory, even though they refer to two different companies. Giprotransmost was responsible for a feasibility study relating to the construction of the bridge in question, whereas Stroygazmontazh was responsible for the construction of that bridge. However, it must be noted that that remark by the Council does not in fact prove that the applicant controlled Giprotransmost.

85 That finding cannot be called into question by the argument which the Council derives from the fact that, in the application in Case T-717/14 (see paragraph 29 above), the applicant did not challenge the veracity of his role within Giprotransmost, as described in the July 2014 measures, but merely referred to the irrelevance of that role. It is clear that the Council did not have that application when it adopted the July 2014 measures, so there is no need to rule on the precise meaning of the applicant's statements in that document, which is not part of the file in the present case.

86 Consequently, the applicant's arguments challenging the validity of the statement of reasons used in his case in the July 2014 measures must be accepted as regards the first relevant criterion.

– The application of the second relevant criterion to the applicant

87 With regard to the second relevant criterion, it must be observed that it does not require that the persons or entities concerned benefit personally from the annexation of Crimea or the destabilisation of Eastern Ukraine. It is sufficient, as the Council notes, that they benefit from one of the 'Russian decision-makers' responsible for those events, and it is not necessary to establish a link between the advantages enjoyed by the designated persons and the annexation of Crimea or the destabilisation of Eastern Ukraine.

88 If the existence of such a link had to be established in order for this criterion to be applied, the latter would be entirely irrelevant in relation to the first relevant criterion, which requires a link between the actions of the designated persons and the situation which has arisen in Ukraine.

89 However, in the present case, the Council wrongly concluded that it could apply the second relevant criterion to the applicant.

90 In that regard, first, it must be noted that the first statement of reasons enables only President Putin to be identified as a Russian decision-maker from whom the applicant is deemed to have benefited. The reference to 'Russian decision-makers', without further details, is too vague and is not sufficient to justify the inclusion of the applicant on the lists at issue (see, by analogy, judgment of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 95).

91 Secondly, contrary to the Council's submission, it is necessary, in order for the second relevant criterion to be applied, that the Russian decision-makers from whom the benefits enjoyed by those targeted are derived should already at the very least have started to prepare the annexation of Crimea and the destabilisation of Eastern Ukraine. Where that condition is satisfied, it must be concluded that the recipients of those benefits cannot be unaware of the involvement of those decision-makers in the preparations, and can expect their resources, derived at least in part from those benefits, to be targeted by restrictive measures, with the aim of preventing them from being able to support the decision-makers in question.

92 By contrast, if the second relevant criterion were applicable even when the abovementioned condition is not satisfied, the principle of legal certainty would be compromised, as the applicant submits. On that point, it must be noted that the restrictive measures in question are a reaction to the policies and activities of the Russian authorities in relation specifically to Ukraine, and not to the conduct of those authorities in general. Those policies and activities have been implemented since the end of February 2014.

93 In the present case, the Council acknowledges that the contracts with the Russian State or with State-owned enterprises from which the applicant is said to have benefited, according to the press reports relied on by the Council, relate to an earlier period than that during which Russian decision-makers, notably President Putin, had started to threaten Ukraine. Those contracts relate in particular to the preparations for the Sochi Olympic Games, which were held in the winter of 2014.

94 Assuming that the situation in Russia can be regarded as being such that economic activities on the scale of those carried out by the applicant are not possible without the approval of the president of that country, as is the case, according to the case-law, in Belarus (judgment of 12 May 2015, *Ternavsky* v *Council*, T-163/12, not published, EU:T:2015:271, paragraph 121), in this instance, the Council has not proved that the applicant had been favoured by President Putin at the time when the latter took the action in relation to Ukraine to which the restrictive measures at issue are intended to constitute a response. In that regard, it must be noted that, as is apparent from paragraphs 74 to 85 above with regard to the first relevant criterion, the Council has not proved that there is a link between the applicant and Giprotransmost, with the result that, contrary to the Council's contention, it cannot rely on the contract obtained by that company as an example of the benefits obtained by the applicant.

95 In those circumstances, the Court must uphold the present plea with regard to the July 2014 measures and annul those measures, and there is no need to examine the other arguments on which the applicant relied in that context, or his other pleas.

The claims for annulment of the other contested acts

96 By documents lodged at the Court Registry on 26 May and 2 November 2015 and on 24 March 2016, the applicant sought to modify the application so as to cover annulment of the other contested acts, in so far as they concern him.

