ECLI:EU:C:2016:722

OPINION OF ADVOCATE GENERAL

SHARPSTON

delivered on 22 September 2016 (1)

Case C-79/15 P

Council of the European Union

v

Hamas

(Appeal — Restrictive measures with the aim of preventing terrorism — Maintaining individuals, groups and entities on the list provided for by Article 2(3) of Regulation (EC) No 2580/2001 — Common Position 2001/931/CFSP — Article 1(4) and (6) — Procedure — Meaning of ‘competent authority’ — Value of information available in the public domain — Rights of the defence — Duty to state reasons)

1. The Council of the European Union has appealed against the judgment of the General Court in Case T-400/10 (2) ('the judgment under appeal') annulling a series of Council decisions and Council implementing measures in so far as, with a view to combating terrorism, they included Hamas (including Hamas-Izz al-Din al-Qassem) on the list of persons, groups and entities to whom, or for whose benefit, it is prohibited to provide financial services. The General Court annulled those decisions and measures for reasons relating to, inter alia, the insufficient statement of grounds accompanying them and the grounds on which the Council had relied for maintaining Hamas (including Hamas-Izz al-Din al-Qassem) on that list.

2. The Council submits that, in the judgment under appeal, the General Court erred in law by:

– assessing the Council's use of information in the public domain for the periodic review of the measures adopted;

– not concluding that the decision of competent authorities of the United States of America ('USA') constituted a sufficient basis for including Hamas on the list of persons, groups and entities with respect to whom it is prohibited to provide financial services to them or for their benefit; and

– not concluding that the decision of the competent authorities of the United Kingdom constituted a sufficient basis for including Hamas on the list of persons, groups and entities with respect to whom it is prohibited to provide financial services to them or for their benefit.

Legal background

3. The general legal background set out at points 3 to 12 of my Opinion in Case C-599/14 P *Council* v *LTTE*, delivered on the same day as my Opinion in the present appeal, is equally relevant to the present appeal. I shall not repeat it here.

4. The Council first listed 'Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)' in the respective annexes to Common Position 2001/931/CFSP (3) and to Council Decision 2001/927/EC. (4) That group remains listed. As of 12 September 2003, the group listed appears under the name 'Hamas (including Hamas-Izz al-Din al-Qassem)'. At the time of bringing its action before the General Court, that group ('"Hamas", including "Hamas-Izz al-Din al-Qassem"') was maintained on the list as a result of Council Decision 2010/386/CFSP (5) and Council Implementing Regulation (EU) No 610/2010 (6) ('the Council measures of July 2010').

5. On 13 July 2010, the Council published a notice ('the July 2010 Notice') for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 (7) ('the Article 2(3) list'). (8) In the July 2010 Notice, the Council brought to the attention of the persons, groups and entities listed in Regulation No 610/2010 that it considered that the reasons for keeping them on that list

remained valid and that, accordingly, it had decided to maintain them on that list. The Council further mentioned that the persons, groups and entities concerned could submit a request to obtain the Council's statement of reasons for maintaining them on the list (unless they had already received such statement). It also informed them of their right to submit at any time a request to the Council, together with any supporting documentation, that the decision to include and maintain them on the Article 2(3) list should be reconsidered.

6. Hamas was subsequently maintained on the Article 2(3) list by the following measures:

– Council Decision 2011/70/CFSP (9) and Council Implementing Regulation (EU) No 83/2011 (10) ('the Council measures of January 2011'), together with a notice published on 2 February 2011 (11) ('the February 2011 Notice'). The Council sent Hamas the statement of reasons for maintaining it on that list by letter of 2 February 2011, notified to Hamas on 7 February 2011 ('the letter of 2 February 2011').

– Council Decision 2011/430/CFSP (12) and Council Implementing Regulation (EU) No 687/2011 (13) ('the Council measures of July 2011'), together with a notice published on 19 July 2011 (14) ('the July 2011 Notice') and the statement of reasons sent by the Council by letter of 19 July 2011;

– Council Decision 2011/872/CFSP (15) and Council Implementing Regulation (EU) No 1375/2011 (16) ('the Council measures of December 2011'), together with a notice published on 23 December 2011 (17) ('the December 2011 Notice');

– Council Decision 2012/333/CFSP (18) and Council Implementing Regulation (EU) No 542/2012 (19) ('the Council measures of June 2012'), together with a notice published on 26 June 2012 (20) ('the June 2012 Notice');

– Council Decision 2012/765/CFSP (21) and Council Implementing Regulation (EU) No 1169/2012 (22) ('the Council measures of December 2012), together with the Notice published on 11 December 2012 (23) ('the December 2012 Notice');

– Council Decision 2013/395/CFSP (24) and Council Implementing Regulation (EU) No 714/2013 (25) ('the Council measures of July 2013');

– Council Decision 2014/72/CFSP (26) and Council Implementing Regulation (EU) No 125/2014 (27) ('the Council measures of February 2014'); and

– Council Decision 2014/483/CFSP (28) and Council Implementing Regulation (EU) No 790/2014 (29) ('the Council measures of July 2014').

7. The General Court described the content of the statement of reasons for the Council measures of July 2011 to July 2014 as follows:

‘94 The statements of reasons for the Council measures of July 2011 to July 2014 begin with a paragraph in which the Council describes the applicant as “a group involved in terrorist acts which from 1988 onwards carried out, and acknowledged responsibility for, regular attacks against Israeli targets, including kidnapping, stabbing and shooting attacks against civilians, and suicide bomb attacks on public transport and in public places”. The Council states that “Hamas mounted attacks in both ‘Green Line’ Israel and Occupied Territories” and that “in March 2005, Hamas declared a ‘tahdia’ (period of calm) that resulted in a decline in their activities”. The Council continues: “However, on 21 September 2005 a Hamas cell kidnapped and later killed an Israeli. In a video statement Hamas claimed to have kidnapped the man in an attempt to negotiate the release of Palestinian prisoners held by Israel”. The Council states that “Hamas militants have taken part in the firing of rockets from Gaza into southern Israel [and that] [f]or the purpose of carrying out terrorist attacks against civilians in Israel, Hamas has in the past recruited suicide bombers by offering support to their families”. The Council states that “in June 2006 Hamas [including Hamas-Izz al-Din-al-Qassem] was involved in the operation which led to the kidnap of an Israeli soldier, Gilad Shalit” (first paragraph of the statements of reasons for the Council measures of July 2011 to July 2014). Beginning with the statement of reasons for Implementing Regulation No 1375/2011 …, the Council states that “Hamas released [the soldier] Gilad Shalit, after holding him for five years, as part of a prisoner swap deal with Israel on 11 October 2011”.

