JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

8 November 2017 (*)

(Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies subject to the freezing of funds and economic resources — Maintenance of the applicant's name on the list — Manifest error of assessment)

In Case T-246/15,

Yuriy Volodymyrovych Ivanyushchenko, residing in Yenakievo (Ukraine), represented by B. Kennelly QC, J. Pobjoy, Barrister, R. Gherson and T. Garner, Solicitors,

applicant,

v

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

defendant,

APPLICATION under Article 263 TFEU seeking the annulment of (i) Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 25) and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 1), and (ii) Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76) and Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, 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: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 18 May 2017,

gives the following

Judgment

Background to the dispute

1 The present case has been brought against the background of the restrictive measures adopted against certain persons, entities and bodies in view of the situation in Ukraine following the suppression of demonstrations in Independence Square in Kiev (Ukraine).

2 The applicant, Mr Yuriy Volodymyrovych Ivanyushchenko, was formerly a member of the Ukrainian Parliament, representing the Party of the Regions.

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). 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).

4 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 [decided] 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.’

5 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 the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.

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

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

7 In accordance with Decision 2014/119, Regulation No 208/2014 requires the adoption of the restrictive measures at issue and lays down detailed rules for implementing those 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 on the identical list in Annex I to that regulation (‘the list’) along with, inter alia, the reasons for their listing. Initially, the applicant’s name did not appear on the list.

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).

10 By Implementing Decision 2014/216 and Implementing Regulation No 381/2014, the applicant’s name was added to the list with the identifying information ‘Party of Regions MP’ 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 letter of 22 July 2014 to the Council, the applicant’s lawyers took issue with the inclusion of the applicant’s name on the list. By letter of 22 October 2014, the Council replied, setting out the reasons for the applicant’s designation on the list and enclosing, in that respect, three letters concerning the applicant [*confidential*] (1) dated 7 March, 8 July and 10 October 2014.

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

13 Decision 2015/143 clarified, as from 31 January 2015, the criteria for the designation of persons targeted by the freezing of funds and Article 1(1) of Decision 2014/119 was replaced with the following text:

‘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.’

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

15 By letter of 6 February 2015, the Council informed the applicant of its intention to maintain the restrictive measures directed against him, informed him that the designation criteria had been amended by Decision 2015/143 and Regulation 2015/138 and that the statement of reasons concerning him was to be amended to read as follows:

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

16 In addition, the Council granted the applicant privileged access to the letter concerning him [*confidential*] dated 30 December 2014. By letter of 24 February 2015, the applicant submitted his observations in that regard.

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

18 By the March 2015 acts, the restrictive measures directed against, amongst others, the applicant, were extended until 6 March 2016 and the statement of reasons for his designation was amended in the terms set out in paragraph 15 above.

19 By letter of 6 March 2015 the Council sent the applicant's lawyers copies of the March 2015 acts, informing them that their client's name was being maintained on the list and responding to the applicant's observations of 24 February 2015.

Events subsequent to the bringing of the action

20 Following an exchange of correspondence between the parties, the Council, by letter of 11 May 2015, granted the applicant's request for access to a certain number of documents.

21 By letters of 6 November and 15 December 2015, respectively, the Council provided the applicant with letters [*confidential*] dated 14 September and 30 November 2015 ('the letters of 14 September and 30 November 2015'). It also reminded the applicant of the deadline for submitting observations to the Council for the purposes of the annual review of the restrictive measures at issue. The applicant submitted his observations to the Council by letters of 30 November 2015, 4 January and 23 February 2016.

22 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) (together, 'the March 2016 acts').

23 By the March 2016 acts, the application of the restrictive measures concerning the applicant, amongst others, was extended until 6 March 2017. The statement of reasons for the applicant's designation was not altered.

24 By letter of 7 March 2016, the Council informed the applicant that the restrictive measures against him were being maintained by the March 2016 acts. The Council also responded to the observations which the applicant had made in his earlier letters, sent him copies of the March 2016 acts and a letter [*confidential*] dated 1 March 2016 containing updated information concerning the applicant.

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) (together, 'the March 2017 acts'). By the March 2017 acts, the applicant's name was removed from the list.

Procedure and forms of order sought

26 By application lodged at the Court Registry on 15 May 2015, the applicant brought the present action for, inter alia, annulment of the March 2015 acts.

27 On 14 September 2015, the Council lodged its defence. On the same day, the Council submitted a reasoned request, 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 disclosed in documents relating to the present case to which the public has access.

28 The reply was lodged by the applicant on 13 December 2015, and the Council lodged its rejoinder on 1 February 2016. On 8 February 2016, the Council also submitted a request, similar to that referred to in paragraph 27 above, for the content of an annex to the reply and that of an annex to the rejoinder not to be disclosed in the documents relating to the present case to which the public has access.

29 The written part of the procedure was closed on 1 February 2016.

30 By document lodged at the Court Registry on 7 March 2016, the Council requested that a hearing

be held.

31 By a statement lodged at the Court Registry on 13 May 2016, the applicant modified the application, in accordance with Article 86 of the Rules of Procedure, so as to request also the annulment of the March 2016 acts in so far as they applied to him.

32 By document lodged at the Court Registry on 27 June 2016, the Council submitted its observations on the statement of modification, as well as a similar request to that referred to in paragraph 27 above, asking that the content of certain annexes to the statement of modification and that of an annex to the Council's observations on that statement not be mentioned in the documents relating to the case to which the public has access.

