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ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
 TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
 TRIBUNÁL EVROPSKÉ UNIE
 DEN EUROPÆISKE UNIONS RET
 GERICHT DER EUROPÄISCHEN UNION
 EUROOPA LIIDU ÜLDKOHUS
 ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
 GENERAL COURT OF THE EUROPEAN UNION
 TRIBUNAL DE L'UNION EUROPÉENNE
 CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
 OPĆI SUD EUROPSKE UNIJE
 TRIBUNALE DELL'UNIONE EUROPEA

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 EUROOPAN UNIONIN YLEINEN TUOMIOISTUIM
 EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

705 547

28 January 2016 *

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

In Case T-341/14,

Sergiy Klyuyev, residing in Donetsk (Ukraine), represented by R. Gherson, T. Garner, Solicitors, and B. Kennelly, Barrister,

applicant,

v

Council of the European Union, represented by Á. de Elera-San Miguel Hurtado and J.-P. Hix, acting as Agents,

defendant,

supported by

European Commission, represented by D. Gauci and T. Scharf, acting as Agents,

intervener,

APPLICATION for annulment of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26), Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), Council Decision (CFSP) 2015/876 of 5 June 2015 amending Decision 2014/119 (OJ 2015 L 142, p. 30) and Council Implementing

* Language of the case: English.

Regulation (EU) 2015/869 of 5 June 2015 implementing Regulation (EU) No 208/2014 (OJ 2015 L 142, p. 1), in so far as the applicant's name was included on the list of persons, entities and bodies covered by those restrictive measures,

THE GENERAL COURT (Ninth Chamber),

composed of G. Berardis (Rapporteur), President, O. Czúcz and A. Popescu, Judges,

Registrar: L. Grzegorzczuk, Administrator,

having regard to the written procedure and further to the hearing on 24 September 2015,

gives the following

Judgment

Background

- 1 The applicant, Sergiy Klyuyev, is the brother of Andrii Klyuyev, the former Head of Administration of the President of Ukraine.
- 2 On 5 March 2014, the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26).
- 3 Article 1(1) and (2) of Decision 2014/119 provides as follows:
 - '1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.
 2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.'
- 4 The detailed rules for implementation of the restrictive measures at issue are defined in the subsequent paragraphs of that article.
- 5 On the same date, the Council adopted, on the basis of Article 215(2) TFEU, Regulation (EU) No 208/2014 concerning restrictive measures directed against

certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1).

6 In accordance with Decision 2014/119, Regulation No 208/2014 requires the adoption of the restrictive measures at issue and lays down the detailed rules for implementation of those restrictive measures in terms which are essentially identical to those used in that decision.

7 The names of the persons covered by Decision 2014/119 and Regulation No 208/2014 appear on the list in the annex to that decision and in Annex I to that regulation ('the list') along with, in particular, the reason for their inclusion on the list.

8 The applicant's name was included on the list with the identifying information 'businessman, brother of Mr Andrii Kliuiev' with the following statement of reasons:

'Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.'

9 On 6 March 2014, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons subject to the restrictive measures provided for in Decision 2014/119 and in Regulation No 208/2014 concerning restrictive measures in view of the situation in Ukraine (OJ 2014 C 66, p. 1). According to that Notice, 'the persons concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the ... list should be reconsidered ...'. The Notice also draws the attention of the persons concerned 'to the possibility of challenging the Council's decision before the General Court ... in accordance with the conditions laid down in Article 275, second paragraph, and Article 263, fourth and sixth paragraphs, [TFEU]'

10 Decision 2014/119 was amended by Council Decision (CFSP) 2015/143 of 29 January 2015 (OJ 2015 L 24, p. 16), which entered into force on 31 January 2015. As to the criteria for the designation of the persons covered by the restrictive measures at issue, according to Article 1 of that decision, Article 1(1) of Decision 2014/119 is replaced by the following:

'1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.

For the purpose of this Decision, persons identified as responsible for the misappropriation of Ukrainian State funds include persons subject to investigation by the Ukrainian authorities:

- (a) for the misappropriation of Ukrainian public funds or assets, or being an accomplice thereto; or
- (b) for the abuse of office as a public office-holder in order to procure an unjustified advantage for him- or herself or for a third party, and thereby causing a loss to Ukrainian public funds or assets, or being an accomplice thereto.'

