Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

7 July 2017 *

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Maintaining the applicant's name on the list — Obligation to state reasons — Rights of defence — Right to property — Right to pursue an economic activity — Proportionality — Misuse of powers — Principle of good administration — Manifest error of assessment)

In Case T-215/15,

Mykola Yanovych Azarov, residing in Kiev (Ukraine), represented by G. Lansky and A. Egger, lawyers,

applicant,

v

Council of the European Union, represented by J.-P. Hix and F. Naert, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for the annulment of Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 25) and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 1), in so far as those acts maintain the applicant's name on the list of persons covered by the restrictive measures at issue,

THE GENERAL COURT (Sixth Chamber),

composed of G. Berardis (Rapporteur), President, D. Spielmann and Z. Csehi, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written procedure and further to the hearing on 15 December 2016,

gives the following

* Language of the case: German.

Judgment

Background to the dispute

1 The applicant, Mr Mykola Yanovych Azarov, was Prime Minister of Ukraine from 11 March 2010 to 28 January 2014.

2 The present case is one of a number of cases concerning the restrictive measures adopted in view of the situation in Ukraine following the suppression of demonstrations in Independence Square in Kiev (Ukraine) in February 2014.

3 On 5 March 2014, the Council of the European Union adopted 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). On the same date, the Council adopted 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) (together, 'the March 2014 acts').

4 Article 1(1) and (2) of Decision 2014/119 provides:

'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.

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.'

5 The detailed rules for the freezing of those funds are set out in the subsequent paragraphs of that article.

6 In accordance with Decision 2014/119, Regulation No 208/2014 requires the adoption of measures for the freezing of funds and sets out the detailed rules governing the freezing of funds in terms essentially identical to those used in that decision.

7 The names of the persons covered by the March 2014 acts appear on the — identical — list contained in the Annex to Decision 2014/119 and in Annex I to Regulation No 208/2014 ('the list'), together with, in particular, the reasons for their inclusion on the list.

8 The name of the applicant was listed along with the identifying information 'Prime Minister of Ukraine until January 2014' and the following reason:

'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 forming the subject of the restrictive measures provided for in Decision 2014/119 and Regulation No 208/2014 (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 …'.

10 On 12 May 2014 the applicant brought an action for the annulment of Decision 2014/119 and Regulation No 208/2014. That action was registered under number T-331/14 at the Registry of the General Court.

11 On 29 January 2015, the Council adopted Decision (CFSP) 2015/143 amending Decision 2014/119 (OJ 2015 L 24, p. 16) and Regulation (EU) 2015/138 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1) (together, 'the January 2015 acts').

12 Decision 2015/143 specified the criteria, effective from 31 January 2015, for selecting the persons covered by the freezing of funds. In particular, Article 1(1) of Decision 2014/119 was 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.'

13 Regulation 2015/138 amended Regulation No 208/2014 in accordance with Decision 2015/143.

14 By letter of 2 February 2015, the Council informed the applicant that it intended to maintain the restrictive measures in place against him and sent him a letter [*confidential*],[1] dated 10 October 2014 ('the letter of 10 October 2014'), informing him of his right to submit observations. By letter of 18 February 2015, the applicant submitted his observations.

15 On 5 March 2015, the Council adopted Decision (CFSP) 2015/364 amending Decision 2014/119 (OJ 2015 L 62, p. 25) and Implementing Regulation (EU) 2015/357 implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1) (together, 'the contested acts').

16 Decision 2015/364 amended Article 5 of Decision 2014/119 by extending the restrictive measures, so far as the applicant was concerned, until 6 March 2016. Consequently, the list was replaced in accordance with the contested acts.

17 Following those amendments, the applicant's name was maintained on the list with the identifying information 'Prime Minister of Ukraine until January 2014' and the following new reason:

'Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.'

18 By letter of 6 March 2015, the Council informed the applicant that the restrictive measures in place against him were being maintained.

Events subsequent to the bringing of the action

19 By its judgment of 28 January 2016, *Azarov* v *Council*, T-331/14, EU:T:2016:49, the General Court annulled Decision 2014/119 and Regulation No 208/2014 in so far as they concerned the applicant.

1 — Confidential data redacted.

20 On 4 March 2016, the Council adopted Decision (CFSP) 2016/318 amending Decision 2014/119 (OJ 2016 L 60, p. 76) and Implementing Regulation (EU) 2016/311 implementing Regulation No 208/2014 (OJ 2016 L 60, p. 1). Those acts extend the restrictive measures, in particular so far as the applicant is concerned, until 6 March 2017.

21 Decision 2016/318 and Implementing Regulation 2016/311 are the subject of a new action brought by the applicant before the General Court on 27 April 2016 (Case T-190/16, *Azarov* v *Council*).

Procedure and forms of order sought

22 By application lodged at the Registry of the General Court on 29 April 2015, the applicant brought the present action. He also lodged a request for an expedited procedure pursuant to Article 76a of the Rules of Procedure of the General Court of 2 May 1991.

23 By decision of 28 May 2015, the General Court (Ninth Chamber) rejected the request for an expedited procedure.

24 On 7 July 2015, the Council lodged its defence. On 8 July 2015, it also submitted a reasoned application in accordance with Article 66 of the Rules of Procedure of the General Court for the content of certain documents annexed to the defence not to be cited in the documents relating to that case to which the public has access. The applicant submitted his objections to the request for confidential treatment.

25 The reply and rejoinder were lodged by the applicant on 27 August 2015 and by the Council on 12 October 2015, respectively.

26 On 14 October 2015, the Council submitted a reasoned application in accordance with Article 66 of the Rules of Procedure for the content of an annex to the application and an annex to the rejoinder not to be referred to in the documents relating to that case to which the public has access.

27 Following a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which this case was consequently allocated.

28 Acting on a proposal from the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral procedure.

29 The parties presented oral argument and answered the questions put to them by the General Court at the hearing on 15 December 2016.

30 The applicant claims that the Court should:

— annul the contested acts in so far as they concern him;

— order certain measures of organisation of procedure;

— order the Council to pay the costs.

31 The Council contends that the Court should:

— dismiss the action;

— in the alternative, declare that the effects of Decision 2015/364 are to be maintained until the partial annulment of Implementing Regulation 2015/357 takes effect;

— order the applicant to pay the costs.

Law

32 In support of the action, the applicant relies on five pleas in law, alleging, first, infringement of the obligation to state reasons, secondly, infringement of fundamental rights, thirdly, misuse of powers, fourthly, infringement of the principle of good administration and, fifthly, a manifest error of assessment.

