

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 10 September 2026 ([1](#))

Case C-378/25

KX
v
Predsedatel na Smetna palata na Republika Bulgaria,
interested party:
Okrazhna prokuratura Silistra

(Request for a preliminary ruling from the Administrativen sad – Silistra (Administrative Court, Silistra, Bulgaria))

(Reference for a preliminary ruling – Restrictive measures taken in view of the military aggression against Ukraine – Regulation (EU) No 833/2014 – Article 5k – Prohibition on awarding a public contract falling within the scope of the public procurement Directives – Russian national, natural person established in Russia or legal person, entity or body established in or controlled from that country – Award by the mayor of a municipality of a public contract for the supply of a waste collection vehicle – Estimated value of the contract below the threshold amount under Directive 2014/24/EU – Estimated value of the contract above the threshold amount under the national legislation transposing that directive)

I. Introduction

1. The present request for a preliminary ruling concerns the interpretation 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. ([2](#)) Article 5k thereof, which was introduced by Regulation 2022/576, ([3](#)) prohibits the award of any public contract falling within the scope of the EU public procurement Directives – namely Directive 2014/24/EU ([4](#)) – to any Russian national or to any natural person established in Russia, as well as to any legal person, entity or body established in or controlled from that country. ([5](#))

2. The request has been made in proceedings between KX, the mayor of the municipality of Glavinitsa (Bulgaria), and the predsedatel na Smetna palata na Republika Bulgaria (President of the Court of Auditors of the Republic of Bulgaria). The latter imposed an administrative penalty on KX for irregularities that occurred during the procurement procedure ([6](#)) organised in that municipality for the acquisition of a waste collection vehicle. Those irregularities consisted, in essence, in making the award of the public contract in

question subject to the prohibition contained in Article 5k of Regulation No 833/2014, despite the fact that the threshold amount set out in Directive 2014/24 was not met.

3. To date, the Court has addressed the interpretation of Regulation No 833/2014 on several occasions. (7) For instance, in its recent judgment in [Opera Laboratori Fiorentini](#), (8) the Court's Fifth Chamber defined the obligations that contracting authorities must respect under Article 5k of Regulation No 833/2014 in situations where a tenderer in a procurement procedure is an undertaking based in the European Union that is managed by Russian nationals. (9)

4. The present case, however, raises a legal issue with more profound constitutional connotations. It concerns the division of competences between the European Union and its Member States in the field of restrictive measures. Sitting in its Grand Chamber, the Court must ascertain, first and foremost, whether a contracting authority in a Member State may prohibit Russian nationals, as well as natural and legal persons, entities or bodies established in or controlled from Russia, from participating in procurement procedures that do not fall within the scope of Directive 2014/24, in terms similar to those set out in Article 5k of Regulation No 833/2014 for procedures that do fall under that directive.

5. Moreover, should a practice by a contracting authority in a Member State establishing such a prohibition be permitted, the Court will then have to determine whether that practice fails to observe the principles that must be respected under EU law in procurement procedures that are not governed by Directive 2014/24 but that, nevertheless, present a certain cross-border interest. Those principles encompass, inter alia, the principles of non-discrimination and equal treatment.

6. Finally, this case marks the first time that the Court may need to interpret Article 10 of Regulation No 833/2014. That provision contains a 'non-liability clause' that excludes the responsibility of EU operators, including public bodies, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in Regulation No 833/2014. Whether a contracting authority, in a context such as that of the main proceedings, should be held liable for subjecting the procurement procedure in question to the prohibition contained in Article 5k of Regulation No 833/2014 is an additional issue that the Court will have to address in order to provide a useful answer to the referring court in the present case.

II. Legal framework

A. European Union law

1. Regulation No 833/2014

7. Recital 2 of Regulation No 833/2014 states:

'On 22 July 2014, the Council [of the European Union] concluded that should Russia fail to respond to the demands formulated in the European Council conclusions of 27 June 2014 and in its own conclusions of 22 July, it would be ready to introduce without delay a package of further significant restrictive measures. It is therefore considered appropriate to apply additional restrictive measures with a view to increasing the costs of Russia's actions to undermine Ukraine's territorial integrity, sovereignty and independence and to promoting a peaceful settlement of the crisis. These measures will be kept under review and may be ... supplemented by other restrictive measures, in light of developments on the ground.'

8. Article 10 of Regulation No 833/2014 provides:

'Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.'

2. Regulation 2022/576

9. Recitals 1, 2, 3, 4, 10 and 11 of Regulation 2022/576 state:

- ‘(1) On 31 July 2014, the Council adopted Regulation [No 833/2014].
- (2) Regulation [No 833/2014] gives effect to certain measures provided for in [Decision 2014/512 ([10](#))].
- (3) On 8 April 2022, the Council adopted [Decision 2022/578 ([11](#))], amending [Decision 2014/512/CFSP]. ...
- (4) [Decision 2022/578] ... prohibits the award and continued execution of public contracts and concessions with Russian nationals and entities or bodies established in Russia.
- ...
- (10) These measures fall within the scope of the Treaty and, therefore, in particular with a view to ensuring their uniform application in all Member States, regulatory action at the level of the Union is necessary.
- (11) Regulation [No 833/2014] should therefore be amended accordingly’.

10. Article 1 of Regulation 2022/576 provides:

‘Regulation [No 833/2014] is amended as follows:

- (1) in Article 1, the following points are added:

“(v) ‘public procurement Directives’ means [inter alia Directive 2014/24];

...”

...

- (23) the following Articles are inserted:

“Article 5k

1. It shall be prohibited to award or continue the execution of any public or concession contract falling within the scope of the public procurement Directives, ... to or with:

- (a) a Russian national, or a natural or legal person, entity, or body established in Russia;
- (b) a legal person, entity, or body whose proprietary rights are directly or indirectly owned for more than 50% by an entity referred to in point (a) of this paragraph; or
- (c) a natural or legal person, entity, or body acting on behalf of or at the direction of an entity referred to in point (a) or (b) of this paragraph,

including, where they account for more than 10% of the contract value, subcontractors, suppliers, or entities whose capacities are being relied on within the meaning of the public procurement Directives.

...”

...’

3. ***Directive 2014/24***

11. Recital 1 of Directive 2014/24 states:

‘The award of public contracts by or on behalf of Member States’ authorities has to comply with the principles of the [TFEU], and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that those principles are given practical effect and public procurement is opened up to competition.’

12. Article 1 of Directive 2014/24, under the heading ‘Subject matter and scope’, provides in paragraph 1 thereof:

‘This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.’

13. Article 4 of that directive, entitled ‘Threshold amounts’, provides:

‘This Directive shall apply to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

...

(c) EUR 215 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities; ...

...’

14. Under Article 18 of Directive 2014/24, entitled ‘Principles of procurement’:

‘1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

...’

4. ***Bulgarian law***

15. The *Zakon za obshtestvenite porachki* (Law on public procurement), (12) in the version applicable to the facts of the main proceedings, transposes Directive 2014/24 into Bulgarian law. (13)

16. Article 2 of the ZOP provides:

‘(1) Public contracts shall be awarded in accordance with the principles of the [TFEU], and in particular the principles of the free movement of goods, freedom of establishment, freedom to provide services, and mutual recognition, as well as the principles derived therefrom:

1. equality and prohibition of all discrimination;
2. free competition;
3. proportionality;
4. publicity and transparency.

(2) In the award of public contracts, contracting authorities shall not be empowered to restrict competition by imposing conditions or requirements which result in an undue advantage or which unduly restrict the access of economic operators to public contracts and which are not proportionate to the subject matter, value, complexity, quantity, or scope of the public contract.

...’