97 When the applicant modified the application so as to cover the March 2015 measures, he maintained the five pleas in law on which he had relied in respect of the July 2014 measures, while raising additional arguments which concerned, inter alia, the fact that the Council had in the meantime given partly different reasons with respect to the applicant.

98 Since the September 2015 and March 2016 measures merely extended the application of the restrictive measures at issue without amending the second statement of reasons concerning the applicant, he did not, in his second and third requests to modify the application, raise new arguments, merely maintaining those previously relied on.

99 The Council does not challenge the admissibility of those requests as such, but maintains that certain pleas or arguments relied on in the application in relation to the July 2014 measures cannot be applied to the other contested acts.

The first plea in law, alleging infringement of the obligation to state reasons

100 The applicant claims that the other contested acts, like the July 2014 measures, infringe the obligation to state reasons so far as concerns him. In particular, it is not possible for him to understand which criteria the Council applied in order to justify retaining him on the lists at issue, or in what way he was favoured and by whom.

101 The Council disputes the applicant’s arguments.

102 The second statement of reasons used by the Council with regard to the applicant is set out in paragraph 18 above.

103 It must be noted that the first three paragraphs correspond, in essence, to the first two paragraphs of the first statement of reasons, so that the considerations set out in paragraphs 55 to 57 above apply by analogy and the applicant’s arguments in relation to those paragraphs must be rejected.

104 The fourth and fifth paragraphs of the second statement of reasons identify more specific and concrete information concerning the posts held by the applicant within Stroygazmontazh and the publishing house Prosvescheniye.

105 Without prejudging the question as to whether those two final paragraphs are well founded, it should be noted that they precisely define the applicant's role as owner of Stroygazmontazh and chairman of the board of directors of Prosvescheniye. Further, each of those companies is stated to be carrying on activities which can readily be associated with the first relevant criterion.

106 In the case of Stroygazmontazh, it was awarded a State contract for the construction of a bridge between Russia and the Autonomous Republic of Crimea, thereby consolidating its integration into the Russian Federation.

107 In the case of Prosvescheniye, it implemented the project 'To the Children of Russia: Address — Crimea', a public relations campaign designed to persuade Crimean children that they are now Russian citizens living in Russia, thereby supporting the Russian Government's policy to integrate Crimea into Russia.

108 It is possible to understand from such a statement of reasons that, in view of the applicant's role in each of those companies, he bears responsibility for their actions, which the Council considers to be covered by the first relevant criterion, namely those which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine.

109 In those circumstances, the statement of reasons for the other contested acts enabled the applicant to understand that his name had been maintained on the lists at issue because of the posts he held within the companies referred to above and their activities, which is confirmed by the fact that, in the context of the second plea, he takes issue specifically with the validity of the Council's reasoning in that respect. Furthermore, as the reasons for the Council's choice were clearly stated in those acts, the Court is in a position to assess whether those reasons are well founded.

110 In accordance with the case-law recalled in paragraph 58 above, it must be concluded that the statement of reasons for the other contested acts is sufficient and that the question whether that statement of reasons is well founded must be assessed in the context of the examination of the second plea.

The second plea in law, alleging manifest errors of assessment

111 As regards that part of the second statement of reasons which was already to be found, in essence, in the first, the applicant puts forward the same arguments as those which he put forward in the application and in the reply with regard to the July 2014 measures (see paragraph 63 above), whilst stating that his companies were not shown any favouritism and disputing the Council's ability to rely on a presumption that a successful businessman in Russia can, by that fact alone, be regarded as benefiting from Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine.

112 With regard to the fourth paragraph of the second statement of reasons, the applicant argues that owning Stroygazmontazh does not mean that he is responsible for actions which threaten the territorial integrity of Ukraine or that he supports such actions, since the project entrusted to that company to build a bridge between Russia and Crimea was planned well in advance of the annexation of Crimea and was not decided upon by the same persons as those responsible for that annexation.

113 In the light of his role within the publishing house Prosvescheniye, referred to in the fifth paragraph of the second statement of reasons, the applicant denies that the activities of that company are linked to the integration of Crimea into Russia and asserts that he cannot be held responsible for the content of the publication referred to by the Council, taking into account in particular the thousands of publications supplied by that publishing house.

