



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 November 2012*

(Appeal — Common foreign and security policy — Specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire — Freezing of funds — Article 296 TFEU — Obligation to state the reasons on which a decision is based — Rights of the defence — Right to an effective legal remedy — Right to respect for property)

In Case C-417/11 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 5 August 2011,

Council of the European Union, represented by M. Bishop and B. Driessen and by E. Dumitriu-Segnana, acting as Agents,

applicant,

supported by:

French Republic, represented by G. de Bergues and É. Ranaivoson, acting as Agents,

intervener in the appeal,

the other parties to the proceedings being:

Nadiany Bamba, residing in Abidjan (Côte d'Ivoire), represented initially by P. Haïk, and subsequently by P. Maisonneuve, lawyers,

applicant at first instance,

European Commission, represented by E. Cujo and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts (Rapporteur), E. Juhász, G. Arestis and J. Malenovský, Judges,

Advocate General: P. Mengozzi,

Registrar: V. Tourrès, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 20 September 2012,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 By its appeal, the Council of the European Union seeks the setting aside of the judgment of the General Court of the European Union of 8 June 2011 in Case T-86/11 *Bamba v Council* ECR II-2749 ('the judgment under appeal') in which that court annulled Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 11, p. 36) and Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 11, p. 1) ('the contested decision' and 'the contested regulation' respectively; taken together, 'the contested acts'), in so far as those two acts concern Ms Bamba.

Legal context and background to the dispute

- 2 Ms Bamba is a national of the Republic of Côte d'Ivoire.
- 3 On 15 November 2004, the United Nations Security Council adopted Resolution 1572 (2004) in which, inter alia, it asserted that the situation in Côte d'Ivoire continued to pose a threat to international peace and security in the region and decided to impose certain restrictive measures against that country.
- 4 Article 14 of Resolution 1572 (2004) sets up a committee ('the Sanctions Committee') which is responsible, inter alia, for designating the individuals and entities subject to the restrictive measures concerning displacement of persons and freezing of funds, financial assets and economic resources imposed in paragraphs 9 and 11 of the resolution, and for updating the list of those individuals and entities. Ms Bamba has never been identified by the Sanctions Committee as being subject to such measures.
- 5 On 13 December 2004, considering that action by the European Community was needed in order to implement Resolution 1572 (2004), the Council adopted Common Position 2004/852/CFSP concerning restrictive measures against Côte d'Ivoire (OJ 2004 L 368, p. 50).
- 6 On 12 April 2005, considering that a regulation was necessary in order to implement, at Community level, the measures described in Common Position 2004/852, the Council adopted Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2005 L 95, p. 1).
- 7 Common Position 2004/852 was extended and amended on a number of occasions before being repealed and replaced by Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire (OJ 2010 L 285, p. 28).
- 8 An election with a view to appointing the President of the Republic of Côte d'Ivoire took place on 31 October and 28 November 2010.