17. Article 5 of the ZOP stipulates:

‘(1) The contracting entities shall be responsible for the proper estimation, planning, execution, conclusion and reporting of the outcomes of public contracts. The contracting entities shall be public and sectoral.

(2) The following shall be public contracting entities:

...

9. mayors of municipalities, districts and communities, and deputy mayors having the power to administrate budgets;

...’

18. Article 18(1) of the ZOP lists, from points 1 to 13, the types of procedures covered by that law. In particular, point 1 of that provision refers to the ‘open procedure’, in which ‘any interested party may submit a tender’.

19. Article 20(1) of the ZOP provides:

‘(1) The procedures under Article 18(1)(1) ... shall apply when:

1. public contracting authorities and their consortia award public contracts with a value estimated to be equal to or greater than:

...

(b) [271 000 leva (BGN)] – for supplies and services;

...’

III. Facts, procedure and the questions referred

20. KX is the mayor of the municipality of Glavinitsa. Under the ZOP, in that capacity he may act as a contracting authority issuing public contracts.

21. On 29 December 2022, KX initiated a procurement procedure for the award of a public contract under the following subject matter: ‘Supply of a new specialised vehicle equipped with a system for waste collection and waste removal to meet the needs of the municipality of Glavinitsa within the framework of financial leasing’. The estimated value of the public contract, net of VAT, was BGN 283 333.33 – approximately EUR 145 000. The conditions of participation in the procurement procedure listed, as a ground for exclusion, the ‘presence of circumstances specified in Article 5k of [Regulation No 833/2014]’.

22. On 14 December 2023, after the public contract had been awarded, the Court of Auditors of the Republic of Bulgaria ordered an inspection of the proper administration of public funds by the municipality of Glavinitsa between 1 January 2022 and 30 June 2023. Following that inspection, the relevant administrative authority found that KX had infringed the ZOP in relation to the procurement procedure launched in December 2022. KX was criticised in particular for subjecting that procedure to the prohibition set out in Article 5k of Regulation No 833/2014, even though the public contract concerned by that procedure had an estimated value below the threshold specified in Directive 2014/24. According to the administrative authority, that requirement unduly restricted access for economic operators and was disproportionate to the subject matter and value of the public contract.

23. Upon receiving the decision issued after the inspection, KX contested the findings contained therein. For that purpose, he argued that, when transposing Directive 2014/24, the Bulgarian legislature had deliberately lowered the thresholds laid down in Article 4 of that directive. Consequently, pursuant to the ZOP, Directive 2014/24 still applied to procurement procedures organised for the award of public contracts for supplies and services as long as they were valued above BGN 271 000 – approximately EUR 139 000 – like the public contract concerned by the decision. In KX's view, since, under the ZOP, the procedure leading to the award of that public contract had to comply with the main principles and requirements laid down in Directive 2014/24, the terms and conditions of the procurement necessarily had to include a ground for exclusion based on Article 5k of Regulation No 833/2014.

24. On 30 September 2024, the President of the Court of Auditors of the Republic of Bulgaria accepted the findings made by the administrative authority in its decision and imposed a penalty on KX of BGN 6 594.04 – approximately EUR 3 500. KX then challenged that penalty before the Rayonen sad Tutrakan (District Court, Tutrakan, Bulgaria), which, in its judgment, found that he had been correctly held liable. KX subsequently lodged an appeal against that judgment before the Administrativen sad – Silistra (Administrative Court, Silistra, Bulgaria), the referring court in the present proceedings.

25. From the outset, the referring court notes that it is undisputed that, under the ZOP, the provisions of Directive 2014/24 apply to public contracts with an estimated value below the thresholds laid down in that directive, as was the case of the public contract concerned in the main proceedings. In that regard, the referring court submits that, according to the Court's order of 26 September 2024, [Agentsia za darzhavna finansova inspektzia](#) (C-550/23, EU:C:2024:808), (14) that is an option at the Member State's discretion, which aligns with the directive's primary objective of opening up public procurements to the widest possible range of economic operators.

26. Regarding Article 5k of Regulation No 833/2014, the referring court observes that, according to the European Commission's document 'Frequently asked questions on public procurement sanctions against Russia', contracts below the public procurement thresholds laid down in Directive 2014/24 are not covered by that article. That view is shared by the Komisiya za zashtita na konkurentsiyata (Commission for the Protection of Competition, Bulgaria), which has expressly stated that applying Article 5k of Regulation No 833/2014 to procurement procedures that do not reach the thresholds laid down in Directive 2014/24 unduly and unlawfully restricts the participation of eligible economic operators.

27. Against that backdrop, however, the referring court considers that the literal interpretation of Article 5k of Regulation No 833/2014 advocated for by the Commission and the Commission for the Protection of Competition fails to take necessary account of the objectives of that regulation and may lead to gaps in the implementation of the restrictive measures adopted by the European Union. In that court's view, Article 5k of Regulation No 833/2014 constitutes a ground for exclusion that complements those laid down in Article 57 of Directive 2014/24. In the present case, since, pursuant to the ZOP, the provisions of that directive were binding on the procurement procedure concerned in the main proceedings, the prohibition set out in Article 5k of Regulation No 833/2014 could also be considered to be applicable to that procedure as a ground for exclusion.

28. The referring court further considers that, even if preference were to be given to the literal interpretation of Article 5k of Regulation No 833/2014, there would still be doubt as to whether establishing that ground for exclusion in respect of a contract valued below the thresholds laid down in Directive 2014/24 unduly restricts competition. That ground does not affect all economic operators, but rather a narrowly defined set of individuals and entities, who are listed explicitly in Article 5k of Regulation No 833/2014. Provided that the restriction is implemented in order to achieve a legitimate objective of the common foreign and security policy (CFSP), it must be determined whether it can be considered justified in the light of that objective.

29. It is in those circumstances that the Administrativen sad – Silistra (Administrative Court, Silistra) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 5k of [Regulation No 833/2014] to be interpreted as also applying to public contracts with a value estimated to be below the thresholds laid down in Article 4 of [Directive 2014/24] where the contracting [authority] is required under national law to apply the provisions of that directive?’

(2) Does the requirement to make a declaration as to the absence of the grounds set out in Article 5k of [Regulation No 833/2014] constitute a breach of the principles of equal treatment, non-discrimination and free competition or of the prohibition on unduly restricting participants laid down in Article 2(2) of [the ZOP] where that requirement is imposed in a procedure in which a contract value is below the thresholds laid down in [Directive 2014/24]?

(3) Is Article 5k of [Regulation No 833/2014] to be interpreted as permitting a public contracting [authority’s] practice which, in applying the national legislation transposing the provisions of [Directive 2014/24] in procedures concerning contract values below the thresholds, requires participants to make a declaration as to the absence of the grounds set out in that provision?’

30. The request for a preliminary ruling was lodged at the Registry of the Court of Justice on 6 June 2025. The Czech Government, the European Commission and the parties to the main proceedings submitted written observations. A hearing was held on 27 April 2026.

IV. Analysis

31. By its questions, the referring court aims to ascertain whether the prohibition set out in Article 5k of Regulation No 833/2014 applies to a procurement procedure that does not reach the applicability threshold for Directive 2014/24, specifically in a context where the contracting authority is nonetheless required, under national law, to apply the provisions of that directive.

32. That is, in particular, the subject matter of the first question referred, the content of which is closely linked to that of the third question. The main difference between them is that the third question referred is not phrased as an obligation for the contracting authority stemming from Article 5k of Regulation No 833/2014, but rather as an option at the disposal of that authority. Indeed, by that third question, the referring court wishes to clarify whether, where a public contract does not reach the thresholds laid down in Directive 2014/24, Article 5k of Regulation No 833/2014 still permits a contracting authority’s practice of requiring a tenderer in a procurement procedure to provide a declaration confirming that it is not covered by any of the circumstances set out in that article.

