ECLI:EU:C:2016:601

JUDGMENT OF THE COURT (First Chamber)

28 July 2016 (*)

(Appeal — Restrictive measures imposed on certain persons and entities forming part of the Government of Zimbabwe or linked to it — List of persons, groups and entities covered by the freezing of funds and economic resources — Inclusion of the appellants' names)

In Case C-330/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 3 July 2015,

Johannes Tomana and Others, represented by M. O'Kane, Solicitor, and by M. Lester and Z. Al-Rikabi, Barristers,

appellants,

the other parties to the proceedings being:

Council of the European Union, represented by B. Driessen and A. Vitro, acting as Agents,

European Commission, represented by E. Georgieva, M. Konstantinidis and T. Scharf, acting as Agents,

defendants at first instance,

United Kingdom of Great Britain and Northern Ireland, represented by M. Holt, acting as Agent, and by S. Lee, Barrister,

intervener at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, A. Arabadjiev, J.-C. Bonichot, S. Rodin (Rapporteur) and E. Regan, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeal, Mr Johannes Tomana and the 120 other appellants whose names are listed in the annex to the present judgment seek to have set aside the judgment of the General Court of the European Union of 22 April 2015 in *Tomana and Others* v *Council and Commission* (T-190/12, 'the judgment under appeal', EU:T:2015:222), by which the General Court dismissed their action for annulment of Council Decision 2012/97/CFSP of 17 February 2012 amending Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe (OJ 2012 L 47, p. 50), Commission Implementing Regulation (EU) No 151/2012 of 21 February 2012 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2012 L 49, p. 2), and Council Implementing Decision 2012/124/CFSP of 27 February 2012 implementing Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe (OJ 2012 L 54, p. 20) (together 'the contested measures'), in so far as those measures relate to the appellants.

Background to the dispute

2 On 18 February 2002, the Council of the European Union adopted, under Article 15 EU (now Article 29 TEU), Common Position 2002/145/CFSP concerning restrictive measures against Zimbabwe (OJ 2002 L 50, p. 1), in which it expressed its concerns about the situation in Zimbabwe. Its attention was focused on serious violations of human rights committed by the Government of Zimbabwe in relation, in particular, to the freedom of opinion, freedom of association and freedom of peaceful assembly.

3 By Articles 3 and 4 of Common Position 2002/145, the Council imposed a travel ban in the territory of the European Union and froze the funds of the persons listed in the annex to that common position 'who are engaged in activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe'. In addition, under Article 7, the Council determined that that common position was to apply for a renewable

12-month period from the date of its entry into force and was to be kept under constant review.

4 Council Common Position 2004/161/CFSP of 19 February 2004 renewing restrictive measures against Zimbabwe (OJ 2004 L 50, p. 66) provided for the renewal of the restrictive measures imposed by Common Position 2002/145.

5 Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2004 L 55, p. 1) was adopted, as stated in recital 5 thereof, in order to implement the restrictive measures provided for by Common Position 2004/161.

6 Recital 2 of that regulation states:

'The Council continues to consider that the Government of Zimbabwe is still engaging in serious violations of human rights. Therefore, for as long as the violations occur, the Council deems it necessary to maintain restrictive measures against the Government of Zimbabwe and those who bear prime responsibility for such violations.'

7 Article 6(1) of the regulation is worded as follows:

'All funds and economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in Annex III shall be frozen.'

8 Article 11(b) of the regulation provides:

'The Commission shall be empowered to:

...

(b) amend Annex III on the basis of decisions taken in respect of the Annex to Common Position 2004/161/CFSP.'

9 It should be noted that the names of the majority of the appellants appear in Annex III to Regulation No 314/2004.

10 Implementing Regulation No 151/2012 amended Regulation No 314/2004. Article 1 of that implementing regulation replaced Annex III to Regulation No 314/2004 with a new annex containing the names of all the appellants. Articles 6 and 11 of Regulation No 314/2004 remain unchanged.

11 Council Decision 2011/101/CFSP of 15 February 2011 concerning restrictive measures against Zimbabwe (OJ 2011 L 42, p. 6, and corrigendum OJ 2011 L 100, p. 74) repealed Common Position 2004/161. That decision provides for the imposition, on the

persons whose names appear in the annex thereto, of restrictive measures similar to those provided for in Common Position 2004/161.

12 Article 4(1) of Decision 2011/101 provides:

'Member States shall take the measures necessary to prevent the entry into, or transit through, their territories of members of the Government of Zimbabwe and of natural persons associated with them, as well as of other natural persons whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe. The individuals referred to in this paragraph are listed in the Annex.'

13 Article 5(1) of that decision is worded as follows:

'All funds and economic resources belonging to individual members of the Government of Zimbabwe or to any natural or legal persons, entities or bodies associated with them, or belonging to any other natural or legal person whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe, shall be frozen. The persons and entities referred to in this paragraph are listed in the Annex.'

14 Article 6(1) of the decision provides:

'The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt modifications to the list contained in the Annex as required by political developments in Zimbabwe.'

15 Article 7 of the decision provides:

'1. The Annex shall include the grounds for listing the natural or legal persons and entities.

2. The Annex shall also contain, where available, the information necessary to identify the natural or legal persons or entities concerned. With regard to natural persons, such information may include names, including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, and function or profession. With regard to legal persons or entities, such information may include names, place and date of registration, registration number and place of business.'

16 Decision 2012/97 amends Decision 2011/101. Decision 2012/97 replaces Annex I to Decision 2011/101, but the appellants' names continue to be listed in it.

17 Implementing Decision 2012/124 amends the listing of one of the appellants in Annex I to Decision 2011/101. The amendment concerns the grounds for that listing.

