Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

15 June 2017*

(Common foreign and security policy — Restrictive measures in respect of actions undermining or threatening Ukraine — Freezing of funds — Restrictions on entry into the territories of the Member States — Natural person actively supporting or implementing actions undermining or threatening Ukraine — Obligation to state reasons — Manifest error of assessment — Freedom of expression — Proportionality — Rights of defence)

In Case T-262/15,

Dmitrii Konstantinovich Kiselev, residing in Korolev (Russia), represented by J. Linneker, Solicitor, T. Otty, Barrister, and B. Kennelly QC,

applicant,

v

Council of the European Union, represented by V. Piessevaux and J.-P. Hix, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking the annulment of (i) Council Decision (CFSP) 2015/432 of 13 March 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 70, p. 47) and Council Implementing Regulation (EU) 2015/427 of 13 March 2015 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 70, p. 1), (ii) Council Decision (CFSP) 2015/1524 of 14 September 2015 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 239, p. 157) and Council Implementing Regulation (EU) 2015/1514 of 14 September 2015 implementing Regulation No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2015 L 239, p. 30), and (iii) Council Decision (CFSP) 2016/359 of 10 March 2016 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2016 L 67, p. 37) and Council Implementing Regulation (EU) 2016/353 of 10 March 2016 implementing Regulation No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2016 L 67, p. 1), in so far as those measures apply to the applicant,

THE GENERAL COURT (Ninth Chamber),

composed of G. Berardis (Rapporteur), President, V. Tomljenović and D. Spielmann, Judges,

* Language of the case: English.

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 September 2016,

gives the following

Judgment

Background to the dispute

1 On 17 March 2014, the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16).

2 On the same date, the Council adopted, on the basis of Article 215(2) TFEU, Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6).

3 By Council Implementing Decision 2014/151/CFSP of 21 March 2014 implementing Decision 2014/145 (OJ 2014 L 86, p. 30) and by Council Implementing Regulation (EU) No 284/2014 of 21 March 2014 implementing Regulation No 269/2014 (OJ 2014 L 86, p. 27), the name of the applicant, Dmitrii Konstantinovich Kiselev, was included on the lists of persons subject to the restrictive measures provided for in that regulation and that decision ('the lists at issue') for the following reasons:

'Appointed by Presidential Decree on 9 December 2013 Head of the Russian Federal State news agency "Rossiya Segodnya". Central figure of the government propaganda supporting the deployment of Russian forces in Ukraine.'

4 Subsequently, on 25 July 2014, the Council adopted Decision 2014/499/CFSP amending Decision 2014/145 (OJ 2014 L 221, p. 15) and Regulation (EU) No 811/2014 amending Regulation No 269/2014 (OJ 2014 L 221, p. 11) in order, inter alia, to amend the criteria by which natural or legal persons, entities or bodies could be made subject to the restrictive measures at issue.

5 Article 2(1) and (2) of Decision 2014/145, as amended by Decision 2014/499 ('Decision 2014/145, as amended'), is worded as follows:

'1. All funds and economic resources belonging to, or owned, held or controlled by:

(a) natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them;

...

as listed in the Annex, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.'

6 The detailed rules for the freezing of those funds are set out in the subsequent paragraphs of that article.

7 Article 1(1)(a) of Decision 2014/145, as amended, prohibits the entry into or transit through the territories of the Member States of natural persons who satisfy essentially the same criteria as those set out in Article 2(1)(a) of that decision.

8 Regulation No 269/2014, as amended by Regulation No 811/2014 ('Regulation No 269/2014, as amended'), requires the adoption of measures to freeze funds and lays down the detailed rules governing that freezing in terms essentially identical to those of Decision 2014/145, as amended. Article 3(1)(a) of that regulation largely reproduces Article 2(1)(a) of that decision.

9 By letter of 4 February 2015 ('the letter of 4 February 2015'), the applicant, through his lawyers, made a request to the Council pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) for, inter alia, access to the documents on which his inclusion on the lists at issue had been based.

10 By letter of 13 February 2015, sent to the applicant's lawyers, the Council informed the applicant, inter alia, that it intended to extend the duration of the restrictive measures against him until September 2015 and invited him to present observations in that regard by 26 February 2015 at the latest.

11 By letter of 25 February 2015 ('the letter of 25 February 2015'), the applicant, through the same lawyers, replied to that invitation, asserting that the adoption of restrictive measures against him was not justified.

12 On 13 March 2015, the Council adopted Decision (CFSP) 2015/432 amending Decision 2014/145 (OJ 2015 L 70, p. 47) and Implementing Regulation (EU) 2015/427 implementing Regulation No 269/2014 (OJ 2015 L 70, p. 1) ('the measures of March 2015'), by which, after reviewing the individual designations, it maintained the applicant's name on the lists at issue until 15 September 2015, without amending the statement of reasons in respect of the applicant.

13 By letter of 16 March 2015 ('the letter of 16 March 2015'), the Council notified the measures of March 2015 to the applicant's lawyers, stating in particular that the arguments which the applicant had raised in the letter of 25 February 2015 did not cast doubt on the validity of the reasons adopted in his case, since the State news agency of the Russian Federation Rossiya Segodnya ('RS') had given coverage of the events in Ukraine which was favourable to the Russian Government and had thus provided support to the policy of that government in relation to the situation in Ukraine.

Procedure and forms of order sought

14 By application lodged at the Court Registry on 22 May 2015, the applicant brought an action for annulment of the March 2015 measures, in so far as they concerned him.

15 On 14 September 2015, by Decision (CFSP) 2015/1524 amending Decision 2014/145 (OJ 2015 L 239, p. 157) and by Implementing Regulation (EU) 2015/1514 implementing Regulation No 269/2014 (OJ 2015 L 239, p. 30) ('the September 2015 measures'), the application of the restrictive measures at issue was extended by the Council until 15 March 2016, without any amendment to the statement of reasons in respect of the applicant.

16 By document lodged at the Court Registry on 24 November 2015, the applicant, in accordance with Article 86 of the Rules of Procedure of the General Court, modified the application so as to cover also the annulment of the September 2015 measures, in so far as they concerned him.