33. By contrast, the second question referred is based on the assumption that EU law does not prevent a contracting authority from applying a prohibition similar to that set out in Article 5k of Regulation No 833/2014 in respect of a procurement procedure not covered by Directive 2014/24. In particular, the referring court wishes to determine whether, in that situation, applying that prohibition could nevertheless breach the principles that must be observed under EU law in procurement procedures that do not require the application of Directive 2014/24 – namely, the principles of non-discrimination and equal treatment.

34. Since the answer to the second question referred hinges on a positive response to either the first or the third questions referred, I will examine those two questions first and the second question last.

First question referred

35. The first question invites the Court to determine whether Article 5k of Regulation No 833/2014 should be interpreted as meaning that the prohibition on awarding any public contract falling within the scope of Directive 2014/24 to any Russian national or to any natural person established in Russia, as well as to any legal person, entity or body established in or controlled from that country, also applies to contracts with an estimated value below the threshold amount laid down in Article 4 of that directive. The question arises in a context where national law requires the application of Directive 2014/24 to procurement procedures organised in relation to public contracts that do not reach the threshold set out in that directive.

36. According to Article 5k(1) of Regulation No 833/2014, public contracts that fall within the scope of the public procurement Directives must not be awarded to any of the following parties: (a) Russian nationals or natural or legal persons, entities or bodies established in Russia; (b) legal persons, entities or bodies whose proprietary rights are directly or indirectly owned by more than 50% by an entity referred to in point (a); and (c) natural or legal persons, entities or bodies acting on behalf of or at the direction of an entity referred to in points (a) and (b). (15) For its part, Article 1(v) of that regulation states that references to the public procurement Directives in Regulation No 833/2014 encompass Directive 2014/24.

37. It follows that public contracts covered by Directive 2014/24 cannot be awarded to Russian nationals or to any natural person, legal person, entity or body established in Russia. The same applies to any legal person, entity or body that is essentially controlled from that country. According to the Court's case-law, that is a residual category of prohibitions intended to prevent Article 5k(1) of Regulation No 833/2014 from being circumvented and thus deprived of any practical effect. (16)

38. Moreover, it is apparent from Article 1 of Directive 2014/24 that that directive establishes the rules on the procedures for procurement by contracting authorities with respect to public contracts with a value estimated to be not less than the thresholds laid down in Article 4. (17) Regarding public supply contracts awarded by sub-central contracting authorities, Article 4(c) of Directive 2014/24, in the version relevant to the facts of the case, declares that the provisions of that directive must apply to contracts with an estimated value, excluding VAT, of at least EUR 215 000. That means that if a public supply contract to be awarded by a sub-central contracting authority exceeds that threshold, EU law requires Directive 2014/24 to be applied to the procurement procedure organised to that end. Conversely, if a public contract of that kind does not reach that threshold, the procurement procedure is not subject to the provisions of Directive 2014/24.

39. In the present case, it is apparent from the order for reference that the procurement procedure at issue in the main proceedings concerned a public supply contract to be awarded by a sub-central contracting authority, with an estimated value of BGN 283 333.33 – approximately EUR 145 000 – net of VAT. Taking into account the wording of Article 5k of Regulation No 833/2014, the prohibition contained therein cannot be considered to be applicable to that procurement procedure, since the public contract in question did not exceed the threshold set out in Article 4(c) of Directive 2014/24.

40. The referring court explains, nevertheless, that, when transposing Directive 2014/24 into national law, the Bulgarian legislature decided to lower the applicability thresholds for that directive. That means that, in that Member State, the provisions of Directive 2014/24 still apply to procurement procedures organised for the award of public contracts valued below EUR 215 000. In actual fact, only public contracts with an estimated value below BGN 271 000 – approximately EUR 139 000 – are not covered by the provisions of Directive 2014/24. According to Bulgarian law then, the procurement procedure at issue in the main proceedings, relating to a public contract valued at EUR 145 000, had to comply with the rules and principles laid down in Directive 2014/24.

41. The Court has previously referred to that specific feature of the Bulgarian legislation transposing Directive 2014/24 in the order in [Agentsia za darzhavna finansova inspektzia](#). (18) In particular, the Court considered that national legislation making rules of Directive 2014/24 applicable to contracts with an estimated value that does not reach the threshold amounts laid down by that directive stems from each Member State's freedom to regulate public contract awards in their sphere of competence. Moreover, the Court stated that that national legislation does not contravene the rules defining the scope of Directive 2014/24, since it shares their primary objective, namely opening up public procurement to the broadest possible competition, for the benefit of economic operators and contracting authorities alike. (19)

42. It should be recalled that, within the area of public procurement, the scope of actions falling under the competence of the European Union and the competence of the Member States is determined by the economic scale of the public contract in question. That is particularly the aim of Article 4 of Directive 2014/24, which determines the value of public contracts relevant to the EU single market. (20) Public contracts worth more than the threshold amount established in that provision are considered significant to

the EU internal market, while procurement procedures concerning lower-value tenders remain, with due respect for the principle of subsidiarity, (21) the responsibility of the Member States. Following the Court's declarations in the order in [Agentsia za darzhavna finansova inspektzia](#), it is in the exercise of that responsibility that Member States may freely decide to lower the thresholds of Directive 2014/24 in order to make the provisions of that directive applicable to procurement procedures falling within their competence.

43. It follows that, even though the Court has deemed national legislation, such as that which transposed Directive 2014/24 into Bulgarian law, to be compatible with that directive, the Bulgarian legislature's decision to lower the applicability thresholds for that directive constitutes an independent choice of that Member State to regulate procurement procedures that fall within its competence.

44. Moreover, the fact that a Member State has lowered the threshold amounts of Directive 2014/24 of its own accord does not mean that the prohibition set out in Article 5k of Regulation No 833/2014 automatically applies to procurement procedures governed by national law. After all, the scope of Article 5k of Regulation No 833/2014 must not exceed the limits of the competences attributed to the European Union with regard to procurement procedures, which, as indicated in point 42 above, are defined by the threshold amounts established in Article 4 of Directive 2014/24. Even if, as the referring court suggests, Article 5k of Regulation No 833/2014 constituted a ground for exclusion complementing those listed in Article 57 of Directive 2014/24, from the perspective of EU law, that ground for exclusion cannot be imposed on a procurement procedure not governed by that law.

45. Consequently, the answer to the question whether a prohibition such as that contained in Article 5k of Regulation No 833/2014 can be applied to procurement procedures falling within the competence of the Member States cannot be derived from that article. Instead, that question must be assessed in the light of national law, as an expression of the Member States' freedom to regulate public contract award rules within their competence, provided, of course, that EU law does not object to it, as I will examine in my analysis of the second and third questions referred.

46. Furthermore, the referring court wonders whether interpreting Article 5k of Regulation No 833/2014 solely in terms of its wording, as set out in point 39 of the present Opinion, could lead to undermining the objectives of the restrictive measures adopted by the European Union in the context of the military aggression perpetrated by Russia against Ukraine.

