ECLI:EU:C:2017:583

JUDGMENT OF THE COURT (Grand Chamber)

26 July 2017 (*)

(Appeal — Common foreign and security policy — Fight against terrorism — Restrictive measures against certain persons and entities — Freezing of funds — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Retention of an organisation on the list of persons, groups and entities involved in terrorist acts — Conditions — Factual basis of the decisions to freeze funds — Decision taken by a competent authority — Obligation to state reasons)

In Case C-599/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 December 2014,

Council of the European Union, represented by E. Finnegan, G. Étienne and B. Driessen, acting as Agents,

appellant,

supported by:

French Republic, represented by G. de Bergues, F. Fize, D. Colas and B. Fodda, acting as Agents,

intervener in the appeal,

the other parties to the proceedings being:

Liberation Tigers of Tamil Eelam (LTTE), established in Herning (Denmark), represented by T. Buruma and A.M. van Eik, advocaten,

applicant at first instance,

Kingdom of the Netherlands, represented by M.K. Bulterman and J. Langer, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by S. Brandon, C. Crane, J. Kraehling and V. Kaye, acting as Agents, and by M. Gray, Barrister,

European Commission, represented by D. Gauci and F. Castillo de la Torre, acting as Agents,

interveners at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz (Rapporteur), J.L. da Cruz Vilaça and M. Vilaras, Presidents of Chambers, J. Malenovský, E. Levits, J.-C. Bonichot, A. Arabadjiev, C. Vajda, S. Rodin, F. Biltgen, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: E. Sharpston,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 3 May 2016,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2016,

gives the following

Judgment

1 By its appeal, the Council of the European Union asks the Court to set aside the judgment of the General Court of the European Union of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, 'the judgment under appeal', EU:T:2014:885), by which the General Court annulled:

– Council Implementing Regulation (EU) No 83/2011 of 31 January 2011 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 Implementing Regulation (EU) No 610/2010 (OJ 2011 L 28, p. 14);

– Council Implementing Regulation (EU) No 687/2011 of 18 July 2011 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 Implementing Regulations (EU) No 610/2010 and (EU) No 83/2011 (OJ 2011 L 188, p. 2);

– Council Implementing Regulation (EU) No 1375/2011 of 22 December 2011 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 Implementing Regulation (EU) No 687/2011 (OJ 2011 L 343, p. 10);

– Council Implementing Regulation (EU) No 542/2012 of 25 June 2012 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 Implementing Regulation (EU) No 1375/2011 (OJ 2012 L 165, p. 12);

– Council Implementing Regulation (EU) No 1169/2012 of 10 December 2012 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 Implementing Regulation (EU) No 542/2012 (OJ 2012 L 337, p. 2);

– Council Implementing Regulation (EU) No 714/2013 of 25 July 2013 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 Implementing Regulation (EU) No 1169/2012 (OJ 2013 L 201, p. 10);

– Council Implementing Regulation (EU) No 125/2014 of 10 February 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 Implementing Regulation (EU) No 714/2013 (OJ 2014 L 40, p. 9);

– Council Implementing Regulation (EU) 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 Implementing Regulation (EU) No 125/2014 (OJ 2014 L 217, p. 1);

(together ‘the acts at issue’), in so far as those acts concern the Liberation Tigers of Tamil Eelam (LTTE).

Legal context

United Nations Security Council Resolution 1373 (2001)

2 On 28 September 2001, the United Nations Security Council adopted Resolution 1373 (2001) laying out wide-ranging strategies to combat terrorism and in particular the financing of terrorism. Point 1(c) of that resolution provides, inter alia, that all States are to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities.

3 The resolution does not provide a list of persons to whom those restrictive measures must be applied.

EU law

Common Position 2001/931/CFSP

4 In order to implement Resolution 1373 (2001), the Council adopted, on 27 December 2001, Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

5 Article 1 of Common Position 2001/931 provides:

'1. This Common Position applies in accordance with the provisions of the following Articles to persons, groups and entities involved in terrorist acts and listed in the Annex.

...

4. The list in the Annex shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.

For the purposes of this paragraph "competent authority" shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area.

...

6. The names of persons and entities on the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list.'

Regulation (EC) No 2580/2001

6 The Council considered that a regulation was necessary to implement at Community level the measures set out in Common Position 2001/931, and adopted Regulation (EC) No 2580/2001 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).

7 Article 2 of that regulation provides:

‘1. Except as permitted under Articles 5 and 6:

(a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;

(b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of:

(i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or

(iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).’