95 Then, the Council draws up a list of “terrorist activities” which, according to the Council, Hamas has recently carried out, from January 2010 (second paragraph of the statements of reasons for the Council measures of July 2011 to July 2014).

96 The Council, after expressing the view that “these acts fall within the provision of Article 1(3), subpoints (a), (b), (c), (d), (f) and (g) of Common Position 2001/931, and were committed with the aims set out in Article 1(3), points (i), (ii) and (iii) thereof”, and that “Hamas (including Hamas-Izz al-Din-al-Qassem) falls within Article 2(3)(ii) of Regulation No 2580/2001” (third and fourth paragraphs of the statements of reasons for the Council measures of July 2011 to July 2014), refers to decisions which the United States and United Kingdom authorities, as is apparent from the statement of reasons and from the file, adopted in 2001 against the applicant (fifth to seventh paragraphs of the statements of reasons for the Council measures of July 2011 to July 2014). In the statement of reasons for Implementing Regulation No 790/2014 …, the Council refers for the first time to a United States decision of 18 June 2012.

97 The decisions to which the Council refers are, first, a decision of the United Kingdom Secretary of State for the Home Department of 29 March 2001 and, second, United States Government decisions adopted pursuant to section 219 of the United States Immigration and Nationality Act (“INA”) and Executive Order 13224.

98 As regards those decisions, the Council mentions the fact that, in the case of the United Kingdom decision, it is reviewed regularly by an internal governmental committee and, in the case of the United States decisions, they are subject to both administrative and judicial review.

99 The Council infers from those considerations that "decisions in respect of Hamas (including Hamas-Izz al-Din-al-Qassem) have thus been taken by competent authorities within the meaning of Article 1(4) of Common Position 2001/93" (eighth paragraph in the statements of reasons for the Council measures of July 2011 to July 2014).

100 Last, the Council "notes that the above decisions … still remain in force, and is satisfied that the reasons for including Hamas (including Has-Izz al-Din-al-Qassem) on the list [relating to frozen funds] remain valid" (ninth paragraph of the statements of reasons for the Council measures of July 2011 to July 2014). The Council concludes that the applicant should continue to appear on that list (10th paragraph of the statements of reasons for the Council measures of July 2011 to July 2014).'

Summary of the procedure at first instance and the judgment under appeal

8. On 12 September 2010, Hamas brought an action before the General Court challenging in essence its inclusion in the Article 2(3) list. It sought the annulment of the July 2010 notice and the July 2010 Council measures in so far as they concerned Hamas and asked the General Court to order the Council to pay the costs. Hamas subsequently applied to amend the form of order sought so as to include also the Council measures of January 2011 to July 2014. The General Court therefore treated Hamas' action as asking it to annul the notice of July 2010 and the Council measures of July 2010 to July 2014 (collectively 'the contested measures'), in so far as they concerned Hamas, and to order the Council to pay the costs. The General Court found that Hamas' action retained its object with respect to the contested measures preceding the Council measures of July 2014. (30) However, it dismissed Hamas' action as being inadmissible in so far as it sought annulment of the July 2010 notice: that notice was not a challengeable act within the meaning of Article 263 TFEU. (31)

9. The Council asked the Court to dismiss the action and to order the applicant to pay the costs. The European Commission intervened in support of the Council.

10. Hamas put forward four pleas in support of its application for annulment of the Council measures of July 2010 and January 2011. Those pleas concerned, respectively, breach of its rights of defence; a manifest error of assessment; breach of the right to property; and breach of the obligation to state reasons.

11. Hamas put forward eight pleas in support of its application for annulment of the Council measures of July 2011 to July 2014. Those pleas included the alleged infringement of Article 1(4) of Common Position 2001/931 (first plea); the failure to take sufficient account of the development of the situation 'owing to the passage of time' (fourth plea); the principle of non-interference (fifth plea); breach of the obligation to state reasons (sixth plea); and breach of Hamas' rights of defence and of the right to effective judicial protection (seventh plea).

12. The General Court assessed the *fourth and sixth pleas, taken together*, for annulment of the Council measures of July 2011 to July 2014.

13. The General Court first set out general considerations and the case-law (concerning the review process; the duty to state reasons under Article 296 TFEU; the scope of the Council's discretion; and the legal and factual basis of a decision based on Article 1(4) of Common Position 2001/931) against the background of which it would assess the grounds on which the Council based its measures of July 2011 to July 2014. (32) After describing the content of the statement of reasons for those measures, (33) the General Court then found that, although the list of acts of violence for the period after 2004 (in particular for the period 2010 to 2011) drawn up by the Council had played a decisive role in determining the appropriateness of maintaining the freezing of Hamas' funds, none of those acts of violence had been examined in the UK and US decisions of 2001 to which the statements of reasons referred. (34) Nor indeed could those acts have been examined in those decisions because of the dates on which they took place. (35) Furthermore, whilst the statements of reasons made clear that those national decisions remained in force, they contained no reference to more recent national decisions or the reasons on which such decisions were based (with the exception of the statement of reasons for the Council measures of July 2014, which mentioned for the first time a July 2012 US decision). (36) As regards the July 2012 US decision, the General Court found that the Council had provided no evidence disclosing how the actual reasons on which that decision was based related to the list of acts of violence set out in the statement of reasons for the Council measures of July 2014. (37) The General Court also rejected as inadmissible other national decisions to which reference was made at the hearing (and were not mentioned in the statement of reasons for the Council measures of July 2014 adopted after the hearing). (38)

14. As regards the Council's claim that it was sufficient to consult the press in order to establish that Hamas regularly acknowledged responsibility for terrorist acts, the General Court found that claim, together with the absence of any reference to decisions of the competent authorities postdating the imputed acts and referring to those acts, clearly showed that the Council had based its imputation of terrorist acts to Hamas (taken into account for the period after 2004) on information which it had derived from the press, not on appraisals contained in decisions of competent authorities. (39) The General Court therefore concluded that the Council had not satisfied the requirements of Common Position 2001/931 according to which the factual basis of an EU decision freezing funds is to be derived from material actually examined and accepted in decisions of national competent authorities within the meaning of that common position. (40) The General Court found the Council's reasoning to be as follows: the Council had begun with appraisals which were in reality its own, describing Hamas as 'terrorist' and imputing to it a series of acts of violence which the Council had taken from the press and the internet; it had then stated that the facts imputed to Hamas fell within the definition of terrorist acts and that Hamas was a terrorist group within the meaning of Common Position 2001/931; only *after* those assertions had the Council referred to decisions of national authorities predating the imputed facts (at least as regards the Council measures of July 2011 to February 2014). (41) According to the General Court, the Council had no longer relied on facts that were first assessed by national authorities. Rather, the Council had itself performed the role of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. (42)

