Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

30 January 2019*

(Common foreign and security policy — Restrictive measures adopted 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 — Maintenance of the applicant's name on the list — Obligation to state reasons — Plea of illegality — Principle of proportionality — Legal basis — Manifest error of assessment — Principle *ne bis in idem*)

In Case T-290/17,

Edward Stavytskyi, residing in Brussels (Belgium), represented by J. Grayston, Solicitor, P. Gjørtler, G. Pandey and D. Rovetta, lawyers,

applicant,

v

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

defendant,

supported by

European Commission, represented by E. Paasivirta and L. Baumgart, acting as Agents,

intervener,

APPLICATION under Article 263 TFEU and seeking the annulment of Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 34), and Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017 L 58, p. 1), in so far as the applicant's name was maintained on the list of persons, entities and bodies subject to those restrictive measures,

THE GENERAL COURT (Sixth Chamber),

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

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 12 September 2018,

* Language of the case: English.

gives the following

Judgment

Background to the dispute

1 The applicant, Mr Edward Stavytskyi, is a former Minister for Energy and the Coal Industry of Ukraine.

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

3 Recitals 1 and 2 of Decision 2014/119 read as follows:

'(1) On 20 February 2014, the Council condemned in the strongest terms all use of violence in Ukraine. It called for an immediate end to the violence in Ukraine, and full respect for human rights and fundamental freedoms. It called upon the Ukrainian Government to exercise maximum restraint and opposition leaders to distance themselves from those who resort to radical action, including violence.

(2) On 3 March 2014, the Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine.'

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 implementing the restrictive measures at issue are defined in the subsequent paragraphs of that article.

6 On 5 March 2014, the Council also 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 the adoption of the restrictive measures at issue and lays down the detailed rules for implementation of those restrictive measures in terms which are essentially identical to those used in that decision.

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 at issue') along with, in particular, a statement of the reasons for their listing. The applicant's name does not appear on the list at issue.

9 Decision 2014/119 and Regulation No 208/2014 were amended 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) ('the measures of April 2014').

10 By the measures of April 2014, the applicant's name was added to the list at issue with the identifying information 'former Minister for Fuel and Energy 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.'

11 By application lodged at the Court Registry on 25 June 2014, the applicant brought an action for the annulment of the measures of April 2014, in so far as they related to him. That action was registered as Case T-486/16.

12 Decision 2014/119 was also amended by Council Decision (CFSP) 2015/143 of 29 January 2015 (OJ 2015 L 24, p. 16), which entered into force on 31 January 2015. As to the criteria for the designation of persons covered by the restrictive measures at issue, according to Article 1 of Decision 2015/143, 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 by Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119 (OJ 2015 L 62, p. 25) and by Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation No 208/2014 (OJ 2015 L 62, p. 1). In Decision 2015/364, Article 5 of Decision 2014/119 was replaced by new wording, extending the application of the restrictive measures at issue until 6 March 2016. In Implementing Regulation 2015/357, Annex I to Regulation No 208/2014 was replaced by new wording, amending the entries for 18 persons.

15 By Decision 2015/364 and Implementing Regulation 2015/357, the applicant's name was maintained on the list at issue, with the identifying information 'former Minister for Fuel and Energy' and the following statement of reasons:

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

16 The applicant did not bring an action against Decision 2015/364 or Implementing Regulation 2015/357.

17 By judgment of 28 January 2016, *Stavytskyi* v *Council* (T-486/14, not published, EU:T:2016:45), the Court annulled the measures of April 2014, holding essentially that the Council had not had sufficient evidence to include the applicant's name on the list at issue.

18 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), by which it extended until 6 March 2017 the application of the restrictive measures at issue, without altering the reasons given with regard to the applicant, as set out in paragraph 15 above.

19 By application lodged at the Court Registry on 17 May 2016, the applicant brought an action for the annulment of the measures of Decision 2016/318 and of Implementing Regulation 2016/311, in so far as they related to him. That action was registered as Case T-242/16.

20 By letter of 21 October 2016, the applicant suggested to the Council that it had been misled by allegedly false information provided by the Prosecutor General's Office of Ukraine ('the PGO') and requested access to a number of documents.

21 In reply, by letter of 12 December 2016, first, the Council notified the applicant of its intention to maintain the restrictive measures against him. Secondly, the Council observed that the PGO, by letters of 25 July and 16 November 2016, had confirmed that the applicant was subject to criminal proceedings for the misappropriation of public funds. Thirdly, the Council attached those documents to its letter together with another document dated 18 November 2016 containing questions it had put to the PGO and the PGO's answers ('the PGO's answers'). Fourthly, the Council invited the applicant to submit any observations he may have no later than 13 January 2017.

22 By letter of 13 January 2017 to the Council, the applicant argued, in particular, that the PGO had interfered with the criminal proceedings at issue with the sole aim of keeping them open and that the conduct in question in those proceedings had already been examined by other authorities in Ukraine, including judicial authorities, which had found no evidence of unlawfulness. The applicant also stated that he had asked the Commission for the Control of Files of the International Criminal Police Organisation (Interpol) to remove his name from the international wanted persons list.