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

33 According to the applicant, the Council's decision to maintain his name on the list is unreasoned. In particular, the information in the 'statement of reasons' does not explain the actual and specific reasons or the matters of fact and law on the basis of which the contested acts were adopted, and, therefore, does not satisfy the requirements laid down in the case-law concerning the statement of reasons and respect for the rights of the defence. Moreover, the fact that the Council did not disclose those reasons either at the time when the restrictive measures were adopted or as soon as possible thereafter constitutes an infringement of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

34 The applicant also submits that the reason given in the contested acts, to the effect that he is 'subject to criminal proceedings', is incorrect given that the criminal proceedings of which he is the subject are only at the early stages. Furthermore, the fact that the applicant is accused of being the perpetrator of a misappropriation of funds is unfounded. The document on which the Council relied does not show that the acts described there constituted a misappropriation of funds.

35 In his reply, the applicant also accuses the Council of having simply reproduced the contents of the documents from the Ukrainian authorities, without carrying out an independent assessment.

36 The Council disputes the applicant's arguments.

37 Under the second paragraph of Article 296 TFEU, 'legal acts shall state the reasons on which they are based'.

38 Under Article 41(2)(c) of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties, the right to good administration includes, inter alia, 'the obligation of the administration to give reasons for its decisions'.

39 It is settled case-law that the statement of reasons required by Article 296 TFEU and Article 41(2)(c) of the Charter must be appropriate to the nature of the contested act and to the context in which it was adopted. It must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case (see judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 94 and the case-law cited).

40 It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU and Article 41(2)(c) of the Charter must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. Accordingly, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which

was known to that person and which enables him to understand the scope of the measure concerning him. Moreover, the degree of precision of the statement of the reasons for a measure must be weighed against practical realities and the time and technical facilities available for taking the measure (see judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 95 and the case-law cited).

41 In particular, the statement of reasons for an asset-freezing measure cannot, in principle, consist merely of a general, stereotypical formulation. Subject to the qualifications stated in paragraph 40 above, such a measure must, on the contrary, indicate the actual and specific reasons why the Council considers that the relevant legislation is applicable to the person concerned (see judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 96 and the case-law cited).

42 Finally, it must be borne in mind that the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure. The reasoning in a measure consists in a formal statement of the grounds on which that measure is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the measure, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (judgments of 22 March 2001, *France* v *Commission*, C-17/99, EU:C:2001:178, paragraph 35, and of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraphs 60 and 61).

43 In the present case, it must be noted that the reason given for including the applicant's name on the list, as amended when his name was maintained by the contested acts (see paragraph 17 above), is actual and specific and sets out the considerations forming the basis of the decision to maintain it, namely the fact that he is the subject of criminal proceedings brought by the Ukrainian authorities for the misappropriation of public funds or assets.

44 Moreover, the decision to maintain the restrictive measures against the applicant was made in a context that was known to him, in that he had, in exchanges with the Council, been made aware of the letter of 10 December 2014 on the basis of which the Council maintained those measures (see, to that effect, judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraphs 53 and 54 and the case-law cited, and of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 88). That letter states [*confidential*]. Furthermore, that context also includes the exchanges between the applicant and the Council in connection with the case which gave rise to the judgment of 28 January 2016, *Azarov* v *Council* (T-331/14, EU:T:2016:49).

45 In the light of all the foregoing, it must be concluded that the contested acts state to the requisite legal standard the matters of fact and law on which, according to the Council, those acts are based.

46 That conclusion cannot be called into question by the applicant's arguments.

47 First, as regards the allegedly stereotypical nature of the reason for listing, it should be noted that, while the considerations set out in that reason are the same as those on the basis of which the other natural persons listed were subjected to restrictive measures, they nonetheless seek to describe the particular situation of the applicant, who, like others, has, in the Council's view, been the subject of judicial proceedings linked to investigations concerning the misappropriation of Ukrainian State funds (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 115).

48 Secondly, with regard to the discrepancy between the statement of reasons contained in the contested acts and that contained in the March 2014 acts, it is readily apparent, as the Council submits, that, since the statement of reasons provided in the contested acts is sufficient, the fact that other acts contain slightly different reasons is no ground for declaring the contested acts unlawful.

49 Thirdly, as regards the applicant's claim that the reasons given in the contested acts differ from the information contained in the letter of 10 October 2014, it should be noted that that letter refers to [*confidential*]. The fact that that letter also refers to [*confidential*] is irrelevant from the point of view of an alleged infringement of the obligation to state reasons.

50 Finally, with regard to the applicant's arguments concerning the credibility of the statement of reasons, it must be noted that these have to do with whether the reasons given are correct, and will therefore, in accordance with the case-law referred to in paragraph 42 above, be examined in the context of the fifth plea in law below.

51 In the light of the foregoing, the first plea in law must be rejected.

The second plea in law, alleging infringement of fundamental rights

52 This plea is divided into four parts, alleging, respectively, that the right to property has been infringed, that the right to pursue an economic activity has been infringed, that the restrictive measures at issue are disproportionate and that the rights of the defence have been infringed.

53 It is appropriate to examine the fourth part, alleging that the rights of the defence have been infringed, first, and then, in turn, the parts alleging that the right to property has been infringed, that the right to pursue an economic activity has been infringed and that the restrictive measures at issue are disproportionate.

The fourth part, alleging infringement of the rights of the defence

54 The applicant accuses the Council, in essence, of having infringed his right to be heard, in so far as it sent him information that was not precise enough to enable him effectively to make known his views on the evidence adduced against him. More specifically, the letter of 10 October 2014 contains vague and general considerations and does not satisfy the requirements of effective judicial protection. Moreover, the Council did not take into account the applicant's submissions aimed at demonstrating that he could not have committed the offences alleged against him. Furthermore, the Council also did not take into account the many violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), perpetrated by the Ukrainian authorities.

55 The Council disputes the applicant's arguments.

56 It should be recalled, first of all, that the fundamental right to respect for the rights of defence during a procedure preceding the adoption of a restrictive measure is expressly affirmed in Article 41(2)(a) of the Charter (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 66).

57 In the case of a subsequent decision to freeze funds by which the inclusion of the name of a person or entity already appearing on the list of persons and entities whose funds are frozen is maintained, the adoption of such a decision must, in principle, be preceded by notification of the incriminating evidence and by allowing the person or entity concerned an opportunity of being heard (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 62).

58 That right to be heard beforehand must be respected where the Council has relied on new evidence against a person covered by the restrictive measure whose name is maintained on the list at issue (judgments of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 26, and of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 43).

59 In the present case, it must be observed that Article 2(2) and (3) of Decision 2014/119 and Article 14(2) and (3) of Regulation No 208/2014 provide that the Council is to communicate its decision, including the grounds for the listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council is to review its decision and inform the natural or legal person, entity or body concerned accordingly. Moreover, the third paragraph of Article 5 of Decision 2014/119 provides that that decision is to be kept under constant review, and Article 14(4) of Regulation No 208/2014 that the list is to be reviewed at regular intervals and at least every twelve months. The contested acts are based on those initial March 2014 acts and have the effect of extending the freezing of funds following the Council's review of the list.

60 In that regard, it should be noted, in the light of the principle established by the case-law set out in paragraph 58 above, that, when it maintained the applicant's name on the list, the Council relied on new evidence which had not previously been communicated to the applicant following his initial listing.