15. The Council had thus contravened the two-tier system established by Common Position 2001/931. Whilst the Council may, if necessary and within the context of its broad discretion, decide to maintain a person or group on the Article 2(3) list in the absence of a change in the factual situation, any new terrorist act which the Council inserts in its statement of reasons during its review must, under that system, have been the subject of examination and a decision by a competent authority. (43)

16. The General Court also rejected the argument of the Council and the Commission that the absence of any reference to decisions of competent authorities was due to the fact that Hamas could and should have contested the restrictive measures against it at the national level. (44) It found that the Council's argument corroborated its finding that the Council had relied on information obtained from the press and the internet. (45)

17. The General Court disagreed with the Council's claim that, in any event, in the context of the present action, Hamas (in its application) did not appear to contest its involvement in terrorism. According to the General Court, the Council cannot substitute before the Court the grounds for its measures of July 2011 to July 2014 by reducing those grounds to a few factual elements which (the Council alleges) Hamas has admitted before the Court. Nor can the Court itself undertake an assessment for which the Council alone is competent. (46)

18. On the basis of those considerations, the General Court concluded that, in adopting the Council measures of July 2011 to July 2014, the Council had infringed Article 1 of Common Position 2001/931 and had breached the obligation to state reasons. (47) It therefore annulled the Council measures of July 2011 to July 2014 and also the Council measures of July 2010 and January 2011. As regards the latter category of measures, the General Court found that it was not disputed that these measures likewise contained no reference to decisions of competent authorities relating to the facts imputed to the applicant. They were therefore vitiated by the same breach of the obligation to state reasons. (48)

Claims and submissions on appeal

19. The Council, supported by the Commission and the French Government, asks the Court to set aside the judgment under appeal, to give final judgments in the matters that are the subject of its appeal and to order Hamas to pay the costs of the Council at first instance and in this appeal. Hamas asks the Court to dismiss the appeal and to order the Council to pay the costs incurred by Hamas at first instance and at appellate level.

20. At the hearing on 3 May 2016, the same parties presented oral argument.

21. By its *first ground of appeal*, the Council submits that the General Court erred in law in its assessment of the Council's reliance on information in the public domain for the purposes of review pursuant to Article 1(6) of Common Position 2001/931.

22. *First*, the General Court was wrong to consider that the Council must regularly provide new reasons explaining why a person or group continues to be subject to restrictive measures. That principle is contrary to the Court's judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* (49) and the judgments of the General Court in *People's Mojahedin Organization of Iran* v *Council* (50) and in *Al-Aqsa* v *Council*. (51) In the first case, the Council had not been required to modify the statement of reasons over a period of almost six years. It follows that the Court accepted (implicitly) the possibility of maintaining a person or group on the list during that period if there is no new information of the competent authorities supporting delisting. Like the situation of Stichting Al-Aqsa, Hamas' proscription in the UK made it extremely difficult for Hamas to commit new terrorist acts which would give rise to new decisions within the meaning of Article 1(4) of Common Position 2001/931. The same applies as regards the US decisions. Furthermore, had Hamas challenged its proscription or had there been a review *ex officio* of those decisions, that would have resulted in new decisions.

23. *Second*, the General Court erred in rejecting the Council's use of information available in the public domain. That decision is also contrary to its own previous case-law according to which a decision of a competent authority might not be sufficient to decide to maintain a person or group on the Article 2(3) list. (52) Even in the absence of any further decision of a competent authority, the Council was entitled to maintain Hamas on that list. In the present case, the publicly available information on which the Council relied was used for that purpose only (irrespective of the fact that the Council could have maintained the listing on the basis of existing decisions of competent authorities). That is consistent with the Court's judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*. (53) Thus, a change in the factual situation may result from a change in the legal status of the initial Article 1(4) decision or new information about the activities of the listed group. In circumstances where the original Article 1(4) decision has not been annulled or withdrawn, the relevant question in the context of a review is whether there is a reason for delisting, not whether there is a reason to re-list the person or group concerned. The General Court's reasoning also leads to the absurd result that, on the one hand, the Council's decision to maintain Hamas on the Article 2(3) list would have been valid had the Council simply relied on the initial Article 2(3) list and not referred to additional information, and, on the other hand, it was publicly known that Hamas had committed new terrorist attacks (a fact which Hamas accepted in its original application before the General Court).

24. *Third*, the General Court erred in finding that the Council had made its own factual findings, based on publicly available information, for the purposes of its review. That finding too is contrary to the Court's judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*. It also raises the question how the Council is to act in circumstances where it becomes aware of acts which are clearly 'terrorist' and for which a listed person or group publicly claims responsibility. In such circumstances, the two-tier system does not require procedures to be initiated at the national level.

25. *Fourth*, the General Court erred in annulling the contested measures on the basis that the Council had referred to publicly available information. That information was

relevant to deciding whether to withdraw Hamas from the Article 2(3) list. In the absence of elements in support of such delisting, the Council could decide to maintain Hamas on that list.

26. Hamas' response to the first ground of appeal is as follows.

27. *First*, Hamas disagrees with the Council that the General Court required decisions within the meaning of Article 1(6) of Common Position 2001/931 to be based on new reasons or decisions of competent authorities. Rather, the General Court insisted that the grounds of the contested measures be based on facts that had been examined by competent authorities. Furthermore, the Council could not rely on previous decisions of competent authorities without examining the facts underlying those decisions. Furthermore, Hamas cannot be faulted for not having challenged the Council's factual imputations before national courts: there were no new decisions to challenge.

28. *Second*, Hamas submits that the duty to state reasons and the need for a sufficient factual basis equally apply to decisions whereby the Council maintains a person or group on the Article 2(3) list. In its review, the Council may not assume that a person or group should continue to be included in that list. In the present case, the Council had relied on its initial listing decisions (which Hamas did not challenge). However, when Hamas was first included in the Article 2(3) list, it was not yet possible to challenge those decisions before the General Court alleging that the Council had not sufficiently stated the grounds of those decisions. In fact, the Council had never communicated precise information or parts of the file showing that decisions within the meaning of Article 1(4) of Common Position 2001/931 had been taken with regard to Hamas. Nor had the Council informed Hamas of the elements justifying its inclusion in the list. That also means that the Union Courts cannot now verify whether the facts resulting in the Council's initial listing of Hamas were sufficiently credible and had been examined by a competent authority.

