



Press and Information

General Court of the European Union

**PRESS RELEASE No 97/16**

Luxembourg, 15 September 2016

Judgments in Cases T-340/14 Andriy Klyuyev v Council,  
T--346/14 Viktor Fedorovych Yanukovych v Council and T-348/14 Oleksandr  
Viktorovych Yanukovych v Council

**The General Court of the EU confirms the freezing of funds of three Ukrainians, one being Viktor Yanukovych, former President of Ukraine, for the period from 6 March 2015 until 6 March 2016**

*The Court annuls however the freezing of funds for the period from 6 March 2014 until 5 March 2015 for non-compliance with the listing criteria*

In response to the crisis in Ukraine which began at the end of 2013, the Council decided, on 5 March 2014, to freeze the funds and economic resources of persons identified as being responsible for the misappropriation of Ukrainian State funds.

Mr Viktor Fedorovych Yanukovych and Mr Andriy Klyuyev, who respectively occupied the positions of President of Ukraine and Head of Administration of the President, and one of the sons of Mr Yanukovych (Oleksandr Viktorovych Yanukovych) were named, for the period from 6 March 2014 until 5 March 2015, on the list of persons subject to freezing of funds on the ground that they were the subject of pre-trial investigations in Ukraine for offences linked to the misappropriation of Ukrainian public funds and their illegal transfer outside Ukraine.

As from 6 March 2015, the freezing of funds imposed on those individuals was extended by one year, the reasons for listing being different. The reasons then stated for the freezing were that the three Ukrainians concerned were the subject of criminal proceedings initiated by the Ukrainian authorities with respect to the misappropriation of public funds or assets.

The three above-named Ukrainians brought actions before the General Court of the European Union to challenge the freezing of their funds for the period from 6 March 2014 until 5 March 2015. They later modified their applications in order also to seek the annulment of the freezing for the period from 6 March 2015 until 6 March 2016.<sup>1</sup>

By its judgments today, **the General Court upholds in part the actions of the three Ukrainians and annuls the freezing of assets imposed on them for the period from 6 March 2014 until 5 March 2015. However, the General Court confirms the freezing of funds imposed for the period from 6 March 2015 until 6 March 2016.**

As regards the **first period**, the General Court finds that, as in, inter alia, the cases of *Portnov*<sup>2</sup> and *Azarov*,<sup>3</sup> the Council identified the three Ukrainians as being responsible for a misappropriation of funds solely on the basis of a letter of 3 March 2014 from the Prosecutor General's Office of Ukraine, which stated that following investigations initiated with respect to those individuals 'there have been established facts of embezzlement of State funds in sizeable amounts and further illegal transfer outside the territory of Ukraine'. The General Court holds that **that letter does not provide any detail of the specific acts the three Ukrainians are alleged to have committed or of their liability for those acts.**

<sup>1</sup> The freezing imposed on them has since been extended by a further year, until 6 March 2017. That extension is the subject of actions brought by Mr Viktor Fedorovych Yanukovych (Case [T-244/16](#)), Mr Andriy Klyuyev (Case [T-240/16](#)) and Mr Oleksandr Viktorovych Yanukovych (Case [T-245/16](#)).

<sup>2</sup> Case [T-290/14](#) *Andriy Portnov v Council* see also Press Release [No 129/15](#)).

<sup>3</sup> Case [\(T-331/14](#) *Mykola Yanovych Azarov v Council* see also Press Release [No 7/16](#)).

The General Court concludes that the asset-freezing imposed on the three Ukrainians does not comply with the listing criteria and therefore annuls it for the period from 6 March 2014 until 5 March 2015.

As regards the **second period**, from 6 March 2015 until 6 March 2016, the General Court considers that it is necessary first to determine whether the listing criterion referring to persons identified as responsible for the misappropriation of Ukrainian State funds corresponds to the objective of consolidating and supporting the rule of law in Ukraine. While it is conceivable that certain conduct pertaining to acts classifiable as misappropriation of public funds may be capable of undermining the rule of law, it cannot be accepted that any act classifiable as misappropriation of public funds justifies European Union action.

In that context, the listing criterion can be considered to be compatible with the European Union legal order only to the extent that it is possible to attribute to it a meaning that is compatible with the requirements of the higher rules with which it must comply, and more specifically with the objective of consolidating and supporting the rule of law in Ukraine.

Accordingly, the General Court holds that the listing criterion must be interpreted as meaning that it does not concern, in abstract terms, any act to be classified as misappropriation of public funds, but rather that it concerns acts classifiable as misappropriation of public funds or public assets which, having regard to the amount or the type of funds or assets misappropriated or to the context in which the offence took place, are, at the very least, such as to undermine the legal and institutional foundations of Ukraine (in particular the principles of legality, the prohibition of arbitrary exercise of power by the executive, effective judicial review and equality before the law) and, ultimately, such as to undermine respect for the rule of law in Ukraine. As thus interpreted, the listing criterion is compatible with and proportionate to the relevant objectives of the EU Treaty.

Next, the General Court finds that the Council, to justify the imposition of restrictive measures on the three Ukrainians, relied on a number of letters from the Ukrainian authorities of 10 October 2014 and 30 December 2014. Those letters give an account of progress in the various investigations concerning the three Ukrainians and provide **sufficient proof of the fact that, when the freezing of funds was extended in March 2015, those individuals were the subject of criminal proceedings relating to misappropriation of public funds or assets.** Further, the General Court states that, taking into consideration the fact that the context of those measures is that a significant part of the former Ukrainian leadership is suspected of having committed serious crimes in the management of public resources, and the positions held by the three Ukrainians within that leadership, **the freezing of funds imposed on them contributes, in an effective manner, to facilitating the prosecution of crimes of misappropriation of public funds** that were to the detriment of the Ukrainian institutions and ensure that restitution of the profits of such misappropriations can be more easily achieved.

Last, the General Court concludes that the extension of the fund-freezing imposed on the three Ukrainians, on the basis of the information provided in the letters of 10 October 2014 and 30 December 2014, is compatible with the listing criterion, as interpreted in the light of the objective of consolidating and supporting the rule of law in Ukraine.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*Unofficial document for media use, not binding on the General Court.*

*The full text of the judgments ([T-340/14](#), [T-346-14](#) and [T-348-14](#)) is published on the CURIA website on the day of delivery*

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