17 The Council submitted observations on that request by document lodged at the Court Registry on 6 January 2016.

18 On 10 March 2016, by Decision (CFSP) 2016/359 amending Decision 2014/145 (OJ 2016 L 67, p. 37) and by Implementing Regulation (EU) 2016/353 implementing Regulation No 269/2014 (OJ 2016 L 67, p. 1) ('the March 2016 measures'), the Council extended the application of the restrictive measures at issue until 15 September 2016, without amending the statement of reasons concerning the applicant.

19 By a statement lodged at the Court Registry on 20 May 2016, the applicant modified the application so as to cover also the annulment of the March 2016 measures, in so far as they concerned him.

20 The Council submitted observations on that request by document lodged at the Court Registry on 14 June 2016.

21 Acting upon a proposal of the Judge-Rapporteur, the Court (Ninth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure under Article 89(3) of the Rules of Procedure, put questions to the parties, requesting them to reply to some in writing, and to the others at the hearing.

22 The parties' written replies were lodged at the Court Registry within the prescribed period.

23 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 28 September 2016. At that hearing, the Court authorised the applicant to submit a document, which the applicant lodged the following day. The Council submitted its written observations on that document on 24 October 2016 and the President of the Ninth Chamber of the General Court therefore closed the oral part of the procedure on 26 October 2016.

24 The applicant claims that the Court should:

— annul the measures of March 2015, of September 2015 and of March 2016 ('the contested measures'), in so far as they concern him;

— order the Council to pay the costs.

25 The Council contends that the Court should:

— dismiss the action;

— reject the modifications of the application;

— order the applicant to pay the costs.

Law

26 In support of his action, the applicant relies on six pleas in law alleging (i) a manifest error of assessment with regard to the application to his situation of the designation criterion set out in Article 1(1)(a) and Article 2(1)(a) of Decision 2014/145, as amended, and in Article 3(1)(a) of Regulation No 269/2014, as amended, (ii) infringement of the right to freedom of expression, (iii) infringement of the rights of the defence and of the right to effective judicial protection, (iv) failure to comply with the obligation to state reasons, (v) in the alternative, that the criterion at issue would be incompatible with the right to freedom of expression, and therefore unlawful, if it allowed the imposition of restrictive measures on journalists exercising that right and (vi) breach of the

Agreement on partnership and cooperation between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part (OJ 1997 L 327, p. 3; 'the Partnership Agreement').

27 It is appropriate to examine, first of all, the sixth plea, then the fourth plea, next the first and second pleas, followed by the fifth plea and, lastly, the third plea.

A – *The sixth plea, alleging a breach of the Partnership Agreement*

28 The applicant claims that, in adopting the restrictive measures at issue, the Council failed to take account of the requirements of the Partnership Agreement. In particular, he submits, the contested measures infringe paragraphs 1, 5 and 8 of Article 52 of that Agreement, which provide, respectively, that restrictions on the free movement of capital between the EU and Russia are prohibited, that the contracting parties may not introduce restrictions following a transitional period of five years, and that the Cooperation Council established under Article 90 of that Agreement must be consulted. In addition, he argues, the Council made no attempt to justify the breaches of the Partnership Agreement. The applicant states in this regard that neither Decision 2014/145 nor Regulation No 269/2014, as amended, contains provisions which can justify the restrictive measures in the light of Article 99(1)(d) of the Partnership Agreement, which permits the parties to that agreement to disregard it in order to take measures necessary for the protection of their essential security interests 'in time of war or serious international tension constituting threat of war'.

29 The Council disputes the applicant's arguments.

30 As a preliminary point, it must be noted that paragraphs 1, 5 and 8 of Article 52 of the Partnership Agreement indeed ensure the free movement of capital between the EU and the Russian Federation.

31 Nevertheless, Article 99(1)(d) of that agreement lays down an exception which may be invoked unilaterally by a party in order to take the measures that it considers necessary for the protection of its essential security interests, in particular 'in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security'.

32 First, it must be observed that, as the Council emphasised, under the Partnership Agreement, a party that wishes to take measures on the basis of that provision is not required to inform the other party beforehand, nor to consult it or provide it with reasons for its action.

33 Secondly, as regards the situation in Ukraine when the contested measures were adopted, it may be considered that the actions of the Russian Federation constitute 'war or serious international tension constituting threat of war' within the meaning of Article 99(1)(d) of the Partnership Agreement. In view of the interest of the European Union and its Member States in having, as a neighbour, a stable Ukraine, it could be considered necessary to adopt restrictive measures in order to exert pressure on the Russian Federation to cease its activities undermining or threatening the territorial integrity, sovereignty or independence of Ukraine. Furthermore, those measures could be aimed at 'maintaining peace and international security', which is also mentioned in that article.

34 Accordingly, it must held that the restrictive measures at issue are compatible with the exemptions in relation to security laid down in Article 99(1)(d) of the Partnership Agreement.

35 In the light of those considerations the sixth plea must be rejected.

B – *The fourth plea, alleging infringement of the obligation to state reasons*

36 The applicant argues that the statement of reasons adopted by the Council to justify including and maintaining his name on the lists at issue is not sufficiently precise and specific. The vagueness of that statement of reasons, even if it were well founded, did not enable him to mount an effective challenge to the allegations made against him.

37 Furthermore, the applicant claims that those reasons cannot be supplemented by the statements contained in the letter of 16 March 2015 (see paragraph 13 above).

38 The Council disputes the applicant's arguments.

39 It should be borne in mind that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for in the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter') is, first, to provide the person concerned with sufficient information to make it possible to determine whether the act is well founded or whether it is vitiated by an error permitting its validity to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the lawfulness of the act. The obligation to state reasons therefore constitutes an essential principle of European Union law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him, for failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the EU Courts (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 85 and the case-law cited).

40 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the disclosure of certain information, the Council is required to inform the person or entity covered by restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. It must thus state the matters of fact and law which constitute the legal basis of the measures concerned and the considerations which led it to adopt them (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 86 and case-law cited).

41 Furthermore, the statement of reasons must be appropriate to the measure at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient 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. In particular, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 87 and the case-law cited).

42 In the present case, the reasons relied on in relation to the applicant in the contested measures coincide with those set out in paragraph 3 above.