47. In that regard, I would briefly point out, from the outset, that the fact that the Commission has stated, in its document 'Frequently asked questions on public procurement sanctions against Russia', as amended on 26 January 2024, (22) that contracts below the public procurement thresholds laid down in Directive 2014/24 are not covered by Article 5k of Regulation No 833/2014 is of no consequence. The Commission correctly recognises in that document that only the Court is competent to interpret the regulations applicable in the domain of EU restrictive measures, which means that that document cannot determine, in any manner, the outcome of the analysis as to the proper interpretation to be given to Article 5k of Regulation No 833/2014. (23)

48. Nevertheless, it is important to recall that, although the Court's settled case-law declares that, when interpreting a provision of EU law, consideration should be given to its wording, the context in which it occurs, and the objectives of the rules of which it forms part, that same case-law states that recourse may be had to contextual and teleological interpretations only in order to resolve drafting ambiguities. Neither of those two hermeneutical methods can take precedence over the clear and precise wording of a provision, depriving that wording of all effectiveness as a result. (24)

49. In the present case, Article 5k of Regulation No 833/2014 expressly provides that the prohibition contained therein applies to public contracts 'falling within the scope of the public procurement Directives', which, as is apparent from Article 1(v) of that regulation, encompass Directive 2014/24. Since the wording of Article 5k of Regulation No 833/2014 is unambiguous and its meaning clear, there is no

need to examine further the context of that provision or the objectives of the EU restrictive measures in order to answer the question referred by the referring court.

50. In any event, it should be observed that, when read in the context of the Treaties and, in particular, in the light of the division of competences between the European Union and the Member States in the field of procurement procedures, as explained in the present Opinion, the contextual interpretation of Article 5k of Regulation No 833/2014 lends support to the literal interpretation of that provision. Even the teleological interpretation of Article 5k of Regulation No 833/2014 leads to a similar conclusion. In that regard, it must be recalled that, according to the Court's case-law, the primary objective of Article 5k of Regulation No 833/2014 is to ensure that the financial resources of the Russian Federation enabling it to continue its military aggression against Ukraine are effectively undermined. (25) Contrary to the view expressed by the referring court in the order for reference, that objective, which must be attained in full respect of the competences attributed to the Union, can be achieved without considering that Article 5k of Regulation No 833/2014 applies to a case such as that concerned in the main proceedings, since the prohibition contained therein covers those public contracts that are relevant to the internal market under EU law and the protection of which is conferred on the European Union.

51. In the light of the foregoing, I conclude, as regards the first question referred, that Article 5k of Regulation No 833/2014 must be interpreted as meaning that the prohibition on awarding any public contract falling within the scope of Directive 2014/24 to a Russian national, to any natural person established in Russia, or to any legal person, entity or body established in or controlled from Russia does not apply to contracts with an estimated value below the threshold laid down in that directive, even where the contracting authority is required, under national law, to apply the provisions of that directive.

Third question referred

52. The fact that Article 5k of Regulation No 833/2014 does not apply to public contracts with an estimated value below the threshold amount set out in Directive 2014/24, as concluded in my analysis of the first question referred, does not mean that national contracting authorities are necessarily prevented from introducing similar prohibitions for procurement procedures within the competence of the Member States. That is the subject matter of the third question referred, by which the referring court asks, in essence, whether Article 5k of Regulation No 833/2014 should be interpreted as precluding a contracting authority's practice of requiring tenderers, in the context of a public contract that does not reach the threshold amount set out in Directive 2014/24, to confirm that they are not covered by any of the circumstances set out in that article.

53. Both Regulation No 833/2014 and Regulation 2022/576, the latter of which introduced Article 5k into the former, are based on Article 215 TFEU. That is the only provision of Title IV, which appears in Part Five of the TFEU, concerning 'the Union's external action'. (26) Under the heading 'Restrictive measures', Article 215(1) TFEU refers to the Council's power to adopt, on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, measures necessary to interrupt and reduce, either in part or completely, economic and financial relations with one or more third countries. Article 215(1) TFEU further states that such a decision is to be adopted in accordance with the specific provisions on the CFSP, particularly those set out in Chapter 2 of Title V of the TEU. (27)

54. It is important to recall that, although the term is not used in Article 215(1) TFEU itself, the measures adopted under that provision are commonly referred to as 'sectoral' restrictive measures. Those measures target strategic economic activities of the country to which they are applied, in order to exert maximum pressure on its government and bring about a change in policy or behaviour. (28) With regard to the actions by the Russian Federation that have destabilised the situation in Ukraine and to the subsequent aggression by the Russian armed forces against that country, the European Union has adopted to date 21 packages of measures, (29) comprising a broad range of sectoral restrictions, (30) the majority of which are set out in Regulation No 833/2014, (31) as subsequently amended.

55. Moreover, sectoral restrictive measures should be distinguished from ‘individual’ restrictive measures, which are those that target specific natural or legal persons, groups, or non-State entities, rather than establishing limitations on economic activities and sectors in a generalised manner. (32) Based on Article 215(2) TFEU, their adoption also requires a prior decision by the Council in accordance with Chapter 2 of Title V of the TEU. (33) Individual restrictive measures typically consist of asset freezes, bans on entering the territory of the European Union and restrictions on the circulation of the persons or entities concerned within that territory. That type of measure is illustrated, in particular, by the measures adopted in response to the Russian Federation’s military aggression against Ukraine, as set out in Regulation (EU) No 269/2014. (34)

56. In the present case, the question whether Article 5k of Regulation No 833/2014 permits a contracting authority to consider the presence of the circumstances specified in that article as grounds for exclusion in a procurement procedure, as in the case of the main proceedings, must be assessed in the light of the nature of the competences conferred on the European Union by the Treaties in the area of restrictive measures. Ultimately, the answer to that question depends on whether the adoption of Article 5k of Regulation No 833/2014 precludes the establishment of a similar prohibition at national level, either because the European Union’s competence in that area is to be considered exclusive, or because it is to be considered shared and Regulation No 833/2014 pre-empts any action by the Member States.

57. As is well known, the European Union’s competences are governed by the principle of conferral, which is enshrined in Article 5(1) TEU and defined in more concrete terms in Article 5(2) thereof. Under that principle, the European Union may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the European Union in the Treaties remain with the Member States. (35)

58. The categories and areas of Union competence are expressly set out in Title I of Part One of the TFEU. In particular, according to Article 2(1) TFEU, the exclusive competences of the European Union are those that, in essence, have no concurrent Member State competence, since it is considered that that competence has been completely transferred by the Member States to the European Union. (36) They cover the areas listed specifically in Article 3(1) TFEU, which encompass, for instance, the common commercial policy. By virtue of Article 3(2) TFEU, the European Union also has exclusive competence for the conclusion of an international agreement when its conclusion is necessary, inter alia, to enable it to exercise its internal competence.

59. By contrast, shared competences are those in which the Treaties confer a competence on the European Union that does not relate to the areas referred to in Article 3 TFEU – namely the areas in which the European Union has exclusive competence – or in Article 6 TFEU – namely the areas in which the European Union has supportive, coordination and supplementary competences. (37) According to Article 2(2) TFEU, when the Treaties confer on the European Union a competence shared with the Member States in a specific area, both the European Union and the Member States may legislate and adopt legally binding acts in that area. However, the Member States may only exercise their competence to the extent that the European Union has not already done so. That means that a shared competence can become exclusive through pre-emption by EU action. (38)

60. As indicated in point 53 of the present Opinion, with respect to restrictive measures, both sectoral or individual, they are regulated in the part of the TFEU devoted to the external action of the European Union. Yet, for the enactment of those measures, they must be preceded by a decision adopted in the sphere of the CFSP, in particular under Article 29 TEU. In the judgment in [Parliament v Council](#), cited above, the Court regarded that double normative source of restrictive measures, stemming from both the TEU and the TFEU, as the ‘bridge’ (39) expressly provided by the Treaty of Lisbon in order to link the CFSP and the EU ordinary external actions involving economic measures against third countries or against natural or legal persons or non-State entities. (40)

61. For the purposes of the present case, it is important to recall that Article 2(4) TFEU declares that the European Union must have ‘competence [...] to define and implement a [CFSP]’. That is not an area

included as such in the list set out in Article 3 TFEU, nor, certainly, in that of Article 6 TFEU. Consequently, that policy cannot be categorised as the European Union's exclusive competence or as a coordinating or supportive competence. Moreover, it could be argued that the CFSP cannot be classified as a shared competence either, (41) since, contrary to what is stipulated in Article 2(2) TFEU, the European Union cannot 'legislate' under that policy. (42) It follows that the CFSP has specific features that make it difficult to categorise it among the general types of Union competence.