11 Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1) amended the latter in accordance with Decision 2015/143.

12 Decision 2014/119 and Regulation No 208/2014 were subsequently amended by Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119 (OJ 2015 L 62, p. 25) and by Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1). Decision 2015/364 amended Article 5 of Decision 2014/119 by extending the restrictive measures in respect of the applicant until 6 June 2015. Implementing Regulation 2015/357 consequently replaced Annex I to Regulation No 208/2014.

13 By Decision 2015/364 and Implementing Regulation 2015/357, the applicant's name was maintained on the list with the identifying information 'brother of Mr Andrii Kliuiev, businessman' and the following new statement of reasons:

'Person subject to investigation by the Ukrainian authorities for involvement in the misappropriation of public funds or assets and in the abuse of public office as a public office-holder in order to procure an unjustified advantage for himself or for a third party and thereby causing a loss to Ukrainian public funds or assets. Person associated with a designated person (Andrii Petrovych Kliuiev) subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.'

14 On 5 June 2015, the Council adopted Decision (CFSP) 2015/876 amending Decision 2014/119 (OJ 2015 L 142, p. 30) and Implementing Regulation (EU) 2015/869 implementing Regulation No 208/2014 (OJ 2015 L 142, p. 1). Decision 2015/876, first, replaced Article 5 of Decision 2014/119 by extending the application of the restrictive measures, in so far as the applicant is concerned, until 6 October 2015 and, secondly, amended the annex to that decision. Implementing Regulation 2015/869 consequently amended Annex I to Regulation No 208/2014.

- 15 By Decision 2015/876 and Implementing Regulation 2015/869, the applicant's name was maintained on the list with the heading 'brother of Mr Andrii Kliuiev, businessman' and the following new statement of reasons:

'Person subject to investigation by the Ukrainian authorities for involvement in the misappropriation of public funds. Person associated with a designated person (Andrii Petrovych Kliuiev) subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.'

Procedure and forms of order sought by the parties

- 16 By application lodged at the Court Registry on 15 May 2014, the applicant brought the present action.
- 17 On 12 August 2014 and 18 December 2014, the Council submitted reasoned applications in accordance with Article 18(4) of the Instructions to the Registrar of the General Court requesting that the contents of certain annexes to the defence and the rejoinder should not be cited in the documents relating to the present case to which the public has access.
- 18 By document lodged at the Court Registry on 18 September 2014, the European Commission sought leave to intervene in the present proceedings in support of the Council. By order of 6 November 2014, the President of the Ninth Chamber of the Court granted leave to intervene. By document lodged at the Court Registry on 17 December 2014, the Commission waived its right to submit a statement in intervention.
- 19 On 14 August 2015, in the context of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure of the General Court, the latter invited the parties to submit their observations on the question whether the applicant still had an interest in bringing proceedings following the amendment of the reason for the inclusion of his name on the list and the extension of the restrictive measures concerning him until 6 June 2015 by Decision 2015/364 and Implementing Regulation 2015/357 and, if so, in relation to which pleas he still had such an interest. The parties complied with that request within the time allowed. The parties also submitted their observations on the replies to the questions within the time allowed.
- 20 By document lodged at the Court Registry on 12 August 2015, the applicant modified the form of order sought in order also to seek annulment of Decision 2015/876 and Implementing Regulation 2015/869. On 14 September 2015, the Council submitted a reasoned application in accordance with Article 66 of the Rules of Procedure requesting that the content of certain annexes to the observations on the statement modifying the form of order sought should not be cited in the documents relating to the present case to which the public has access.

- 21 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 24 September 2015.
- 22 The applicant claims that the Court should:
- annul Decision 2014/119 and Regulation No 208/2014 in so far as they relate to him;
 - annul Decision 2015/876 and Implementing Regulation 2015/869 in so far as they relate to him;
 - order the Council to pay the costs.
- 23 The Council, supported by the Commission, contends that the Court should:
- dismiss the action as inadmissible or, in the alternative, as unfounded;
 - declare the statement modifying the form of order sought inadmissible or, in the alternative, unfounded;
 - order the applicant to pay the costs.

