Reports of Cases

ORDER OF THE GENERAL COURT (Ninth Chamber)

12 July 2016*

(Actions for annulment — 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 — Inclusion of the applicant's name — Modification of the form of order sought — Death of the applicant — Inadmissibility — Proof that inclusion on the list is justified — Manifestly well founded action)

In Case T-347/14,

**Olga Stanislavivna Yanukovych**, as heir of Viktor Viktorovych Yanukovych, residing in Kiev (Ukraine), represented by T. Beazley QC,

applicant,

v

**Council of the European Union**, represented initially by E. Finnegan and J.-P. Hix, and subsequently by J.-P. Hix and P. Mahnič Bruni, acting as Agents,

defendant,

supported by

**European Commission**, represented by S. Bartelt and D. Gauci, acting as Agents,

intervener,

ACTION pursuant to Article 263 TFEU for annulment, first, of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26), as amended by Council Implementing Decision 2014/216/CFSP of 14 April 2014, implementing Decision 2014/119 (OJ 2014 L 111, p. 91), and of Council Regulation (EU) No 208/2014 of 5 March 2014, concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), as amended by Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation No 208/2014 (OJ 2014 L 111, p. 33), and secondly, of Council Decision (CFSP) 2015/143 of 29 January 2015, amending Decision 2014/119 (OJ 2015 L 24, p. 16), and of Council Regulation (EU) 2015/138 of 29 January 2015, amending Regulation No 208/2014 (OJ 2015 L 24, p. 1), and of Council Decision (CFSP) 2015/364 of 5 March 2015, amending Decision 2014/119 (OJ 2015 L 62, p. 25), and of Council Implementing Regulation (UE) 2015/357 of 5 March 2015, implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1), in so far as they concern Mr Viktorovych Yanukovych,

THE GENERAL COURT (Ninth Chamber),

* Language of the case: English

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

Registrar: E. Coulon,

makes the following

## Order

### Background to the dispute

1 The present case has been brought in connection with restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

2 Mr Viktor Viktorovych Yanukovych was one of the sons of the former President of Ukraine, and one of the Members of the Verkhovna Rada (Supreme Council).

3 On 5 March 2014, the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26).

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

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

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.’

5 The detailed rules for implementation of the restrictive measures at issue are defined in the subsequent paragraphs of that article.

6 On the same date, the Council adopted, on the basis of Article 215(2) TFEU, Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1).

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

8 The names of the persons covered by Decision 2014/119 and Regulation No 208/2014 appear on the list in the annex to that decision and in Annex I to that regulation (‘the list’) along with, in particular, a statement of the reasons for their listing.

9 Mr Yanukovych’s name was on the list along with the identifying information ‘son of former President, Member of the Verkhovna Rada (Supreme Council) of Ukraine’ and the following statement of reasons:

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

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

11 Decision 2014/119 and Regulation No 208/2014 were amended respectively by Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119 (OJ 2014 L 111, p. 91) and by Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation No 208/2014 (OJ 2014 L 111, p. 33).

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

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

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

(a) for the misappropriation of Ukrainian public funds or assets, or being an accomplice thereto; or

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

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

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

15 By those measures, Mr Yanukovych's name was maintained on the list with the identifying information 'son of former President, Member of the Verkhovna Rada (Supreme Council) of Ukraine' and the following new statement of reasons:

'Person subject to investigations by the Ukrainian authorities for the misappropriation of public funds or assets. Person associated with a designated person (former President of Ukraine, Viktor Fedorovych Yanukovych) subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.'

16 By Council Decision (CFSP) 2015/876 of 5 June 2015 amending Decision 2014/119 (OJ 2015 L 142, p. 30) and by Council Implementing Regulation (EU) 2015/869 of 5 March 2015 implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1), Mr Yanukovych's name was removed from the list.

## Procedure and forms of order sought

17 By application lodged at the Court Registry on 14 May 2014, Mr Yanukovych brought the present action.

18 By documents lodged at the Court Registry, respectively on 15 and 16 September 2014, the European Commission and Ukraine, respectively, sought leave to intervene in the present proceedings in support of the form of order sought by the Council.

19 By order of 12 November 2014, the President of the Ninth Chamber of the Court granted the Commission leave to intervene. The Commission lodged its statement in intervention and Mr Yanukovych and the Council lodged their observations within the time allowed.