33 The written part of the procedure was again closed on that date.

34 Upon the alteration of the composition of the chambers of the Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which this case was consequently allocated.

35 On the proposal of the Judge-Rapporteur, the Court (Sixth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure under Article 89 of the Rules of Procedure, decided to put written questions to the Council ('the first series of questions').

36 By letter of 24 February 2017, the applicant requested that the hearing scheduled for 5 April 2017 be postponed. On 1 March 2017, the President of the Sixth Chamber of the Court granted that request and decided to postpone the hearing until 18 May 2017.

37 On 8 March 2017, the Council lodged at the Court Registry its reply to the first series of questions along with a request, similar to that referred to in paragraph 27 above, concerning the content of documents in the annex to that reply.

38 On 16 March 2017, by way of measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, the Court (Sixth Chamber) put written questions to the parties ('the second series of questions'), to which the Council and the applicant replied, respectively, on 27 and 30 March 2017.

39 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 18 May 2017.

40 The applicant claims that the Court should:

– annul the March 2015 acts and the March 2016 acts in so far as they relate to him;

– order the Council to pay the costs;

41 The Council contends that the Court should:

– dismiss the application;

– in the alternative, order that the effects of Decision 2015/364 and those of Decision 2016/318 be maintained until the partial annulment of Implementing Regulation 2015/357 and that of Implementing Regulation 2016/311, respectively, take effect;

– order the applicant to pay the costs.

42 At the hearing, in response to a question put to it by the Court, the Council withdrew its second head of claim.

Law

The applicant's continued interest in bringing proceedings

43 As noted in paragraph 25 above, since the entry into force of the March 2017 acts, the applicant is no longer subject to the restrictive measures at issue.

44 In its reply to the second series of questions, the Council submitted that the applicant had not demonstrated that he had a continued interest in bringing proceedings.

45 It is settled case-law that the purpose of the action must, like the applicant's interest in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it (see, judgment of 6 June 2013, *Ayadi* v *Commission*, C−183/12 P, not published, EU:C:2013:369, paragraph 59 and the case-law cited).

46 In addition, whilst recognition of the illegality of the contested act cannot, as such, compensate for material harm or for interference with a person's private life, it is nevertheless capable of rehabilitating the person concerned or constituting a form of reparation for the non-material harm which he has suffered by reason of that illegality, and of thereby establishing that he retains his interest in bringing proceedings. In that respect, the fact that the repeal of the restrictive measures at issue is definitive does not prevent an interest in bringing proceedings from continuing to exist so far as concerns the effects of the acts that 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, *Abdulrahim* v *Council and Commission*, C−239/12 P, EU:C:2013:331, paragraphs 70 to 72 and 82).

47 In the present case, it must be noted that the mere inclusion of the applicant's name on the list, on the ground that he is a person subject to criminal proceedings in Ukraine in relation to the misappropriation of public funds, is enough to have a negative impact, particularly on his reputation as a businessman in Ukraine.

48 It follows that maintaining the applicant's name on the list could have increased the opprobrium and suspicion in his regard and, consequently, the non-material harm which he claims to have suffered (see, to that effect and by analogy, judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C−239/12 P, EU:C:2013:331, paragraph 76).

49 In that respect, it must be noted that, as the applicant submits, the fact that the March 2015 acts and the March 2016 acts are no longer in force in so far as they concern the applicant is not the same as the annulment of those acts by the General Court, since the amendment of those acts is not a recognition of their illegality (see, to that effect and by analogy, judgment of 11 June 2014, *Syria International Islamic Bank* v *Council*, T−293/12, not published, EU:T:2014:439, paragraphs 36 to 41 and the case-law cited).

50 It follows that the applicant continues to have an interest in bringing proceedings, despite the repeal of the restrictive measures, in so far as they concern him, by the March 2017 acts.

The merits of the claim for annulment of the March 2015 acts and the March 2016 acts

51 In support of his action, the applicant puts forward five pleas in law alleging, first, the absence of a legal basis, secondly, a manifest error of assessment, thirdly, infringement of the rights of the defence and of the right to effective judicial protection, fourthly, a failure to provide adequate reasons and, fifthly, infringement of the right to property and of the right to reputation. In the alternative, the applicant raises a plea of illegality under Article 277 TFEU, alleging that the designation criterion laid down in Article 1(1) of Decision 2014/119, as amended by Decision 2015/143, and Article 3(1) of Regulation No 208/2014, as amended by Regulation 2015/138, (see

paragraph 12 above) ('the relevant criterion') lacks a proper legal basis or is disproportionate to the objectives pursued by the acts at issue, and should therefore be declared inapplicable to him. When the applicant modified the application so as to request also the annulment of the March 2016 acts, he also put forward a plea alleging infringement of his rights under Article 6 TEU, read together with Articles 2 and 3 TEU, and under Articles 47 and 48 of the Charter of Fundamental Rights of the European Union ('the Charter').

52 The Court considers it appropriate to begin by examining the second plea in law.

53 In support of that plea, the applicant argues, in essence, that the Council made a manifest error of assessment in concluding that the relevant criterion was met in his case.

