JUDGMENT OF THE GENERAL COURT (Second Chamber)

(Common foreign and security policy – Restrictive measures in view of Russian actions destabilising the situation in Ukraine – Temporary prohibition of broadcasting and suspension of broadcasting activities – Freedom of expression and information – Proportionality – Freedom to conduct a business – Principle of non-discrimination on grounds of nationality)

In Case T-125/22,

RT France, established in Boulogne-Billancourt (France), represented by: Pierre-Olivier Sur, lawyer,

applicant,

supported by:

Council of the European Union, represented by S. Lejeune, A. Moyer and S. Chmielewska, acting as agents,

defendant,

supported by:

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

intervener,

Republic of Estonia, represented by M. Ivashko and N. Grünberg, acting as agents,

intervener,

French Republic, represented by A.-L. Desplanques, J.-L. Carré, M. Dumortier and T. Stehlin, acting as agents,

intervener,

Republic of Latvia, represented by K. Pommere, J. Davidovičs, I. Kucina, D. Castro and I. Romulāns, acting as agents,

intervener,

(Text rectified by order of 14 October 2022 **Republic of Lithuania**, represented by R. Dzwonovski and V. Kazlamickienė, acting as agents,

intervener,

Republic of Poland, represented by M. Rogalski and A. Wiłkowska, acting as agents,

intervener,

European Commission, represented by D. Calliga Crouch, D. Di Bucci, F. Brabandt and M. Carpus Carcea, acting as agents,

intervener,

High Representative of the Union for Foreign Affairs and Security Policy, represented by P. Hoffmann, J. Heves and M. A. Dimitriou-Jonas, acting as agents,

intervener.

THE GENERAL COURT (Second Chamber),

Composed of: E. Papasavvas, President, K. Kowalik-Bańczyk (Rapporteur), S. Gervasoni, N. J. Fenwick and M. Sampol Pucurull, Judges; P. Arwa, Administrator,

1 Gilles L'Hotellier, Administrator; D. Hubert and O. Mongin, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

further to the hearing on 19 June 2023,

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, RT France, seeks the annulment of Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2022 L 65, p. 1, the contested decision) and of Council Regulation (EU) 2022/350 of 1 March 2022 implementing Regulation (EU) No 833/2014 concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2022 L 65, p. 1, the contested regulation, and together with the contested decision, the contested measures).

Background to the dispute

2 In 2009, RT France, a subsidiary of the Russian television company RT, was established in Boulogne-Billancourt (France), with its principal place of business in Paris. The applicant, which is a private-law limited liability company, is wholly owned by the Russian State through its shareholder, the Russian Federal Agency for Press and Mass Communications.

3 In 2009, RT France, which is a television broadcaster, was granted a television broadcasting licence by the French audiovisual regulatory authority, the Conseil supérieur de l'audiovisuel (CSA), France, now the Arcom. The applicant is the holder of a number of licences to broadcast television programmes in the French language, which are valid for a period of five years. The applicant's licences were renewed in 2014 and 2019.

4 In March 2014, the Russian Federation unlawfully annexed the Autonomous Republic of Crimea and the city of Sevastopol and has since engaged in continued destabilisation actions in Ukraine. On 17 March 2014, the European Council adopted Decision 2014/145/CFSP concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2014 L 78, p. 16), and Council Regulation (EU) No 269/2014 concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine and jeopardising the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 1), which provided for restrictive measures in view of the actions of the Russian Federation destabilising the situation in Ukraine and jeopardising the territorial integrity of Ukraine and the city of Sevastopol by the Russian Federation.

5 In 2015, the Minsk agreements were concluded between Russia and Ukraine because tensions, with the deployment by the Russian Federation of substantial military forces on the Ukrainian territory, had increased.

6 In conclusions of 24 and 25 June 2015, the European Council called on the Russian Federation to fully ensure its responsibility in ensuring the full implementation of the Minsk agreements, which it had signed and had thus accepted to implement in good faith, and to use its influence over the separatists to that end. It also called on the Russian Federation to cease its further malign, illegal and destabilising actions by Russia, making full use of all instruments at the European Union's disposal, and ensuring coordination with partners". To that end, the European Council stated that it was prepared to adopt additional restrictive measures in the course of July 2015 if there was no tangible progress towards the full implementation of the Minsk agreements.