43 It must be pointed out that, although that statement of reasons does not explicitly state the criterion on which the Commission relied in order to maintain the applicant's name on the lists at issue, it is sufficiently clear from that statement of reasons that the Council applied the criterion set out in Article 1(1)(a) and Article 2(1)(a) of Decision 2014/145, as amended, and in Article 3(1)(a) of

Regulation No 269/2014, as amended, since it refers to natural persons actively supporting actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine ('the criterion at issue').

44 In the statement of reasons in question, after noting that the applicant was appointed Head of RS by a Presidential Decree of 9 December 2013, the Council observed that he was a central figure of the Russian government propaganda supporting the deployment of Russian forces in Ukraine.

45 That statement of reasons therefore explains that the rationale for including and maintaining the applicant's name on the lists at issue is that the Council considered that the applicant, by his management role in RS and by his statements as a journalist, had engaged in propaganda supporting the military actions of the Russian Federation in Ukraine and was therefore one of the persons actively supporting actions or policies undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

46 The applicant's observations submitted to the Council in the letter of 25 February 2015 confirm, moreover, that he had understood that he was covered by the restrictive measures at issue specifically because of his professional role and conduct.

47 As regards the details provided by the Council in the letter of 16 March 2015, it must be pointed out that, as the Council rightly submitted, that letter containing additional reasons, sent in the context of correspondence between the Council and the applicant, may be taken into account in the examination of those measures (see, to that effect, judgment of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 88).

48 Accordingly, although it would have been preferable if the additional reasons had been set out directly in the contested measures, and not only in the letter of 16 March 2015, it is necessary to assess the contested measures also in the light of the details which the Council provided in that letter, in response to the applicant's letter of 25 February 2015, relating to the fact that RS had presented the events that had occurred in Ukraine in a light favourable to the Russian Government and had thereby supported the policy of that government in relation to the situation in Ukraine.

49 In any event, as the Council submits, the letter of 16 March 2015 mainly refers to the statement of reasons in the contested measures. While it true that the subject matter of the propaganda in which the applicant and RS are alleged to have engaged generally relates to the Russian policy concerning Ukraine, that issue is closely linked to the deployment of Russian forces in that country. Furthermore, even before receiving that letter, the applicant had understood that the propaganda in question was not limited to the deployment of Russian forces, since, in the letter of 25 February 2015, reference was made, more generally, to his lack of influence on 'the situation in Ukraine' and the lack of any causal link between 'any Russian actions in Ukraine' and his role as a manager and journalist.

50 In view of the foregoing, it must be concluded, first, that the statement of reasons set out by the Council in the contested measures enabled the applicant to understand the reasons for which his name had been maintained on the lists at issue, particularly since the details provided in the letter of 16 March 2015 may also be taken into account, and, secondly, that the Court is able to review whether that statement of reasons is well founded.

51 Thus, it must be held that the Council fulfilled its obligation to state reasons laid down in Article 296 TFEU.

52 The question whether that statement of reasons is well founded must be assessed within the context of the first and second pleas, rather than the present plea. In that regard, it must be borne in mind that the obligation to state reasons on which an act is based is an essential procedural requirement, to be distinguished from the question whether the reasons given are well founded, which goes to the

substantive legality of the contested act. The reasoning on which an act is based consists in a formal statement of the grounds on which that act is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the act, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 96 and the case-law cited).

53 Consequently, the fourth plea in law must be rejected.

C – The first and second pleas in law, alleging a manifest error of assessment with regard to the application of the criterion at issue to the situation of the applicant and infringement of the right to freedom of expression

54 The applicant, after referring to general principles relating inter alia to the scope of judicial review, asserts that the Council failed to demonstrate, by evidence forming a solid factual basis, that his case satisfied the criterion at issue, which cannot apply to just any kind of support for actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine or stability or security in Ukraine. That criterion must respect the principle of legal certainty and be interpreted consistently with the rules on the right to freedom of expression as set out in Article 11 of the Charter and Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

55 In particular, the applicant observes, first, that the limitations of that right must be provided for by law, having regard to the principle of legal certainty, pursue an objective of general interest and be necessary and proportionate to that objective, without impairing the substance of that freedom or significantly interfering with journalistic activity. The notions of national security and hate speech must also be interpreted strictly.

56 Secondly, the applicant submits that the Council has provided no reliable evidence demonstrating propaganda by him with regard to the policy of the Russian Government in Ukraine.

57 The Council asserts that the criterion at issue applies to natural persons actively supporting actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, which is the case with regard to the applicant. It is therefore not necessary to show that such persons are themselves responsible for such actions or policies; it is sufficient that those persons provide quantitatively or qualitatively significant support in that regard, and this is consistent with the principle of legal certainty.

58 In particular, first, according to the Council, the designation of the applicant on the basis of that criterion does not infringe the right to freedom of expression because it is provided for by law, it is consistent with the objective, set out in Article 21(2)(c) TEU, of exerting pressure on the Russian Government to cease its activities threatening Ukraine, and it does not prevent the applicant from carrying on his journalistic activities and expressing his views. The limitations on the applicant's right are therefore consistent with Article 52(1) of the Charter and with Article 10(2) of the ECHR.

59 Secondly, the Council asserts that its conclusion that the applicant is a central figure of the propaganda actively supporting the Russian Government's policy in Ukraine is substantiated by several pieces of reliable evidence.

60 It is appropriate to begin the examination of those arguments by setting out the principles in relation to the review carried out by the Court and to the need to interpret the criterion at issue in the light of primary law, in particular the right to freedom of expression, which forms part of primary law.

1. *The scope of judicial review*

61 It must be borne in mind that, according to the case-law, as regards the general rules defining the procedures for giving effect to the restrictive measures, the Council has a broad discretion as to what to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Article 215 TFEU, consistent with a decision adopted on the basis of Chapter 2 of Title V of the EU Treaty, in particular Article 29 TEU. Because the Courts of the European Union may not substitute their assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review carried out by those Courts must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate and that there has been no manifest error of assessment of the facts or misuse of power. That limited review applies, especially, to the assessment of the considerations of appropriateness on which such measures are based (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 127 and the case-law cited).

62 However, although the Council thus 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 requires that, as part of the review of the lawfulness of the grounds which are 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 are to 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 (judgments of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 41 and 45, and of 26 October 2015, *Portnov* v *Council*, T-290/14, EU:T:2015:806, paragraph 38).