114 The Council disputes the applicant's arguments.

115 As a preliminary point, it must be noted that, as regards the first three paragraphs of the second statement of reasons, the considerations set out in paragraphs 87 to 94 above apply, so that it must be concluded that the Council made a manifest error of assessment in deciding that the applicant's name could be maintained on the lists at issue on the basis of the reasons given in those paragraphs, applying the second relevant criterion.

116 However, it must be borne in mind that, according to settled case-law, having regard to the preventive nature of the restrictive measures at issue, if, in the course of their review of the lawfulness of the contested decision, the Courts of the European Union consider that, at the very least, one of the reasons relied on by the Council in respect of a person subject to those measures is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself a sufficient basis to justify the adoption or continuation of those measures, the fact that the same cannot be said of other such reasons cannot justify the annulment of the acts incorporating those measures (see, to that effect and by analogy, judgment of 12 May 2015, *Ternavsky* v *Council*, T-163/12, not published, EU:T:2015:271, paragraph 124 and the case-law cited).

117 Consequently, it is necessary to determine whether the fourth or fifth paragraphs of the second statement of reasons are founded on sufficient evidence and can thus justify, in accordance with the first or second relevant criterion, the applicant's name having been retained on the lists at issue.

118 It will be recalled that the fourth paragraph of the second statement of reasons reads as follows:

'[The applicant] is also the owner of the company Stroygazmontazh which has been awarded a State contract for the construction of a bridge from Russia to the illegally annexed Autonomous Republic of Crimea, therefore consolidating its integration into the Russian Federation which in turn further undermines the territorial integrity of Ukraine.'

119 As the Council emphasises, the applicant does not contest the accuracy of the facts mentioned in that paragraph. Nor does he deny that he is the owner of Stroygazmontazh or that that company was awarded a State contract for the construction of a bridge between Russia and Crimea. In any event, the evidence produced by the Council, which predates the adoption of the March 2015 measures, substantiates those statements.

120 By contrast, the applicant takes issue with the conclusion in the fourth paragraph of the second statement of reasons that the construction of the bridge in question consolidates the integration of Crimea into the Russian Federation and thus further undermines the territorial integrity of Ukraine.

121 It must be noted in that regard that, as the Council observes, it is currently impossible to reach Crimea directly from Russia by land, whereas the bridge will establish such direct access and therefore facilitate trade between Russia and Crimea, not only in relation to goods and services, but also from a military point of view. It follows from this that the Council was fully entitled to consider that, in the light of the political and military developments in the region, which were characterised by Russia's actions leading to the holding of what was described as a referendum on the status of Crimea, followed by Russia's recognition of the results of that referendum and the illegal annexation of Crimea, the construction of the bridge would consolidate the integration of Crimea into Russia, thereby further undermining the territorial integrity of Ukraine.

122 The situation brought about by those actions on Russia's part constitutes a major change, as a result of which the construction of the bridge has entirely new implications. The applicant's argument that the construction of the bridge between Russia and Crimea had already been contemplated earlier is thus entirely irrelevant.

123 It follows from this that the fourth paragraph of the second statement of reasons correctly applies the first relevant criterion with regard to the applicant.

124 Although, in accordance with the case-law referred to in paragraph 116 above, the applicant's retention on the lists at issue is sufficiently justified if one of the reasons relied on by the Council is well founded, it is appropriate, for the sake of completeness, to examine also the applicant's arguments in relation to the reason given in the fifth paragraph of the second statement of reasons.

125 That paragraph reads as follows:

'[The applicant] is the chairman of the board of directors of publishing house Prosvescheniye, which has notably implemented the project "To the Children of Russia: Address — Crimea", a public relations campaign that was designed to persuade Crimean children that they are now Russian citizens living in Russia and thereby supporting the Russian Government's policy to integrate Crimea into Russia.'

126 The applicant does not deny being the chairman of that publishing house but claims that its activities do not amount to his supporting the integration of Crimea into Russia and, moreover, that he played no part in that.

127 First, it must be observed that, as the Council rightly remarks, the existence of that project and its wide scope, entailing the production of more than 2.5 million books, are established by several open-source documents, notably from the website of the Public Council under the Ministry of Education and Science of the 'government' of Crimea and even the website of Prosvescheniye itself, as well as by a statement of the public relations company AGT Communications, which participated in the campaign. It must be noted in that regard that the Council had those documents at its disposal before it adopted the March 2015 measures, as is evident from the letter of 19 December 2014 (see paragraph 14 above).