18 On 20 April 2012, the appellants asked the Council to provide them with 'all of the evidence and information' on which it had relied in making its decision to apply restrictive measures to them.

The procedure before the General Court and the judgment under appeal

19 By application lodged at the General Court Registry on 25 April 2012, the appellants brought an action for annulment of the contested measures.

20 In support of their action, the appellants relied on five pleas in law, alleging, first, that there was no proper legal basis for including persons or entities who are neither leaders of the Republic of Zimbabwe nor their associates in the list of persons subject to the restrictive measures in question; secondly, a manifest error of assessment; thirdly, infringement of the obligation to state reasons; fourthly, infringement of their rights of defence; and, fifthly, breach of the principle of proportionality.

21 After the action was brought, the Council notified the General Court of the adoption of other acts concerning the appellants. These include:

– Council Decision 2013/160/CFSP of 27 March 2013 amending Decision 2011/101/CFSP (OJ 2013 L 90, p. 95), which replaced Annex II to Decision 2011/101. The names of most of the appellants, both natural persons and entities, appear in that list;

– Council Regulation (EU) No 298/2013 of 27 March 2013 amending Regulation No 314/2004 (OJ 2013 L 90, p. 48), which contains the same names of natural persons and entities as those listed in Annex II to Decision 2011/101, as replaced by Decision 2013/160;

– Council Implementing Decision 2013/469/CFSP of 23 September 2013 implementing Decision 2011/101 (OJ 2013 L 252, p. 31), which amended Annex I to Decision 2011/101 so as to remove one of the appellants;

– Commission Implementing Regulation (EU) No 915/2013 of 23 September 2013 amending Regulation No 314/2004 (OJ 2013 L 252, p. 23), which amended Annex III to the latter regulation so as to remove the reference in that annex to one of the appellants;

– Council Decision 2014/98/CFSP of 17 February 2014, which amends Decision 2011/101 (OJ 2014 L 50, p. 20). The annex to Decision 2014/98 includes the names of several appellants; and

– Council Regulation (EU) No 153/2014 of 17 February 2014 amending Regulation No 314/2004 and repealing Regulation No 298/2013 (OJ 2014 L 50, p. 1). Annex IV to Regulation No 314/2004, as added by Regulation No 153/2014, includes the names of all the appellants — natural persons and entities — who were still listed in Annex III to Regulation No 314/2004, save for one in respect of whom the freezing of funds and economic resources provided for in that regulation still applies and has not been suspended.

22 The General Court rejected the five pleas put forward and, therefore, dismissed the action in its entirety.

Forms of order sought and procedure before the Court of Justice

23 By their appeal, the appellants claim that the Court should:

– set aside the judgment under appeal;

– annul the contested measures in so far as they apply to the appellants; and

– order the respondent institutions to pay the costs of the proceedings at first instance and of the appeal.

24 The Council contends that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs of the appeal and of the procedure before the General Court.

25 The Commission contends that the Court should:

– in so far as it is admissible, dismiss the appeal; and

– order the appellants to pay the costs of the proceedings.

26 The United Kingdom of Great Britain and Northern Ireland contends that the Court should dismiss the appeal.

The appeal

27 The appellants put forward seven grounds of appeal. It is appropriate to examine together the first and fifth grounds of appeal, relating to the legal basis of the contested measures, then the fourth ground of appeal, concerning respect for the rights of the defence in the procedure before the institutions, then the second and sixth grounds of appeal together, as to whether the contested measures are well founded, and, lastly, the third and seventh grounds of appeal, concerning the General Court’s obligation to state reasons.

The first and fifth grounds of appeal

Arguments of the parties

28 By their first ground of appeal, the appellants claim that the only legal basis for Implementing Regulation No 151/2012 is Article 11(b) of Regulation No 314/2004, according to which the Commission is to be empowered to amend Annex III on the basis of decisions taken in respect of the annex to Common Position 2004/161.

29 They submit that, at the time of the adoption of Implementing Regulation No 151/2012, Common Position 2004/161 had been repealed by Decision 2011/101. Yet Article 11(b) of Regulation No 314/2004 continues to refer to Common Position 2004/161. Invoking Article 291 TFEU, they state that the Commission is empowered to adopt implementing regulations only where the act in question confers such a power on it, and there is nothing in the wording of Article 11(b) to suggest this conclusion.

30 By their fifth ground of appeal, the appellants maintain that, where the Commission lacks a legal basis for imposing restrictive measures on non-State actors — that is people who are neither members of the Government nor their associates —, it is not open to the General Court to re-characterise listing decisions taken under them so that they no longer purport to apply to non-State actors, despite the fact that the respondent institutions understood them to extend to non-State actors and applied them in that way.

31 The Council, supported by the Commission and by the United Kingdom, contends that the first and fifth grounds of appeal should be rejected as unfounded.

32 The Commission submits that the first ground of appeal is a new plea and is therefore inadmissible. In addition, it maintains that the lack of clarity with regard to the fifth ground of appeal renders it inadmissible.

Findings of the Court

– Admissibility

33 It should be noted that, according to the case-law of the Court, to allow a party to put forward for the first time before the Court of Justice a plea in law which it did not raise before the General Court would in effect allow that party to bring before the Court a wider case than that heard by the General Court. In an appeal, the Court's jurisdiction is, as a general rule, confined to a review of the assessment by the General Court of the pleas argued before it. However, an argument which was not raised at first instance does not constitute a new plea that is inadmissible at the appeal stage if it is simply an amplification of an argument already developed in the context of a plea set out in the application before the General Court (judgment of 10 April 2014 in *Areva and Others* v *Commission*, C-247/11 P and C-253/11 P, EU:C:2014:257, paragraphs 113 and 114).