62. Be that as it may, it is important to recall that, according to Article 24(1)(1) TEU, the European Union's competence in matters of CFSP 'shall cover *all areas* of foreign policy'. (43) That broad definition of the CFSP's substantive scope makes unworkable, in my view, any attempt to encapsulate all potential CFSP actions or decisions, and its implementing measures under the TFEU, under a single category of Union competence. Conversely, determining whether a decision adopted under the CFSP prevents any action by the Member States – either because it could be considered an exclusive EU action or because it could be considered a pre-empted shared competence – depends on the concrete area concerned by the measure in question. (44)

63. That is particularly evident when referring to sectoral restrictive measures adopted under Article 215(1) TFEU, which constitute one of the areas falling within the scope of the CFSP and which, as previously mentioned, may comprise a wide variety of measures devoted to exerting maximum pressure on a third country's government and bringing about a change in policy or behaviour. (45) For instance, apart from the prohibition contained in Article 5k of Regulation No 833/2014, which is relevant to the present case, that regulation also contains measures of a completely different nature for the purpose of exerting pressure on the Russian Federation for its actions undermining Ukraine's territorial integrity, (46) including export controls, (47) import bans, (48) financial and investment prohibitions, (49) and restrictions on services. (50) In that context, an all-encompassing approach appears to me to be insufficient to define the specific type of competence exercised by the European Union when adopting sectoral restrictive measures under Article 215(1) TFEU. Rather, a specific analysis must be conducted in the light of the area of competence concerned by the sectoral restrictive measure in question.

64. In the present case, as is apparent from points 42 and 43 of the present Opinion, public procurement is an area that falls within the realm of the competences shared by the European Union and the Member States. Those procedures constitute a fundamental instrument for achieving the proper functioning of the EU internal market, which, according to Article 4(2) TFEU, is one of the 'principal areas' where a shared competence between the European Union and the Member States applies. Therefore, since Article 5k of Regulation No 833/2014 is a restrictive measure adopted by the Council concerning that area, it must be considered to be an expression of shared competence between the European Union and the Member States.

65. At this stage, if Article 5k of Regulation No 833/2014 is the expression of a shared competence by the European Union, then the question remains whether that provision is capable of pre-empting any action at the level of Member States consisting in establishing a prohibition such as that contained therein.

66. In my Opinion in Joined Cases [SG and JA](#) (C-706/25 and C-707/25, EU:C:2026:474), I have already pointed out the three circumstances in which, according to academic doctrine, pre-emption may occur. (51) Those circumstances are, namely, (i) when the EU has fully harmonised a certain field, which has the effect of thereby depriving the Member States of their competence to legislate (field pre-emption), (ii) when national law impairs the proper functioning of EU legislation or hinders the attainment of the objectives it pursues (obstacle pre-emption) or (iii) when national law is contrary to a rule of EU law (rule pre-emption).

67. Here, no argument is persuasive enough to suggest that any of the possible pre-emptions occur with regard to Article 5k of Regulation No 833/2014.

68. First, it is evident that, by limiting the prohibition contained in Article 5k of Regulation No 833/2014 to procedures covered by the EU public procurement Directives – including Directive 2014/24 – the Council did not carry out a full harmonisation in that area. The express wording of Article 5k

of Regulation No 833/2014 leaves out of its scope any action at national level with regard to public contracts with an estimated value that does not exceed the threshold amounts set out in those directives. Second, it is also clear to me that a prohibition established by a national contracting authority for procurement procedures that makes a general reference to Article 5k of Regulation No 833/2014 and assumes its full wording, like the prohibition at issue in the main proceedings, cannot be considered to hinder the attainment of the objective of the EU restrictive measures, in particular those of the measures adopted against the Russian Federation for its aggression against Ukraine. Quite to the contrary, it must be understood that the aims of both prohibitions are aligned. Third, due to the identical scope of the prohibition applied at EU and national level, no contradiction between EU and national law can be said to exist.

69. It follows that Article 5k of Regulation No 833/2014 should not be considered to pre-empt action at a national level that prohibits Russian nationals, as well as Russian-based natural and legal persons, entities or bodies, from participating in procurement procedures that fall outside the scope of Directive 2014/24. Instead, Member States should be free to adopt a similar prohibition in the realm of their competence with regard to procurement procedures, provided, of course, that no element of that prohibition is capable of hindering the aims of the EU restrictive measures.

70. It may be argued against that consideration, first, that a prohibition such as that established in Article 5k of Regulation No 833/2014 should be set out, in advance, by the national legislation on procurement procedures rather than by contracting authorities as part of their administrative practices. While that could be desirable for consistency and the uniform application of a ground for exclusion within a given Member State's territory, it is an issue that falls outside the scope of EU law, as was discussed during the hearing before the Court. Indeed, to the extent that that practice arises in the context of procurement procedures falling within the competence of Member States, a possible inconsistency or a lack of uniformity among contracting authorities in that Member State is an element to be resolved by national law.

71. Second, it was also put forward during the hearing in the present case that the Commission has concluded that Member States should not be permitted to adopt additional listings with regard to individual restrictive measures beyond those adopted by the European Union. (52) However, the Commission's position can easily be explained by reference to the fact that individual restrictive measures mainly impose asset freezes on the natural and legal persons concerned, which, as the Commission correctly pointed out, have a particular effect on the movement of capital and payments. The individual restrictive measures also impose limitations on entry into the European Union, which has only one external border, as well as on free movement within that territory, where internal borders have been abolished. If Member States were permitted to adopt their own listings in an unconditional manner, that would hinder the uniform application of entry and free movement rules under the TFEU. Aside from the fact that that is not the subject matter of the question referred by the referring court, to my mind, a difference in approach as between individual restrictive measures and the sectoral restrictive measure contained in Article 5k of Regulation No 833/2014 is justified due to their completely different legal nature. (53)

72. Third, although recital 10 of Regulation 2022/576 states that the measures introduced in Regulation No 833/2014, including Article 5k thereof, fall within the scope of the Treaty and, therefore, require regulatory action at the level of the European Union, 'in particular with a view to ensuring their uniform application in all Member States', that is an expression of the Council's assessment of compliance with the principle of subsidiarity when adopting a prohibition regarding the procurement procedures that fall within the competence of the European Union. However, that statement has no bearing on whether a similar prohibition can be established by the Member States for procurement procedures falling within their remit.

73. In the light of the foregoing, regarding the third question referred, I conclude that Article 5k of Regulation No 833/2014 must be interpreted as not precluding, on its own, the application of the prohibition set out therein as an independent decision of a contracting authority under national law. That includes a national practice whereby the contracting authority requires a tenderer to provide a declaration confirming that it is not covered by any of the circumstances set out in that article, provided that no

element of that prohibition is capable of hindering the aims of the EU restrictive measures, which it is for the national court to determine.

Second question referred

74. Having established that Article 5k of Regulation No 833/2014 does not prevent a contracting authority from implementing a prohibition similar to that outlined in that provision with regard to a procurement procedure not covered by Directive 2014/24, it is necessary to ascertain whether that could still breach the principles that must be observed under EU law concerning procurement procedures within the competence of the Member States. That is, in essence, the subject matter of the second question referred by the referring court.

