Datum van inontvangstneming	:	17/04/2024

CVRIA
LUXEMBOURG

ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

- 1184795 -

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

17 April 2024 *

(Common foreign and security policy – Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine – Prohibition on purchasing, importing or transferring, directly or indirectly, in the European Union, goods which generate significant revenues for Russia as listed in Annex XXI to Regulation (EU) No 833/2014 – Mica products – Action for annulment – Regulatory act not entailing implementing measures which directly affects the legal situation of importers – Admissibility – Obligation to state reasons – Right to be heard – Right of access to the file – Freedom to conduct a business – Proportionality)

In Case T-782/22,

Cogebi, established in Brussels (Belgium),

Cogebi, a.s., established in Tábor (Czech Republic),

represented by H. over de Linden, lawyer,

applicants,

v

Council of the European Union, represented by M. Bishop and E. Nadbath, acting as Agents,

defendant,

supported by

Republic of Estonia, represented by M. Kriisa, acting as Agent,

and by

* Language of the case: English.

European Commission, represented by J.-F. Brakeland, M. Carpus Carcea and L. Puccio, acting as Agents,

interveners,

THE GENERAL COURT (Fourth Chamber),

composed of R. da Silva Passos, President, S. Gervasoni (Rapporteur) and N. Półtorak, Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment

1 By their action based on Article 263 TFEU, the applicants, Cogebi and Cogebi, a.s., seek the annulment of Article 3i of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), as amended by Council Regulation (EU) 2022/1904 of 6 October 2022 (OJ 2022 L 259I, p. 3), in so far as Regulation 2022/1904 inserts CN code 6814 (worked mica and articles of mica) ('mica products') into the list of goods which generate significant revenues for the Russian Federation as listed in Annex XXI to Regulation No 833/2014 and whose direct or indirect purchase, import or transfer in the European Union is prohibited by Article 3i of that regulation.

Background to the dispute

2 The applicants, which belong to the same group of companies, manufacture mica-based industrial products. They import mica products from Russia manufactured by a company established in Russia which is part of that group of companies.

3 On 18 March 2014, Russia annexed the Autonomous Republic of Crimea and the City of Sevastopol (Ukraine).

4 In April and May 2014, two entities, the 'Luhansk People's Republic' and the 'Donetsk People's Republic', were proclaimed in Eastern Ukraine.

5 On 31 July 2014, the Council of the European Union adopted Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13) in order to introduce targeted restrictive measures in the areas of access to capital markets, defence, dual-use goods and sensitive technologies. That same day, the Council adopted Regulation No 833/2014, which gives effect to certain measures provided for in Decision 2014/512.

6 On 21 February 2022, the President of the Russian Federation signed a decree recognising the independence and sovereignty of the 'Donetsk People's Republic' and the 'Luhansk People's Republic'.

7 On 23 February 2022, the Council adopted a first package of restrictive measures concerning, inter alia, economic relations with the regions of Donetsk and Luhansk not controlled by the Ukrainian Government and access to EU financial markets and services.

8 On 24 February 2022, the President of the Russian Federation announced a military operation in Ukraine and, on the same day, Russian armed forces attacked Ukraine.

9 On 25 February 2022, the Council adopted a second package of restrictive measures comprising, inter alia, measures in the finance, defence, energy, aviation and the space industry sectors, and measures suspending the application of some provisions of the Agreement providing for facilitations for certain categories of citizens of the Russian Federation applying for short-stay visas.

10 Between 28 February and 2 March 2022, the Council adopted a third package of restrictive measures involving, inter alia, the closure of EU airspace to Russian aircraft, the prohibition on providing financial messaging (SWIFT) services to certain Russian banks, the prohibition of all transactions with the Central Bank of Russia, and the suspension of the broadcasting activities of media outlets controlled by the leadership of the Russian Federation.

11 On 15 March 2022, the Council adopted a fourth package of restrictive measures which, inter alia, prohibited all transactions with certain companies controlled by the Russian State, prohibited the provision of credit rating services to any entity established in Russia, prohibited new investments in and exports of equipment, technology and services for the Russian energy sector, and imposed trade restrictions on steel and luxury goods.

12 On 8 April 2022, the Council adopted a fifth package of restrictive measures which, inter alia, prohibited deposits to crypto-wallets, the export of euro-denominated banknotes and the sale of euro-denominated securities to any entity established in Russia and in Belarus, the award and continued performance of public contracts with Russian nationals or persons established in Russia, the provision of support to any entity established in Russia controlled by the Russian State, acting as a trustee for Russian persons and entities, Russian vessels' access

to EU ports, exports of jet fuel and other goods to Russia, imports of coal and other fossil fuels and other goods generating significant revenues for Russia, and the road transport of goods in EU territory by road transport undertakings established in Russia and in Belarus.

13 In particular, Council Decision (CFSP) 2022/578 of 8 April 2022 amending Decision 2014/512 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 111, p. 70) and Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 111, p. 1) prohibit imports of goods which generate significant revenues for Russia, as listed in Annex XXI to that regulation ('Annex XXI'), including wood, cement and seafood. Those goods are identified in that annex by a nomenclature code, taken from the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) (CN code).

14 On 3 June 2022, the Council adopted a sixth package of restrictive measures which, inter alia, prohibited imports of petroleum products, prohibited the provision of accounting, public relations and business and management consulting services to entities established in Russia, excluded three Russian banks from the SWIFT system, and suspended the broadcasting activities in the European Union of media outlets controlled by the leadership of the Russian Federation.

15 On 21 July 2022, the Council adopted a seventh package of restrictive measures which, inter alia, prohibited imports of gold originating in Russia.

16 On 30 September 2022, the President of the Russian Federation signed a decree annexing the regions of Donetsk, Kherson, Luhansk and Zaporizhzhia.

17 On 6 October 2022, the Council adopted an eighth package of restrictive measures providing for, inter alia, a price cap on the maritime transport of Russian oil to third countries, restrictions on trade and on the provision of services to Russia, and a prohibition on EU nationals holding positions on the governing bodies of certain entities controlled by the Russian State.