Background to the dispute and the acts at issue

8 On 29 May 2006, the Council adopted Decision 2006/379/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2005/930/EC (OJ 2006 L 144, p. 21). By that decision, the Council placed the LTTE on the list provided for in Article 2(3) of Regulation No 2580/2001 (‘the list at issue’).

9 The LTTE’s entry on that list was maintained by subsequent acts of the Council, including by the acts at issue.

10 In the statements of reasons relating to those acts, the Council described the LTTE as a terrorist group and referred to a number of terrorist acts which the LTTE is said to have carried out from 2005 onwards. It found that, ‘while the recent military defeat of the LTTE has significantly weakened its structure, the likely intention of the organisation is to continue terrorist attacks in Sri Lanka’. In addition, the Council referred, in particular,

to two 2001 decisions of the United Kingdom of Great Britain and Northern Ireland, proscribing the LTTE and freezing their funds (together 'the UK decisions'), and a decision proscribing the LTTE which was adopted by the Indian authorities in 1992 and confirmed in 2004 ('the decision of the Indian authorities'). Having noted, with regard to the UK decisions and — only in the grounds for Implementing Regulation No 790/2014 — the decision of the Indian authorities, that these were reviewed regularly or were subject to judicial review or appeal, the Council found that those decisions had been adopted by competent authorities within the meaning of Article 1(4) of Common Position 2001/931. Lastly, the Council noted that those decisions still remained in force and indicated that the reasons for including the LTTE on the list at issue remained valid.

The procedure before the General Court and the judgment under appeal

11 By an application lodged at the General Court Registry on 11 April 2011, the LTTE brought an action, registered as Case T-208/11, for annulment of Implementing Regulation No 83/2011 in so far as that measure concerned them.

12 By a document lodged at the General Court Registry on 28 September 2011 and regularised on 19 October 2011, the LTTE brought an action, registered as Case T-508/11, for annulment of Implementing Regulation No 687/2011 in so far as that measure concerned them.

13 In the course of the proceedings, the Council adopted Regulations No 1375/2011, No 542/2012, No 1169/2012, No 714/2013, No 125/2014 and No 790/2014 repealing and replacing, respectively, the prior implementing regulations; the LTTE therefore made a series of modifications to the original form of order sought so that their action also covered annulment of these regulations, in so far as they concerned the LTTE.

14 In support of their claims, the LTTE relied, in essence, on seven pleas in law, six of which were common to Cases T-208/11 and T-508/11, and the seventh of which was raised in Case T-508/11. The six pleas common to both cases alleged, respectively: (i) the inapplicability of Regulation No 2580/2001 to the conflict between the LTTE and the Government of Sri Lanka; (ii) the wrongful categorisation of the LTTE as a terrorist organisation for the purposes of Article 1(3) of Common Position 2001/931; (iii) the lack of any decision taken by a competent authority; (iv) failure to undertake the review required under Article 1(6) of Common Position 2001/931; (v) breach of the obligation to state reasons; and (vi) infringement of the applicant entity's rights of defence and right to effective judicial protection. The seventh plea, raised only in Case T-508/11, alleged breach of the principles of proportionality and subsidiarity.

15 Having rejected the first of those pleas, the General Court upheld the fourth to sixth pleas and, in part, the third plea, and, on that basis, annulled the acts at issue in so far as they concerned the LTTE.

Forms of order sought and procedure before the Court of Justice

16 The Council claims that the Court should:

– set aside the judgment under appeal;

– give final judgment in the matters that are the subject of this appeal and dismiss the actions brought by the LTTE; and

– order the LTTE to pay the costs incurred by the Council at first instance and in the present appeal.

17 The LTTE contend that the Court should:

– dismiss the Council's appeal;

– uphold the judgment under appeal; and

– order the Council to pay the costs relating to the present appeal and uphold the judgment under appeal in so far as the Council was ordered to pay the costs relating to the proceedings before the General Court.

18 The French Republic, the Kingdom of the Netherlands, the United Kingdom and the European Commission have intervened in support of the form of order sought by the Council.

The appeal

The first ground of appeal

Arguments of the parties

19 By its first ground of appeal, the Council, supported by the United Kingdom Government, complains that the General Court held, in paragraphs 141 and 146 to 148 of the judgment under appeal, that the Council should have demonstrated, in the statements of reasons relating to the acts at issue, that it had verified the existence in the Indian legal order of protection of the rights of the defence and of the right to effective judicial protection equivalent to that guaranteed at EU level. Whilst acknowledging that it must verify the existence of such protection if it relies, as in the present case, on a decision emanating from an authority of a third State, the Council submits that Common Position 2001/931 does not require it to include any reasoning in respect of that verification.