23 By letter of 6 February 2017, the Council sent the applicant a number of documents which the Ukrainian authorities had provided to it, namely a letter from the PGO of 27 January 2017 and several decisions of Ukrainian courts, and invited him to comment on them no later than 13 February 2017.

24 The applicant replied to that invitation by letter of 13 February 2017.

25 On 3 March 2017, the Council adopted Decision (CFSP) 2017/381 amending Decision 2014/119 (OJ 2017 L 58, p. 34), and Implementing Regulation (EU) 2017/374 implementing Regulation No 208/2014 (OJ 2017 L 58, p. 1) ('the contested measures'), by which it extended until 6 March 2018 the application of the restrictive measures at issue, without altering the reasons given with regard to the applicant, as set out in paragraph 15 above.

26 By letter of 6 March 2017, the Council notified the applicant of the contested measures and provided a joint reply to his letters of 13 January and 13 February 2017.

27 By judgment of 22 March 2018, *Stavytskyi* v *Council* (T-242/16, not published, EU:T:2018:166), the Court dismissed the applicant's action mentioned in paragraph 19 above.

Procedure and forms of order sought

28 By application lodged at the Court Registry on 16 May 2017, the applicant brought the present action.

29 On 28 July 2017, the Council lodged the defence. On 3 August 2017, it lodged 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 application and to the defence not to be cited in the documents relating to that case to which the public has access.

30 On 5 September 2017, the European Commission applied for leave to intervene in this case in support of the form of order sought by the Council. By decision of 21 September 2017, the President of the Sixth Chamber of the General Court granted that application, on the basis of Article 144(4) of the Rules of Procedure, as the main parties had not raised any confidentiality issues.

31 The written part of the procedure was closed on 19 December 2017, following the lodging of the reply, the rejoinder, the statement in intervention and the main parties' observations on the statement in intervention.

32 By document lodged at the Registry on 17 January 2018, the applicant requested that a hearing be held, under Article 106(1) and (2) of the Rules of Procedure.

33 On a proposal from the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral part of the procedure.

34 The main parties presented oral argument and answered the questions put to them by the Court at the hearing on 12 September 2018, in which the Commission did not participate, as it had informed the General Court by letter of 16 August 2018.

35 The applicant claims that the Court should:

– annul the contested measures, in so far as they maintained his name on the list at issue;

– order the Council to pay the costs.

36 The Council contends that the Court should:

– dismiss the action;

– in the alternative, in the event of the annulment of the contested measures, maintain the effects of Decision 2017/381, until the annulment of Implementing Regulation 2017/374 takes effect, in accordance with Article 60 of the Statute of the Court of Justice of the European Union;

– order the applicant to pay the costs.

37 The Commission contends that the Court should dismiss the action.

Law

38 In support of his action, the applicant relies on four pleas, alleging, respectively, (i) unlawfulness of the designation criterion laid down in Article 1(1) of Decision 2014/119, as amended by Decision 2015/143, and in Article 3(1a) of Regulation No 208/2014, as amended by Regulation 2015/138 ('the relevant criterion'); (ii) manifest error of assessment in so far as the fact that he is subject to criminal proceedings before the Ukrainian authorities does not constitute a sufficient factual basis; (iii)

infringement of the obligation to state reasons; and (iv) error as to the legal basis, in so far as the restrictive measures concerning him do not fall within the common foreign and security policy (CFSP), but within international cooperation in criminal matters.

39 In view of the linkage between some of the arguments raised under different pleas, the applicant should be regarded as essentially pleading (i) infringement of the obligation to state reasons; (ii) unlawfulness, disproportionality and lack of legal basis of the relevant criterion; and (iii) manifest errors of assessment in applying that criterion to the applicant's case.

Infringement of the obligation to state reasons

40 In the first place, the applicant argues that the statement of reasons on the basis of which his name was maintained on the list by the contested measures, which is the same as that set out in paragraph 15 above, is general and stereotypical, as it simply reproduces the wording used in the definition of the relevant criterion.

41 In the second place, the applicant submits that the Council cannot supplement that statement of reasons with the information contained in the letters it sent to the applicant during the procedure which led to the adoption of the contested measures (see paragraphs 21, 23 and 26 above), since a legal act must itself contain a sufficient statement of reasons. In any event, the additional information contained in the letters at issue does not constitute a sufficient statement of reasons.

42 The Council, supported by the Commission, disputes the applicant's arguments.

43 It should be recalled that, under the second paragraph of Article 296 TFEU, 'legal acts shall state the reasons on which they are based'.

44 Under Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('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'.

45 It is settled case-law that the statement of reasons required by the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter must be appropriate to the nature of the contested measure 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 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 77 and the case-law cited).

