Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

17 December 2014*

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — Factual basis of the decisions to freeze funds — Reference to terrorist acts — Need for a decision of a competent authority for the purpose of Common Position 2001/931 — Obligation to state reasons — Temporal adjustment of the effects of an annulment)

In Case T-400/10,

**Hamas**, established in Doha (Qatar), represented by L. Glock, lawyer,

applicant,

v

**Council of the European Union**, represented initially by B. Driessen and R. Szostak, and subsequently by B. Driessen and G. Étienne, acting as Agents,

defendant,

supported by

**European Commission**, represented initially by M. Konstantinidis and É. Cujo, and subsequently by M. Konstantinidis and F. Castillo de la Torre, acting as Agents,

intervener,

APPLICATION for, initially, annulment of the Council Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2010 C 188, p. 13); of Council Decision 2010/386/CFSP of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2010 L 178, p. 28); and of Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1), in so far as those measures concern the applicant,

THE GENERAL COURT (Second Chamber),

composed of N.J. Forwood, President, F. Dehousse (Rapporteur) and J. Schwarcz, Judges,

Registrar: C. Kristensen, Administrator,

* Language of the case: French.

further to the hearing on 28 February 2014 and to the closure of the oral procedure on 9 April 2014,

having regard to the decision of 15 October 2014 re-opening the oral procedure and further to its closure on 20 November 2014,

gives the following

## Judgment

### Background to the dispute

1 On 27 December 2001, the Council of the European Union adopted Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) and Decision 2001/927/EC establishing the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2001 L 344, p. 83).

2 'Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)' appeared on the lists annexed to Common Position 2001/931 and Decision 2001/927.

3 Those two instruments were regularly updated, in application of Article 1(6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001, and 'Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)' remained on the lists. Since 12 September 2003, the entity on the lists has been 'Hamas (including Hamas-Izz al-Din al-Qassem)'.

4 On 12 July 2010, the Council adopted Decision 2010/386/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 (OJ 2010 L 178, p. 28) and Implementing Regulation (EU) No 610/2010 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1) (together 'the Council measures of July 2010').

5 '"Hamas", including "Hamas-Izz al-Din al-Qassem"' continued to be included on the lists contained in those measures.

6 On 13 July 2010, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2010 C 188, p. 13; 'the notice of July 2010').

### Procedure and new developments in the course of the proceedings

7 By document lodged at the Court Registry on 12 September 2010, the applicant brought the present action.

8 In its application, the applicant claims that the Court should:

— annul the notice of July 2010 and the Council measures of July 2010;

— order the Council to pay the costs.

9 By document lodged at the Court Registry on 21 December 2010, the European Commission sought leave to intervene in support of the form of order sought by the Council. That application was granted by order of the President of the Second Chamber of the Court of 7 February 2011.

10 On 31 January 2011, the Council adopted Decision 2011/70/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 (OJ 2011 L 28, p. 57), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 83/2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 610/2010 (OJ 2011 L 28, p. 14) ('the Council measures of January 2011').

11 On 2 February 2011, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2011 C 33, p. 14).

12 By letter of 2 February 2011, notified to the applicant on 7 February 2011, the Council sent the applicant the statement of reasons for maintaining it on the list.

13 By letter of 17 February 2011, lodged at the Court Registry on the same date, the applicant referred to the Council measures of January 2011 and the letter of 2 February 2011. It stated that it maintained the pleas in its application against those measures and that it would develop its criticisms against the reasons for maintaining it on the list notified by the letter of 2 February 2011.

14 By letter of 30 May 2011, the Council informed the applicant that it intended, when it next reviewed the restrictive measures, to maintain the applicant on the list of persons, groups and entities subject to the restrictive measures provided for in Regulation No 2580/2001.

15 After hearing the other parties, the Court, by letter from the Registry of 15 June 2011, authorised the applicant to amend, in its reply, the pleas in law and form of order sought in its action with respect to the Council measures of January 2011, if appropriate in the light of the reasons set out in the letter of 2 February 2011. On the other hand, the Court did not authorise the applicant to amend the form of order sought so far as the letter of 2 February 2011 was concerned.

16 The time-limit for lodging the reply was set at 27 July 2011.

17 On 18 July 2011, the Council adopted Decision 2011/430/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 (OJ 2011 L 188, p. 47), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 687/2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulations No 610/2010 and No 83/2011 (OJ 2011 L 188, p. 2) (together 'the Council measures of July 2011').

18 On 19 July 2011, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2011 C 212, p. 20).

19 By letter of 19 July 2011, the Council sent the applicant the statement of reasons for maintaining it on the list.

20 By letter of 27 July 2011, the applicant referred to the Council measures of July 2011 and the letter of 19 July 2011 as replacing the measures initially contested. It observed that the publication or notification of those measures caused a new two-month period for bringing an action to begin to run. It stated the reasons why the reply had not been lodged.

21 The letter of 27 July 2011 was placed on the file as an application to extend the period for lodging the reply.

22 By letters from the Registry of 16 September 2011, the Court informed the parties that it had decided not to grant that application for an extension and set at 2 November 2011 the deadline by which the Commission was to lodge its statement in intervention.

23 On 28 September 2011, the applicant lodged a supplementary pleading at the Court Registry. In that pleading, the applicant stated that it 'extended the form of order seeking annulment to include [the Council measures of July 2011]'.

24 The applicant also stated that, in the light of the initial application, the letter of 17 February 2011 and the supplementary pleading, the present action should henceforth be considered to be brought against the Council measures of July 2010, January 2011 and July 2011. The applicant further stated that the claims submitted against the notice of July 2010 were also maintained and made clear that its applications for annulment related to the measures at issue solely in so far as they concerned the applicant.

