Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition)

20 March 2024*

(Common foreign and security policy – Restrictive measures taken because of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine – Freezing of funds – Lists of persons, entities and bodies to whom the freezing of funds and economic resources applies – Registering and maintaining the applicant's name on the lists – Support for Lukashenko's regime – Financial support – State-owned business – Repression of civil society – Error of assessment)

In Case T-115/22,

Belshyna AAT, established in Bobruisk (Belarus), represented by N. Tuominen and L. Engelen, lawyers,

applicant,

v

Council of the European Union, represented by A. Boggio-Tomasaz and A. Antoniadis, acting as Agents,

defendant,

THE GENERAL COURT (Ninth Chamber, Extended Composition),

composed of S. Papasavvas, President, L. Truchot, H. Kanninen (Rapporteur), R. Frendo and T. Perišin, Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

further to the hearing on 21 June 2023,

gives the following

* Language of the case: English.

Judgment [1]

1 By the present action under Article 263 TFEU, the applicant, Belshyna AAT, seeks the annulment, first, of Council Implementing Decision (CFSP) 2021/2125 of 2 December 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ 2021 L 430 I, p. 16), and of Council Implementing Regulation (EU) 2021/2124 of 2 December 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2021 L 430 I, p. 1) ('the initial acts'), and, secondly, of Council Decision (CFSP) 2023/421 of 24 February 2023 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ 2023 L 61, p. 41), and Council Implementing Regulation (EU) 2023/419 of 24 February 2023 implementing Article 8a of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ 2023 L 61, p. 20) ('the maintaining acts'), in so far as those acts concern it.

Background to the dispute and events subsequent to the bringing of the action

2 The applicant is an undertaking which manufactures tyres and is established in Bobruisk (Belarus).

3 The present case has been brought in connection with the restrictive measures adopted by the European Union since 2004 in view of the situation in Belarus with regard to democracy, the rule of law and human rights.

4 On 18 May 2006, the Council of the European Union adopted, on the basis of Articles [75 and 215 TFEU], Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134, p. 1), the title of which was replaced, under Article 1(1) of Council Regulation (EU) No 588/2011 of 20 June 2011 (OJ 2011 L 161, p. 1), by the title 'Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus'.

5 On 15 October 2012, the Council adopted, on the basis of Article 29 TEU, Decision 2012/642/CFSP concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1).

6 According to Article 4(1)(a) and (b) of Decision 2012/642 and Article 2(4) and (5) of Regulation No 765/2006, as amended by Council Regulation (EU) No 1014/2012 of 6 November 2012 (OJ 2012 L 307, p. 1), the last provision referring to the first, all funds and economic resources owned, held or controlled by, inter alia, persons, entities or bodies responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or natural or legal persons, entities or bodies that, inter alia, support the Lukashenko regime, are to be frozen.

7 On 2 December 2021, the Council adopted the initial acts. It is clear from recital 4 thereof that, 'in view of the gravity of the situation in Belarus, 17 persons and 11 entities should be included in the list of natural and legal persons, entities and bodies subject to restrictive measures'.

[1] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

8 By the initial acts, the applicant's name was inserted in line 26 of Table B of the list of natural and legal persons, entities and bodies described in Article 3(1) and Article 4(1) of Decision 2012/642 appearing in the annex to that decision and in line 26 of Table B of the list of natural and legal persons, entities and bodies described in Article 2(1) of Regulation No 765/2006 appearing in Annex I to that regulation (together, 'the lists at issue').

9 In the initial acts, with regard to the applicant, the Council entered the identifying information 'name: Open Joint Stock Company Belshina', 'address: 4 Minskoe Shosse St., Bobruisk, 213824 Belarus', 'date of registration: 10.1.1994', 'registration number: 700016217' and 'website: http://www.belshinajsc.by/' and justified the adoption of the restrictive measures in respect of the applicant on the following grounds:

'[The applicant] is one of the leading State-owned companies in Belarus and a large manufacturer of vehicle tyres. As such, it is a substantial source of revenue for the Lukashenk[o] regime. The Belarussian State is directly profiting from the earnings made by [the applicant]. Therefore, [the applicant] supports the Lukashenk[o] regime.

Employees of [the applicant] who protested and went on strike in the wake of the 2020 presidential elections in Belarus were dismissed. [The applicant] is therefore responsible for the repression of civil society.'

10 By letter of 3 December 2021, the Council informed the applicant that its name had been included in the lists at issue.

11 By letter of 30 December 2021, the applicant requested from the Council access to the information and evidence supporting the inclusion of its name in the lists at issue and a review of that inclusion.

12 By letter of 14 January 2022, the Council sent the applicant the documents containing the evidence used to decide on the inclusion of its name in the lists at issue and stated that it would inform it at a later date of the outcome of the request for review.

13 On 24 February 2022, the Council adopted Decision (CFSP) 2022/307 amending Decision 2012/642 (OJ 2022 L 46, p. 97) and Implementing Regulation (EU) 2022/300 implementing Article 8a of Regulation No 765/2006 (OJ 2022 L 46, p. 3) ('the acts of 24 February 2022'), by which it retained the applicant's name on the lists at issue on grounds that were essentially identical to those set out in the initial acts.

14 By letter of 21 December 2022, the Council informed the applicant of its intention to extend the restrictive measures against it on the basis of a document enclosed with that letter.

15 By letter of 20 January 2023, the applicant replied that the document forwarded by the Council did not justify the continued inclusion of its name on the lists at issue.