63 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 (judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 121, and of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 128).

2. *The interpretation of the criterion at issue in the light of primary law, in particular the right to freedom of expression*

64 It must be noted that, although it is true that the Council enjoys a broad discretion in relation to the definition of the criteria under which persons or entities may be the subject of restrictive measures, those criteria can be regarded as being in accordance with the EU legal order only to the extent that it is possible to attribute to them a meaning that is compatible with the requirements of the higher rules with which they must comply (see, to that effect, judgment of 15 September 2016, *Yanukovych* v *Council*, T-346/14, under appeal, EU:T:2016:497, paragraph 100).

65 Accordingly, an interpretation of those general criteria in accordance with the requirements of primary law is necessary.

66 In that respect, it must be observed that the right to freedom of expression forms part of primary law. The Charter, to which Article 6(1) TEU grants the same legal value as the Treaties, provides, in Article 11 thereof, the following:

‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.’

67 That right is not absolute, since, under Article 52(1) of the Charter:

‘Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.’

68 Similar provisions are set out in the ECHR, referred to in Article 6(3) TEU. Article 10 of the ECHR provides as follows:

‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

69 According to the case-law, the right to freedom of expression does not constitute an unfettered prerogative and may, therefore, be limited, under the conditions laid down in Article 52(1) of the Charter. Consequently, in order to comply with EU law, a limitation on the freedom of expression and the freedom of the media must satisfy three conditions. First, the limitation must be ‘provided for by law’. In other words, the EU institution adopting measures liable to restrict a person’s freedom of expression must have a legal basis for its actions. Secondly, the limitation in question must be intended to achieve an objective of general interest, recognised as such by the European Union. Thirdly, the limitation in question must not be excessive (see, to that effect, judgment of 4 December 2015, *Sarafraz* v *Council*, T-273/13, not published, EU:T:2015:939, paragraphs 177 to 182 and 184).

70 Those conditions correspond, in essence, to those laid down by the case-law of the European Court of Human Rights (‘the ECtHR’), according to which, in order to be justified under Article 10(2) of the ECHR, an interference with the right to freedom of expression must have been ‘prescribed by law’, intended for one or more of the legitimate aims set out in that paragraph, and ‘necessary in a democratic society’ to achieve that aim or aims (ECtHR, 15 October 2015, *Perinçek v. Switzerland*, CE:ECHR:2015:1015JUD002751008, paragraph 124). It follows that the criterion at issue must be interpreted as meaning that the Council was allowed to adopt restrictive measures liable to limit the applicant’s freedom of expression, provided that those limitations comply with the conditions set out above, all of which must be satisfied in order for that freedom to be legitimately restricted.

71 It must therefore be examined whether the restrictive measures concerning the applicant are provided for by law, are intended to achieve an objective of general interest and are not excessive.

a) The conditions that any restriction on freedom of expression must be 'provided for by law'

72 As to whether the restrictive measures at issue were provided for by law, it must be noted that those measures are set out in acts of general application and have, first, clear legal bases in EU law, namely Article 29 TEU and Article 215 TFEU, and, secondly, a sufficient statement of reasons as regards both their scope and the reasons justifying their application to the applicant (see paragraphs 42 to 51 above) (see, by analogy, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 176 and the case-law cited). However, it must be established whether the applicant could reasonably expect that the criterion at issue, which refers to the concept of 'active support', could be applied to his situation, which was, in principle, protected by the freedom of expression.

73 In that respect, although it is true that the contested measures do not contain a specific definition of 'active support', that concept can only be understood as meaning that it covers persons who — without being themselves responsible for the actions and policies of the Russian Government destabilising Ukraine and without themselves implementing those actions or policies — provide support for those policies and actions.

74 In addition, it must be stated that the criterion at issue does not cover all forms of support for the Russian Government, but rather concerns forms of support which, by their quantitative or qualitative significance, contribute to the continuance of its actions and policies destabilising Ukraine. Interpreted, subject to review by the Courts of the European Union, by reference to the objective of exerting pressure on the Russian Government in order to force it to put an end to those actions and policies, the criterion at issue thus objectively establishes a limited category of persons and entities which may be subject to fund-freezing measures (see, to that effect and by analogy, judgment of 16 July 2014, *National Iranian Oil Company* v *Council*, T-578/12, not published, EU:T:2014:678, paragraph 119).

75 When interpreting that criterion, account must be taken of the case-law of the ECtHR which has recognised the impossibility of attaining absolute precision in the framing of laws, especially in fields in which the situation changes according to the prevailing views of society, and has accepted that the need to avoid rigidity and keep pace with changing circumstances means that many laws are couched in terms which are to some extent vague and whose interpretation and application are questions of practice. The condition that offences must be clearly defined in law is satisfied where a person can know from the wording of the relevant provision — if need be, with the assistance of the courts' interpretation of it — what acts and omissions will render him or her criminally liable (see, to that effect, ECtHR, 15 October 2015, *Perinçek v. Switzerland*, CE:ECHR:2015:1015JUD002751008, paragraphs 133 and 134).

76 In view of the important role played by the media, in particular the audiovisual media, in modern society (see, to that effect, ECtHR, 17 September 2009, *Manole and Others v. Moldova*, CE:ECHR:2009:0917JUD001393602, paragraph 97, and 16 June 2016, *Delfi v. Estonia*, CE:ECHR:2015:0616JUD006456909, paragraph 134), it was foreseeable that large-scale media support for the actions and policies of the Russian Government destabilising Ukraine, provided, in particular during very popular television programmes, by a person appointed by a decree of President Putin as Head of RS, a news agency that the applicant himself describes as a 'unitary enterprise' of the Russian State, could be covered by the criterion based on the concept of 'active support', provided that the resulting limitations on the freedom of expression comply with the other conditions that must be satisfied in order for that freedom to be legitimately restricted.