25 On 28 October 2011, the Commission lodged its statement in intervention.

26 By letter of 15 November 2011, the Council informed the applicant's counsel that it intended, when it next reviewed the restrictive measures, to maintain the applicant on the list of persons, groups and entities subject to the restrictive measures provided for in Regulation No 2580/2001.

27 By decision of the Court of 8 December 2011, the supplementary pleading was placed on the file.

28 By letter of 20 December 2011, the Court informed the parties that, since the period within which an action for annulment of the Council measures of January 2011 had expired before the supplementary pleading was lodged, the amendment of the form of order sought in the action to include those measures, which was in itself admissible, since it had already been requested and put into effect to the requisite legal standard by the applicant's letter of 17 February 2011, would be examined only in the light of the pleas and arguments put forward by that party before the expiry of the period within which an action for annulment of those measures could be brought, that is to say, the pleas and arguments put forward in the application initiating the proceedings.

29 The Court set 17 February 2012 as the deadline by which the Council and the Commission were to lodge their observations on the amendment of the form of order sought to include the Council measures of January 2011 and on 5 March 2012 it extended until 3 April 2012 the deadline by which those parties were to lodge their observations on the supplementary pleading.

30 On 22 December 2011, the Council adopted Decision 2011/872/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2011/430 (OJ 2011 L 343, p. 54), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 1375/2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 687/2011 (OJ 2011 L 343, p. 10) (together 'the Council measures of December 2011').

31 On 23 December 2011, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2011 C 377, p. 17).

32 By letter lodged at the Court Registry on 1 February 2012, the applicant amended the form or order sought to include the Council measures of December 2011.

33 By documents lodged at the Court Registry on 13 and 16 February 2012, the Commission and the Council, at the Court's invitation, lodged their observations on the amendment of the form of order sought to include the Council measures of January 2011.

34 By documents lodged at the Court Registry on 3 April 2012, the Council and the Commission, at the Court's invitation, lodged their observations on the supplementary pleading.

35 On 25 June 2012, the Council adopted Decision 2012/333/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2011/872 (OJ 2012 L 165, p. 72), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 542/2012 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 1375/2011 (OJ 2012 L 165, p. 12) (together 'the Council measures of June 2012').

36 On 26 June 2012, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2012 C 186, p. 1).

37 By document lodged at the Court Registry on 28 June 2012, the applicant, at the Court's invitation, lodged its observations in response to the Council's and the Commission's observations of 3 April 2012.

38 By letter lodged at the Court Registry on 10 July 2012, the applicant amended the form of order sought to include the Council measures of June 2012.

39 By documents lodged at the Court Registry on 20 and 23 July 2012, the Commission and the Council, at the Court's invitation, lodged their observations on the amendment of the form of order sought to include the Council measures of June 2012.

40 By documents lodged at the Court Registry on 5 and 6 September 2012, the Commission and the Council, at the Court's invitation, replied to the applicant's observations of 28 June 2012.

41 On 10 December 2012, the Council adopted Decision 2012/765/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2012/333 (OJ 2012 L 337, p. 50), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 1169/2012 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 542/2012 (OJ 2012 L 337, p. 2) (together 'the Council measures of December 2012').

42 On 11 December 2012, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2012 C 380, p. 6).

43 By letter lodged at the Court Registry on 11 February 2013, the applicant amended the form of order sought to include the Council measures of December 2012.

44 By documents lodged at the Court Registry on 11 and 13 March 2013, the Commission and the Council, at the Court's invitation, lodged their observations on the amendment of the form of order sought to include the Council measures of December 2012.

45 On 25 July 2013, the Council adopted Decision 2013/395/CFSP updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2012/765 (OJ 2013 L 201, p. 57), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 714/2013 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 1169/2012 (OJ 2013 L 201, p. 10) (together 'the Council measures of July 2013').

46 By letter of 24 September 2013, the applicant amended the form of order sought to include the Council measures of July 2013.

47 By letter of 4 October 2013, the Court invited the Council — which complied with that request by document of 28 October 2013 — to produce certain documents, and put certain questions to the parties with a view to the hearing.

48 By documents lodged at the Court Registry on 28 and 30 October 2013, the Council and the Commission, at the Court's invitation, lodged their observations on the amendment of the form of order sought to include the Council measures of July 2013.

49 On 10 February 2014, the Council adopted Decision 2014/72/CFSP updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2013/395 (OJ 2014 L 40, p. 56), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 125/2014 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 714/2013 (OJ 2014 L 40, p. 9) (together 'the Council measures of February 2014').

50 On 28 February 2014, the applicant amended the form of order sought to include the Council measures of February 2014.

51 By documents lodged at the Court Registry on 4 and 5 March 2014, the Commission and the Council, at the Court's invitation, lodged their observations on the amendment of the form of order sought to include the Council measures of February 2014.

52 On 22 July 2014, the Council adopted Decision 2014/483/CFSP updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2014/72 (OJ 2014 L 217, p. 35), whereby it maintained the applicant on the list, and Implementing Regulation (EU) No 790/2014 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 125/2014 (OJ 2014 L 217, p. 1) (together 'the Council measures of July 2014'; the Council measures of July 2010, January, July and December 2011, June and December 2012, July 2013 and February and July 2014 being hereinafter referred to together as 'the Council measures of July 2010 to July 2014').

53 On 21 September 2014, the applicant amended the form of order sought to include the Council measures of July 2014.

54 By documents lodged at the Court Registry on 23 October and 4 November 2014, the Council and the Commission, at the Court's invitation, lodged their observations on the amendment of the form of order sought to include the Council measures of July 2014.