75. As I have already indicated in my analysis of the first and third questions referred, Member States retain, as a general rule, a regulatory competence over public procurements falling outside the scope of Directive 2014/24. However, in accordance with the Court's settled case-law, the award of contracts which, in view of their value, do not fall within the scope of that directive is still subject to the fundamental rules and the general principles of the TFEU, in particular the principles of equal treatment and of non-discrimination on grounds of nationality and the consequent obligation of transparency, provided that those contracts are of certain cross-border interest. (54)

76. From the outset, I would like to point out that, by the second question referred, the referring court asks, in part, whether the principle of free competition and the prohibition on unduly restricting participants laid down in Article 2(2) ZOP are compatible with the introduction by a contracting authority of a prohibition similar to that set out in Article 5k of Regulation No 833/2014. However, that part of the question referred should be considered inadmissible, since, as is clear from settled case-law, the Court has no jurisdiction to interpret national law and it is for the national court alone to determine the precise scope of the laws of its Member State. (55)

77. Moreover, with respect to the cross-border interest of the public contract at issue in the main proceedings, it must be stated that the order for reference contains no information in that regard. In any event, the Court has iteratively indicated that that interest must be assessed in the light of objective criteria, including, inter alia, the fact that the contract in question is for a significant amount, in conjunction with the place where the work is to be carried out or the technical characteristics of the contract and the specific characteristics of the products concerned. (56) In the present case, it is the responsibility of the referring court to determine whether the public contract in question raises such an issue before any further analysis is carried out. (57)

78. If it were established that the public contract at issue in the main proceedings has certain cross-border implications, I would note, first and foremost, in line with the Commission's observations, that the ground for exclusion imposed by the contracting authority in those proceedings is worded in identical terms to the prohibition contained in Article 5k of Regulation No 833/2014. According to recital 4 of Regulation 2022/576, which, as already indicated, introduced that provision into Regulation No 833/2014, the prohibition aimed, in essence, to prevent the award of public procurement contracts to Russian nationals and entities or bodies established in Russia. That falls under the overall purpose of ensuring that the financial resources of the Russian Federation enabling it to continue its military aggression against Ukraine are effectively undermined. (58)

79. It can be inferred from the previous observation that, for public contracts governed by the EU public procurement Directives, including Directive 2014/24, the objective of Article 5k of Regulation No 833/2014 is, in the eyes of the Council, such as to justify the limitation of the fundamental principles of the TFEU that commonly apply to procurement procedures falling within the European Union's competence. That being so, it is difficult to argue that a prohibition set out in similar terms by a national contracting authority for a procurement procedure falling within the competence of a Member State, pursuing essentially the same aim as that of Article 5k of Regulation No 833/2014, could lead to the breach of those principles.

80. In any event, with regard, first, to the principle of non-discrimination, the Court's case-law establishes that the participation of economic operators of third countries in procurement procedures depends on whether an international agreement with the European Union guarantees equal and reciprocal access to those procedures. That means that, if a third country has not established such an agreement with the European Union, economic operators originating from that country cannot be treated like those from the Member States. (59) As to the present case, it is important to note that the Russian Federation is not a party to the World Trade Organization Agreement on Government Procurement (GPA), which is cited in Article 25 of Directive 2014/24. In that context, Russian economic operators cannot claim that they should be treated in the same way as any other operator from the Member States of the European Union.

81. Therefore, a contracting authority such as that at issue in the main proceedings would not breach the principle of non-discrimination on grounds of nationality with regard to Russian nationals, or natural or legal persons, entities or bodies established in Russia, by adopting as a ground for exclusion a provision formulated in terms similar to those of Article 5k(1)(a) of Regulation No 833/2014.

82. A similar conclusion should be drawn with regard to persons, entities and bodies established in the European Union but linked with natural or legal persons, entities or bodies established in Russia. Certainly, in that case, that would not be due to the fact that the Russian Federation is not a party to the GPA, but rather because Article 5k(1)(b) and (c) of Regulation No 833/2014 extends the prohibitions contained therein to any legal person, entity or body that is essentially controlled from that country. As mentioned in point 37 of the present Opinion, the Court's case-law has established that those provisions are a residual category of prohibitions intended to prevent Article 5k(1) of Regulation No 833/2014 from being circumvented and thus deprived of any practical effect. (60)

83. Second, with regard to the principle of equal treatment, the Court has stated that that principle is intended to provide all tenderers with an equal opportunity to submit their tenders. (61) Furthermore, it entails an obligation of transparency, enabling the contracting authority to verify that that principle has been complied with. That obligation consists of ensuring, for the benefit of any potential tenderer, sufficient advertising to open up the services market to competition and to enable the impartiality of procurement procedures to be reviewed. (62) In the present case, that is not a controversial issue, since, as is apparent from the information provided in the order for reference, the conditions for participating in the procurement procedure concerned in the main proceedings expressly and unambiguously listed, as a ground for exclusion, the circumstances specified in Article 5k of Regulation No 833/2014.

84. It follows from the foregoing observations that a practice by a contracting authority in a Member State establishing a prohibition similar to that set out in Article 5k of Regulation No 833/2014 does not breach the principles that must be observed under EU law in procurement procedures that are not governed by Directive 2014/24 but that, nevertheless, present a certain cross-border interest, namely the principles of equal treatment and of non-discrimination and the consequent obligation of transparency.

85. For the sake of completeness, should the Court disagree with the analysis carried out in the previous points or with my assessment regarding the third question referred, I would nevertheless invite it to consider the relevance of Article 10 of Regulation No 833/2014 to the outcome of the case in the main proceedings. None of the questions referred concerns that provision. However, as that case involves an administrative penalty imposed on an individual deemed liable due to the improper application of Article 5k of Regulation No 833/2014 to a procurement procedure not covered by Directive 2014/24, it would be useful to provide the referring court with guidance on the 'non-liability clause' set out in Article 10 of that regulation. (63)

86. As mentioned in the introduction to this Opinion, Article 10 of Regulation No 833/2014 exempts EU operators, including public bodies, from liability if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in Regulation No 833/2014.

87. In the present case, my analysis of the first question referred suggests that Article 5k of Regulation No 833/2014 does not apply to contracts with an estimated value below the threshold set out in Directive

2014/24, even when the contracting authority is required by national law to apply the provisions of that directive. Furthermore, when implementing a prohibition such as that set out in Article 5k of Regulation No 833/2014 in a procurement procedure not covered by Directive 2014/24, a contracting authority is operating within the remit of national law rather than EU law. (64)

88. It could be argued that Article 10 of Regulation No 833/2014 cannot be applied in order to exclude the liability of a person such as that sanctioned in the main proceedings, since that person would not be operating under Regulation No 833/2014 in any event. However, in my view, that argument should not be upheld. After all, that contracting authority would be committing an error with respect to the proper scope of application of Article 5k of Regulation No 833/2014, which means that its liability should be assessed in the light of Article 10 of Regulation No 833/2014. That is even more evident in the present case, where the lack of clarity surrounding the scope of the prohibition set out in Article 5k of Regulation No 833/2014 has resulted in a request for a preliminary ruling that will ultimately be the subject of a decision by the Grand Chamber of the Court.

89. It follows that, in a case where there are reasonable doubts about the scope of application of a provision of Regulation No 833/2014, and where the relevant contracting authority can in essence demonstrate good faith in its behaviour, Article 10 of Regulation No 833/2014 excludes that authority's liability for incorrectly imposing a prohibition similar to that set out in Article 5k of that regulation in a procurement procedure in which that provision was not applicable.