- 9 On 3 December 2010, the Special Representative of the United Nations Secretary-General for Côte d'Ivoire certified the final result of the second round of the presidential election as declared by the president of the Independent Electoral Commission on 2 December 2010, confirming Mr Alassane Ouattara as the winner of the presidential election.
- 10 On 13 December 2010, the Council emphasised the importance of the presidential election held on 31 October and 28 November 2010 for the return of peace and stability in Côte d'Ivoire and declared it to be imperative that the sovereign wish expressed by the Ivorian people be respected. It also took note of the conclusions of the Special Representative of the United Nations Secretary-General for Côte d'Ivoire in the context of his certification mandate and congratulated Mr Ouattara on his election as President of the Republic of Côte d'Ivoire.
- 11 On 17 December 2010, the European Council called on all Ivorian leaders, both civilian and military, who had not yet done so, to place themselves under the authority of the democratically elected President, Mr Ouattara. It confirmed the determination of the European Union to take targeted restrictive measures against those who continued to obstruct the respect of the sovereign wish expressed by the Ivorian people.
- 12 In order to impose restrictive measures, concerning travel, against certain persons who, although not designated by the United Nations Security Council or the Sanctions Committee, are obstructing the processes of peace and national reconciliation in Côte d'Ivoire, and in particular those who are jeopardising the proper outcome of the electoral process, the Council adopted Decision 2010/801/CFSP of 22 December 2010 amending Council Decision 2010/656 (OJ 2010 L 341, p. 45). The list of those persons is set out in Annex II to Decision 2010/656.
- 13 On 14 January 2011, the Council adopted the contested decision.
- 14 Recitals 2 to 7 in the preamble to that decision state:
 - '(2) On 13 December 2010, the Council emphasised the importance of the Presidential election held on 31 October and 28 November 2010 for the return of peace and stability in Côte d'Ivoire and declared it to be imperative that the sovereign wish expressed by the Ivorian people be respected.
 - (3) On 17 December 2010, the European Council called on all Ivorian leaders, both civilian and military, who have not yet done so, to place themselves under the authority of the democratically elected President, Mr Alassane Ouattara.
 - (4) On 22 December 2010, the Council adopted Decision [2010/801] in order to impose travel restrictions against those who are obstructing the process of peace and national reconciliation, and in particular those who are jeopardising the proper outcome of the electoral process.
 - (5) On [11] January 2011, the Council adopted Decision 2011/17/CFSP amending Decision [2010/656] in order to include additional persons in the list of persons subject to travel restrictions.
 - (6) In view of the seriousness of the situation in Côte d'Ivoire, additional restrictive measures should be imposed against those persons.
 - (7) Moreover, the list of persons subject to the restrictive measures set out in Annex II to Decision [2010/656] should be amended and the information relating to certain persons on the list should be updated.'

15 Under Article 1 of the contested decision:

‘Decision [2010/656] is hereby amended as follows:

1. Article 5 is replaced by the following:

“*Article 5*

1. All funds and economic resources owned or controlled directly or indirectly by:

...

- (b) the persons or entities referred to in Annex II who are not included in the list in Annex I and who are obstructing the process of peace and national reconciliation, and in particular who are jeopardising the proper outcome of the electoral process, or held by entities owned or controlled directly or indirectly by them or by any persons acting on their behalf or at their direction,

shall be frozen.

2. No funds, financial assets or economic resources shall be made available, directly or indirectly, to or for the benefit of persons or entities referred to in paragraph 1.

...”.

2. Article 10 is replaced by the following: “*Article 10*

...

3. The measures referred to in Article ... 5(1)(b) shall be reviewed at regular intervals and at least every 12 months. They shall cease to apply to the persons or entities concerned if the Council establishes, in accordance with the procedure in Article 6(2), that the conditions necessary for their application are no longer met.”

16 Article 2 of the contested decision provides:

‘Annex II to Decision [2010/656] is replaced by the Annex to this Decision.’

17 On 14 January 2011, the Council also adopted the contested regulation.

18 Recitals 1 and 4 in the preamble to that regulation state:

‘(1) Decision [2010/656], as amended [by the contested decision], provides for the adoption of restrictive measures against certain persons who, while not designated by the United Nations (UN) Security Council or the Sanctions Committee, are obstructing the process of peace and national reconciliation in Côte d’Ivoire and in particular those who are jeopardising the proper outcome of the electoral process, as well as against legal persons, entities or bodies owned or controlled by such persons and persons, entities or bodies acting on their behalf or at their direction.

...

- (4) The power to amend the lists in Annexes I and IA to Regulation [No 560/2005] should be exercised by the Council, in view of the specific threat to international peace and security posed by the situation in Côte d'Ivoire, and to ensure consistency with the process for amending and reviewing Annexes I and II to Decision [2010/656].'

19 Under Article 1 of the contested regulation:

'Regulation [No 560/2005] is amended as follows:

- (1) Article 2 is replaced by the following:

"Article 2

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I or in Annex IA shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex I or in Annex IA.

...

5. Annex IA shall consist of the natural or legal persons, entities and bodies referred to in Article 5(1)(b) of Decision [2010/656] as amended."

...

- (7) the following Article is inserted: *"Article 11a*

...

2. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 2(1), it shall amend Annex IA accordingly.
3. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraphs 1 and 2, 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.
4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

...

6. The list in Annex IA shall be reviewed [at] regular intervals and at least every 12 months."

...

- (10) the text set out in Annex I is inserted into Regulation [No 560/2005] as Annex IA.'

