ORDER OF THE PRESIDENT OF THE GENERAL COURT

28 November 2018(*)

(Application for interim measures — Common foreign and security policy — Restrictive measures taken in view of the situation in Ukraine — Freezing of funds — Application for suspension of operation of a measure — Prima facie case — No urgency)

In Case T−305/18 R,

Andriy Klyuyev, residing in Donetsk (Ukraine), represented by B. Kennelly QC, J. Pobjoy, Barrister, R. Gherson and T. Garner, Solicitors,

applicant,

v

Council of the European Union, represented by P. Mahnič and A. Vitro, acting as Agents,

defendant,

APPLICATION pursuant to Articles 278 and 279 TFEU for the suspension of operation of Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p.48) and Council Implementing Regulation (EU) 2018/326 of 5 March 2018 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018 L 63, p. 5), in so far as they apply to the applicant,

THE PRESIDENT OF THE GENERAL COURT

makes the following

Order

Background to the dispute, procedure and forms of order sought by the parties

1 The applicant, Mr Andriy Klyuyev, is the former Head of Administration of the President of Ukraine.

2 The present case has been brought in connection with the restrictive measures adopted by the Council of the European Union from 2014 against certain persons, entities and bodies in the light of the situation in Ukraine.

3 On 5 March 2014, the Council adopted, on the basis of Article 29 TEU, Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in the light of the situation in Ukraine (OJ 2014 L 66, p. 26). On the same date, the Council adopted, on the basis of Article 215(2) TFEU, Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1).

4 Recital 2 of Decision 2014/119 states:

‘On 3 March 2014, the Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine.’

5 Article 1(1) and (2) of Decision 2014/119 provided as follows:

‘1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for misappropriation of Ukrainian State funds and persons responsible for human rights violations 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 In accordance with Decision 2014/119, Regulation No 208/2014 requires the adoption of measures for the freezing of funds and lays down the detailed rules governing that freezing in terms essentially identical to those of that decision.

8 The names of the persons covered by Decision 2014/119 and Regulation No 208/2014 appear on the list, which is identical, in the annex to Decision 2014/119 and in Annex I to Regulation No 208/2014 (‘the list’) together with, inter alia, the reasons for their inclusion on the list.

9 The name of the applicant was included on the list identified as ‘former Head of Administration of President of Ukraine’, with the following statement of reasons:

‘Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.’

10 On 29 January 2015, the Council adopted Decision (CFSP) 2015/143 amending Decision 2014/119 (OJ 2015 L 24, p. 16) and Regulation (EU) 2015/138 amending Regulation No 208/2014 (OJ 2015 L 24, p. 1).

11 Decision 2015/143 specified, with effect from 31 January 2015, the criteria for the designation of the persons subject to the freezing of funds. In particular, Article 1(1) of Decision 2014/119 was replaced by the following:

‘1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.

For the purpose of this Decision, persons identified as responsible for the misappropriation of Ukrainian State funds include persons subject to investigation by the Ukrainian authorities:

(a) for the misappropriation of Ukrainian public funds or assets, or being an accomplice thereto; or

(b) for the abuse of office as a public office-holder in order to procure an unjustified advantage for him- or herself or for a third party, and thereby causing a loss to Ukrainian public funds or assets, or being an accomplice thereto.’

12 Regulation 2015/138 amended Regulation No 208/2014, in accordance with Decision 2015/143.

13 On 5 March 2015, the Council adopted Decision (CFSP) 2015/364, amending Decision 2014/119 (OJ 2015 L 62, p. 25), and Implementing Regulation (EU) 2015/357 implementing Regulation No 208/2014

(OJ 2015 L 62, p. 1) (together, ‘the March 2015 measures’).

14 Decision 2015/364 amended Article 5 of Decision 2014/119, by extending the application of the restrictive measures in respect of the applicant until 6 March 2016. Consequently, Decision 2015/364 and Implementing Regulation 2015/357 replaced the list.