**Forms of order sought**

55 It is apparent from the foregoing facts that, by the present action, the applicant claims that the Court should:

— annul, in so far as they concern the applicant, the notice of July 2010 and the Council measures of July 2010 to July 2014 (together 'the contested measures');

— order the Council to pay the costs.

56 The Council, supported by the Commission, contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

## Law

*Preliminary considerations on the object of the action and also on the scope and admissibility of the applicant's observations of 28 June 2012*

The object of the action

57 As is apparent from the description of the facts, the Council measures of July 2010 were repealed and replaced, successively, by the Council measures of January, July and December 2011, June and December 2012, July 2013 and February and July 2014.

58 The applicant successively amended the initial form of order sought in such a way that its action seeks annulment of those various measures, in so far as they concern the applicant. In addition, it expressly maintained its claims for annulment of the repealed measures.

59 In accordance with a consistent line of decisions relating to successive fund-freezing measures adopted under Regulation No 2580/2001, an applicant still has an interest in obtaining annulment of a decision imposing restrictive measures which has been repealed and replaced by a subsequent restrictive decision, in so far as the repeal of an act of an institution does not constitute recognition of the unlawfulness of that act and has only prospective effect, unlike a judgment annulling an act, by which the annulled act is eliminated retroactively from the legal order and is deemed never to have existed (judgment of 12 December 2006 in *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, '*OMPI* T-228/02', ECR, EU:T:2006:384, paragraph 35; see also judgments of 23 October 2008 in *People's Mojahedin Organization of Iran* v *Council*, T-256/07, '*PMOI* T-256/07', ECR, EU:T:2008:461, paragraphs 45 to 48 and the case-law cited, and 30 September 2009 in *Sison* v *Council*, T-341/07 '*Sison* T-341/07', ECR, EU:T:2009:372, paragraphs 47 and 48).

60 It follows that the present action for annulment retains its object with respect to the contested measures preceding the Council measures of July 2014.

The scope and admissibility of the applicant's observations of 28 June 2012

61 On 28 June 2012, the applicant, in response to an invitation by the Court, lodged its observations on the Council's and the Commission's observations of 3 April 2012 on the supplementary pleading.

62 As the applicant had entitled its observations 'Reply', the Council, in its observations of 6 September 2012, raised the objection that the applicant could not be authorised to lodge a reply covering the entire case as initially brought by the lodging of the application.

63 The Council took the view that the exchanges of pleadings relating to the substance of the case ought to have come to an end when the applicant lodged the supplementary pleading and the Council lodged its observations on that pleading.

64 It should be observed that the applicant's observations of 28 June 2012, lodged at the Court's invitation, cannot indeed constitute a reply, within the meaning of Article 47(1) of the Rules of Procedure of the Court, in the present case.

65 As stated at paragraphs 20 to 22 above, the applicant did not in the present case lodge a reply within the prescribed period and the application for an extension of the time limit for lodging a reply, which the Court inferred from the applicant's letter of 27 July 2011, was rejected.

66 The fact none the less remains that, although the observations of 28 June 2012 cannot be taken into consideration in the present action in so far as they seek annulment of the Council measures of July 2010 and January 2011 (see, in the latter regard, paragraph 28 above), they are admissible in the context of the application for annulment of the Council measures of July 2011 (introduced by the lodging of the supplementary pleading), in so far as they respond to the Council's observations on the new pleas in the supplementary pleading directed against the measures of July 2011, and also in the context of the applications for annulment of the Council's subsequent measures.

67 Furthermore, it is precisely because the Court considered it necessary to allow the applicant to respond, in that context, to the Council's observations of 3 April 2012 on the supplementary pleading that it invited the applicant to submit observations.

68 Last, it follows from the actual wording of those observations of 28 June 2012 (see paragraph 1 of those observations) that they seek only to respond to the Council's observations of 3 April 2012 on the supplementary pleading.

69 In the light of that explanation of the scope of the observations of 28 June 2012, the Council's objections to the admissibility of those observations must be rejected.

*Admissibility of the action in that it seeks the annulment of the notice of July 2010*

70 The Council, supported by the Commission, raises the objection that, as regards the notice of July 2010, the action is inadmissible, as that notice is not an act that can be challenged.

71 In accordance with the first paragraph of Article 263 TFEU, acts against which an action may be brought are acts 'intended to produce legal effects vis-à-vis third parties'.

72 According to consistent case-law, although, in order to determine whether contested measures constitute acts for the purposes of Article 263 TFEU, it is necessary to look at their substance, only measures the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in its legal position are acts or decisions which may be the subject of an action for annulment (see order of 14 May 2012 in *Sepracor Pharmaceuticals (Ireland)* v *Commission*, C-477/11 P, EU:C:2012:292, paragraphs 50 and 51 and the case-law cited).

73 In the present case, the applicant was maintained on the European Union list relating to frozen funds ('the list relating to frozen funds') by the Council measures of July 2010.

74 The sole purpose of the notice of July 2010, published in the *Official Journal of the European Union* on the day following the adoption of those measures, was to attempt to inform the persons, groups and entities whose funds remained frozen pursuant to those measures of the possibilities provided to them to ask the competent national authorities to authorise the use of the frozen funds for certain needs, to ask the Council to state the reasons why they continued to be on the list relating to frozen funds, to ask the Council to review its decision to maintain them on that list and, last, to bring an action before the Courts of the European Union.

75 In doing so, the notice of July 2010 did not produce legal effects which were binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in its legal position.

76 As that notice is therefore not an act that can be challenged, the present action must be dismissed as inadmissible in so far as its seeks annulment of that notice.