20 In the contested acts, the Council included Ms Bamba's name, for the first time, in the list of persons subject to the restrictive measures freezing funds. In paragraph 6 of Table A of Annex II to Decision 2010/656, as amended by the contested decision, and of Table A of Annex IA to Regulation No 560/2005, as amended by the contested regulation, that inclusion was accompanied by a note of the following grounds: 'Director of the Cyclone group which publishes the newspaper "Le Temps":

Obstruction of the peace and reconciliation processes through public incitement to hatred and violence and through participation in disinformation campaigns in connection with the 2010 presidential election.’

- 21 On 18 January 2011, the Council published a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2010/656 and in Regulation No 560/2005 apply (OJ 2011 C 14, p. 8) (‘the notice of 18 January 2011’). In that notice, the Council states that it has decided that the persons and entities that appear in Annex II to Decision 2010/656, as amended by the contested decision, and in Annex IA to Regulation No 560/2005, as amended by the contested regulation, should be included in the lists of persons and entities subject to the restrictive measures provided for in those acts. Moreover, it draws those persons’ and entities’ attention to the possibility of making an application to the competent authorities of the relevant Member State in order to obtain an authorisation to use frozen funds for basic needs or specific payments. It states, furthermore, that the persons and entities concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the lists in question should be reconsidered. Finally, the Council mentions the possibility of challenging its decision ‘before the General Court of the European Union, in accordance with the conditions laid down in Article 275 [TFEU], second paragraph, and Article 263 [TFEU], fourth and sixth paragraphs’.

Proceedings at first instance and the judgment under appeal

- 22 By application lodged at the Registry of the General Court on 14 February 2011, Ms Bamba brought an action for the annulment of the contested acts, in so far as they concern her.
- 23 The European Commission was granted leave to intervene in support of the form of order sought by the Council.
- 24 In support of her action, Ms Bamba raised two pleas in law.
- 25 The first of those pleas, alleging breach of the rights of the defence and the right to an effective remedy, was in three parts. The second of those three parts was based on the claim that the contested acts do not provide for the communication of a detailed statement of reasons for the inclusion of Ms Bamba in the lists in question.
- 26 In paragraphs 38 to 57 of the judgment under appeal, the General Court examined that second part. Having found, in paragraphs 41 and 42 of that judgment, that both Decision 2010/656 and Regulation No 560/2005 provide that persons, entities and bodies which are subject to restrictive measures must be informed of the grounds for their inclusion in the lists set out in Annex II to that decision and in Annex IA to that regulation, the General Court determined whether, in the present case, those grounds had been communicated to Ms Bamba such that she could exercise her rights of the defence and her right to an effective legal remedy.
- 27 In paragraphs 47 and 48 of the judgment under appeal, the General Court recalled the relevant case-law relating to the content of the statement of reasons for an act of the Council which imposes restrictive measures such as those at issue in the present case. Next, it held, in paragraphs 49 to 51 of that judgment, that both the grounds set out in recitals 6 and 7 in the preamble to the contested decision and in recital 4 in the preamble to the contested regulation, pointing out the seriousness of the situation in Côte d’Ivoire and the specific threat to international peace and security posed by that situation, and those set out in paragraph 6 of Table A in Annex II to Decision 2010/656 and of Table A in Annex IA to Regulation No 560/2005 in relation to Ms Bamba, as mentioned in paragraph 20 of this judgment, amounted to ‘vague and general considerations’ and not to ‘actual and specific reasons why [the Council considered], in the exercise of its discretion, that the restrictive measures in question [had to] be adopted in respect of [Ms Bamba]’.