18 As regards the trade restrictions in particular, on 6 October 2022, the Council adopted Decision (CFSP) 2022/1909 amending Decision 2014/512 (OJ 2022 L 259I, p. 122), which imposes restrictions on imports of other goods generating significant revenues for Russia such as wood pulp and paper, certain elements used in the jewellery industry such as stones and precious metals, certain machinery and chemical items, cigarettes, plastics, and chemical products such as cosmetics.

19 That same day, the Council adopted Regulation 2022/1904 implementing Decision 2022/1909. That regulation replaced Annex XXI with a new annex

containing a more extensive list of goods generating significant revenues for Russia, imports of which are prohibited. That new annex lays down, inter alia, a prohibition on the import into the European Union of goods falling under CN code 6814, namely mica products.

Procedure and forms of order sought

20 On 13 December 2022, the applicants brought the present action.

21 The applicants claim that the Court should:

– annul Article 3i of Regulation No 833/2014, as amended by Regulation 2022/1904, in so far as it includes CN code 6814 in the list of goods and technology set out in Annex XXI and referred to in Article 3i of Regulation No 833/2014 ('the contested provision');

– order the Council to pay the costs.

22 The Council, supported by the Republic of Estonia and the European Commission, contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

23 In support of their action, the applicants rely on five pleas in law, alleging (i) an infringement of the obligation to state reasons, (ii) a manifest error of assessment, (iii) a failure to observe the principle of proportionality, (iv) an infringement of the freedom to conduct a business, and (v) an infringement of the right to good administration and the right to an effective remedy.

24 After clarifying the subject matter of the action, the Court considers it appropriate, first, to examine the plea of inadmissibility raised by the Commission followed by the submissions relating to the formal legality of the contested provision, before examining the pleas on the merits of the action.

Subject matter of the action

25 Under Article 3i(1) of Regulation No 833/2014, as inserted by Regulation 2022/576, it is prohibited to purchase, import, or transfer, directly or indirectly, goods which generate significant revenues for Russia thereby enabling its actions destabilising the situation in Ukraine, as listed in Annex XXI, into the European Union if they originate in Russia or are exported from Russia.

26 Regulation 2022/1904 replaced Annex XXI with a new annex containing a more extensive list of goods. In particular, it inserted in that annex CN code 6814 corresponding to mica products.

27 It is apparent from the applicants' written pleadings that they are challenging only the prohibition on purchasing, importing or transferring, directly or indirectly, in the European Union, mica products originating in Russia or exported from Russia.

28 Accordingly, the applicants must be regarded as seeking the annulment of Regulation 2022/1904 in so far as it inserts, in Annex XXI, CN code 6814 in the list of goods and technology which generate significant revenues for Russia and whose direct or indirect purchase, import or transfer in the European Union are prohibited by Article 3i of Regulation No 833/2014.

Plea of inadmissibility raised by the Commission alleging that the applicants are not directly affected or individually concerned by the contested provision

29 The Commission argues that the action is inadmissible because the applicants are not directly affected by the contested provision. It submits that, since the applicants are EU undertakings which use mica imported from Russia in their production activities, the import ban affects their ability to import mica products from Russia, but does not affect their ability to import those products from other sources or to produce their end products. The applicants, who bear the burden of proof, neither claim nor demonstrate that their market position is sufficiently affected. They are not individually concerned, since the contested provision is a regulatory act of general application which does not specifically target them and was not defined on the basis of their specific situation.

30 The applicants claim that the plea of inadmissibility must be rejected.

31 As regards the Commission's standing to raise that plea of inadmissibility, it must be noted that, according to Article 142(1) of the Rules of Procedure of the General Court, the intervention is to be limited to supporting, in whole or in part, the form of order sought by one of the main parties. Moreover, under Article 142(3) of those rules, the intervener must accept the case as he or she finds it at the time of his or her intervention.

32 It follows from those provisions that a party who has been granted leave to intervene in a case in support of the defendant has no standing to raise a plea of inadmissibility not set out in the form of order sought by the defendant (see, to that effect, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 67 and the case-law cited).

33 Accordingly, since the Commission has no standing to raise the plea of inadmissibility at issue, the Court is not required to address it expressly as to the substance.

34 However, given that, under Article 129 of the Rules of Procedure, the Court may at any time, of its own motion, after hearing the main parties, examine whether there exists any absolute bar to proceeding with a case, it is appropriate in the present case, in the interests of the sound administration of justice, the main parties having been afforded an opportunity to submit observations on the plea of inadmissibility at issue in their observations on the Commission's statement in intervention, to examine that plea of inadmissibility (see, to that effect, judgments of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraph 23, and of 19 September 2018, *HH Ferries and Others* v *Commission*, T-68/15, EU:T:2018:563, paragraph 41 (not published)).

35 The fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are accorded standing to institute proceedings against an act which is not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Secondly, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (judgment of 18 October 2018, *Internacional de Productos Metálicos* v *Commission*, C-145/17 P, EU:C:2018:839, paragraph 32).

36 The conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, but such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 98).

37 Since the contested provision is not addressed to the applicants, they may be accorded standing to institute proceedings only if they fall within one of the two situations mentioned in paragraph 35 above.

38 The admissibility of the action should be examined by reference to the second situation mentioned in paragraph 35 above.

39 It is necessary to determine, first, whether the contested provision is a regulatory act, secondly, whether it entails implementing measures and, thirdly, whether it is of direct concern to the applicants.

40 In the first place, regulatory acts, within the meaning of the fourth paragraph of Article 263 TFEU, cover all non-legislative acts of general application (judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 28).

41 It must be ascertained whether the contested provision is of general application and whether or not it constitutes a legislative act.

42 An act is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in a general and abstract manner (judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 29).

43 The contested provision applies to objectively determined economic transactions (the direct or indirect purchase, import or transfer in the European Union of certain goods) and defines the products concerned, namely mica products, objectively by reference to the Combined Nomenclature.

