



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

23 October 2024*

(Common Foreign and Security Policy – Restrictive measures taken in view of actions destabilising Moldova – Freezing of funds – Restrictions on entry into the territories of the Member States – Lists of persons, entities and bodies subject to the freezing of funds and to restrictions on entry into the territories of the Member States – Inclusion of the applicant's name on the lists – Criminal investigations and prosecutions initiated by the authorities of a third State – Obligation to verify that that decision observes the rights of the defence and the right to effective judicial protection – Obligation to state reasons)

In Case T-480/23,

Vladimir Gheorghe Plahotniuc, residing in Chişinău (Moldova), represented by J. Pobjoy, Barrister-at-Law,

applicant,

v

Council of the European Union, represented by A. Boggio-Tomasaz and P. Mahnič, acting as Agents, and by E. Raoult, lawyer,

defendant,

THE GENERAL COURT (Fifth Chamber),

composed of J. Svenningsen, President, C. Mac Eochaidh (Rapporteur) and M. Stancu, Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was made and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

* Language of the case: English

Judgment

- 1 By his action under Article 263 TFEU, the applicant, Mr Vladimir Gheorghe Plahotniuc, seeks annulment of Council Decision (CFSP) 2023/1047 of 30 May 2023 amending Decision (CFSP) 2023/891 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 140 I, p. 9) and of Council Implementing Regulation (EU) 2023/1045 of 30 May 2023 implementing Regulation (EU) 2023/888 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 140 I, p. 1), in so far as those acts (together, ‘the contested acts’) concern the applicant.

Background to the dispute

- 2 The applicant is a politician and businessman of Moldovan nationality.
- 3 On 28 April 2023, the Council of the European Union adopted, pursuant to Article 29 TEU, Council Decision (CFSP) 2023/891 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 114, p. 15) and, pursuant to Article 215 TFEU, Council Regulation (EU) 2023/888 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 114, p. 1).
- 4 According to the recitals of Decision 2023/891, the Moldovan government has been increasingly faced with direct threats to its stability coming from both internal groups with vested interests and from Russia, which often collude to derail the country from its reform path.
- 5 Article 1(1) of Decision 2023/891 provides as follows:

‘Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:

- (a) natural persons responsible for, supporting or implementing actions or policies which undermine or threaten the sovereignty and independence of the Republic of Moldova, or democracy, the rule of law, stability or security in the Republic of Moldova through any of the following actions:
 - (i) obstructing or undermining the democratic political process, including by obstructing or seriously undermining the holding of elections or attempting to destabilise or overthrow the constitutional order;
 - (ii) planning, directing, engaging in, directly or indirectly, supporting or otherwise facilitating violent demonstrations or other acts of violence; or
 - (iii) serious financial misconduct concerning public funds and the unauthorised export of capital;

...

as listed in the Annex.’

- 6 Under Article 2(1)(a) of Decision 2023/891, all funds and economic resources belonging to, owned, held or controlled by natural persons, entities or bodies meeting criteria which are essentially identical to those set out in Article 1(1)(a) of that decision, as listed in the annex thereto, are to be frozen.

- 7 Article 2(3)(a) of Regulation 2023/888 provides that Annex I to that regulation is to include, inter alia, natural or legal persons, entities or bodies meeting criteria which are essentially identical to those set out in Article 1(1)(a) of Decision 2023/891 ('the listing criteria at issue').
- 8 According to Article 2(1) of Regulation 2023/888, all funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body listed in Annex I to that regulation are to be frozen.
- 9 Article 2(2) of Regulation 2023/888 provides that no funds or economic resources are to be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I to that regulation.
- 10 The annex to Decision 2023/891 and Annex I to Regulation 2023/888 contain, respectively, the 'list of natural and legal persons, entities and bodies referred to in Articles 1 and 2' and the 'list of natural and legal persons, entities and bodies referred to in Article 2'.
- 11 On 30 May 2023, the Council adopted the contested acts.
- 12 By the contested acts, the Council added five persons, including the applicant, to the list of natural and legal persons, entities and bodies set out in the annex to Decision 2023/891 and in Annex I to Regulation 2023/888 (together, 'the lists at issue').
- 13 In the contested acts, the Council justified the adoption of the restrictive measures concerning the applicant by reference to the following grounds ('the grounds for the listing at issue'):

'Vladimir Plahotniuc is subject to numerous criminal proceedings in the Republic of Moldova related to crimes in connection with the embezzlement of State funds of the Republic of Moldova and their illegal transfer outside the Republic of Moldova. He was accused in the Republic of Moldova in the "Bank Fraud" case, the economic effects of which are still affecting the country. He is also being investigated for bribing the former president of the Republic of Moldova with a bag of cash in exchange for political favours.