- 28 In particular, the General Court stated the following in paragraph 52 of the judgment under appeal:
- ‘...the indication that [Ms Bamba] is the director of the Cyclone group which publishes the newspaper “Le Temps” does not constitute a circumstance such as to provide an adequate and specific statement of reasons for the contested acts against her. That indication does not enable it to be understood how [Ms Bamba] was involved in obstruction of the peace and reconciliation processes through public incitement to hatred and violence and through participation in disinformation campaigns in connection with the 2010 presidential election. No concrete evidence, which could be used against [Ms Bamba] and which could justify the measures in question, is thus set out’.
- 29 In paragraph 53 of the judgment under appeal, the General Court added that there was no evidence to show that, in the circumstances of the present case, detailed publication of the complaints put forward against Ms Bamba would have conflicted with overriding considerations of public interest related to the security of the European Union and its Member States, or the conduct of their international relations, or that it would have jeopardised Ms Bamba’s legitimate interests by being capable of causing serious damage to her reputation. The Council, moreover, had not presented any such evidence.
- 30 In paragraph 54 of the judgment under appeal, the General Court observed that no additional reason had been communicated to Ms Bamba following the adoption of the contested acts or during the proceedings before the General Court. The Council merely mentioned, in the course of the written procedure, that Ms Bamba had been included in the lists of persons subject to restrictive measures due to ‘her responsibility for the campaign of disinformation and incitement to hatred and intercommunity violence in Côte d’Ivoire’, adding that she was ‘one of the principal collaborators’ of Mr Laurent Gbagbo and that she was his ‘second wife’. None the less, at the hearing, the Council indicated to the General Court that it was not that fact which was the reason behind the inclusion of Ms Bamba in those lists.
- 31 The General Court also pointed out, in paragraph 55 of the judgment under appeal, that the fact that Ms Bamba had not, following the publication either of the contested acts or of the notice of 18 January 2011, asked the Council to communicate to her the actual and specific reasons for her inclusion in the lists in question was irrelevant in the present case, since the obligation to state reasons fell to the Council and it should have fulfilled that obligation either when that inclusion was decided on or, at the very least, as swiftly as possible after that decision.
- 32 In paragraph 56 of the judgment under appeal, the General Court concluded that the statement of reasons in the contested acts had not enabled Ms Bamba to challenge their validity before the Court and had impeded the Court from reviewing their legality.
- 33 Accordingly, without assessing the need to examine either the other parts of the first plea or the second plea, the General Court annulled those acts in so far as they concerned Ms Bamba.

Forms of order sought by the parties to the appeal

- 34 The Council claims that the Court should:
- set aside the judgment under appeal;
 - give final judgment in the matters that are the subject of the present appeal and dismiss the initial action as unfounded; and
 - order Ms Bamba to pay the costs incurred by the Council at first instance and in connection with the present appeal.

35 Ms Bamba contends that the Court should:

- declare the appeal inadmissible;
- dismiss the appeal; and
- order the Council to pay the costs pursuant to Articles 69 et seq. of the Rules of Procedure of the Court of Justice.

36 The French Republic, granted leave to intervene in support of the form of order sought by the Council by an order of the President of the Court of 9 January 2012, asks the Court to uphold the Council's appeal.

Appeal

37 The appeal is structured around two pleas in law. As its main plea, the Council alleges that the General Court erred in law in ruling that the reasoning provided in the contested acts does not meet the requirements of Article 296 TFEU. In the alternative, it raises a plea alleging that the General Court erred in law in failing to take into account, in its assessment of whether the obligation to state reasons had been complied with in the present case, the context – well known to Ms Bamba – in which the contested acts were adopted.

Admissibility

38 Ms Bamba submits that the two grounds of appeal are inadmissible on the ground that they are based on new factual assertions. She argues that, under cover of those two pleas, alleging that the General Court has erred in law, the present appeal has, in fact, been 'exploited' by the Council in order to present to the Court factual evidence, based on newspaper articles, which was not previously submitted either to the Court or to the General Court and which, therefore, has never been discussed before the latter court.

39 In that regard, it should be borne in mind that, under Article 58 of the Statute of the Court of Justice of the European Union, an appeal to that court is to be limited to points of law.

40 The jurisdiction of the Court of Justice in an appeal is limited to review of the findings of law on the pleas argued before the court of first instance. Consequently, the Court of Justice has jurisdiction, in such proceedings, solely to examine whether the argument within the appeal identifies an error of law vitiating the judgment under appeal (see, to that effect, Case C-352/98 P *Bergaderm and Goupil v Commission* [2000] ECR I-5291, paragraph 35; Case C-76/01 P *Eurocoton and Others v Council* [2003] ECR I-10091, paragraph 47; and Case C-348/06 P *Commission v Girardot* [2008] ECR I-833, paragraph 49).

41 The extent of the obligation to state the reasons for an act adopted by an institution of the European Union is a question of law reviewable by the Court on appeal (see, to that effect, Case C-188/96 P *Commission v V* [1997] ECR I-6561, paragraph 24, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 453).