34 Furthermore, according to settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, in particular, judgments of 4 September 2014 in *Spain* v *Commission*, C-197/13 P, EU:C:2014:2157, paragraph 43, and of 5 March 2015 in *Ezz and Others* v *Council*, C-220/14 P, EU:C:2015:147, paragraph 111). In this regard, Article 169(2) of the Rules of Procedure of the Court of Justice specifies that the pleas in law and legal arguments relied on must identify

precisely those points in the grounds of the decision of the General Court which are contested.

35 In the present case, the General Court, in paragraphs 118 and 133 of the judgment under appeal, addressed the issues relating to the legal basis of Implementing Regulation No 151/2012 in the context of the first plea in law raised before it. Consequently, the first ground of appeal is not a new plea in law. Moreover, as regards the fifth ground of appeal, it is clear that it concerns the same issues, and it must therefore be considered admissible.

36 The first and fifth grounds of appeal must accordingly be held to be admissible.

– Substance

37 It should be borne in mind that review of the legal basis of an act enables the procedure for the adoption of that act to be checked as to whether it was vitiated by any irregularity (judgment of 6 December 2005 in *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 53). According to settled case-law, the choice of the legal basis for an EU measure must rest on objective factors amenable to judicial review, which include the aim and content of that measure (see, in particular, judgment of 19 July 2012 in *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraph 42).

38 Article 29 TEU, which replaced Article 15 EU, enables the Council to adopt decisions which define the approach of the Union to a particular matter of a geographical or thematic nature. Member States are to ensure that their national policies conform to the Union positions. Furthermore, Article 215(2) TFEU allows the Council to adopt restrictive measures against natural or legal persons and groups or non-State entities, namely, measures that, before the Treaty of Lisbon entered into force, required Article 308 EC too to be included in their legal basis if their addressees were not linked to the governing regime of a third country (see, to that effect, judgment of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 216).

39 In the present case, Common Position 2002/145 was adopted on the basis of Article 15 EU by the Council, which expressed its concerns about the situation in Zimbabwe. The Council thus imposed, for a renewable 12-month period, restrictive measures which were to be subject to annual review. Common Position 2004/161 provided for those measures to be renewed.

40 Regulation No 314/2004, amended by Implementing Regulation No 151/2012, was adopted on the basis of Articles 60 EC and 301 EC (now Articles 75 TFEU and 215 TFEU).

41 In adopting Decisions 2012/97 and 2012/124, the Council relied on Article 29 TEU and Article 31(2) TEU, respectively. As regards the legal basis for Implementing

Regulation No 151/2012, it must be noted that that amends Regulation No 314/2004, the latter having as its basis Common Position 2004/161. There is continuity between Common Position 2004/161 and Decision 2011/101, given that the latter not only repealed the former but also replaced it.

42 It is evident that the wording of Article 11(b) of Regulation No 314/2004, according to which the Commission is empowered to amend Annex III to that regulation on the basis of decisions taken in respect of the annex to Common Position 2004/161, covers not only Common Position 2004/161 but also any decision, like Decision 2011/101, that is substituted for that common position and contains essentially identical provisions.

43 Accordingly, the appellants' argument that, at the time of the adoption of Implementing Regulation No 151/2012, Common Position 2004/161 had been repealed by Decision 2011/101 does not establish that that regulation has no legal basis.

44 The General Court therefore correctly held, in paragraphs 118 and 133 of the judgment under appeal, that Article 11(b) of Regulation No 314/2004 constitutes an adequate legal basis for the adoption of a Commission implementing regulation, such as Implementing Regulation No 151/2012.

45 As regards the plea that it is not open to the General Court to re-characterise listing decisions where the Commission does not have a legal basis on which to impose restrictive measures on non-State actors — that is to say, in this instance, on persons who are neither 'members of the Government of Zimbabwe' nor 'natural persons associated with them' — it must be noted that, as the General Court recalled in paragraph 122 of the judgment under appeal, the Court of Justice, in its judgment of 19 July 2012 in *Parliament* v *Council* (C-130/10, EU:C:2012:472), observed that, as a result of the amendments made to primary law after the Treaty of Lisbon entered into force, the content of Article 60 EC, relating to restrictive measures with regard to capital movements and payments, and Article 301 EC, on the interruption or reduction, in part or completely, of economic relations with one or more third countries, is mirrored in Article 215 TFEU. As the Court of Justice has also confirmed, Article 215(2) TFEU allows the Council to adopt restrictive measures against natural or legal persons and groups or non-State entities (paragraph 51 of that judgment).

46 Furthermore, in paragraphs 63 and 64 of the judgment of 13 March 2012 in *Tay Za* v *Council* (C-376/10 P, EU:C:2012:138), the Court stated that, in order for it to be possible for them to be adopted on the basis of Articles 60 EC and 301 EC as restrictive measures imposed on third States, the measures in respect of natural persons must be directed only against the leaders of such States and the persons associated with those leaders (judgment of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 166). That requirement ensures that there is a sufficient link between the persons concerned and the third State targeted by the restrictive measures adopted by the

Union, precluding too broad an interpretation of Articles 60 EC and 301 EC which would therefore be contrary to the case-law of the Court.

47 In examining the precise links of those non-State actors in terms of support for the regime, the General Court related the contested measures to the legal basis that is Article 4(1) of Decision 2011/101, according to which the 'Member States shall take the measures necessary to prevent the entry into, or transit through, their territories of members of the Government of Zimbabwe and of natural persons associated with them, as well as of other natural persons whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe'.