54 He submits, inter alia, that the Council wrongly relied on the proceedings described in the [*confidential*] letters in order to conclude that he was the subject of criminal proceedings for the misappropriation of public funds, in accordance with the relevant criterion. The assertions contained in the [*confidential*] letters, which the Council accepted unquestioningly and without taking account of the inaccuracies pointed out by the applicant, did not constitute a sufficiently solid factual basis.

55 In particular, the [*confidential*] letter of 30 December 2014, as regards the March 2015 acts, and its letters of 14 September and 30 November 2015 and 1 March 2016, as regards the March 2016 acts, constitute the only evidence adduced by the Council to justify maintaining the applicant's name on the list. Those letters are inaccurate, unreliable and incapable of justifying the decision to maintain the applicant's name on the list.

56 The letters do not contain sufficient and up-to-date information concerning the specific proceedings mentioned in relation to the applicant. Moreover, some of the proceedings brought against him were dictated by the willingness of the new Ukrainian regime to make false accusations against him.

57 The applicant submits that it is for the Council to establish that the reasoning relied on against him is well founded, taking into account the observations and exculpatory evidence adduced. In view of the shortcomings of the letters [*confidential*], he submits that the Council was required to carry out its own additional verifications.

58 The Council contests all those arguments. It argues that the reasons stated for the applicant's designation meet the relevant criterion and are based on a sufficiently solid factual basis.

59 The Council submits, inter alia, that the maintenance of the applicant's name on the list is based on sufficient factual evidence. It submits that the applicant's assertion that trumped-up charges have been brought against him by the Ukrainian Government is not substantiated. Furthermore, it argues that, contrary to the applicant's assertions, the letters [*confidential*] contain detailed and specific information on several sets of criminal proceedings to which the applicant is subject in Ukraine for the misappropriation of public funds and indicate, in respect of each set of proceedings, the number of the case, the date of initiation, the offences that the applicant is suspected of having committed and the corresponding articles of the Ukrainian Criminal Code, the relevant factual circumstances and the fact that notifications of suspicion were issued.

60 In addition, the Council submits that, according to the case-law, if one of the reasons stated for the designation of a person is sufficiently detailed and substantiated, it will constitute a sufficient factual basis to support the Council's decision. Moreover, while the Council is required to substantiate its reasons for designating the applicant by adducing evidence of the existence of criminal proceedings, which in this case was provided by the letters [*confidential*], it is not however required to prove the veracity of the crimes which the applicant is suspected of having committed.

Preliminary observations

61 As a preliminary point, it must be noted, first, that the relevant criterion provides that restrictive measures are to be adopted as regards persons who have been 'identified as responsible' for the misappropriation of public funds — including persons 'subject to investigation by the Ukrainian authorities' for misappropriation of Ukrainian public funds or assets (see paragraph 13 above) — and, secondly, that that 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 acts classifiable as misappropriation of public funds or public assets which are such as to undermine respect for the rule of law in Ukraine (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T−340/14, EU:T:2016:496, paragraph 91).

62 In the present case, the applicant's name was maintained on the list, first by the March 2015 acts, and then by the March 2016 acts, on the ground that he was a 'person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets'.

63 It is undisputed that, in deciding to maintain the applicant's name on the list, the Council relied on the letters [*confidential*] concerning him, namely the letter of 30 December 2014, as regards the March 2015 acts, and the letters of 14 September and 30 November 2015 and 1 March 2016 as regards the March 2016 acts.

64 It is necessary to verify the ground on which the applicant's name was maintained on the list as well as the Council's assessment of the evidence available to it.

65 In that regard, it follows from the case-law that, although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the effectiveness of the judicial review guaranteed by Article 47 of the Charter 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 a list of persons subject to restrictive measures, the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the 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, *Anbouba* v *Council*, C−605/13 P, EU:C:2015:248, paragraphs 41 and 45 and the case-law cited).

66 According to the case-law on decisions maintaining a person's name on a list of persons covered by restrictive measures, where the individual or the entity concerned makes comments on the reasons stated, the competent European Union authority is under an obligation to examine, carefully and impartially, whether the reasons relied on are well founded, in the light of those comments and of any exculpatory evidence provided with those comments (see judgments of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraph 114 and the case-law cited, and of 30 April 2015, *Al-Chihabi* v *Council*, T−593/11, EU:T:2015:249, paragraph 51). Moreover, that obligation is entailed by the obligation to observe the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 58 and the case-law cited).

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

68 In that respect, it is apparent from recitals 1 and 2 of Decision 2014/119 that that decision forms

part of a more general European Union policy of supporting the Ukrainian authorities, intended to promote the political stability of Ukraine. It therefore satisfies the objectives of the Common Foreign and Security Policy (CFSP), which are defined, in particular, in Article 21(2)(b) TEU, pursuant to which the European Union is to engage in international cooperation with a view to consolidating and supporting democracy, the rule of law, human rights and the principles of international law (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 60 and the case-law cited).

69 The restrictive measures at issue, 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 adopted by a national judicial authority of a Member State in the relevant criminal proceedings, respecting the safeguards provided by those proceedings. Consequently, the requirements the Council must fulfil with regard to the evidence underpinning a person's entry on the list of persons whose assets are to be frozen cannot be exactly the same as those which apply to the national judicial authority in the abovementioned case (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 64 and the case-law cited).