46 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 the second paragraph 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 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 78 and the case-law cited).

47 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 46 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 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 79 and the case-law cited).

48 In the present case, it must be noted that the statement of reasons given for maintaining the applicant's name on the list at issue (see paragraph 15 above) is specific and concrete and sets out the factors which constitute the basis for that decision, namely that he was subject to criminal proceedings brought by the Ukrainian authorities for the misappropriation of public funds or assets.

49 In addition, the decision to maintain the restrictive measures at issue occurred in a context known to the applicant, who had been informed, during the exchanges with the Council, inter alia of the letters from the PGO of 25 July 2016, 16 November 2016 and 27 January 2017 and of the PGO's answers (see paragraphs 21 and 23 above), on which the Council based its decision to maintain those measures (see, to that effect and by analogy, 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). Those letters specify the name of the authority responsible for the investigation, the case numbers of the criminal proceedings brought against the applicant, amongst others, the dates on which those proceedings were opened, the offences which he is alleged to have committed, the names of the other persons and bodies concerned, the amount of public funds allegedly misappropriated, the relevant articles of the Ukrainian Criminal Code and the fact that the applicant was informed in writing that he was a suspect. In particular, the letter of 25 July 2016 states as follows:

[*confidential*] [1]

50 In the letter of 12 December 2016, the Council clearly indicated that the letter from the PGO of 25 July 2016, as confirmed by the letter of 16 November 2016, contained the relevant information to conclude that the applicant continued to be subject to criminal proceedings for the misappropriation of public funds or assets.

51 In addition, the contested measures were adopted in a context which also includes the exchanges between the applicant and the Council in the context of the cases which gave rise to the judgments of 28 January 2016, *Stavytskyi* v *Council* (T-486/14, not published, EU:T:2016:45), and of 22 March 2018, *Stavytskyi* v *Council* (T-242/16, not published, EU:T:2018:166).

52 It must be stated that all that information was received from the applicant before the adoption of the contested measures.

53 As regards the letter of 6 March 2017, which post-dates the adoption of the contested measures, it should be noted that that letter in essence merely refers to matters in the correspondence which the applicant and the Council had exchanged before those measures were adopted and to the case-law of the General Court. Thus, that letter may be taken into account in the examination of those measures (see, to that effect and by analogy, judgment of 15 June 2017, *Kiselev* v *Council*, T-262/15, EU:T:2017:392, paragraph 47 and the case-law cited). In any event, it must be noted that the content of the letter of 6 March 2017 essentially coincides with that of the contested measures and of the correspondence exchanged previously between the Council and the applicant (see, to that effect and by analogy, judgment of 15 June 2017, *Kiselev* v *Council*, T-262/15, EU:T:2017:392, paragraphs 48 and 49).

1 Confidential information omitted.

54 In the light of all the foregoing, it must be concluded that the contested measures, taken in their context, state to the requisite legal standard the matters of fact and law on which, according to the Council, those measures are based.

55 That conclusion cannot be called into question by the applicant's argument concerning the allegedly stereotypical nature of the statement of reasons concerning him.

56 In that respect, it must be observed that, while the considerations within that statement of reasons are the same as those on the basis of which restrictive measures were imposed on the other natural persons who are included on the list at issue, they are nonetheless designed to describe the particular situation of the applicant, who, no less than other individuals, has been, according to the Council, subject to judicial proceedings linked to investigations concerning the misappropriation of Ukrainian public funds (see, to that effect, judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 82 and the case-law cited).

57 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 (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 96 and the case-law cited).

58 Accordingly, even on the assumption that, as the applicant claimed during the hearing, when the Council maintains, after several years, restrictive measures against the same person, it is subject to a duty of greater diligence, that has no effect on the review that the General Court carries out as regards the statement of reasons for the contested measures, although it could justify a stricter review of whether there has been a manifest error of assessment.

59 In the light of the foregoing considerations, it is necessary to reject the applicant's complaints relating to the infringement of the obligation to state reasons.

Unlawfulness, disproportionality and lack of legal basis of the relevant criterion

60 The applicant claims that the relevant criterion, as provided for by Decision 2015/143 and Regulation 2015/138 would be unlawful for infringement of the principle of proportionality and lack of legal basis under the CFSP, if it were to be interpreted as allowing the adoption of restrictive measures against any person subject to investigation by the Ukrainian authorities in connection with the misappropriation of public funds, irrespective of whether the conduct of which that person is accused is capable of undermining the rule of law in Ukraine and thus the legal and institutional foundations of that country.