128 The project concerned, as its very title shows (To the Children of Russia: Address — Crimea), consists of a public relations campaign designed to persuade Crimean children that they are Russian citizens living in Russia. The campaign therefore supports the Russian government's policy of integrating Crimea into Russia.

129 In particular, it is evident from the documents produced by the Council that, according to the Ministry of Education and Science mentioned above, the project in question was established 'as part of the orders of the President of Russia' and 'in connection with the transfer of Crimea and Sevastopol to Russian educational standards'. Likewise, the Council relied on a document from the public relations company AGT Communications, which participated in the campaign, from which it is apparent that the textbooks produced by Prosvescheniye had been provided 'within the framework of moving the Crimean education system to the Russian standards', and that the campaign included 'contests of children's drawings "We live in Russia"'.

130 The applicant's first argument must therefore be rejected.

131 Secondly, it must be observed that, as chairman of the board of directors of Prosvescheniye, the applicant could not reasonably have been unaware of the editorial line in publications of the publishing house which he headed. It should be noted that the power to influence and the responsibility which might be supposed to result from that position necessarily implies the applicant's involvement in the campaign conducted by that company (see, to that extent and by analogy, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraphs 58 and 59). Thus, the Council was fully entitled to regard the applicant as having satisfied the first relevant criterion on that basis.

132 Accordingly, the applicant's second argument must also be rejected.

133 It follows from this that the fifth paragraph of the second statement of reasons also correctly applies the first relevant criterion to the applicant's situation.

134 In the light of the foregoing considerations, it must be held that the second plea is unfounded as regards the fourth and fifth paragraphs of the second statement of reasons, but well founded as regards the first three paragraphs. In those circumstances, in accordance with the case-law referred to in paragraph 116 above, the applicant cannot be granted annulment of the other contested acts on the basis of the present plea.

The third plea in law, alleging breach of the principle of data protection

135 The applicant claims, in essence, that the publication by the Council of unsubstantiated, unfounded and incorrect allegations, seriously damaging to his reputation, and which allege that he is involved in cases of corruption and criminal conduct, breaches the principles of protection of personal data, as provided for, inter alia, in Regulation No 45/2001. He states that the new grounds relied on in his case imply criminal conduct on his part, even though the Council did not use the terms 'corruption' or 'crime'.

136 The Council contests the substance of the applicant's arguments and adds that the allegedly incorrect information concerning the applicant's shareholding in Giprotransmost was eliminated by the adoption of the March 2015 measures. Since the applicant had not explained how his argument relating to that company was capable of being applied to the new grounds, that plea was inadmissible.

137 First, the Council's plea of inadmissibility must be upheld.

138 The applicant has indeed failed to explain how his argument in relation to Giprotransmost is to be applied to the other contested acts, which do not mention that company. Consequently, the conditions laid down in Article 76(d) of the Rules of Procedure, which essentially mirror those in Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991, have not been satisfied.

139 It must be borne in mind that, under those provisions, if they are not to be inadmissible, the pleas in law and arguments relied on in support of a request to modify the application must be set out in that request in sufficiently clear and precise terms to enable the defendant to prepare its defence and the Court to rule on that request (see, to that effect and by analogy, judgments of 13 June 2013, *Versalis* v *Commission*, C-511/11 P, EU:C:2013:386, paragraph 115, and of 13 September 2013, *Anbouba* v *Council*, T-592/11, not published, EU:T:2013:427, paragraph 72).

140 Secondly, and in any event, that plea in law is ineffective. Even if the Council had processed personal data concerning the applicant's shareholding in Giprotransmost in a way that was inconsistent with Regulation No 45/2001, that could not lead to the annulment of the other contested acts. However, were the applicant to succeed in proving that data was processed in that way, he could invoke an infringement of that regulation, in the context of an action for damages.

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

141 The applicant claims that the Council did not give him access to the evidence on which it intended to rely in order to retain his name on the lists at issue and that it did not give him a prior hearing in that regard. He adds that the Council's assertions to the effect that his companies were favoured and were awarded lucrative contracts without tendering procedures were made for the first time in the course of the present proceedings.

142 The Council disputes the applicant's arguments.

143 It should be borne in mind that the fundamental right to observance of the rights of the defence during a procedure preceding the adoption of a restrictive measure is expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights, which is recognised by Article 6(1) TEU as having the same legal value as the Treaties (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 102 and the case-law cited).