70 It also follows from the case-law that the Council is not required to carry out, systematically and on its own initiative, its own investigations or checks for the purpose of obtaining additional information, when it already has information provided by the authorities of a third country in taking restrictive measures against nationals of that country who are subject to judicial proceedings in that country (judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 57). It should be noted, in that regard, that it has been held that [*confidential*] (judgment of 15 September 2016, *Klyuyev* v *Council*, T−340/14, EU:T:2016:496, paragraphs 41 and 93).

71 What the Council must verify is, first, the extent to which the evidence on which it relied proves that the applicant's situation corresponds to the reason stated for maintaining his name on the list, namely that he is subject to criminal proceedings brought by the Ukrainian authorities in respect of actions that may be characterised as misappropriation of public funds, and, secondly, that those proceedings are such that the applicant's actions can be characterised as meeting the relevant criterion. Only if those verifications were not successful would it, in the light of the case-law referred to in paragraph 66 above, be incumbent on the Council to investigate further (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 65 and the case-law cited).

72 Moreover, in the context of the cooperation governed by the acts at issue (see paragraph 68 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 acts classifiable as misappropriation of public funds. 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 69 above, the Council's obligations under the acts at issue 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. That interpretation is confirmed by 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 for the Council or the General Court to verify not whether the investigations to which the appellants were subject were well founded, but only whether that was the case as regards the decision to freeze funds in the light of the document provided by the national authorities (see judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 66 and the case-law cited).

73 However, it must be borne in mind that the Council cannot, in all circumstances, endorse the findings of the Ukrainian judicial authorities contained in the documents provided by them. 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 first subparagraph of Article 6(1) TEU and Article 51(1) of the Charter of Fundamental Rights (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 67).

74 Moreover, in line with paragraph 71 above, 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 inadequate or inconsistent. Information communicated to the Council, either by the Ukrainian authorities themselves or in some other way, might conceivably lead that institution to doubt the adequacy of the evidence already supplied by those authorities. Furthermore, when availing themselves of the opportunity which the persons concerned must be given to submit their comments on the reasons which the Council intends to use in order to maintain their names in the annexes to the contested acts, 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 referred to in the letters [*confidential*] are well founded, it is not inconceivable that, in the light, in particular, of the applicant's observations, the Council might be obliged to seek clarification from those Ukrainian authorities with regard to the material on which those investigations are based (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 68).

75 In the present case, the applicant acknowledges that the letters [*confidential*] — in respect of which the arguments alleging that they lack credibility must be rejected for the reasons set out in paragraph 70 above — refer to criminal proceedings in which [*confidential*] investigations are being conducted concerning him. It must therefore be examined whether the Council could validly consider that the various sets of proceedings, examined in turn below, supported the reason stated for the applicant's designation.

Case No [confidential] and Case No [confidential]

76 According to the letter of 30 December 2014, in Case No [*confidential*] and Case No [*confidential*].

77 However, besides the fact that those two cases are mentioned very briefly in that letter of 30 December 2014, and are not mentioned at all in the subsequent letters, it suffices to note that the Council expressly stated that it did not rely on those two cases in deciding to maintain the restrictive measures as regards the applicant.

78 They must therefore be excluded from the relevant factual basis.

Case No [confidential] and a part of Case No [confidential]

79 The applicant disputes the [*confidential*] assertion that he was the subject of investigations in Case No [*confidential*] ('Case No [*confidential*]') and Case No [*confidential*] ('Case No [*confidential*]') and argues that the [*confidential*] assertions are unfounded.

80 The Council merely submits that it is not required to prove the veracity of the offences which the applicant is suspected of having committed.

81 It must be noted, in view of the case-law cited in paragraph 71 above, that the offences described in those cases are irrelevant, since they do not correspond to the reason stated for the maintenance of the applicant's name on the list and are not such that the applicant's actions could be characterised

as meeting the relevant criterion.

82 First, as regards Case No [*confidential*].

83 The [*confidential*] letters are consistent with regard to that offence, apart from the fact that, following the letters of 14 September and 30 December 2015, that offence now forms part of Case No [*confidential*]. The criminal classification of the offence that the applicant is suspected of having committed remains otherwise unchanged, namely that it [*confidential*].

84 Secondly, as regards Case No [*confidential*], the applicant is also suspected, in that context, of having [*confidential*].

85 In addition, according to the letter of 30 December 2014, [*confidential*]. The letters of 14 September and 30 November 2015 and 1 March 2016 give details of the offence [*confidential*].

86 It must be noted that, as regards those two cases, namely Case No [*confidential*] and Case No [*confidential*], and subsequently the aforementioned two parts of Case No [*confidential*], [*confidential*] does not mention any misappropriation of public funds of which the applicant is suspected.

87 In that respect, it must be borne in mind that, according to the case-law the concept of misappropriation of public funds cannot cover any economic offence or crime (see, to that effect, judgments of 28 May 2013, *Trabelsi and Others* v *Council*, T−187/11, EU:T:2013:273, paragraph 91, and of 2 April 2014, *Ben Ali* v *Council*, T−133/12, not published, EU:T:2014:176, paragraph 69).

88 Moreover, it must be observed that Article 1 of Decision 2014/119, as clarified (see paragraph 13 above), the wording of which is clear and precise, mentions a specific category of offences in respect of which restrictive measures may be adopted in order to pursue the objective of combating corruption, which constitutes, in the context of the external action of the European Union, a principle within the scope of the rule of law (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T−340/14, EU:T:2016:496, point 116). That specific category of offences includes conduct classifiable as misappropriation of public funds, by itself or as a result of an abuse of power for which the person concerned is responsible as a public office-holder, and the Ukrainian Criminal Code lays down the specific offence of misappropriation of public funds in Article 191 thereof, as can be seen from the letters [*confidential*].