20 On 3 October 2014, the Council submitted a reasoned application in accordance with the second subparagraph of Article 18(4) of the Instructions to the Registrar of the General Court requesting that the contents of an annex to the defence should not be cited in the documents relating to the present case to which the public has access.

21 By letter lodged at the Court Registry on 24 December 2014, Ukraine informed the Court that it was withdrawing its application for leave to intervene.

22 By order of 11 March 2015, the President of the Ninth Chamber of the Court removed Ukraine from the register as an intervener.

23 By letter of 11 March 2015, the Court Registry informed the parties that the written part of the procedure had been closed.

24 On 20 March 2015, Mr Yanukovych died.

25 By separate document lodged at the Court Registry on 8 April 2015, Mr Yanukovych's representative lodged with the Court Registry, on his behalf, a statement of modification to take account of, first, Decision 2015/143 and Regulation 2015/138, and secondly, Decision 2015/364 and Implementing Regulation 2015/357, in so far as those measures concerned Mr Yanukovych.

26 On the same date, Mr Yanukovych's representative, on his behalf, brought an action, registered at the Court under reference T-172/15, seeking annulment of those measures, stating that the action was brought in parallel with the modification of the application, by way of a precaution.

27 In those two documents, Mr Yanukovych's representative explained that Mr Yanukovych had died shortly before they were lodged. In addition, he stated in the documents that the proceedings in Ukraine to appoint his legal successor were ongoing and that it was likely that Mr Yanukovych's widow would succeed to his rights. Mr Yanukovych's representative therefore applied to stay the proceedings for as long as was necessary to appoint the legal successor and to decide on whether to pursue the action.

28 By decision of the President of the Ninth Chamber of 13 July 2015 under Article 69(d) of the Rules of Procedure of the Court, the present proceedings were stayed until 31 October 2015.

29 By order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569), the Court (Ninth Chamber) dismissed the action in Case T-172/15 as manifestly inadmissible on the ground that it had been brought by Mr Yanukovych's representative after his death, in view of the fact that nothing in the case file gave grounds for interpreting that action as having been brought on behalf of Mr Yanukovych's widow, who is referred to in the application as his future legal successor, or on behalf of any other successor.

30 By letter of 30 October 2015, Mr Yanukovych's representative filed Mr Yanukovych's death certificate stating that his widow and sole heir, Mrs Olga Stanislavivna Yanukovych, intended to continue the action, and setting out the reasons for her continued interest in bringing the proceedings, despite the removal of Mr Yanukovych's name from the list.

31 On 22 February 2016, the Council responded to the statement of modification.

32 On 25 February 2016, the Council submitted a reasoned application in accordance with Article 66 of the Rules of Procedure requesting that the content of an annex to the statement of modification should not be cited in the documents relating to the present case to which the public has access.

33 On 10 March 2016, the Commission responded to the statement of modification.

34 By letter of 17 March 2016, the Court Registry asked the parties to state their positions on the applicability of Article 132 of the Rules of Procedure in the present case, in the light of the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806), and the judgments of 28 January 2016 in *Stavytskyi* v *Council* (T-486/14, not published, EU:T:2016:45), in *Arbuzov* v *Council* (T-434/14, not published, EU:T:2016:46), in *Klyuyev* v *Council* (T-341/14, EU:T:2016:47), in *Azarov* v *Council* (T-332/14, not published, EU:T:2016:48), and in *Azarov* v *Council* (T-331/14, EU:T:2016:49), in which the Court annulled Decision 2014/119 and Regulation No 208/2014 in so far as they concerned the applicants in those cases. By the same letter, the parties were also asked to set out their positions on the possible consequences for the present action, with regard to the modification of the form of order sought, of the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569). The parties responded within the time allowed.

35 The applicant, Mrs Stanislavivna Yanukovych, in essence, claims that the Court should:

— annul Decision 2014/119, as amended by Implementing Decision 2014/216, and Regulation No 208/2014, as amended by Implementing Regulation No 381/2014, Decision 2015/143 and Regulation 2015/138, and Decision 2015/364 and Implementing Regulation 2015/357, in so far as those measures concern Mr Yanukovych;

— order the Council to pay the costs.

