



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

26 July 2017*

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

In Case C-79/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 February 2015,

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

appellant,

supported by:

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

intervener in the appeal,

the other parties to the proceedings being:

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

applicant at first instance,

European Commission, represented by F. Castillo de la Torre, M. Konstantinidis and R. Tricot, acting as Agents,

intervener at first instance,

THE COURT (Grand Chamber),

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

Advocate General: E. Sharpston,

* Language of the case: French.

Registrar: V. Giacobbo-Peyronnel, Administrator,

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

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

gives the following

Judgment

1 By its appeal, the Council of the European Union asks the Court to set aside the judgment of the General Court of the European Union of 17 December 2014, *Hamas v Council* (T-400/10, ‘the judgment under appeal’, EU:T:2014:1095), by which the General Court annulled:

- Council Decisions 2010/386/CFSP of 12 July 2010 (OJ 2010 L 178, p. 28), 2011/70/CFSP of 31 January 2011 (OJ 2011 L 28, p. 57), 2011/430/CFSP of 18 July 2011 (OJ 2011 L 188, p. 47) 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 (OJ 2011 L 343, p. 54), 2012/333/CFSP of 25 June 2012 (OJ 2012 L 165, p. 72), 2012/765/CFSP of 10 December 2012 (OJ 2012 L 337, p. 50), 2013/395/CFSP of 25 July 2013 (OJ 2013 L 201, p. 57), 2014/72/CFSP of 10 February 2014 (OJ 2014 L 40, p. 56) and 2014/483/CFSP of 22 July 2014 (OJ 2014 L 217, p. 35) updating and, where appropriate, amending, the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing, respectively, Decisions 2011/430, 2011/872, 2012/333, 2012/765, 2013/395 and 2014/72; and
- Council Implementing Regulations (EU) No 610/2010 of 12 July 2010 (OJ 2010 L 178, p. 1), (EU) No 83/2011 of 31 January 2011 (OJ 2011 L 28, p. 14), (EU) No 687/2011 of 18 July 2011 (OJ 2011 L 188, p. 2), (EU) No 1375/2011 of 22 December 2011 (OJ 2011 L 343, p. 10), (EU) No 542/2012 of 25 June 2012 (OJ 2012 L 165, p. 12), (EU) No 1169/2012 of 10 December 2012 (OJ 2012 L 337, p. 2), (EU) No 714/2013 of 25 July 2013 (OJ 2013 L 201, p. 10), (EU) No 125/2014 of 10 February 2014 (OJ 2014 L 40, p. 9), and (EU) No 790/2014 of 22 July 2014 (OJ 2014 L 217, p. 1) 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;

(together ‘the acts at issue’), in so far as those acts concern Hamas, including Hamas-Izz al-Din al-Qassem (‘Hamas’).

Legal context

United Nations Security Council Resolution 1373 (2001)

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

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

EU law

Common Position 2001/931/CFSP

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

5 Article 1 of Common Position 2001/931 provides:

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

...

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

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

...

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

Regulation (EC) No 2580/2001

6 The Council considered that a regulation was necessary to implement at Community level the measures set out in Common Position 2001/931, and adopted Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

7 Article 2 of that regulation provides:

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

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

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

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

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

- (i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;
- (ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;
- (iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or
- (iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).'

Background to the dispute and the acts at issue

8 On 27 December 2001, the Council adopted Common Position 2001/931, Regulation No 2580/2001 and Decision 2001/927/EC establishing the list provided for in Article 2(3) of Regulation No 2580/2001 ('the list at issue') (OJ 2001 L 344, p. 83). Hamas appeared on the lists annexed to Common Position 2001/931 and Decision 2001/927.