*The application for annulment of the Council measures of July 2010 to July 2014*

77 In support of its application for annulment of the Council measures of July 2010 and January 2011, the applicant puts forward, in the application, four pleas in law, alleging, in essence, first, breach of its rights of defence; second, a manifest error of assessment; third, breach of the right to property; and, fourth, breach of the obligation to state reasons.

78 In support of its application for annulment of the Council measures of July and December 2011, June and December 2012, July 2013 and February and July 2014 (together 'the Council measures of July 2011 to July 2014'), the applicant puts forward, in the supplementary pleading and its subsequent amendments of the form of order sought, eight pleas for annulment, alleging, first, infringement of Article 1(4) of Common Position 2001/931; second, errors as to the accuracy of the facts; third, an error of assessment as to the terrorist nature of the applicant; fourth, failure to take sufficient account of the development of the situation 'owing to the passage of time'; fifth, breach of the principle of non-interference; sixth, breach of the obligation to state reasons; seventh, breach of its rights of defence and of the right to effective judicial protection; and, eighth, breach of the right to property.

79 It is appropriate to begin by examining the fourth and sixth pleas for annulment of the Council measures of July 2011 to July 2014, taken together, alleging failure to take sufficient account of the development of the situation 'owing to the passage of time' and breach of the obligation to state reasons.

80 The applicant submits that the freezing of funds must be based on actual and specific reasons which show that that measure is still necessary. The Council is required to pay particularly close attention to the consequences of procedures undertaken at national level; yet in the present case the Council merely cited a series of facts and asserted that the national decisions were still in force. It is not apparent from the reasoning on which the Council measures of July 2011 to July 2014 are based that the Council did in fact concern itself with the national consequences of the measures taken against the applicant. The applicant therefore takes issue with the Council for having taken insufficient account of the development of the situation 'owing to the passage of time'.

81 In the applicant's submission, the Council ought to have included in the reasoning on which its measures were based the material showing the existence of serious evidence and indicia on the basis of the national decisions. However, the statements of reasons sent to the applicant contain no information on that matter. The statements of the reasons for the Council measures of July 2011 to July 2014 could not be limited to mentioning the existence of the national decisions, but ought, in addition, to have set out the relevant information which the Council inferred from those decisions in order to substantiate its own decision. However, the Council gave no indication of the facts established against the applicant in those national decisions.

82 The Council denies having failed to take sufficient account of the development of the situation 'owing to the passage of time'. Since the applicant was first included on the list relating to frozen funds in 2003, it has been maintained on the list following the periodic reviews carried out by the Council on the basis of the measures adopted by the United States and United Kingdom authorities.

83 The Council maintains that the statements of reasons, read with the Council measures of July 2011 to July 2014, present convincing reasons that satisfy the obligation to state reasons.

84 In the first place, it should be borne in mind that, after adopting, on the basis of decisions of competent national authorities, a decision to include a person or a group on the list relating to frozen funds, the Council must satisfy itself at regular intervals, at least once every six months, that there are still grounds for maintaining that person or group on the list.

85 Although verification that there is a decision of a national authority meeting the definition in Article 1(4) of Common Position 2001/931 is an essential precondition for the adoption, by the Council, of an initial decision to freeze funds, the verification of the consequences of that decision at national level is imperative in the context of the adoption of a subsequent decision to freeze funds (*OMPI* T-228/02, paragraph 59 above, EU:T:2006:384, paragraph 117, and judgment of 11 July 2007 in *Sison* v *Council*, T-47/03, EU:T:2007:207, paragraph 164). The essential question when reviewing whether to continue to include a person on the list is whether, since that person was included on the 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 in terrorist activities (judgment of 15 November 2012 in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, ECR, EU:C:2012:711, paragraph 82).

86 In the second place, it should be borne in mind that, according to consistent case-law, the statement of reasons required by Article 296 TFEU, which must be appropriate to the nature of the act at issue and the context in which it was adopted, must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons must be assessed by reference to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see *OMPI* T-228/02, paragraph 59 above, EU:T:2006:384, paragraph 141 and the case-law cited).

87 In the context of the adoption of a decision to freeze funds under Regulation No 2580/2001, the grounds for that decision must be assessed primarily in the light of the legal conditions of application of that regulation to a given scenario, as laid down in Article 2(3) thereof and, by reference, in Article 1(4) or Article 1(6) of Common Position 2001/931, depending on whether it is an initial decision or a subsequent decision to freeze funds (*OMPI* T-228/02, paragraph 59 above, EU:T:2006:384, paragraph 142).

88 In that regard, the Court cannot accept that the statement of reasons may consist merely of a general, stereotypical formulation, modelled on the drafting of Article 2(3) of Regulation No 2580/2001 and Article 1(4) or (6) of Common Position 2001/931. In accordance with the principles referred to above, the Council is required to state the matters of fact and of law which constitute the legal basis of its decision and the considerations which led it to adopt that decision. The grounds for such a measure must therefore indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (see *OMPI* T-228/02, paragraph 59 above, EU:T:2006:384, paragraph 143 and the case-law cited).

89 Accordingly, both the statement of reasons for an initial decision to freeze funds and the statement of reasons for subsequent decisions must refer not only to the legal conditions of application of Regulation No 372/2001, in particular the existence of a national decision taken by a competent authority, but also to the actual and specific reasons why the Council considers, in the exercise of its discretion, that the person or entity concerned must be made the subject of a measure freezing funds (*Sison* T-341/07, paragraph 59 above, EU:T:2009:372, paragraph 60).