36 The Council contends that the Court should:

— dismiss the application;

— in the alternative, in the event of an annulment, declare that the effects of Decision 2014/119, as amended by Implementing Decision 2014/216, be maintained as regards Mr Yanukovych until the annulment in part of Regulation No 208/2014, as amended by Implementing Regulation No 381/2014, takes effect;

— order the applicant to pay the costs.

37 The Commission contends that the application should be dismissed.

## Law

*The claim for annulment of Decision 2014/119, as amended by Implementing Decision 2014/216, and of Regulation No 208/2014, as amended by Implementing Regulation No 381/2014, in so far as those measures concern Mr Yanukovych*

38 Under Article 132 of the Rules of Procedure, where the Court of Justice or the General Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the action, and the General Court finds that the facts have been established, it may, after the written part of the procedure has been closed, on a proposal from the Judge-Rapporteur and after hearing the parties, decide by reasoned order in which reference is made to the relevant case-law to declare the action manifestly well founded.

39 In the present case, the Court considers that the conditions for applying Article 132 of the Rules of Procedure have been met and has decided to give a decision without taking further steps in the proceedings.

40 As a preliminary point, it must be stated that the applicant seeks annulment of Decision 2014/119, as amended by Implementing Decision 2014/216, and annulment of Regulation No 208/2014, as amended by Implementing Regulation No 381/2014, in so far as those measures concern Mr Yanukovych. It must be noted that neither Implementing Decision 2014/216, nor Implementing Regulation No 381/2014 concerns Mr Yanukovych. The applicant's claim therefore concerns only the annulment of Decision 2014/119 and Regulation No 208/2014 in so far as those measures concern Mr Yanukovych.

41 In support of the action, the applicant relies on seven pleas in law, alleging, first, lack of a legal basis, second, abuse of power, third, failure to provide adequate reasons, fourth, failure to satisfy the listing criteria, fifth, manifest error of assessment, sixth, infringement of the rights of the defence and of the right to an effective remedy, and seventh, infringement of the right to property.

42 The Court considers it appropriate in the first place to examine the fourth plea in support of which the applicant claims, in essence, that the restrictive measures against Mr Yanukovych were adopted in the absence of a sufficiently solid factual basis.

43 That plea raises a question of law identical to the one on which the Court has already made a ruling in the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806), and judgments of 28 January 2016 in *Stavytskyi* v *Council* (T-486/14, not published, EU:T:2016:45), in *Arbuzov* v *Council* (T-434/14, not published, EU:T:2016:46), in *Klyuyev* v *Council* (T-341/14,EU:T:2016:47), in *Azarov* v *Council* (T-332/14, not published, EU:T:2016:48), and in *Azarov* v *Council* (T-331/14, EU:T:2016:49), which have all become final and *res judicata*.

44 By that plea, the applicant claims, in particular, first, that the inclusion of Mr Yanukovych's name on the list solely because he was the subject of an investigation did not satisfy, in the light of the relevant case-law, the criteria laid down in Decision 2014/119 and Regulation No 208/2014 which refer to 'persons identified as responsible' for the misappropriation of State funds, and secondly, that the mere fact that he was identified as being the 'son of [the] former President' was not sufficient to categorise him as being 'associated' with the latter in accordance with the case-law. In any event, the Council has not discharged the burden of proof.

45 In her reply, the applicant claims that the Council, first, did not verify the statements made in the letter from the Office of the Prosecutor General of Ukraine to the High Representative of the European Union for Foreign Affairs and Security Policy of 3 March 2014 ('the letter of 3 March 2014'), which constitutes the sole evidence that was available to the Council on the date of the adoption of Decision

2014/119 and Regulation No 208/2014, and second, cannot rely on information postdating those measures. Therefore, that letter is not sufficient to constitute 'the necessary concrete evidence and information' to justify the inclusion of Mr Yanukovych's name on the list.

46 In response to those complaints, first of all, the Council contends that, in accordance with the relevant case-law, it is for the Council itself to identify persons who may be considered responsible for misappropriating State funds, on the basis of consistent information, and that it is appropriate to interpret the term 'identified' broadly so as to include not only persons subject to criminal prosecution for misappropriation of State funds, but also persons under investigation for involvement in offences in connection with the misappropriation of Ukrainian State funds and their illegal transfer. Such an investigation is a precursor to the launching of criminal proceedings and targets those who are suspected of involvement in such crimes.