77 Furthermore, it must be noted that, contrary to the applicant's assertions, the case-law resulting from the judgment of 23 September 2014, *Mikhalchanka* v *Council* (T-196/11 and T-542/12, not published, EU:T:2014:801), does not allow the conclusion that the concept of 'active support' applies to the work of a journalist only when his remarks have a concrete impact. As the Council rightly submitted, in that

judgment the Court did not address the issue of the right to freedom of expression, but rather considered that the Council had not proved that, in the case that gave rise to that judgment, the applicant fell within the scope of the designation criteria laid down in the measures that were at issue. Those criteria covered, inter alia, persons responsible for the violations of international electoral standards in the presidential elections held in Belarus on 19 December 2010 and those responsible for the serious violations of human rights or the crackdown on civil society and democratic opposition in that country. In those circumstances, the Court held that the Council had not adduced evidence capable of demonstrating the influence, the specific impact and, above all, the responsibility that the applicant, and, where relevant, the television programme that he presented, could have had in the violations of international electoral standards and in the crackdown on civil society and the democratic opposition (see, to that effect, judgment of 23 September 2014, *Mikhalchanka* v *Council*, T-196/11 and T-542/12, not published, EU:T:2014:801, paragraphs 7, 8, 15, 134 and 135).

78 In the present case, the criterion of 'active support', applied by the Council to the applicant, is broader than those, based on responsibility, at issue in the case that gave rise to the judgment of 23 September 2014, *Mikhalchanka* v *Council* (T-196/11 and T-542/12, not published, EU:T:2014:801). Accordingly, the applicant is not justified in invoking that judgment in support of his argument that the Council should have shown the concrete effects of his statements.

79 In those circumstances, it must be held that the condition that the limitations on the freedom of expression must be laid down by law is satisfied in the present case.

b) The pursuit of an objective of general interest

80 As regards the condition in relation to the pursuit of an objective of general interest, recognised as such by the European Union, it must be observed that, by the restrictive measures adopted inter alia under the criterion at issue, the Council seeks to exert pressure on the Russian authorities to put an end to their actions and policies destabilising Ukraine, which corresponds to one of the objectives of the Common Foreign and Security Policy (CFSP).

81 The adoption of restrictive measures in relation, inter alia, to persons who actively support the actions and policies of the Russian Government destabilising Ukraine meets the objective, referred to in Article 21(2)(c) TEU, of preserving peace, preventing conflicts and strengthening international security, in accordance with the purposes and principles of the United Nations Charter.

82 In that respect, it must be pointed out that, as the Council submits, on 27 March 2014, the United Nations General Assembly adopted Resolution 68/262, entitled 'Territorial integrity of Ukraine', in which it recalled the obligation of all States, under Article 2 of the UN Charter, to refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any State, and to settle international disputes by peaceful means. It welcomed the continued efforts, in particular, by international and regional organisations to support de-escalation of the situation in Ukraine. In the operative part of that resolution, the General Assembly notably reaffirmed the importance of sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognised borders, and urged all parties to pursue immediately the peaceful resolution of the situation with respect to Ukraine, to exercise restraint, to refrain from unilateral actions and inflammatory rhetoric that may increase tensions and to engage fully with international mediation efforts.

83 Accordingly, it must be concluded that the condition relating to the pursuit of an objective of general interest is satisfied in the present case.

c) The non-excessive nature of the restrictive measures imposed on the applicant

84 The condition that the limitations on the freedom of expression arising from the restrictive measures at issue must not be excessive has two aspects: (i) those limitations must be necessary and proportionate to the aim sought, and (ii) the essence of that freedom must not be impaired (see, to that effect, judgment of 4 December 2015, *Sarafraz* v *Council*, T-273/13, not published, EU:T:2015:939, paragraph 184 and the case-law cited).

The necessary and proportionate nature of the limitations

85 In the first place, as regards the necessity of the limitations at issue, it should be noted that alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the objectives pursued, namely bringing pressure to bear on Russian decision-makers responsible for the situation in Ukraine, particularly given the possibility of circumventing the restrictions imposed (see, by analogy, judgment of 12 March 2014, *Al Assad* v *Council*, T-202/12, EU:T:2014:113, paragraph 117 and the case-law cited).

86 In the second place, as regards the proportionate nature of the limitations at issue, it is necessary to recall the case-law on the principle of proportionality and on the limitations on the freedom of expression and to establish how they may be applied to the applicant's specific situation, as set out in the documents in the Council's file.

87 The principle of proportionality, as one of the general principles of EU law, requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 4 December 2015, *Sarafraz* v *Council*, T-273/13, not published, EU:T:2015:939, paragraph 185 and the case-law cited).

88 In that respect, the case-law makes clear that, with regard to judicial review of compliance with the principle of proportionality, the EU legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. Consequently, the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited).

89 As regards, in particular, limitations on the freedom of expression, several principles may be identified in the case-law of the ECtHR.

90 First, it has held that freedom of expression is one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment, and that, in principle, it applies not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb, such being the demands of pluralism, tolerance and broadmindedness without which there is no democratic society. That freedom is indeed subject to exceptions, but these must be construed strictly, and the need for any restrictions must be established convincingly (ECtHR, 15 October 2015, *Perinçek v. Switzerland*, CE:ECHR:2015:1015JUD002751008, paragraph 196(i)).

91 Secondly, the ECtHR has held that there is little scope under Article 10(2) of the ECHR for restrictions on political expression or on debate on questions of public interest. Expression on matters of public interest is in principle entitled to strong protection, contrary to expression that promotes or justifies violence, hatred, xenophobia or other forms of intolerance, which is normally not protected. It is in the nature of political speech to be controversial and often virulent, but that does not diminish its public interest, provided that it does not cross the line and turn into a call for violence, hatred or intolerance (ECtHR, 15 October 2015, *Perinçek v. Switzerland*, CE:ECHR:2015:1015JUD002751008, paragraphs 197, 230 and 231).

92 Thirdly, as regards the 'necessary' nature of a limitation of the freedom of expression, the ECtHR considers that this implies the existence of a pressing social need and that an interference must be examined in the light of the case as a whole in order to determine whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient (ECtHR, 15 October 2015, *Perinçek v. Switzerland*, CE:ECHR:2015:1015JUD002751008, paragraph 196(ii) and (iii)).

93 Those principles are indeed important elements to be taken into consideration in the present case. However, it must be noted that they are applicable only in so far as they are relevant in the context of the present case, which has specific characteristics which distinguish it from those that allowed the ECtHR to develop its case-law.