61 According to the applicant, if the relevant criterion were directed only at persons who have engaged in such conduct, the Council would have to conduct its own review of proportionality. The applicant concedes that, according to the case-law, the Council may, in principle, rely on information sent to it by the PGO. However, the Council is not exempted from the obligation of performing an evaluation of whether that information provides a sufficient basis for considering that the alleged conduct of the person under investigation is capable of undermining the rule of law in Ukraine. Only by satisfying itself that it does would the Council comply with the principle of proportionality. Otherwise, any action by the EU institutions relating to ongoing criminal proceedings in a third country would not fall within the CFSP, but within judicial cooperation in criminal matters and police cooperation. Thus,

if Article 40 TEU is not to be infringed, such action requires a legal basis other than Article 29 TEU and Article 215 TFEU, bearing in mind that the latter is only available where a CFSP decision has already been adopted.

62 The Council and the Commission contest the applicant's arguments.

63 As a preliminary point, it must be observed that the parties agree on the fact that the case-law has recognised that restrictive measures taken under the relevant criterion may be legitimately adopted on the basis of Article 29 TEU and Article 215 TFEU, provided that the misappropriation of public funds or assets of which the relevant persons are suspected is such that it is liable to undermine the legal and institutional foundations of the country concerned, having regard to the amounts concerned, the type of funds or assets misappropriated or to the context in which the offence took place.

64 In that context, it must be recalled that the objectives of the EU Treaty concerning the CFSP are stated, in particular, in Article 21(2)(b) TEU, as follows:

'The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations in order to … consolidate and support democracy, the rule of law, human rights and the principles of international law.'

65 That objective was mentioned in recital 2 of Decision 2014/119, which is set out in paragraph 3 above.

66 In that regard, it must be observed that the case-law has established that objectives such as that mentioned in Article 21(2)(b) TEU are intended to be achieved by an asset-freeze the scope of which is, as in this case, restricted to the persons identified as being responsible for misappropriation of State funds and to persons, entities or bodies associated with them, that is to say, to the persons whose actions are liable to have jeopardised the proper functioning of public institutions and bodies linked to them (see, to that effect, judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 95 and the case-law cited).

67 Similarly, it must be observed that respect for the rule of law is one of the primary values on which the European Union is founded, as is stated in Article 2 TEU, and in the preambles of the EU Treaty and of the Charter. Respect for the rule of law constitutes, moreover, a prerequisite of accession to the European Union, pursuant to Article 49 TEU. The concept of the rule of law is also enshrined in the preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 97).

68 The case-law of the Court of Justice and of the European Court of Human Rights, and the work of the Council of Europe, by means of the European Commission for Democracy through Law, provide a non-exhaustive list of principles and standards which may fall within the concept of the rule of law. That list includes: the principles of legality, legal certainty and the prohibition on arbitrary exercise of power by the executive; independent and impartial courts; effective judicial review, extending to respect for fundamental rights and equality before the law (see, in that regard, the rule of law checklist adopted by the European Commission for Democracy through Law at its 106th Plenary Session (Venice, 11 to 12 March 2016)). Further, in the context of European Union external action, a number of legal instruments include reference to the fight against corruption as a principle within the scope of the concept of the rule of law (see, for example, Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ 2006 L 310, p. 1)) (judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 98).

69 Moreover, it must be observed that the prosecution of economic crimes, such as misappropriation of public funds, is an important means of combating corruption, and that the fight against corruption constitutes, in the context of the external action of the European Union, a principle that is within the scope of the rule of law (judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 141).

70 However, while it is conceivable that certain conduct pertaining to acts classifiable as misappropriation of public funds may be capable of undermining the rule of law, it cannot be accepted that any act classifiable as misappropriation of public funds, committed in a third country, justifies European Union action with the objective of consolidating and supporting the rule of law in that country, using the powers of the Union under the CFSP. Before it can be established that a misappropriation of public funds is capable of justifying European Union action under the CFSP, based on the objective of consolidating and supporting the rule of law, it is, at the very least, necessary that the disputed acts should be such as to undermine the legal and institutional foundations of the country concerned (judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 99).

71 It follows that the relevant criterion can be considered to be compatible with the European Union legal order only to the extent that it is possible to attribute to it a meaning that is compatible with the requirements of the higher rules with which it must comply, and more specifically with the objective of consolidating and supporting the rule of law in Ukraine. Further, a consequence of that interpretation is that the broad discretion enjoyed by the Council in relation to the definition of the general listing criteria can be respected, while review, in principle full review, of the lawfulness of European Union acts in the light of fundamental rights is ensured (see judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 100 and the case-law cited).

72 Consequently, the relevant criterion must be interpreted as meaning that it does not concern, in abstract terms, any act classifiable as misappropriation of public funds, but rather that it concerns the misappropriation of public funds or assets which, having regard to the amount or the type of funds or assets misappropriated or to the context in which the offence took place, are, at the very least, such as to undermine the legal and institutional foundations of Ukraine, and in particular the principles of legality, the prohibition of arbitrary exercise of power by the executive, effective judicial review and equality before the law and, ultimately, to undermine respect for the rule of law in that country. As thus interpreted, that criterion is compatible with and proportionate to the relevant objectives of the EU Treaty (judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 101).