90. In the light of the foregoing, I conclude, as regards the second question referred, that the principles of equal treatment and of non-discrimination and the consequent obligation of transparency must be interpreted as not precluding the application of the prohibition set out in Article 5k of Regulation No 833/2014 as an independent decision of a contracting authority under national law, namely in the context of a public contract not subject to Directive 2014/24 but which is of certain cross-border interest, which it is for the referring court to ascertain. In any event, in a case where there are reasonable doubts about the scope of application of a provision of Regulation No 833/2014, and where the relevant contracting authority can demonstrate good faith in its behaviour, Article 10 of Regulation No 833/2014 excludes that authority's liability for incorrectly imposing a prohibition similar to that set out in Article 5k of that regulation in a procurement procedure in which that provision was not applicable. Those elements are for the national court to assess.

V. Conclusion

91. On the basis of the analysis set out above, I propose that the Court answer the questions referred by the Administrativen sad – Silistra (Administrative Court, Silistra, Bulgaria) as follows:

(1) Article 5k 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, as amended by Council Regulation (EU) 2022/576 of 8 April 2022,

must be interpreted as meaning that the prohibition on awarding any public contract falling within the scope of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, as amended by Commission Delegated Regulation (EU) 2021/1952 of 10 November 2021, to a Russian national, to any natural person established in Russia, or to any legal person, entity or body established in or controlled from Russia does not apply to contracts with an estimated value below the threshold laid down in that directive, even where the contracting authority is required, under national law, to apply the provisions of that directive.

(2) Article 5k of Regulation No 833/2014, as amended by Regulation 2022/576,

must be interpreted as not precluding, on its own, the application of the prohibition set out therein as an independent decision of a contracting authority under national law. That includes a national practice whereby the contracting authority requires a tenderer to provide a declaration confirming that it is not covered by any of the

circumstances set out in that article, provided that no element of that prohibition is capable of hindering the aims of the EU restrictive measures, which it is for the national court to determine.

(3) The principles of equal treatment and of non-discrimination and the consequent obligation of transparency must be interpreted as not precluding the application of the prohibition set out in Article 5k of Regulation No 833/2014, as amended by Regulation 2022/576, as an independent decision of a contracting authority under national law, namely in the context of a public contract not subject to Directive 2014/24, as amended by Delegated Regulation 2021/1952, but which is of certain cross-border interest, which it is for the referring court to ascertain. In any event, in a case where there are reasonable doubts about the scope of application of a provision of Regulation No 833/2014, as amended, and where the relevant contracting authority can demonstrate good faith in its behaviour, Article 10 of Regulation No 833/2014 excludes that authority's liability for incorrectly imposing a prohibition similar to that set out in Article 5k of that regulation, as amended, in a procurement procedure in which that provision was not applicable. Those elements are for the national court to assess.

[1](#) Original language: English.

[2](#) (OJ 2014 L 229, p. 1), as amended by Council Regulation (EU) 2022/576 of 8 April 2022 (OJ 2022 L 111, p. 1) ('Regulation No 833/2014').

[3](#) See also Article 1(25) of Council Regulation (EU) 2025/395 of 24 February 2025 (OJ L, 2025/395), which partially modified Article 5k of Regulation No 833/2014. This amendment, however, does not apply *ratione temporis* to the facts of the present case.

[4](#) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65). The version of Directive 2014/24 relevant to the facts of the present case is the version amended by Commission Delegated Regulation (EU) 2021/1952 of 10 November 2021 (OJ 2021 L 398, p. 23) ('Directive 2014/24').

[5](#) See Article 5k(1)(a) to (c) of Regulation No 833/2014. In the present Opinion, the circumstances described in points (b) and (c) of that provision will be referred to as 'any legal person, entity or body controlled from Russia', or a similar formulation, unless a more precise indication is required. The wording of that provision is stated in point 10 below.

[6](#) For the sake of readability, the term 'procurement procedure' should be understood throughout the present Opinion as referring to 'public procurement procedure'.

[7](#) See judgments of 28 March 2017, [Rosneft](#) (C-72/15, EU:C:2017:236); of 5 September 2024, [Jemerak](#) (C-109/23, EU:C:2024:681); of 30 April 2025, [Generalstaatsanwaltschaft Frankfurt am Main \(Export of cash to Russia\)](#) (C-246/24, EU:C:2025:295); and of 5 February 2026, [Hauptzollamt Düsseldorf \(Vehicle originating in Russia\)](#) (C-619/24, EU:C:2026:73).

[8](#) Judgment of 12 February 2026, [Opera Laboratori Fiorentini](#) (C-313/24, 'the judgment in *Opera Laboratori Fiorentini*', EU:C:2026:91).

[9](#) *Ibid.*, paragraphs 51 to 56.

[10](#) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 13).

[11](#) 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).

[12](#) DV No 13 of 16 February 2016, p. 2 ('the ZOP').

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- [13](#) See paragraph 3 of the additional provisions of the ZOP.
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- [14](#) ‘The order in [Agentsia za darzhavna finansova inspektisia](#)’.
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- [15](#) As indicated in footnote 3 above, Article 1(25) of Regulation 2025/395 amended Article 5k(1)(c) of Regulation No 833/2014 to read as follows: ‘(c) a natural or legal person, entity or body acting on behalf or at the direction of a natural or legal person, entity or body referred to in point (a) or (b) of this paragraph’.
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- [16](#) See, in that regard, the judgment in [Opera Laboratori Fiorentini](#), paragraphs 33 and 36.
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- [17](#) The threshold amounts are subject to biannual revisions in accordance with Article 6 of Directive 2014/24.
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- [18](#) That order was adopted under Article 99 of the Rules of Procedure of the Court of Justice, which provides, inter alia, that where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
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- [19](#) The order in [Agentsia za darzhavna finansova inspektisia](#), paragraphs 29 and 30.
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- [20](#) See the reference to Article 114 TFEU in the preamble to Directive 2014/24, and recital 1 thereof.
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- [21](#) See Nowicki, P., ‘Article 4: Threshold amounts’, in Caranta, R. and Sánchez-Graells, A. (eds), *European Public Procurement – Commentary on Directive 2014/24/EU*, Edward Elgar Publishing, 2021, pp. 43-44.
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- [22](#) See points 7 and 33 of that document; available at: https://finance.ec.europa.eu/system/files/2024-01/faqs-sanctions-russia-public-procurement_en.pdf.
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- [23](#) See my Opinion in [Jemerak](#) (C-109/23, EU:C:2024:307, point 69).
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- [24](#) See, inter alia, to that effect, judgment of 8 December 2005, [ECB v Germany](#) (C-220/03, EU:C:2005:748, paragraph 31).
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- [25](#) The judgment in [Opera Laboratori Fiorentini](#), paragraphs 46 and 47.
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- [26](#) See, in that regard, judgment of 19 July 2012, [Parliament v Council](#) (C-130/10, ‘the judgment in [Parliament v Council](#)’, EU:C:2012:472, paragraphs 56 and 57).
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- [27](#) See, in particular, Article 29 TEU, which provides the legal basis for the Council to adopt decisions defining the European Union’s approach to a particular geographical or thematic matter.
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- [28](#) See, in that regard, judgments of 28 March 2017, [Rosneft](#) (C-72/15, EU:C:2017:236, paragraph 123), and of 25 June 2020, [VTB Bank v Council](#) (C-729/18 P, EU:C:2020:499, paragraph 59).
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- [29](#) For an overview of the packages of restrictive measures adopted by the European Union since the start of the Russian Federation’s military actions against Ukraine, see Council of the European Union, *Timeline – Packages of sanctions against Russia since February 2022*; available at: <https://www.consilium.europa.eu/en/policies/sanctions-against-russia/timeline-packages-sanctions-since-february-2022/>.
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- [30](#) For a comprehensive list of economic restrictive measures concerned by Regulation No 833/2014, see *EU restrictive measures in view of Russia’s war of aggression against Ukraine*; available at: <https://eur-lex.europa.eu/EN/legal-content/summary/eu-restrictive-measures-in-view-of-russia-s-invasion-of-ukraine.html>.
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- [31](#) Although Regulation No 833/2014 constitutes the main legal instrument implementing the European Union’s sectoral restrictive measures against the Russian Federation, it does not encompass the entirety of the EU restrictive measures

regimes relating to the Russian Federation. See, inter alia, Council Regulation (EU) 2024/1485 of 27 May 2024 concerning restrictive measures in view of the situation in Russia (OJ L, 2024/1485) and Council Regulation (EU) 2024/2642 of 8 October 2024 concerning restrictive measures in view of Russia's destabilising activities (OJ L, 2024/2642).