Law

The claim for annulment of Decision 2014/119 and Regulation No 208/2014 in so far as they relate to the applicant

The applicant's continuing interest in bringing proceedings

- 24 As was indicated in paragraphs 12 and 13 above, Decision 2015/364 and Implementing Regulation 2015/357 amended the reason for inclusion of the applicant's name on the list and extended the application of the restrictive measures, as regards the applicant, until 6 June 2015. Decision 2015/876 and Implementing Regulation 2015/869 subsequently amended the reason for inclusion and extended the application of the restrictive measures, as regards the applicant, until 6 October 2015.
- 25 The applicant did not bring an action against Decision 2015/364 or Implementing Regulation 2015/357, which have therefore become final in so far as he is concerned. However, he has modified the form of order sought in the present case so that it also seeks annulment of Decision 2015/876 and of Implementing Regulation 2015/869.
- 26 The Council, supported by the Commission, submits that, since the applicant did not challenge either Decision 2015/364 or Implementing Regulation 2015/357, which replaced the restrictive measures imposed by Decision 2014/119 and Regulation No 208/2014, he implicitly accepted being subject to those restrictive

measures and thus lost his interest in bringing proceedings. Furthermore, the modification of the form of order sought, submitted by the applicant with a view to the annulment of Decision 2015/876 and Implementing Regulation 2015/869, may not, it is contended, be relied on in support of a continuing interest in bringing proceedings, because it is ineffective and inadmissible.

- 27 It is established case-law that the purpose of the action must, like the interest of an applicant in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it (see, to that effect and by analogy, judgment of 6 June 2013 in *Ayadi v Commission*, C-183/12 P, EU:C:2013:369, paragraph 59 and the case-law cited).
- 28 Moreover, according to the case-law, whilst recognition of the illegality of the contested act cannot, as such, compensate for material harm or for interference with a person's private life, it is nevertheless capable of rehabilitating the person concerned or constituting a form of reparation for the non-material harm which he has suffered by reason of that illegality, and of thereby establishing that he retains his interest in bringing proceedings (see, to that effect, judgment of 28 May 2013 in *Abdulrahim v Council and Commission*, C-239/12 P, ECR, EU:C:2013:331, paragraphs 70 to 72).
- 29 In the present case, in his observations on the replies of the Council and the Commission to a written question from the Court (see paragraph 19 above), the applicant claims that, even if the restrictive measures against him were replaced by new measures, he retains, first, his right potentially to bring an action for damages for the period in which the unlawful measure was in force and, secondly, his interest in securing, to a certain extent, the restoration of his reputation.
- 30 With regard, more particularly, to the fact that he did not challenge Decision 2015/364 and Implementing Regulation 2015/357, he claims that, since those measures extended the restrictive measures against him only for three months, that is to say, until 6 June 2015, it was unlikely that an action could have been heard before a subsequent amendment of the measures. He adds that he nevertheless modified the form of order sought to include Decision 2015/876 and Implementing Regulation 2015/869, which subsequently extended the restrictive measures against him, and that he therefore still has an interest in bringing proceedings in the present case.
- 31 It must be stated that the applicant retains an interest in bringing proceedings arising from the fact that recognition of the illegality of Decision 2014/119 and of Regulation No 208/2014 may form the basis of a subsequent action for compensation for material and non-material damage suffered as a result of those acts during the period of their application, that is to say, for the period from 6 March 2014 to 6 March 2015 (see, to that effect and by analogy, judgment in

Abdulrahim v Council and Commission, cited in paragraph 28 above, EU:C:2013:331, paragraph 82).

- 32 In that regard, it must be held that the fact that Decision 2014/119 and Regulation No 208/2014 are no longer in force, given that they were amended, in so far as they concern the applicant, by Decision 2015/364 and Implementing Regulation 2015/357, cannot be equated with annulment by the Court of acts adopted initially, in so far as that amendment does not amount to recognition of the illegality of the acts in question (see, to that effect and by analogy, judgment of 11 June 2014 in *Syria International Islamic Bank v Council*, T-293/12, EU:T:2014:439, paragraphs 36 to 41 and the case-law cited).
- 33 It must therefore be concluded that the applicant's interest in bringing proceedings continues to exist despite the amendment of the restrictive measures affecting him, and despite the fact that he did not bring an action against Decision 2015/364 or Implementing Regulation 2015/357.