144 It must also be noted that, according to settled case-law, the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, this principle having, moreover, been reaffirmed by Article 47 of the Charter of Fundamental Rights (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 103 and the case-law cited).

145 In addition, according to settled case-law, the effectiveness of judicial review, which must apply in particular to the lawfulness of the grounds on which an EU authority relied in order to include a person or an entity on the lists of addressees of the restrictive measures adopted by that authority, means that that authority is bound to communicate those grounds to the person or entity concerned, so far as possible, either when that inclusion is decided on or, at the very least, as swiftly as possible after that decision is taken, in order to enable those addressees to exercise, within the periods prescribed, their right to bring an action (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 104 and the case-law cited).

146 Observance of that obligation to communicate the grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Courts of the European Union, and to put those Courts fully in a position in which they may carry out the review of the lawfulness of the EU act in question, which is their duty under the Treaty (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 105 and the case-law cited).

147 In accordance with the requirements laid down in that case-law, 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 to the natural or legal person, entity or body concerned, including the reasons for his or its inclusion on the list, either directly, if the address is known, or through the publication of a notice, providing such person or entity with an opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council is to review its decision and inform the natural or legal person, entity or body accordingly.

148 In addition, it must be observed, first, that it follows from the third paragraph of Article 6 of Decision 2014/145 that that decision is to be kept under constant review and, secondly, that, according to Article 14(4) of Regulation No 269/2014, the list annexed to that regulation is to be reviewed at regular intervals and at least every 12 months.

149 In the present case, it must be noted that, by the other contested acts, the applicant's name was retained on the lists at issue with a statement of reasons that partly differed from that contained in the July 2014 measures.

150 In that context, it should be borne in mind that although, according to the case-law, the Council was not required to hear the applicant before he was first listed, so that the restrictive measures against him would have a surprise effect (see, to that effect and by analogy, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraphs 110 to 113 and the case-law cited), it was in principle required to hear him before deciding to maintain him on the lists at issue. However, the right to be heard prior to the adoption of acts which maintain restrictive measures against persons already subject to those measures applies where the Council has admitted new evidence against those persons and not where those measures are maintained on the basis of the same grounds as those that justified the adoption of the initial act imposing the restrictive measures in question (see, to that effect and by analogy, judgment of 7 April 2016, *Central Bank of Iran* v *Council*, C-266/15 P, EU:C:2016:208, paragraph 33).

151 Given that the statement of reasons concerning the applicant in the other contested acts was partly amended, the Council was obliged to hear him before adopting the March 2015 measures.

152 As has already been observed in paragraphs 14 to 16 above, the Council, by letter of 19 December 2014, sent the firm of lawyers representing the applicant in the present case the new draft statement of reasons it was intending to adopt in order to maintain the restrictive measures against him, and set a time-limit for submission of observations.

153 That draft statement of reasons (see paragraph 14 above), was, except for the fourth paragraph, essentially the same as the second statement of reasons, which was used in the March 2015 measures. That fourth paragraph, however, mentioned the fact that the applicant was the beneficial owner of Volgomost which in turn controlled Giprotransmost. As regards Giprotransmost, the considerations set out in the July 2014 measures were reproduced.

154 On 14 January 2015, the applicant submitted observations to the Council notably on that draft statement of reasons, the applicant claiming that the reasons were unparticularised and irrelevant to the criteria by which a person could be made subject to restrictive measures. In particular, he denied being the beneficial owner of Volgomost, disputing the evidence on which the Council relied in that respect, and denied that his role within Prosvescheniye could justify his retention on the lists at issue.

155 By letter of 13 February 2015, the Council informed the applicant of its intention to maintain his name on the lists at issue on the basis of the second statement of reasons, which responded to the observations that had been submitted by the applicant. The Council also attached to its letter publicly available supporting documents and invited the applicant to comment on the new statement of reasons before 26 February 2015.

156 The applicant did not respond to that invitation.

157 The facts summarised above show that the Council discharged the obligations laid down by the case-law concerning observance of the applicant's rights of defence during the procedure culminating in the adoption of the March 2015 measures.

158 Furthermore, it should be noted that, while it is true that the Council now had the applicant's address, which appeared in the application initiating the present action, the fact that the Council communicated with the applicant's representatives does not mean that the rights of the defence were infringed.

