

### **Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission infringed the provisions of the Treaty, in so far as they relate to, and directly or indirectly regulate, the conditions for consenting to mergers, including, in particular, Articles 101 and 102 of the Treaty and the provisions for their implementation, including, in particular, Article 6(1)(b) and Article 2(1) and (2) of Regulation No 139/2004, by failing to carry out a full assessment of the negative effects of the concentration on competition, including, inter alia, an assessment of the effects of the concentration on the relevant markets determined on the basis of the O&D model. An assessment of the concentration within the O&D model, however, would bring to light a series of distortions of competition caused by that concentration.
2. Second plea in law, alleging that the Commission incorrectly assessed the effects of the concentration in relation to the possibility of providing passenger air transport services and in relation to the airports concerned by the concentration, thereby committing a gross and manifest error of assessment. A properly conducted analytical examination of the concentration would necessarily lead to the conclusion that its realisation will give rise to a series of negative effects on competition, including the creation of a dominant position for Lufthansa at certain airports.
3. Third plea in law, alleging that the Commission infringed Regulation No 95/93 by infringing the principles of neutrality, transparency and non-discrimination in relation to the allocation of slots at certain airports.
4. Fourth plea in law, alleging that the Commission infringed the Guidelines on the assessment of horizontal mergers by failing to examine whether the alleged efficiency gains occasioned by the Transaction counteract its negative effects on competition.
5. Fifth plea in law, alleging that the Commission infringed the provisions of the Treaty and the provisions for their implementation by imposing obligations on Lufthansa which do not counteract the significant distortion of competition caused by the Transaction.
6. Sixth plea in law, alleging that the Commission infringed the provisions of the Treaty, including Article 107(1) TFEU, and the provisions for their implementation by failing to take into consideration the distortion of competition in the internal market occasioned by the Transaction in the context of the State aid granted to Air Berlin.
7. Seventh plea in law, alleging that the Commission infringed Article 296 TFEU by failing to provide an adequate statement of reasons for its Decision.

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### **Action brought on 13 May 2018 — Yanukovych v Council**

**(Case T-300/18)**

(2018/C 231/59)

*Language of the case: English*

### **Parties**

*Applicant:* Viktor Feodorovych Yanukovych (Rostov on Don, Russia) (represented by: T. Beazley, QC)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- annul Council Decision (CFSP) 2018/333 of 5 March 2018 <sup>(1)</sup> and Council Implementing Regulation (EU) 2018/326 of 5 March 2018 <sup>(2)</sup>, insofar as they concern the Applicant; and
- order the Council to bear the costs of the proceedings.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Applicant does not fulfil the stated criteria for a person to be listed at the relevant time. The Council of the European Union has failed to properly take into account and consider all of the material provided to it while also being highly selective in the material that it has taken into account. Arguments in support of this plea include that: the Applicant is merely the subject of pre-trial investigations which have stagnated and are clearly not sufficient to satisfy the relevant criterion; and the materials upon which the Council has based its decision to maintain the Applicant's name on the list are wholly inadequate, inconsistent, false and are not supported by any evidence.
2. Second plea in law, alleging that the Council made manifest errors of assessment in including the Applicant in the contested measures. In re-designating the Applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error. Moreover the reasons given in relation to the first plea apply equally to the second plea.
3. Third plea in law, alleging that the Council failed to state reasons. The Council has failed to identify the actual and specific reasons for the Applicant's designation. The 'statement of reasons' adopted in the Sixth Amending Decision and Sixth Amending Regulation for including the Applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.
4. Fourth plea in law, alleging that the Applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed adequately to consult with the Applicant prior to the re-designation, and the Applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances. At not stage has the Council/Applicant been provided with serious, credible or concrete evidence to justify the imposition of restrictive measures.
5. Fifth plea in law, alleging that the Council lacked a proper legal basis for the Sixth Amending Instruments. Arguments in support of the plea include the following: (a) The conditions for the Council relying on Article 29 TEU were not fulfilled by the Sixth Amending Decision. Amongst other things: (i) The Council's expressly invoked objectives are merely vague assertions; (ii) The basis lacks any sufficient connection to the proper standard of judicial review required in the present circumstances; and (iii) the imposition of restrictive supports and legitimises the conduct of the new regime in Ukraine that is itself undermining due process and the rule of law and is systematically violating human rights; (b) The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V of TEU; (c) There was no sufficient link for Article 215 TFEU to be relied on against the Applicant.
6. Sixth plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the Sixth Amending Instruments was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the European Union), and not the purposes/rationales stated on the face of the Sixth Amending Instruments. The designation criteria represent an extraordinary and wholesale delegation of power consistent with the Council's purpose.

7. Seventh plea in law, alleging that the Applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the European Union, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the Applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the Applicant's assets since the Ukraine authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the Applicant.

- <sup>(1)</sup> Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 48).
- <sup>(2)</sup> Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5).

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**Action brought on 13 May 2018 — Yanukovych v Council**

**(Case T-301/18)**

(2018/C 231/60)

*Language of the case: English*

**Parties**

*Applicant:* Oleksandr Viktorovych Yanukovych (Saint Petersburg, Russia) (represented by: T. Beazley, QC)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- annul Council Decision (CFSP) 2018/333 of 5 March 2018 <sup>(1)</sup> and Council Implementing Regulation (EU) 2018/326 of 5 March 2018 <sup>(2)</sup>, insofar as they concern the Applicant; and
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