20 According to the Council, even if it is assumed that the Council is required to demonstrate that procedures in place in a third State provide guarantees in respect of the rights of the defence and the right to effective judicial protection equivalent to those provided for by EU law, the Council maintains that it cannot be criticised for having demonstrated this in the defence rather than in the statements of reasons relating to the acts at issue. In so far as the third State might regard a comment in those statements of

reasons on whether or not it complies with the rights of the defence and the right to effective judicial protection as amounting to interference in its internal affairs, the reasoning required by the General Court would prevent the Council from relying on the decisions of third States. The position would be different if the Council were permitted to make its observations on the legal system of the third State concerned in its written pleadings before the Courts of the European Union, where such pleadings would be subject to a certain measure of confidentiality.

21 The LTTE dispute those arguments.

Findings of the Court

22 In order to rule on this ground of appeal, it must be noted as a preliminary point that, in paragraphs 125 to 136 of the judgment under appeal, the General Court correctly interpreted the term 'competent authority', within the meaning of Article 1(4) of Common Position 2001/931, as not being limited to the authorities of Member States but as being capable, in principle, of also including the authorities of third States.

23 That interpretation, with which, moreover, the parties do not take issue in the present appeal, is justified, first, in the light of the wording of Article 1(4) of Common Position 2001/931, which does not limit the concept of 'competent authorities' to the authorities of the Member States, and, second, in the light of the objective of that common position, which was adopted in order to implement United Nations Security Council Resolution 1373 (2001), which seeks to intensify the global fight against terrorism through the systematic and close cooperation of all States.

24 That being the case, the General Court was also right to rule, in essence, in paragraph 139 of the judgment under appeal, that the Council must, before acting on the basis of a decision of an authority of a third State, verify whether that decision was adopted in accordance with the rights of the defence and the right to effective judicial protection.

25 The Court has repeatedly held that the Council is obliged, when adopting restrictive measures, to respect the fundamental rights that form an integral part of the EU legal order, which include, in particular, respect for the rights of the defence and the right to effective judicial protection (see, to that effect, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 97 and 98, and of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraphs 65 and 66).

26 The need for the verification described in paragraph 24 of the present judgment, which is expressly acknowledged by the Council in this appeal, arises, inter alia, from the purpose of the requirement, laid down in Article 1(4) of Common Position 2001/931, that the initial entry of a person or entity on the list at issue be based on a decision adopted by a competent authority. That requirement is designed to protect the persons or entities

concerned by ensuring that they are first included on that list only on a sufficiently solid factual basis (see, to that effect, judgment 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, paragraph 68). That objective cannot be attained unless the decisions of third States on which the Council bases initial listings of persons or entities are adopted in accordance with the rights of the defence and the right to effective judicial protection.

27 That conclusion is, moreover, corroborated by paragraph 4 of the document entitled 'Working methods of the Working Party on implementation of Common Position 2001/931 on the application of specific measures to combat terrorism' in Annex II to Council document 10826/1/07 REV 1 of 28 June 2007, from which it is apparent that when the Council relies on a proposal of a third State to justify the listing of a person or an entity it will check whether that proposal respects human rights, inter alia the right to an effective remedy and to a fair trial.

28 In so far as the Council challenges the need for reasoning, in the statements of reasons relating to the acts at issue, that confirms that it verified whether the decision of the Indian authorities had been adopted in accordance with the rights of the defence and the right to effective judicial protection, it must be borne in mind that the assessment by the General Court as to whether the statement of reasons is or is not sufficient is subject to review by the Court on an appeal (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 140 and the case-law cited).

29 The purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, second, to enable those Courts to review the legality of that act (judgments of 18 February 2016, *Council* v *Bank Mellat*, C-176/13 P, EU:C:2016:96, paragraph 74, and of 21 April 2016, *Council* v *Bank Saderat Iran*, C-200/13 P, EU:C:2016:284, paragraph 70).

30 The statement of reasons for such an act must therefore, in any event, set out the facts and the legal considerations that have decisive importance in the context of that act (see, to that effect, judgments of 11 January 2007, *Technische Glaswerke Ilmenau* v *Commission*, C-404/04 P, not published, EU:C:2007:6, paragraph 30; of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 96; and of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 169).