The merits of the application for annulment of Decision 2014/119 and Regulation No 208/2014

- 34 In support of the action, the applicant relies on seven pleas in law. The first alleges lack of a legal basis. The second alleges failure to comply with the listing criteria. The third alleges infringement of the rights of the defence and of the right to effective judicial protection. The fourth alleges a failure to state adequate reasons. The fifth alleges infringement of the right to property and the right to reputation. The sixth alleges an error of fact and a manifest error of assessment, while the seventh alleges an error in the assessment of the evidence.
- 35 By the second, sixth and seventh pleas, which should be examined first, the applicant claims, in essence, that the measure concerning him was adopted without a sufficiently solid factual basis. More particularly, he submits that it has not been established that he was responsible for misappropriation of public funds or human rights violations in Ukraine, or that he was linked to a person identified as such, or that he was under investigation.
- 36 The Council contends that the letter which the acting Prosecutor General of Ukraine sent on 3 March 2014 to the High Representative of the European Union for Foreign Affairs and Security Policy ('the letter of 3 March 2014') provided sufficient factual evidence to justify the adoption of Decision 2014/119 and Regulation No 208/2014 in so far as the applicant is concerned, and that evidence postdating the adoption of those measures confirms that a pre-trial investigation concerning the applicant had been opened in Ukraine in criminal proceedings relating to misappropriation of public funds, which permitted the conclusion that the general listing criterion had been satisfied, irrespective of the follow-up to that investigation.

- 37 The Council also submits that a distinction must be drawn between, on the one hand, the ongoing criminal proceedings in Ukraine, in which the applicant will be able to defend himself in accordance with the Ukrainian rules of criminal procedure and, on the other, the temporary and reversible measures freezing his assets at EU level, for the adoption of which the Council is not required to adduce proof of the offences in respect of which the applicant is under investigation.
- 38 It should be noted that, although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which form the basis of the decision to include or to maintain a person's name on the list of persons subject to restrictive measures, the Courts of the European Union must ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. This entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, are substantiated by sufficiently specific and concrete evidence (see judgment of 21 April 2015 in *Anbouba v Council*, C-605/13 P, ECR, EU:C:2015:248, paragraphs 41 and 45 and the case-law cited).
- 39 In the present case, the criterion laid down in Article 1(1) of Decision 2014/119 provides that restrictive measures are to be adopted against persons who have been identified as responsible for the misappropriation of public funds. Furthermore, it is clear from recital 2 of that decision that the Council adopted those measures 'with a view to consolidating and supporting the rule of law ... in Ukraine'.
- 40 The name of the applicant was included on the list on the ground that he was a 'person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine'. It thus appears that the Council took the view that, at the very least, the applicant was the subject of a preliminary investigation or inquiry, which had not (or not yet) culminated in the bringing of a formal charge, by reason of his alleged involvement in the misappropriation of public funds.
- 41 In support of the reason for including the applicant's name on the list, the Council relies on the letter of 3 March 2014 and on other evidence post-dating Decision 2014/119 and Regulation No 208/2014.
- 42 The first part of the letter of 3 March 2014 states that the 'law-enforcement agencies of Ukraine' have launched a number of criminal proceedings to investigate criminal acts committed by former senior officials, whose names are

listed immediately afterwards, with regard to whom the investigation into the abovementioned offences has made it possible to establish the misappropriation of large amounts of public funds and their subsequent unlawful transfer out of Ukrainian territory.