61 On the one hand, the statement of reasons provided in the contested acts is not the same as that provided for the first listing of the applicant's name (see paragraphs 8 and 17 above). On the other hand, the Council relies on new evidence in the form of the letter of 10 October 2014.

62 Consequently, the Council was obliged to hear the applicant before adopting those acts.

63 It follows from the case file that, by its letter of 2 February 2015, the Council, after drawing the applicant's attention to the fact that the selection criterion had been amended by the January 2015 acts (see paragraphs 12 and 13 above), attached to that letter, and after examining the applicant's arguments which had been brought to its attention, informed the applicant that it intended to maintain the restrictive measures against him. Thus, it referred to the letter of 10 October 2014, attached to the letter of 2 February 2015, as evidence justifying the inclusion of the applicant's name on the list and, finally, gave him the opportunity to submit observations. By letter of 18 February 2015, the applicant duly wrote to the Council, presenting it with additional evidence in support of the request that the inclusion of his name be reconsidered.

64 Moreover, immediately after the contested acts were adopted, the Council, by letter of 6 March 2015, responded to the applicant's observations in his letter of 18 February 2015 by dismissing them. In addition, the Council forwarded the contested acts to him and gave him the opportunity to submit further observations. By letter of 27 March 2015, the Council also granted the applicant's request, in his e-mail of 9 March 2015, for access to certain Council documents.

65 In the light of those circumstances, the conclusion must be drawn that the Council discharged its obligations in relation to respect for the applicant's rights of defence in the course of the procedure culminating in the adoption of the contested acts. It is readily apparent, after all, that the applicant had access to the information and evidence on the basis of which the restrictive measures against him were maintained and was able to submit observations in good time and to bring the present action in reliance, for his defence, on relevant evidence from the documents before the Court.

66 That conclusion cannot be called into question by the other arguments raised by the applicant.

67 First, it should be pointed out, as the Council observes, that the applicant's claims regarding the vague or insufficiently precise nature of the information sent to him have more to do with an alleged infringement of the Council's obligation to state reasons. In that regard, reference must therefore be had to the considerations set out as part of the assessment of the first plea in law, above.

68 Secondly, with regard to the applicant's arguments concerning the alleged infringement of his rights of defence by the Ukrainian authorities, it must be observed, as the Council has, that the applicant cannot allege that those rights have been infringed or that any other irregularity has been committed in the course of proceedings pending in Ukraine as a basis for claiming that his rights of defence were infringed in the course of the proceedings at the end of which the Council extended the restrictive measures at issue, since any infringement of the rights of the defence may relate only to an infringement of those rights by the EU institutions. Moreover, with regard more specifically to the alleged unlawfulness of the refusal to grant him access to the file, as is said to have been established by decision of the Pechersk District Court, Kiev, of 5 March 2015, it is sufficient to point out that that judgment was given on the very same day that the contested acts were adopted and cannot therefore have any bearing on the lawfulness of those acts.

69 Thirdly, with regard to the argument alleging that the Council looked only at the information received [*confidential*] and did not request any additional information, it should be noted that the material which had been submitted to the Council by the applicant makes it perfectly clear that this did not deprive the applicant of the opportunity to put forward his views and is not therefore such as to constitute an infringement of his rights of defence.

70 Furthermore, that argument, in so far as it is to be construed as alleging, in essence, that the Council committed a manifest error of assessment, in the light of the evidence that was available to it, must be examined in the context of the fifth plea in law below.

71 In the light of the foregoing, the fourth part of the second plea in law must be rejected.

The first part, alleging infringement of the right to property

72 The applicant considers that the contested acts infringe his right to property, enshrined in Article 17(1) of the Charter. In his submission, the freezing of assets imposed on him amounts to a de facto expropriation, as is apparent, moreover, from the case-law of the European Court of Human Rights. The restrictions imposed by the contested acts, being based only on assertions, were adopted without the procedural guarantees provided for by EU law. According to the applicant, the Council has not proved that, when the contested acts were adopted, he had already been prosecuted for the offences set out in the statement of reasons. The limitation of the applicant's right to property cannot therefore be regarded as being 'provided for by law' within the meaning of Article 52(1) of the Charter. Moreover, the Council has not proved the existence of conditions such as to justify infringements of fundamental rights.

73 The Council disputes the applicant's arguments.

74 Under Article 17(1) of the Charter:

'Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.'

75 Article 52(1) of the Charter provides, first, that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms, and, secondly, that, subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

76 According to case-law, a measure freezing funds undeniably entails a restriction of the exercise of the right to property (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 358).

77 In the present case, it is true that the applicant's right to property is restricted inasmuch, in particular, as he has no access, other than by special permission, to his EU-based funds, and no funds or economic resources may be made directly or indirectly available to him. Since the contested acts had the effect of extending the freezing of the applicant's assets until 6 March 2016, they necessarily restrict the exercise of the applicant's right to property until that date.

78 However, the right to property, as protected by Article 17(1) of the Charter, does not constitute an unfettered prerogative and may therefore have limitations attached to it, under the conditions laid down in Article 52(1) of the Charter (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 195 and the case-law cited).

79 As is clear from Article 52(1) of the Charter, a limitation on the exercise of that right must, in order to comply with EU law, satisfy three conditions.

80 First, the limitation must be 'provided for by law'. In other words, the measure must have a legal basis. Secondly, it must refer to an objective of general interest, recognised as such by the European Union. Those objectives include those pursued under the Common Foreign and Security Policy (CFSP) and referred to in Article 21(2) TEU. Thirdly, the limitation must not be excessive: it must be necessary and proportional to the aim sought and the 'essential content', that is, the substance, of the right or freedom at issue must not be impaired (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraphs 197 to 200 and the case-law cited).

81 In the present case, each of these conditions is met.

82 In the first place, the limitation is 'provided for by law', since the retention of the applicant's name on the list fulfils the listing criterion originally laid down in Article 1(1) of Decision 2014/119, as amended by Decision 2015/143, which has not been amended by the contested acts and which refers to the existence of criminal proceedings brought against the person listed for misappropriation of public funds.

83 In the second place, it should be noted that, as is clear from recital 2 of Decision 2014/119, the contested acts are consistent with the objective, referred to in Article 21(2)(b) TEU, to the effect that the restrictive measures at issue should seek to consolidate and support the rule of law in Ukraine. In so doing, those acts form part of a policy of support for the Ukrainian authorities which is aimed at promoting both the political and economic stability of Ukraine and, more specifically, at assisting the authorities of that country in combatting the misappropriation of public funds.

84 In the third place, so far as concerns the proportionality of the interference in the applicant's right to property, it should be recalled that the principle of proportionality, as one of the general principles of EU law, requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to

the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:C:2014:93, paragraph 205 and the case-law cited).