31 Having regard to the purpose, referred to in paragraph 26 of the present judgment, of the requirement that the initial entry of a person or entity on the list at issue be based on a decision adopted by a competent authority, it must be held that, when the Council bases that listing on a decision by a third State, the guarantee that that decision has been

taken in accordance with the rights of the defence and the right to effective judicial protection has decisive importance in the context of that listing and of subsequent fund-freezing decisions. The Council is, therefore, required to provide, in the statements of reasons relating to those decisions, the particulars from which it may be concluded that it has ascertained that those rights were respected.

32 That finding is not called in question by the Council's arguments as set out in paragraph 20 of the present judgment.

33 The purpose of the obligation to state reasons is to enable the person concerned to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction (see, to that effect, judgments of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 53, and 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 100). It is sufficient, for that purpose, that the Council briefly refer in the statement of reasons relating to a decision to freeze funds to the reasons why it considers the decision of the third State on which it intends to rely to have been adopted in accordance with the rights of the defence and the right to effective judicial protection.

34 Since the Council can only rely on a decision of a third State that respects the rights of the defence and the right to effective judicial protection, a statement of reasons such as that described in the preceding paragraph cannot amount to interference in the internal affairs of the third State concerned.

35 Nor, furthermore, in the light of the case-law cited in paragraph 33 of the present judgment, can the Court accept the Council's argument that it must be permitted to make its observations on the legal system of the third State concerned not in the statements of reasons relating to decisions to freeze funds but in its pleadings before the Courts of the European Union.

36 In the present case, as the General Court indicated in paragraphs 141 and 145 of the judgment under appeal, the statements of reasons relating to Implementing Regulations No 83/2011, No 687/2011, No 1375/2011, No 542/2012, No 1169/2012, No 714/2013 and No 125/2014 merely state that the Indian Government proscribed the LTTE in 1992 under the Unlawful Activities Act 1967 and subsequently included them in the list of terrorist organisations in the schedule to the Unlawful Activities Prevention (Amendment) Act 2004. The summary of reasons for Implementing Regulation No 790/2014 merely supplements that statement by mentioning that sections 36 and 37 of the Unlawful Activities Act 1967 include provisions concerning the review and revision of the Indian list of persons and entities subject to restrictive measures, that the decision proscribing the LTTE as an unlawful association is periodically reviewed by the Indian Home Affairs Minister, that the last revision took place on 14 May 2012, and that, following a revision by the tribunal established under the Unlawful Activities Act 1967, the designation of the LTTE as an entity involved in terrorist acts was confirmed by the Indian Home Affairs Minister on 11 December 2012.

37 Neither Implementing Regulations No 83/2011, No 687/2011, No 1375/2011, No 542/2012, No 1169/2012, No 714/2013 and No 125/2014 nor Implementing Regulation No 790/2014 refer to anything that might suggest that the Council verified whether the decision of the Indian authorities was adopted in accordance with the rights of the defence and the right to effective judicial protection. The statements of reasons for those regulations do not, therefore, disclose whether the Council fulfilled its verification obligation in that regard.

38 Consequently, the General Court correctly held, notably in paragraphs 142, 146, 147 and 149 of the judgment under appeal, that the acts at issue were vitiated by a failure to give sufficient reasons.

39 The first ground of appeal must, therefore, be rejected.

The second ground of appeal

Arguments of the parties

40 By its second ground of appeal, which relates in particular to paragraphs 173, 175, 186 to 189, 198, 202 to 204, 212, 213 and 225 of the judgment under appeal, the Council submits, first, that that judgment is based on the mistaken premiss that the Council must regularly provide new reasons for retaining the LTTE on the list at issue. In the absence of any annulment or withdrawal of the national decisions on which the initial entry of the LTTE on that list was based, and in the absence of other material that might support the withdrawal of the LTTE from that list, the Council was, it claims, entitled to maintain the LTTE on the list at issue solely on the basis of the national decisions that justified that entity's initial listing.

41 Second, the Council maintains that the General Court was wrong to reject the use of open source material for the purposes of periodic reviews. The Council contends that it must be able to rely to that end on material other than national decisions, since in many cases there are no national decisions taken after the initial entry of a person or entity on the list at issue. The General Court's reasoning is, it argues, contrary to the objective of combating terrorism to which Common Position 2001/931 refers.

42 The Commission and the Member States that are parties to the proceedings before the Court support the Council's arguments, underlining in particular the distinction which Common Position 2001/931 draws between, on the one hand, the initial entry of an entity on the list at issue, referred to in Article 1(4) of that common position, and, on the other hand, the subsequent reviews provided for in Article 1(6) thereof.