90 In the third place, with regard to the review exercised by the Court, the latter has recognised that the Council has broad discretion as to what matters to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 75 TFEU, 215 TFEU and 352 TFEU, consistent with a common position adopted on the basis of the common foreign and security policy. That discretion concerns, in particular, the considerations of appropriateness on which such decisions are based (see *Sison* T-341/07, paragraph 59 above, EU:T:2009:372, paragraph 97 and the case-law cited). However, although the Court acknowledges that the Council possesses some latitude in that sphere, that does not mean that the Court is not to review the interpretation made by the Council of

the relevant facts. The Courts of the European Union must not only establish whether the evidence relied on is factually accurate, reliable and consistent, but must also ascertain whether that evidence contains all the relevant information to be taken into account in order to assess the situation and whether it is capable of substantiating the conclusions drawn from it. However, when conducting such a review, the Court in question must not substitute its own assessment of what is appropriate for that of the Council (see *Sison* T-341/07, paragraph 59 above, EU:T:2009:372, paragraph 98 and the case-law cited).

91 In the fourth place, as regards the legal and factual bases of a decision to freeze funds in connection with terrorism, it should be borne in mind that, in the words of Article 1(4) of Common Position 2001/931, the list relating to frozen funds is to be drawn up on the basis of precise information or material in the 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.

92 In its judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 85 above (EU:C:2012:711), the Court of Justice observed that it follows from the reference in Article 1(4) of Common Position 2001/931 to a decision of a 'competent authority' and also from the reference to 'precise information' and 'serious and credible evidence or [indicia]' that that provision aims to protect the persons concerned by ensuring that they are included on the list at issue by the Council only on a sufficiently solid factual basis, and that the Common Position seeks to attain that objective by requiring a decision taken by a national authority (paragraph 68 of the judgment). In fact, the Court of Justice observed, that the European Union lacks the means to carry out its own investigations regarding the involvement of a given person in terrorist acts (paragraph 69 of the judgment).

93 It is in the light of the foregoing considerations that the Court must examine the grounds on which the Council based its measures of July 2011 to July 2014.

94 The statements of reasons for the Council measures of July 2011 to July 2014 begin with a paragraph in which the Council describes the applicant as 'a group involved in terrorist acts which from 1988 onwards carried out, and acknowledged responsibility for, regular attacks against Israeli targets, including kidnapping, stabbing and shooting attacks against civilians, and suicide bomb attacks on public transport and in public places'. The Council states that 'Hamas mounted attacks in both "Green Line" Israel and Occupied Territories' and that '[i]n March 2005, Hamas declared a "tahdia" (period of calm) that resulted in a decline in their activities'. The Council continues: 'However, on 21 September 2005 a Hamas cell kidnapped and later killed an Israeli. In a video statement Hamas claimed to have kidnapped the man in an attempt to negotiate the release of Palestinian prisoners held by Israel'. The Council states that 'Hamas militants have taken part in the firing of rockets from Gaza into southern Israel [and that] [f]or the purpose of carrying out terrorist attacks against civilians in Israel, Hamas has in the past recruited suicide bombers by offering support to their families'. The Council states that '[i]n June 2006 Hamas [including Hamas-Izz al-Din-al-Qassem] was involved in the operation which led to the kidnap of an Israeli soldier, Gilad Shalit' (first paragraph of the statements of reasons for the Council measures of July 2011 to July 2014). Beginning with the statement of reasons for Implementing Regulation No 1375/2011 of 22 December 2011, the Council states that 'Hamas released [the soldier] Gilad Shalit, after holding him for five years, as part of a prisoner swap deal with Israel on 11 October 2011'.

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

96 The Council, after expressing the view that '[t]hese acts fall within the provision of Article 1(3), subpoints (a), (b), (c), (d), (f) and (g) of Common Position 2001/931, and were committed with the aims set out in Article 1(3), points (i), (ii) and (iii) thereof', and that 'Hamas (including Hamas-Izz al-Din-al-Qassem) falls within Article 2(3)(ii) of Regulation No 2580/2001' (third and fourth paragraphs of the statements of reasons for the Council measures of July 2011 to July 2014), refers to decisions which the United States and United Kingdom authorities, as is apparent from the statement of reasons and from the file, adopted in 2001 against the applicant (fifth to seventh paragraphs of the statements of reasons for the Council measures of July 2011 to July 2014). In the statement of reasons for Implementing Regulation No 790/2014 of 22 July 2014, the Council refers for the first time to a United States decision of 18 June 2012.

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

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

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

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

101 It should be observed at the outset, and independently of whether the inferences set out at paragraph 99 above are correct, that although the list of acts of violence for the period after 2004, and more particularly for the period 2010 to 2011, drawn up by the Council in the first and second paragraphs of the statements of the reasons for the Council measures of July 2011 to July 2014 plays a decisive role in the determination of whether it is appropriate to maintain the freezing of the applicant's funds, since that list supports the Council's finding of the existence of terrorist acts committed by the applicant during that period, none of those acts of violence was examined in the national decisions of 2001 referred to in the fifth and sixth paragraphs of those statements of reasons.

102 In fact, all those acts of violence postdate those national decisions and cannot therefore have been examined in those decisions.

103 However, while the statements of the reasons for the Council measures of July 2011 to July 2014 state that the national decisions to which they refer have remained in force, they contain no reference to more recent national decisions, still less to the reasons on which such decisions were based, apart from the Council measures of July 2014, which mention for the first time a United States decision of 18 July 2012.

104 Faced with the applicant's criticisms on that point, the Council produces no more recent decision of the United States or United Kingdom authorities which it proves to have had in its possession when it adopted its measures of July 2011 to July 2014 and from which it would specifically follow that the acts of violence subsequent to 2004 listed in the statements of reasons had actually been examined and accepted by those authorities.

