

Form of order sought

The applicant claims that the Court should:

- annul Council Decision 2015/1781/CFSP of 5 October 2015 amending Council Decision 2014/119 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Implementing Regulation (EU) No 2015/1777 implementing Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine insofar as they apply to the applicant; and
- order the defendant to pay the applicant's costs.

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 failed to identify a proper legal base. Article 29 TEU was not a proper legal base for the contested decision because the complaint made against the applicant did not identify him as an individual having undermined the rule of law or human rights in Ukraine (within the meaning of Articles 21(2) and 23 TEU). As the decision was invalid, the Council could not rely on Article 215(2) TFEU to enact the contested regulation. At the time that the restrictive measures were imposed, there was no charge against the applicant in the context of judicial proceedings that his activities threatened to undermine the rule of law, or violated any human rights in Ukraine. The restrictive measures in fact endorse a violation of the rule of law by the Ukrainian authorities in their treatment of the applicant.
2. Second plea in law, alleging that the Council made a manifest error of appreciation in finding that the applicant satisfied the criterion for listing. The allegations presented to the Council by the prosecutor general's office were excessively generic and unsupported by any (still less 'concrete') evidence of any judicial proceedings against the applicant. The applicant pointed out the errors in the allegations in advance of the restrictive measures and the Council failed to obtain answers and the necessary evidence from the Ukrainian authorities. The Council erred in accepting the allegations at face value, not least because of the lack of a judicial process in Ukraine which meets European standards.
3. Third plea in law, alleging that the Council violated the applicant's rights of defence and the right to effective judicial protection. In a re-designation case, the Council has a heightened duty to make full inquiries of the requesting authorities and to provide that information to the designated person. That duty was breached in this instance.
4. Fourth plea in law, alleging that the Council failed to give the applicant sufficient reasons for his inclusion. These reasons given were insufficiently detailed and precise.
5. Fifth plea in law, alleging that the Council severely infringed the applicant's fundamental rights to property and reputation. The restrictive measures were imposed without proper safeguards enabling the applicant to put his case effectively to the Council. The restrictive measures are not restricted to any specific property which is said to represent misappropriated state funds or even limited to the amount of funds alleged to have been misappropriated.
6. Sixth plea in law, alleging that to the extent that the Council is correct that the criteria for designation can extend to any investigation unconnected to judicial proceedings, the criteria are disproportionate and illegal.

Action brought on 16 December 2015 — Portuguese Republic v Commission**(Case T-733/15)**

(2016/C 068/45)

*Language of the case: Portuguese***Parties**

Applicant: Portuguese Republic (represented by: L. Inez Fernandes and M. Figueiredo, Agents, assisted by L. Silva Morais, lawyer)

Defendant: European Commission

Form of order sought

- Annul the Commission decision notified by the Secretariat-General of the Commission in Case SG-Greffe (2015) D/11533 of 12 October 2015;⁽¹⁾
- order the European Commission to pay the costs.

Pleas in law and main arguments

The Portuguese Republic maintains that the request for payment sent by the Secretariat-General of the European Commission in Case SG-Greffe (2015) D/11533 of 12 October 2015 is flawed by reason of the following and must, therefore, be declared invalid:

1. There is no justification for the contested measure as the Commission has usurped the powers of EU judicature and therefore lacks competence.
2. The measure is based on an artificial division of the effects of the judgment of the Court of Justice in Case C-76/13, thus resulting in infringement of the Treaties or of any rule of law relating to their application.
3. The Commission measure that is contested in this annulment action disregards the principle of *res judicata*, resulting once again in infringement of the Treaties or of any rule of law relating to their application.
4. The measure is also unlawful on the ground that it disregards the principles of legal certainty, the stability of legal relations and legitimate expectations, recognised by EU law.
5. The measure infringes the principle of the prohibition of double penalties, which precludes obtaining, through a new individual legal act, what could not be obtained previously by means of the judicial decision, resulting in infringement of the Treaties or of any rule of law relating to their application.

⁽¹⁾ Decision of the Director General of the Directorate-General for Communications Networks, Content and Technology of the European Commission, which required the Portuguese Republic to pay, between 25 June and 21 August 2014, the sum of EUR 580 000 by way of application of the periodic penalty payment which it was ordered to pay by the Court of Justice in Case C-76/13.

Appeal brought on 17 December 2015 by the European Commission against the judgment of the Civil Service Tribunal of 6 October 2015 in Case F-119/14, FE v Commission

(Case T-734/15 P)

(2016/C 068/46)

Language of the case: French

Parties

Appellant: European Commission (represented by F. Simonetti and G. Gattinara, acting as Agents)

Other party to the proceedings: FE (Luxembourg, Luxembourg)

Form of order sought by the appellant

The appellant claims that the Court should:

- set aside the judgment of the Civil Service Tribunal of 6 October 2015 in Case F-119/14, *FE v Commission*;
- dismiss the action brought by FE in Case F-119/14 as unfounded;