48 The General Court correctly held, in paragraph 130 of the judgment under appeal, that, in the particular circumstances of Zimbabwe, the natural persons whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe and the legal persons, entities or bodies belonging to those natural persons, referred to in Articles 4 and 5 of Decision 2011/101, should not be regarded as other than persons associated with the members of the Government of Zimbabwe and the legal persons, entities or bodies belonging to such associates, but constitute, in fact, a particular category of those associates.

49 In conclusion, the General Court, in ruling as outlined above, did not re-characterise listing decisions, but specifically ascertained whether the contested measures were covered by the legal bases relied on in those acts.

50 In the light of all of the foregoing, the first and fifth grounds of appeal must be rejected as unfounded.

The fourth ground of appeal

Arguments of the parties

51 The appellants maintain that the General Court departed from settled case-law on rights of defence by holding that the respondent institutions were not required to communicate evidence or the basis for maintaining a listing, or to give the appellants an opportunity to make observations, prior to a decision to re-list them. The appellants claim, in essence, that the Council did not notify them before adopting the contested measures.

52 The appellants submit that the Court of Justice held, in paragraph 62 of the judgment of 21 December 2011 in *France* v *People's Mojahedin Organization of Iran* (C-27/09 P, EU:C:2011:853), that the adoption of a decision renewing a fund-freezing measure previously adopted must be preceded by notification of the incriminating evidence and by the person or entity concerned being allowed an opportunity of being heard.

53 Lastly, the appellants state that they were not provided with any evidence in advance of the contested measures being readopted, to support the grounds on which each of them was included within the scope of those measures. The General Court should therefore have found that the respondent institutions had infringed the appellants' rights of defence.

54 The Council, supported by the Commission and by the United Kingdom, contends that the fourth ground of appeal should be rejected as unfounded.

Findings of the Court

55 As a preliminary point, a distinction must be drawn between the initial fund-freezing measure, and a subsequent fund-freezing measure concerning a person or entity already covered by that initial measure.

56 In paragraph 61 of the judgment of 21 December 2011 in *France* v *People's Mojahedin Organization of Iran* (C-27/09 P, EU:C:2011:853), the Court held that, in the case of an initial decision to freeze funds, the Council is not obliged to inform the person or entity concerned beforehand of the grounds on which that institution intends to rely in order to include that person or entity's name in the list of persons or entities referred to in a fund-freezing measure. So that its effectiveness may not be jeopardised, such a decision must, by its very nature, be able to take advantage of a surprise effect and to apply immediately. In such a case, it is as a rule enough if the institution notifies the person or entity concerned of the grounds of that decision and affords it the right to be heard at the same time as, or immediately after, the decision is adopted.

57 In the present case, the appellants first established contact with the European institutions by means of the letter of 1 September 2011 sent by Mr Tomana to the President of the Council 'on behalf of all the natural and legal persons and legal entities listed in the Annex to Decision 2011/101'. In that letter, Mr Tomana disputed that the grounds given to justify the imposition of restrictive measures on all those persons were well founded, but did not request disclosure of the evidence of the claims made in that annex.

58 In its reply of 20 September 2011, the Council stated that the grounds for the imposition of restrictive measures on the persons and entities concerned were set out in the annex to Decision 2011/101 and otherwise referred to the Council's Notice of 16 February 2011 for the attention of the persons, entities and bodies to which restrictive measures provided for in Decision 2011/101 apply (OJ 2011 C 49, p. 4). That notice mentioned, inter alia, that the persons, entities and bodies concerned by the restrictive measures at issue could submit a request to the Council that the decision to include them on the list in that annex should be reconsidered, and indicated the address to which such a request was to be sent. A similar notice was, moreover, published in the *Official Journal of the European Union* on 18 February 2012 (OJ 2012 C 48, p. 13), following the adoption of Decision 2012/97.

59 In addition, the General Court issued a written question asking the appellants to state, in the event that they did not accept that the letter of 20 February 2012 addressed to Mr Tomana constituted notification of the restrictive measures at issue to all the appellants, on what date and by what means the other appellants had become aware of the adoption of those measures and of their content. The representatives of the appellants replied that they were unable, in the time available, to ascertain the precise date on and means by which each appellant became aware of the fact of their inclusion in those measures.

60 According to the appellants, the publication in the *Official Journal of the European Union* of a notice relating to the contested measures cannot be regarded as sufficient. The Council and the Commission contend that, when the contested measures were adopted, they did not have the appellants' addresses.

61 It is for the purpose of complying with the principle of effective judicial protection that the Council is required to communicate to the natural or legal person, entity or body concerned its decision to include them on a list of persons or entities subject to restrictive measures, including the grounds for listing, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations (see, to that effect, order of 10 December 2015 in *NICO* v *Council*, C-153/15 P, not published, EU:C:2015:811, paragraphs 44 and 45).

62 In paragraph 213 of the judgment under appeal, the General Court found the appellants' argument in relation to the service of the contested acts to be of no relevance in the context of examination of whether their rights of defence were respected prior to the adoption of the contested measures. It must be added that service of those measures necessarily follows their adoption and determines the starting point for the period allowed for bringing proceedings.

63 In the present case, it is common ground that the appellants were aware of the contested measures. Moreover, it must be noted that the action at first instance was brought in time, and this point has not been disputed by the respondent institutions. Thus, notwithstanding the absence of an address for individual notification, mere publication in the *Official Journal of the European Union* did not prevent an action for annulment from being brought before the General Court.

64 It follows from this that the General Court correctly held, in paragraphs 193 and 194 of the judgment under appeal, that the appellants had in their possession information which was sufficiently precise, and that it was the responsibility of the appellants themselves to request, if they wished, disclosure of the evidence concerning them on which the Council had relied. Accordingly, it must be noted that the respondent institutions did not infringe the appellants' rights of defence as regards the initial decision adopting the restrictive measures to which they are subject.