42 In the present case, it is quite clear from the appeal that, in its two pleas in law, the Council is complaining, in essence, that the General Court has erred in law with respect to Article 296 TFEU by finding the statement of reasons contained in the contested acts to be insufficient as regards the inclusion of Ms Bamba in the lists set out in Annex II to Decision 2010/656 and Annex IA to Regulation No 560/2005.

43 It follows that the grounds of appeal are admissible.

Substance

Arguments of the parties

44 In the context of the first plea, which it invokes as its main plea, the Council, supported by the French Republic, claims that, contrary to what the General Court held in paragraph 54 of the judgment under appeal, the reasoning contained in the contested acts is sufficient.

45 First, it asserts that recitals 2, 4, 6 and 7 in the preamble to the contested decision and recital 4 in the preamble to the contested regulation include a detailed description of the – particularly serious – situation in Côte d'Ivoire which justified the measures taken against the persons included in the lists annexed to those acts.

46 Second, the Council submits that, contrary to what is asserted in paragraph 51 of the judgment under appeal, the notes set out in the annexes to the contested acts, so far as they concern Ms Bamba, do not amount to vague and general considerations but rather provide actual and specific reasons for her inclusion in the lists of persons subject to restrictive measures. It points out that it is due to her position as director of the Cyclone group which publishes the newspaper *Le Temps*, a publication involved in public incitement to hatred and violence and in the disinformation campaign relating to the presidential election at the end of 2010, that Ms Bamba has been subject to such measures. It adds that the role played by the newspaper *Le Temps* in the events following the elections in Côte d'Ivoire is common knowledge both in that country and abroad.

47 Emphasising that the Council has never informed her of any grounds for adopting the contested acts other than those set out in those acts and those contained in a newspaper article produced in support of the defence filed with the General Court, Ms Bamba submits that evoking her position as director of the Cyclone group and the political context of the Côte d'Ivoire at the time those acts were adopted stems from vague, imprecise and peremptory considerations which do not constitute a sufficient statement of reasons enabling her to understand the reasons for her inclusion in the list of persons covered by the restrictive measures and to dispute the merits of those reasons and enabling the General Court to exercise its power of legal review. That court had, therefore, rightly concluded that the statement of reasons was insufficient.

48 Ms Bamba adds that the assessment of whether the grounds for inclusion on a list of persons subject to restrictive measures are sufficient can only be carried out in the light of the evidence held by the institution concerned at the time those measures were adopted. The opposite approach, which authorised an *ex post* statement of reasons highlighting grounds which did not exist on the date when the contested act was adopted, or relying on already existing evidence which was not produced until after that date, should be rejected, in the interests of complying with the basic requirements of the right to a fair hearing.

Findings of the Court

- 49 According to a consistent body of case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the European Union judicature and, second, to enable that judicature to review the legality of that act (see Case C-199/99 P *Corus UK v Commission* [2003] ECR I-11177, paragraph 145; *Dansk Rørindustri and Others v Commission*, paragraph 462; and Case C-521/09 P *Elf Aquitaine v Commission* [2011] ECR I-8947, paragraph 148).
- 50 The statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review (see, *inter alia*, Joined Cases C-539/10 P and C-550/10 P *Al-Aqsa v Council and Netherlands v Al-Aqsa* [2012] ECR, paragraph 138 and the case-law cited).
- 51 As the General Court pointed out in paragraph 40 of the judgment under appeal, where the person concerned is not afforded the opportunity to be heard before the adoption of an initial decision to freeze funds, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the person concerned, at least after the adoption of that decision, to make effective use of the legal remedies available to him in order to challenge the lawfulness of that decision.
- 52 Therefore, the statement of reasons for an act of the Council which imposes a measure freezing funds must, as the General Court rightly stated in paragraph 47 of the judgment under appeal, identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned.
- 53 The statement of reasons required by Article 296 TFEU must, however, be appropriate to the act at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on 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. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, *inter alia*, Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; *Elf Aquitaine v Commission*, paragraph 150; and *Al-Aqsa v Council and Netherlands v Al-Aqsa*, paragraphs 139 and 140).
- 54 In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the scope of the measure concerning him (Case C-301/96 *Germany v Commission* [2003] ECR I-9919, paragraph 89, and Case C-42/01 *Portugal v Commission* [2004] ECR I-6079, paragraphs 69 and 70).
- 55 In the present case, it should be noted, first, that in recitals 2 to 6 in the preamble to the contested decision and in recitals 1 and 4 in the preamble to the contested regulation the Council sets out the general context which led it to extend the scope *ratione personae* of the restrictive measures against the Republic of Côte d'Ivoire. It is clear from those recitals that the general context, which was necessarily known to Ms Bamba in view, in particular, of her personal and professional position, was the serious situation in that country and the specific threat posed to international peace and security