94 It must be emphasised that the principles set out in the case-law of the ECtHR were established in view of situations in which restrictive measures, often of a penal nature, were imposed on a person who had made statements or actions considered unacceptable by a State which had acceded to the ECHR, and that person invoked the freedom of expression as a defence against that State.

95 However, in the present case, the applicant is a Russian citizen, residing in Russia, who was appointed by a decree of President Putin as Head of the news agency RS, which is a 'unitary enterprise' of the Russian State.

96 In his role as a journalist, which cannot be separated from his role as Head of RS, the applicant addressed the situation that the Russian Government created in Ukraine on several occasions and, according to the Council, he presented the events relating to that situation in a light favourable to the Russian Government.

97 That is the context in which the applicant invokes the right to freedom of expression. Thus, he does not rely on that right in order to defend himself against the Russian State, but rather to protect himself against restrictive measures, of a precautionary, rather than penal, nature, which the Council adopted in reaction to the actions and policies of the Russian Government destabilising Ukraine. It is well known that those actions and policies are the subject of extensive media coverage in Russian and are often presented to the Russian people, through propaganda, as being fully justified.

98 In particular, the Court notes that, on 13 February 2014, the Russian Public Collegium for Press Complaints ('the Russian Collegium') adopted a resolution concerning the applicant following a complaint relating to the 'Vesti Nedeli' (News of the Week) programme which he presents. In that resolution the Russian Collegium considered that the Vesti Nedeli programme broadcast on 8 December 2013 contained propaganda which presented the events that took place on 30 November and 1 December 2013 on Independence Square in Kiev (Ukraine) in a manner which was biased and contrary to the journalistic principles of social responsibility, harm minimisation, truth, impartiality and justice, in order to manipulate Russian public opinion through disinformation techniques.

99 The applicant does not deny making the remarks mentioned by the Russian Collegium in its resolution, but argues that propaganda is protected by the freedom of expression.

100 Moreover, it must be noted that the fact that the applicant engaged in propaganda activities in support of the actions and policies of the Russian Government destabilising Ukraine is also clear from the decision of the Nacionālā elektronisko plašsaziņas līdzekļu padome (Latvian National Electronic Mass Media Council) of 3 April 2014 ('the Latvian decision'), and from the decision of the Lietuvos radijo ir televizijos komisija (Radio and Television Commission of Lithuania) of 2 April 2014, as upheld by the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court, Lithuania) on 7 April 2014 ('the Lithuanian decision'), concerning the suspension, in their respective countries, of the broadcasting of, inter alia, the Vesti Nedeli programmes, in which the applicant participated.

101 According to the applicant, the Latvian and Lithuanian decisions are unilateral rulings on which neither he nor RS were able to present their views, with the result that the Council cannot rely on those decisions.

102 First, it must be noted that the Council, in its written response to a question put to it by the Court, indicated that those decision had been formally added to the administrative file on 1 February 2016.

103 Thus, although it is clear that those decisions form part of the evidence on which the measures of March 2016 are based, that is not the case as regards the measures of March 2015 and of September 2015.

104 In that respect, the Court cannot accept the Council's argument that it was already aware of the content of the Latvian and Lithuanian decision when it adopted the measures of March 2015, since those decision had been published, including in English, in April and October 2014. It cannot be presumed that the Council was aware of every document concerning the applicant merely because those documents were public.

105 As regards the content of those decision, first, it must be pointed out that the Latvian National Electronic Mass Media Council — on the basis of a report drawn up by the Latvian police, which had examined the Vesti Nedeli programmes, in particular the programmes of 2 and 16 March 2014, in which the applicant participated — considered that those programmes contained war propaganda justifying the Russian military intervention in Ukraine and comparing defenders of Ukrainian democracy to Nazis, sending the message that, if those defenders of democracy were in power, they would repeat the crimes committed by the Nazis.

106 Secondly, the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court) approved the conclusion of the Radio and Television Commission of Lithuania that the Vesti Nedeli programme of 2 March 2014, which the latter had examined, incited hatred between Russians and Ukrainians and justified Russian military intervention in Ukraine and the annexation by Russia of a part of Ukrainian territory.

107 Such findings, from authorities in two Member States which examined the programmes in question, constitute solid evidence that the applicant engaged in propaganda activities in support of the actions and policies of the Russian Government destabilising Ukraine.

108 That is especially so since, before the Court, the applicant did not call into question the findings set out in the Latvian and Lithuanian decisions, but merely raised formal objections (see paragraph 101 above).

109 In that respect, it must be observed that the circumstances invoked by the applicant did not affect his ability to put forward, during the proceedings before the Court, arguments and evidence calling into question the substance of the findings contained in those decisions.

110 Furthermore, it must be noted that neither the applicant nor RS contested the Latvian and Lithuanian decisions before the competent national authorities, even though, at least as regards the Latvian decision, it is apparent from the file that it was open to appeal.

111 In those circumstances, it must be concluded that, by relying on the decision of the Russian Collegium and — as regards the measures of March 2016 — on the Latvian and Lithuanian decisions, the Council was entitled to consider that the applicant had engaged in propaganda.

112 The Council's adoption of restrictive measures relating to the applicant because of his propaganda in support of the actions and policies of the Russian Government destabilising Ukraine cannot be regarded as a disproportionate restriction of his right to freedom of expression.

113 If that were the case, the Council would be unable to pursue its policy of exerting pressure on the Russian Government by addressing restrictive measures not only to persons who are responsible for the actions and policies of that government as regards Ukraine or to the persons who implement those actions or policies, but also to persons providing active support to those persons.

114 In accordance with the case-law cited in paragraph 74 above, the concept of active support concerns forms of support which, by their quantitative or qualitative significance, contribute to the continuance of the actions and policies of the Russian Government destabilising Ukraine.

115 That concept is not limited to material support; it also covers the support that can be provided by the Head of RS, a 'unitary enterprise' of the Russian State, who is appointed by the President of that State, the person who bears ultimate responsibility for the actions and policies condemned by the Council, to which it seeks to react by adopting the restrictive measures at issue.