15 Following those amendments, the applicant’s name was maintained on the list with the identifying information ‘former Head of Administration of President of Ukraine’ and the following fresh statement of reasons:

‘Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and in connection with the misuse of office by a public office-holder to procure an unjustified advantage for himself or a third party thereby causing a loss to the Ukrainian public budget or assets.’

16 On 4 March 2016, the Council adopted Decision (CFSP) 2016/318 amending Decision 2014/119 (OJ 2016 L 60, p. 76) and Implementing Regulation (EU) 2016/311 implementing Regulation No 208/2014 (OJ 2016 L 60, p. 1) (together, ‘the March 2016 measures’).

17 By the March 2016 measures, the application of the restrictive measures concerning the applicant, among others, was extended to 6 March 2017. The statement of reasons for the applicant’s designation, as it appeared in the March 2015 measures, was not amended.

18 By judgment of 15 September 2016, *Klyuyev* v *Council* (T−340/14, EU:T:2016:496), the Court annulled Decision 2014/119 and Regulation No 208/2014, in their original versions, in so far as they concerned the applicant and until the entry into force of the March 2015 measures, and dismissed the action in so far as it concerned the March 2015 measures.

19 The annulment of Decision 2014/119 in its original version, in so far as it concerned the applicant, was based on the fact that the inclusion of the applicant’s name on the list did not have a sufficient factual basis to ensure compliance with the criteria for the designation of the persons subject to the restrictive measures at issue laid down by Decision 2014/119.

20 As a consequence of the annulment of Decision 2014/119, the Court also annulled, in so far as it concerned the applicant, Regulation No 208/2014 in its original version, which, under Article 215(2) TFEU, presupposed a decision adopted in accordance with Chapter 2 of Title V of the EU Treaty.

21 The Council did not appeal against the judgment of 15 September 2016, *Klyuyev* v *Council* (T−340/14, EU:T:2016:496).

22 On 3 March 2017, the Council adopted Decision (CFSP) 2017/381 amending Decision 2014/119 (OJ 2017 L 58, p. 34) and Implementing Regulation (EU) 2017/374 implementing Regulation No 208/2014 (OJ 2017 L 58, p. 1) (together, ‘the March 2017 measures’).

23 By the March 2017 measures, the application of the restrictive measures concerning the applicant, among others, was extended to 6 March 2018. The statement of reasons for the applicant’s designation, as it appeared in the March 2015 and March 2016 measures, was not amended.

24 By letter of 20 October 2017, the Office of the Prosecutor General of Ukraine (‘the PGO’) informed the Council of the state of the proceedings against the applicant in Ukraine.

25 By email of 28 November 2017, the applicant wrote to the Council putting forward reasons why his designation should not be renewed.

26 On 14 December 2017, the Council asked for clarification from the PGO.

27 On 18 December 2017, the Council forwarded the PGO's letter of 20 October 2017 to the applicant and requested him to comment.

28 On 5 January 2018, the PGO stated its views on the request for clarification of 14 December 2017.

29 On 10 January 2018, the applicant commented on the Council's letter of 18 December 2017.

30 On 16 January 2018, the Council forwarded the PGO's letter of 5 January 2018 to the applicant and requested him to state his views.

31 On 24 January 2018, the Council asked for further clarification from the PGO.

32 On 25 January 2018, the applicant commented on the letter of the Council of 16 January 2018.

33 On 31 January 2018, the PGO commented on the request for clarification of 24 January 2018.

34 On 5 February 2018, the Council forwarded the PGO's letter of 31 January 2018 to the applicant and requested him to state his views.

35 On 15 February 2018, the applicant commented on the letter of the Council of 5 February 2018.

36 By email of 2 March 2018, the applicant claimed that the reasoning in the judgment of 21 February 2018, *Klyuyev* v *Council* (T−731/15, EU:T:2018:90), concerning his brother also applied to his situation and that the Council should decide on that basis not to maintain him on the list.

37 On 5 March 2018, the Council adopted Decision (CFSP) 2018/333 amending Decision 2014/119 (OJ 2018 L 63, p. 48) and Implementing Regulation (EU) 2018/326 implementing Regulation No 208/2014 (OJ 2018 L 63, p. 5) (together, 'the contested measures').