7 In the conclusions adopted at the meeting held on 16 December 2015, the European Council reviewed the urgent need for the Russian Federation to de-escalate tensions caused by its military actions in Ukraine, in breach of its commitments under the Minsk agreements, and to use its influence over the separatists to that end. The European Council also called on the Russian Federation to cease its further malign, illegal and destabilising actions by Russia, making full use of all instruments at the European Union's disposal, and ensuring coordination with partners". To that end, the European Council stated that it was prepared to adopt additional restrictive measures in the course of January 2016 if there was no tangible progress towards the full implementation of the Minsk agreements.

8 On 29 January 2022, the Council of the European Union approved conclusions in which it had condemned the Russian Federation's continued aggressive actions and threats against Ukraine and its people, which had been ongoing since the illegal annexation of Crimea and the city of Sevastopol, and had caused a grave humanitarian crisis, with the deployment of military forces on the Ukrainian territory, including through a wide array of asserted and individual restrictive measures that would be adopted in coordination with partners.

9 On 24 February 2022, the Russian Federation launched a military aggression against Ukraine, which was, in the words of the President of the European Council, a flagrant and grave violation of international law and of the principles of the United Nations Charter, which had been reaffirmed by the Russian Federation itself.

10 On 23 February 2022, the President of the Russian Federation signed a decree recognising the independence and sovereignty of the self-proclaimed Donetsk People's Republic and of the self-proclaimed Luhansk People's Republic, which had been proclaimed on 22 February 2022.

11 On 23 February 2022, the High Representative published a declaration on behalf of the European Union condemning those actions, since they constituted a serious violation of international law and undermined the sovereignty and territorial integrity of Ukraine, and stating that the European Union would respond to those actions with additional restrictive measures.

12 On 23 February 2022, the Council adopted a first package of restrictive measures. Those measures concerned, first, restrictions applicable to economic relations with the non-government controlled areas of the Donetsk and Luhansk oblasts, including a prohibition on the import into the European Union of goods originating in those areas, a ban on investment in those areas by Union citizens and bodies and, third, the addition of members of the government, banks, businesspeople, generals and 336 Members of the State Duma of the Federal Assembly of the Russian Federation to the lists of persons and entities subject to restrictive measures.

13 On 24 February 2022, the President of the European Commission announced the adoption of a package of measures to close the Union's airspace to all Russian aircraft and companies in the country.

14 On 25 February 2022, the High Representative published a declaration on behalf of the European Union condemning the 'unprovoked invasion' of Ukraine by the armed forces of the Russian Federation, which was a flagrant violation of international law and of the principles of the United Nations Charter, which had been reaffirmed by the Russian Federation itself. In that declaration, the European Union condemned in the strongest possible terms that 'unprovoked and groundless attack', 'aggression' being of the view that, by its illegal military actions, in which the European Union had not been involved, the Russian Federation had chosen to disrupt the stability of Europe and the world, and had made a deliberate choice to cause human suffering and to bring a crisis with consequences for stability, in Europe and beyond, that could be foreseen. The European Union also stated that it would continue to take all necessary measures to ensure that the Russian Federation ceased its military actions and ensure compliance for the Russian Federation.

15 On 25 February 2022, the President of the European Council and the President of the Council of the European Union, on behalf of the Member States (the restrictive measures at issue), lifted, formally, certain EU-27 of the contested decision and recitals 9 thereof.

16 On 25 February 2022, the Council adopted a second package of restrictive measures. Those measures concerned, first, restrictions applicable to economic relations with the non-government controlled areas of the Donetsk and Luhansk oblasts, including a prohibition on the import into the European Union of goods originating in those areas, a ban on investment in those areas by Union citizens and bodies and, third, the addition of members of the government, banks, businesspeople, generals and 336 Members of the State Duma of the Federal Assembly of the Russian Federation to the lists of persons and entities subject to restrictive measures.

17 On 26 February 2022, the President of the European Commission announced the adoption of a package of measures to close the Union's airspace to all Russian aircraft and companies in the country.