116 In that respect, it is indeed true that, in the assessment of the proportionality of the restrictive measures concerning the applicant, it must be examined whether they dissuade Russian journalists from freely expressing their views on political issues of public interest, such as the actions and policies of the Russian Government destabilising Ukraine. That would be a detrimental consequence for society as a whole (see, to that effect, ECtHR, 17 December 2004, *Cumpănă and Mazăre v. Romania*, CE:ECHR:2004:1217JUD003334896, paragraph 114).

117 However, that is not so in the present case, given the specific, or even unique, feature of the applicant's situation, namely that he engages in propaganda in support of the actions and policies of the Russian government destabilising Ukraine by using the means and power available to him as Head of RS, a position which he obtained by virtue of a decree of President Putin himself.

118 Other journalists who wish to express their views, even views that may shock, offend or disturb (see paragraph 90 above), on issues that fall within the realm of political discourse and are of public interest (see paragraph 91 above), such as the actions or policies of the Russian Government destabilising Ukraine, are not in a situation comparable to that of the applicant, who is the sole occupant of the post of Head of RS, as a result of a deliberate choice made by President Putin.

119 Furthermore, no other journalist is included on the lists at issue and only the statement of reasons concerning a member of the so-called 'Donetsk People's Republic' relates to propaganda activities.

120 The foregoing considerations are sufficient, in view of the broad discretion enjoyed by the Council (see paragraph 88 above), to establish that the limitations on the right to freedom of expression that the restrictive measures are liable to entail are necessary and are not disproportionate, and there is no need to examine the other evidence on which the Council relied showing that the applicant incited violence or engaged in hate speech.

121 Since the limitations on the applicant's freedom of expression that the restrictive measures at issue are liable to entail are necessary and proportionate to the objective pursued, it is appropriate to examine the condition that the substance of that freedom must not be impaired.

The absence of any impairment of the substance of the applicant's freedom of expression

122 As regards the condition that the substance of the applicant's freedom of expression must not be impaired, it must be borne in mind that the restrictive measures at issue provide that (i) the Member States are to take the necessary measures to prevent his entry into, or transit through, their territories, and (ii) all of his funds and economic resources in the European Union are to be frozen.

123 The applicant is a national of a third country, the Russian Federation, and resides in that State, where he carries out his professional activity as Head of RS. Accordingly, the restrictive measures at issue do not impair the substance of the applicant's right to exercise his freedom of expression, particularly in the context of his professional activity in the media sector, in the country in which he resides and works (see, by analogy, judgment of 4 December 2015, *Sarafraz* v *Council*, T-273/13, not published, EU:T:2015:939, paragraph 190 and the case-law cited).

124 In addition, those measures are by nature temporary and reversible. Article 6 of Decision 2014/145 provides that that decision is to be kept under constant review and Article 14(4) of Regulation No 269/2014 provides that the list annexed to that regulation is to be reviewed at regular intervals and at least every 12 months.

125 It follows that the restrictive measures imposed on the applicant do not impair the essence of his freedom of expression.

126 In the light of the foregoing considerations, the first and second pleas must be rejected.

D – *The fifth plea in law, alleging that the criterion at issue would be incompatible with the right to freedom of expression and therefore unlawful, if it allowed the adoption of restrictive measures in respect of journalists exercising that right*

127 In the alternative, the applicant raises an objection of illegality pursuant to Article 277 TFEU against the criterion at issue, should it be interpreted as permitting restrictive measures to be adopted in respect of journalists who have expressed views which the Council regards as objectionable. According to the applicant, that criterion, thus interpreted, would be disproportionate and lack a legal basis. In the reply, the applicant states that Article 29 TEU and Article 215 TFEU do not permit the adoption of measures contrary to the right to freedom of expression.

128 In the first place, the Council submits that this plea in law is inadmissible since it does not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure.

129 In the second place, the Council states that the criterion at issue applies to propaganda or disinformation activities which provide active support to the Russian Government in destabilising Ukraine and that such a criterion is not contrary to freedom of expression.

130 It follows from the examination of the first and second plea in law that the criterion at issue must be interpreted in accordance with primary law, which includes provisions protecting the right to freedom of expression (see paragraphs 64 to 70 above).

131 The Court has concluded that the criterion at issue can be interpreted and applied in a manner consistent with primary law, including the right to freedom of expression. Furthermore, it has been found that the application of that criterion in the present case as regards the applicant did not infringe his right to freedom of expression, since the Council respected the legal conditions to which limitations of that freedom are subject.

132 In those circumstances, the present plea in law must be rejected, and it is not necessary to rule on the plea of inadmissibility raised by the Council.

E – *The third plea in law, alleging infringement of the rights of the defence and of the right to effective judicial protection*

133 The applicant, after recalling principles developed in case-law in relation to respect for the rights of the defence in connection with restrictive measures, asserts that, although the measures of March 2015 maintained, and did not include for the first time, his name on the lists at issue, he was not notified in advance of the reasons for maintaining his inclusion and was not given serious, credible and concrete evidence to justify that maintenance.

134 In particular, the applicant submits, first, that the measures of March 2015 were adopted before the Council responded to his request for access to the file contained in the letter of 4 February 2015. Thus, he was unable to express, in full knowledge of the facts, his views on the Council's intention to maintain the application of restrictive measures against him.

135 Secondly, the applicant argues that his letter of 25 February 2015 was not carefully and impartially examined.

136 The Council, in addition to challenging the substance of the applicant's arguments alleging the infringement of his rights of defence, submits that the applicant's invocation of a breach of the right to effective judicial protection is inadmissible in so far as it does not meet the minimum requirements laid down in Article 76(d) of the Rules of Procedure.

137 As a preliminary point, the objection of inadmissibility raised by the Council must be upheld, since the applicant has not raised arguments relating specifically to the breach of his right to effective judicial protection.

138 It must be recalled that, under Article 76(d) of the Rules of Procedure, which is essentially the same as Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991, the application must contain a summary of each plea in law relied on. In addition, it is settled case-law that that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without having to seek further information. It is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, but coherently and intelligibly, in the application itself, in order to guarantee legal certainty and the sound administration of justice. It is also settled case-law that any plea which is not adequately articulated in the application initiating the proceedings must be held inadmissible. Similar requirements apply where a submission is made in support of a plea in law. That objection constitutes an absolute bar to proceedings which must be raised by the Court of its own motion (see, to that effect, judgment of 12 May 2016, *Italy* v *Commission*, T-384/14, EU:T:2016:298, paragraph 38 (not published) and the case-law cited).