38 By the contested measures, the application of the restrictive measures concerning, among others, the applicant was extended to 6 March 2019. The statement of reasons for the applicant's designation, as it appeared in the March 2015, March 2016 and March 2017 measures, was not amended.

39 By letter of 8 March 2018, the Council informed the applicant of the reasons which led it to maintain the applicant on the list.

40 By letter of 13 April 2018, the applicant requested the reopening of the oral part of the procedure in Case T−240/16, in which he had requested the annulment of the March 2016 and March 2017 measures, in order to modify the application, in accordance with Article 86 of the Rules of Procedure of the General Court, with a view to referring in addition to the contested measures.

41 By letter of 20 April 2018, the Court informed the applicant of the President of the Chamber's decision not to reopen the oral part of the procedure.

42 By judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), the Court annulled the March 2017 measures, in so far as they concerned the applicant, and dismissed the action in so far as it concerned the March 2016 measures.

43 The annulment of the March 2017 measures was based on the finding that the Council had made a manifest error of assessment in considering that it was not required to take into account the evidence produced by the applicant and the arguments advanced by him or to make further inquiries of the Ukrainian authorities, although that evidence and those arguments were such as to give rise to legitimate doubts regarding the reliability of the information provided by the Ukrainian authorities in relation to the proceedings brought against the applicant.

44 The Council did not bring an appeal against the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433).

45 By application lodged at the Court Registry on 16 May 2018, the applicant brought an action for the annulment of the contested measures, in so far as they relate to him.

46 By document, lodged at the Court Registry on the same day, the applicant brought the present application for interim measures, in which he claims, in essence, that the President of the General Court should:

– suspend the effect of the contested measures in so far as they concern the applicant;

– decide to adjudicate, in the main case under an expedited procedure;

– order the Council to pay the costs.

47 In its observations on the application for interim measures, lodged at the Court Registry on 11 June 2018, the Council contends that the President of the Court should:

– dismiss the application for interim measures;

– order the applicant to pay the costs.

48 By a measure of organisation of procedure of 12 July 2018, the President of the Court requested the parties to take a view on the impact of the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), on the present interim proceedings and invited the Council to indicate whether it would maintain the applicant's name on the list.

49 On 25 July 2018, the Council replied to the questions raised by the President of the Court and stated, inter alia, that 'the implications of [the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433),] [had been] discussed, but [that no] decision regarding the applicant's listing [had been] taken at [that] stage'.

50 On 13 August 2018, the applicant replied to the question raised by the President of the Court.

Law

General

51 It is apparent from reading Articles 278 and 279 TFEU together with Article 256(1) TFEU that the judge hearing an application for interim measures may, if he considers that circumstances so require, order that the operation of a measure challenged before the General Court be suspended or prescribe any necessary interim measures, pursuant to Article 156 of the Rules of Procedure. Nevertheless, Article 278 TFEU establishes the principle that actions do not have suspensory effect, since acts adopted by the institutions of the European Union are presumed to be lawful. It is therefore only exceptionally that the judge hearing an application for interim measures may order suspension of the operation of an act contested before the General Court or prescribe interim measures (order of 19 July 2016, *Belgium* v *Commission*, T−131/16 R, EU:T:2016:427, paragraph 12).

52 The first sentence of Article 156(4) of the Rules of Procedure provides that applications for interim measures must state 'the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for'.

53 Accordingly, the judge hearing an application for interim relief may order suspension of operation of an act and other interim measures, if it is established that such an order is justified, prima facie, in fact and in law, and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's

interests, it must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, and consequently an application for interim measures must be dismissed if any one of them is not satisfied. The judge hearing an application for interim relief is also to undertake, when necessary, a weighing of the competing interests (see order of 2 March 2016, *Evonik Degussa* v *Commission*, C−162/15 P-R, EU:C:2016:142, paragraph 21 and the case-law cited).