Through his serious financial misconduct concerning public funds and the unauthorised export of capital, Vladimir Plahotniuc is responsible for actions and implementing policies which undermine and threaten the democracy, the rule of law, stability or security in the Republic of Moldova through undermining the democratic political process in the Republic of Moldova and serious financial misconduct concerning public funds.'

- 14 On 31 May 2023, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons subject to the restrictive measures provided for in Council Decision (CFSP) 2023/891, as amended by Council Decision (CFSP) 2023/1047 and in Council Regulation (EU) 2023/888, as implemented by Council Implementing Regulation (EU) 2023/1045 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 C 190, p. 5).

Forms of order sought

- 15 The applicant claims that the Court should:
- annul the contested acts in so far as they concern him;

– order the Council to pay the costs.

16 The Council contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

17 In support of his claim for annulment, the applicant relies on two pleas in law, the first alleging manifest error of assessment and the second alleging infringement of his rights under Article 6 TEU, read in conjunction with Articles 2 and 3 TEU, and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.

Preliminary observations

18 As a preliminary point, it should be noted that the grounds for the listing at issue, which are reproduced in paragraph 13 above, are somewhat imprecise and ambiguous.

19 First, the Council bases that listing on the criminal investigations and prosecutions conducted against the applicant in the ‘Bank Fraud’ case and for ‘bribing the former president of the Republic of Moldova’, but it also refers, without providing further details, to ‘numerous criminal proceedings in the Republic of Moldova related to crimes in connection with the embezzlement of State funds of the Republic of Moldova and their illegal transfer outside the Republic of Moldova’.

20 As regards the last reference, it should be borne in mind that the statement of reasons for an act of the Council which imposes a measure freezing funds must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned (judgment of 15 November 2012, *Council v Bamba*, C-417/11 P, EU:C:2012:718, paragraph 52).

21 However, it is not necessary for the reasoning to go into all the relevant facts and points of law, inasmuch as the question whether the statement of reasons for an act meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 18 May 2022, *Foz v Council*, T-296/20, EU:T:2022:298, paragraph 39 (not published)).

22 In particular, the reasons given for an act adversely affecting a person are sufficient if that act was adopted in a context which was known to the person concerned and which enables that person to understand the scope of the measure concerning him or her (judgment of 18 May 2022, *Foz v Council*, T-296/20, EU:T:2022:298, paragraph 40 (not published)).

23 That is the case here as regards the reference in the grounds for the listing at issue, namely to ‘numerous criminal proceedings’. The existence or otherwise of such proceedings against the person concerned must be regarded as forming part of the context known to him.