159 The applicant is not in fact alleging that the Council's decision to communicate to his lawyers the drafts of the new statement of reasons to be adopted against him resulted in an infringement of his rights that would justify the annulment of the March 2015 measures in so far as they concern him (see, to that effect and by analogy, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 122 and the case-law cited).

160 As regards the applicant's argument concerning the fact that it was only in the course of the judicial proceedings that the Council mentioned the favouritism allegedly shown to his companies and the absence of any tendering procedures for the State contracts awarded to his companies, it should be noted that the draft statements of reasons received by the applicant refer to the fact that he was favoured in the awarding of those contracts, on account of his relationship with Russian decision-makers. Furthermore, in his letter of 14 January 2015, the applicant denies having been favoured. Consequently, he cannot rely on an infringement of his rights of defence in that regard.

161 As regards the September 2015 and March 2016 measures, leaving aside the fact that the applicant does not put forward specific arguments, suffice it to note that the statement of reasons used by the Council was not amended, and thus the Council was not obliged to hear the applicant beforehand, in accordance with the case-law referred to in paragraph 150 above.

162 Lastly, as regards the fact, also invoked by the applicant, that the Council did not give him a hearing, it must be stated that neither the applicable legislation nor the general principle of respect for the rights of the defence gives those concerned the right to such a hearing (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 120 and the case-law cited).

163 Consequently, the fourth plea in law must be rejected in so far as it supports the claim for annulment of the other contested acts.

The fifth plea in law, alleging infringement, without justification or proportion, of fundamental rights, including the right to property, the right to privacy and the freedom to conduct a business

164 The applicant claims that the entry and retention of his name on the lists at issue constitute an unjustified and disproportionate restriction of his fundamental rights, including, in particular, the right to property, the right to privacy and the freedom to conduct a business. He adds that the Council has not explained how maintaining the restrictive measures concerning him could result in pressure being brought to bear on the decision-makers responsible for the annexation of Crimea.

165 The Council disputes the applicant's arguments.

166 It should be borne in mind that the right to property is among the general principles of EU law and is enshrined in Article 17 of the Charter of Fundamental Rights. The right to respect for private life is recognised by Article 7 of the Charter of Fundamental Rights. Similarly, the freedom to conduct a business is enshrined in Article 16 of the Charter.

167 In the present case, the restrictive measures imposed on, inter alia, the applicant constitute protective measures, which are not supposed to deprive the persons concerned of their property, the right to respect for their private life or their freedom to conduct a business. However, the measures in question undeniably entail a restriction of the exercise of the applicant's right to property and affect his private life and his freedom to conduct a business (see, to that effect and by analogy, judgment of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 115 and the case-law cited).

168 However, it has consistently been held that in EU law those fundamental rights do not have absolute protection, but must be viewed in relation to their function in society (see judgment of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 113 and the case-law cited).

169 It should be noted in that regard that, according to Article 52(1) of the Charter of Fundamental Rights, 'any limitation on the exercise of the rights and freedoms recognised by [the] Charter [of Fundamental Rights] must be provided for by law and respect the essence of those rights and freedoms', and, moreover, 'subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet

objectives of general interest recognised by the [European] Union or the need to protect the rights and freedoms of others'.

170 Consequently, in order to comply with EU law, a limitation on the exercise of the fundamental rights at issue must satisfy three conditions (judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 197).

171 First, the limitation must be provided for by law. In other words, the measure in question must have a legal basis (see, to that effect and by analogy, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 198 and the case-law cited).

172 Secondly, the limitation must refer to an objective of general interest, recognised as such by the European Union (judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 199).

173 Thirdly, the limitation may not be excessive. It must be necessary and proportional to the aim sought, and the 'essential content', that is, the substance, of the right or freedom at issue must not be impaired (see, to that effect and by analogy, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 200 and the case-law cited).

174 Those three conditions are satisfied in the present case.

175 In the first place, the restrictive measures in question which are imposed on the applicant by the other contested acts are 'provided for by law', since they are set out in acts of general application that have a clear legal basis in EU law and since they have a sufficient statement of reasons as regards their scope and the reasons justifying their application to the applicant (see paragraphs 103 to 110 above) (see, by analogy, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 176 and the case-law cited). Furthermore, in the context of the review of the second plea in law, it has been established that, notwithstanding certain errors, it could be concluded from that statement of reasons that the Council could legitimately maintain the applicant's name on the lists at issue (see paragraphs 115 to 134 above).