73 In the light of that case-law, which the parties do not call into question, it must be concluded that the relevant criterion, thus interpreted, is not illegal and could be introduced by measures based on Article 29 TEU and Article 215 TFEU, which therefore constitute appropriate legal bases.

74 It follows also that, by providing for the relevant criterion, the Council did not infringe the first paragraph of Article 40 TEU, which states that the implementation of the CFSP is not to affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 TFEU.

75 Lastly, it should be recalled that, according to the case-law, the PGO is one of the highest judicial authorities in Ukraine, since, in that State, it acts as the public prosecutor's office in the administration of criminal justice and conducts pre-trial investigations in the context of criminal proceedings (see, to that effect, judgment of 19 October 2017, *Yanukovych* v *Council*, C-598/16 P, not published, EU:C:2017:786, paragraph 53). Similarly, it has already been held that evidence from the PGO, provided that its content is sufficiently precise, may justify the adoption of restrictive measures against persons who are the subject of criminal proceedings for misappropriation of public funds (see, to that effect, judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 139), as the applicant moreover concedes.

76 In the light of the foregoing considerations, the applicant's complaints of unlawfulness, disproportionality and lack of legal basis of the relevant criterion must be rejected in their entirety.

77 It is necessary, however, to examine whether the Council, when applying to the applicant the relevant criterion, interpreted in the manner described in particular in paragraph 72 above, made manifest errors of assessment.

Manifest errors of assessment in applying the relevant criterion to the applicant's case

78 The applicant claims in essence that, when the Council adopted the contested measures, it did not have a sufficiently solid factual basis.

79 The Council, supported by the Commission, disputes the applicant's arguments.

80 Before examining in further detail the applicant's arguments, it is appropriate to make preliminary observations relating to the judicial review and to the Council's obligations.

Judicial review and the Council's obligations

81 According to the case-law, the Courts of the European Union must, in their judicial review of restrictive measures, allow the Council a broad discretion in establishing the general criteria defining the category of persons that could be made subject to such measures (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 81 and the case-law cited).

82 However, 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 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. 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 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 82 and the case-law cited).

83 According to the case-law, 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 (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 83 and the case-law cited).

84 In that regard, it should be recalled that, as was observed in paragraph 75 above, the PGO is one of the highest Ukrainian judicial authorities.

85 Admittedly, it fell, in the present case, to the Council to examine carefully and impartially the evidence provided to it by the Ukrainian authorities, in the light, in particular, of the observations and any exculpatory evidence submitted by the applicant. Moreover, in the context of the adoption of restrictive measures, the Council is under an obligation to observe the principle of good administration enshrined in Article 41 of the Charter, which, according to settled case-law, entails the

obligation for the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 85 and the case-law cited).

86 However, it is also apparent from the case-law that, in order to assess the nature, form and degree of the proof that the Council may be asked to provide, the nature, specific scope and the objective of the restrictive measures must be taken into account (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 86 and the case-law cited).

87 In that regard, as is apparent from recitals 1 and 2 of Decision 2014/119 (see paragraph 3 above), 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 judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 87 and the case-law cited).

88 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. Facilitating the recovery of those funds consolidates and supports the rule of law in Ukraine (see paragraphs 68 to 72 above).

89 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 those funds. They are therefore purely precautionary (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 89 and the case-law cited).

90 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 judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 90 and the case-law cited).

91 In the present case, what the Council must ascertain is, first, to what extent the information from the PGO on which it relied prove that, as indicated by the grounds for including the applicant's name on the list at issue, 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 relevant criterion. Only if those investigations were not successful would it, in the light of the case-law referred to in paragraph 85 above, be incumbent on the Council to investigate further (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 91 and the case-law cited).

92 Furthermore, in the context of the cooperation governed by the contested measures (see paragraph 87 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 89 above, in adopting the contested measures, 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. Furthermore, as is apparent from paragraph 90 above, the Council's obligations under the contested measures cannot be treated in the same way as those of a national judicial authority of a Member State in the context of asset-freezing criminal proceedings initiated, in particular, in the context of international cooperation in criminal matters (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 92 and the case-law cited).

93 That interpretation is confirmed by paragraph 77 of the judgment of 5 March 2015, *Ezz and Others* v *Council* (C-220/14 P, EU:C:2015:147), in which the Court of Justice held, in circumstances similar to those of the present case, that it was not for the Council or the General Court to verify whether the investigations to which the appellants were subject were well founded, but only to verify whether that was the case as regards the decision to freeze funds in the light of the Egyptian authorities' request for assistance.

94 It is true that the Council cannot adopt, in all circumstances, the findings made by the Ukrainian judicial authorities in the documents provided by those authorities. 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 judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 94 and the case-law cited).

95 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. 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 mentioned in the letters from the PGO 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 judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 95 and the case-law cited).