[32](#) Despite their substantive differences, both sectoral and individual restrictive measures are often adopted as part of a common response by the European Union to a given situation. See, in particular, recital 10 of Council Decision (CFSP) 2022/329 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 50, p. 1), which declares that the European Union's response against 'the unprovoked invasion of Ukraine by armed forces of the Russian Federation ... include[s] both sectoral and individual restrictive measures'.

[33](#) See the judgment in [Parliament v Council](#), paragraphs 47, 57 and 58. See also footnote 27 above.

[34](#) Council Regulation of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6).

[35](#) See also Article 4(1) TEU.

[36](#) According to that provision, Member States may legislate and adopt legally binding acts only if so empowered by the European Union or for the implementation of Union acts.

[37](#) See Article 2(5) TFEU, which, in essence, refers to non-harmonising competences through which the European Union may encourage, facilitate or complement Member States' action in specific policy areas while leaving primary regulatory authority with those States.

[38](#) Other categories of shared competence are explicitly deemed by the TFEU to be non-pre-emptive. See, as regards the European Union's external action, Article 4(4) TFEU, which excludes pre-emption in the fields of humanitarian aid and cooperation.

[39](#) The judgment in [Parliament v Council](#), paragraph 59.

[40](#) See also De Baere, G., 'From "Don't Mention the Titanium Dioxide Judgment" to "I Mentioned it Once, But I Think I Got Away with it All Right": Reflections on the Choice of Legal Basis in EU External Relations after the Legal Basis for Restrictive Measures Judgment', *The Cambridge yearbook of European legal studies*, Vol. 15, 2013, p. 554.

[41](#) See, in that regard, Cremona, M., 'The position of CFSP/CSDP in the EU's constitutional architecture', in Blockmans, S. and Koutrakos, P. (eds), *Research Handbook on the EU's Common Foreign and Security Policy*, Edward Elgar Publishing, 2018, p. 6, and Ramopoulos, T., 'Article 24 TEU', in Kellerbauer, M. et al. (eds), *The EU Treaties and the Charter of Fundamental Rights: a commentary*, Oxford, 2019, p. 214.

[42](#) See Article 24(1) and Article 31(1) TEU.

[43](#) Emphasis added.

[44](#) See, in that regard, Lenaerts, K., Van Nuffel, P., and Corthaut, T., *EU Constitutional Law*, Oxford University Press, 2021, p. 337, which states that '[t]he CFSP does not consist of a list of competences, but rather formulates aims and instruments with a view to pursuing a "foreign policy" alongside and in conjunction with other external Union action'.

[45](#) See point 54 of the present Opinion.

[46](#) See recital 2 of Regulation No 833/2014, which makes apparent that the European Union is combining various measures within the scope of the Treaty to achieve that aim. See also the recitals of the numerous subsequent regulations amending Regulation No 833/2014, namely recitals 3 to 9 of Regulation 2022/576.

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- [47](#) See, inter alia, Articles 2, 2a, 2aa, 2b, 3, 3b, 3c, 3f, 3h, 3k, 3ra, 3s, 3t and 4 of Regulation No 833/2014, together with the relevant annexes.
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- [48](#) See, inter alia, Articles 3g, 3i, 3m, 3ma, 3o, 3p, 3ra, 3u and 3v of Regulation No 833/2014, together with the relevant annexes.
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- [49](#) See, inter alia, Articles 5, 5a, 5aa, 5b, 5e, 5f, 5h, 5i and 5l of Regulation No 833/2014, together with the relevant annexes.
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- [50](#) See, inter alia, Articles 3g, 3l, 3m, 3n, 3r, 3rb, 3s, 3t, 3u, 4, 5j, 5m, 5n and 5p of Regulation No 833/2014, together with certain transport and technical-assistance provisions.
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- [51](#) See, in particular, point 84 of that Opinion and the doctrinal source cited.
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- [52](#) Commission opinion of 8 November 2019 on the compatibility of national asset freezes imposed by Member States with Union law (C(2019) 8007 final, p. 2).
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- [53](#) See, nevertheless, judgment of 12 March 2026, [EM SYSTEM](#) (C-84/24, EU:C:2026:181, paragraph 74 et seq.), in which the Court accepts that, under certain circumstances, Member States may impose an asset freeze measure on a legal person not specifically listed in an EU regulation on restrictive measures.
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- [54](#) See, in that regard, judgment of 6 October 2016, [Tecnoedi Costruzioni](#) (C-318/15, EU:C:2016:747, paragraph 19 and the case-law cited).
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- [55](#) See, inter alia, to that effect, judgment of 6 October 2015, [Consorci Sanitari del Mareme](#) (C-203/14, EU:C:2015:664, paragraph 43 and the case-law cited).
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- [56](#) See judgment of 6 October 2016, [Tecnoedi Costruzioni](#) (C-318/15, EU:C:2016:747, paragraph 20 and the case-law cited).
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- [57](#) None of the questions referred, including the second, aims to clarify whether the public contract at issue in the main proceedings presents a certain cross-border interest. Instead, the referring court has raised doubts about the scope of the principles that procurement procedures not covered by Directive 2014/24 must observe under EU law in any event. That is why, to my mind, the present question should not be subject to any analysis as to its admissibility, even in the absence of further information about the cross-border implications of the public contract in question. See, for instance, judgment of 19 April 2018, [Oftalma Hospital](#) (C-65/17, EU:C:2018:263, paragraphs 42 to 46).
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- [58](#) See point 50 of the present Opinion, in particular the reference to the judgment in [Opera Laboratori Fiorentini](#), paragraphs 46 and 47.
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- [59](#) See judgment of 13 March 2025, [CRRC Qingdao Sifang and Others](#) (C-266/22, EU:C:2025:178, paragraphs 58 and 59). See also, by analogy, judgment of 22 October 2024, [Kolin İnşaat Turizm Sanayi ve Ticaret](#) (C-652/22, EU:C:2024:910, paragraphs 45 and 55), which interprets Article 43 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243). That provision is worded in identical terms to Article 25 of Directive 2014/24.
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- [60](#) See, in particular, the judgment in [Opera Laboratori Fiorentini](#), paragraphs 56 and 57, where the Court declared that a fact-based inquiry must be carried out in order to determine whether an undertaking is actually acting on behalf or at the direction of an entity established in Russia.
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- [61](#) See, inter alia, judgment of 6 November 2014, [Cartiera dell'Adda](#) (C-42/13, EU:C:2014:2345, paragraph 44 and the case-law cited).
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[62](#) See, inter alia, to that effect, judgment of 7 December 2000, [Telaustria and Telefonadress](#) (C-324/98, EU:C:2000:669, paragraphs 61 and 62).

[63](#) See, inter alia, judgment of 14 June 2007, [Medipac – Kazantzidis](#) (C-6/05, EU:C:2007:337, paragraph 34 and the case-law cited).

[64](#) See points 44 and 45 of the present Opinion.