139 As regards the complaint concerning a breach of the rights of defence, it should be borne in mind that the fundamental right to observance of the rights of the defence during a procedure preceding the adoption of a restrictive measure is expressly affirmed in Article 41(2)(a) of the Charter (see judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 102 and the case-law cited).

140 In that context, it must be noted that Article 3(2) and (3) of Decision 2014/145 and Article 14(2) and (3) of Regulation No 269/2014 provide that the Council is to communicate its decision, including the grounds for listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or by the publication of a notice, providing the opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council is to review its decision and inform the natural or legal person, entity or body accordingly.

141 In addition, it must be pointed out that, in accordance with the third paragraph of Article 6 of Decision 2014/145, that decision is to be kept under constant review. Next, the second paragraph of Article 6 of that decision provided, in its initial version, that that decision would apply until 17 September 2014; that period was extended several times by subsequent measures. Lastly, Article 14(4) of Regulation No 269/2014 states that the list annexed to that regulation is to be reviewed at regular intervals and at least every 12 months.

142 In the present case, the applicant has challenged neither Implementing Decision No 2014/151 nor Implementing Decision No 284/2014, by which the Council first included his name (see paragraph 3 above). As he acknowledged in his written reply to a question from the Court, his first response to the adoption of those measures was the letter sent on 4 February 2015, even though the Council had, on 22 March 2014, published a Notice for the attention of the persons subject to the restrictive measures provided for in Decision 2014/145, as implemented by Implementing Decision 2014/151 and in Regulation (EU) No 269/2014 as implemented by Council Implementing Regulation (EU) No 284/2014 (OJ 2014, C 84, p. 3).

143 That notice stated, inter alia, that the persons and entities concerned could submit a request to the Council, together with supporting documentation, that the decision to include their names on the lists annexed to the first contested measures should be reconsidered.

144 It follows that the applicant waited for a long time before requesting the Council to grant him access to the documents concerning him and to review his situation.

145 Furthermore, it must be pointed out that, by the measures of March 2015, the applicant's name was maintained on the lists at issue with the same statement of reasons as before. In that respect, it should be borne in mind that although, according to the case-law, the Council was not required to hear the applicant before he was first listed, so that the restrictive measures against him would have a surprise effect (see, to that effect and by analogy, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraphs 110 to 113 and the case-law cited), it was in principle required to hear him before deciding to maintain his name on the lists at issue. However, the right to be heard prior to the adoption of acts which maintain restrictive measures against persons already subject to those measures applies where the Council has admitted new evidence against those persons and not where those measures are maintained on the basis of the same grounds as those that justified the adoption of the initial act imposing the restrictive measures in question (see, by analogy, judgment of 28 July 2016, *Tomana and Others* v *Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraph 67 and the case-law cited; see also, to that effect and by analogy, judgment of 7 April 2016, *Central Bank of Iran* v *Council*, C-266/15 P, EU:C:2016:208, paragraph 33).

146 In the present case, the statement of reasons concerning the applicant in the contested measures has not changed by comparison with that of the measures by which his name was first included on the lists at issue.

147 In those circumstances, first, the Council was not required to hear the applicant before adopting the contested measures.

148 Secondly, it must be noted that, by letter of 13 February 2015 (see paragraph 10 above), the Council, in any event, asked the applicant to state his views on the possible extension of the duration of the restrictive measures concerning him.

149 It is true that the applicant, despite his request of 4 February 2015, had not been granted access to the documents justifying the inclusion of his name when he presented his observations in response to the Council's invitation.

150 However, it must be observed that, even if that request, although formally based on Regulation No 1049/2001, could be regarded as having been presented in the context of the review procedure referred to in the provisions mentioned in paragraphs 140 and 141 above and could therefore be relevant in assessing whether the applicant's rights of defence were observed in the present case, the Council cannot be criticised for not having dealt with that request, within a very brief period, before adopting the measures of March 2015, when the applicant had waited almost 11 months before reacting to the first inclusion of his name and making such a request.

151 In that regard, it must be noted that, when sufficiently precise information has been communicated, enabling the person concerned effectively to state his point of view on the evidence adduced against him by the Council, the principle of respect for the rights of the defence does not mean that the institution is obliged spontaneously to grant access to the documents in his file. It is only at the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 97 and the case-law cited).

152 In the present case, since, as found in the context of the examination of the fourth plea in law, the statement of reasons for the contested measures concerning the applicant — which was the same as that for the measures by which his name was first included — was sufficient, the Council was not required to take the initiative in granting the applicant access to the file or to await the outcome of the request that the latter finally made, before deciding to maintain his name on the lists at issue. The applicant knew, well before he received the letter of 16 March 2015, that he was the subject of restrictive measures as a result of his activities as a journalist and as Head of RS and he was necessarily aware of the manner in which he had carried out those activities.

153 Thirdly, for the sake of completeness, it must be recalled that, before an infringement of the rights of the defence can result in the annulment of an act, it must be demonstrated that, had it not been for that irregularity, the outcome of the procedure might have been different. In the present case, the applicant has not explained what arguments and evidence he could have relied on if he had received the documents in question earlier, nor has he demonstrated that such arguments and evidence could have led to a different result in his case, that is to say, to the restrictive measures at issue not being renewed (see, to that effect and by analogy, judgment of 18 September 2014, *Georgias and Others* v *Council and Commission*, T-168/12, EU:T:2014:781, paragraphs 106 to 108 and the case-law cited). Accordingly, the present plea in law could not, in any event, have led to the annulment of the contested measures.

154 In the light of those considerations the present plea in law must be rejected.

155 Since all the pleas in law relied on by the applicant have been rejected, the action must be dismissed in its entirety.

Costs

156 Under Article 134(1) of the Rules of Procedure, 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 applicant has been unsuccessful, he must be ordered to pay the costs in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Dmitrii Konstantinovich Kiselev to pay the costs.

Berardis Tomljenović Spielmann

Delivered in open court in Luxembourg on 15 June 2017.

E. Coulon
Registrar

G. Berardis
President

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