96 It is in the light of those considerations that the applicant's specific arguments must be assessed.

Whether the information provided by the PGO is sufficient

97 In the first place, the applicant asserts that the burden of proof lies with the Council when it adopts restrictive measures against a person and that any decision taken in that context must have a sufficiently solid factual basis from which it is possible to establish the existence of criminal proceedings concerning that person in relation to acts, described in detail, classifiable as misappropriation of public funds and capable of undermining the institutional and legal foundations of Ukraine. In that context, the applicant states that the misappropriation of funds of which he is accused

in the PGO's letters on which the Council relied, particularly its letter of 25 July 2016, relates to real property which, by its very nature, remains in Ukraine and cannot be moved abroad. That letter does not provide enough detail and does not explain how the applicant could have obtained the sum of [*confidential*] Ukrainian hryvnias (UAH) mentioned therein. Therefore, the alleged misappropriation could only be tackled through action by the Ukrainian authorities, with the result that it is unaffected by the freezing of the applicant's funds decided by the Council.

98 The applicant adds that the Council cannot base any relevant arguments on the fact that the PGO's letter of 25 July 2016 states that, during the investigation, property [*confidential*] was seized at the investigator's request, by decisions of the District Court [*confidential*] ('the District Court') in 2014 and 2015. The only information directly concerning the applicant relates to the seizure [*confidential*], which does not provide compelling support for criminal proceedings in relation to the alleged misappropriation of real property valued at UAH [*confidential*].

99 The Council, supported by the Commission, argues that the misappropriation of funds of which the applicant is accused caused a loss to the Ukrainian State's public funds or assets. The Ukrainian State is deprived of its rights of ownership, use and enjoyment of the misappropriated funds or assets, including possible revenue generated by them, until such time as the misappropriation has been undone, for example by a court decision that has become final. Furthermore, the Council states that, by order of 3 October 2014, the District Court ordered the seizure [*confidential*].

100 It is common ground between the parties that, when adopting the contested measures, the Council essentially relied on the information contained in the letter from the PGO of 25 July 2016 and on the PGO's answers.

101 In that regard, it should be recalled that that letter contains the information set out in paragraph 49 above.

102 The PGO also stated that the acts described in the letter in question correspond to the criminal offence defined in Article 191(5) of the Ukrainian Criminal Code, which concerns the misappropriation of somebody else's property when committed by a group of persons by prior conspiracy, in relation to a particularly large amount.

103 Moreover, the PGO observed that, during the investigation, property [*confidential*] was seized at the investigator's request, by decisions of the District Court of 2014 and 2015.

104 Accordingly, it must be found that, when it adopted the contested measures, the Council had sufficiently precise information in relation to the infringement of which the applicant was suspected and the state of the proceedings relating to that infringement.

105 As regards the applicant's argument relating to the fact that, in the present case, misappropriation of real property is alleged, which cannot, by its very nature, be moved outside of Ukraine, it should be observed that the relevant criterion does not provide that, for a person to be listed, there must be a risk that the public funds that that person is suspected of having misappropriated are moved abroad. Thus, the reference to the misappropriation of public funds, if it is well founded, is sufficient, in itself, to justify the restrictive measures against the applicant (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 106 and the case-law cited).

106 In that regard, it follows from the case-law that the concept of misappropriation of public funds covers any act consisting in the unlawful use of resources belonging to public authorities, or which are placed under their control, for purposes which run counter to those planned for the resources, in particular for private purposes. To fall within the scope of that concept, that use must have been prejudicial to

the financial interests of these authorities, and therefore have caused damage which can be assessed in financial terms (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 107 and the case-law cited).

107 That broad interpretation of the concept at issue is necessary in order to ensure the full effectiveness of Decision 2014/119 with a view to achieving its objectives of consolidating the rule of law in Ukraine. Taking into account, moreover, the purely precautionary nature of the measure at issue, the general principle of European Union law of the legality of offences and penalties, enshrined in the first sentence of Article 49(1) of the Charter, and that of the presumption of innocence, enshrined in Article 48(1) of the Charter, are not applicable in the present case and cannot, therefore, preclude such a broad interpretation (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 109 and the case-law cited).

108 In the present case, as the Council correctly observes, the misappropriation of public funds or assets described in the letter of 25 July 2016, as long as it lasts and has not been undone, for example pursuant to a court decision which has become final, causes a loss to the Ukrainian State which is deprived of the ownership of the misappropriated funds or assets and of the use and enjoyment thereof, including possible revenue generated thereby (see, to that effect, judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 110 and the case-law cited).

109 The fact that, as a result of the restrictive measures provided for in the contested measures, the applicant's funds in the European Union are provisionally frozen helps to facilitate the Ukrainian authorities' task of recovering misappropriated public funds and assets, in the event that the applicant is found guilty, and supplements the measures adopted at the national level, such as the seizure of the property ordered by the District Court (see paragraph 103 above) (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 111 and the case-law cited).