29. The Council also wrongly alleges that, had it not included in the statement of reasons a list of more recent facts and additional information, its decision would nevertheless still have been valid because it was based on the initial decisions of competent authorities. That presupposes that the Council would have been justified in relying solely on information taken from those decisions. Whilst the Council had relied on a series of alleged terrorist attacks committed by Hamas (both in the contested measures and in the course of the procedure before the Court), it has not shown any evidence of those facts. Nor may the Council rely on press articles for that purpose.

30. *Third*, Hamas observes that the Council appears to criticise the General Court for having reached the (logical) conclusion that the Council had made its own factual imputations. The Council is wrong to allege that there cannot be any doubt about the terrorist character of Hamas' actions. It also has no competence, when acting pursuant to Common Position 2001/931, to characterise acts in this manner. The Council's argument that it is impossible for it to ask a judicial authority to assess new facts is not relevant because the General Court did not impose such a requirement on the Council. Nor did the General Court demand that the Council ask the UK or US authorities to proscribe Hamas

again. The General Court only insisted that, when the Council relies on new facts, those facts be assessed by a competent authority.

31. *Fourth*, Hamas considers that it was insufficient for the Council merely to state that the initial national decisions remained valid. It is for the Council to assess whether Hamas continued to be characterised as terrorist in a manner that is consistent with Common Position 2001/931. Whilst the Council had referred to a US decision of 18 July 2012 in the grounds for Implementing Regulation No 790/2014, the General Court correctly found that there was nothing showing that the reasoning underlying that decision attached to the acts on which the Council relied. In so far as the Council relied only on the initial decisions, the contested measures were insufficiently reasoned.

32. By its *second ground of appeal*, the Council claims that the General Court erred in not concluding that the decisions of US authorities constituted a sufficient basis for listing Hamas.

33. *First*, a decision of an administrative authority may be a decision within the meaning of Article 1(4) of Common Position 2001/931. That has been confirmed by the Court in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* (54) as well as by the General Court in *People's Mojahedin Organization of Iran* v *Council*. (55)

34. *Second*, under Common Position 2001/931, the competent national authority is to find the facts underlying the national decision. Where the decision is not taken by a judicial authority, judicial protection is guaranteed by offering the person or group concerned the possibility of challenging that decision before the national courts and tribunals. The General Court erred by requiring that the Council should know all of the factual elements on the basis of which the US Secretary of State listed Hamas. Article 1(4) of Common Position 2001/931 does not require those elements to be communicated to the Council. Nor can the Council substitute itself for the competent authority. If the General Court's position were to be upheld, it would mean that, where a person or group challenges the listing decision before the EU Courts (rather than the national courts), it would be for the EU Courts to examine the grounds underlying the listing. Furthermore, it is not realistic to require that the information underlying the decision to proscribe at a national level must constitute the factual basis of the Council's decision to apply restrictive measures. Finally, were the US authority to review the decision in a relevant manner, it would be for the Council to take that development into account.

35. *Third*, in the present case, procedures were available under US law for challenging the decision to list Hamas as a terrorist organisation.

36. *Fourth*, Hamas never contested its listing by the US authorities.

37. *Fifth*, upholding the General Court's position would mean reversing the General Court's judgment in *People's Mojahedin Organization of Iran* v *Council*, (56) including the finding that '… the Council acts reasonably and prudently when … the decision of the competent national authority on which the Community decision to freeze funds is

based may be or is the subject of challenge before the courts under domestic law [and] that institution [therefore] refuses in principle to express an opinion on the validity of the arguments on substance raised by the party concerned in support of such an action, before it knows the outcome of the proceedings. If it acted otherwise, the assessment made by the Council, as a political or administrative institution, would run the risk of conflicting, on issues of fact or law, with the assessment made by the competent national court or tribunal'. (57) Upholding the General Court's position would also imply that a person or group could block its listing by deliberately not challenging the decisions of the competent authorities before the national courts and tribunals, and that an administrative authority became the final authority on the (factual) elements of the file. That approach also results in a risk of forum shopping.

38. Hamas submits that the second ground of appeal is inadmissible because the General Court made no findings on whether the US decisions were a sufficient basis for including Hamas on the Article 2(3) list. Rather, the General Court found that the Council had based its factual imputations on information found in the press and not on decisions of competent authorities. In the alternative, Hamas argues that the second plea is also inadmissible in so far as it contests factual findings made by the General Court.

39. In the further alternative, Hamas alleges that the US decisions were not taken by competent authorities within the meaning of Common Position 2001/931 and could not be a sufficient basis for including Hamas in the Article 2(3) list. In that regard, Hamas submits, the US authorities at issue only established a list of terrorist organisations to which restrictive measures should be applied. Such decisions do not satisfy the conditions of Article 1(4) of Common Position 2001/931 (except for listing decisions taken by the UN Security Council). Furthermore, as regards specifically the decisions of authorities of third States, Hamas stresses that the principle of sincere cooperation applies between the Council and the authorities of EU Member States. Hamas insists on the need to verify whether the third State pursues the same objectives as the European Union and offers the same guarantees as competent authorities of Member States. Hamas contests the Council's arguments regarding the level of protection of rights of defense, the duty to state reasons and the right to an effective judicial protection under US law.

40. Hamas submits that the Council is wrong to allege that the General Court erred by finding that the Council could not rely on a US decision without having access to the facts and assessments underlying that decision. It is settled case-law that it is not sufficient for the Council to rely on a decision of a competent authority. The Council must explain why it considers a group to be a terrorist group and provide the elements showing that that classification remains relevant at the time of its review.

41. By its *third ground of appeal*, the Council submits that the General Court erred in not concluding that the UK proscription order constituted a sufficient basis for listing Hamas. Even if the Council could not rely on the US decisions, the General Court was required to examine whether the 2001 UK proscription order was a sufficient and valid basis for keeping Hamas on the Article 2(3) list. Whilst the General Court accepted that the UK order remained valid, it implicitly took the position that that decision was

repealed or had become outdated. The Court has already accepted that the 2001 UK proscription order was a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. Furthermore, the Council was justified in relying on the 2001 UK proscription order without it being necessary to have access to the facts and assessments underlying that decision.

42. Hamas submits that the third ground of appeal is inadmissible in so far as the General Court did not find that the 2001 UK proscription order was not a sufficient basis for including Hamas in the Article 2(3) list and, in the alternative, in so far as that plea contests factual findings made by the General Court. In the further alternative, Hamas argues that the 2001 UK proscription order was not taken by competent authorities within the meaning of Common Position 2001/931 and could not be a sufficient basis for including Hamas in the Article 2(3) list. It adds that, whereas the US decision concerned Hamas itself, the 2001 UK proscription order related only to Brigades Al-Qassem.