by obstructions to the processes of peace and national reconciliation, in particular those jeopardising the respect of the sovereign wish, as expressed by the Ivorian people in the election of 31 October and 28 November 2010, to appoint Mr Ouattara as President.

- 56 Second, regarding the grounds on which the Council decided that Ms Bamba should be subject to such restrictive measures, the statement of reasons, reproduced in paragraph 20 of this judgment, which is set out in paragraph 6 of Table A of Annex II to Decision 2010/656, as amended by the contested decision, and of Table A of Annex IA to Regulation No 560/2005, as amended by the contested regulation, identifies the actual and specific evidence, in terms of professional position, publishing group, newspaper and types of activities and press campaigns covered which, from the Council's point of view, show Ms Bamba's involvement in obstructing the process of peace and reconciliation in Côte d'Ivoire.
- 57 Contrary to the findings of the General Court, a reading of that statement of reasons allows it to be understood that the Council is basing the actual and specific reason which led it to adopt restrictive measures against Ms Bamba on her alleged responsibility, as supposed director of the group which publishes the newspaper *Le Temps*, for acts of public incitement to hatred and violence and for disinformation campaigns which were transmitted by that newspaper in connection with the 2010 presidential election.
- 58 As the Council has argued, Ms Bamba could not reasonably have been unaware that, by alluding, in the contested acts, to her position as director of the group which publishes the newspaper *Le Temps*, the Council intended to highlight the power to influence and the responsibility which might be supposed to result from that position as regards the editorial line of that newspaper and the content of press campaigns allegedly run by that newspaper during the Ivorian post-electoral crisis.
- 59 Thus, from those notes, Ms Bamba was placed in a position effectively to dispute the merits of the contested acts. In the light of those notes, it was possible for her, if appropriate, to dispute the truth of the claims made in the contested acts, in particular, by denying her position as director of the group which publishes the newspaper *Le Temps* or the existence of the campaigns or by denying any responsibility in connection with those campaigns, or by disputing the relevance of all or any of those facts or their classification as obstructions to the process of peace and reconciliation in Côte d'Ivoire capable of justifying the use of restrictive measures against her.
- 60 It is also important to point out that the question of the statement of reasons, which concerns an essential procedural requirement, is separate from that of the evidence of the alleged conduct, which concerns the substantive legality of the act in question and involves assessing the truth of the facts set out in that act and the characterisation of those facts as evidence justifying the use of restrictive measures against the person concerned (see, to that effect, Case C-66/02 *Italy v Commission* [2005] ECR I-10901, paragraph 26, and Case C-548/09 P *Bank Melli Iran v Council* [2011] ECR I-11381, paragraph 88).
- 61 Thus, in the present case, review of compliance with the obligation to state reasons, which is intended to ascertain whether the notes provided by the Council in the contested acts were sufficient to allow the evidence which led that institution to impose restrictive measures against Ms Bamba to be known, must be distinguished from examination of the merits of the statement of reasons, which would consist, if appropriate, of ascertaining whether the evidence relied on by the Council is established and whether it is capable of justifying the adoption of those measures.
- 62 As regards Ms Bamba's argument that the restrictive measures against her cannot be subject to an a posteriori statement of reasons, it is sufficient to note that the documentation submitted by the Council as an annex to its appeal is intended, not to provide *ex post* reasons for the contested acts, but to show, in the light of the context in which those acts were adopted, that the statement of reasons in those acts was sufficient.

- 63 It follows from the foregoing that the General Court erred in law in ruling, in paragraphs 54 and 56 of the judgment under appeal, that the statement of reasons in the contested acts was not sufficient to enable Ms Bamba to challenge their validity and to enable the Court to review their legality.
- 64 Accordingly, the main plea invoked by the Council is well founded and, without it being necessary to examine the plea submitted in the alternative by that institution, the judgment under appeal must be set aside.