9 That listing was maintained by subsequent acts of the Council, including by the acts at issue.

10 In the statements of reasons relating to those acts, the Council described Hamas as a terrorist group and referred to a number of terrorist acts which Hamas is said to have carried out from 2005 onwards. In addition, the Council referred, in particular, to a decision adopted in 2001 by the United Kingdom of Great Britain and Northern Ireland and two decisions adopted in the same year by the authorities of the United States of America. The United Kingdom decision is a decision of the Secretary of State for the Home Department proscribing Hamas, which is considered to be an organisation involved in acts of terrorism. The decisions of the authorities of the United States consist in a government decision designating Hamas as a foreign terrorist organisation, pursuant to section 219 of the US Immigration and Nationality Act, and a decision designating Hamas as an entity expressly identified as an international terrorist entity, pursuant to Executive Order 13224 (together 'the decisions of the United States authorities'). Having found that the aforementioned decision of the United Kingdom was reviewed regularly by an internal government committee and that the decisions of the United States authorities were subject to both administrative and judicial review, the Council considered that those decisions had been adopted by competent authorities, for the purposes of Article 1(4) of Common Position 2001/931. Lastly, the Council noted that those decisions still remained in force and indicated that the reasons for including Hamas on the list at issue remained valid.

The procedure before the General Court and the judgment under appeal

11 By an application lodged at the General Court Registry on 12 September 2010, Hamas brought an action for annulment of Decision 2010/386 and Implementing Regulation No 610/2010. Those measures 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 mentioned in paragraph 1 of the present judgment, and Hamas therefore successively modified the form of order initially sought, so as to ensure that its action covers the annulment of those measures also, in so far as they concern Hamas.

- 12 In support of its application for annulment of the Council measures of July 2010 and January 2011 mentioned in paragraph 1 of the present judgment, Hamas put forward four pleas in law, alleging, respectively, breach of its rights of defence; a manifest error of assessment; breach of the right to property; and breach of the obligation to state reasons. In support of its application for annulment of the measures adopted by the Council in the period from July 2011 to July 2014 and mentioned in paragraph 1 of the present judgment (together ‘the measures adopted by the Council in the period from July 2011 to July 2014’), Hamas put forward eight pleas in law, alleging, respectively, infringement of Article 1(4) of Common Position 2001/931; errors as to the accuracy of the facts; an error of assessment as to the terrorist nature of that entity; failure to take sufficient account of the development of the situation ‘owing to the passage of time’; breach of the principle of non-interference; breach of the obligation to state reasons; breach of its rights of defence and of the right to effective judicial protection; and breach of the right to property.
- 13 The General Court upheld the fourth and sixth pleas raised against the measures adopted by the Council in the period from July 2011 to July 2014 and, on that basis, annulled the acts at issue in so far as they concerned Hamas.

Forms of order sought

- 14 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 appeal; and
 - order Hamas to pay the costs incurred by the Council at first instance and in the appeal.
- 15 Hamas asks the Court to dismiss the appeal. In the alternative, should the Court be required to give final judgment in the matters that are the subject of the appeal, it maintains all the pleas in law put forward, and the form of order sought, in the proceedings before the General Court. Hamas also asks the Court to order the Council to pay the costs incurred by Hamas at first instance and in the appeal.
- 16 The European Commission has intervened in support of the form of order sought by the Council in its appeal.
- 17 The French Republic asks the Court to set aside the judgment under appeal, to give final judgment in the matters that are the subject of the appeal and to dismiss Hamas’ action.

The appeal

The first ground of appeal

Arguments of the parties

- 18 By its first ground of appeal, which relates in particular to paragraphs 101, 103, 109 to 111, 121, 125 to 127 and 141 of the judgment under appeal, the Council submits, first, that that judgment is based on the mistaken premiss that the Council must regularly provide new reasons for retaining Hamas on the list at issue. In the absence of any annulment or withdrawal of the national decisions on which the initial entry of Hamas on that list was based, and in the absence of other material that might support the withdrawal of Hamas from that list, the Council was, it claims, entitled to maintain Hamas on the list at issue solely on the basis of the national decisions that justified that entity's initial listing.
- 19 Second, the Council maintains that the General Court was wrong to reject the use of open source material for the purposes of periodic reviews. The Council contends that it must be able to rely to that end on material other than national decisions, since in many cases there are no national decisions taken after the initial entry of a person or entity on the list at issue. The General Court's reasoning is, it argues, contrary to the objective of combating terrorism to which Common Position 2001/931 refers.
- 20 The Commission and the French Republic intervening in support of the Council's arguments underline in particular the distinction which Common Position 2001/931 draws between, on the one hand, the initial entry of an entity on the list at issue, referred to in Article 1(4) of that common position, and, on the other hand, the subsequent reviews provided for in Article 1(6) thereof.
- 21 By contrast, according to Hamas, the Council is wrong to claim that it could have maintained Hamas on the list at issue solely on the basis of the national decisions that justified its initial entry on that list. The Council's assertion that the General Court wrongly ruled out the use of open source information falls foul of Article 1(4) of Common Position 2001/931, as interpreted by the Court in the judgment of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa* (C-539/10 P and C-550/10 P, EU:C:2012:711), which requires, in order to guarantee the protection of the persons or entities concerned and in the absence of the European Union's own means of investigation, that the restrictive measures imposed by the Union be based on material actually examined and accepted in decisions of national competent authorities. Hamas argues that that requirement applies, given the seriousness of the impact of restrictive measures on the persons or entities concerned, also to the reviews prescribed in Article 1(6) of Common Position 2001/931.
- 22 The difficulty, encountered following Hamas' proscription in the United Kingdom and the freezing of its funds by the United States authorities, of obtaining new decisions of competent national authorities does not affect the Council's obligation to rely only on facts assessed by such authorities. That difficulty could, moreover, be resolved by seeking, if need be, the views of a competent national authority on a specific act capable of constituting a terrorist act.