16 On 24 February 2023, the Council adopted the maintaining acts maintaining the applicant's name on the lists at issue for reasons identical to those laid down in the acts of 24 February 2022.

17 By letter of 27 February 2023, the Council stated that the observations set out in the letter of 20 January 2023 did not call into question its assessment that it was appropriate to maintain the applicant's name on the lists at issue.

Forms of order sought

18 Following modification of the application pursuant to Article 86 of the Rules of Procedure of the General Court, the applicant claims that the Court should:

– annul the initial and maintaining acts in so far as they affect it;

– order the Council to pay the costs;

– dismiss the Council's request in the alternative that the Court order that the effects of Implementing Decision 2021/2125 be maintained as regards the applicant until the annulment in part of Implementing Regulation 2021/2124 takes effect.

19 The Council contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs;

– in the alternative, should the Court annul the restrictive measures adopted against the applicant, order that the effects of Implementing Decision 2021/2125 be maintained as regards the applicant until the annulment in part of Implementing Regulation 2021/2124 takes effect.

Law

…

The application for partial annulment of the maintaining acts

84 By means of a statement of modification, the applicant seeks the annulment of the maintaining acts in so far as they concern it.

85 In its observations on the statement of modification, the Council submits that the application for partial annulment of the maintaining acts is admissible and that it should be rejected as unfounded.

Admissibility of the modification of the application

86 Considering that the examination of the admissibility of actions was a matter of public policy and that it is therefore appropriate, in the event of modification of the application, to ascertain whether the conditions laid down in Article 86(1) of the Rules of Procedure are satisfied (see, to that effect, judgment of 14 December 2018, *Hamas* v *Council*, T-400/10 RENV, EU:T:2018:966, paragraphs 139 to 145 and the case-law cited), the Court questioned the parties in that regard at the hearing.

87 In response to the Court's questions, both the applicant and the Council submitted that the fact that the applicant had not, in the context of the present case, modified its form of order to seek annulment of the acts of 24 February 2022, in so far as those acts concerned it, should not affect the admissibility of the modification of the application to seek partial annulment of the maintaining acts as well.

88 In support of their arguments, the parties submit that the findings in paragraphs 141 and 142 of the judgment of 14 December 2018, *Hamas* v *Council* (T-400/10 RENV, EU:T:2018:966) and paragraphs 90 and 96 of the judgment of 24 November 2021, *LTTE* v *Council* (T-160/19, not published, EU:T:2021:817) cannot be transposed to the present case. They claim that the cases which gave rise to those judgments concerned restrictive measures taken by the European Union pursuant to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), under which the legal acts drawing up the list of persons and entities covered by the restrictive measures are repealed and replaced by new acts during the periodic review carried out by the Council, whereas, in the context of the restrictive measures concerning Belarus, the periodic review of the lists at issue takes the form of legal acts amending the period of application or the annexes to Decision 2012/642 and Regulation No 765/2006. The Council also argued that considering the application to annul the maintaining acts admissible was consistent with the objective of procedural economy.

89 It must be recalled that Article 86(1) of the Rules of Procedure provides that, where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

90 In the present case, it should be observed, first, that both the initial acts and the maintaining acts, in so far as they concern the applicant, have as their subject matter the imposition on it of individual restrictive measures consisting of a freezing of all its funds and economic resources, pursuant to Article 4(1)(a) and (b) of Decision 2012/642 and Article 2(4) and (5) of Regulation No 765/2006.

91 Secondly, as the parties have rightly pointed out, under the regime introducing restrictive measures against Belarus, the individual restrictive measures take the form of the inclusion of the names of the targeted persons, entities or bodies on the lists at issue set out in the annexes to Decision 2012/642 and Regulation No 765/2006.

92 In that context, the initial acts amended the annexes to Decision 2012/642 and Regulation No 765/2006 to include, in particular, the applicant's name on the lists at issue. As regards the maintaining acts, it should be noted, first, that Decision 2023/421 extended until 28 February 2024 the applicability of Decision 2012/642, Annex I to which, as amended by Implementing Decision 2021/2125, mentions the applicant's name and, secondly, that Implementing Regulation 2023/419 amended Annex I to Regulation No 765/2006, while maintaining, at least implicitly, the inclusion of the applicant's name in that annex. Consequently, the maintaining acts must be regarded as having amended the initial acts within the meaning of Article 86(1) of the Rules of Procedure.

93 It follows that, in accordance with the objective of procedural economy underlying Article 86 of the Rules of Procedure (see, to that effect, judgment of 13 September 2018, *Almaz-Antey* v *Council*, T-515/15, not published, EU:T:2018:545, paragraphs 43 and 44), the applicant, having

sought annulment of the initial acts in the application, was entitled, in the context of the present proceedings, to modify the application in order to seek annulment of the maintaining acts as well, even though it had not previously modified the application in order to seek annulment of the acts of 24 February 2022.

94 It must therefore be held that the application for modification of the application is admissible.

…

On those grounds,

THE GENERAL COURT (Ninth Chamber, Extended Composition)

hereby:

1. **Annuls Council Implementing Decision (CFSP) 2021/2125 of 2 December 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus, Council Implementing Regulation (EU) 2021/2124 of 2 December 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Council Decision (CFSP) 2023/421 of 24 February 2023 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, and Council Implementing Regulation (EU) 2023/419 of 24 February 2023 implementing Article 8a of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, in so far as they concern Belshyna AAT;**

2. **Orders the Council of the European Union to pay the costs.**

Papasavvas Truchot Kanninen

Frendo Perišin

Delivered in open court in Luxembourg on 20 March 2024.

[Signatures]