- 43 The second part of the letter of 3 March 2014 adds that ‘the investigation verifies the involvement of other senior officials representing former authorities in the same sort of crimes’ and that it is ‘planned to notify them shortly of suspicion’. The names of those other senior officials, including that of the applicant, are also then listed.
- 44 With regard to the case file, the letter of 3 March 2014 is the only item of evidence submitted by the Council in the present proceedings which predates Decision 2014/119 and Regulation No 208/2014. The lawfulness of those acts must therefore be assessed in the light of that item of evidence alone.
- 45 It is therefore necessary to establish whether the letter of 3 March 2014 constitutes sufficient proof to support the conclusion that the applicant had been ‘identified as responsible for the misappropriation of Ukrainian State funds’ within the meaning of Article 1(1) of Decision 2014/119.
- 46 Although, as the Council submits, the letter of 3 March 2014 was sent by a high judicial body in a third country, that is to say, the Prosecutor General of Ukraine, it contains only a general and generic statement linking the applicant’s name, among those of other former senior officials, to an investigation which essentially sought to establish the involvement of those persons in acts of misappropriation of public funds. The letter does not provide any details as to the establishment of the acts under investigation by the Ukrainian authorities and, still less, as to the applicant’s individual liability, even if presumed, in respect of those acts.
- 47 It is true, as the Council submits, that, in the context of the application of restrictive measures, the EU Courts have held that identification of a person as responsible for an offence did not necessarily imply that that person had been convicted of that offence (see, to that effect, judgments of 5 March 2015 in *Ezz and Others v Council*, C-220/14 P, ECR, EU:C:2015:147, paragraph 72, and 27 February 2014 *Ezz and Others v Council*, T-256/11, ECR, EU:T:2014:93, paragraphs 57 to 61).
- 48 However, in the context of the cases which gave rise to the case-law cited in paragraph 47 above, the applicants had, at least, been the subject of an order of the Prosecutor General of the third country concerned seeking to seize their assets, which had been endorsed by a criminal court (judgment in *Ezz and Others v Council*, cited in paragraph 47 above, EU:T:2014:93, paragraph 132). Consequently, the imposition of restrictive measures on the applicants in those cases was based on specific facts of which the Council was aware.

- 49 In the present case, the Court finds, first, that the Council did not have any information regarding the acts or conduct specifically attributed to the applicant by the Ukrainian authorities and, secondly, that, even if it is examined in its context, the letter of 3 March 2014 on which it relies cannot constitute a sufficiently solid factual basis within the meaning of the case-law cited in paragraph 38 above for inclusion of the applicant's name on the list on the ground that he had been 'identified as responsible' for the misappropriation of State funds.
- 50 Irrespective of the stage reached in the proceedings to which the applicant was deemed to be subject, the Council could not adopt restrictive measures against him without knowing the acts of misappropriation of public funds which the Ukrainian authorities specifically alleged against him. It is only by being aware of such acts that the Council would have been in a position to establish that they were capable, first, of being categorised as misappropriation of public funds and, secondly, of undermining the rule of law in Ukraine, the consolidation and support of which, as was recalled in paragraph 39 above, constitute the objective pursued by the adoption of the restrictive measures in question.
- 51 Furthermore, it is for the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (judgments of 18 July 2013 in *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, ECR, EU:C:2013:518, paragraphs 120 and 121, and 28 November 2013 *Council v Fulmen and Mahmoudian*, C-280/12 P, ECR, EU:C:2013:775, paragraphs 65 and 66).
- 52 In view of all of the foregoing, the inclusion of the applicant's name on the list does not comply with the criteria for the designation of persons covered by the restrictive measures at issue which were laid down in Decision 2014/119.
- 53 Since the second, sixth and seventh pleas in law are well founded, the action must be upheld in that it seeks annulment of Decision 2014/119 in so far as it concerns the applicant, without there being any need to rule on the applicant's other pleas.
- 54 For the same reasons, Regulation No 208/2014 must be annulled in so far as it concerns the applicant.

The claim for annulment of Decision 2015/876 and Implementing Regulation 2015/869 in so far as they relate to the applicant

- 55 In the statement modifying the form of order sought, the applicant also seeks annulment of Decision 2015/876 and Implementing Regulation 2015/869 in so far as they relate to him.
- 56 The Council, supported by the Commission, contends, first of all, that the statement modifying the form of order sought is inadmissible. First, it submits that

the applicant could not modify the claim for annulment of Decision 2014/119 and Regulation No 208/2014, in so far as they relate to him, so that that claim also covers Decision 2015/876 and Implementing Regulation 2015/869, given that Decision 2014/119 and Regulation No 208/2014 had already been replaced by Decision 2015/364 and Implementing Regulation 2015/357. Consequently, according to the Council, Decision 2015/876 and Implementing Regulation 2015/869 merely amended Decision 2015/364 and Implementing Regulation 2015/357 and did not concern Decision 2014/119 and Regulation No 208/2014.