54 In the context of that overall examination, the court hearing the application for interim measures has a wide discretion and is free to determine, having regard to the particular circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of law imposing a pre-established scheme of analysis within which the need to order interim measures must be assessed (see order of 19 July 2012, *Akhras* v *Council*, C−110/12 P(R), not published, EU:C:2012:507, paragraph 23 and the case-law cited).

55 Having regard to the material in the case file, the President of the Court considers that he has all the information needed to rule on the present application for interim measures without there being any need first to hear oral argument from the parties.

56 In the circumstances of the present case, it is appropriate first to examine whether the condition relating to the existence of a prima facie case is satisfied.

Prima facie case

57 As regards the condition relating to a prima facie case, it should be noted that that condition is satisfied where at least one of the pleas in law put forward by the party seeking interim measures in support of the main action appears, prima facie, not unfounded. That is the case where one of the pleas relied on reveals the existence of a major legal or factual disagreement whose resolution is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the judge hearing the application for interim measures but must be the subject of the main proceedings (see, to that effect, orders of 3 December 2014, *Greece* v *Commission*, C−431/14 P-R, EU:C:2014:2418, paragraph 20 and the case-law cited, and of 1 March 2017, *EMA* v *MSD Animal Health Innovation and Intervet international*, C−512/16 P(R), not published, EU:C:2017:149, paragraph 59 and the case-law cited).

58 In the present case, the applicant argues, in essence, that the Council made a manifest error of assessment in concluding that the relevant criterion for his inclusion on the list was satisfied. In that regard, he claims that the PGO's statements, which the Council accepted without any prior examination and without taking account of the inaccuracies identified by the applicant, do not constitute a sufficiently solid factual basis for his designation, particularly since it was incumbent on the Council to take account of the observations and exculpatory evidence he had produced. According to the applicant, the Council was required to conduct further inquiries and to request additional evidence from the Ukrainian authorities, which the Council failed to do to a sufficient standard in the present case. That failure, according to the applicant, is all the more serious since the restrictive measures taken against him have lasted for more than four years and the proceedings in Ukraine are still at a preliminary stage despite the passage of a considerable period of time.

59 In order to examine whether the applicant's claims are prima facie justified, in the first place, it should be noted, as a preliminary point, that the Court annulled the March 2017 measures on the ground that the Council committed a manifest error of assessment in considering that it was not required to take into account the evidence produced by the applicant and the arguments developed by him or to make further enquires of the Ukrainian authorities, despite the fact that that evidence and those arguments were such as to give rise to legitimate doubts regarding the reliability of the information provided by the PGO (see, to that effect, judgment of 11 July 2018, *Klyuyev* v *Council*, T−240/16, not published, EU:T:2018:433, paragraph 237).

60 As is apparent from paragraphs 209 to 237 of the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), that conclusion was based, inter alia,

– on the finding that the Council had relied on letters from the PGO containing inconsistencies and inaccuracies,

– on the fact that it was apparent from the letter from the Public Prosecutor's Office in Vienna (Austria) of 4 April 2016 that, after examining the supporting documents provided by the PGO in connection with a request for judicial assistance, it found that those documents did not corroborate the allegations made by the Ukrainian authorities responsible for the investigation,

– on the fact that the PGO had not informed the Council of the suspension of the investigation, and

– on the fact that the Council had not correctly taken account of certain exculpatory evidence relied on by the applicant.

61 Accordingly, in the second place, it is necessary to examine to what extent the circumstances relevant to the assessment of the contested measures differ from those which prevailed at the time of the assessment of the March 2017 measures or whether, as regards the contested measures, the same conclusion should be drawn as that in the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), namely, that those measures were unlawful.

62 In that regard, it must be pointed out, first, that the relevant criterion remained the same, namely that the restrictive measures are adopted against persons who were 'identified as responsible' for misappropriation of public funds — including persons 'subject to investigation by the Ukrainian authorities' for the misappropriation of Ukrainian public funds or assets.