47 Furthermore, it submits that the letter of 3 March 2014, confirmed by additional information provided subsequently by the Office of the Prosecutor General of Ukraine, stated that, in the context of criminal proceedings brought against some former senior civil servants, certain facts concerning the misappropriation of significant amounts of State funds and their subsequent illegal transfer outside the territory of Ukraine had been established and that that letter had also specified that the investigation of the abovementioned crimes had shown that other persons, including Mr Yanukovych, had been involved in crimes of a similar nature. Accordingly, Decision 2014/119 and Regulation No 208/2014 were adopted on a sufficiently solid factual basis. The imposition of a stricter requirement would risk undermining the effectiveness of a regime of restrictive measures relating to the misappropriation of State funds.

48 In that regard, it should be noted that, as was recalled in paragraph 38 of the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806), although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which form the basis of the decision to include or to maintain a person's name on the list of persons subject to restrictive measures, the EU judicature must ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. This entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, are substantiated by sufficiently specific and concrete evidence (see judgment of 21 April 2015 in *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 41 and 45 and the case-law cited).

49 As in the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806, paragraph 39), in the present case, the criterion laid down in Article 1(1) of Decision 2014/119 provides that restrictive measures are to be adopted against persons who have been identified as responsible for the misappropriation of public funds. Furthermore, it is clear from recital 2 of that decision that the Council adopted those measures 'with a view to consolidating and supporting the rule of law … in Ukraine'.

50 Mr Yanukovych's name was included on the list on the ground that he was a 'person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine'. It thus appears that the Council took the view that Mr Yanukovych was the subject of a preliminary investigation or an inquiry, which had not (or had not yet) culminated in the bringing of a formal charge, on account of his alleged involvement in the misappropriation of public funds.

51 As in the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806, paragraph 41), in support of the reason for including Mr Yanukovych's name on the list, the Council relies on the letter of 3 March 2014 and on other evidence post-dating Decision 2014/119 and Regulation No 208/2014.

52 The letter of 3 March 2014 is divided into two parts. The first part of that letter states that the 'law-enforcement agencies of Ukraine' have launched a certain number of criminal proceedings to investigate criminal acts committed by former senior officials with regard to whom the investigation into the abovementioned offences has made it possible to establish embezzlement of State funds in sizeable amounts and the further illegal transfer of those funds out of Ukrainian territory. The names of those senior officials (eight in total, and all redacted) are listed immediately afterwards. The second part adds that 'the investigation verifies the involvement of other senior officials representing former authorities in the same sort of crimes' and that it is planned to notify them shortly of the initiation of that investigation. The names of those other senior officials (10 in total), including that of Mr Yanukovych (the only one not redacted), are also listed immediately afterwards.

53 It is common ground that it is solely on that basis that Mr Yanukovych was identified as being 'responsible for the misappropriation of Ukrainian State funds' for the purposes of Article 1(1) of Decision 2014/119.

54 As in the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806, paragraph 42), the letter of 3 March 2014 is the only item of evidence submitted by the Council in the present proceedings which pre-dates Decision 2014/119 and Regulation No 208/2014. The lawfulness of those measures must therefore be assessed in the light of that item of evidence alone.

55 As the Court held in the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:T:2015:806, paragraphs 43 and 44), it must be considered that, although that letter was sent by a high judicial body in a third country, it contains only a general and vague statement connecting the applicant's name, among other former senior officials, to an investigation which, in essence, is alleged to have established acts of misappropriation of State funds. The letter does not provide any details as to confirmation of the acts which the investigation conducted by the Ukrainian authorities was in the process of verifying and, still less, as to Mr Yanukovych's individual liability, even if presumed, in respect of those acts (see also, to that effect, judgment of 28 January 2016 in *Azarov* v *Council*, T-332/14, not published, EU:T:2016:48, paragraph 46).

56 Unlike the circumstances of the case giving rise to the judgment of 27 February 2014 in *Ezz and Others* v *Council* (T-256/11, EU:T:2014:93, paragraphs 57 to 61), confirmed on appeal by the judgment of 5 March 2015 in *Ezz and Others* v *Council* (C-220/14 P, EU:C:2015:147), and invoked by the Council in the present case, it must also be stated, first, that the Council did not have any information regarding the acts or conduct specifically imputed to Mr Yanukovych by the Ukrainian authorities and, secondly, that, even if it is examined in its context, the letter of 3 March 2014 on which it relies cannot constitute a sufficiently solid factual basis within the meaning of the case-law cited in paragraph 48 above for inclusion of Mr Yanukovych's name on the list on the ground that he had been identified 'as responsible' for the misappropriation of State funds (see, to that effect, judgment of 26 October 2015 in *Portnov* v *Council*, T-290/14, EU:T:2015:806, paragraphs 46 to 48).