43 By contrast, according to the LTTE, the General Court was right to find that if the Council chooses to provide new reasons for their retention on the list at issue, those reasons must be derived from national decisions within the meaning of Article 1(4) of Common Position 2001/931, and not from the press or the internet. The Council's assertion that it may use open source material to justify maintaining a listing is at odds

with the two-tier system established by Common Position 2001/931 and the 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).

Findings of the Court

44 The second ground of appeal concerns the conditions under which the Council may, when reviewing the entry of a person or entity on the list at issue, as it is required to do under Article 1(6) of Common Position 2001/931, retain that person or entity on that list. In order to determine those conditions, it is necessary to interpret Article 1(6) of Common Position 2001/931, taking into account in particular its relationship with Article 1(4), which governs the conditions for the initial listing of the person or entity concerned.

45 The Court has ruled, with regard to initial decisions on the freezing of funds, that the wording of Article 1(4) of Common Position 2001/931 refers to the decision taken by a national authority by requiring that precise information or evidence in the file exists which shows that such a decision has been taken. That requirement seeks to ensure that, in the absence of any means at the disposal of the European Union that would enable it to carry out its own investigations regarding the involvement of a person or entity in terrorist acts, the Council's decision on the initial listing is taken on a sufficient factual basis enabling the Council to conclude that there is a danger that, if preventive measures are not taken, the person or entity concerned may continue to be involved in terrorist activities (see, to that effect, 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, paragraphs 69, 79 and 81).

46 As regards, on the other hand, subsequent fund-freezing decisions, it is apparent from the case-law of the Court that the essential question when reviewing whether to continue to include a person or entity on the list at issue is whether, since the inclusion of that person or that entity on that list or since the last review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion in relation to the involvement of that person or entity in terrorist activities (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, paragraph 82).

47 In the present case, the General Court held, in paragraphs 173 and 202 of the judgment under appeal, that the list of terrorist acts which the LTTE was said to have committed since 2005, set out in the statements of reasons relating to the acts at issue, played a decisive role in the Council's decision to continue to freeze the LTTE's funds. In paragraphs 187 and 204 of the judgment under appeal, the General Court held that the reference to any new terrorist act which the Council inserts in its statement of reasons during a review pursuant to Article 1(6) of Common Position 2001/931 must have been the subject of an examination and a national decision by a competent authority. Having found, notably in paragraphs 186 and 207 of the judgment under appeal, that the Council had based its allegations concerning terrorist acts which the LTTE is said to have

committed from 2005 onwards not on such decisions but on information which it obtained from articles in the press and on the internet, the General Court accordingly annulled the acts at issue.

– *The first part of the second ground of appeal*

48 By the first part of its second ground of appeal, the Council maintains that the General Court erred in law by finding that the Council was required regularly to provide new reasons justifying the LTTE's retention on the list at issue and that it could not, in the absence of material supporting the LTTE's removal from that list, retain the LTTE on the list solely on the basis of the national decisions on which their initial listing was based.

49 It follows from the examination of the first ground of appeal that the General Court was right to find that the acts at issue are vitiated by a failure to give sufficient reasons with respect to a guarantee that the decision of the Indian authorities was taken in accordance with the rights of the defence and the right to effective judicial protection. The first part of the second ground of appeal is, therefore, ineffective in so far as it concerns the decision of the Indian authorities.

50 In so far as the first part of the second ground of appeal concerns the UK decisions, it must be held that, as is apparent in particular from paragraph 196 of the judgment under appeal, the General Court, at least implicitly, considered that those decisions did not in themselves constitute a sufficient basis for maintaining the LTTE on the list at issue.

51 It must be recalled, in that regard, that it is apparent from the case-law cited in paragraph 46 of the present judgment that, in the context of a review pursuant to Article 1(6) of Common Position 2001/931, the Council may maintain the person or entity concerned on the list at issue if it concludes that there is an ongoing risk of that person or entity being involved in the terrorist activities which justified their initial listing. The retention of a person or entity on the list at issue is, therefore, in essence, an extension of the original listing.

52 In the process of verifying whether the risk of the person or entity concerned being involved in terrorist activities is ongoing, the subsequent fate of the national decision that served as the basis for the original entry of that person or entity on the list at issue must be duly taken into consideration, in particular the repeal or withdrawal of that national decision as a result of new facts or material or any modification of the competent national authority's assessment.

53 That said, the question that arises in this case is whether the fact that the national decision that served as the basis for the original listing is still in force can, in itself, be considered sufficient for the purpose of maintaining the person or entity concerned on the list at issue.