Assessment

Preliminary remarks

43. There is considerable overlap between the issues raised in the present appeal and those in *Council* v *LTTE*, C-599/14 P. Both Opinions should be read together. Where relevant, I shall cross-refer to my Opinion in *Council* v *LTTE* in assessing the Council's grounds of appeal in this case.

44. Like the appeal in that case, this appeal in essence invites the Court to (re)consider the architecture of the mechanism through which EU restrictive measures under Common Position 2001/931 and Regulation No 2580/2001 are maintained and the role of the Member States and third States in that scheme.

45. Within that scheme, a distinction can be made between: (i) the initial listing and (ii) the decision to maintain a person, entity or group on the Article 2(3) list. As regards the first type of decision, Common Position 2001/931 lays down the procedure which the Council is to apply and the materials on which it must rely. No such rules are set out for the second type of decision. It is that second type of decision that was the subject of Hamas' action before the General Court and which is at issue in the present appeal.

46. Article 1(6) of Common Position 2001/931 provides only for regular review of the names of persons and groups on the Article 2(3) list in order to ensure that there are grounds for keeping them on the list. The central issues in this appeal are how the Council may establish that such grounds exist and what the Council must communicate to the persons or groups concerned.

47. It follows from Article 1(6) of Common Position 2001/931 that, in the absence of grounds for keeping a person or group on that list, the Council must remove or 'delist' them. (58) In that regard, it is common ground that Hamas has not submitted observations and evidence to the Council which may affect the reasons for its inclusion in the Article

2(3) list and possibly result in its delisting. In the context of a different type of restrictive measure, the Court has held that, where such observations and evidence are provided and taken into account in amending the reasons for listing a person in the decision taken in the framework of the CFSP, the amendment must also appear in the regulation adopted pursuant to the TFEU. (59)

48. In its pleadings, the Council places considerable emphasis on the fact that Hamas never challenged any of the national decisions on which the Council had relied or the Council regulations through which it was initially listed and maintained on the Article 2(3) list. However, as I see it, review of a Council regulation involves examining whether the Council complied with applicable rules of EU law, including conditions laid down in Common Position 2001/931 and fundamental rights. Nothing in those rules makes that review dependent on whether the party concerned first challenged the decision of the competent authority before the appropriate national forum.

First ground of appeal

Introduction

49. The Council's first ground of appeal in essence concerns whether it may rely, in the context of a review under Article 1(6) of Common Position 2001/931, on information in the public domain.

50. That ground of appeal is based on four arguments: (i) the General Court wrongly required the Council regularly to provide new reasons justifying why the party concerned should remain subject to restrictive measures; (ii) the General Court wrongly rejected the Council's use of information available in the public domain; (iii) the General Court wrongly found that the Council had made its own factual findings, based on publicly available information, for the purposes of its review within the meaning of Article 1(6) of Common Position 2001/931; and (iv) the General Court was wrong in annulling the contested measures on the basis that the Council had referred to publicly available information.

51. In my opinion, the second and third arguments are in essence the same. I shall therefore consider them together.

Must the Council regularly provide new reasons justifying why a group remains subject to restrictive measures?

52. The Council's first argument in support of its first ground of appeal in the present case corresponds with the first argument it advanced in support of its second ground of appeal in *Council* v *LTTE*.

53. What I have said in analysing that ground of appeal in my Opinion in that case applies equally here. (60) In my view, there cannot, on the one hand, be a hard and fast rule entitling the Council to maintain a person or group on the Article 2(3) list only where

there are decisions of competent authorities taken or known to the Council after the initial or previous listing. On the other hand, the initial decision(s) used as a basis for the initial listing will not always be sufficient in the context of a review. Where the Council adopts an Article 1(6) decision without relying on a new decision of a competent authority, it must be satisfied that the decision of a competent authority on which it previously relied to adopt either the initial decision or a subsequent decision to keep a person or group on the Article 2(3) list is still a sufficient basis for showing that there are grounds to continue to do so.

54. Thus, when basing itself on the facts and evidence underlying the earlier decision(s) of the competent authority (even if those decisions were repealed for reasons unrelated to those facts and evidence showing involvement in terrorist acts or activities (61)), the Council must show that the facts and evidence on which the (initial or earlier) decision(s) of the competent authority was or were based continue to justify its assessment that the person or group concerned presents a risk of terrorism and that, consequently, preventive measures are justified. Because decisions of competent authorities necessarily relate to facts preceding those decisions, it follows that the longer the period between those facts and an earlier decision, on the one hand, and the Council's new decision to maintain a person or group on the Article 2(3) list, on the other hand, the greater the obligation on the Council to verify diligently whether, at the time of its review, its conclusion continues to be validly based on that decision and the facts underpinning it. (62)

55. Where that earlier decision of the competent authority has been renewed or extended, the Council must verify on what basis that was done. It follows that the Council's analysis cannot be entirely identical to that performed when adopting an earlier Article 1(6) decision based on the same decision of a competent authority. At the very least, it is necessary to take into account the time element. That must also be reflected in the statement of reasons.

56. As I read the judgment under appeal, the General Court did *not* find that the Council must regularly provide new reasons explaining why it had decided to maintain a person or group on the Article 2(3) list. Nor do I suggest that it must do so. Rather, the General Court took issue with the Council for producing a list of acts of violence, which appeared to be determinative for its decision to keep Hamas on the Article 2(3) list, without explaining in the contested measures on what grounds it considered those acts to have been established and examined in decisions of competent authorities. For the General Court, that could evidently not be the case of the UK and US decisions of 2001 on which the Council relied in its statement of reasons. That appears clearly from paragraphs 101 to 112 and paragraphs 119 and 127 of the judgment under appeal. Paragraph 133 of the judgment under appeal summarises the General Court's position: it had not before it, in the statement of reasons, any references to any decisions of a competent authority relating to the factual elements used by the Council against the applicant.

57. I consider that the General Court was accordingly justified in finding that, because there was no new or other decision of a competent authority forming a satisfactory basis for maintaining that there were grounds to list Hamas, the Council was precluded from relying on a list of terrorist attacks allegedly carried out by that organisation without those facts being shown in decisions of competent authorities.

58. I should like to add that the Council also cannot rely on the fact that, because a group's proscription renders it difficult for that group to commit new terrorist acts, new decisions of competent authorities relating to that group become less evident. The effectiveness of a group's proscription does not exonerate the Council from its obligation to ensure that a person or group is maintained on the Article 2(3) list based on decisions of competent authorities. Furthermore, a decision of a competent authority that justified initial listing can still be relevant for subsequent listings, provided that the Council finds that (and explains why) it remains a sufficient basis for finding that there is a risk justifying the application of restrictive measures. (63)

59. I therefore reject the Council's first argument.

May the Council rely on open source materials in deciding to maintain a group on the Article 2(3) list?