Findings of the Court

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

- 24 The Court has ruled, with regard to initial decisions on the freezing of funds, that the wording of Article 1(4) of Common Position 2001/931 refers to the decision taken by a national authority by requiring that precise information or evidence in the file exists which shows that such a decision has been taken. That requirement seeks to ensure that, in the absence of any means at the disposal of the Union to carry out its own investigations regarding the involvement of a person or entity in terrorist acts, the Council's decision on the initial listing is taken on a sufficient factual basis enabling the Council to conclude that there is a danger that, if preventive measures are not taken, the person or entity concerned may continue to be involved in terrorist activities (see, to that effect, judgment of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 69, 79 and 81).
- 25 As regards, on the other hand, subsequent fund-freezing decisions, it is apparent from the case-law of the Court that the essential question when reviewing whether to continue to include a person or entity on the list at issue is whether, since the inclusion of that person or that entity on that list or since the last review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion in relation to the involvement of that person or entity in terrorist activities (judgment of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 82).
- 26 In the present case, the General Court held, in paragraphs 101 and 125 of the judgment under appeal, that the list of terrorist acts which Hamas was said to have committed since 2005, set out in the statements of reasons relating to the acts at issue, played a decisive role in the Council's decision to continue to freeze Hamas' funds. In paragraphs 110 and 127 of the judgment under appeal, the General Court held that the reference to any new terrorist act which the Council inserts in its statement of reasons during a review pursuant to Article 1(6) of Common Position 2001/931 must have been the subject of an examination and a national decision by a competent authority. Having found, notably in paragraphs 109 and 131 of the judgment under appeal, that the Council had based its allegations concerning terrorist acts which Hamas is said to have committed from 2005 onwards not on such decisions but on information which it obtained from the press and the internet, the General Court accordingly annulled the acts at issue.

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

- 27 By the first part of its first ground of appeal, the Council maintains that the General Court erred in law by finding that the Council was required regularly to provide new reasons justifying Hamas' retention on the list at issue and that it could not, in the absence of material supporting Hamas' removal from that list, retain Hamas on the list solely on the basis of the national decisions on which its initial listing was based.
- 28 As is apparent in particular from paragraph 119 of the judgment under appeal, the General Court, at least implicitly, considered that the United Kingdom's decision and/or the decisions of the United States authorities did not constitute in themselves a sufficient basis for maintaining Hamas on the list at issue.
- 29 It must be recalled, in that regard, that it is apparent from the case-law cited in paragraph 25 of the present judgment that, in the context of a review pursuant to Article 1(6) of Common Position 2001/931, the Council may maintain the person or entity concerned on the list at issue if it concludes that there is an ongoing risk of that person or entity being involved in the terrorist activities which justified their initial listing. The retention of a person or entity on the list at issue is, therefore, in essence, an extension of the original listing.