63 Secondly, as is apparent from its letter of 8 March 2018, the Council relied, in order to maintain the applicant's name on the list, mainly, or solely, on the letters from the PGO, namely, the letters of 20 October 2017 and of 5 and 31 January 2018.

64 Thirdly, as is apparent from its letter of 8 March 2018, the Council does not appear to have taken account of the letter from the Public Prosecutor's Office in Vienna of 4 April 2016 nor other exculpatory evidence relied on by the applicant.

65 Fourthly, it is noted in the Council's letter of 8 March 2018 that the applicant was subject to 'ongoing' criminal proceedings.

66 However, the Council failed to mention that that procedure was suspended, leading to the conclusion that the Council did not attach particular importance to whether the proceedings in the light of which the applicant's name was included on the list were suspended or not and, as the case may be, the grounds giving rise to that suspension.

67 However, as is apparent from paragraph 229 of the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), while the fact that the proceedings were formally suspended is insufficient to show that the preliminary investigation against the applicant had concluded, it remains the case that such a fact is not without implications for the Council's decision to maintain a restrictive measure, otherwise the Council could extend the measure indefinitely, which would be inconsistent with the provisional nature of restrictive measures. That is particularly true given that, since March 2014, the applicant has been subject to restrictive measures adopted by the Council.

68 Fifthly, the applicant informed the Council, by letter of 15 February 2018, that the PGO's request to conduct a special pre-trial investigation in absentia had been rejected by the Pecherskiy District Court (Ukraine) on 12 February 2018.

69 However, the Council's letter of 8 March 2018 did not mention the decision of the Pecherskiy District Court, leading to the conclusion that the Council failed to give any weight to it, notwithstanding the fact

that that decision was adopted in the criminal proceedings on the basis of which it was decided to include the applicant's name on the list.

70 Sixthly, it is apparent that on 14 December 2017 and 24 January 2018 the Council wrote to the PGO in order to obtain additional information in relation to its letters of 20 October 2017 and 5 January 2018.

71 However, it is clear that, prima facie, the replies provided by the PGO were not sufficient to answer the questions that raised the fact that, despite the passage of a considerable period of time, the procedure initiated against the applicant was still at a preliminary stage and, moreover, was again suspended.

72 Therefore, the plea alleging a manifest error of assessment raised by the applicant is not prima facie without reasonable substance.

73 It follows from all of the foregoing that the condition relating to a prima facie case is satisfied.

Urgency

74 In order to determine whether the interim measures sought are urgent, it should be noted that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the future final decision, in order to prevent a lacuna in the legal protection afforded by the EU Courts. To attain that objective, urgency must usually be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party requesting the interim measure. That party must demonstrate that it cannot await the outcome of the main proceedings without suffering serious and irreparable damage (see order of 14 January 2016, *AGC Glass Europe and Others* v *Commission*, C−517/15 P-R, EU:C:2016:21, paragraph 27 and the case-law cited).

75 Furthermore, it should be pointed out that, according to settled case-law, when suspension of the operation of a European Union act is sought, the grant of the interim measure requested is justified only where the act at issue constitutes the decisive cause of the alleged serious and irreparable damage (see order of 14 January 2016, *AGC Glass Europe and Others* v *Commission*, C−517/15 P-R, EU:C:2016:21, paragraph 45 and the case-law cited).

76 Following settled case-law, damage of a pecuniary nature cannot, other than in exceptional circumstances, be regarded as irreparable since, as a general rule, pecuniary compensation is capable of restoring the aggrieved person to the situation that prevailed before he suffered the damage. Any such damage could be remedied by the applicant's bringing an action for compensation on the basis of Articles 268 and 340 TFEU (see order of 23 April 2015, *Commission* v *Vanbreda Risk & Benefits*, C−35/15 P(R), EU:C:2015:275, paragraph 24 and the case-law cited).

77 Furthermore, under the second sentence of Article 156(4) of the Rules of Procedure, an application for interim measures must 'contain all the evidence and offers of evidence available to justify the grant of interim measures'.