60. The Council's second and third arguments in support of its first ground of appeal mostly correspond with the second argument which it advanced in support of the second ground of appeal in *Council* v *LTTE*. In my Opinion in that case, I concluded (for the reasons given there (64)) that the Council may not, in deciding to maintain a person or group on the Article 2(3) list, rely on grounds based on facts and evidence found elsewhere than in decisions of competent authorities. That same conclusion and reasoning apply here.

61. I therefore find no error in the General Court's interpretation of Common Position 2001/931, set out at paragraph 110 of the judgment under appeal, according to which the factual basis for a Council decision freezing funds in a terrorism matter cannot be based on material which the Council has obtained from the press or from the internet. The General Court rightly observed, at paragraph 121 of the judgment under appeal, that allowing the Council to do so would entail that institution performing the role of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. However, as the General Court explained at paragraph 127 of the judgment under appeal, under the two-tier system any new terrorist act which the Council inserts in its statement of reasons must have been the subject of an examination in a decision by a competent authority.

62. I therefore reject the Council's second and third arguments.

Was the General Court justified in annulling the contested measures?

63. The Council's fourth argument in support of its first ground of appeal corresponds with the Council's third argument in support of its second ground of appeal and the second argument in support of its third ground of appeal in *Council* v *LTTE*.

64. In my Opinion in that case, (65) I rejected the logic underlying the Council's argument that, because no account can be taken of the more recent acts as documented in the press, there had been no change in the factual situation and the LTTE could therefore be maintained on the Article 2(3) list. I explained that, where there is no other or newer decision of a competent authority (regarding other facts), the Council must nonetheless review whether, based on the facts and evidence in the decision on which it previously relied, there continues to be a risk of involvement in terrorist acts and therefore a ground for listing. That also implied that the Council should have explained why the 2001 UK proscription order continued to be a sufficient basis for its decision to continue to list the LTTE and that the General Court should have addressed that argument. The General Court's findings on whether the Council had done so were the subject of the Council's third ground of appeal in that case.

65. I take the same view here.

66. First, the General Court annulled the contested Council measures of July 2011 to July 2014 because it found that the Council had infringed Article 1 of Common Position 2001/931 and breached the obligation to state reasons. (66)

67. Second, it does not necessarily follow that, because the Council could not rely on facts that it found itself, the Council could nevertheless decide to maintain Hamas on the Article 2(3) list without further examination. As I have said, in circumstances where there is no other or newer decision of a competent authority (regarding other facts), the Council must nonetheless review whether, based on the facts and evidence in the decision on which it previously relied, *there continues to be a risk of involvement in terrorist acts* and therefore a ground for listing. (67) It also implies that the Council should have explained why the 2001 national decisions in the UK and in the US continued to be a sufficient basis for its decision and that the General Court should have addressed that argument. Just as in *Council* v *LTTE*, the General Court's findings on whether the Council did so are the subject of the Council's third ground of appeal.

68. I therefore reject the Council's fourth argument.

Second ground of appeal

69. The Council's second ground of appeal is that the General Court erred in not concluding that the decisions of US authorities constituted a sufficient basis for listing Hamas.

70. Unlike the General Court in the judgment under appeal in *Council* v *LTTE*, the General Court did not make findings here on whether a decision of a third State may

constitute a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931 and, if so, under what conditions.

71. In my opinion, the first, third and fourth arguments advanced in support of this ground of appeal must therefore be rejected as inoperative: the General Court simply did not make the findings which the Council alleges are erroneous. Indeed, the General Court made no finding on whether the decision of a US administrative authority may be a decision within the meaning of Article 1(4) of Common Position 2001/931 (first argument). That follows clearly from reading together paragraphs 99 and 101 of the judgment under appeal. Nor did it make findings on whether reliance on such a decision should be dependent on whether the listed group could and in fact did challenge, under US law, the decision to list it as a terrorist organisation (the third and fourth arguments).

72. The Council also alleges that the General Court wrongly required it to know all of the factual elements on the basis of which the US Secretary of State listed Hamas (second argument). It relies, to that effect, on paragraphs 129 to 132 of the judgment under appeal. I do not read the judgment under appeal in the same manner. At paragraph 129, the General Court reiterated the need for there to be a factual basis derived from decisions of competent authorities in order to subject a person or group to restrictive measures. That is consistent with the objective of ensuring that any person or group is included in the Article 2(3) list only on a sufficiently solid factual basis. (68) At paragraph 130, the General Court found that requirement to apply irrespective of the conduct of the person or group concerned. It also focused on the need to include, in the statement of reasons, the decisions of competent national authorities that have actually examined and established the terrorist acts which the Council takes as the factual basis of its own decisions. That is consistent with the requirement that the Council must verify whether the decision of a competent authority is sufficiently precise so as (i) to identify the person or group concerned and (ii) to establish a possible nexus (as described in Article 1(2) of Common Position 2001/931) between the person or group concerned and terrorist acts as defined in Article 1(3) of that common position. (69) Paragraphs 131 and 132 concern, respectively, the General Court's earlier finding that the Council in fact relied on information which it had itself obtained and the scope of judicial review.

73. I therefore find nothing in those paragraphs to support the view that the General Court required the Council to know all of the factual elements on the basis of which a decision was adopted by a competent authority in a third State. In fact, when read together with other parts of the judgment under appeal (in particular, paragraphs 103, 106 and 110), it becomes clear that the General Court merely (and rightly) found that the Council cannot rely on a decision of a competent authority without knowing the actual reasons on which that decision was based. As the General Court stated at paragraph 114 of the judgment under appeal, the Council has to take as the factual basis of its assessment decisions adopted by competent authorities which have taken precise facts into consideration and which have acted on the basis of those facts before ascertaining that those facts are indeed 'terrorist acts' and that the group concerned is a 'group' within the meaning of Common Position 2001/931.

74. Finally, in my opinion, the Council's fifth argument cannot support its second ground of appeal according to which the General Court erred in not concluding that the decisions of US authorities constituted a sufficient basis for listing Hamas. That argument concerns the possible consequences of the General Court's logic. However, as I have already explained, the Council has misread the relevant part of the judgment under appeal.

75. In any event, the fact that a decision of the competent authority on which the Council relies has not been challenged before a national court does not relieve the Council from its obligation to verify that, as regards its reliance on that decision, the relevant conditions under Articles 1(4) and (6) of Common Position 2001/931 are satisfied and to provide an appropriate statement of reasons.

76. I therefore reject the arguments in support of the second ground of appeal.

Third ground of appeal

77. The Council's third ground of appeal is that the General Court erred by not concluding that the listing of Hamas could stand on the basis of the 2001 UK proscription order. That ground of appeal corresponds with the third ground of appeal in *Council* v *LTTE*.