85 Now, it is clear from case-law that the disadvantages caused by the restrictive measures are not disproportionate to the objectives pursued, bearing mind, first, that those measures are by nature temporary and reversible and do not therefore infringe the 'essential content' of the right to property, and, secondly, that they may be derogated from in order to cover the basic needs, the legal costs or even the extraordinary expenses of the persons concerned (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:C:2014:93, paragraph 209 and the case-law cited).

86 It should also be noted, first, that the restrictive measures at issue play an effective role in helping to identify misappropriations of public funds in Ukraine, as well as in facilitating the restitution of such funds, and, secondly, that the applicant has not put forward any argument to show that those measures are inappropriate or that there are other less onerous means of attaining the objectives pursued.

87 Consequently, the first part of the second plea in law must also be rejected.

The second part, alleging infringement of the right to pursue an economic activity

88 According to the applicant, the contested acts infringe Article 16 of the Charter, which covers the freedom to pursue an economic or commercial activity, freedom of contract and free competition. In so far as those acts provide for the freezing not only of funds but also of all economic resources, they make it practically impossible to pursue a business activity. Those measures are also disproportionate in the light of the objectives pursued, since, at the time when those acts were adopted, the rule of law and respect for human rights in Ukraine were no longer under threat, in particular, from the applicant, who no longer held political office and was abroad.

89 The Council disputes the applicant's arguments.

90 Article 16 of the Charter provides that 'the freedom to conduct a business in accordance with Union law and national laws and practices is recognised'.

91 It follows from case-law that, although a restrictive measure may have considerable adverse consequences and a substantial impact on the business life of the person concerned, it is intended only to freeze his assets on a precautionary basis. Its immediate purpose is thus not to prevent the person concerned from pursuing industrial or commercial activities for profit within the European Union (see judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 253 and the case-law cited). Moreover, the applicant has not produced any specific evidence to show that he pursues or intends to pursue an economic activity in the European Union or that the freezing of his funds is harmful to existing economic activities.

92 In any event, so far as concerns the freedom to pursue an economic activity, the Court has held that, in the light of the wording of Article 16 of the Charter, that freedom may be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest (see judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 123 and the case-law cited).

93 In the present case, even assuming that the measures at issue do restrict the economic rights relied on by the applicant, it should be noted, first, that such a restriction, imposed by a provision of general application in Decision 2014/119, is provided for by law (see paragraph 82 above).

94 Secondly, that restriction serves the general-interest objective pursued by the measures at issue (see paragraph 83 above).

95 Thirdly, such a restriction cannot be regarded as disproportionate to that objective. In that regard, it should be pointed out that the applicant does not adduce any evidence such as to call into question the proportionality of such a restriction. In particular, he does not claim that there is a measure less onerous than the measure at issue but nonetheless appropriate for attaining the objectives pursued by the contested acts (see, to that effect, judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 257 and the case-law cited).

96 In the light of the foregoing, the second part of the second plea in law must be rejected.

The third part, alleging that the restrictive measures are disproportionate

97 According to the applicant, the imposition of the restrictive measures is disproportionate inasmuch as the amount of the frozen assets is unlimited and unrelated to the aim of those measures. In the present case, after all, neither the amount of the State resources affected by the alleged offence nor the amount of the assets or economic resources frozen have been determined. The applicant considers that the Council's submissions with respect to the difficulties involved in implementing a restriction of assets are unjustified. Finally, the applicant recalls that it is for the Council to demonstrate that the measures are proportionate.

98 The Council disputes the applicant's arguments.

99 It must be recalled that the principle of proportionality, as one of the general principles of EU law, requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least binding, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 205 and the case-law cited).

100 As the Council rightly submits, it should be noted that, in the absence of a judicial decision on the merits of the accusations pending against the applicant in Ukraine, the Council could not, at the time when it adopted the contested acts, know the nature of the public funds allegedly misappropriated or itself indicate their value. It was not therefore in a position to distinguish the assets that may have become the applicant's property following such misappropriations from the remainder of his assets. That being the case, there was no way the Council could adopt a decision imposing, say, a partial freeze of the applicant's funds.

101 Moreover, it should also be noted in that regard that, even if the applicant were to submit that there is no justification for freezing funds in excess of the value of the assets allegedly misappropriated, as indicated by the information that was available to the Council, the fact is that [*confidential*] give only an indication of the value of the assets alleged to have been misappropriated and, moreover, any attempt to pin down the amount of the funds frozen would, as the Council rightly points out, be extremely difficult, if not impossible, to implement in practice.

102 It is further to be noted, as mentioned in paragraph 85 above, first, that the measures at issue are by nature temporary and reversible and do not therefore infringe the 'essential content' of the right to property, and, secondly, that derogations from those measures may be authorised in order to cover the basic needs, the legal costs or even the extraordinary expenses of the persons concerned.

103 In the light of all the foregoing, the third part of the second plea in law, and, therefore, the second plea in law in its entirety, must be rejected.

The third plea in law, alleging a misuse of powers

104 The applicant claims that the Council adopted restrictive measures against him without having any proof of the offences cited as the reason for maintaining his name on the list. In his submission, there is a misuse of powers even if the objective pursued is legitimate, but the outcome of the act does not serve to attain that objective. The freezing of assets does not provide a means of attaining the objective of consolidating and supporting the rule of law and respect for human rights in Ukraine, either generally or in relation to the applicant, since he was no longer in political office when the contested acts were adopted. Moreover, even several months after those measures were imposed, the Ukrainian authorities have not adduced any evidence to support the inclusion of the applicant's name on the list. Finally, in the circumstances of the present case, the measures at issue do not assist the Ukrainian authorities in recovering the misappropriated public funds.

105 The Council disputes the applicant's arguments.

106 The first point to be noted is that it is settled case-law that a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed for dealing with the circumstances of the case (see judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 50 and the case-law cited).

107 In the present case, it should be recalled that the March 2014 acts, in their initial wording and as amended by the January 2015 acts and the contested acts, provide for restrictive measures against persons identified as being responsible for the misappropriation of Ukrainian State funds, with a view to supporting the rule of law in Ukraine.

108 As already mentioned in paragraph 83 above, it should be noted, first, that the objective pursued by Decision 2014/119 is of a piece with one of the objectives set out in Article 21(2)(b) TEU, which provides that the Union is to define and pursue common policies and actions and work for a high degree of cooperation in all fields of international relations, in order, inter alia, to consolidate and support democracy, the rule of law, human rights and the principles of international law, and, secondly, that such an objective is attainable by the measures at issue.

109 In particular, such an objective is attainable by an asset freeze the scope of which is, as in this instance, restricted to persons identified as being responsible for the misappropriation of Ukrainian State funds and their associates, that is to say, to the persons whose actions are liable to have jeopardised the proper functioning of the public institutions and bodies linked to them (see, to that effect and by analogy, judgments of 28 May 2013, *Trabelsi and Others* v *Council*, T-187/11, EU:T:2013:273, paragraph 92; of 28 May 2013, *Chiboub* v *Council*, T-188/11, not published, EU:T:2013:274, paragraph 53, and of 2 April 2014, *Ben Ali* v *Council*, T-133/12, not published, EU:T:2014:176, paragraph 70).