- 57 Secondly, the Council submits that the statement modifying the form of order sought does not contain a statement of reasons, which it ought to have contained in accordance with Article 86(3) of the Rules of Procedure, bearing in mind the new factual and legal situation on the date on which the new measures were adopted, that is to say, that relating to the entry into force of Decision 2015/876 and Implementing Regulation 2015/869.
- 58 The Council also submits that, in any event, the statement modifying the form of order sought is unfounded.
- 59 It must be recalled that, in accordance with settled case-law, where the measure initially contested is replaced, during the proceedings, by another measure with the same subject matter, the latter is to be considered a new factor allowing the applicant to modify its claims and pleas in law (see, to that effect, judgment of 5 November 2014 in *Mayaleh v Council*, T-307/12 and T-408/13, ECR, EU:T:2014:926, paragraph 47).
- 60 It must also be recalled that, by virtue of Article 86(3) of the Rules of Procedure, the statement modifying the form of order sought, where appropriate, must contain, inter alia, the modified pleas in law and arguments.
- 61 That, however, is not the case here. It must be recalled that the annex to Decision 2014/119 and Annex I to Regulation No 208/2014 were ‘replaced’ respectively by Decision 2015/364 and Implementing Regulation 2015/357. As has been explained in paragraph 13 above, following that amendment, the applicant’s name was retained on the list with a new statement of reasons. Those measures were not challenged by the applicant in a separate action or statement modifying the form of order sought.
- 62 The annexes in question were subsequently ‘amended’ by Decision 2015/876 and Implementing Regulation 2015/869. As has been explained in paragraph 15 above, following that amendment, the applicant’s name was retained on the list with a new statement of reasons. Those measures are the subject of the statement modifying the form of order sought.
- 63 The reasons for the inclusion of the applicant’s name on the list were as follows.

- 64 First of all, the name of the applicant was included on the list in Decision 2014/119 and Regulation No 208/2014 on the ground that he was a 'person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine'.
- 65 Next, the name of the applicant was retained on the list in Decision 2015/364 and Implementing Regulation 2015/357 on the ground that he was a 'person subject to investigation by the Ukrainian authorities for involvement in the misappropriation of public funds or assets and in the abuse of public office as a public office-holder in order to procure an unjustified advantage for himself or for a third party and thereby causing a loss to Ukrainian public funds or assets' and a 'person associated with a designated person (Andrii Petrovych Kliuiev) subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets'.
- 66 Finally, the name of the applicant was retained on the list in Decision 2015/876 and Implementing Regulation 2015/869 on the ground that he was a 'person subject to investigation by the Ukrainian authorities for involvement in the misappropriation of public funds' and a 'person associated with a designated person (Andrii Petrovych Kliuiev) subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets'.
- 67 Thus, the reason for the inclusion of the applicant's name on the list relating to Decision 2015/876 and Implementing Regulation 2015/869, which are covered by the statement modifying the form of order sought, differs substantially from the reason for the inclusion of his name on the list relating to Decision 2014/119 and Regulation No 208/2014, which are covered by the application.
- 68 While the reason for the inclusion of the applicant's name on the list set out in Decision 2014/119 and Regulation No 208/2014 merely referred to an investigation in Ukraine concerning involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine, the reason for the inclusion of the applicant's name on the list set out in Decision 2015/876 and Implementing Regulation 2015/869 provides more explanations as to why the applicant is subject to restrictive measures, in particular with the addition of the reference to his association with a person designated by restrictive measures, that is to say, his brother, Andrii Klyuyev, who in turn was subject to criminal proceedings brought by the Ukrainian authorities for misappropriation of public funds or assets.
- 69 In that respect, it must be stated that, in the application, the applicant claims in essence that the inclusion of his name on the list is not reasoned or based on evidence, and that he did not receive specific information relating to the investigation concerning him.