65 Furthermore, as to the case of a decision to maintain the name of a person or entity already appearing in the list of persons or entities covered by a fund-freezing measure, in paragraph 204 of the judgment under appeal, the General Court recalled the judgment of 21 December 2011 in *France* v *People's Mojahedin Organization of Iran* (C-27/09 P, EU:C:2011:853), which, in paragraph 62, established the principle that surprise effect is no longer necessary in order to ensure that such a measure is effective, with the result that the adoption of such a decision must, in principle, be preceded by notification of the incriminating evidence and by the person or entity concerned being allowed an opportunity of being heard.

66 In that regard, it must be noted that, according to the case-law of the Court of Justice, when sufficiently precise information has been disclosed, enabling the person concerned properly to state his point of view on the evidence adduced against him by the Council, the principle of respect for the rights of the defence does not mean that that institution is obliged spontaneously to grant access to the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see, to that effect, judgment of 16 November 2011 in *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 92).

67 It must also be stated that, according to the case-law of the Court of Justice, the right to be heard prior to the adoption of acts which maintain restrictive measures against persons already subject to those measures applies where the Council has admitted new evidence against those persons and not where those measures are maintained on the basis of the same grounds as those that justified the adoption of the initial act imposing the restrictive measures in question (see, to that effect, judgment of 21 December 2011 in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 63).

68 In the present case, the General Court did not err in law in ruling, in paragraph 205 of the judgment under appeal, that the grounds set out in the contested measures as justification for the imposition on the applicants of the restrictive measures at issue are not essentially different from those set out in the earlier acts, namely Decision 2011/101 and Regulation No 314/2004, the statement of reasons having been amended in certain cases to update details of the post held by the appellant concerned.

69 In the light of all of the foregoing, the fourth ground of appeal must be rejected as unfounded.

The second and sixth grounds of appeal

Arguments of the parties

70 By their second ground of appeal, the appellants submit that the Council was entitled to target only persons whose activities seriously undermine democracy, respect for human rights and the rule of law. In their submission, being a member of the

Government of Zimbabwe or associated with it is not sufficient ground for being listed. Furthermore, in their view, the General Court interpreted the words ‘persons associated’ too broadly.

71 By their sixth ground of appeal, the appellants maintain that, in characterising certain persons as being ‘associates’ of members of the Government on the basis of past conduct, the General Court created a presumption not stated in the contested measures or in the grounds for their listing, and with no evidential support, that those individuals colluded with the leaders to whom the Council has attributed responsibility for policies of violence and intimidation.

72 The appellants state that, as the General Court recognised in paragraph 103 of the judgment under appeal, there must be collusion between the persons directly implicated in conduct which constitutes a crime or an offence and some, at least, of the leaders of the third country concerned in order for such conduct to be capable of harming democracy itself or the rule of law. However, they argue that there is no indication in the contested measures or in the statement of reasons for them that the respondent institutions alleged, still less proved, that there was collusion between the appellants and the leaders of the Republic of Zimbabwe or that the appellants were the ‘true instruments’ of the policy of violence which the Union imputes to the leaders of that third country.

73 According to the appellants, the General Court wrongly justified the characterisation of those accused of misconduct as ‘associates’ of members of the Government on the basis that such misconduct involved collusion with at least some of the leaders of the Republic of Zimbabwe, that the individuals concerned were the ‘true instruments’ of the policy of violence and intimidation, and that they were directly involved in such violence and intimidation as ‘leaders and instigators’.

74 The Council, supported by the Commission and by the United Kingdom, contends that the second and sixth grounds of appeal should be rejected as unfounded.

Findings of the Court

75 In the present case, Article 4(1) of Decision 2011/101 provides for three categories of persons who may be subject to restrictive measures, namely members of the Government of Zimbabwe, natural persons associated with them and other natural persons whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.

76 As is apparent from the case-law of the Court, the concept of a third country, within the meaning of Articles 60 EC and 301 EC, may include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them (judgment of 13 March 2012 in *Tay Za* v *Council*, C‑376/10 P, EU:C:2012:138, paragraph 43 and the case-law cited).

77 It must be noted that the grounds for the restrictive measures adopted against the Government of Zimbabwe are clear from the common positions and decisions taken under the common foreign and security policy and regulations adopted since 2002. It is apparent in particular from recital 4 of Common Position 2002/145 that the Council had assessed that that government was continuing to engage in serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. Therefore, for as long as the violations occurred, it was necessary to introduce restrictive measures against that government and those who bore a wide responsibility for such violations (order of 1 December 2015 in *Georgias and Others* v *Council and Commission*, C-545/14 P, not published, EU:C:2015:791, paragraph 35).

78 In addition, it is clear from both recital 7 of Common Position 2004/161 and recital 2 of Regulation No 314/2004 that the Council's objective was to adopt restrictive measures targeted at members of the Government of Zimbabwe and thereby exert pressure on those persons to reject policies that undermine human rights, freedom of expression and good governance (order of 1 December 2015 in *Georgias and Others* v *Council and Commission*, C-545/14 P, not published, EU:C:2015:791, paragraph 39).

79 As regards the second category of persons covered by the restrictive measures at issue, the contested measures do not contain any definitions of the concept of 'association' with the members of the Government of Zimbabwe to whom the Council has imputed responsibility for policies of violence and intimidation. Nor do they contain any details as to how those matters are to be proved.

80 It must, however, be determined whether, in the light of the review which the General Court carried out regarding the grounds on the basis of which the appellants were included on the list of persons subject to restrictive measures, it made an error of law which should result in the judgment under appeal being set aside (see, to that effect, judgment of 21 April 2015 in *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 44).