105 Thus, as regards the procedure in the United Kingdom, the Council produces no decision adopted later than 2001.

106 As regards the United States decisions taken under section 219 INA, the Council produces no decision adopted later than 2003. As for the decision of 18 July 2012, taken under section 219 INA and mentioned for the first time in the statement of reasons for the Council measures of July 2014, the Council provides no evidence that would disclose how the actual reasons on which those decisions were based bears any relationship to the list of acts of violence set out in the statement of reasons for those measures. More generally, and so far as the reasons for the designation made in application of section 219 INA are concerned, the Council produces only a document dated 1997. As regards the United States decision taken in application of Executive Order 13224, the Council produces before the Court only a decision of 31 October 2001. The Council produces no later decision of the United States Government in application of that order. As for the reasons for the designation, the Council produces an undated document originating in the United States Treasury which mentions Hamas in reference to facts the most recent of which dates from June 2003.

107 As for the national decisions to which reference was first made at the hearing, they constitute — quite apart from the fact that they have not been produced — an attempt to submit reasons out of time, which is inadmissible (see, to that effect, judgments of 12 November 2013 in *North Drilling* v *Council*, T-552/12, EU:T:2013:590, paragraph 26, and 12 December 2013 in *Nabipour and Others* v *Council*, T-58/12, EU:T:2013:640, paragraphs 36 to 39). It should be observed, incidentally, that there is no mention of those decisions in the statement of reasons for the Council measures of July 2014, which were adopted after the hearing.

108 The Council claims, on the other hand, in its observations on the supplementary pleading, that it is sufficient to consult the press in order to establish that the applicant regularly acknowledges responsibility for terrorist acts.

109 That consideration, together with the absence of any reference in the statements of reasons for the Council measures of July 2011 to July 2014 to decisions of competent authorities more recent than the imputed acts and referring to those acts, clearly shows that the Council did not base its imputation to the applicant of the terrorist acts taken into account for the period after 2004 on appraisals contained in decisions of competent authorities, but on information which it derived from the press.

110 As is apparent from the matters recalled at paragraphs 91 and 92 above, however, Common Position 2001/931 requires, for the protection of the persons concerned and in the absence of the European Union's own means of investigation, that the factual basis of a European Union decision freezing funds in a terrorism matter be based not on material that the Council has obtained from the press or from the internet, but on material actually examined and accepted in decisions of national competent authorities within the meaning of Common Position 2001/931.

111 It is only on such a reliable factual basis that the Council can then exercise its broad discretion when adopting decisions to freeze funds at EU level, in particular as regards the considerations of appropriateness on which such decisions are based.

112 It follows from the foregoing considerations that the Council did not satisfy those requirements of Common Position 2001/931.

113 The statements of reasons on which the Council measures of July 2011 to July 2014 are based show, moreover, that the Council's reasoning took the opposite direction to that required by that common position.

114 Thus, instead of taking as the factual basis of its assessment decisions adopted by competent authorities which had taken precise facts into consideration and acted on the basis of those facts, and then ascertaining that those facts are indeed 'terrorist acts' and that the group concerned is indeed 'a group', within the meaning of the definitions in Common Position 2001/931, before eventually deciding, on that basis and in the exercise of its broad discretion, to adopt a decision at EU level, the Council, in the statements of reasons for its measures of July 2011 to July 2014, did the opposite.

115 It begins with appraisals which are in reality its own, describing the applicant as 'terrorist' in the first sentence of the statements of reasons — thus settling the question that those reasons are supposed to resolve — and imputing to it a series of acts of violence which it has taken from the press and the internet (first and second paragraphs of the statements of reasons for the Council measures of July 2011 to July 2014).

116 It should be noted, in that regard, that the fact that the exercise in question constitutes a review of the list relating to frozen funds, and therefore follows on from previous examinations, cannot justify that description being applied at the outset. Although the past cannot be ignored, the review of a fund-freezing measure is, by definition, open to the possibility that the person or the group concerned is no longer 'terrorist' at the time when the Council makes its determination. It is therefore only at the end of that review that the Council is able to draw its conclusion.

117 The Council states, next, that the facts which it imputes to the applicant fall within the definition of terrorist acts within the meaning of Common Position 2001/931 and that the applicant is a group within the meaning of that common position (third and fourth paragraphs of the statements of reasons for the Council measures of July 2011 to July 2014).

118 It is only after making those assertions that the Council refers to decisions of national authorities, which, however, at least for the Council measures of July 2011 to February 2014, predate the imputed facts.

119 The Council does not seek to show, in the statements of reasons for those measures, that any subsequent national review decisions, or other decisions of competent authorities, did in fact examine and accept the specific facts that appear at the beginning of those statements of reasons. In the statements of reasons for the Council measures of July 2011 to February 2014, the Council merely cites the initial national decisions and states, without more, that they are still in force. Only in the statement of reasons for the Council measures of July 2014 does it mention a United States decision adopted later than the facts actually imputed to the applicant, but again without showing that that decision actually examined and accepted the specific facts set out at the beginning of that statement of reasons.

120 The present case, like the case giving rise to the judgment of 16 October 2014 in *LTTE* v *Council* (T-208/11 and T-508/11, ECR, EU:T:2014:885), is therefore markedly different from the other cases that inaugurated the litigation concerning terrorism-related fund-freezing measures before this Court, following the adoption of Common Position 2001/931 (*Al-Aqsa* v *Council*, *Sison* v *Council* and *People's Mojahedin Organization of Iran* v *Council*).

121 Although, in those first cases in the European Union litigation on terrorist matters, the factual basis of the Council regulations had its source in decisions of competent national authorities, the Council no longer relies, in this case, on facts that were first of all assessed by national authorities, but makes its own factual imputations on the basis of the press or the internet. In doing so, the Council performs the role of the 'competent authority' within the meaning of Article 1(4) of Common Position 2001/931, which, however, as the Court of Justice observes in essence, is neither within its competence according to that common position nor within its means.