44 Moreover, the contested provision does not target identified natural or legal persons (see, to that effect, judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 97, and of 6 September 2018, *Bank Mellat* v *Council*, C-430/16 P, EU:C:2018:668, paragraph 56). On the contrary, it applies, according to Article 13 of Regulation No 833/2014, '(a) within the territory of the Union; (b) on board any aircraft or any vessel under the jurisdiction of a Member State; (c) to any person inside or outside the territory of the Union who is a national of a Member State; (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union'.

45 The contested provision is therefore an act of general application.

46 Furthermore, an act which has not been adopted on the basis of a provision of the Treaties which expressly refers either to the ordinary legislative procedure or to the special legislative procedure cannot be classified as a legislative act of the European Union (judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 62).

47 The contested provision was not adopted in accordance with the legislative procedure laid down in Article 289 TFEU. It was adopted in accordance with the non-legislative procedure laid down by Article 215(1) TFEU (judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 92), which allows for the adoption by the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, of the measures necessary to implement a decision on the common foreign and security policy providing for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the European Parliament being informed thereof.

48 Consequently, the contested provision, which is a non-legislative act of general application, constitutes a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU.

49 In the second place, the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the third limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (see judgments of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 61 and the case-law cited, and of 13 September 2018, *Gazprom Neft* v *Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraph 99 and the case-law cited).

50 In the present case, it follows from the very wording of the contested provision that the prohibitions laid down by that provision apply without leaving any discretion to the addressees responsible for implementing them. Those prohibitions are directly applicable to the applicants without requiring the adoption of implementing measures, either by the European Union or by the Member States (see, to that effect, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 90). That is also not contested by the Commission.

51 In that regard, it is true that Article 3i(3c) of Regulation No 833/2014 provides that, by way of derogation from paragraphs 1 and 2, the competent authorities may authorise the purchase, import or transfer of the goods listed in Part B of Annex XXI, or the provision of related technical and financial assistance, under such conditions as they deem appropriate, after having determined that that is necessary for the establishment, operation, maintenance, fuel supply and retreatment and safety of civil nuclear capabilities, and the continuation of design, construction and commissioning required for the completion of civil nuclear facilities, the supply of precursor material for the production of medical radioisotopes and similar medical applications, or critical technology for environmental radiation monitoring, as well as for civil nuclear cooperation, in particular in the field of research and development.

52 However, the applicants have not established or claimed that the mica products they import from Russia, which they state make it possible, among other things, to produce components intended for aircraft manufacturers, qualify, in whole or even in part, for a derogation which essentially relates to the specific civil nuclear sector. In those circumstances, it would be artificial to require the applicants to request the competent authorities to apply that derogation to them and to challenge the refusal of that request before a national court, in order to cause that court to make a reference to the Court of Justice on the validity of the contested provision (see, to that effect, judgments of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 66, and of 13 September 2018, *Rosneft and Others* v *Council*, T-715/14, not published, EU:T:2018:544, paragraph 90).

53 Accordingly, the derogation mechanism set out in Article 3i(3c) of Regulation No 833/2014 cannot be regarded as laying down measures implementing the contested provision vis-à-vis the applicants. In consequence, that provision constitutes a regulatory act not entailing implementing measures in respect of them, within the meaning of Article 263 TFEU (see, by analogy, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 90). That is also not contested by the Commission.

54 In the third place, the condition that the measure forming the subject matter of the proceedings must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 263 TFEU, requires the fulfilment of two cumulative criteria, namely the contested measure should, first, directly affect the legal situation of the individual and, secondly, should leave no discretion to the addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 61).

55 In order to determine whether a measure produces legal effects, it is necessary to look in particular to its purpose, its content, its scope, its substance and the legal and factual context in which it was adopted (judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 66).

56 It is appropriate, for the purpose of determining direct concern to a person, for consideration to be given not only to the effects of an EU act on a person's legal situation, but also to its factual effects on that person, and such effects must be more than merely indirect. That must be determined specifically in each individual case having regard to the regulatory content of the EU act in question (judgment of 13 September 2018, *Gazprom Neft* v *Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraph 97).

57 The contested provision prohibits, inter alia, imports into the European Union of mica products originating in Russia. It applies to the applicants, which are legal persons constituted under the law of a Member State, within the meaning of Article 13(d) of Regulation No 833/2014, and whose imports of mica products from Russia amount to business done in part within the European Union, within the meaning of Article 13(e) of that regulation.

58 Under Article 3i(3b) of Regulation No 833/2014, with regard to the goods, such as mica products, listed in Part B of Annex XXI, the import ban is not to apply to the execution until 8 January 2023 of contracts concluded before 7 October 2022, or of ancillary contracts necessary for the execution of such contracts.

59 The contested provision directly produces effects on the applicants' legal situation. The applicants, which, it is common ground, import mica products from Russia for the purposes of manufacturing their goods, are, on account of that provision and within the limits of Article 3i(3b) of Regulation No 833/2014, legally and directly deprived of the right to pursue that import activity (see, by analogy, judgments of 25 October 2011, *Microban International and Microban (Europe)* v *Commission*, T-262/10, EU:T:2011:623, paragraph 28, and of 13 September 2018, *Rosneft and Others* v *Council*, T-715/14, not published, EU:T:2018:544, paragraphs 80 and 81).

60 In view of the mandatory wording of Article 3i(1) of Regulation No 833/2014 ('it shall be prohibited'), the institutions and bodies of the European Union and the Member States have no discretion in the implementation of the contested provision, which is purely automatic (see, by analogy, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraphs 61 and 69).

61 The Commission's arguments seeking to call into question the applicants' direct concern must be rejected.

62 First, the Commission argues that the contested provision has only a purely material effect on the applicants' situation.

63 It is true, as the Commission rightly points out, that the mere fact that a measure may exercise an influence on an applicant's substantive situation cannot be sufficient ground for that applicant to be regarded as directly concerned by the measure (judgment of 21 October 2021, *Lípidos Santiga* v *Commission*, C-402/20 P, not published, EU:C:2021:872, paragraph 20). Similarly, in order to assess whether the contested provision produces direct effects on the applicants' legal situation, it would be wrong to take into account only the intensity or purely economic nature of those effects (see, to that effect, judgment of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others*, C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923, paragraphs 108 and 109).