110 Indeed, in the event that the accusations against the applicant are recognised as well founded by the Ukrainian courts and that those courts order the recovery of the misappropriated funds, such recovery could be effected, in particular, by using the funds that the applicant might have placed in the European Union. In that regard, it is irrelevant whether those possible funds originate in the transaction which is the subject of the investigation relating to the applicant, given that what matters is to facilitate the Ukrainian State's recovery of funds from which it should never have been separated (see judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 112 and the case-law cited).

111 In the light of the foregoing, those arguments of the applicant must be rejected.

112 In the second place, the applicant recalls that he argued before the Council that the conduct of which he is accused in the PGO's letter of 25 July 2016 dated back to 2006 and 2007 and had already been examined in 2008 by Ukrainian courts, which had found no evidence of unlawfulness. According to the applicant, although it is true that the Council responded to those arguments by putting questions to the PGO in that regard, the latter's replies were not satisfactory, particularly as regards observance of the principle *ne bis in idem*, so that the Council was not entitled to find that it had sufficient evidence to justify maintaining his name on the list at issue. In addition, the applicant claims that the Council cannot criticise him for not producing any documentation in support of his arguments, since it is for the Council to satisfy itself that it has a sufficiently solid factual basis.

113 The Council, supported by the Commission, recalls that the applicant did not produce the relevant court decisions when he claimed that the conduct of which he was accused had already been examined by Ukrainian courts. The Council submits that it was proactive in so far as it requested additional information from the PGO, which, in its answers to the Council's questions, provided the necessary details and stated, in particular, that the conduct at issue had not been assessed from a

criminal law perspective. The principle *ne bis in idem* therefore does not apply. Accordingly, the Council had a sufficiently solid factual basis to justify maintaining the restrictive measures against the applicant.

114 It must be recalled that, following the arguments that the applicant had put forward in the case which gave rise to the judgment of 22 March 2018, *Stavytskyi* v *Council* (T-242/16, not published, EU:T:2018:166), the Council sent certain questions to the PGO, in particular in order to ascertain whether, as the applicant claimed, the acts alleged against him in the criminal proceedings referred to in a letter from the PGO of 30 November 2015, which are the same proceedings as those referred to in the letter of 25 July 2016, related to the period from 2006 to 2007 and had already been examined by the Ukrainian courts.

115 The PGO's answers to the Council's questions are to be found in a Working Paper of the Council of 16 November 2016. According to that paper, first, the property transaction linked to the misappropriation of public funds alleged against the applicant took place during 2006 and 2007 and was given concrete form by an exchange agreement [*confidential*]:

[*confidential*]

[*confidential*]

[*confidential*]

116 After he had received the PGO's answers from the Council, the applicant, by letter of 13 January 2017, replied, inter alia, that the exchange agreement [*confidential*] had been recognised as legal by several decisions of Ukrainian courts in 2008 and 2009, [*confidential*] and by the District Court, which all found that there had been no unlawfulness. Moreover, the applicant stated that, in 2009, the PGO had ascertained that the acts undertaken, in particular by him, during the conclusion of that agreement were legitimate and recognised that there had been no unlawfulness.

117 It is common ground between the parties that, on reading the applicant's letter of 13 January 2017, the Council did not request further information from the PGO. In that regard, the Council contends that it was entitled to confine itself to relying on the allegedly detailed information with which the PGO had already provided it, since the applicant had not appended to his letter the court decisions which he mentioned in that letter.

118 For his part, the applicant is of the opinion that the PGO's replies were very general and uninformative. According to the applicant, although the PGO confirmed that the alleged actions of the applicant, which took place in 2006 and 2007, were subsequently found to be legal, the PGO asserts that the currently ongoing investigation has provided evidence of guilt, without specifying any facts concerning that investigation. Moreover, the PGO does not state the reasons why the new investigation is compatible with the principle *ne bis in idem*.

119 In that regard, it must be held that, in the light of the matters raised by the applicant, the Council was required to re-contact the PGO, in accordance with the principles set out in paragraphs 94 and 95 above.

120 Contrary to what the Council contends, the material in its possession did not enable it to rule out that the criminal proceedings on which it relied to maintain the restrictive measures concerning the applicant conflicted with the principle *ne bis in idem*.

121 In that context, first, it should be pointed out that, in the letter of 13 January 2017, the applicant referred not only to decisions of economic or administrative courts, but also to a decision of the District Court, that is the same court which is mentioned in the letter from the PGO of 25 July 2016.

122 [*Confidential*]

123 Third, it should be recalled that the principle *ne bis in idem* is a general principle of EU law, which is applicable regardless of any legislative provision (judgment of 18 October 2001, *X* v *ECB*, T-333/99, EU:T:2001:251, paragraph 149).

124 As regards the courts of the Member States, that principle is recognised in Article 50 of the Charter.

125 Moreover, reference must be made to Article 4 of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, entitled 'Right not to be tried or punished twice', which provides:

'1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.'