54 In that regard, if, in view of the passage of time and in the light of changes in the circumstances of the case, the mere fact that the national decision that served as the basis for the original listing remains in force no longer supports the conclusion that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, the Council is obliged to base the retention of that person or entity on the list on an up-to-date assessment of the situation, and to take into account more recent facts which demonstrate that that risk still exists (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).

55 In the present case, a significant period of time elapsed between the adoption in 2001 of the UK decisions which served as the basis for the original entry of the LTTE on the list at issue, the listing itself, which occurred in 2006, and the adoption of the acts at issue in the period from 2011 to 2014. In addition, as the Council mentioned in the statements of reasons relating to the acts at issue, the LTTE incurred a military defeat, announced by the Sri Lankan Government in May 2009, which significantly weakened that organisation. The Council was therefore obliged to base the retention of the LTTE on that list on more recent material demonstrating that there was still a risk that the LTTE were involved in terrorist activities. Consequently, contrary to what is claimed by the Council, the General Court did not err in law in considering, at least implicitly, that the UK decisions did not in themselves constitute a sufficient basis for the acts at issue.

56 The first part of the second ground of appeal must therefore be rejected.

– *The second part of the second ground of appeal*

57 In the second part of the second ground of appeal, the Council submits that the General Court erred in law in ruling, notably in paragraphs 187 to 189, 202 to 204 and 225 of the judgment under appeal, that the Council was required to rely exclusively on material contained in the national decisions of competent authorities in order to maintain a person or entity on the list at issue, and that the Council had infringed both Article 1 of Common Position 2001/931 and its obligation to state reasons by relying in this instance on information obtained from the press and the internet.

58 As regards, in the first place, Article 1 of Common Position 2001/931, it must be noted first of all that that article draws a distinction between the initial entry of a person or entity on the list at issue, referred to in paragraph 4 thereof, and the retention on that list of a person or entity already listed, referred to in paragraph 6 thereof.

59 Under Article 1(4) of Common Position 2001/931, the initial entry of a person or entity on the list at issue presupposes the existence of a national decision by a competent authority or of a decision of the United Nations Security Council imposing a sanction.

60 No such condition is laid down in Article 1(6) of Common Position 2001/931, however, according to which ‘the names of persons and entities on the list in the Annex

shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list'.

61 That distinction is attributable to the fact that, as has been stated in paragraph 51 of the present judgment, the retention of a person or entity on the list at issue is, in essence, an extension of the original listing and presupposes, therefore, that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, as initially established by the Council on the basis of the national decision on which that original listing was based.

62 Thus, although Article 1(6) of Common Position 2001/931 requires the Council to carry out at least once every six months a 'review' to ensure that there continue to be grounds for 'keeping' on that list a person or entity already listed on the basis of a national decision taken by a competent authority, it does not require any new material on which the Council may rely in order to justify the retention of the person or entity concerned on the list at issue to have been the subject of a national decision taken by a competent authority after the decision on which the initial listing was based. By imposing such a requirement, the General Court transposed the condition concerning the existence of such a decision, which is laid down in Article 1(4) of Common Position 2001/931 solely in relation to the initial entry of a person or entity on that list, to the reviews which the Council is required to carry out under Article 1(6) of that common position. In so doing, the General Court failed to have regard to the distinction between the original decision placing a person or entity on the list at issue and the subsequent decision maintaining the person or entity concerned on that list.

63 Next, it must be noted that the General Court's interpretation of Article 1 of Common Position 2001/931 is based, at least implicitly, on the consideration that either the competent national authorities regularly adopt decisions on which the reviews the Council is required to carry out under Article 1(6) of Common Position 2001/931 may be based, or the Council has the option, if necessary, of asking those authorities to adopt such decisions.

64 However, that consideration has no basis in EU law.

65 It must be made clear in that regard that the fact, noted by the General Court in paragraphs 210 and 211 of the judgment under appeal, that the Member States are to inform the Council of decisions adopted by their competent authorities and to transmit those decisions to it does not mean that those authorities are obliged to adopt decisions that may serve as a basis for those reviews either regularly or, indeed, when required.

66 Moreover, contrary to the General Court's ruling in paragraph 213 of the judgment under appeal, in the absence of any specific basis in the restrictive measures regime established by Common Position 2001/931, the principle of sincere cooperation enshrined in Article 4(3) TEU does not permit the Council to require the competent authorities of the Member States to adopt, if necessary, national decisions that may serve

as the basis for the reviews the Council is required to carry out pursuant to Article 1(6) of that common position.