64 However, the contested provision not only has an impact on the applicants' substantive situation; it also amounts to a prohibition of a legal nature directly affecting one of the activities which the applicants carried out on the date of adoption of the contested provision. It is apparent from paragraphs 1 and 3b of the contested provision, concerning restrictions on imports into the European Union, that, as a result of its adoption, the applicants were unable, in practice and in law, to conclude new contracts or to require the performance, after 8 January 2023, of contracts concluded before 7 October 2022 or of ancillary contracts necessary for the performance of such contracts with the company – belonging to their group of companies and established in Russia – which manufactures and exports the mica products needed for their mica-based industrial activities (see, to that effect, judgment of 13 September 2018, *Gazprom Neft* v *Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraphs 88 and 89). Thus, the prohibitions set out

in paragraph 1 of that provision, namely the prohibition on purchasing, importing or transferring mica products, directly or indirectly, in the European Union, have the immediate and automatic effect of preventing the applicants, inter alia, from importing the products at issue into the European Union (see, to that effect, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 69).

65 Secondly, it is apparent from the order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (T-18/10, EU:T:2011:419, paragraph 75), relied on by the Commission, that a measure prohibiting, subject to certain exceptions, the placing on the EU market of seal products directly affects persons active on that market. In the present case, the applicants' written pleadings set out arguments, which were not challenged by the Council or the interveners, capable of demonstrating that they were active, on the date of adoption of the contested provision, on the market for imports of mica products from Russia, with the result that they fulfil the criterion of direct concern (see, to that effect, judgment of 13 September 2018, *Rosneft and Others* v *Council*, T-715/14, not published, EU:T:2018:544, paragraph 69).

66 Thirdly, the fact that the applicants are able to procure mica products not originating in Russia from suppliers established in countries other than Russia does not call into question the conclusion that the abovementioned prohibition is of direct concern to them (see, by analogy, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 71).

67 The contested provision is therefore of direct concern to the applicants within the meaning of the fourth paragraph of Article 263 TFEU.

68 It follows from the foregoing considerations that the conditions laid down in the third limb of the fourth paragraph of Article 263 TFEU are satisfied and that, consequently, the action is admissible.

Substance

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

69 The applicants submit that the contested provision infringes the obligation to state reasons under Article 41(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 296 TFEU. They argue that the Council failed to provide sufficient reasons for adding CN code 6814 to Annex XXI and did not elaborate on the values of revenues for Russia which it considered to be significant.

70 The Council, supported by the Republic of Estonia and the Commission, disputes those arguments.

71 It should be borne in mind that the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the Council's reasoning so as to enable the persons concerned to ascertain the reasons for the measures and to enable the EU judicature to exercise its power of review. The question whether the obligation to state reasons has been fulfilled must, moreover, be assessed by reference not only to the wording of the measure but also to its context and to all the legal rules governing the matter in question (judgments of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 58, and of 22 November 2018, *Swedish Match*, C-151/17, EU:C:2018:938, paragraph 78).

72 The extent of the obligation to state reasons depends on the nature of the measure in question and, in the case of measures of general application, the statement of reasons may be limited to indicating the overall situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (judgments of 19 November 1998, *Spain* v *Council*, C-284/94, EU:C:1998:548, paragraph 28; of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 120; and of 17 September 2020, *Rosneft and Others* v *Council*, C-732/18 P, not published, EU:C:2020:727, paragraph 68).

73 In the case of measures of general application, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (judgments of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 59; of 22 November 2018, *Swedish Match*, C-151/17, EU:C:2018:938, paragraph 79; and of 30 April 2019, *Italy* v *Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 42).

74 In the present case, the contested provision constitutes a measure of general application, as stated in paragraph 45 above.

75 The applicants submit, in the context of the fifth plea, that the contested provision is also an individual measure. They state that, together, in 2021, they were responsible for 93% of all imports of mica products from Russia into the European Union.

76 The applicants' argument must be examined in the light of the case-law according to which, in the field of restrictive measures, measures such as the freezing of funds resemble, at the same time, both measures of general application, in that they impose on a general and abstract category of addressees a prohibition on making available economic resources to entities listed in their annexes, and also individual decisions affecting those entities (judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 102, and of 23 November 2021, *Council* v *Hamas*, C-833/19 P, EU:C:2021:950, paragraph 65).

77 The contested provision, which applies generally, in all situations and to all persons covered by Article 13 of Regulation No 833/2014, without targeting identified natural or legal persons, and in particular without targeting Cogebi or

Cogebi, a.s., is of a very different nature than the individual fund freezing measures (see, to that effect, judgment of 6 September 2018, *Bank Mellat* v *Council*, C-430/16 P, EU:C:2018:668, paragraph 55).

78 The very large proportion of imports of mica products from Russia into the European Union for which the applicants, taken together, were responsible in 2021 does not permit the inference, contrary to what the applicants claim, that the contested provision constitutes an individual measure with regard to them (see, to that effect, judgment of 17 September 2020, *Rosneft and Others* v *Council*, C-732/18 P, not published, EU:C:2020:727, paragraph 66).

79 Thus, the statement of reasons for the contested provision may be limited to indicating the overall situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other.

80 In that regard, it should be noted that Decision 2022/1909 and Regulation No 833/2014, referred to in Regulation 2022/1904, form part of the context of the contested provision and must be taken into account in order to assess whether sufficient reasons were provided for that provision.

81 Concerning the overall situation which led to the insertion of the contested provision, Decision 2022/1909 mentions that the European Union remains unwavering in its support for Ukraine's sovereignty and territorial integrity. It states that (i) on 24 February 2022, the President of the Russian Federation announced a military operation in Ukraine and Russian armed forces began an attack on Ukraine; (ii) that attack is a blatant violation of the territorial integrity, sovereignty and independence of Ukraine; (iii) in its conclusions of the same date, the European Council condemned in the strongest possible terms Russia's unprovoked and unjustified military aggression against Ukraine; (iv) by its illegal military actions, Russia is grossly violating international law and the principles of the Charter of the United Nations and undermining European and global security and stability; and (v) the European Council called for the urgent preparation and adoption of a further individual and economic sanctions package.