57 Irrespective of the stage of the proceedings to which Mr Yanukovych was deemed to be subject, the Council could not adopt restrictive measures against him without knowing the acts of misappropriation of public funds which the Ukrainian authorities specifically alleged against him. It is only by being aware of such acts that the Council would have been in a position to establish that they were capable, first, of being categorised as misappropriation of public funds and, secondly, of undermining the rule of law in Ukraine, the consolidation and support of which, as was recalled in

paragraph 49 above, constitute the objective pursued by the adoption of the restrictive measures in question (see, to that effect, judgment of 28 January 2016 in *Azarov* v *Council*, T-331/14, EU:T:2016:49, paragraph 55).

58 Moreover, it is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, namely that those reasons are not well founded (see judgment of 26 October 2015 in *Portnov* v *Council*, T-290/14, EU:C:2015:806, paragraph 45 and the case-law cited).

59 It must therefore be concluded, just as the Court decided in the judgment of 26 October 2015 in *Portnov* v *Council* (T-290/14, EU:C:2015:806, paragraph 50), given that identical legal issues have been raised with regard to the Council's burden of proof and as to whether the reasons relied on for the listing are substantiated by sufficiently specific and concrete evidence, that the listing of Mr Yanukovych's name does not satisfy the criteria for the designation of persons covered by the restrictive measures at issue, laid down in Decision 2014/119.

60 Finally, with regard to the condition under Article 132 of the Rules of Procedure that the Court must find that the facts have been established, it must be pointed out that as regards the factual element on which the Council relied in order to include Mr Yanukovych's name on the list, that is to say, the fact that, according to the letter of 3 March 2014, there was an investigation or a preliminary inquiry conducted by the Ukrainian authorities with regard to Mr Yanukovych for misappropriation of State funds, that element is not materially contested by the parties and may therefore be regarded as having been established.

61 It follows that the present action, in so far as it seeks annulment of Decision 2014/119 and Regulation No 208/2014, must be declared manifestly well founded, in accordance with Article 132 of the Rules of Procedure.

62 That conclusion cannot be called into question by the Council's arguments, raised in response to a question put by the Court (see paragraph 34 above), which sought to challenge the application of that article to the present case.

63 It must be observed at the outset that the Council does not raise any specific objections relating to the conditions which must be met in order to be able to apply Article 132 of the Rules of Procedure to the present case. It merely raises two procedural issues which allegedly make the present case a specific one that does not lend itself to being resolved by way of a reasoned order for the purposes of that article.

64 More specifically, in the first place, the Council, supported by the Commission, claims that, unlike in each of the cases giving rise to the judgments referred to in the question put by the Court (see paragraph 34 above), in the present case the question arises as to whether there is an interest in pursuing the action in so far as it seeks annulment of Decision 2014/119 and Regulation No 208/2014, since Mr Yanukovych was removed from the list following his death.

65 In the second place, the Council maintains that, in view of Decision 2015/364 and Implementing Regulation 2015/357 which provided for Mr Yanukovych's name to be retained on the list until 6 June 2015, it is appropriate to address the issue of *lis alibi pendens*.

66 With regard to the first objection, it must be held, first, that it is unclear and, secondly, that it is unsubstantiated. The Council has not advanced any argument in its reply to the statement of modification concerning the applicant's alleged lack of interest in pursuing the action.

67 In so far as that objection is to be understood as alleging that the applicant has lost her interest in the outcome of the dispute due to the removal of Mr Yanukovych's name from the list following his death, it must be stated as a preliminary point, first, that it is clear from the case-law that an action for annulment brought by the addressee of a measure can be pursued by the addressee's successor, particularly in the case of the death of a natural person (see judgment of 22 April 2015 in *Tomana and Others* v *Council and Commission*, T-190/12, EU:T:2015:222, paragraph 50 and the case-law cited), and secondly, that an applicant's interest in bringing proceedings must continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it (see judgments of 6 June 2013 in *Ayadi* v *Commission*, C-183/12 P, not published, EU:C:2013:369, paragraph 59 and the case-law cited, and of 22 April 2015 in *Tomana and Others* v *Council and Commission*, T-190/12, EU:T:2015:222, paragraph 64 and the case-law cited).

