



Press and Information

General Court of the European Union
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Order of the President of the General Court in Case T-305/18 R
Andriy Klyuyev v Council

The application for interim measures of Mr Andriy Klyuyev, former Head of Administration of the President of Ukraine, to suspend the operation of restrictive measures, is dismissed

However, the particular features of proceedings relating to restrictive measures must not render inoperative the right to effective judicial protection

In March 2014, the Council of the European Union included, for a period of one year, the name of Mr Andriy Klyuyev, former Head of Administration of the President of Ukraine, on the list of persons against whom restrictive measures consisting, inter alia, of the freezing of funds was ordered in the light of the situation in Ukraine ('the list'). The reason why Mr Klyuyev's name was included on the list was that he was 'subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.'

In March 2015, the inclusion of Mr Klyuyev's name on the list was extended to March 2016, in essence, for the same reasons as those supporting his initial inclusion. By judgment of 15 September 2015,¹ the General Court annulled the inclusion of Mr Klyuyev's name on the list for the period from March 2014 to March 2015 and confirmed his inclusion for the period from March 2015 to March 2016.

In March 2016 and 2017, the Council extended, on each occasion for a one-year period, the application of restrictive measures against Mr Klyuyev for the same reasons as those underlying his inclusion on the list in March 2015. By judgment of 11 July 2018,² the Court annulled the inclusion of Mr Klyuyev's name on the list in respect of the period from March 2017 to March 2018 and confirmed his inclusion for the period from March 2016 to March 2017. The annulment of the March 2017 measures was based on the fact that the Council had failed to dispel doubts that existed as to the reliability of the information provided by the Ukrainian authorities concerning the proceedings brought against Mr Klyuyev.

In the meantime, in March 2018, the Council extended the application of the restrictive measures against Mr Klyuyev to March 2019, for the same reasons as those underlying his inclusion on the list in March 2015, 2016 and 2017.

Mr Klyuyev brought an action before the Court against the acts by which the Council extended, in March 2018, the application of the restrictive measures against him for a further period of one year. In his action, Mr Klyuyev argues, inter alia, that the Council has once again failed to dispel doubts that exist as to the reliability of the information provided by the Ukrainian authorities for the purpose of establishing the list. He also requested the Court to suspend the operation of those measures as against him until a final decision is given in respect of his action.

By order given on the application to suspend operation, the President of the General Court notes that such an application may be granted if it is established, first, that the suspension of operation is justified, *prima facie*, and, secondly, that that measure is urgent so that it must be adopted in order to avoid serious and irreparable harm to the applicant's interests.

¹ Case: [T-340/14](#) Klyuyev v Council.

² Case: [T-240/16](#) Klyuyev v Council.

Concerning whether the application for suspension is justified, *prima facie*, the President notes that the reasons underlying the application of restrictive measures against Mr Klyuyev have, in essence, remained unchanged since he was first included on the list in March 2014. In that context, the President also notes that in the contested measures, **as in the circumstances for the adoption of the March 2017 measures criticised by the Court in its judgment of 11 July 2018**, the Council relied primarily on information from the Prosecutor General of Ukraine and appears not to have taken into account exculpatory evidence which was made available to it, *inter alia*, by Mr Klyuyev.

In addition, the President finds that the Council did not take into consideration the fact that the criminal proceedings brought against Mr Klyuyev in Ukraine were suspended and the reasons that led to that suspension, **notwithstanding the finding made by the Court in its judgment of 11 July 2018** that such a suspension is not without implications for the Council's decision to maintain a restrictive measure.

Accordingly, the President finds that **the circumstances for the adoption of the contested measures do not seem to differ considerably from those for the adoption of the March 2017 measures, although, having regard to the annulment of those measures by the Court, Mr Klyuyev's action does not appear, *prima facie*, to be without reasonable substance.**

As regards the urgency of the suspension application, the President considers, *inter alia*, **Mr Klyuyev's argument alleging infringement of his right to an effective remedy** resulting from the continued extensions of the inclusion of his name on the list, notwithstanding the existence of judgments in which the Court held that certain acts were unlawful relating to the imposition of restrictive measures on him.

In that context, the President finds that a relaxation of the criterion of urgency is possible where systemic reasons could impede effective judicial protection. Accordingly, the President states that the specific features of proceedings relating to restrictive measures must not render ineffective the right to effective judicial protection. However, in the present case, there are no systemic reasons which would negate the effectiveness of the judgments of the General Court annulling the restrictive measures.

The Council is obliged to examine the impact of a judgment which annuls a measure on the decision to maintain restrictive measures and must, in particular, re-examine carefully and in the light of the Court's judgment annulling the restrictive orders previously adopted, whether the reasons which led the Council, in the meantime, to maintain the restrictive measures remain valid. Where that is not the case, the Council must make further inquiries and draw the appropriate conclusions from those inquiries, namely, whether to annul or to maintain the restrictive measures.

In that regard, the President notes, in the present case, that the Council, even though it did not make an explicit decision on that point, nevertheless examined the relevance of the reasons which led to the annulment of the March 2017 measures in maintaining the March 2018 measures, thus acknowledging the need to re-examine the contested measures in the light of the judgment of 11 July 2018, which had the force of *res judicata*.

Accordingly, the President finds that **Mr Klyuyev has failed to establish that the suspension of operation of the March 2018 measures is urgent and, consequently, dismisses the application to suspend.**

NOTE: The General Court will deliver final judgment on the substance of this case at a later date. An order as to interim measures is without prejudice to the outcome of the main proceedings. An appeal, limited to points of law only, may be brought before the President of the Court of Justice against the decision of the President of the General Court within two months of notification of the decision.

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The [full text](#) of the order is published on the CURIA website.

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