82 Decision 2022/1909 also mentions that, in its conclusions of 23 and 24 June 2022, the European Council declared that work would continue on sanctions, including to strengthen implementation and prevent circumvention.

83 Decision 2022/1909 goes on to state that (i) on 28 September 2022, the High Representative of the Union for Foreign Affairs and Security Policy issued a declaration on behalf of the European Union condemning in the strongest possible terms the illegal sham referenda conducted in parts of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine currently partially occupied by Russia; (ii) he declared that the European Union does not and would never recognise those illegal sham referenda and their falsified outcome, or any decision taken on the basis of that outcome, and urged all Members of the United Nations to do the same; (iii) by organising those illegal sham referenda, Russia aimed to

change by force the internationally recognised borders of Ukraine, which constitutes a clear and serious breach of the Charter of the United Nations; (iv) all those involved in organising those illegal sham referenda as well as those responsible for other violations of international law in Ukraine would be held accountable and that additional restrictive measures against Russia would be brought forward in that regard; (v) the European Union remains unwavering in its support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders, and demands that Russia immediately, completely and unconditionally withdraw all of its troops and military equipment from the entire territory of Ukraine; and (vi) the European Union and its Member States would continue to support Ukraine's efforts to that end, as long as necessary.

84 Decision 2022/1909 further states that (i) on 30 September 2022, the members of the European Council issued a declaration firmly rejecting and unequivocally condemning the illegal annexation by Russia of Ukraine's Donetsk, Kherson, Luhansk and Zaporizhzhia regions; (ii) by wilfully undermining the rules-based international order and blatantly violating the fundamental rights of Ukraine to independence, sovereignty and territorial integrity, core principles enshrined in the Charter of the United Nations and international law, Russia is putting global security at risk; (iii) the members of the European Council do not and would never recognise the illegal referenda that Russia engineered as a pretext for that further violation of Ukraine's independence, sovereignty and territorial integrity, or their falsified and illegal results; (iv) they would never recognise that illegal annexation, that those decisions are null and void and cannot produce any legal effect whatsoever, and that Crimea, Donetsk, Kherson, Luhansk and Zaporizhzhia are Ukraine; (v) they called on all States and international organisations to unequivocally reject that illegal annexation and recalled that Ukraine is exercising its legitimate right to defend itself against the Russian aggression to regain full control of its territory and has the right to liberate occupied territories within its internationally recognised borders; and (vi) they would strengthen the European Union's restrictive measures countering Russia's illegal actions and further increase pressure on Russia to end its war of aggression.

85 In those circumstances, it must he held that sufficient reasons were provided for the contested provision as regards the overall situation which led to its adoption.

86 As regards the general objectives which the contested provision is intended to achieve, Decision 2022/1909 states, as indicated above, that, on 28 September 2022, the High Representative of the Union for Foreign Affairs and Security Policy declared that the European Union demands that Russia immediately, completely and unconditionally withdraw all of its troops and military equipment from the entire territory of Ukraine, and that the European Union and its Member States would continue to support Ukraine's efforts to that end, as long as necessary. It explains that, on 30 September 2022, the members of the European Council stated that they would further increase pressure on Russia to end its war of aggression. Decision 2022/1909 makes clear that, in view of the gravity of the

situation, it is appropriate to introduce further restrictive measures and in particular to impose import restrictions on additional items that generate significant revenues for Russia. Like Regulation 2022/1904, it states that that prohibition applies to goods that originate in Russia or are exported from it and includes such items as wood pulp and paper, certain elements used in the jewellery industry such as stones and precious metals, certain machinery and chemical items, cigarettes, plastics, and finished chemical products such as cosmetics. Article 3i of Regulation No 833/2014 provides that goods which generate significant revenues for Russia enable it to implement actions destabilising the situation in Ukraine.

87 It is thus apparent from Decision 2022/1909, Regulation 2022/1904 and Regulation No 833/2014 that the objective of the contested provision is to increase pressure on Russia with a view to having it withdraw its troops and military equipment from Ukraine and end its war of aggression, by imposing import restrictions on goods which generate significant revenues for Russia and which enable it to implement actions destabilising the situation in Ukraine, goods that are listed in Annex XXI.

88 Sufficient reasons were therefore provided for the contested provision as regards the general objectives pursued by the Council.

89 The applicants argue that the Council did not elaborate on the values of revenues for Russia which it considered to be significant and failed to provide sufficient reasons for adding mica products to Annex XXI, whereas other goods not included in that annex generate higher revenues for Russia. Gas or goods which, like mica products, fall under Chapter 68 of the Combined Nomenclature (‘articles of stone, plaster, cement, asbestos, mica or similar materials’) are not listed in that annex.

90 However, in accordance with the case-law cited in paragraphs 72 and 73 above, given that the Council explained the overall situation which led to the adoption of the contested provision and the general objectives which that provision was intended to achieve, it was not required to set out in further detail the reasons for the contested provision.

91 In particular, the Council was not required to set out in further detail the reasons for its decision to impose import restrictions on certain goods considered to generate significant revenues for Russia (see, to that effect, judgment of 13 September 2018, *Gazprom Neft* v *Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraph 126).

92 In that regard, it should be noted that the import restrictions laid down in Article 3i of Regulation No 833/2014 relate only to goods generating significant revenues for Russia ‘as listed’ in that annex and not to all goods generating significant revenues for Russia.

93 In any event, a product such as gas has, despite the significant revenues it generates for Russia, a number of obvious specific characteristics compared with mica products. As for goods which, like mica products, fall under Chapter 68 of the Combined Nomenclature, but are not listed in Annex XXI (CN codes 6801 to 6805, 6809, and 6811 to 6813), their import value was, according to the statistical documents for 2021, lower than the import value of mica products, unlike the goods in Chapter 68 included in Annex XXI (Part A: CN code 6810; Part B: CN codes 6806 to 6808 and 6815).