68 In that regard, the case-law has stipulated that, whilst recognition of the illegality of a contested act cannot, as such, compensate for material harm or for interference with one's private life, it is nevertheless capable of restoring the reputation of the person concerned or constituting a form of reparation for the non-material harm which he has suffered by reason of that illegality, and of thereby establishing that he retains his interest in bringing proceedings. In that regard, the fact that the repeal of the restrictive measures at issue was definitive does not prevent an interest in bringing proceedings from continuing to exist so far as concerns the effects of the acts which imposed those measures between the date of their entry into force and that of their repeal (see, to that effect, judgment of 28 May 2013 in *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 70 to 72 and 82).

69 In the present case, it must be noted that publicly identifying Mr Yanukovych as the subject of criminal proceedings in Ukraine in connection with the misappropriation of State funds could have harmed, in particular, his reputation as a politician.

70 In those circumstances, as was explained in paragraph 67 above, since Mr Yanukovych's successor is entitled to pursue the action, her interest in bringing proceedings is retained, despite the removal of Mr Yanukovych's name from the list, for the purpose of having the Court recognise that he should never have been included on the list or that he should not have been included under the procedure which was adopted by the EU institutions. That is all the more true where the removal of Mr Yanukovych's name from the list was a consequence of his death and not the result of a re-examination of the reasons justifying the initial listing of his name.

71 It must therefore be concluded that the applicant's interest in bringing proceedings continues to exist notwithstanding the repeal, in so far as Mr Yanukovych is concerned, of the restrictive measures at issue.

72 With regard to the second objection, suffice it to state that there is no action before the Court, pre-dating the lodging of the present statement of modification and currently pending between the same parties, which has the same purpose and is brought on the basis of the same submissions. Accordingly, the Court cannot detect any issue of *lis alibi pendens*.

73 In view of all the foregoing considerations, it is appropriate to uphold the action, which is manifestly well founded for the purposes of Article 132 of the Rules of Procedure in that it seeks annulment of Decision 2014/119 in so far as it concerns Mr Yanukovych.

74 For the same reasons, Regulation No 208/2014 must be annulled in so far as it concerns Mr Yanukovych.

75 Since Decision 2015/876 and Implementing Regulation 2015/869 (see paragraph 16 above) removed Mr Yanukovych's name from the list, there is no need to rule on the question whether the effects of Decision 2014/119 should be maintained in so far as it concerns him.

*The claim for annulment, first, of Decision 2015/143 and Regulation 2015/138 and, secondly, of Decision 2015/364 and Implementing Regulation 2015/357 in so far as those measures concern Mr Yanukovych*

76 Under Article 126 of the Rules of Procedure, where it is clear that the Court has no jurisdiction to hear and determine an action or where an action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, on a proposal from the Judge-Rapporteur, at any time decide to give a decision by reasoned order without taking further steps in the proceedings. In the present case, the Court considers that it has sufficient information from the documents before it and decides to give its decision without taking further steps in the proceedings.

77 In the statement of modification, the applicant also seeks annulment, first, of Decision 2015/143 and Regulation 2015/138, in so far as they amend, respectively, Article 1(1) of Decision 2014/119 and Article 3 of Regulation No 208/2014, and secondly, of Decision 2015/364 and Implementing Regulation 2015/357.

78 In its reply to the statement of modification, the Council contends, first, that in the light of Article 275 TFEU, the Court does not have jurisdiction to give a ruling on an action against Decision 2015/143, which was adopted, inter alia, on the basis of Article 29 TEU, and, secondly, that the extension of the form of order sought to that decision and to Regulation 2015/138 is inadmissible because the applicant does not have *locus standi*.

79 Subsequently, in its written reply to the question put by the Court, the Council, supported by the Commission, contended that the statement of modification had to be declared manifestly inadmissible for the same reasons as those which had led the Court to dismiss as manifestly inadmissible the action giving rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569) (see paragraph 29 above).