- 24 Furthermore, even though the Council may refer to an indefinite number of criminal proceedings, it nevertheless specifies the nature and purpose of those proceedings. Only proceedings concerning certain specific offences are covered, namely ‘criminal proceedings ... related to crimes in connection with the embezzlement of State funds of the Republic of Moldova and their illegal transfer outside the Republic of Moldova’. Such considerations of fact that were the basis for the Council’s view that the applicant should be subject to the restrictive measures provided for by the contested acts are thus sufficiently detailed to enable him to challenge their correctness before the Courts of the European Union (see, by analogy, judgment of 27 February 2014, *Ezz and Others v Council*, T-256/11, EU:T:2014:93, paragraph 114).
- 25 Secondly, in the second paragraph of the grounds for including the applicant on the lists at issue, which is supposed to identify the legal basis for the contested acts, the Council employed wording that gives rise to ambiguity as regards the criteria – referred to in Article 2(3)(a) of Regulation 2023/888 and Article 1(1)(a) of Decision 2023/891 – which served as the basis for that listing.
- 26 In that regard, it should be borne in mind that, in addition to indicating the legal basis for the measure adopted, the obligation to state reasons relates precisely to the circumstances which enable it to hold that one or other of the listing criteria is satisfied in the case of the parties concerned. Against that background, failure to refer to a precise provision need not necessarily constitute an infringement of essential procedural requirements when the legal basis for the act may be determined from other parts of the act. However, such explicit reference is indispensable where, in its absence, the parties concerned and the Courts of the European Union are left uncertain as to the precise legal basis (see, to that effect, judgment of 25 March 2015, *Central Bank of Iran v Council*, T-563/12, EU:T:2015:187, paragraphs 67 and 68).
- 27 In the light of the wording of the grounds for the listing at issue, it is not possible to determine with certainty whether the applicant’s listing is based solely on the criterion of serious financial misconduct concerning public funds and the unauthorised export of capital (referred to in Article 2(3)(a)(iii) of Regulation 2023/888 and Article 1(1)(a)(iii) of Decision 2023/891) or also on the criterion of undermining the democratic political process in the Republic of Moldova (referred to in Article 2(3)(a)(i) of Regulation 2023/888 and Article 1(1)(a)(i) of Decision 2023/891).
- 28 In that regard, the beginning of the second paragraph of the grounds for the listing at issue states that the said listing is justified by ‘serious financial misconduct concerning public funds and the unauthorised export of capital’ and that those facts support the conclusion that the applicant ‘is responsible for actions and implementing policies which undermine and threaten the democracy, the rule of law, stability or security in the Republic of Moldova’, as provided for in Article 2(3)(a) of Regulation 2023/888 and Article 1(1)(a) of Decision 2023/891. However, the end of that paragraph appears to revisit the criteria on which that listing is based, this time referring only to serious financial misconduct and not to the unauthorised export of capital, while adding that the applicant undermined the democratic political process in the Republic of Moldova.
- 29 The result of such wording is that the Council not only refers, at the beginning and at the end of the sentence, to what appear to be the criteria on which the applicant’s inclusion on the lists at issue is based, but also does not rely on the same criteria in both places.
- 30 The uncertainty generated by that drafting is compounded by the fact that, in the case of the applicant, the Council departed from the structure used to draft the grounds relied on in the contested acts with regard to the other four persons included on the lists at issue, a structure which on each occasion meant that the Council, in the first place, identified the criterion or

criteria on which the listing was based and, in the second place, concluded that those criteria made it possible to satisfy the listing condition laid down in Article 2(3)(a) of Regulation 2023/888 and Article 1(1)(a) of Decision 2023/891.

- 31 In addition, it is apparent at the very least from the French-language version of the contested acts that the Council referred to ‘serious financial misconduct concerning public funds and the unauthorised export of capital in an unauthorised manner’ and, in so doing, relied on a criterion that was not only superfluous but also distinct from that referred to in Article 2(3)(a)(iii) of Regulation 2023/888 and Article 1(1)(a)(iii) of Decision 2023/891.
- 32 Such ambiguous wording is liable to give rise to a reasonable doubt as to whether the Council actually relied on the criterion of undermining the democratic political process in the Republic of Moldova vis-à-vis the applicant. Accordingly, that wording could reasonably lead the applicant to believe that his inclusion on the lists at issue was based solely on the criterion of serious financial misconduct concerning public funds and the unauthorised export of capital.
- 33 Although such ambiguity is not capable of establishing that the statement of reasons for the contested acts, taken as a whole, is inadequate, it nevertheless means that the Court is bound to consider that the applicant’s inclusion on the lists at issue is based solely on the criterion of serious financial misconduct concerning public funds and the unauthorised export of capital.
- 34 This also means that the wording of the contested acts does not support the Council’s claim that the applicant’s inclusion on the lists at issue was justified under the two criteria referred to in paragraph 27 above. Consequently, that institution cannot validly maintain that the applicant challenged only one of the two grounds for his inclusion on those lists. Nor can it validly claim that, as a result, his pleas in law are ineffective and his action unfounded.
- 35 It follows from the foregoing that, in the context of the examination of the pleas in law raised by the applicant and, in particular, his second plea, which should be examined at the outset, it is necessary to determine whether the Council infringed the applicant’s rights under Article 6 TEU, read in conjunction with Articles 2 and 3 TEU, and Articles 47 and 48 of the Charter of Fundamental Rights, only as regards his inclusion on the lists at issue pursuant to the criterion of serious financial misconduct concerning public funds and the unauthorised export of capital and on the basis of the grounds stated in the first paragraph of the grounds for the listing at issue, namely the existence of (i) criminal proceedings in the Republic of Moldova related to crimes in connection with the embezzlement of State funds and their illegal export, and (ii) criminal investigations and prosecutions in the ‘Bank Fraud’ case and for ‘bribing the former president of the Republic of Moldova’.
- 36 Thus, the Council cannot reasonably argue that it is for the Court to verify only whether it adduced evidence capable of establishing, in general terms, that the applicant was responsible for, supported or implemented actions or policies which undermine or threaten the sovereignty and independence of the Republic of Moldova, or democracy, the rule of law, stability or security in the Republic of Moldova, as provided for in Article 2(3)(a) of Regulation 2023/888 and Article 1(1)(a) of Decision 2023/891, without having to link the conduct concerned to any of the three criteria laid down in those provisions, or without taking account of the statement of reasons and the matters of fact referred to in the first paragraph of the grounds for the listing at issue.