89 Accordingly, those offences which have a different criminal classification in the present case cannot be considered relevant in order to support the reason stated for maintaining the applicant's name on the list, as noted in paragraph 62 above. Moreover, at the hearing the Council acknowledged the weakness of the link between those cases and the factual basis for that maintenance.

90 In any event, it must be pointed out that, in view of the concept of misappropriation of public funds developed in the case-law of the Courts of the European Union, the conduct described does not fall within the scope of that concept.

91 According to the case-law, the concept of misappropriation of public funds, which is given an autonomous interpretation under EU law, 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, to that effect, judgment of 30 June 2016, *CW* v *Council*, T−224/14, not published, EU:T:2016:375, paragraphs 84 and 89).

92 It should also be pointed out that this interpretation of the concept in question leads to a definition

analogous to that of the concept of misappropriation of European Union funds referred to in Article 4(3) of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29). In accordance with that article, '"misappropriation" means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests' (see, to that effect and by analogy, judgment of 30 June 2016, *CW* v *Council*, T−224/14, not published, EU:T:2016:375, paragraph 90).

93 In the present case, as regards the first offence mentioned above, it suffices to note that the applicant is not suspected of having committed funds or used resources belonging to the Ukrainian public authorities, but rather of having [*confidential*].

94 As regards the second offence mentioned above, despite the abstruse summary of the factual circumstances of that offence in the letters [*confidential*], as the applicant rightly points out, it must be noted that [*confidential*] do not correspond, prima facie, to the misappropriation of public funds and, moreover, they do not necessarily result from a misappropriation of public funds (see, to that effect and by analogy, judgment of 28 May 2013, *Trabelsi and Others* v *Council*, T−187/11, EU:T:2013:273, paragraphs 94 and 95). Furthermore, the Council has not put forward any argument to demonstrate any link between the factual circumstances cited and a misappropriation of funds causing a loss to Ukrainian public funds.

95 Accordingly, those offences cannot support the reason stated for maintaining the restrictive measures as regards the applicant and must be excluded from the relevant factual basis.

Case No [confidential]

96 The applicant submits, in essence, that Case No [*confidential*] ('Case No [*confidential*]') was closed by a decision of the Prosecutor of the Odessa Region (Ukraine) ('the Regional Prosecutor') of 14 January 2015 ('the decision of the Regional Prosecutor'), which he informed the Council of by his letter of 24 February 2015, attaching a copy of that decision. In addition, no allegation was made, nor any act taken, against the applicant as regards the offence in question in Case No [*confidential*], to which Case No [*confidential*] was joined.

97 The Council disputes the applicant's argument that Case No [*confidential*] is closed and asserts that that case was reopened, assigned to [*confidential*] and then joined to Case No [*confidential*], as confirmed by the letters of 14 September and 30 November 2015.

98 It must be noted that, as regards Case No [*confidential*], the letter of 30 December 2014 contains, inter alia, the following information: [*confidential*].

99 The letters of 14 September and 30 November 2015 provide the following information: [*confidential*].

100 Lastly, the letter of 1 March 2016 does not provide further details, since the offence is described in the same terms as in the letters of 14 September and 30 November 2015, and still in relation to Article 191(5) and Article 190(4) of the Ukrainian Criminal Code.

101 The letters [*confidential*] in question therefore contain information showing that the applicant is the subject, in Case No [*confidential*].

102 Notwithstanding the vague description of the actions that gave rise to those offences, it is nevertheless clear from those letters [*confidential*] that the conduct imputed to the applicant concerns, in essence, [*confidential*].

103 Although it is not indicated whether the company Promtarovny Rymok [*confidential*].

104 In addition, the conduct in question is classified by [*confidential*] as misappropriation of public funds [*confidential*].

105 It must be borne in mind, in the light of the case-law cited in paragraph 72 above, that 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 classifiable as misappropriation of public funds.

106 Nevertheless, in accordance with the case-law cited in paragraph 74 above, it was for the Council, which was informed of exculpatory evidence that could cast doubt on the adequacy of the evidence [*confidential*], to investigate further.

107 In the present case, the applicant submits that Case No [*confidential*] has been closed and invokes, in that respect, the decision of the Regional Prosecutor, which he notified to the Council in his letter of 24 February 2015, that is to say, prior to the adoption of the March 2015 acts.

108 First, it must be observed that, in that decision, after summarising the facts of the investigation and the relevant proceedings, the Regional Prosecutor rejected the applicant's request that the charges against him in Case No [*confidential*] be dropped. By decision of 13 January 2015, the District Court of the Odessa Region, upholding the applicant's appeal against that rejection, reversed the Regional Prosecutor's decision and, accordingly, ordered that prosecutor to reconsider the applicant's request that Case No [*confidential*] be closed.

109 Secondly, it must be noted that the Regional Prosecutor considered that there was not sufficient objective evidence of the applicant's involvement in the conduct in question and that, moreover, the applicant could not be regarded as an official, within the meaning of Article 191(5) of the Ukrainian Criminal Code. On that basis, the Regional Prosecutor decided that the notification of suspicion as regards the applicant was premature and unlawful and concluded that the criminal proceedings concerning the applicant in Case No [*confidential*] should be terminated.