78 Thus, an application for interim measures must, of itself, enable the defendant to prepare its observations and the judge hearing the application to rule on it, if necessary without any other supporting information, since the essential elements of fact and law on which the application is based must be found in the actual text of that application (see order of 6 September 2016, *Inclusion Alliance for Europe* v *Commission*, C−378/16 P-R, not published, EU:C:2016:668, paragraph 17 and the case-law cited).

79 It is also established case-law that, in order to be able to determine whether all the conditions set out in paragraphs 74 and 75 above are met, the judge hearing the application for interim measures must have hard and precise information, supported by detailed and certified documents showing the situation of the party seeking interim relief and making it possible to examine the actual consequences which would be likely to result if the measures sought were not granted. It follows that that party, especially where it alleges harm of a financial nature, must, in principle, provide, with supporting documentation, an accurate and

comprehensive picture of its financial situation (see, to that effect, order of 29 February 2016, *ICA Laboratories and Others* v *Commission*, T−732/15 R, not published, EU:T:2016:129, paragraph 39 and the case-law cited).

80 While the application for interim measures may be supplemented on specific points by references to documents annexed to that application, those documents cannot compensate for the failure to set out the essential elements in that application. It is not the task of the judge hearing the application for interim measures to seek, in place of the party concerned, the information that may be found in the annexes to the application for interim measures, in the main application or in the annexes to that application, which is liable to substantiate the application for interim measures. To impose such an obligation on the judge hearing the application for interim measures would also be likely to deprive of all effect Article 156(5) of the Rules of Procedure, under which the application for interim measures must be made by separate document (see order of 20 June 2014, *Wilders* v *Parliament and Others*, T−410/14 R, not published, EU:T:2014:564, paragraph 16 and the case-law cited).

81 In the present case, the applicant relies on three elements in order to establish that the condition relating to urgency is satisfied.

82 First, the applicant claims financial loss because of the freezing of his funds.

83 However, where there is no information that would enable the extent of the alleged harm and the likelihood of its occurrence to be assessed, it cannot be concluded that the applicant has succeeded in showing the risk of serious and irreparable financial damage on account of the freezing of his funds.

84 That is particularly true given that the applicant maintains that he ‘no longer has any assets or property in any EU Member State that can be seized or frozen’.

85 Secondly, the applicant relies on damage to his reputation. In that regard, he submits, inter alia, for the first time in his reply of 13 August 2018 to a question from the President of the Court, that the contested measures prevent him from returning to the political scene in Ukraine and, in particular, from taking part in the presidential elections which are expected to take place in March 2019 and the elections to the Ukrainian Parliament in September 2019.

86 Irrespective of whether the applicant is entitled to put forward, for the first time in his reply of 13 August 2018 to the President of the General Court’s question, reasons relating to damage to his reputation as regards participation in political life, it is clear that his claims cannot establish that the condition relating to urgency is satisfied.

87 The applicant confines himself to making mere assertions, without adducing any evidence enabling the President of the Court to assess whether the alleged damage exists and its relevance.

88 Indeed, the fact that the applicant is included on the list on account of the contested measures may be detrimental to his reputation.

89 However, the applicant has not demonstrated that the alleged damage, in particular as regards the alleged impossibility of participating in political life, has as its determining cause the contested measures and not the ongoing criminal proceedings against him in Ukraine. According to the case-law referred to in paragraph 75 above, the grant of an interim measure is justified only where the measure at issue constitutes the decisive cause of the damage.

90 It must be added that, even if the decisive cause of the damage to the applicant’s reputation was the listing of his name in the contested measures, that damage would persist until that listing is annulled in the main action. In those circumstances, a suspension of operation of the contested measures, which the President of the Court could order only on a purely provisional basis and as part of a summary procedure, would scarcely be such as to dispel the suspicion which hangs over the applicant (see, to that effect, order of

22 December 2011, *Al-Chihabi* v *Council*, T−593/11 R, not published, EU:T:2011:770, paragraph 32 and the case-law cited).