18 On 26 February 2022, the High Representative published a declaration on behalf of the European Union condemning the 'unprovoked invasion' of Ukraine by the armed forces of the Russian Federation, which was a flagrant violation of international law and of the principles of the United Nations Charter, which had been reaffirmed by the Russian Federation itself. In that declaration, the European Union condemned in the strongest possible terms that 'unprovoked and groundless attack', 'aggression', being of the view that, by its illegal military actions, in which the European Union had not been involved, the Russian Federation had chosen to disrupt the stability of Europe and the world, and had made a deliberate choice to cause human suffering and to bring a crisis with consequences for stability, in Europe and beyond, that could be foreseen. The European Union also stated that it would continue to take all necessary measures to ensure that the Russian Federation ceased its military actions and ensure compliance for the Russian Federation.

19 On 27 February 2022, the President of the European Council and the President of the Council of the European Union, on behalf of the Member States (the restrictive measures at issue), lifted, formally, certain EU-27 of the contested decision and recitals 9 thereof.

20 Against that background, on 1 March 2022 the Council adopted, on the basis of Article 29 TEU, the contested decision and, on the basis of Article 215 TFEU, the contested regulation, in order to implement the restrictive measures at issue, which, in the words of the Council, were aimed at ending the war in Ukraine, which had been caused by the Russian Federation, and at ensuring that the Russian Federation put an end to its military actions in Ukraine, and which, in the words of the Council, were also aimed at ensuring that the Russian Federation ceased its actions aimed at destabilising the situation in Ukraine and ensure compliance for the Russian Federation with its international commitments and with the rules and principles of the United Nations Charter.

21 Recital 9 of the contested decision and recitals 2 and 3 of the contested regulation provided that adoption of the restrictive measures which they lay down ("the restrictive measures at issue") fell within the scope of the Treaty on European Union, including in the Charter of Fundamental Rights, and in Member States' constitutions, within their respective fields of application.

22 Article 4g of Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 16), as amended by the contested decision ("Article 4g of Decision 2014/512/CFSP"), provides:

'1. It shall be prohibited for operators to broadcast or to enable, sell, provide, transmit or distribute broadcast content to any person or entity in the Union, including through transmission or distribution by any means such as cable, satellite, IP TV, Internet service providers, Internet video-sharing platforms or applications, whether new or established.

2. Any broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies listed in Annex II shall be suspended.

The relevant broadcasting activities of those legal persons, entities or bodies shall be prohibited.

Article 27 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), as amended by the contested regulation ("Article 27 of Regulation No 833/2014"), provides:

'1. It shall be prohibited for operators to broadcast or to enable, sell, provide, transmit or distribute broadcast content to any person or entity in the Union, including through transmission or distribution by any means such as cable, satellite, IP TV, Internet service providers, Internet video-sharing platforms or applications, whether new or established.

2. Any broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies listed in Annexes XVI and XVII shall be suspended.

The relevant broadcasting activities of those legal persons, entities or bodies shall be prohibited.

3. Article 4 of Decision (CFSP) 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 16), as amended by Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russian actions destabilising the situation in Ukraine (OJ 2022 L 65, p. 1), is to apply until 31 July 2022 and is to be reviewed in accordance with Article 29 of Decision 2014/512/CFSP.'

Procedure and forms of order sought

23 By application lodged at the Registry of the General Court on 8 March 2022, the applicant brought the present action.

24 By separate document lodged at the Registry of the General Court on 11 March 2022, the applicant also lodged an application for interim measures. That application was dismissed by order of 30 March 2022 of Order of the President of the Fifth Chamber of the General Court, RT France v Council (T-125/22 R, not published, EU:T:2022:188), upheld on appeal by order of the President of the Fifth Chamber of the Court of Justice of the General Court, RT France v Council (C-620/22 P, not published, EU:C:2022:491).

25 By decision of the President of the Fifth Chamber of the General Court, the case was assigned to the Second Chamber.

26 By decision of the President of the Second Chamber of the General Court, the case was assigned to the Second Chamber, sitting in a different composition.

27 In accordance with Article 1 of Regulation (EU) No 2015/1, as amended by Council Decision (CFSP) 2015/227 of 10 February 2015 (OJ 2015 L 38, p. 1), it is to apply until 31 July 2022 and is to be reviewed in accordance with Article 2 of Regulation (EU) No 2015/1, as amended by Regulation (EU) 2015/2 of 10 February 2015.