78. The Council's first argument is that in previous cases the General Court had already accepted that same order to be a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. In my opinion, that argument cannot support the third ground of appeal. The General Court made no explicit findings on the status of that decision. Nor did its reasoning suggest (either expressly or implicitly) that it had taken the view that the 2001 UK proscription order was *not* a decision of a competent authority. I also do not read paragraph 105 of the judgment under appeal as meaning that the General Court found that that order had been repealed or was no longer relevant. That paragraph formed part of the General Court's discussion of the lack of decisions of competent authorities examining and establishing the acts of violence on which the Council had relied for the period after 2004.

79. The Council's second argument is that the General Court erred in law when concluding that the 2001 UK proscription order was not, or could no longer be, a valid decision within the meaning of Article 1(4) of Common Position 2001/931 and when finding that the Council should have had available to it all the elements that resulted in the Home Secretary adopting that order. I take the same position here as in respect of the equivalent argument in *Council* v *LTTE*. (70) In my opinion, the General Court made neither finding. Having found, at paragraph 101 of the judgment under appeal, that the list of acts of violence for the period after 2004 played a decisive role in the Council's determination of whether it was appropriate to maintain Hamas on the Article 2(3) list, the General Court focused on whether the statement of reasons referred to decisions of competent authorities examining those facts. Such decisions had necessarily to postdate those facts and could therefore under no circumstances include the 2001 UK proscription

order. Furthermore, I have already explained why I consider that the Council is wrong to allege that the General Court required the Council to have before it all the elements relied upon by competent authorities when proscribing Hamas. (71)

80. That said, like the third ground of appeal in *Council* v *LTTE*, it is implicit in the Council's third ground of appeal that, having found that the Council could not rely on the list of acts of violence for the period after 2004 without those acts having been examined by decisions of competent authorities, the General Court should nonetheless have found the 2001 UK proscription order (the third ground of appeal does not concern the US decision) to constitute a sufficient basis for the contested measures.

81. My position is that set out in my Opinion in *Council* v *LTTE*. (72) Thus, I take the view that, whilst the General Court accepted that the Council had cited, in the statements of reasons for the Council measures of July 2011 to July 2014, the initial national decisions (in particular, the 2001 UK proscription order), it found that the Council had stated only that they remained in force. (73) The General Court did not draw, in express terms, any conclusions from that fact. Thus, whilst the Council is wrong to allege that the General Court erred in law by finding that the 2001 UK proscription order could not, or no longer, be a valid decision of a competent authority, it is less clear whether the General Court in fact neglected to address that question (which was clearly before it, based on Hamas' pleas alleging failure to take sufficient account of the development of the situation owing to the passage of time and breach of the obligation to state reasons). (74)

82. I agree with the Council that, having found that some of the reasons could not justify the decision to keep Hamas on the list and should therefore be annulled, the General Court had to go on expressly to examine the other reasons and verify whether at the very least one of those reasons was sufficient in itself to support the decision. (75) Only if those other reasons were also not sufficiently detailed and specific to form the basis for listing could the contested measures be annulled. However, the General Court here omitted to make such findings. The General Court's reasoning was in essence limited to a finding of fact, namely that the Council merely cited the earlier national decisions and stated that they remained valid. For that reason, the third plea should be upheld and the judgment of the General Court should be set aside.

83. Fortunately, the state of the proceedings in the present case enables the Court to give, in accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, final judgment in the matter. In the context of the fourth and sixth pleas, Hamas argued that the Council merely cited a series of facts and asserted that the national decisions were still in force. It took issue with the Council for having taken insufficient account of the development of the situation owing to the passage of time. It also complained that the Council gave no indication of the facts established against it in those national decisions.

84. I have explained elsewhere in this Opinion and in my Opinion in *Council* v *LTTE* why I consider that the General Court rightly concluded that the Council could not, when deciding to keep Hamas on the Article 2(3) list, rely (in its statement of reasons) on a list

of new acts that had not been assessed and established by decisions of competent authorities. That leaves the question of whether it was sufficient to state in the grounds for the contested measures, either that the initial decisions of the competent authorities (in particular the 2001 UK proscription order) remained valid, or (without more) that a decision of a competent authority had been taken.

85. For the reasons which I have already explained, in particular at points 77 to 91 of my Opinion in *Council* v *LTTE*, I consider that that was not sufficient. I therefore conclude that the contested measures must be annulled on that ground. (76) In these circumstances, it is unnecessary to examine the other pleas advanced by Hamas at first instance.

Postscript

86. Both Hamas' application at first instance and the Council's present appeal were, quintessentially, about process rather than substance. In reaching my conclusions, I deliberately refrain from expressing any view on the substantive question as to whether conduct imputed to Hamas as assessed and established by decisions of competent authorities, warrants placing and/or retaining that group and/or its affiliates on the Article 2(3) list. This Opinion should therefore be read as being concerned exclusively with upholding the rule of law, respect for due process and the rights of the defence.

Conclusion

87. In the light of all the above considerations, I conclude that the Court should:

– uphold the appeal of the Council of the European Union;

– set aside the judgment of the General Court in Case T-400/10;

– annul Council Decisions 2010/386/CFSP of 12 July 2010, 2011/70/CFSP of 31 January 2011, 2011/430/CFSP of 18 July 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, Council Decisions 2011/872/CFSP of 22 December 2011, 2012/333/CFSP of 25 June 2012, 2012/765/CFSP of 10 December 2012, 2013/395/CFSP of 25 July 2013, 2014/72/CFSP of 10 February 2014 and 2014/483/CFSP of 22 July 2014 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing, respectively, Decisions 2011/430, 2011/872, 2012/333, 2012/765, 2013/395 and 2014/72, in so far as they concern Hamas (including Hamas-Izz al-Din al-Qassem);

– annul Council Implementing Regulations (EU) No 610/2010 of 12 July 2010, No 83/2011 of 31 January 2011, No 687/2011 of 18 July 2011, No 1375/2011 of 22 December 2011, No 542/2012 of 25 June 2012, No 1169/2012 of 10 December 2012, No 714/2013 of 25 July 2013, No 125/2014 of 10 February 2014 and No 790/2014 of 22

July 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing, respectively, Implementing Regulations (EU) No 1285/2009, No 610/2010, No 83/2011, No 687/2011, No 1375/2011, No 542/2012, No 1169/2012, No 714/2013 and No 125/2014 in so far as they concern Hamas (including Hamas-Izz al-Din al-Qassem);

– order, in accordance with Articles 138(3) and 184(1) of the Rules of Procedure of the Court of Justice, the Council to bear its own costs and two thirds of the costs of Hamas (including Hamas-Izz al-Din al-Qassem) incurred in this appeal;

– order, in accordance with Articles 138(3) and 184(1) of the Rules of Procedure of the Court of Justice, Hamas (including Hamas-Izz al-Din al-Qassem) to bear its remaining costs incurred in this appeal;

– order, in accordance with Articles 138(1) and 184(1) of the Rules of Procedure of the Court of Justice, the Council to pay its own costs and those of Hamas (including Hamas-Izz al-Din al-Qassem) at first instance; and,

– order, in accordance with Articles 140(1) and 184(1) of the Rules of Procedure of the Court of Justice, the French Government and the European Commission to bear their own costs.