The action before the General Court

- 65 Pursuant to the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, if a judgment under appeal is set aside the Court of Justice may give final judgment in the matter where the state of the proceedings so permits.
- 66 In the present case, the Court considers that the action for annulment of the contested acts, brought by Ms Bamba at first instance, is ready for judgment and that final judgment should thus be given on it.
- 67 In that action, Ms Bamba has raised two pleas in law. The first alleges breach of the rights of the defence and the right to an effective remedy. It is in three parts, alleging, respectively, that there has been no procedure enabling Ms Bamba to be heard and effectively to request that her name be removed from the lists in question, no communication of a detailed statement of reasons for her inclusion in those lists, and no notification to Ms Bamba of the remedies and time-limits for bringing an action against that inclusion. The second plea in law alleges a clear breach of the right to property.

First plea in law

First part of the first plea

- 68 Ms Bamba claims that the contested regulation does not provide for any procedure enabling her to be guaranteed an effective exercise of the rights of the defence. According to her, that regulation does not provide either for her right to be heard or for a procedure enabling her effectively to request that her name be removed from the list, annexed to that regulation, of persons subject to the restrictive measures in question.
- 69 First, Ms Bamba argues that the contested regulation does not specify the conditions under which the Council has to maintain or amend its decision to include a person on the list of persons subject to restrictive measures. She notes in that regard, first, that the review provided for in Article 11a(4) of Regulation No 560/2005, inserted into that regulation by the contested regulation, is not accompanied by any requirement to provide a statement of reasons and is not regulated by any time-limit, such that the Council may simply respond succinctly to a request to be removed from that list, or even not respond to that request at all. She emphasises, second, that the regular review provided for in Article 11a(6) of Regulation No 560/2005 is not coupled with an obligation for the Council to communicate its new decision to the persons concerned and to invite them, consequently, to submit new observations.
- 70 In that regard, it should be noted that Article 11a(4) of Regulation No 560/2005, inserted into that regulation by Article 1(7) of the contested regulation, states that the Council is to review its decision to subject a person to the restrictive measures in question and is to inform the person concerned of that review where observations are submitted, or where substantial new evidence is presented. The

notice of 18 January 2011 also states that the persons concerned, such as Ms Bamba, may submit a request, together with supporting documentation, that the decision to include them in the list in question should be reconsidered.

- 71 Moreover, under Article 11a(6) of Regulation No 560/2005, also inserted into that regulation by Article 1(7) of the contested regulation, '[t]he list in Annex IA shall be reviewed [at] regular intervals and at least every 12 months'.
- 72 Regarding Ms Bamba's arguments alleging supposed loopholes in those procedures for regular review and reconsideration, it must be emphasised that the present action has been brought by Ms Bamba against the contested acts in so far as those acts have included her, for the first time, in the lists, set out in Annex II to Decision 2010/656 and Annex IA to Regulation No 560/2005, of persons subject to a measure freezing funds. As the Council has observed, the present case is thus not connected either with a refusal on its part to review its initial decision to subject Ms Bamba to restrictive measures nor to a decision by that institution to keep her on those lists after a review. Accordingly, those arguments are irrelevant.
- 73 Second, Ms Bamba submits that the contested regulation does not provide at any stage, whether at the time of initial inclusion or at the review stage, that the persons concerned may be heard in connection with measures taken against them.
- 74 In that regard, it should be borne in mind that, in order to attain the objective pursued by the contested acts, the restrictive measures in question must, by their very nature, have a surprise effect. For that reason, the Council was not obliged to hear Ms Bamba before her name was included for the first time in the lists in question (see, to that effect, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraphs 340 and 341, and Case C-27/09 P *France v People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 61).
- 75 Moreover, in so far as it concerns the review procedure, Ms Bamba's argument based on her right to be heard is irrelevant for reasons identical to those set out in paragraph 72 of this judgment.
- 76 In the light of the foregoing, the first part of the first plea must be dismissed.

Second part of the first plea

- 77 Ms Bamba claims that the contested acts do not provide for the communication of a detailed statement of reasons for her inclusion in the lists of persons subject to the restrictive measures in question.
- 78 However, it is clear from the considerations set out in paragraphs 55 to 59 of this judgment that the contested acts contain a sufficient statement of reasons for Ms Bamba's inclusion on the lists, annexed to those acts, of persons subject to the restrictive measures in question. The second part of the first plea must, accordingly, be dismissed.