91 Thirdly, the applicant alleges infringement of his right to an effective remedy. He was subject to an asset freeze from March 2014 and, regardless of the outcome of his application for annulment, his name was still re-listed. The periodic reviews which the Council conducted under the third paragraph of Article 5 of Decision 2014/119, together with the applicable time-limits before the Court, had the consequence of negating the effectiveness of the judgments of the Court which annulled Decision 2014/119, Regulation No 208/2014 and the March 2017 measures. At the time when the annulment took place, the applicant's inclusion on the list was no longer based on those measures but on subsequent measures adopted by the Council while the proceedings before the Court were ongoing. In order to restore effective judicial protection of the applicant, the President of the Court should intervene with an interim order to break the 'vicious circle'.

92 It follows from the above that, in order to establish that the condition relating to urgency is satisfied, the applicant does not maintain that the suspension sought is necessary to ensure the full effectiveness of the ruling to be given in the main proceedings.

93 By contrast, the applicant argues that, only the adoption of an interim measure could, in the present case, ensure effective judicial protection which would otherwise be incomplete because the judgments ordering annulment of the regulations imposing restrictive measures would be ineffective.

94 However, to accept such reasoning would, in essence, be tantamount to departing from the definition of urgency as interpreted in accordance with settled case-law.

95 In that regard, it must be recalled that a relaxation of the conditions applicable to assessing the existence of urgency has been permitted because of requirements relating to effective judicial protection, inter alia, where systemic reasons could impede, in law or in fact, that effective judicial protection or where there is flagrant and very serious illegality (see, to that effect, order of 19 July 2016, *Belgium* v *Commission*, T−131/16 R, EU:T:2016:427, paragraphs 37 and 40).

96 First, as regards the existence of systemic reasons that might impede effective judicial protection of the applicant, it is true that the restrictive measures before the Court are characterised by certain specific features in that regard.

97 The second paragraph of Article 60 of the Statute of the Court of Justice of the European Union provides that decisions of the General Court annulling a regulation laying down restrictive measures are to take effect only as from the date of expiry of the period for bringing an appeal or, if an appeal has been brought within that period, as from the date of dismissal of that appeal by the Court of Justice. That maintaining in force of the validity of such measures is justified by the need to give the Council the chance to correct the finding of illegality by adopting new measures (see, to that effect, order of 16 July 2015, *National Iranian Tanker Company* v *Council*, T−207/15 R, EU:T:2015:535, paragraph 56 and the case-law cited).

98 Thus, a judgment annulling a regulation laying down restrictive measures could produce the practical effects sought by that person or that entity, namely the unfreezing of funds, only from a date after the date on which that judgment is delivered, whereas on that date, the judge hearing the application for interim measures at first instance would no longer have any jurisdiction *ratione temporis* and, in any event, the freezing of funds could be maintained by reason of a fresh restrictive measure, which would, within the period laid down in the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, replace the measure annulled (see order of 19 July 2016, *Belgium* v *Commission*, T−131/16 R, EU:T:2016:427, paragraph 39 and the case-law cited).

99 In particular, where, as in the present case, the restrictive measures are subject to review and, if appropriate, periodic renewal, it cannot be ruled out that, at the time of the judgment annulling those

measures, they might already have been extended by measures adopted by the Council whilst the proceedings were ongoing.

100 However, those specific features of proceedings relating to restrictive measures cannot be considered to be systemic reasons that render the judgments of the Court annulling restrictive measures ineffective.

101 The Council cannot make those particular features of proceedings relating to restrictive measures obstacles to the effective judicial protection of the persons concerned.

102 In that regard, it should be noted that, in the present case, the restrictive measures are kept under constant review in accordance with the third paragraph of Article 5 of Decision 2014/119 and that, in accordance with Article 14(4) of Regulation No 208/2014, the list is to be reviewed at regular intervals and at least every 12 months.

103 Furthermore, the Council must observe the principle of sound administration enshrined in Article 41 of the Charter, which, according to settled case-law, entails the obligation for the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 11 July 2018, *Klyuyev* v *Council*, T−240/16, not published, EU:T:2018:433, paragraph 116 and the case-law cited).