81 It must be concluded that, in reviewing whether the appellants' inclusion on the list of persons subject to restrictive measures is well founded, it is necessary to assess whether their situation constitutes sufficient proof of collusion between them and the leaders of the Republic of Zimbabwe. Such an appraisal must be carried out by examining the evidence not in isolation but in its context.

82 In view of the situation in Zimbabwe, the Council discharges the burden of proof borne by it if it presents to the Courts of the European Union a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime (see, to that effect, judgment of 21 April 2015 in *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 52).

83 In that regard, the situation in Zimbabwe must be considered as described in the contested measures and as taken into account by the General Court. In the present case, in

paragraph 232 of the judgment under appeal, the General Court found that ZANU-PF is not just any political party, but the party which monopolised power during the period of violence, intimidation and infringements of the fundamental rights of the Zimbabwean people. In addition, in paragraph 164 of the judgment under appeal, the General Court noted that there had not been in the interim any collapse in the country concerned of the regime in power.

84 Consequently, those who hold senior posts, such as the individuals involved in military, police or security operations, must be regarded as being fully associated with the Government of Zimbabwe, unless they have taken specific action demonstrating their rejection of the government's practices. In those circumstances, referring to the capacity of those individuals or to the posts they occupy is sufficient, as the contested measures themselves expressly provide. It must be noted that no presumption has been applied, the interpretation of EU legislation in the light of the context in which it was adopted supporting the conclusion that the persons concerned should be made subject to restrictive measures.

85 As the General Court ruled in paragraph 105 of the judgment under appeal, the restrictive measures concerned by Decisions 2011/101 and 2012/97 were imposed on the appellants not on the ground of their alleged implication in certain conduct which might constitute a crime or an offence, but because of the alleged conduct on their part which, while also falling in all probability within the scope of criminal law or, at the least, civil law, was part of a strategy of intimidation and systematic violation of the fundamental rights of the Zimbabwean people, responsibility for which the Council assigned to the leaders of the Republic of Zimbabwe. It is precisely on that last ground that the persons who were accused of such conduct could legitimately be made subject to the restrictive measures referred to by the two abovementioned decisions, adopted on the basis of Article 29 TEU.

86 The reference, in the grounds of the contested measures, to posts formerly occupied by some appellants, reveals that the authors of those measures considered that, for that reason, the appellants concerned remained associates of the leaders of the Republic of Zimbabwe and that they were not aware of anything to call into question that view. The General Court correctly held, in paragraph 164 of the judgment under appeal, that, in circumstances such as those of this case, recalled in paragraph 83 of the present judgment, reference to the fact that a person occupied in the past a post on the basis of which he can be characterised, while occupying that post, as a member of the government of the country concerned or as an associate of such a member, constitutes sufficient justification for his being characterised, after leaving that post, as an associate of members of the government of the country concerned.

87 It follows from all the foregoing considerations that the General Court reviewed whether the appellants' inclusion on the lists of persons subject to restrictive measures was well founded on the basis of a set of indicia relating to the situation, functions and relations of those individuals in the context of the Zimbabwean regime.

88 Moreover, as is apparent from the established case-law of the Court of Justice, the General Court has exclusive jurisdiction to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents submitted to it, and to appraise those facts. The appraisal of the facts therefore does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (judgment of 10 July 2014 in *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 84).

89 In the present case, the appellants maintain that it is not clear to them on what basis the General Court differentiated between the occupations it deemed sufficient to establish association with the Government of Zimbabwe and those deemed insufficient to establish such association. In addition, they complain that the General Court described high-ranking officials or civil servants, including provincial governors, and police and military officers as working closely with members of that government and on that basis considered that they could legitimately be characterised as associates of members of that government, no additional justification being necessary.

90 By their arguments, the appellants are in fact criticising the General Court's assessment, as such, of the facts and of the evidence relating to them. Accordingly, the appellants are trying to obtain from the Court of Justice a fresh assessment of the facts found by the General Court and of the evidence put forward, which, in accordance with the case-law cited in paragraph 88 of the present judgment, is outside the scope of the Court of Justice's review.

91 In the light of all of the foregoing, the second and sixth grounds of appeal must be rejected as being in part inadmissible and in part unfounded.

The third and seventh grounds of appeal

Arguments of the parties

92 By their third ground of appeal, the appellants submit that the General Court departed from settled case-law on the obligation to state reasons by permitting reliance on vague reasons that were not particularised, and/or supplementing those reasons with additional reasons not stated anywhere in the contested measures.

93 The General Court's reasoning, in paragraph 103 of the judgment under appeal, according to which collusion between persons directly implicated in conduct which constitutes a crime or an offence and some, at least, of the leaders of the third country concerned cannot be inferred, according to the appellants, from the reasons set out in the grounds for the inclusion of the persons concerned in the list of persons or entities subject to the restrictive measures at issue, and should therefore be treated as constituting a new reason.

94 The appellants, by their seventh ground of appeal, claim that the General Court failed to test its conclusions in relation to each appellant, or to treat each as having an

application that merited separate consideration. The General Court failed to give any consideration to whether the respondent institutions had discharged their burden of proving that the contested measures were taken on a sufficiently solid factual basis in respect of each appellant. It proceeded on the incorrect premiss that the appellants were not challenging the factual basis of their inclusion on the list of persons or entities subject to the restrictive measures at issue.

95 The appellants submit that the General Court failed, however, to consider whether the contested measures were proportionate in relation to each appellant, instead making the general statement, in paragraph 298 of the judgment under appeal, that those measures were proportionate in the light of the deep concern felt by the EU authorities as regards the situation in Zimbabwe. According to the appellants, the General Court should have found that the contested measures were disproportionate in so far as they applied to the appellants.