110 It is therefore apparent from the decision of the Regional Prosecutor that Case No [*confidential*] was closed and that, accordingly, it is no longer capable of supporting the reason stated for the applicant's designation on the list in view of the relevant criterion.

111 That decision, which was delivered by a Regional Prosecutor and which is entirely unambiguous in its statement of reasons and its conclusion, is, at the very least, capable of casting doubt on the existence of proceedings as regards the applicant in Case No [*confidential*].

112 In that respect, as regards the adoption of the March 2015 acts, it must be noted that the decision of the Regional Prosecutor constitutes, from a chronological perspective, the last development concerning Case No [*confidential*] of which the Council was aware before adopting those acts.

113 In its letter of 6 March 2015, in reply to the applicant's letter of 24 February 2015, the Council did not refer to that document and merely asserted that the proceedings had not been terminated. Moreover, it does not specify the information that it took into account in order to reach that conclusion.

114 As regards the adoption of the March 2016 acts, it must be noted that the Council relied on other letters [*confidential*], namely those of 14 September and 30 November 2015, and 1 March 2016, which were all sent after the decision of the Regional Prosecutor and which still refer, inter alia, to the offence which forms the subject matter of Case No [*confidential*], and which state that that case had been, in the meantime, joined to Case No [*confidential*]. However, contrary to the Council's assertions, it cannot be inferred from that joinder that Case No [*confidential*] was reopened as

regards the applicant in respect of that offence.

115 It must be noted that [*confidential*] no information to the Council concerning the Regional Prosecutor's decision to close Case No [*confidential*]. However, in the letter of 14 September 2015, after that decision to close the case, [*confidential*] informed the Council that, in Case No [*confidential*], on 22 December 2014, the Regional Prosecutor [*confidential*], even though, in its previous letter of 30 December 2014, it had stated, as regards the same case, that [*confidential*].

116 It must be noted that the use of the expression [*confidential*], in the letter of 14 September 2015, and of [*confidential*], in the letter of 30 December 2014, highlights a degree of inconsistency in the information sent by [*confidential*] and, accordingly, raises doubts as to the reliability of that information. In addition, that information is not included in the successive letters of 30 November 2015 and of 1 March 2016.

117 Given the fact that the Council had, as from 24 February 2015, been informed by the applicant that Case No [*confidential*] had been closed by the Regional Prosecutor by decision of 14 January 2015, [*confidential*], those circumstances should have led it, in the context of a careful and impartial examination of the exculpatory evidence adduced by the applicant, to investigate further and to seek clarifications from the Ukrainian authorities concerning the developments in that case, in accordance with the case-law cited in paragraph 74 above, which it did not do in the present case.

118 It follows that the Council could not rely on the existence of proceedings in Case No [*confidential*] in order to justify the maintenance of restrictive measures as regards the applicant.

Case No [confidential], joined to Case No [confidential], now Case No [confidential]

119 The applicant submits that Case No [*confidential*] ('Case No [*confidential*]') is mentioned for the first time in the letter of 30 December 2014. In addition, he argues that he cannot be regarded as having been an 'official' of the State-owned company [*confidential*], and that this is confirmed by the decision of the Regional Prosecutor. Moreover, [*confidential*]. In any event, [*confidential*].

120 As regards the same offence, subsequently allocated to Case No [*confidential*] ('Case No [*confidential*]'), the applicant submits that, in a decision of 27 January 2016, an investigating judge of the Solomianskyi District Court (Kiev) ('the decision of the Solomianskyi District Court') ordered that the case be closed, [*confidential*]. The latter lodged an appeal against that decision before the Kiev Court of Appeal. That appeal was rejected as inadmissible by a decision of 11 February 2016 ('the decision of the Kiev Court of Appeal'). [*confidential*] then brought an appeal in cassation and the proceedings are still ongoing. The applicant submits, however, that the appeal does not have suspensive effect and that the decision of the Solomianskyi District Court remains in force. According to the applicant, he informed the Council of those decisions by letter of 23 February 2016. In his view, Case No [*confidential*] therefore has no legal basis. Furthermore, this was confirmed, at first instance, by the Pecherskyi District Court (Kiev), on 1 April 2016, and, on appeal, by the Kiev Court of Appeal, on 6 April 2016.

121 The Council contends, as regards Case No [*confidential*], that the applicant does not dispute [*confidential*]. It also emphasises the fact that the applicant also does not dispute that the proceedings in question concern a misappropriation of public funds prohibited by Article 191(5) of the Ukrainian Criminal Code. According to the Council, those observations apply, in substance, equally to Case No [*confidential*], to which Case No [*confidential*] was joined. [*confidential*].

122 As regards Case No [*confidential*], the Council submits that it is clear from the letters [*confidential*]. It adds that that case was still ongoing when the March 2016 acts were adopted, which is confirmed by the letter of 1 March 2016 and [*confidential*]. As regards the decision of the Solomianskyi District Court, upheld on appeal, the Council submits that [*confidential*] brought an appeal in cassation before the High Court of Ukraine specialised in civil and criminal matters ('the

High Court') and that, on 9 June 2016, the High Court upheld that appeal in cassation and referred the case back to the Court of Appeal of Kiev. The question of the suspensive effect of the appeal in cassation is therefore no longer relevant. Moreover, as regards the decision of the Pecherskyi District Court of 1 April 2016, contrary to the applicant's claim, [*confidential*] brought an appeal in cassation against that decision.