122 Thus, in *PMOI* T-256/07, paragraph 59 above (EU:T:2008:461, paragraph 90), the acts listed in the grounds for the freezing of funds which the Council sent to the People's Mojahedin Organization of Iran ('the PMOI') were not based on autonomous assessments of the Council, but on assessments of the competent national authority. As is apparent from paragraph 90 of the judgment in *PMOI* T-256/07, paragraph 59 above (EU:T:2008:461), the statement of reasons dated 30 January 2007 sent to the group concerned (the PMOI) referred to terrorist acts for which the PMOI was said to be responsible and stated that, 'because of those acts, a decision had been taken by a competent [national] authority'. The acts listed in the Council's statement of reasons of 30 January 2007, sent to the PMOI, had therefore been examined and accepted as against that group by the competent national authority. Unlike in the present case, the acts in question were not listed on the basis of autonomous assessments carried out by the Council.

123 Likewise, in the judgment of 9 September 2010 in *Al-Aqsa* v *Council* (T-348/07, ECR, EU:T:2010:373) the Court had before it the text of the decisions of competent authorities referred to in the statement of the reasons for the contested regulations and analysed them in detail. It concluded that the Council had not made a manifest error of assessment in finding that the applicant was aware that the funds which it collected would be used for the purposes of terrorism (paragraphs 121 to 133). The factual basis on which the Council proceeded was therefore, according to the findings of the Court, a perfectly sound basis, following directly from the findings made by the competent national authorities. In the judgment of 11 July 2007 in *Al-Aqsa* v *Council* (T-327/03, EU:T:2007:211), it is also clear from the grounds of the judgment (paragraphs 17 to 20 of the judgment) that the assessments forming the basis of the European Union fund-freezing measure derived not from factual findings made by the Council itself but from decisions of competent national authorities.

124 Likewise, in Case T-341/07 *Sison* v *Council*, the assessments forming the basis of the fund-freezing measure derived not from factual findings made by the Council itself but from decisions having the force of *res judicata* and adopted by the competent national authorities (Raad van State (Netherlands Council of State) and Arrondissementsrechtbank te's-Gravenhage (The Hague District Court) (*Sison* T-341/07, paragraph 59 above, EU:T:2009:372, paragraphs 1, 88, 100 to 105).

125 It should be added that the factual grounds of the Council measures of July 2011 to July 2014, and therefore the list of the facts which the Council imputes to the applicant in the present case, do not of course constitute a judicial assessment having the authority of *res judicata*. The fact none the less remains that those factual grounds of the measures at issue played a decisive role in the Council's assessment of the appropriateness of maintaining the applicant on the list in relation to frozen funds and that, far from establishing that it derived those grounds from decisions of competent authorities, the Council attests in reality that it relied on information taken from the press.

126 The Court considers that that approach contravenes the two-tier system of Common Position 2001/931 with regard to terrorism.

127 Although, as the Court of Justice has observed, the essential question when reviewing whether to continue to include a person on the list is whether, since that person was included on the 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 in terrorist activities (judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 85 above, EU:C:2012:711, paragraph 82), with the consequence that the Council may, if necessary and within the context of its broad discretion, decide to maintain a person on the list relating to frozen funds in the absence of a change in the factual situation, the fact remains that any new terrorist act which the Council inserts in its statement of reasons during that review for the purposes of justifying maintaining the person concerned on the list relating to frozen funds must, in the two-tier decision-making system of Common Position 2001/931 and because of the Council's lack of means of investigation, have been the subject of an examination and a decision by a competent authority within the meaning of that common position (judgment in *LTTE* v *Council*, paragraph 120 above, EU:T:2014:885, paragraph 204).

128 It does not avail the Council and the Commission to suggest that the absence of any reference in the statements of reasons for the Council measures of July 2011 to July 2014 to decisions of specific competent authorities that have actually examined and established the facts set out at the head of those statements is imputable to the applicant, who, according to the Council and the Commission, could and should have contested the restrictive measures taken against it at national level.

129 First, the Council's obligation to base its decisions to freeze funds in terrorist matters on a factual basis derived from decisions of competent authorities follows directly from the two-tier system introduced by Common Position 2001/931, as confirmed in the judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 85 above (EU:C:2012:711, paragraphs 68 and 69).

130 That obligation is therefore not affected by the conduct of the person or group concerned. Under the obligation to state reasons, which is an essential procedural requirement, the Council must indicate, in the grounds of its decisions to freeze funds, the decisions of competent national authorities that have actually examined and established the terrorist acts which the Council takes as the factual basis of its own decisions.

131 Second, the argument employed by the Council and the Commission ultimately merely corroborates the finding, already made at paragraph 109 above, that the Council relied in reality not on assessments contained in decisions of competent authorities but on information which it obtained from the press and the internet. In that regard, it seems paradoxical that the Council should take issue with the applicant for not having contested at national level factual imputations which the Council itself does not seek to link to any decision of a specific competent authority.

132 Last, it should be observed that the findings made above do not exceed the scope of the restricted review which the Court must carry out and consisting, without calling in question the Council's broad discretion, in reviewing compliance with the procedure and the material correctness of the facts. It was thus, moreover, that in *Sison* T-341/07, paragraph 59 above (EU:T:2009:372), this Court found it necessary to ascertain — and was able to establish — that the allegations as to fact against Mr Sison contained out in the statement of reasons for maintaining him on the list relating to the freezing of funds were substantiated in due fashion by the findings of fact made in their absolute discretion in the decisions of the Netherlands authorities (Raad van State and Arrondissementsrechtbank te's-Gravenhage), on which the Council relied in the same statements of reasons (*Sison* T-341/07, paragraph 59 above, EU:T:2009:372, paragraphs 87 and 88).