The second plea, alleging infringement of the applicant's rights under Article 6 TEU, read in conjunction with Articles 2 and 3 TEU, and Articles 47 and 48 of the Charter of Fundamental Rights

- 37 By his second plea in law, the applicant claims that, before adopting the contested acts, the Council failed to verify whether the criminal investigations and criminal proceedings initiated against him in Moldova, referred to in the first paragraph of the grounds for the listing at issue, observed his fundamental rights, even though those proceedings were, he submits, affected by numerous irregularities. The applicant thus maintains that, if the Council had carried out the appropriate verifications, it would have reached the conclusion that those proceedings could not be relied on to justify the restrictive measures adopted against him.
- 38 Therefore, it is argued, the Council infringed Article 6 TEU, read in conjunction with Article 2 and Article 3(5) TEU, and Articles 47 and 48 of the Charter of Fundamental Rights.
- 39 The Council disputes that line of argument.
- 40 According to the Court's case-law, in a review of restrictive measures, the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all EU acts in the light of the fundamental rights forming an integral part of the EU legal order (see judgment of 19 December 2018, *Azarov v Council*, C-530/17 P, EU:C:2018:1031, paragraph 20 and the case-law cited).
- 41 As regards, in particular, the inclusion of persons on the lists of restrictive measures on grounds based exclusively on decisions of the authorities of third States, which were competent to make them, to initiate criminal investigations or criminal proceedings concerning offences of embezzlement of State funds, it is for the Council to verify whether those decisions were adopted in accordance with the rights of the defence and the right to effective judicial protection (see, to that effect, judgment of 19 December 2018, *Azarov v Council*, C-530/17 P, EU:C:2018:1031, paragraphs 25 and 26 and the case-law cited).
- 42 That requirement means that the Council must refer, if only briefly, in the statement of reasons relating to a decision to include a person or entity on a list of persons and entities whose assets are to be frozen, to the reasons why it considers the decision of the third State on which it intends to rely to have been adopted in accordance with the rights of the defence and the right to effective judicial protection (see judgment of 19 December 2018, *Azarov v Council*, C-530/17 P, EU:C:2018:1031, paragraph 29 and the case-law cited).
- 43 If it does not do so, the Council fails to fulfil its obligation to state reasons under the second paragraph of Article 296 TFEU, which it is for the Courts of the European Union to raise, if need be of their own motion (see, to that effect, judgment of 19 December 2018, *Azarov v Council*, C-530/17 P, EU:C:2018:1031, paragraph 30 and the case-law cited).
- 44 In the present case, the statement of reasons for the contested acts shows that the applicant's inclusion on the lists at issue is based exclusively on decisions of the Moldovan authorities to conduct criminal investigations and criminal proceedings against him.
- 45 It is true that it is apparent from the evidence pack, attached as Annexes B.1 and B.2 to the defence, that the Council did not rely directly on decisions of the Moldovan authorities, which were competent to make them, to initiate criminal investigations or criminal proceedings

concerning offences of embezzlement of State funds; rather, it essentially relied on press articles and press releases issued by the prosecutorial or investigating authorities of the Republic of Moldova, on official announcements by State bodies of third countries or on reports, all of which refer to such criminal investigations and criminal proceedings.