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1 – Original language: English.

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2 – Judgment of 17 December 2014, *Hamas* v *Council*, T-400/10, EU:T:2014:1095.

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3 – Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), as amended.

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4 – Decision of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 83).

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5 – Decision of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 (OJ 2010 L 178, p. 28).

6 – Implementing Regulation of 12 July 2010 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1). The interpretation and validity of that regulation is at issue also in Case C-158/14, *A and Others*, in which I shall deliver my Opinion on 29 September 2016.

7 – Regulation of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70), as last amended.

8 – OJ 2010 C 188, p. 13.

9 – Decision of 31 January 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP (OJ 2011 L 28, p. 57).

10 – Implementing Regulation of 31 January 2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 610/2010 (OJ 2011 L 28, p. 14).

11 – Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2011 C 33, p. 14).

12 – Decision of 18 July 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 (OJ 2011 L 188, p. 47).

13 – Implementing Regulation of 18 July 2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulations No 610/2010 and No 83/2011 (OJ 2011 L 188, p. 2).

14 – Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2011 C 212, p. 20).

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15 – Decision of 22 December 2011 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2011/430 (OJ 2011 L 343, p. 54).

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16 – Council Implementing Regulation of 22 December 2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 687/2011 (OJ 2011 L 343, p. 10).

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17 – Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2011 C 377, p. 17).

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18 – Decision of 25 June 2012 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2011/872 (OJ 2012 L 165, p. 72).

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19 – Implementing Regulation of 25 June 2012 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 1375/2011 (OJ 2012 L 165, p. 12).

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20 – Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2012 C 186, p. 1).

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21 – Decision of 10 December 2012 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2012/333 (OJ 2012 L 337, p. 50).

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22 – Council Implementing Regulation of 10 December 2012 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 542/2012 (OJ 2012 L 337, p. 2).

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23 – Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2012 C 380, p. 6).

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24 – Decision of 25 July 2013 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2012/765 (OJ 2013 L 201, p. 57).

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25 – Implementing Regulation of 25 July 2013 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 1169/2012 (OJ 2013 L 201, p. 10).

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26 – Decision of 10 February 2014 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2013/395 (OJ 2014 L 40, p. 56).

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27 – Implementing Regulation of 10 February 2014 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 714/2013 (OJ 2014 L 40, p. 9).

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28 – Decision of 22 July 2014 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2014/72 (OJ 2014 L 217, p. 35).

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29 – Implementing Regulation of 22 July 2014 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 125/2014 (OJ 2014 L 217, p. 1).

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30 – Paragraph 60 of the judgment under appeal.

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31 – Paragraph 76 of the judgment under appeal.

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32 – Paragraphs 84 to 92 of the judgment under appeal.

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33 – See point 7 above.

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34 – Paragraph 101 of the judgment under appeal.

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35 – Paragraph 102 of the judgment under appeal.

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36 – Paragraph 103 of the judgment under appeal.

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37 – Paragraph 106 of the judgment under appeal.

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38 – Paragraph 107 of the judgment under appeal.

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39 – Paragraph 109 of the judgment under appeal.

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40 – Paragraphs 110 and 112 of the judgment under appeal.

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41 – Paragraphs 113 to 119 of the judgment under appeal.

42 – Paragraph 121 of the judgment under appeal. See also paragraph 125.

43 – Paragraphs 126 and 127 of the judgment under appeal.

44 – Paragraph 128 of the judgment under appeal.

45 – Paragraphs 129 to 131 and 141 of the judgment under appeal.

46 – Paragraphs 138 to 140 of the judgment under appeal.

47 – Paragraph 137 of the judgment under appeal.

48 – Paragraph 141 of the judgment under appeal.

49 – Judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711 ('the judgment in *Al-Aqsa*'), paragraphs 145 and 146.

50 – Judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T-256/07, EU:T:2008:461 ('judgment of the General Court in *PMOI*'), paragraphs 109 and 112.

51 – Judgment of 9 September 2010, *Al-Aqsa* v *Council*, T-348/07, EU:T:2010:373.

52 – The General Court relied on its judgment in *PMOI*, paragraph 81.

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53 – Judgment in *Al-Aqsa*, paragraph 82.

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54 – Judgment in *Al-Aqsa*, paragraphs 70 and 71.

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55 – Judgment of the General Court in *PMOI*, paragraph 144.

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56 – Judgment of the General Court in *PMOI*, paragraphs 144 to 147.

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57 – Judgment of the General Court in *PMOI*, paragraph 147.

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58 – Judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 72.

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59 – Judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraph 55.

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60 – See points 77 to 92 of my Opinion in Case C-599/14 P.

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61 – That was the case in the judgment in *Al-Aqsa*, paragraphs 83 to 90.

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62 – As regards a different type of sanction, see, by analogy, judgment 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 156.

63 – See points 77 to 92 of my Opinion in Case C-599/14 P.

64 – See points 96 to 107 of my Opinion in Case C-599/14 P.

65 – See points 109 to 112 of my Opinion in Case C-599/14 P.

66 – See paragraphs 137 and 141 of the judgment under appeal.

67 – See, in particular, point 88 of my Opinion in Case C-599/14 P.

68 – See also my Opinion in Case C-599/14 P, point 99 and the case-law cited there.

69 – See also my Opinion in Case C-599/14 P, point 80 and the case-law cited there.

70 – See, in particular, points 116 to 126 of my Opinion in Case C-599/14 P.

71 – See point 73 above.

72 – See points 117 to 123 of my Opinion in Case C-599/14 P.

73 – Paragraph 103 of the judgment under appeal. See also paragraphs 100 and 119.

74 – See paragraphs 79 and 80 of the judgment under appeal.

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75 – Judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 72 and the case-law cited.

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76 – In so far as some of those measures concern the Common Foreign and Security Policy, the Court's jurisdiction to do so is based on Article 24(1) TEU and the second paragraph of Article 275 TFEU.