110 Moreover, the applicant has not demonstrated that, in adopting the contested acts or the March 2014 acts, as amended by the January 2015 acts, the Council was principally concerned with pursuing an aim other than that of consolidating and supporting the rule of law in Ukraine.

111 For, first, it is important to note, as the Council has, that the alleged lack of any specific evidence to support the maintenance of the applicant's name on the list is irrelevant, since the question of whether the restrictive measures are adopted on a sufficiently solid factual basis has no bearing on whether the Council acted with a view to achieving ends other than those stated or tried to evade the procedure prescribed for the adoption of restrictive measures.

112 Secondly, with regard to the argument that the objective pursued by the contested acts, namely to consolidate and support the rule of law in Ukraine, cannot be achieved in relation to the applicant, since he no longer holds political office in that country, it should be recalled that that objective also includes assisting the Ukrainian authorities in recovering misappropriated public funds and that the contested acts help achieve such an objective (see paragraph 86 above), irrespective of whether the applicant still holds political office within the Ukrainian Government.

113 Consequently, the third plea in law must be rejected.

The fourth plea in law, alleging infringement of the principle of good administration

114 The applicant submits that the contested acts infringe the principle of good administration, enshrined in Article 41 of the Charter, in several respects. That principle includes, first of all, the right to be heard, implicit in which is the right of the person concerned to be informed that proceedings have been brought against him and to be made aware of the subject matter of those proceedings, and the opportunity to submit observations on the matters of fact and law relating to them. This includes the duty of the competent authority to take account of those observations when making its decision, any exception thereto requiring strict interpretation. Also implicit in the right to be heard is the right to be treated impartially, which prevents the Council from imposing restrictive measures on the basis of data which has been collected unilaterally.

115 Next, the applicant submits, the right to fair treatment, which flows from the principle of good administration, has been infringed in the present case, since the reason given for maintaining his name on the list was not substantiated by facts. The proceedings were not therefore impartial, inasmuch as the Council entered letters from a third country in the case file without investigating them.

116 Finally, the applicant submits that the principle of good administration calls for a serious and thorough investigation of the facts, which did not take place here. Indeed, the fact that the Council chose not to verify the facts and the relevant Ukrainian law, particularly in the light of the evidence presented to it, shows that it was biased and that the applicant was treated unfairly.

117 The Council disputes the applicant's arguments.

118 It should be observed that, in the context of the present plea in law, the applicant claims that the principle of good administration has been infringed, and refers in this regard to a number of rights, such as the right to be heard, implicit in which is the right to be informed that proceedings have been brought, to be made aware of the subject matter of those proceedings and to submit observations on the matters of facts and law relating to them, and to certain obligations, such as the obligation on the administration to give reasons for acts and make a careful determination of the facts and the obligation of impartiality and fair treatment.

119 Most of the alleged infringements of those rights have already been claimed by the applicant in the context of the first and second pleas in law. Given that the applicant does not put forward any specific arguments, there is no need to re-examine those complaints in the context of the present plea.

120 With regard, more specifically, to the complaint alleging infringement of the obligation of impartiality and fair treatment, it is important to point out, in so far as the applicant bases that complaint on the allegation that the reason given for the restrictive measures 'is not substantiated by the required facts', that that complaint will, in effect, be examined in the assessment of the fifth plea. In so far as the applicant bases that complaint on the fact that the Council 'entered letters from third countries in the case file without investigating them', it should be recalled that, at the time when the contested acts were adopted, the Council had the letter of 10 October 2014 and the applicant's observations in its possession and decided to maintain the applicant's name on the list in the light of those two items of evidence. The Council did not therefore commit any error in deciding to maintain the applicant's name on the basis of that evidence. Moreover, it is clear from case-law that the Council is not required as a matter of course to conduct its own investigations or to carry out checks with a view to obtaining additional details, when relying on evidence supplied by the authorities of a third country as the basis for imposing restrictive measures on persons originating in that country who are the subject of judicial proceedings there (see, to that effect, judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 175).

121 With regard, finally, to the alleged infringement of the obligation to make a careful determination of the facts, it should be noted that the applicant has not substantiated his arguments. In so far as that complaint is to be understood as seeking to criticise the Council's approach of not having conducted a more thorough investigation, and of having confined its examination to the letter of 10 October 2014, it is linked to the fifth plea in law, alleging a manifest error of assessment, and will therefore be dealt with in the assessment of that plea.

122 In the light of the foregoing, the fourth plea in law must be rejected.

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

123 The applicant claims that the Council committed a manifest error of assessment in deciding to extend the restrictive measures at issue on the basis of the letter of 10 October 2014, since that letter is nothing more than a vain attempt to cobble together an offence that can be laid against him.

124 According to the applicant, the contested acts contain only very vague and brief statements of reasons. The Council should have provided further, more detailed information rather than simply giving the reasons set out in the list.

125 Moreover, the applicant cites evidence from a number of sources to show that he could not have misappropriated public funds from the Ukrainian State budget [*confidential*].

126 First, the decision [*confidential*] was therefore lawful. Secondly, as Prime Minister, the applicant did not have the powers to commit the offence he is suspected of having committed by the Ukrainian authorities. In any event, it follows from a final judgment of an independent Ukrainian court that the use of State funds for [*confidential*] was lawful. Thirdly, the judgment of the Kiev District Administrative Court had previously found that [*confidential*]. Consequently, no State resources were misappropriated. Moreover, the fact that funds from the budget were used for their intended purpose is confirmed by the undertakings concerned themselves. Fourthly, there was no secret agreement. Fifthly, the Council did not comply with the obligation to verify carefully that the relevant Ukrainian legislation provided protection for his rights of defence and effective judicial protection, and that the inclusion of his name on the list had a sufficiently solid factual basis.

127 In the reply, the applicant submits, first of all, that, even assuming that [*confidential*] – for which the Council has no proof – took place, this is not sufficient to satisfy the requirements of a serious investigation of the facts. Moreover, by saying that the applicant would have the opportunity during

the criminal proceedings in Ukraine to challenge the veracity of the suspicions under which he has fallen, the Council refused to allow the principle of the presumption of innocence, enshrined in Article 48 of the Charter, to be applied.

128 Furthermore, the applicant points up the fact that, despite the time which has passed since those proceedings were instituted, the Ukrainian authorities have failed to present any evidence of the offence he is suspected of having committed.

129 Next, the applicant submits that it was impossible for him to submit his observations in Ukraine, as the many decisions which he has attached [to the reply] show.

130 Finally, he states, first, that, contrary to what the Council submits, it is immaterial whether a judicial decision was given in administrative rather than criminal proceedings, the importance of those decisions lying in the fact that they provide an answer in law to preliminary questions arising in the course of the criminal proceedings, and, secondly, that, under Ukrainian law, decisions at second instance are final.

