



## Reports of Cases

**Case T-341/14**

**Sergiy Klyuyev**

**v**

**Council of the European Union**

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Ukraine — Freezing of funds — List of persons, entities and bodies covered by the freezing of funds and economic resources — Inclusion of the applicant's name — Proof that inclusion on the list is justified)

Summary — Judgment of the General Court (Ninth Chamber), 28 January 2016

1. *Actions for annulment — Interest in bringing proceedings — Interest to be assessed at the time at which an action is brought — Action against an act imposing restrictive measures on the applicant — Repeal of the contested act in the course of the proceedings — Declaration that no need to adjudicate — Inadmissibility — Applicant maintaining an interest in obtaining recognition that the contested act unlawful*

(Art. 263 TFEU; Council Decision 2014/119/CFSP, as amended by Decisions 2015/364/CFSP and 2015/876/CFSP; Council Regulation No 208/2014, as amended by Regulations 2015/357 and 2015/869)

2. *European Union — Judicial review of the legality of the acts of the institutions — Restrictive measures taken having regard to the situation in Ukraine — Ambit of the review — Proof that the measure well-founded — Obligation on the competent EU authority to establish, in the event of challenge, that the grounds held against the persons or entities concerned well-founded*

(Charter of Fundamental Rights of the European Union, Art. 47; Council Decision 2014/119/CFSP; Council Regulation No 208/2014)

3. *Judicial proceedings — Decision or regulation replacing the contested measure in the course of proceedings — New factor — Extension of the initial pleadings — Condition — No statement of the adapted pleas and arguments — Inadmissibility*

(Rules of Procedure of the General Court, Art. 86(3); Council Decision 2014/119/CFSP, as amended by Decision 2015/876/CFSP; Council Regulation No 208/2014, as amended by Regulation 2015/869)

1. In an annulment action, the interest of the applicant in bringing proceedings must continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it.

In the case of an application for the annulment of Council acts entering the name of the applicant on a list of persons covered by restrictive measures taken having regard to the situation in Ukraine, the fact that those acts are no longer in force at the time judgment is delivered, given that they were amended,

in so far as they concern the applicant, cannot be equated with annulment by the Court of acts adopted initially, in so far as that amendment does not amount to recognition of the illegality of the acts in question. The applicant therefore retains an interest in bringing proceedings arising from the fact that recognition of the illegality of the contested acts may form the basis of a subsequent action for compensation for damage suffered as a result of those acts during the period of their application.

(see paras 27, 31-33)

2. Although the Council has a broad discretion as regards the general criteria to be taken into consideration for the purpose of adopting restrictive measures, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which form the basis of the decision to include or to maintain a person's name on the list of persons subject to restrictive measures, the Courts of the European Union must 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.

In that regard, in order to enter the name of a person on the list of persons subject to restrictive measures, on the ground that he had been identified as responsible for the misappropriation of State funds, the Council must have a sufficiently solid factual basis, namely information concerning the facts or conduct specifically alleged against that person.

Furthermore, it is for the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded.

(see paras 38, 49, 51)

3. See the text of the decision.

(see paras 59-72)