Third part of the first plea

- 79 Ms Bamba submits that the contested acts do not provide for the notification to the person concerned of the remedies and time-limits for bringing an action against the decision to include that person in the lists in question and contain no information in that regard. According to her, those acts create an obligation for the person concerned to find out that information himself, which is contrary to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

- 80 In that regard, it should be noted that, in the notice of 18 January 2011, the Council mentioned the possibility for the persons and entities concerned of challenging its decision ‘before the General Court of the European Union, in accordance with the conditions laid down in Article 275 [TFEU], second paragraph, and Article 263 [TFEU], fourth and sixth paragraphs’.
- 81 That statement, combined with the statements in the sixth paragraph of Article 263 TFEU, was such as to enable Ms Bamba to identify both the remedy available to her in order to contest her inclusion in the lists in question and the time-limit for bringing an action which is, moreover, confirmed by the fact that she brought her action within the period prescribed by that provision.
- 82 The third part of the first plea must, accordingly, be dismissed.
- 83 The first plea must therefore be rejected in its entirety.

Second plea in law

- 84 While asserting that she does not dispute the objective pursued by the contested acts, Ms Bamba submits that those acts pose a disproportionate threat to her right to property, given that it is impossible for her effectively to put her case to the competent authorities. According to Ms Bamba, those acts provide for a complete freezing of her funds without providing actual procedural guarantees enabling her to contest that measure.
- 85 In that regard, it is apparent from the reference made, in that second plea, to paragraphs 368 to 371 of the judgment in *Kadi and Al Barakaat International Foundation v Council and Commission*, in which the Court found that an unjustified restriction of the right to property of the person concerned had taken place on the ground that restrictive measures had been adopted against him without his being furnished with any procedural guarantees enabling him to put his case to the competent authorities, that Ms Bamba infers the existence of a threat to her right to property from an alleged absence of such guarantees in the present case.
- 86 As is apparent from the examination of the various parts of the first plea, the Council, which was not obliged to hear Ms Bamba before adopting the contested acts, furnished her, in those acts, with a sufficient statement of reasons to enable her effectively to contest, before the European Union judicature, the merits of the restrictive measures to which she had been subject. The present case is thus distinguished from that giving rise to the judgment in *Kadi and Al Barakaat International Foundation v Council and Commission*.
- 87 Regarding the possibility of the right of access to the Council’s records relating to the restrictive measures taken against Ms Bamba, it is sufficient, in the present case, to note that she does not claim to have requested that the Council grant her such access (see, to that effect, *Bank Melli Iran v Council*, paragraph 92).
- 88 It should also be pointed out that both Decision 2010/656 and Regulation No 560/2005 provide for the regular review of the lists of persons subject to the restrictive measures in question. At the end of one such review, the Council took the view, in Implementing Decision 2012/144/CFSP of 8 March 2012 implementing Decision 2010/656 (OJ 2012 L 71, p. 50) and in Implementing Regulation (EU) No 193/2012 of 8 March 2012 implementing Regulation No 560/2005 (OJ 2012 L 71, p. 5), that there were no longer grounds for keeping Ms Bamba on those lists.
- 89 The second plea must therefore be rejected.
- 90 In the light of all the foregoing, the action brought by Ms Bamba must be dismissed in its entirety.

Costs

- 91 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, applicable to appeal proceedings 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. Article 140(1) of those Rules provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.
- 92 As the Council's appeal has been upheld and Ms Bamba's action against the contested acts has been dismissed, Ms Bamba must be ordered to pay, in addition to her own costs, those incurred by the Council in connection with the present appeal and at first instance, in accordance with the form of order sought by the Council.
- 93 The French Republic and the Commission, as intervening parties before the Court and the General Court respectively, are to bear their own costs.

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

1. **Sets aside the judgment of the General Court of the European Union of 8 June 2011 in Case T-86/11 *Bamba v Council*;**
2. **Dismisses Ms Bamba's action;**
3. **Orders Ms Bamba to pay, in addition to her own costs, those incurred by the Council of the European Union in connection with the present appeal and at first instance;**
4. **Orders the French Republic and the European Commission to bear their own costs.**

[Signatures]