133 In the present case, by contrast, the Court does not have before it, in the statements of reasons for the Council measures of July 2011 to July 2014, any references to any decision of a competent authority to the grounds of which it could link the factual elements used by the Council against the applicant.

134 In addition, and still in *Sison* T-341/07, paragraph 59 above (EU:T:2009:372), it should be observed that, although the Court found that the facts set out in the statements of reasons for the Council measures did indeed originate in the two Netherlands decisions referred to in those statements of reasons, it none the less refused to recognise those Netherlands decisions as being in the nature of decisions of competent authorities, on the ground that they did not seek the imposition on the person concerned of measures of a preventive or punitive nature in connection with the combating of terrorism (*Sison* T-341/07, paragraph 59 above, EU:T:2009:372, paragraphs 107 to 115).

135 If the Court was thus able to disregard findings of fact, notwithstanding that they were made by competent authorities, on the ground that the decisions of those authorities were not 'condemnations, instigation of investigations or prosecutions', that means that in the present case press articles — which in any event are not mentioned in the statements of reasons for the Council measures of July 2011 to July 2014 — cannot be afforded the procedural and evidential status which Common Position 2001/931 recognises only to decisions of competent authorities.

136 The Court considers, last, that it is appropriate to emphasise the importance of the guarantees afforded by fundamental rights in that context (see Opinion in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, ECR, EU:C:2011:482, points 235 to 238).

137 In the light of all of the foregoing considerations, it must be concluded that, in adopting its measures of July 2011 to July 2014 in the circumstances described above, the Council infringed Article 1 of Common Position 2001/931 and breached the obligation to state reasons.

138 The Council claims, however, that the applicant's involvement in terrorism has been established in any event in the context of the present action. It refers, in that regard, to the passages in the application in which the applicant states that it abandoned its line of conduct consisting in sparing civil populations only temporarily after the 'Massacre of the Tomb of the Patriarchs', committed by an Israeli on 25 February 1994, and in which the applicant states that recourse to suicide attacks was only transitory. The Council adds that the applicant does not dispute its responsibility for the kidnapping of the soldier Gilad Shalit and the deaths of Israeli soldiers.

139 It must be stated that, in doing so, the Council replaces, before the Court, the grounds for its measures of July 2011 to July 2014 by reducing the grounds initially applied in those measures to a few factual elements which, according to the Council, the applicant has admitted before the Court.

140 However, the Court cannot, in the circumstances of the present case, itself undertake an assessment which it is for the Council, acting unanimously, to carry out.

141 In the light of the foregoing considerations, from which it is apparent that the Council both infringed Article 1 of Common Position 2001/931 and, in the absence of any reference in the statement of reasons to decisions of competent authorities in relation to the acts imputed to the applicant, breached the obligation to state reasons, the Court must annul, in so far as they concern the applicant, the Council measures of July 2011 to July 2014, and also the Council measures of July 2010 and January 2011, which, it is not disputed, likewise contain no reference to decisions of competent authorities relating to the facts imputed to the applicant and which are therefore vitiated by the same breach of the obligation to state reasons.

142 The Court emphasises that the annulment of those measures, on basic procedural grounds, does not entail any substantive assessment of the question of the applicant's description as a terrorist group within the meaning of Common Position 2001/931.

143 In the light of all of the foregoing considerations, the present action must be upheld and the contested measures annulled, save as regards the notice of July 2010, in respect of which the action must be dismissed (see paragraph 76 above).

144 As regards the temporal effects of the annulment of those measures, it is appropriate, without there being any need to adjudicate on the nature of the contested measures in the light of the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, to observe that the second paragraph of Article 264 TFEU allows the Courts of the European Union to state, if they consider it necessary, which of the effects of the acts which it has declared void are to be considered definitive.

145 In the circumstances of the present case, the Court considers that, in order to avoid the risk of serious and irreversible harm to the effectiveness of the restrictive measures, while taking into account the significant impact of the restrictive measures at issue on the applicant's rights and freedoms, it is appropriate, pursuant to Article 264 TFEU, to suspend the effect of the present judgment vis-à-vis the Council measures of July 2014 for a period of three months from delivery of the judgment or, if an appeal is lodged within the period prescribed in the first paragraph of Article 56 of the Statute of the Court of Justice, until the Court of Justice has given judgment on that appeal.

**Costs**

146 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

147 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

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

2. **Annuls Council Implementing Regulations (EU) No 610/2010 of 12 July 2010, No 83/2011 of 31 January 2011, No 687/2011 of 18 July 2011, No 1375/2011 of 22 December 2011, No 542/2012 of 25 June 2012, No 1169/2012 of 10 December 2012, No 714/2013 of 25 July 2013, No 125/2014 of 10 February 2014 and No 790/2014 of 22 July 2014 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing, respectively, Implementing Regulations (EU) No 1285/2009, No 610/2010, No 83/2011, No 687/2011, No 1375/2011, No 542/2012, No 1169/2012, No 714/2013 and No 125/2014 in so far as they concern Hamas (including Hamas-Izz al-Din al-Qassem);**

3. **Orders that the effects of Decision 2014/483 and of Implementing Regulation No 790/2014 be maintained for three months from delivery of the present judgment or, if an appeal is lodged within the period prescribed in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union, until the Court of Justice has given judgment on that appeal;**

**4. Dismisses the action as to the remainder;**

**5. Orders the Council of the European Union, in addition to bearing its own costs, to pay the costs incurred by Hamas;**

**6. Orders the European Commission to bear its own costs.**

Forwood Dehousse Schwarcz

[Signatures]

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