80 In that regard, it must be pointed out that a document lodged at the Court Registry, during the proceedings, modifying the application, in circumstances such as those of the present case, constitutes a procedural document which, without prejudice to a subsequent decision of the Court on admissibility, is equivalent to the bringing of an action by means of an application (see, to that effect, order of 21 June 2012 in *Hamas* v *Council*, T-531/11, not published, EU:T:2012:317, paragraph 16 and the case-law cited).

81 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

82 Furthermore, in accordance with the case-law, the admissibility of an action must be assessed by reference to the situation prevailing at the time when the application was lodged. If at that time the conditions which must be satisfied to enable an action to be brought are not fulfilled, the action is therefore inadmissible (judgment of 27 November 1984 in *Bensider and Others* v *Commission*, 50/84, EU:C:1984:365, paragraph 8). It must therefore be stated that those considerations may be applied, in view of the case-law referred to in paragraph 80 above, to situations, such as that in the present case, in which an applicant, through a statement of modification, seeks annulment of a new measure replacing or modifying a measure with the same aim and which is already the subject of an application for annulment.

83 As has been stated above, Mr Yanukovych died on 20 March 2015. After his death, that is to say, on 8 April 2015, his representative lodged the statement of modification at the Court Registry in the name of Mr Yanukovych. It is not apparent from the case file that this document was drawn up on behalf of the applicant.

84 It follows that, as the Court held in an essentially identical action, that is to say, the one which gave rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569), the statement of modification lodged by Mr Yanukovych's representative must be dismissed as inadmissible given that Mr Yanukovych was dead when the document was lodged at the Court Registry.

85 That conclusion cannot be called into question by the applicant's arguments in her written reply to the question put by the Court.

86 In the first place, the applicant claims, first, that the process of identifying Mr Yanukovych's legal successor was ongoing when the statement of modification was lodged and that she was expecting to be confirmed as his successor by the Ukrainian authorities, and secondly, that it was clear that the statement of modification had been lodged in her name as the legal successor of the deceased. In those circumstances, having regard to the time allowed for bringing annulment proceedings laid down in the sixth paragraph of Article 263 TFEU, the applicant could not wait for that succession to be confirmed before lodging the statement of modification.

87 In that regard, suffice it to state that, contrary to what the applicant claims, the statement of modification was not presented in her name or on her behalf. If necessary, she could have brought an action, in her own name and on her own behalf, for annulment of the measures which she considered needed to be challenged, justifying her interest in obtaining the annulment where she was not the addressee. Alternatively, she could, again in her own name and on her own behalf, have declared her interest in pursuing the present proceedings by applying to be allowed to modify the form of order sought in the light of the new measures which she considered needed to be challenged, justifying, in that case too, a personal interest in acting in that regard.

88 In the second place, the applicant argues that the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569) does not bind the Court as regards the admissibility of the statement of modification and that no unfavourable conclusion can be drawn from that in the present case. She submits that it is incorrect to regard the modification of the application as being equivalent to bringing a new action, and not pursuing the present proceedings. Furthermore, the applicant was not in a position to present her arguments in the case giving rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569), and there was no reason to appeal against that order. Finally, the Court did not consider the statement of modification to be inadmissible in the course of the present proceedings, even when they were suspended, and none of the parties pleaded its inadmissibility.

89 In that regard, irrespective of whether, in the present case, the Court is bound by that order, it must be pointed out that, in any event, since the application giving rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569) and the statement of modification in the present case were lodged in identical circumstances and conditions, there is no reason – and the applicant does not advance any – to treat the two situations differently. In addition, contrary to what the applicant claims, it is clear from well established case-law that modification of the application is equivalent to the bringing of a new action by means of an application (see paragraph 80 above). The fact that the applicant did not have the opportunity to express her opinion in favour of the admissibility of the action in the case giving rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569) and the fact that she did not consider it appropriate to appeal against the order closing the proceedings in that case are irrelevant for the purposes of assessing the admissibility of the statement of modification. In particular, in the present case, the

Court, as it had done in the case giving rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569), merely finds that the statement of modification was lodged in the name of a deceased person.