123 It should be noted that the letter of 30 December 2014 contains, inter alia, the following information: [*confidential*].

124 The letters of 14 September and 30 November 2015 contain the following information: [*confidential*].

125 Lastly, the letter of 1 March 2016 provides the following additional details: [*confidential*].

126 As a preliminary point, it must be noted that it is clear from reading the abovementioned letters and the file that the offence concerning the misappropriation of funds received from [*confidential*] was first dealt with in the context of Case No [*confidential*], then in that of Case No [*confidential*], and that some parts of Case [*confidential*], including that offence, were subsequently joined to a separate case, namely Case No [*confidential*].

127 Furthermore, first, it must be noted that the funds misappropriated in the present case are public funds since they relate to the transfer of the proceeds from the sale [*confidential*]. Thirdly, the conduct in question constitutes the criminal offence of misappropriation of public funds, within the meaning of Article 191(5) of the Ukrainian Criminal Code, [*confidential*] (see, inter alia, the second indent of paragraph 124 above).

128 However, it must be observed that the summary of the factual circumstances remains very vague. The letter of 30 December 2014 refers, in essence, to the misappropriation [*confidential*]. Further, in the subsequent letters, [*confidential*]. Lastly, the details of the offence, [*confidential*], are not clarified.

129 It should again be pointed out, in view of the case-law mentioned in paragraph 72 above, that indeed 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 classified as misappropriation of public funds. Nevertheless, in accordance with the case-law cited in paragraph 74 above, it was for the Council, when it was informed of exculpatory evidence such as to cast doubt on the adequacy of the evidence already adduced by the Ukrainian authorities, to investigate further.

130 In that respect, in addition to the inherent shortcomings in the letters [*confidential*] cited in paragraph 128 above, it is also necessary to highlight a contradiction which the Council was aware of before it adopted the March 2015 acts. In the [*confidential*] letters, and already in the letter of 30 December 2014, it is clearly stated that the offence concerns a misappropriation of funds [*confidential*], within the meaning of Article 191(5) of the Ukrainian Criminal Code.

131 As noted in paragraph 109 above and, as the applicant submits, the decision of the Regional Prosecutor raised at the very least doubts as regards the classification of the applicant as an official. That decision, although delivered in the context of another case, clearly states that the applicant was not an official and that he could not therefore be subject to the category of criminal offence laid down in Article 191(5) of the Ukrainian Criminal Code. Accordingly, the Council should have taken account of that conclusion in its analysis of Case No [*confidential*]. Moreover, the applicant had made that argument to the Council in his letter of 24 February 2015, to which a copy of the decision of the Regional Prosecutor was annexed.

132 Thus, in view of, first, the intrinsic inconsistencies in [*confidential*] letters on which the Council

relied and, secondly, the decision of the Regional Prosecutor produced as exculpatory evidence, it must be held that the Council could not confine itself to the evidence adduced by the Ukrainian authorities and should have investigated further, in accordance with the case-law cited in paragraphs 71 and 74 above.

133 As regards the March 2016 acts, it must be added that, before those acts were adopted, the Council was notified of Ukrainian judicial decisions casting doubt on the existence of proceedings in Case No [*confidential*]. In that respect, it must be noted, first, that the applicant informed the Council of the existence of those national decision in a letter of 23 February 2016, to which he attached the decision of the Solomianskyi District Court as well as the decision of the Kiev Court of Appeal, and, secondly, that the letter [*confidential*] of 1 March 2016 also mentions those decisions (see paragraph 125 above).

134 It is apparent from the decision of the Solomianskyi District Court that Case No [*confidential*] – which concerned several offences, including the offence in relation to the transfer of the proceeds from the sale of greenhouse gases quotas – was opened as regards the applicant, that a notification of suspicion was issued on 29 December 2014 and that, on 21 February 2015, the proceedings against the applicant were joined to Case No [*confidential*]. It is also indicated in that decision that the applicant's lawyers had petitioned [*confidential*] to terminate the proceedings against the applicant in Case No [*confidential*] because the notification of suspicion was served prematurely and because of inaction on the part of [*confidential*] in that case. The Deputy Prosecutor General had rejected that petition. However, the Solomianskyi District Court, in its judgment, considered, in essence, that the rejection of that petition was not properly reasoned, in the light of the applicant's arguments intended, first, to demonstrate that the reasonable period of a pre-trial investigation had been exceeded, given the starting date of 29 December 2014, that is to say, the date of service of the notification of suspicion on the applicant as regards the offence in question, and, secondly, to demonstrate that the applicant had not committed any unlawful acts. Accordingly, the Solomianskyi District Court upheld the applicant's appeal and ordered the authorised person within [*confidential*] to close Case No [*confidential*].

135 It is apparent from the decision of the Kiev Court of Appeal, which dismissed the appeal lodged by [*confidential*] against the decision of the Solomianskyi District Court, that the Ukrainian Criminal Code does not provide for such an appeal.

136 Thus, the Council was aware of consistent exculpatory evidence, namely two decisions by Ukrainian courts ordering, and then affirming, in essence, the closure of Case No [*confidential*].

137 Those decisions, in addition to the circumstances noted in paragraphs 127 to 131 above, are sufficient to call into question the likelihood of the existence of proceedings in Case No [*confidential*] and, therefore, the existence of a sufficiently solid basis supporting the reason stated for the applicant's designation.