- 30 In the process of verifying whether the risk of the person or entity concerned being involved in terrorist activities is ongoing, the subsequent fate of the national decision that served as the basis for the original entry of that person or entity on the list at issue must be duly taken into consideration, in particular the repeal or withdrawal of that national decision as a result of new facts or material or any modification of the competent national authority's assessment.
- 31 That said, the question that arises in this case is whether the fact that the national decision that served as the basis for the original listing is still in force can, in itself, be considered sufficient for the purpose of maintaining the person or entity concerned on the list at issue.
- 32 In that regard, if, in view of the passage of time and in the light of changes in the circumstances of the case, the mere fact that the national decision that served as the basis for the original listing remains in force no longer supports the conclusion that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, the Council is obliged to base the retention of that person or entity on the list on an up-to-date assessment of the situation, and to take into account more recent facts which demonstrate that that risk still exists (see, by analogy, judgment of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 156).
- 33 In the present case, a significant period of time elapsed between, on the one hand, the adoption of the national decisions which served as the basis for the original entry of Hamas on the list at issue and the original listing itself, in 2001, and, on the other, the adoption of the acts at issue, in the period from 2010 to 2014. The Council was therefore obliged to base Hamas' retention on that list on more recent material demonstrating that there was still a risk that Hamas was involved in terrorist activities. Consequently, contrary to what is claimed by the Council, the General Court did not err in law in considering, at least implicitly, that the decisions of the United States authorities and/or the decision of the United Kingdom did not in themselves constitute a sufficient basis for the acts at issue.
- 34 The first part of the first ground of appeal must therefore be rejected.

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

- 35 In the second part of the first ground of appeal, the Council submits that the General Court erred in law in ruling, notably in paragraphs 109, 110, 125 to 127 and 141 of the judgment under appeal, that the Council was required to rely exclusively on material contained in the national decisions of competent authorities in order to maintain a person or entity on the list at issue, and that the Council had infringed both Article 1 of Common Position 2001/931 and its obligation to state reasons by relying in this instance on information obtained from the press and the internet.
- 36 As regards, in the first place, Article 1 of Common Position 2001/931, it must be noted first of all that that article draws a distinction between the initial entry of a person or entity on the list at issue, referred to in paragraph 4 thereof, and the retention on that list of a person or entity already listed, referred to in paragraph 6 thereof.
- 37 Under Article 1(4) of Common Position 2001/931, the initial entry of a person or entity on the list at issue presupposes the existence of a national decision by a competent authority or of a decision of the United Nations Security Council imposing a sanction.
- 38 No such condition is laid down in Article 1(6) of Common Position 2001/931, however, according to which 'the names of persons and entities on the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list'.

- 39 That distinction is attributable to the fact that, as has been stated in paragraph 29 of the present judgment, the retention of a person or entity on the fund-freezing list is, in essence, an extension of the original listing and presupposes, therefore, that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, as initially established by the Council on the basis of the national decision on which that original listing was based.
- 40 Thus, although Article 1(6) of Common Position 2001/931 requires the Council to carry out at least once every six months a ‘review’ to ensure that there continue to be grounds for ‘keeping’ on that list a person or entity already listed on the basis of a national decision taken by a competent authority, it does not require any new material on which the Council may rely in order to justify the retention of the person or entity concerned on the list at issue to have been the subject of a national decision taken by a competent authority after the decision on which the initial listing was based. By imposing such a requirement, the General Court transposed the condition concerning the existence of such a decision, which is laid down in Article 1(4) of Common Position 2001/931 solely in relation to the initial entry of a person or entity on that list, to the reviews which the Council is required to carry out under Article 1(6) of that common position. In so doing, the General Court failed to have regard to the distinction between the original decision placing a person or entity on the list at issue and the subsequent decision maintaining the person or entity concerned on that list.
- 41 Next, it must be noted that the General Court’s interpretation of Article 1 of Common Position 2001/931 is based, at least implicitly, on the consideration that either the competent national authorities regularly adopt decisions on which the reviews the Council is required to carry out under Article 1(6) of Common Position 2001/931 may be based, or the Council has the option, if necessary, of asking those authorities to adopt such decisions.
- 42 However, that consideration has no basis in EU law.
- 43 It must be made clear in that regard that the fact that the Member States are to inform the Council of decisions adopted by their competent authorities and to transmit those decisions to it does not mean that those authorities are obliged to adopt decisions that may serve as a basis for those reviews either regularly or, indeed, when required.
- 44 Moreover, in the absence of any specific basis in the restrictive measures regime established by Common Position 2001/931, the principle of sincere cooperation enshrined in Article 4(3) TEU does not permit the Council to require the competent authorities of the Member States to adopt, if necessary, national decisions that may serve as the basis for the reviews the Council is required to carry out pursuant to Article 1(6) of that common position.
- 45 On the contrary, it must be noted that that regime does not provide any mechanism that would enable the Council to be provided, if necessary, with national decisions adopted after the initial listing of the person or entity concerned, in order to carry out the reviews it is required to carry out pursuant to Article 1(6) of that common position and in the context of which it is required to verify that there is still a risk that that person or entity is involved in terrorist activities. Without such a mechanism, it cannot be held that that regime requires the Council to carry out those reviews entirely on the basis of such national decisions, if the means that are to be available to the Council for that purpose are not to be restricted unduly.
- 46 Lastly, it should be noted that, contrary to what the General Court found, notably in paragraph 110 of the judgment under appeal, its interpretation of Article 1 of Common Position 2001/931 is also not justified by the need to protect the persons or entities concerned.
- 47 It must be stated that, as regards the initial listing, the person or entity concerned is protected, in particular by the possibility of challenging both the national decisions that served as the basis for that listing, before the national courts, and the listing itself, before the Courts of the European Union.