104 Finally, pursuant to Article 266 TFEU, the Council is required to take the necessary measures to comply with judgments annulling those measures.

105 It follows that the Council is under an obligation to examine the impact of a judgment with the force of *res judicata* which annuls a measure on the decision to maintain restrictive measures. The Council must, in particular, re-examine carefully, and in the light of the General Court's judgment annulling the restrictive measures previously adopted, whether the reasons which led the Council, in the meantime, to maintain the restrictive measures remain valid.

106 Where that is not the case, the Council must make further inquiries and draw the appropriate conclusions from those inquiries, namely, inter alia, whether to repeal or maintain the restrictive measures, where appropriate for a period limited to the time necessary to complete those inquiries.

107 In those circumstances, there are no systemic reasons rendering the judgments of the General Court annulling the restrictive measures ineffective and it cannot be maintained that only the grant of the interim measures sought could ensure, in the present case, the effective judicial protection of the applicant.

108 Secondly, as regards the existence of a certain attitude on the part of the Council liable to render illusory, in practice, the effective judicial protection of the applicant, it is necessary to examine the conduct of the Council following the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433).

109 It is true that the Council did not make an explicit decision concerning the maintenance of the applicant's name on the list following the delivery of the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), and that notwithstanding the question raised by the President of the Court as referred to in paragraph 48 above.

110 The Council stated, in its reply of 25 July 2018, that 'the implications of the judgment [of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433),] [had been] discussed, but [that no] decision regarding the applicant's listing [had been] taken at [that] stage'.

111 It also follows from the Council's reply that it examined the relevance of the reasons which led to the annulment of the March 2017 measures in the judgment of 11 July 2018, *Klyuyev* v *Council* (T−240/16, not published, EU:T:2018:433), as regards the contested measures. Furthermore, it follows from that reply that the Council reached the conclusion at the end of that examination that that judgment did not call into question the legality of the contested measures.

112 Even if that conclusion appears at first sight to be open to dispute, as follows from the examination of the condition relating to a prima facie case (see paragraphs 57 to 73 above), what matters is that it cannot be inferred from the Council's approach that it questioned the need to re-examine the contested measures in the light of the judgment of 11 July 2018, *Klyuyev* v *Council* (T 240/16, not published, EU:T:2018:433), which had the force of *res judicata*.

113 Thus, and in the absence of other elements, it cannot be concluded that the Council's conduct was liable to render illusory, in practice, the effective judicial protection of the applicant.

114 Thirdly, concerning relaxation of the condition of urgency where there is flagrant and very serious illegality, it must be held that, even if it were found that there was a prima facie case, in that the plea alleging manifest error of assessment was not prima facie without reasonable substance, nonetheless the examination of the condition relating to a prima facie case did not reveal any evidence capable of establishing that the contested acts are vitiated by 'flagrant and very serious illegality'.

115 In the light of the foregoing, the examination of the application for interim measures has not established any elements to support a finding that there were systemic reasons liable to impede, in law or in fact, the effective judicial protection of the applicant or flagrant and very serious illegality of the contested measures.

116 In those circumstances, it must be concluded that the applicant has not shown that the condition relating to urgency is satisfied in this case.

117 It follows from all the foregoing that the application for interim measures must be dismissed, as the applicant has failed to establish that the condition of urgency is satisfied, without it being necessary to weigh the competing interests.

118 Lastly, as regards the head of claim seeking that the Court adjudicate in the main case under an expedited procedure pursuant to Article 151 of the Rules of Procedure, it is sufficient to note that the President of the Court has no jurisdiction, in proceedings for interim measures, to take such a decision.

119 Under Article 158(5) of the Rules of Procedure, it is appropriate to reserve the costs.

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

1. The application for interim measures is dismissed.

2. The costs shall be reserved.

Luxembourg, 28 November 2018.

E. CoulonM. Jaeger

Registrar President

* Language of the case: English.