94 Consequently, since sufficient reasons were provided for the contested provision, the first plea in law must be rejected.

The fifth plea in law, alleging an infringement of the right to good administration and the right to an effective remedy

95 The applicants argue that the contested provision infringes their right to good administration because, as that provision is of direct concern to them, they should have been given the opportunity to be heard before its adoption. Moreover, the contested provision infringes their right of access to their file. According to the applicants, between 11 and 28 November 2022, they repeatedly asked the relevant institutions to give them access to the file concerning the procedure for the adoption and evaluation of the contested provision, and to provide them with the reasons for including mica products in Annex XXI. The applicants state that, on the date of lodging the application, they had received only one reply to their request for access to the file informing them that the General Secretariat of the Council had not completed the consultations necessary in order to examine their request. The applicants' inability to access their file prevented them from examining data enabling them to establish their standing to bring proceedings adequately and to prepare for the court proceedings under the best possible conditions, with the result that their right to an effective remedy and to an impartial tribunal, guaranteed by Article 47 of the Charter, was infringed.

96 In the reply, the applicants assert that the contested provision is in fact an individual measure. They claim that they are entitled to a detailed statement of reasons, without which the principle of equality of arms is breached, preventing them from properly defending themselves in court. They received replies to their request for access to the file, but those replies did not provide them with any new information on the Council's reasons for prohibiting imports of mica products.

97 The Council, supported by the Republic of Estonia and the Commission, disputes those arguments.

98 In the first place, the right to good administration, guaranteed by Article 41 of the Charter, does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights such as the right to have affairs handled impartially, fairly and within a reasonable time, the right to be heard, the right of access to the file, or the right to a statement of reasons for a decision

(order of 19 May 2022, *TUIfly* v *Commission*, C-764/21 P, not published, EU:C:2022:407, paragraph 4).

99 In the present case, the applicants plead, in essence, the right to a statement of reasons for a decision, the right to be heard and the right of access to the file.

100 As regards the obligation to state reasons for a decision, the applicants' argument that they did not receive, following their request for access to the file, 'any new information on the Council's reasons [for adopting the contested provision]' does not permit the inference that that provision is vitiated by a failure to state reasons, since sufficient reasons were provided for the contested provision, as explained by the Court in its response to the first plea.

101 As regards the right to be heard and the right of access to the file, those rights are an expression of the principle of respect for the rights of the defence (judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraphs 59 and 60).

102 The principle of respect for the rights of the defence applies in all proceedings initiated against a person liable to culminate in a measure adversely affecting that person (judgments of 28 March 2000, *Krombach*, C-7/98, EU:C:2000:164, paragraph 42, and of 17 November 2022, *Harman International Industries*, C-175/21, EU:C:2022:895, paragraph 64).

103 Since the contested provision is a measure of general application and not an individual measure adopted against the applicants, they were not entitled to be heard or to have access to the file during the process of enacting that provision.

104 First, the right of every person to be heard before any individual measure which would affect him or her adversely is taken, enshrined in Article 41(2)(a) of the Charter, does not apply to the process of enacting measures of general application (judgments of 14 October 1999, *Atlanta* v *European Community*, C-104/97 P, EU:C:1999:498, paragraphs 35 to 37, and of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 49).

105 As regards measures of general application, unless there is express provision to the contrary, neither the process of their drafting nor those measures themselves require, by virtue of general principles of EU law, such as the right to be heard, consulted or informed, the participation of the persons affected (see judgment of 8 July 2020, *BRF and SHB Comércio e Indústria de Alimentos* v *Commission*, T-429/18, EU:T:2020:322, paragraph 94 and the case-law cited).

106 In particular, the right to be heard in an administrative procedure against a specific person cannot be transposed to the procedure leading to the adoption of restrictive measures of general application (judgments of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraphs 83 to 85, and of 17 February 2017, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-14/14 and T-87/14, EU:T:2017:102, paragraph 97).

107 Secondly, the right of access to the file, enshrined in Article 41(2)(b) of the Charter, is designed to ensure effective exercise of the rights of the defence. Failure to respect that right during the procedure prior to enactment of a decision can cause the decision to be annulled if the rights of defence of the person concerned have been infringed (judgment of 2 October 2003, *Corus UK* v *Commission*, C-199/99 P, EU:C:2003:531, paragraphs 126 and 127).

108 The right of every person to have access to the file 'concerning him or her' facilitates a party's access to his or her own file (order of 19 May 2022, *TUIfly* v *Commission*, C-764/21 P, not published, EU:C:2022:407, paragraph 4).

109 The right of access to the file, enshrined in Article 41(2)(b) of the Charter, is therefore not applicable to the process of enacting restrictive measures of general application (see, to that effect, judgments of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraphs 83 to 85, and of 13 September 2018, *Rosneft and Others* v *Council*, T-715/14, not published, EU:T:2018:544, paragraph 133).

110 Thus, since the contested provision constitutes a restrictive measure of general application, the Council was not required to hear the applicants or to ensure their right of access to the file under Article 41(2)(b) of the Charter during the process of enacting that provision.

111 The applicants' argument relating to the infringement of their right to be heard and their right of access to the file, under Article 41(2) of the Charter, is therefore ineffective.

112 In addition, it is apparent from the documents in the file that, on 14 November 2022, after the adoption of the contested provision, Cogebi, a.s. sent an email to the Council, entitled '… Information request …', asking the Council to provide it with the reasons for including CN code 6814 in Annex XXI and to grant it access to the file relating to the procedure for the adoption and evaluation of the eighth package of restrictive measures.

113 On 28 November 2022, the Council acknowledged receipt of that email and stated that all requests for access to documents were dealt with on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43). By decision of 9 January 2023, the Council sent a number of documents in response to the applicants' request, stating that it did not hold any other documents concerning the inclusion of CN code 6814 in Annex XXI, and added that it had been decided to include that CN code because the goods it covered generated significant revenues for Russia, thereby enabling its actions to destabilise the situation in Ukraine.