96 The Council, supported by the Commission and by the United Kingdom, contends that the third and seventh grounds of appeal should be rejected as unfounded.

Findings of the Court

97 It will be recalled that the obligation to state the reasons on which a judgment is based arises under Article 36 of the Statute of the Court of Justice of the European Union, which applies to the General Court by virtue of the first paragraph of Article 53 of the Statute, and Article 81 of the Rules of Procedure of the General Court. It has consistently been held that the statement of the reasons on which a judgment of the General Court is based must clearly and unequivocally disclose that court's reasoning in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and the Court of Justice to exercise its power of review (see, to that effect, judgment of 19 December 2012 in *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *Commission*, C-288/11 P, EU:C:2012:821, paragraph 83 and the case-law cited).

98 With regard to restrictive measures, the Courts of the European Union must determine whether the competent EU authority has complied with the procedural safeguards and the obligation to state reasons laid down in Article 296 TFEU, in particular, whether the reasons relied on are sufficiently detailed and specific (see, to that effect, judgment of 18 July 2013 in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 118).

99 It must also be stated that, by their third and seventh grounds of appeal, the appellants are challenging not the reasons given in the contested measures but the findings of the General Court on account, respectively, of the reliance on additional reasons to justify the contested measures and the failure to consider each ground for annulment in relation to the particular circumstances of each appellant.

100 In the present case, as regards the appellants' argument that the General Court relied on additional grounds not stated anywhere in the contested measures, it must be

noted that the annexes to those measures which contain the appellants' names are in the form of tables. The third column in those tables is headed 'Grounds for designation'. In the case of natural persons, the last two columns of those annexes indicate, inter alia, the governmental or administrative post which the person concerned occupies or occupied, or, in the case of individuals who have not occupied such posts, what the authors of the contested measures considered to be the relevant status of those persons. In a good number of cases there is also information that the individual concerned is a member of ZANU-PF, which alone held power, and, where appropriate, a brief description of the acts of violence and intimidation or infringements of fundamental rights of the Zimbabwean people imputed to the individual concerned by the Council.

101 Consequently, the grounds set out in the third column of the annexes to the contested measures are such that the posts giving the appellants the status of members of the Government of Zimbabwe or associating them with it, and certainly associating them with the leaders of the Republic of Zimbabwe within the meaning of the case-law of the Court, can be clearly inferred.

102 In that respect, the General Court did not err in law in the judgment under appeal by analysing, first, in paragraph 134 of that judgment, whether the listings at issue contained sufficient reasons in general terms to justify the adoption and renewal of those measures in the light of the situation in Zimbabwe and, secondly, by considering whether the contested measures contained reasons that were sufficient in the specific case of each appellant so as to justify the imposition or renewal of the restrictive measures at issue with regard to the person or entity concerned.

103 Furthermore, as regards the appellants' argument that, when they submitted their observations, the General Court wrongly considered their evidence to be inadmissible, it must be noted that the General Court, in paragraph 263 of the judgment under appeal, found that the arguments put forward for the first time in the reply to call into question the truth and accuracy of the grounds in the contested measures constituted a new plea.

104 The General Court considered that, since the appellants had already become acquainted with the contested measures before the proceedings were brought, it was possible for them to challenge, in the application, the truth and accuracy of those grounds. In that respect, the General Court correctly held that the arguments which the appellants put forward in the reply in order to challenge the truth and accuracy of the grounds for the contested measures against them were inadmissible.

105 With regard to the statement of reasons for including each appellant on the list of persons or entities subject to the restrictive measures at issue, the appellants submit that the General Court failed to analyse whether the occupations or former occupations of each appellant were capable of influencing government policy of the Government of Zimbabwe or whether the appellant concerned was in a position to reject such policy.

106 In the present case, the General Court examined in the judgment under appeal, notably in paragraphs 159 to 162 and 169 to 174 thereof, for each person or entity

included on the list of persons or entities subject to the restrictive measures at issue, by reference to the column relating to the 'Grounds for designation' annexed to the contested measures, the precise reasons justifying the adoption or continuation of the restrictive measures at issue with regard to each appellant.

107 In the light of all of the foregoing, the third and seventh grounds of appeal must be rejected as unfounded.

108 It follows from all these considerations that the appeal must be dismissed.

Costs

109 In accordance with 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.

110 Under Article 138(1) of those rules, which applies to the procedure on an appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

111 Since the Council and the Commission have applied for costs and the appellants have been unsuccessful, the latter must be ordered to bear their own costs and to pay those incurred by the Council and the Commission.

112 In accordance with Article 140(1) of the Rules of Procedure of the Court of Justice, which applies to the procedure on an appeal by virtue of Article 184(1) thereof, the United Kingdom, which has intervened in the proceedings, is to bear its own costs.

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

1. **Dismisses the appeal;**

2. **Orders Mr Johannes Tomana and the 120 other appellants whose names are listed in the annex to the present judgment to bear their own costs and to pay those incurred by the Council of the European Union and the European Commission;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

[Signatures]