90 Moreover, the fact that the Court did not immediately find the statement of modification to be inadmissible, and served that statement on the Council and the Commission, is of no consequence. Furthermore, in the present action, it was expressly stated in the letter which the Court Registry sent to the applicant on 9 December 2015 that the inclusion of the statement of modification in the case file was without prejudice to the admissibility of that statement. In that regard, it must be stated that Article 86(5) of the Rules of Procedure provides that 'without prejudice to the decision to be taken by the General Court on the admissibility of the statement modifying the application, the President shall prescribe a time limit within which the defendant may respond to the statement of modification.'

91 In the third place, the applicant also claims that regarding the statement of modification as inadmissible is equivalent to imposing a procedural obstacle which contravenes the principle of effectiveness and/or procedural economy. She has demonstrated her intention to pursue the action and her legal interest. In addition, the applicant, relying on Article 7 of the Charter of Fundamental Rights, draws attention to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the case-law of the European Court of Human Rights on the possibility of the relatives of a deceased person to bring an action where they have a material or non-material interest. Finally, in view of a possible action for damages following the present proceedings, it would be inconsistent with the principle of procedural economy to rule on whether there was an infringement of a rule of law in separate proceedings, concerning only part of the contested restrictive measures.

92 In that regard, it must be observed that the Court has not cast any doubt on the interest of the relatives of the deceased or, more particularly, his sole heir in pursuing the proceedings brought by Mr Yanukovych's initial application. The General Court has merely found, as it did in the case giving rise to the order of 16 July 2015 in *Yanukovych* v *Council* (T-172/15, not published, EU:T:2015:569), that the statement of modification had been lodged by Mr Yanukovych's representative in the former's name after his death (see paragraph 87 above). It is on that basis alone that the Court considers that the statement of modification in the present case is manifestly inadmissible, and it is on a similar basis that it dismissed the application in Case T-172/15 as being manifestly inadmissible.

93 Therefore, it is necessary to dismiss the modification of the application, and thus the action, as manifestly inadmissible in so far as they are directed against Decision 2015/143 and Regulation 2015/138, and against Decision 2015/364 and Implementing Regulation 2015/357, without it being necessary to rule on the other plea of inadmissibility raised by the Council in relation to the application for annulment of Decision 2015/143 and Regulation 2015/138.

94 In the light of all the foregoing, it is necessary therefore, first, to annul Decision 2014/119 and Regulation No 208/2014, in so far as they relate to Mr Yanukovych, and secondly, to dismiss the action as manifestly inadmissible in so far as it is directed against Decision 2015/143 and Regulation 2015/138, and against Decision 2015/364 and Implementing Regulation 2015/357.

95 In that regard, it must be made clear that Decision 2015/364 constitutes an autonomous decision, adopted by the Council at the end of the periodic review provided for in the third paragraph of Article 5 of Decision 2014/119 and in Article 14(4) of Regulation No 208/2014. In those circumstances, although the annulment of Decision 2014/119 and Regulation No 208/2014 entails the removal of Mr Yanukovych's name from the list in respect of the period prior to the date of entry into force of Decision 2015/364, it is not, by contrast, capable of calling into question the legality of that listing in respect of the period after the date of its entry into force.

**Costs**

96 Under Article 134(2) of the Rules of Procedure, where there is more than one unsuccessful party the Court is to decide how the costs are to be shared.

97 In the present case, since the Council has been unsuccessful in relation to the claim for annulment made in the application, it must be ordered to pay the costs relating to that claim, in accordance with the form of order sought by the applicant. Since the applicant has been unsuccessful in relation to the claim for annulment made in the statement of modification, she must be ordered to pay the costs relating to that claim, in accordance with the form of order sought by the Council.

98 Furthermore, in accordance with Article 138(1) of the Rules of Procedure, Member States and institutions which intervene in proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber),

hereby orders:

1. **Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in their original versions, are annulled in so far as they concern Mr Viktor Viktorovych Yanukovych.**

2. **The action is dismissed as to the remainder.**

3. **The Council of the European Union shall bear its own costs and shall pay those incurred by Mrs Olga Stanislavivna Yanukovych, as heir of Mr Viktorovych Yanukovych, in relation to the claim for annulment made in the application.**

4. **Mrs Stanislavivna Yanukovych, as heir of Mr Viktorovych Yanukovych, shall bear her own costs and shall pay those incurred by the Council in relation to the claim for annulment made in the statement of modification.**

5. **The European Commission shall bear its own costs.**

Luxembourg, 12 July 2016.

E. Coulon
Registrar

G. Berardis
President