138 That conclusion cannot be called into question by the Council's arguments.

139 First, the Council submits that the letter of 1 March 2016 confirms that judicial decisions were delivered concerning Case No [*confidential*], but that that case was not formally closed, [*confidential*].

140 In that connection, it must be noted, as the applicant submits, that both the decision of the Solomianskyi District Court and the decision of the Kiev Court of Appeal state, in their operative parts, that they are not subject to an appeal or an appeal in cassation, respectively.

141 Accordingly, although it is not for the Council to prejudge the outcome of the proceedings at the national level, those elements nevertheless lead to the conclusion that the Council should have sought clarifications in that respect from the Ukrainian authorities (see paragraphs 73 and 74 above).

142 Secondly, the Council cannot rely on the [*confidential*].

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

144 It is clear from the file that that additional information [*confidential*] was sent to the Council on 22 June 2016, that is to say, after the adoption of the March 2015 acts and the March 2016 acts. That information must therefore be excluded from the assessment of legality in the present case.

145 Furthermore, the same is true as regards the decisions of April 2016 invoked by the applicant (see paragraph 120 above) and as regards the evidence submitted to the Court by the applicant in response to the second series of questions, all of which date from after the adoption of the March 2015 acts and the March 2016 acts.

146 Thirdly, in so far as the Council invokes the fact that [*confidential*], it must be noted, first of all, that, as the Council itself acknowledges in its reply to the first series of questions, it became aware of [*confidential*] only upon receiving the letter of 14 September 2015, and that argument is therefore, in any event, ineffective as regards the adoption of the March 2015 acts (see paragraph 143 above).

147 In addition, it must be observed that the link between [*confidential*] and Case No [*confidential*] is not clearly explained in [*confidential*] letters.

148 In any event, it should be noted that [*confidential*]. The decision of the Solomianskyi District Court, which was delivered a year later, states that the pre-trial investigation must be conducted within a reasonable period and that the beginning date of that period is the date of service of the notification of suspicion. [*confidential*], they do not call into question the considerations in the subsequent judicial decisions and, in particular, in the decision of the Solomianskyi District Court, namely that [*confidential*] should have examined the applicant's claim that the reasonable period of the pre-trial investigation had been exceeded and that Case No [*confidential*] should therefore be closed.

149 Accordingly, the fact that [*confidential*], is not capable of casting doubt on the subsequent judicial decisions concerning the closure of Case No [*confidential*] (see paragraph 136 above) or allaying the concerns concerning the solidity of the factual basis on which the Council relied in order to justify maintaining the applicant's name on the list.

150 Fourthly, and lastly, a similar objection may be raised to the Council's argument — set out in the rejoinder and clarified in its reply to the first series of questions — alleging that a judicial decision was delivered, on 15 January 2015, by the Pecherskyi District Court (Kiev), confirming that a notification of suspicion had indeed been served on the applicant in Case No [*confidential*], contrary to the latter's assertions. Although that finding is accurate, as is clear, inter alia, from the letters [*confidential*], it is ineffective as regards the March 2015 acts, since it was brought to the Council's attention after the adoption of those acts (see paragraph 143 above), as can be seen from the latter's reply to the first series of questions. As regards the March 2016 acts, it must be noted that that finding does not call into question the subsequent judicial decisions, as can be seen from paragraph 149 above.

151 Consequently, it must be held that the Council could not rely on the proceedings in question [*confidential*], since they do not adequately support the reason stated for maintaining the applicant's name on the list.

Conclusions

152 It follows from all of the foregoing that the information relating to the various criminal proceedings, set out in the letters [*confidential*], on which the Council relied in order to maintain the applicant's name on the list, is either irrelevant, since those proceedings do not concern the misappropriation of public funds, or beset with inconsistencies such that the Council should have had doubts as to the adequacy of the evidence on which it relied.

153 Thus, the Council — given the inadequacy of the factual basis on which it relied, [*confidential*], and given, moreover, the exculpatory evidence invoked by the applicant — should have investigated further and sought clarification from those authorities, as can be seen from the case-law cited, inter alia, in paragraph 74 above.

154 It follows that the Council made a manifest error of assessment when it considered that the proceedings brought against the applicant, as described in the evidence and in the light of the exculpatory evidence adduced by the applicant, corresponded to the reason stated for maintaining his name on the list, namely that he was the subject of criminal proceedings brought by the Ukrainian authorities in respect of actions that could be characterised as misappropriation of public funds and that, consequently, those proceedings allowed the applicant's conduct to be categorised as satisfying the relevant criterion.

155 It must therefore be held that the applicant's second plea is well founded. Accordingly, without it being necessary to examine the other pleas in law raised by the applicant in support of the action, or the plea of illegality raised in the alternative, the action must be upheld in so far as it seeks the annulment of the March 2015 acts and the March 2016 acts, in so far as they concern the applicant.

Costs

156 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.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Annuls Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine in so far as they apply to the applicant;

2. Annuls Council Decision (CFSP) 2016/318 of 4 March 2016 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) 2015/311 of 4 March 2016 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 they apply to the applicant;

3. Orders the Council of the European Union to pay the costs.

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 8 November 2017.

E. Coulon G. Berardis

Registrar President

Table of contents

---

* Language of the case: English.

---

1 Confidential information omitted.