131 The Council disputes the applicant's arguments.

132 The first point to be noted is that, on 7 March 2015, the applicant became the subject of new restrictive measures introduced by the contested acts on the basis of the listing criterion set out in Article 1(1) of Decision 2014/119, as clarified by Decision 2015/143 (see paragraph 12 above). In that regard, it should be noted that Decision 2015/364 is an autonomous decision adopted by the Council following a periodic review provided for in the third paragraph of Article 5 of Decision 2014/119.

133 It should also be recalled, first, that that criterion provides that restrictive measures are to be adopted against persons 'identified as responsible' for acts of misappropriation of public funds — including persons 'subject to investigation by the Ukrainian authorities' for the misappropriation of Ukrainian public funds or assets — and, secondly, that it is to be interpreted as meaning that it does not concern, in abstract terms, any act classifiable as misappropriation of public funds, but rather acts classifiable as misappropriation of public funds or assets which are such as to undermine respect for the rule of law in Ukraine (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T-340/14, EU:T:2016:496, paragraph 91).

134 The applicant's name was maintained on the list by the contested acts on the ground that he was a 'person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets' (see paragraph 17 above).

135 On that basis, it must be ascertained whether the Council's decision to maintain the applicant's name on the list, by way of the contested acts, was impartial and fair, in the light of the assessment of the evidence in its possession, the reason given for maintaining the listing and the relevant criterion set out above.

136 In that regard, it must be recalled that, although the Council has a broad discretion when it comes to 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 requires that, as part of the review of the lawfulness of the grounds which are 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 are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the result that the judicial review is not confined to an assessment of the abstract plausibility of the reasons relied on, but looks at whether those reasons, or, at the very

least, one of those reasons, deemed sufficient in itself to support that decision, are substantiated by sufficiently precise and concrete evidence (see judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 41 and 45 and the case-law cited).

137 Moreover, according to the case-law concerning decisions to maintain the inclusion of a person's name on a list of persons covered by restrictive measures, when comments are made by the individual or the entity concerned on the summary of reasons, the competent EU authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments (see judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 114 and the case-law cited; judgment of 30 April 2015, *Al-Chihabi* v *Council*, T-593/11, EU:T:2015:249, paragraph 51).

138 It also follows from case-law that, in order to assess the nature, form and degree of the proof that the Council may be required to provide, it is necessary to take account of the specific nature and scope of the restrictive measures, as well as of their objective (see judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 59 and the case-law cited).

139 As is apparent from recitals 1 and 2 of Decision 2014/119, that decision forms part of a more general EU policy of support for the Ukrainian authorities which is intended to promote the political stability of Ukraine. It thus satisfies the objectives of the CFSP, which are defined, in particular, in Article 21(2)(b) TEU, pursuant to which the European Union is to engage in international cooperation with a view to consolidating and supporting democracy, the rule of law, human rights and the principles of international law (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 60 and the case-law cited).

140 It is within that context that the restrictive measures at issue provide for the funds and economic resources of, in particular, persons who have been 'identified as responsible for the misappropriation of Ukrainian State funds' to be frozen. The rule of law in Ukraine is, after all, strengthened and supported by facilitating the recovery of those funds.

141 It follows that the restrictive measures at issue are not intended to penalise any misconduct in which the persons concerned may have engaged, or to deter them, by coercion, from engaging in such conduct. The sole purpose of those measures is to facilitate the Ukrainian authorities' identification of any misappropriation of public funds that has taken place and to protect the possibility of the authorities recovering misappropriated public funds. They are therefore purely precautionary (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 62 and the case-law cited).

142 Thus, the restrictive measures at issue, which were imposed by the Council on the basis of the powers conferred on it by Articles 21 and 29 TEU, have no criminal-law aspect. They cannot, therefore, be treated in the same way as a decision to freeze assets that has been taken by a national judicial authority of a Member State in the relevant criminal proceedings, respecting the safeguards provided by those proceedings. Consequently, the requirements the Council must fulfil with regard to the evidence underpinning a person's entry on the list of persons whose assets are to be frozen cannot be exactly the same as those which apply to the national judicial authority in the abovementioned case (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 64 and the case-law cited).

143 It should also be recalled that the Council is not required to carry out, systematically and on its own initiative, its own investigations or checks for the purpose of obtaining additional information, when it already has information provided by the authorities of a third country in taking restrictive measures against nationals of that country who are the subject of judicial proceedings in that country (judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 57).

144 In the present case, what the Council must ascertain is, first, to what extent the documents [*confidential*] on which it intends to rely prove that, as indicated by the grounds for including the applicant's name on the list at issue, referred to in paragraph 134 above, the applicant is the subject of criminal proceedings brought by the Ukrainian authorities in respect of acts that may be characterised as the misappropriation of State funds, and, secondly, whether those proceedings are such that the applicant's actions can be characterised as satisfying the abovementioned criterion. Only if those investigations were not successful would it, in the light of the case-law referred to in paragraph 137 above, be incumbent on the Council to investigate further (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 65 and the case-law cited).

145 Furthermore, in the context of the cooperation governed by the contested acts (see paragraph 139 above), it is not, in principle, for the Council itself to examine and assess the accuracy and relevance of the information relied on by the Ukrainian authorities in conducting criminal proceedings in respect of the applicant for conduct that could be characterised as misappropriation of public funds. As explained in paragraph 141 above, in adopting the contested acts, the Council does not seek itself to punish the misappropriation of public funds being investigated by the Ukrainian authorities, but to protect the possibility of the authorities identifying such misappropriation and recovering the funds thus misappropriated. It is therefore for those authorities, in the context of those proceedings, to verify the information on which they are relying and, where appropriate, to draw the appropriate conclusions as regards the outcome of those proceedings (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 66).

146 That interpretation is confirmed by the case-law to the effect that it is not for the Council to verify whether the investigations of which the person concerned is the subject are well founded, but only to verify whether that is the case as regards the decision to freeze funds in the light of those investigations (see, to that effect and by analogy, judgment of 5 March 2015, *Ezz and Others* v *Council*, C-220/14 P, EU:C:2015:147, paragraph 77).

147 Admittedly, the Council cannot, in all circumstances, adopt the findings of the Ukrainian authorities [*confidential*]. Such conduct would not be consistent with the principle of good administration nor, generally, with the obligation on the part of the EU institutions to respect fundamental rights in the application of EU law, under the combined provisions of the first subparagraph of Article 6(1) TEU and Article 51(1) of the Charter (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 67).