Annex

List of appellants

Johannes Tomana, residing in Harare (Zimbabwe),

Titus Mehliswa Johna Abu Basutu, residing in Harare,

Happyton Mabhuya Bonyongwe, residing in Harare,

Flora Buka, residing in Harare,

Wayne Bvudzijena, residing in Harare,

David Chapfika, residing in Harare

George Charamba, residing in Harare,

Faber Edmund Chidarikire, residing in Harare,

Tinaye Chigudu, residing in Harare,

Aeneas Soko Chigwedere, residing in Harare,

Phineas Chihota, residing in Harare,

Augustine Chihuri, residing in Harare,

Patrick Anthony Chinamasa, residing in Harare,

Edward Takaruza Chindori-Chininga (deceased),

Joseph Chinotimba, residing in Harare,

Tongesai Shadreck Chipanga, residing in Harare,

Augustine Chipwere, residing in Harare,

Constantine Chiwenga, residing in Harare,

Ignatius Morgan Chiminya Chombo, residing in Harare,

Martin Dinha, residing in Harare,

Nicholas Tasunungurwa Goche, residing in Harare,

Gideon Gono, residing in Harare,

Cephas T. Gurira, residing in Harare,

Stephen Gwekwerere, residing in Harare,

Newton Kachepa, residing in Harare,

Mike Tichafa Karakadzai (deceased),

Saviour Kasukuwere, residing in Harare,

Jawet Kazangarare, residing in Harare,

Sibangumuzi Khumalo, residing in Harare,

Nolbert Kunonga, residing in Harare,

Martin Kwainona, residing in Harare,

R. Kwenda (deceased),

Andrew Langa, residing in Harare,

Musarashana Mabunda, residing in Harare,

Jason Max Kokerai Machaya, residing in Harare,

Joseph Mtakwese Made, residing in Harare,

Edna Madzongwe, residing in Harare,

Shuvai Ben Mahofa, residing in Harare,

Titus Maluleke, residing in Harare,

Paul Munyaradzi Mangwana, residing in Harare,

Reuben Marumahoko, residing in Harare,

Mashava G. Mashava, residing in Harare,

Angeline Masuku, residing in Harare,

Cain Ginyilitshe Ndabazekhaya Mathema, residing in Harare,

Thokozile Mathuthu, residing in Harare,

Innocent Tonderai Matibiri, residing in Harare,

Joel Biggie Matiza, residing in Harare,

Brighton Matonga, residing in Harare,

Cairo Mhandu, residing in Harare,

Fidellis Mhonda, residing in Harare,

Amos Bernard Midzi (deceased),

Emmerson Dambudzo Mnangagwa, residing in Harare,

Kembo Campbell Dugishi Mohadi, residing in Harare,

Gilbert Moyo, residing in Harare,

Jonathan Nathaniel Moyo, residing in Harare,

Sibusio Bussie Moyo, residing in Harare,

Simon Khaya Moyo, residing in Harare,

S. Mpabanga, residing in Harare,

Obert Moses Mpofu, residing in Harare,

Cephas George Msipa, residing in Harare,

Henry Muchena, residing in Harare,

Olivia Nyembesi Muchena, residing in Harare,

Oppah Chamu Zvipange Muchinguri, residing in Harare,

C. Muchono, residing in Harare,

Tobaiwa Mudede, residing in Harare,

Isack Stanislaus Gorerazvo Mudenge (deceased),

Columbus Mudonhi, residing in Harare,

Bothwell Mugariri, residing in Harare,

Joyce Teurai Ropa Mujuru, residing in Harare,

Isaac Mumba, residing in Harare,

Simbarashe Simbanenduku Mumbengegwi, residing in Harare,

Herbert Muchemwa Murerwa, residing in Harare,

Munyaradzi Musariri, residing in Harare,

Christopher Chindoti Mushohwe, residing in Harare,

Didymus Noel Edwin Mutasa, residing in Harare,

Munacho Thomas Alvar Mutezo, residing in Harare,

Ambros Mutinhiri, residing in Harare,

S. Mutsvunguma, residing in Harare,

Walter Mzembi, residing in Harare,

Morgan S. Mzilikazi, residing in Harare,

Sylvester Nguni, residing in Harare,

Francis Chenayimoyo Dunstan Nhema, residing in Harare,

John Landa Nkomo (deceased),

Michael Reuben Nyambuya, residing in Harare,

Magadzire Hubert Nyanhongo, residing in Harare,

Douglas Nyikayaramba, residing in Harare,

Sithembiso Gile Glad Nyoni, residing in Harare,

David Pagwese Parirenyatwa, residing in Harare,

Dani Rangwani, residing in Harare,

Engelbert Abel Rugeje, residing in Harare,

Victor Tapiwe Chashe Rungani, residing in Harare,

Richard Ruwodo, residing in Harare,

Stanley Urayayi Sakupwanya (deceased),

Tendai Savanhu, residing in Harare,

Sydney Tigere Sekeramayi, residing in Harare,

Lovemore Sekeremayi (deceased),

Webster Kotiwani Shamu, residing in Harare,

Nathan Marwirakuwa Shamuyarira (deceased),

Perence Samson Chikerema Shiri, residing in Harare,

Etherton Shungu, residing in Harare,

Chris Sibanda, residing in Harare,

Jabulani Sibanda, residing in Harare,

Misheck Julius Mpande Sibanda, residing in Harare,

Phillip Valerio Sibanda, residing in Harare,

David Sigauke, residing in Harare,

Absolom Sikosana, residing in Harare,

Nathaniel Charles Tarumbwa, residing in Harare,

Edmore Veterai, residing in Harare,

Patrick Zhuwao, residing in Harare,

Paradzai Willings Zimondi, residing in Harare,

Cold Comfort Farm Cooperative Trust, established in Harare,

Comoil (Private) Ltd, established in Harare,

Divine Homes (Private) Ltd, established in Harare,

Famba Safaris (Private) Ltd, established in Harare,

Jongwe Printing and Publishing Company (Private) Ltd, established in Harare,

M & S Syndicate (Private) Ltd, established in Harare,

OSLEG (Private) Ltd, established in Harare,

Swift Investments (Private) Ltd, established in Harare,

Zidco Holdings (Private) Ltd, established in Harare,

Zimbabwe Defence Industries (Private) Ltd, established in Harare,

Zimbabwe Mining Development Corp., established in Harare.

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* Language of the case: English.