- 46 However, that fact cannot, in the instant case, release the Council from the verification obligation and the obligation to state reasons imposed on it pursuant to the case-law cited paragraphs 41 and 42 above.
- 47 On the contrary, that case-law must be applied all the more strictly to the Council, since the only evidence on which it relies is indirect evidence of the investigation measures and prosecutions justifying the applicant's inclusion on the lists at issue. In addition, the Court notes that, in order to maintain a person's name on those lists, the third paragraph of Article 8 of Decision 2023/891 requires the Council to take account of the existence of judicial proceedings in respect of the conduct for which that person was initially listed.
- 48 Thus, irrespective of the evidence on which the initial listing is based, the Council may rely, directly or indirectly, on decisions of the authorities of third States to initiate criminal investigations or criminal proceedings only if it complies with the obligations stemming from the case-law cited in paragraphs 41 and 42 above.
- 49 Any other conclusion would allow the Council to evade the strict obligations imposed by the case-law of the Court of Justice, in that rather than relying on documents emanating from the authorities of the States concerned with competence to initiate criminal investigations or criminal proceedings concerning offences of embezzlement of State funds, it could act solely on the basis of documents which merely refer to them.
- 50 In the present case, it is neither disputed nor open to dispute that, in the grounds for the listing at issue, the Council failed to show that it had verified that the prosecutions referred to in those grounds had been conducted in accordance with the applicant's rights of defence and right to effective judicial protection.
- 51 In that regard, it should also be noted that, in its defence, the Council does not deny that it failed to carry out the verifications in question nor, a fortiori, that it failed to disclose the outcome of those verifications in the contested acts.
- 52 It must therefore be held that, as regards the only two elements which could be taken into consideration in order to assess whether the contested acts are well founded (see paragraph 35 above), the Council failed to fulfil its obligation to state reasons.
- 53 That conclusion is not undermined by the Council's argument that, in essence, the applicant cannot rely on the judgment of 3 December 2020, *Saleh Thabet and Others v Council* (C-72/19 P and C-145/19 P, not published, EU:C:2020:992), since, in those two cases, the restrictive measures were based on the existence of judicial proceedings against the applicants or asset recovery proceedings following a final court ruling in respect of the misappropriation of State funds, as required by the applicable listing criteria. The Council claims that those circumstances contrast sharply with the listing criteria in the present case, which, first, do not require the listed person to be subject to investigations in the context of criminal proceedings and, secondly, particularly as regards the criterion of undermining the democratic political process in the Republic of Moldova, cannot be considered to be met by a mere reference to criminal proceedings.

- 54 The Court of Justice has already had occasion to rule that it is irrelevant that the existence of decisions of the authorities of a third State, which were competent to make them, to initiate and conduct a criminal investigation concerning an offence of misappropriation of public funds constitutes not the listing criteria at issue, but rather the factual basis for the restrictive measures at issue (see, to that effect and by analogy, judgments of 19 December 2018, *Azarov v Council*, C-530/17 P, EU:C:2018:1031, paragraph 25, and of 11 July 2019, *Azarov v Council*, C-416/18 P, not published, EU:C:2019:602, paragraph 26).
- 55 It follows that the second plea in law must be upheld and that the contested acts must be annulled in so far as they concern the applicant, without it being necessary to examine the remainder of his arguments.

Costs

- 56 Under Article 134(1) of the Rules of Procedure of the General Court, 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 (Fifth Chamber)

hereby:

- 1. Annuls Council Decision (CFSP) 2023/1047 of 30 May 2023 amending Decision (CFSP) 2023/891 concerning restrictive measures in view of actions destabilising the Republic of Moldova and Council Implementing Regulation (EU) 2023/1045 of 30 May 2023 implementing Regulation (EU) 2023/888 concerning restrictive measures in view of actions destabilising the Republic of Moldova, in so far as they concern Mr Vladimir Gheorghe Plahotniuc;**
- 2. Orders the Council of the European Union to pay the costs.**

Svenningsen

Mac Eochaidh

Stancu

Delivered in open court in Luxembourg on 23 October 2024.

V. Di Bucci
Registrar

S. Papasavvas
President