148 However, it is for the Council to assess, on the basis of the circumstances of the case, whether it is necessary to investigate further, in particular to seek the disclosure of additional evidence from the Ukrainian authorities if it transpires that the evidence already supplied is insufficient or inconsistent. Information communicated to the Council, either by the Ukrainian authorities themselves or in some other way, might conceivably lead that institution to doubt the adequacy of the evidence already supplied by those authorities. Furthermore, when availing themselves of the opportunity which the persons concerned must be given to submit their comments on the reasons which the Council intends to use to maintain their names on the list at issue, those persons may submit such information, or even exculpatory evidence, which would require the Council to investigate further. In particular, while it is not for the Council to take the place of the Ukrainian judicial authorities in assessing whether the criminal proceedings [*confidential*] are well founded, it is not inconceivable that, in the light, in particular, of the applicant's observations, the Council might be obliged to seek clarification from those Ukrainian authorities with regard to the material on which those proceedings are based (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 68).

149 In the present case, it should be noted that the Council bases its decision to maintain the restrictive measures against the applicant principally on the letter of 10 October 2014 [*confidential*]. The letter also refers [*confidential*]. Only one of the two cases, number [*confidential*], is relevant, inasmuch as it relates to a misappropriation of public funds, which is the reason given for maintaining the applicant's name in the contested acts. Moreover, the subject matter of those proceedings is characterised in law by the Ukrainian authorities as misappropriation of funds [*confidential*]. That letter indicates that the applicant misappropriated funds [*confidential*].

150 It follows that the decision to maintain the restrictive measures against the applicant was based on evidence which enabled the Council to establish unequivocally the existence of proceedings instituted by the Ukrainian judicial authorities against the applicant in connection with the offence of misappropriation of public funds.

151 It should be noted, after all, that the letter of 10 October 2014 shows that [*confidential*], and thus leaves no doubt as to the applicant's alleged involvement, particularly given that the facts describing the offence are consistent, coherent and characterised in law by the Ukrainian authorities as misappropriation of public funds, and thus meet the relevant criterion set out above.

152 Moreover, that evidence, which was made known to the Council, is contained [*confidential*] (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T-340/14, EU:T:2016:496, paragraphs 41 and 93). In that regard, the Council cannot therefore be criticised for having regarded the information [*confidential*] as correct and substantiated.

153 Furthermore, it is important to point out that the letter states that the applicant is suspected of having committed certain economic offences [*confidential*].

154 In that regard, it should be noted that the restrictive measures at issue facilitate and complement the efforts made by the Ukrainian authorities to recover the misappropriated public funds, to which extent they are caught by the objective of consolidating the rule of law, as indicated in paragraphs 140 and 141 above.

155 Finally, it is also appropriate to point out that the prosecution of economic crimes, such as misappropriation of public funds, is an important means of combating corruption and that, in the context of the external action of the European Union, the combating of corruption is a principle encompassed by the rule of law. It must further be observed that the offence that the applicant is alleged to have committed has a wider context, in that a significant part of the former Ukrainian leadership is suspected of having committed serious crimes in the management of public resources, thereby seriously threatening the legal and institutional foundations of the country and undermining, inter alia, the principles of legality, prohibition on arbitrary exercise of power by the executive, effective judicial review and equality before the law (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T-340/14, EU:T:2016:496, paragraph 117). It follows that, taken as a whole and taking into consideration the role occupied by the applicant within the former Ukrainian leadership, the restrictive measures at issue contribute, in an effective manner, to facilitating the prosecution of crimes of misappropriation of public funds that were to the detriment of the Ukrainian institutions and ensure that the Ukrainian authorities can more easily secure restitution of the profits of such misappropriation. That facilitates, in the event that the prosecutions are successful, the punishment, through the courts of law, of alleged acts of corruption committed by members of the former regime, and thereby contributes to the support of the rule of law in that country (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T-340/14, EU:T:2016:496, paragraph 118).

156 Thus, the Council did not commit a manifest error of assessment in adopting the contested acts in so far as they concern the applicant.

157 That conclusion cannot be called into question by the other arguments raised by the applicant.

158 First, the applicant's argument that the investigation of which he is the subject in Ukraine cannot culminate in his being charged with an offence, in the light of [*confidential*], as well as the relevant provisions of Ukrainian law and the limited decision-making powers which he exercised, must be rejected.

159 After all, the applicant does not dispute the authenticity of the letter of 10 October 2014. The Council must thus be regarded as having furnished proof of the existence in Ukraine of criminal proceedings relating to the applicant. In that regard, it should be observed that the only evidence provided by the applicant to the Council before the contested acts were adopted sought, in essence, to challenge the merits of the investigation and concerned the powers of the Prime Minister in the Ukrainian legal system and Ukrainian budgetary provisions. That evidence was not therefore such as to call into question the merits of the decision to freeze funds in the light of the investigation.

160 In any event, any argument by the applicant which has to do with challenging the veracity of the accusations made against him and which seeks to refute the facts constituting the offence under investigation in Ukraine are irrelevant, inasmuch as it follows from the case-law recalled in paragraphs 141, 143, 145 and 146 above that it was not, in principle, for the Council itself to examine and assess the accuracy and relevance of the information on which the Ukrainian authorities relied as the basis for conducting a judicial investigation relating to the applicant, it being for those authorities, in the course of those investigations, to verify the information on which they are relying and to draw the appropriate conclusions with regard to the outcome of those investigations (see, to that effect and by analogy, judgment of 14 April 2016, *Ben Ali* v *Council*, T-200/14, not published, EU:T:2016:216, paragraph 158).

161 Secondly, with regard to the judgments given by the Ukrainian administrative courts, which, according to the applicant, demonstrate in essence that the facts on which the investigation concerning him are based do not constitute a misappropriation of public funds, it should be observed that, whether or not they are relevant, the applicant has not established that the Council was aware of them before the contested acts were adopted. It follows that the Council cannot be criticised for having committed a manifest error of assessment in that regard.

162 It should be recalled, moreover, that a decision to freeze assets is to be assessed in the light of the information available to the Council when the decision was adopted (judgment of 28 May 2013, *Trabelsi and Others* v *Council*, T-187/11, EU:T:2013:273, paragraph 115). According to settled case-law, after all, the legality of a European Union measure must be assessed on the basis of the elements of fact and of law existing at the time when the measure was adopted (see judgment of 26 October 2012, *Oil Turbo Compressor* v *Council*, T-63/12, EU:T:2012:579, paragraph 19 and the case-law cited).

163 Thirdly, as regards the alleged infringement of the principle of the presumption of innocence, which is enshrined, in the European Union legal order, in Article 48(1) of the Charter, it is readily apparent, as the Council has noted, that there is nothing in the contested acts which indicates that the applicant has been found guilty of conduct punished under Ukrainian criminal law or the law of an EU Member State, or which prejudges the assessment of the facts by the competent Ukrainian authorities and courts. Moreover, in adopting those acts, the Council did not instil in public opinion a feeling that the applicant is guilty. Those acts merely state that the applicant is the subject of criminal proceedings in Ukraine concerning a misappropriation of public funds (see, to that effect and by analogy, judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraphs 82 to 84).