67 On the contrary, it must be noted that that regime does not provide any mechanism that would enable the Council to be provided, if necessary, with national decisions adopted after the initial listing of the person or entity concerned, in order to carry out the reviews it is required to carry out pursuant to Article 1(6) of that common position and in the context of which it is required to verify that there is still a risk that that person or entity is involved in terrorist activities. Without such a mechanism, it cannot be held that that regime requires the Council to carry out those reviews entirely on the basis of such national decisions, if the means that are to be available to the Council for that purpose are not to be restricted unduly.

68 Lastly, it should be noted that, contrary to what the General Court found, notably in paragraphs 187 and 210 of the judgment under appeal, its interpretation of Article 1 of Common Position 2001/931 is also not justified by the need to protect the persons or entities concerned.

69 It must be stated that, as regards the initial listing, the person or entity concerned is protected, in particular by the possibility of challenging both the national decisions that served as the basis for that listing, before the national courts, and the listing itself, before the Courts of the European Union.

70 In the case of subsequent fund-freezing decisions, the person or entity concerned is protected, inter alia, by the possibility of bringing an action against such decisions before the Courts of the European Union. These are required to determine, in particular, first, whether the obligation to state reasons laid down in Article 296 TFEU has been complied with and, therefore, whether the reasons relied on are sufficiently detailed and specific, and, second, whether those reasons are substantiated (see, by analogy, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 118 and 119, and of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 64).

71 In that context, it must be made clear that the person or entity concerned may, in the action challenging their retention on the list at issue, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources. In the event of challenge, it is for the Council to establish that the facts alleged are well founded and for the Courts of the European Union to determine whether they are made out (see, by analogy, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 121 and 124, and of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraphs 66 and 69).

72 It follows that the General Court erred in law when it ruled that the Council had infringed Article 1 of Common Position 2001/931 by relying, in the statements of reasons

relating to the acts at issue, on material from sources other than national decisions adopted by competent authorities.

73 As regards, in the second place, the infringement of the obligation to state reasons identified by the General Court, it is apparent in particular from paragraph 225 of the judgment under appeal that the General Court relied solely on the absence of any reference — as regards the list of terrorist acts allegedly committed by the LTTE from 2005 — in the statements of reasons relating to the acts at issue to national decisions by competent authorities. The General Court's finding of an infringement of the obligation to state reasons is thus the direct consequence of the finding of an infringement of Article 1 of Common Position 2001/931, in respect of which it has been established that it is vitiated by an error of law.

74 Consequently, the General Court's error of law in its interpretation of Article 1 has the effect that its finding of an infringement by the Council of the obligation to state reasons is also vitiated by an error of law.

75 It must be borne in mind, however, that if the grounds of a decision of the General Court reveal an infringement of EU law, but the operative part of the judgment under appeal can be seen to be well founded on other legal grounds, that infringement is not capable of leading to the annulment of that decision and a substitution of grounds must be made (see, to that effect, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 150, and of 5 March 2015, *Commission and Others* v *Versalis and Others*, C-93/13 P and C-123/13 P, EU:C:2015:150, paragraph 102 and the case-law cited).

76 That is the case here.

77 As the General Court indicated in paragraph 167 of the judgment under appeal, the Council refers, in the statements of reasons relating to the acts at issue, to the military defeat of the LTTE announced by the Sri Lankan Government in May 2009, stating that 'while [that] military defeat ... has significantly weakened [the] structure [of the LTTE], the likely intention of the organisation is to continue terrorist attacks in Sri Lanka'.

78 As regards the material on which the Council based that assessment, the only material referred to by the General Court in the judgment under appeal is a list of terrorist acts allegedly committed by the LTTE from 2005, in the statements of reasons relating to the acts at issue. As is apparent from paragraph 168 of that judgment, the period covered by that list extends, according to the contested regulations, to April 2009 or June 2010. It is evident from the documents submitted to the Court of Justice that, while the statements of reasons relating to the first and second implementing regulations at issue, that is to say, Implementing Regulations No 83/2011 and No 687/2011 (together 'the first and second implementing regulations at issue'), mentioned three alleged terrorist acts which it is claimed the LTTE committed between 27 April and 12 June 2010 and thus after their military defeat in May 2009, the Council subsequently amended the statement of reasons for the acts at issue by removing any reference to those three acts in the statements of

reasons relating to the third to eighth implementing regulations at issue, that is to say, Implementing Regulations No 1375/2011, No 542/2012, No 1169/2012, No 714/2013, No 125/2014 and No 790/2014 (together 'the third to eighth implementing regulations at issue'). The last terrorist act referred to in the statements of reasons relating to the third to eighth implementing regulations at issue dates from 12 April 2009 and thus pre-dates that military defeat. In its written replies to the questions put by the General Court, the Council explained that that amendment was an 'update' of the statements of reasons relating to the acts at issue, which had to be made because new information was obtained.