114 In the reply, lodged at the Court Registry on 25 April 2023, the applicants express their disappointment at not having more information on the reasons for including CN code 6814.

115 In doing so, the applicants do not mention having brought an action challenging the decision of 9 January 2023 and, moreover, do not claim that that decision is contrary to the provisions of Regulation No 1049/2001.

116 Consequently, the applicants' argument alleging infringement of their right to be heard and their right of access to the file must be rejected.

117 In the second place, Article 47 of the Charter, entitled 'Right to an effective remedy and to a fair trial', states, in the first and second paragraphs thereof:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.'

118 In support of their argument alleging an infringement of the right to an effective remedy and to a fair trial, the applicants merely plead an infringement of their right of access to the file.

119 In those circumstances, since the applicants have no grounds for maintaining that the Council infringed their right of access to the file, as stated in paragraph 116 above, their arguments relating to the infringement of Article 47 of the Charter must, on any view, be rejected.

120 The fifth plea in law must therefore be rejected.

The second plea in law, alleging a manifest error of assessment

121 The applicants submit that the Council committed a manifest error of assessment. According to the applicants, given that it is impossible to ascertain why the Council prohibited imports of mica products, as demonstrated by the first plea, the finding that the revenues generated by those products for Russia are of a significant nature does not have a sufficient basis in fact, in accordance with Article 47 of the Charter.

122 The Council, supported by the Republic of Estonia and the Commission, disputes those arguments. It contends that the second plea is inadmissible under Article 76(d) and (e) of the Rules of Procedure, since the application is extremely vague, in particular as regards the reference to Article 47 of the Charter, and, in any event, that that plea is unfounded. It states, inter alia, that it began to prohibit imports of goods generating significant revenues for Russia in April 2022, and that the list was slightly revised in June 2022 and then substantially extended by Regulation 2022/1904 to include, among other goods, mica products.

123 In the reply, the applicants maintain that, by the second plea, they are seeking to dispute the argument that imports of mica products generate significant revenues for Russia. They submit that the Council did not fulfil the criterion of sufficient legal basis when the contested provision was adopted and, in addition, if imports of mica products originating in Russia were to decrease in 2023, as was foreseeable, their inclusion in the list of goods generating significant revenues for Russia would have no sufficient factual basis.

124 According to settled case-law, as regards the general rules defining the procedures for giving effect to restrictive measures, the Council has a broad discretion as to what to take into consideration for the purpose of adopting such economic and financial measures 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 judicature may not substitute its own assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review which it carries 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 13 September 2023, *Venezuela* v *Council*, T-65/18 RENV, EU:T:2023:529, paragraph 63 and the case-law cited). It follows that the review by the EU judicature of the assessment of the facts is to be restricted to reviewing whether there has been a manifest error of assessment. By contrast, the review of whether the facts are materially accurate calls for verification of (i) the factual allegations made and (ii) whether there is a sufficiently solid factual basis, with the result that the judicial review carried out in that regard cannot be restricted to assessing the cogency of the facts in the abstract (see judgment of 13 September 2023, *Venezuela* v *Council*, T-65/18 RENV, EU:T:2023:529, paragraph 64 and the case-law cited).

125 In the first place, it should be noted that, in order to demonstrate that the contested provision is vitiated by a manifest error of assessment, the applicants claim that such an error must be inferred from the failure to state reasons for that provision. That argument must be rejected, for the reasons set out in the Court's examination of the first plea. Moreover, the obligation to state reasons for a measure is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue (judgment of 6 October 2020, *Bank Refah Kargaran* v *Council*, C-134/19 P, EU:C:2020:793, paragraph 64).

126 In the second place, in order to challenge the proposition that mica products generate significant revenues for Russia, the applicants produce, in Annex A.6, a document showing that imports of mica products into the European Union from Russia accounted for EUR 5.064 million in 2021.

127 In that regard, the Council asserts that, in deciding whether to include goods in the list of products generating significant revenues for Russia, it examined the situation of each product category as a whole. It states that mica products fall under the product category covered by Chapter 68 of the Combined Nomenclature and that Russian-sourced imports of goods under that chapter listed in Annex XXI amounted overall to more than EUR 169 million in 2021. It also maintains that, in order to identify, within each product category, which goods generate significant revenues for Russia, the Commission, in its joint proposal with the High Representative of the Union for Foreign Affairs and Security Policy, used a reference value of EUR 5 million as a threshold. It adds that the list of goods generating significant revenues for Russia was gradually extended and that, in choosing those goods, account was taken of both the possibility of further strengthening the restrictive measures in the event that Russia were to continue its war of aggression and the principle of proportionality.

128 As indicated by the documentation concerning imports provided by the applicants and by the Council, the value of imports into the European Union of goods originating in Russia which fall under Chapter 68 of the Combined Nomenclature and are listed in Annex XXI (namely CN codes 6806 to 6808, 6810, 6814 and 6815) was in excess of EUR 169 million in 2021, and the value of mica products was slightly over EUR 5 million that year.

129 Given the value of imports of mica products, the Council could reasonably take the view that those imports generated significant revenues for Russia, within the meaning of Article 3i of Regulation No 833/2014.

130 In so far as the applicants claim that it was foreseeable that imports of mica products would fall in 2023, with the result that those imports would no longer generate significant revenues for Russia that year, that argument must be rejected as ineffective. Indeed, the concept of ‘significant revenues’ within the meaning of Article 3i of Regulation No 833/2014 refers to the level of revenue prior to the Council’s decision to include goods in the list set out in Annex XXI, the very purpose of Article 3i being to reduce those revenues.

131 The second plea in law must therefore be rejected as unfounded, without it being necessary to rule on its admissibility.