164 Fourthly, with regard to the lack of credibility [*confidential*], which is said to vitiate the letter of 10 October 2014, it should be observed, on the one hand, that Ukraine, as a Member State of the Council of Europe since 1995, has ratified the ECHR and, on the other, that the new Ukrainian regime has been recognised as lawful both by the European Union and by the international community. The Council did not therefore err in relying on evidence [*confidential*] without

challenging the legality and legitimacy of the Ukrainian regime and judicial system. In any event, in so far as an examination of the applicant's arguments would require the Court to give a ruling on the lawfulness of the Ukrainian regime's transition, it need hardly be pointed out that such an examination does not fall within the scope of the power of review exercised by the Court in relation to the acts forming the subject matter of the present case (see, to that effect and by analogy, judgment of 25 April 2013, *Gbagbo* v *Council*, T-119/11, not published, EU:T:2013:216, paragraph 75).

165 Fifthly, as regards the claims concerning the alleged inadequacy of the statement of reasons, reference should be had to the assessment carried out in connection with the first plea in law, alleging infringement of the obligation to state reasons.

166 Finally, in his written pleadings and at the hearing, the applicant, relying, first, on the judgment of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, under appeal, EU:T:2014:885), and, secondly, on the Opinion of Advocate General Sharpston in *Council* v *LTTE* (C-599/14 P, EU:C:2016:723), submitted that the Council must, before acting on the basis of a decision of an authority of a third State, carefully verify that the relevant legislation of that State ensures protection of the rights of defence and a right to effective judicial protection equivalent to that guaranteed at EU level. According to the applicant, there is no reason to assume that the level of protection of fundamental rights guaranteed in Ukraine is at least equivalent to that in the European Union. It therefore falls to the Council to ascertain whether the Ukrainian legal system guarantees such protection.

167 That argument is based on incorrect premisses. The approach taken by the General Court in the case which gave rise to the judgment of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, EU:T:2014:885) cannot be transposed to the present case.

168 More particularly, in that case, 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), which establishes a mechanism the effect of which is to allow the Council to include a person on a list relating to frozen funds on the basis of a decision taken by a national authority, in some cases of a third State, laid down a criterion for selecting the persons covered by the restrictive measures adopted by the Council which read as follows:

'The list … shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.'

169 In the present case, the existence of a prior decision by the Ukrainian authorities is not one of the criteria laid down in Article 1(1) of Decision 2014/119, as amended by Decision 2015/143, as a condition for the adoption of the restrictive measures at issue, the judicial proceedings initiated by those authorities being only the factual basis for those measures. The relevant criterion simply refers to persons 'having been identified as responsible for the misappropriation of Ukrainian State funds'.

170 In that regard, it must also be pointed out that the wording of the relevant criterion is closer to that of the criterion in the case which gave rise to the judgment of 27 February 2014, *Ezz and Others* v *Council* (T-256/11, EU:T:2014:93). In particular, in paragraph 6[7] of the judgment of 27 February 2014, *Ezz and Others* v *Council* (T-256/11, EU:T:2014:93), the General Court held that that criterion comprised persons being prosecuted for the 'misappropriation of … State funds', without examining whether the legal order of the country concerned, in that case Egypt, offered legal protection comparable to that guaranteed in the European Union.

171 In any event, as the Council stated at the hearing, it should be noted that there is a considerable difference between restrictive measures, such as those at issue in the case that gave rise to the judgment of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, EU:T:2014:885), which are concerned with combating terrorism, and those which, as in the present case, form part of cooperation between the European Union, on the one hand, and the new authorities of a third State, in this instance, Ukraine, on the other.

172 After all, the fight against terrorism, to which the Council contributes by imposing restrictive measures on certain persons or entities, does not necessarily form part of cooperation with the authorities of a third State which has undergone a regime change that the Council has decided to support. The measures at issue in the present case, however, did form part of such cooperation, as did the measures at issue in the case which gave rise to the judgment of 27 February 2014, *Ezz and Others* v *Council* (T-256/11, EU:T:2014:93), confirmed on appeal by judgment of 5 March 2015, *Ezz and Others* v *Council*, (C-220/14 P, EU:C:2015:147).

173 Thus, if the Council's eminently political decision to cooperate with the new Ukrainian authorities – which it considers to be trustworthy – so as to enable them in particular to recover any misappropriated public funds 'with a view to consolidating and supporting the rule of law' in Ukraine were subject to the condition that, notwithstanding the fact that that country is a member of the Council of Europe and has ratified the ECHR, the Ukrainian State should, immediately after the change of regime, guarantee a level of protection of fundamental rights equivalent to that offered by the European Union and its Member States, the broad discretion enjoyed by the Council when it comes to defining the general criteria for identifying the category of persons capable of forming the subject of restrictive measures to support those new authorities would in effect be undermined (see paragraph 136 above).

174 In exercising that broad discretion, the Council must therefore be free to take the view that, following the change of regime, the Ukrainian authorities deserve to be supported in so far as they are improving democratic life and respect for the rule of law in Ukraine as compared with the state of affairs obtaining there previously, and that one way of consolidating and supporting the rule of law is to freeze the assets of persons having been identified as responsible for the misappropriation of Ukrainian State funds, a category which, following the January 2015 acts, includes persons under investigation by the Ukrainian authorities for misappropriation of public funds or complicity therein, and for abuse of office or complicity therein.

175 Consequently, only if the Council's political decision to support the new Ukrainian regime, including by way of cooperation in the form of the restrictive measures at issue, proved to be manifestly erroneous, in particular because fundamental rights are being systematically violated in that country following the change of regime, could any inconsistency between the protection of fundamental rights in Ukraine and that in place in the European Union have a bearing on the legality of maintaining those measures against the applicant. It is clear from an examination of the present action that that is not the case here.

176 In the present case, it should be noted that the evidence submitted by the applicant is neither such as to call into question the plausibility of the accusations made against him in connection with the misappropriation of public funds, as examined above, nor sufficient to demonstrate that his particular situation was affected by the shortcomings he claims to exist in the Ukrainian judicial system during the proceedings of which he is the subject and which form the basis of the decision to maintain the restrictive measures against him.

177 In the light of all the foregoing, it must be concluded that the Council discharged the burden of proof incumbent upon it and did not commit a manifest error of assessment in taking the view that the letter of 10 October 2014 provided a factual basis sufficient to demonstrate that, at the time when the

contested acts were adopted, the applicant was the subject of criminal proceedings relating to a misappropriation of public funds [*confidential*], and, on that basis, in maintaining the applicant's name on the list.

178 In those circumstances, the fifth plea in law must be rejected.

179 Consequently, the entire action must be dismissed, there being no need to examine either the applicant's application for a measure of organisation of procedure or the request, submitted by the Council in the alternative, to maintain the effects of Decision 2015/364.

Costs

180 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Mykola Yanovych Azarov to pay the costs.

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 7 July 2017.

[Signatures]

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