- 48 In the case of subsequent fund-freezing decisions, the person or entity concerned is protected, *inter alia*, by the possibility of bringing an action against such decisions before the Courts of the European Union. These are required to determine, in particular, first, whether the obligation to state reasons laid down in Article 296 TFEU has been complied with and, therefore, whether the reasons relied on are sufficiently detailed and specific, and, second, whether those reasons are substantiated (see, by analogy, judgments of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 118 and 119, and of 28 November 2013, *Council v Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 64).
- 49 In that context, it must be made clear that the person or entity concerned may, in the action challenging their retention on the list at issue, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources. In the event of challenge, it is for the Council to establish that the facts alleged are well founded and for the Courts of the European Union to determine whether they are made out (see, by analogy, judgments of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 121 and 124, and of 28 November 2013, *Council v Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraphs 66 and 69).
- 50 It follows that the General Court erred in law when it ruled that the Council had infringed Article 1 of Common Position 2001/931 by relying, in the statements of reasons relating to the acts at issue, on material from sources other than national decisions adopted by competent authorities.
- 51 As regards, in the second place, the infringement of the obligation to state reasons identified by the General Court, it must be borne in mind that the assessment by the General Court as to whether the statement of reasons is or is not sufficient is subject to review by the Court on an appeal (see judgment of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 140 and the case-law cited).
- 52 In the present case, it is apparent in particular from paragraph 141 of the judgment under appeal that, in order to find that there had been an infringement of the obligation to state reasons, the General Court relied solely on the absence of any reference — as regards the list of terrorist acts allegedly committed by Hamas from 2005 — in the statements of reasons relating to the acts at issue to national decisions by competent authorities. The General Court's finding of an infringement of the obligation to state reasons is thus the direct consequence of the finding of an infringement of Article 1 of Common Position 2001/931, in respect of which it has been established that it is vitiated by an error of law.
- 53 Consequently, the General Court's error of law in connection with its interpretation of Article 1 has the effect that its finding of an infringement by the Council of the obligation to state reasons is also vitiated by an error of law.
- 54 Since the second part of the first ground of appeal must, therefore, be upheld, the judgment under appeal must on that basis be set aside in its entirety, and there is no need to rule on the second and third grounds of appeal.

The action before the General Court

- 55 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, where it has quashed the decision of the General Court, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

⁵⁶ Since the General Court has ruled only on the fourth and sixth pleas in law in the application made by Hamas for annulment of the measures adopted by the Council in the period from July 2011 to July 2014, and the other pleas in law relied on before the General Court raise in part questions relating to the assessment of facts, the Court considers that the state of the proceedings is not such as to permit final judgment to be given in the action, and that the case must be referred back to the General Court and the costs reserved.

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

- 1. Sets aside the judgment of the General Court of the European Union of 17 December 2014, *Hamas v Council* (T-400/10, EU:T:2014:1095);**
- 2. Refers the case back to the General Court of the European Union;**
- 3. Reserves the costs.**

[Signatures]