176 In the second place, the restrictive measures at issue are intended to exert pressure on the Russian authorities to bring to an end their actions and policies destabilising Ukraine. That is an objective which falls within those pursued under the common foreign and security policy (CFSP) and referred to in Article 21(2)(b) and (c) TEU, such as the consolidation of and support for democracy, the rule of law, human rights and the principles of international law, and the preservation of peace, prevention of conflicts and strengthening of international security and the protection of civilian populations.

177 In that regard, it should be noted that, on 27 March 2014, the United Nations General Assembly adopted Resolution 68/262, entitled 'Territorial integrity of Ukraine', by which it recalled the obligation of all States under Article 2 of the United Nations

Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and to settle their international disputes by peaceful means. It welcomed the continued efforts inter alia by international and regional organisations to support de-escalation of the situation with respect to Ukraine. In the operative part of that resolution, the General Assembly notably reaffirmed the importance of 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 and inflammatory rhetoric that may increase tensions and to engage fully with international mediation efforts.

178 In the third place, with regard to the principle of proportionality, it must be noted that, as a general principle of EU law, this requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 205 and the case-law cited).

179 In that respect, the case-law makes clear that, with regard to judicial review of compliance with the principle of proportionality, the EU legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. Consequently, the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited).

180 In the present case, in the light of the importance of the objectives pursued by the restrictive measures at issue, the adverse consequences of their application to the applicant are not manifestly disproportionate (see, to that effect and by analogy, judgments of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 71, and of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 116).

181 That is particularly so given that, in the context of the examination of the second plea in law, it has been established that the restrictive measures against the applicant were maintained by the other contested acts on the ground that his situation permitted the inference that he satisfied the conditions for the application of the first relevant criterion, in so far as he was among those responsible for policies and actions that undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine.

182 As regards the necessity of the restrictive measures at issue, it should be noted 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 objectives pursued, namely bringing pressure to bear on Russian decision-makers responsible for the situation in Ukraine, particularly given the possibility of circumventing the restrictions imposed (see, by analogy, judgment of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 117 and the case-law cited).

183 It must also be borne in mind that Article 2(3) and (4) of Decision 2014/145 and Article 4(1), Article 5(1) and Article 6(1) of Regulation No 269/2014 provide for the possibility of authorising the use of frozen funds in order to meet basic needs or to meet certain commitments, and of granting specific authorisations permitting the release of funds, other financial assets or other economic resources.

184 Similarly, under Article 1(6) of Decision 2014/145, the competent authority of a Member State may authorise listed persons to enter its territory, inter alia on urgent humanitarian grounds.

185 Lastly, the presence of the applicant's name on the lists at issue cannot be described as disproportionate for being allegedly potentially unlimited, since such lists are subject to periodic review so as to ensure that the persons who, and entities which, no longer meet the necessary criteria are removed from those lists (see, to that effect and by analogy, judgment of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 120 and the case-law cited).

186 It follows from this that the restrictions of the applicant's fundamental rights which flow from the restrictive measures at issue are not disproportionate and cannot lead to the annulment of the other contested acts.

187 The present plea must therefore be rejected.

188 In the light of all the foregoing considerations, the July 2014 measures must be annulled in so far as they concern the applicant, and the action dismissed as to the remainder. In those circumstances, it is not necessary to rule on the claim put forward by the Council in the alternative (see last indent of paragraph 42 above), there being no need to annul Implementing Regulation 2016/353 in so far as it concerns the applicant.

Costs

189 Under Article 134(3) of the Rules of Procedure, the parties are to bear their own costs where each party succeeds on some and fails on other heads. In the present case, the applicant's claims must be upheld as regards annulment of the July 2014 measures, but rejected as regards the other contested acts; each party must therefore be ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber),

hereby:

1. **Annuls Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended by Council Decision 2014/508/CFSP of 30 July 2014, and 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, as implemented by Council Implementing Regulation (EU) No 826/2014 of 30 July 2014, in so far as they concern Mr Arkady Romanovich Rotenberg;**

2. **Dismisses the action as to the remainder;**

3. **Orders each party to bear its own costs.**

Berardis Tomljenović Spielmann

Delivered in open court in Luxembourg on 30 November 2016.

E. Coulon G. Berardis

Registrar President

* Language of the case: English.