- 70 Although the arguments referred to in paragraph 69 above are well founded with regard to the evidence for the inclusion of the applicant's name on the list, as is clear from paragraphs 35 to 53 above, it must be concluded that the reason for the inclusion of the applicant's name on the list set out in Decision 2015/876 and Implementing Regulation 2015/869 is based on other evidence provided by the Council in the present proceedings. Although that evidence, which postdates Decision 2014/119 and Regulation No 208/2014, is not relevant for the purpose of assessing the legality of that initial listing, it must, nevertheless, be taken into account for the purpose of assessing the legality of the retention of the applicant's name on the list by subsequent measures.
- 71 It follows that, by merely declaring that his initial claims seeking annulment of Decision 2014/119 and Regulation No 208/2014, in so far as they relate to him, extended to Decision 2015/876 and Implementing Regulation 2015/869, in so far as they relate to him, without giving any other explanations, the applicant has not provided any information which challenges the merits of those measures and which enables the Court to assess their legality.
- 72 It must therefore be concluded that the statement modifying the form of order sought does not satisfy the conditions laid down in Article 86(3) of the Rules of Procedure.
- 73 Consequently, the claim for annulment of Decision 2015/876 and Implementing Regulation 2015/869, in so far as they relate to the applicant, must be rejected as being inadmissible.

The temporal effects of the annulment in part of Decision 2014/119

- 74 The Council submits that, if the Court annuls Decision 2014/119 in so far as it concerns the applicant, it will be necessary for the effects of that decision as regards the applicant to be maintained pursuant to the second paragraph of Article 264 TFEU until the partial annulment of Regulation No 208/2014 takes effect, in order to ensure legal certainty and preserve the coherence and consistency of the legal order.
- 75 The applicant disputes that line of argument.
- 76 It must be recalled that Decision 2014/119 was amended by Decision 2015/364, which replaced the list as from 7 March 2015 and extended the application of the restrictive measures concerning the applicant until 6 June 2015. Following those amendments the applicant's name was retained on the list with new reasons for his listing (see paragraphs 12 and 13 above).
- 77 Decision 2014/119 was subsequently amended by Decision 2015/876, which extended the application of the restrictive measures concerning the applicant until 6 October 2015 and amended the list as from 7 June 2015. Following those

amendments, the applicant's name was included on the list with new reasons for his listing (see paragraphs 14 and 15 above).

- 78 Therefore, as at today's date, the applicant is subject to a new restrictive measure. It follows that the annulment of Decision 2014/119, in so far as it relates to the applicant, does not lead to removal of his name from the list.
- 79 Consequently, it is not necessary to maintain the effects of Decision 2014/119, in so far as it relates to the applicant.

Costs

- 80 Under Article 134(2) of the Rules of Procedure, where there is more than one unsuccessful party the Court is to decide how the costs are to be shared. In the present case, since the Council has been unsuccessful in relation to the claim for annulment made in the application, it must be ordered to pay the costs relating to that claim, in accordance with the form of order sought by the applicant. In addition, since the applicant has been unsuccessful in relation to the claim for annulment made in the statement modifying the form of order sought, he must be ordered to pay the costs relating to that claim, in accordance with the form of order sought by the Council.
- 81 Moreover, under Article 138(1) of the Rules of Procedure, the institutions which have intervened in proceedings are to bear their own costs. The Commission must therefore bear its own costs.

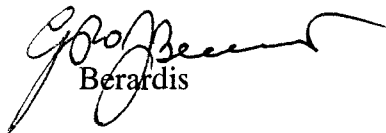
On those grounds,

THE GENERAL COURT (Ninth Chamber)

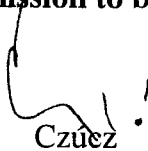
hereby:

- 1. Annuls Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as Mr Sergiy Klyuyev's name was included on the list of persons, entities and bodies covered by those restrictive measures;**
- 2. Dismisses the action as to the remainder;**
- 3. Orders the Council of the European Union to bear its own costs, and to pay those incurred by Mr Klyuyev, in relation to the claim for annulment made in the application;**

4. Orders Mr Klyuyev to bear his own costs, and to pay those incurred by the Council, in relation to the claim for annulment made in the statement modifying the form of order sought;
5. Orders the European Commission to bear its own costs.



Berardis



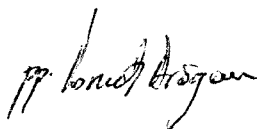
Czucz



Popescu

Delivered in open court in Luxembourg on 28 January 2016.

E. Coulon



Registrar

G. Berardis



President