28 By decision of the President of the Second Chamber of the General Court, the case was assigned to the Second Chamber, sitting in a different composition.

29 By decision of the President of the Second Chamber of the General Court, the case was assigned to the Second Chamber, sitting in a different composition.

30 By decision of the President of the Second Chamber of the General Court, the case was assigned to the Second Chamber, sitting in a different composition.

The relevance and the sufficiency of the evidence adduced by the Council

In the first place, the applicant maintains that it has never sought to conceal the way in which it is funded, which, moreover, is not punishable in itself and has always been public knowledge. Moreover, the Council's complaint that the applicant has failed to show that it was an origin of Russian State influence and of propaganda for the latter. The work of a French researcher, to which the Council refers, is based on mere speculation and on a wrong premise, namely that the applicant is a Russian State-funded media outlet. The Council's claim that the applicant's activities are a threat to the fundamental interests of the Union and its Member States is also unsubstantiated.

In the applicant's submissions, the truncated evidence adduced by the Council does not demonstrate how the applicant deals with Russian military operations on Ukrainian territory. Nothing in the evidence adduced by the Council shows that the applicant's reporting is biased in favour of the Russian Federation or that it is a means of Russian State influence and propaganda. In the reply, not adduced in the proceedings before the General Court, the Council merely alleges that the applicant's reporting is biased in favour of the Russian Federation and of its President. In any case, the applicant maintains that it deals with different opinions concerning the conflict in Ukraine, which are many occasions are described as military aggressor undermining peace, as occupiers, as responsible for war crimes and as responsible for the shelling of civilians, and that it has never been prevented from reporting on the Russian military operations in Ukraine and its opinions can be broadcast.

In the second place, in addition, that is incorrect to assert, in order to justify the prejudicial nature of the prohibition at issue, that such measures do not prevent the applicant and its staff from carrying out their journalistic activities in the Union, since the prohibition at issue prevents the applicant from broadcasting its television programmes in the Union, which is the only means by which it can carry out its journalistic activities. Moreover, the prohibition at issue prevents the applicant from carrying out its journalistic activities in the Union, since the prohibition at issue prohibits the applicant's journalists, pursuant to the prohibition, to carry out any broadcasting activities in the Union, such as, in particular, the broadcasting of their reports, interviews and programmes.

In the third place, the applicant maintains that the Council cannot conclude that applicant's media coverage and information processing with those of other journalists of the RT Group, which are accessible from other Member States, is such as to compensate for the prohibition of its broadcasting in the Union, since the applicant's reporting is not the same as that of other media outlets in the United Kingdom, Britain and Northern Ireland.

Lastly, the applicant, which was adduced by the Council concerning the alleged activity of disinformation or manipulation of information in which the applicant is engaged, the only mentioned is its reply that the Council has failed to show that it was an origin of Russian State influence and of propaganda for the latter. The work of a French researcher, to which the Council refers, is based on mere speculation and on a wrong premise, namely that the applicant is a Russian State-funded media outlet. The Council's claim that the applicant's activities are a threat to the fundamental interests of the Union and its Member States is also unsubstantiated.

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242 In the light of all of the foregoing, the fourth plea must be rejected and, accordingly, the action must be dismissed in its entirety.

Costs

243 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must be ordered to bear its 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.

244 According to Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of Belgium, the Republic of Estonia, the French Republic, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland and the Commission must bear their own costs.

245 According to Article 138(3) of the Rules of Procedure, the General Court may order an intervener other than those referred to in paragraphs 1 and 2 thereof to bear his or her own costs. In the present case, the High Representative must be ordered to bear his own costs.

On those grounds,

THE GENERAL COURT (Grand Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders RT France to bear its own costs and to pay those incurred by the Council of the European Union, including those relating to the interim proceedings;**

3. **Orders the Kingdom of Belgium, the Republic of Estonia, the French Republic, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the European Commission, and the High Representative of the Union for Foreign Affairs and Security Policy to bear their own costs.**

Papasavvas	Kanninen	Tomljenović
Gervasoni	Spielmann	Frimodt Nielsen
Schwarcz	Buttigieg	Öberg
Mastroianni	Brkan	Gâlea
Dimitrakopoulos	Kukovec	Kingston

Delivered in public in Luxembourg on 27 July 2022.

[Signatures]

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* Language of the case: French.