

Form of order sought

The applicants claim that the Court should:

- declare their action admissible;
- annul Commission Notice SA.38271 of 28 October 2014 on State Aid SA.2014/N 38271, linked to the Plan for Investment in Motorways in France, published on 20 February 2015 in the Official Journal of the European Union (OJEU).

Pleas in law and main arguments

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging that the French motorway investment plan ('MIP') would have the effect of granting a benefit specifically to concession-holding companies operating motorways, with the assistance of public funds.
2. Second plea in law, alleging that the MIP would affect competition.
3. Third plea in law, alleging overcompensation for the expenditure incurred by concession-holding companies operating motorways, which is inconsistent with the task of general economic interest with which they are entrusted.
4. Fourth plea in law, alleging a barrier to trade between the Member States.
5. Fifth plea in law, alleging that the amendments made to the MIP without a new notification having been made to the Commission since Notice SA.38271 are unlawful.

Action brought on 15 May 2015 — Ivanyushchenko/Council

(Case T-246/15)

(2015/C 236/62)

Language of the case: English

Parties

Applicant: Yuriy Volodymyrovych Ivanyushchenko (Yenakievo, Ukraine) (represented by: B. Kennelly and J. Pobjoy, Barristers, and R. Gherson, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul 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) insofar as they apply to the applicant;

- alternatively, declare that Article 1(1) of Council Decision 2014/119/CFSP of 5 March 2014 (as amended) and Article 3(1) of Council Regulation (EU) No 208/2014 of 5 March 2014 (as amended), are inapplicable insofar as they apply to the applicant by reason of illegality.

- order the Council to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging that the Council has failed to identify a proper legal base for the Council Decision (CFSP) 2015/364 (the 'Decision') and the Council Implementing Regulation (EU) 2015/357 (the 'Regulation') (together the 'Contested Measures'). Article 29 of the Treaty on the European Union is not a proper legal base for the Decision because the complaint made against the applicant did not identify him as an individual having undermined democracy in Ukraine or deprived the Ukrainian people of the benefits of the sustainable development of their country (within the meaning of Article 23 TEU and the general provisions in Article 21(2) TEU). As the Decision was invalid, the Council could not rely on Article 215(2) of the Treaty on the Functioning of the European Union to enact the Regulation.
2. Second plea in law, alleging that the Council has made manifest errors of assessment in considering that the criterion for listing the applicant in Article 1(1) of Council Decision 2014/119/CFSP of 5 March 2014 (as amended) and Article 3(1) of Council Regulation (EU) No 208/2014 of 5 March 2014 (as amended) was satisfied. The applicant is not subject to criminal proceedings 'for the misappropriation of public funds or assets'.
3. Third plea in law, alleging that the Council violated the applicant's right of defence and the right to good administration and effective judicial review. In particular, the Council failed to carefully and impartially examine whether the alleged reasons said to justify redesignation were well founded in light of the representations made by the applicant prior to redesignation.
4. Fourth plea in law, alleging that the Council has failed to comply with its obligations to provide adequate reasons for redesignating the applicant.
5. Fifth plea in law, the Council has infringed, without justification or proportion, the applicant's fundamental rights, including his right to protection of his property and reputation. The impact of the Contested Measures on the applicant is far-reaching, both as regards to his property, and to his reputation worldwide. The Council has failed to demonstrate that the freezing of the applicant's assets and economic resources is related to, or justified by, any legitimate aim, still less that it is proportionate to such an aim.
6. Sixth plea in law, raised in support of the declaration of illegality, alleging that if, contrary to the arguments advanced in the second plea, article 1(1) of Council Decision 2014/119/CFSP of 5 March 2014 (as amended) and article 3(1) of Council Regulation (EU) No 208/2014 of 5 March 2014 (as amended), are to be interpreted to capture any investigation by a Ukrainian authority irrespective of whether there is any judicial decision or proceedings underpinning, controlling or overseeing it, the designation criterion would, given the arbitrary width and scope that would result from such a broad interpretation, lack a proper legal base; and/or be disproportionate to the objectives of the Decision and Regulation. The provision would therefore be unlawful.