79 Thus, in the absence of any other relevant information, the statements of reasons relating to the third to eighth implementing regulations at issue do not refer to anything that might justify the Council's assessment that, notwithstanding that military defeat, the likely intention of the LTTE was to continue terrorist attacks in Sri Lanka. In view of the fact that that military defeat represented a significant change in circumstances, one that was capable of calling in question the ongoing nature of the risk of the LTTE's involvement in terrorist activities, the Council should have referred to the evidence supporting that assessment in those statements of reasons. Consequently, the third to eighth implementing regulations at issue are vitiated by a failure to give sufficient reasons that is capable of leading to their annulment.

80 As regards the first and second implementing regulations at issue, it must be noted that the Council repealed them and replaced them with the subsequent implementing regulations at issue, while at the same time updating the grounds given in the statements of reasons because new information had been obtained. That update resulted in the removal of references to the three alleged terrorist acts which it is claimed the LTTE committed between 27 April and 12 June 2010 and thus after the LTTE's military defeat. Nor, moreover, has the Council referred to those three alleged terrorist acts in the context of the present appeal, despite a question from this Court as to whether the grounds for the acts at issue are sufficient as regards the likely intention of the LTTE to continue terrorist attacks in Sri Lanka, notwithstanding their military defeat in May 2009. Consequently, it is clear that mention of those three alleged terrorist acts cannot, in any event, lead to the conclusion that the first and second implementing regulations at issue are well founded.

81 In those circumstances, the operative part of the judgment under appeal must be considered to be well founded in respect of all the acts at issue. The second part of the second ground of appeal must therefore be rejected.

The third ground of appeal

Arguments of the parties

82 By its third ground of appeal, the Council, supported by the United Kingdom and the Commission, submits that, in paragraphs 177 and 205 to 208 of the judgment under appeal, the General Court erred in law by not concluding that the UK decision in 2001 to proscribe the LTTE was a sufficient basis for maintaining the LTTE's listing. According to the Council, the General Court was wrong to find that the absence of any indication, in

the statements of reasons relating to the acts at issue, of the matters on which the decision was based precluded the Council from relying on that decision. Contrary to what was held by the General Court, the General Court was not required to ascertain the reasons on which that decision was based, in so far as those reasons are not subject to review by the Courts of the European Union.

83 The LTTE dispute those arguments.

Findings of the Court

84 It must be observed that, in so far as the third ground of appeal concerns an error of law allegedly made by the General Court in finding that the UK decision in 2001 to proscribe the LTTE alone did not constitute a sufficient basis for the acts at issue, this ground of appeal and the first part of the second ground of appeal partially overlap.

85 Irrespective of the validity of the argument put forward by the Council in the context of its third ground of appeal, by which it claims that the General Court was wrong to find that the absence of any indication, in the statements of reasons relating to the acts at issue, of the matters on which the decision was based precluded the Council from relying on that decision, it should be borne in mind that, in any event, it is apparent from the examination of the first part of the second ground of appeal that, because of (1) the considerable amount of time that elapsed between the adoption of the UK decisions that served as the basis for the LTTE's initial listing, the listing itself, and the adoption of the acts at issue, and (2) the military defeat in May 2009, the UK decision in 2001 to proscribe the LTTE did not constitute a sufficient basis for the acts at issue.

86 Consequently, the third ground of appeal is ineffective.

87 Since all the grounds of appeal have been rejected, the appeal must be dismissed.

Costs

88 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs. Article 138 of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, provides in paragraph 1 that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

89 Since the Council's appeal has been dismissed, it is appropriate, in accordance with the form of order sought by the LTTE, to order the Council to bear its own costs and to pay those incurred by the LTTE.

90 Article 140(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.

91 In accordance with those provisions, the French Republic, the Kingdom of the Netherlands, the United Kingdom and the Commission are to bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders the Council of the European Union to bear its own costs and to pay those incurred by the Liberation Tigers of Tamil Eelam (LTTE);**

3. **Orders the French Republic, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.**

Lenaerts	Tizzano	Bay Larsen
von Danwitz	Da Cruz Vilaça	Vilaras
Malenovský	Levits	Bonichot
Arabadjiev	Vajda	Rodin
Biltgen	Jürimäe	Lycourgos

Delivered in open court in Luxembourg on 26 July 2017.

A. Calot Escobar	K. Lenaerts
Registrar	President

* Language of the case: English.