126 In that regard, it should be pointed out that that protocol is applicable to Ukraine.

127 According to the case-law, it is possible that a decision of an authority, required to play a part in the administration of criminal justice in the national legal system concerned, to discontinue criminal proceedings against an accused, subject to certain conditions, means that further prosecution is definitively time-barred. In such a case, the situation of the person concerned must be considered to fall within the scope of the principle *ne bis in idem*, notwithstanding the fact that no court is involved in such a procedure and that the decision in which the procedure culminates does not take the form of a judicial decision (see, to that effect, judgment of 11 February 2003, *Gözütok and Brügge*, C-187/01 and C-385/01, EU:C:2003:87, paragraphs 27 to 31). However, the principle *ne bis in idem* does not fall to be applied to a decision by which an authority of a State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State (see, to that effect, judgment of 22 December 2008, *Turanský*, C-491/07, EU:C:2008:768, paragraph 45).

128 In the light of the foregoing observations, it must be held that the information that the Council had in its possession, on the basis of the PGO's answers, when it adopted the contested measures did not enable it to establish whether the criminal proceedings concerning the applicant, whose existence formed the basis for maintaining the restrictive measures against him, conflicted with the principle *ne bis in idem*, given that the Council did not know the content of the decision of the District Court and of the decisions of the PGO mentioned by the applicant in its letter of 13 January 2017.

129 Although it is not for the Council to determine whether the ongoing criminal proceedings in Ukraine (see paragraphs 91 to 93 above) are well founded, nor to assess whether those proceedings comply with the procedural rules applicable under Ukrainian law (judgment of 22 March 2018, *Stavytskyi* v *Council*, T-242/16, not published, EU:T:2018:166, paragraph 134), the Council is nevertheless required to ensure that the criminal proceedings on which it relies to maintain the restrictive measures against a person does not conflict with the principle *ne bis in idem*, provided that the person concerned provides it with evidence capable of giving rise to doubt in that regard.

130 Whilst it is true that, in his letter of 13 January 2017, the applicant did not expressly refer to the principle *ne bis in idem* nor submitted decisions of the Ukrainian authorities capable of showing that the proceedings to which he is currently subject conflict with that principle, the fact remains that the information that he provided was sufficient to give rise to the obligation for the Council to request further information from the PGO, in view also of the content of the answers that the latter had already provided it with and which mentioned, inter alia, the fact that the bodies responsible for bringing the proceedings had decided not to launch any criminal investigation (see paragraph 116 above).

131 In that context, it must be noted that the issue is not whether, in the light of the information provided to the Council, the Council was required to remove the applicant's name from the list, on account of the fact that the criminal proceedings concerning him infringed the principle *ne bis in idem*, but only whether it was required to take that evidence into account and to carry out additional verifications or seek clarification from the Ukrainian authorities. Accordingly, it is sufficient that the evidence be capable of giving rise to legitimate doubts regarding the conduct of the investigation and the adequacy of the information provided by the PGO (see, to that effect, judgment of 21 February 2018, *Klyuyev* v *Council*, T-731/15, EU:T:2018:90, paragraph 242).

132 Moreover, it should be observed that, at the time when the contested measures were adopted, the applicant had been the subject of the restrictive measures at issue for several years, on account also of the same criminal proceedings brought by the PGO. In such a context (i) the PGO had, in principle, to be capable of providing the Council with all additional information that it might have needed and (ii) the Council had to consider itself to be more required to explore in greater detail the question of a possible breach of a fundamental principle, such as the principle *ne bis in idem*, by the Ukrainian authorities to the detriment of the applicant.

133 In the light of the foregoing considerations, it must be held that the Council made a manifest error of assessment by adopting the contested measures without requesting further information from the Ukrainian authorities; this is sufficient to annul those measures so far as concerns the applicant, and there is no need to consider his other arguments.

134 With respect to the Council's alternative claim, (see paragraph 36, second indent, above), seeking, in essence, that the effects of Decision 2017/381 be maintained until the expiry of the period of time allowed for bringing an appeal and, in the event that an appeal is lodged, until the decision ruling on that appeal, it is sufficient to observe that Decision 2017/381 was effective only until 6 March 2018. Consequently, the annulment of that decision by this judgment has no effect on the period after that date, so that it is not necessary to rule on the question of maintaining the effects of that decision (see judgment of 6 June 2018, *Arbuzov* v *Council*, T-258/17, EU:T:2018:331, paragraph 107 and the case-law cited).

Costs

135 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 Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

136 In accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Annuls Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2017/374 of 3 March 2017 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine in so far as Mr Edward Stavytskyi's name was maintained on the list of persons, entities and bodies subject to those restrictive measures;**

2. **Orders the Council of the European Union to bear its own costs and to pay those incurred by Mr Stavytskyi;**

3. **Orders the European Commission to bear its own costs.**

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 30 January 2019.

E. Coulon
Registrar

G. Berardis
President