The third plea in law, alleging a failure to observe the principle of proportionality, and the fourth plea in law, alleging an infringement of the freedom to conduct a business

132 In their third plea, the applicants argue that the contested provision fails to observe the principle of proportionality, set out in Article 5 TEU and Article 16 and Article 52(1) of the Charter, in view of the effects of that provision on EU undertakings and the very low level of revenue which Russia would be deprived of. The applicants claim that the contested provision causes them serious damage: 100% of the production of Cogebi and 65% of the production of Cogebi, a.s. is

dependent on mica products originating in Russia. That provision affects more than 300 of the applicants' customers in a range of industries across 31 European countries, including world-renowned undertakings. The applicants state that they will no longer be able to supply quality mica tape to European manufacturers of fire-resistant cable and that it is impossible to substitute those products with similar ones in the short term. The discontinuation by Cogebi of the production of mica-based fire protection and thermal insulation barriers for large civil aircraft entails a significant reduction in safety for air passengers and a decrease in competitiveness vis-à vis aircraft manufactured in the United States. The contested provision deprives Russia's revenues of only EUR 100 000, whereas it deprives the Kingdom of Belgium and the Czech Republic of EUR 800 000 in revenues.

133 In the fourth plea, the applicants submit that the contested provision infringes their freedom to conduct a business, in breach of Article 16 and Article 52(1) of the Charter. They argue that Cogebi is no longer able to exercise its freedom to conduct a business in the aviation industry because it has been deprived of a unique type of mica paper and that Cogebi, a.s. has lost its ability to produce a range of goods containing mica products. The contested provision is not necessary since it is not effective, given that Russia's revenues from exporting mica products are hardly significant.

134 The Council, supported by the Republic of Estonia and the Commission, disputes those arguments.

135 Since the applicants allege an infringement of Article 16 of the Charter in both the third and fourth pleas, those pleas should be examined together.

136 Article 16 of the Charter recognises the freedom to conduct a business in accordance with Community law and national laws and practices.

137 The protection afforded by Article 16 encompasses the freedom to exercise an economic or commercial activity, freedom of contract and free competition, and covers, in particular, the freedom to choose with whom to do business (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 79).

138 Since the effect of the contested provision is that the applicants can no longer freely choose which undertakings to purchase mica products from, because they are no longer able to purchase such products if they originate in or are exported from Russia, that provision constitutes an interference with the applicants' freedom to conduct a business.

139 Under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. 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.

140 In that regard, first, it must be held that the limitation on the applicants' freedom to conduct a business is provided for by law, within the meaning of Article 52(1) of the Charter, since that limitation is provided for by Regulation 2022/1904.

141 Secondly, the contested provision respects the essence of the applicants' freedom to conduct a business, as they remain free to carry on their activity of purchasing mica products provided that they do not purchase products originating in or exported from Russia.

142 Thirdly, in so far as the applicants challenge the proportionality of the contested provision, it must be noted 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. The legality of a measure adopted in those areas can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 146 and the case-law cited).

143 The freedom to conduct a business is not absolute and its exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union, provided that such restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very essence of the rights guaranteed (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 148 and the case-law cited).

144 As stated in paragraph 87 above, the objective of the contested provision is to increase pressure on Russia with a view to having it withdraw its troops and military equipment from Ukraine and end its war of aggression, by imposing import restrictions on goods which generate significant revenues for Russia and which enable it to implement actions destabilising the situation in Ukraine, goods that are listed in Annex XXI.

145 Since the Council could reasonably take the view that mica products generated significant revenues for Russia, as stated in paragraph 129 above, the contested provision is consistent with the objective pursued (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 147).

146 Restrictive measures, by definition, have consequences which affect the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of those measures (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 149 and the case-law cited).

147 In the present case, although it is apparent from the Annex to the reply that, in 2022, 99% of the business of Cogebi and 67% of the business of Cogebi, a.s. depended on mica products originating in Russia, it has not been demonstrated that it is impossible for the applicants to purchase mica products similar to those which they imported from Russia in 2022 from other EU or third-country operators. In particular, the applicants have not adduced any evidence to establish to the requisite legal standard that mica products originating in Russia are irreplaceable. For the same reason, it has not been demonstrated that the contested provision per se causes a greater decline in revenues for Belgium and the Czech Republic, in which Cogebi and Cogebi, a.s. respectively are established, than in revenues for Russia. Even if that were the case, that provision would still not be manifestly inappropriate in the light of its objective of applying pressure on Russia to end its war of aggression against Ukraine.

148 Similarly, as regards the applicants' argument that the contested provision affects their customers, particularly in the aviation sector, it has not been established that those customers are unable to obtain products similar to those purchased from the applicants from other EU or third-country suppliers or that the contested provision undermines the safety of air transport or the competitiveness of the aviation sector.

149 The importance of the objectives pursued by the contested provision, namely the protection of the territorial integrity, sovereignty and independence of Ukraine, which is part of the wider objective of supporting the principles of international law and maintaining European and international security, in accordance with the objectives of the European Union's external action set out in Article 21 TEU, is such as to justify the possibility that, for operators like the applicants and their customers, the consequences may be negative, even significantly so. In those circumstances, and having regard, inter alia, to the fact that the restrictive measures adopted by the Council in reaction to the crisis in Ukraine have become progressively more severe, interference with the applicants' and their customers' freedom to conduct a business cannot be considered to be disproportionate (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 150).

150 Consequently, the applicants have no grounds for maintaining that the Council infringed the principle of proportionality and the freedom to conduct a business.

151 The third and fourth pleas in law must therefore be rejected.

152 It follows from all of the foregoing that the action must be dismissed.

Costs

153 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. As the applicants have been unsuccessful, they must be ordered to bear

their own costs and to pay those incurred by the Council, in accordance with the form of order sought by the latter, including those relating to the interim proceedings.

154 In accordance with Article 138(1) of the Rules of Procedure, the Commission and the Republic of Estonia must bear their own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Cogebi and Cogebi, a.s. to bear their own costs and to pay those incurred by the Council of the European Union, including those relating to the interim proceedings;

3. Orders the European Commission and the Republic of Estonia to bear their own costs.

da Silva Passos Gervasoni Półtorak

Delivered in open court in Luxembourg on 17 April 2024.

V. Di Bucci S. Papasavvas

Registrar President

Certified copy of an original signed by qualified electronic signature

Registry of the General Court

17 April 2024