Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

27 February 2014*

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Egypt — Freezing of funds — Legal basis — Obligation to state reasons — Error of fact — Rights of the defence — Right to effective judicial protection — Right to property — Freedom to conduct a business)

In Case T-256/11,

Ahmed Abdelaziz Ezz, residing in Giza (Egypt),

Abla Mohammed Fawzi Ali Ahmed, residing in London (United Kingdom),

Khadiga Ahmed Ahmed Kamel Yassin, residing in London,

Shahinaz Abdel Azizabdel Wahab Al Naggar, residing in Giza,

represented initially by M. Lester, Barrister, and J. Binns, Solicitor, and subsequently by J. Binns, J. Lewis QC, B. Kennelly, Barrister, and I. Burton, Solicitor,

applicants,

v

Council of the European Union, represented by M. Bishop and I. Gurov, acting as Agents,

defendant,

supported by

European Commission, represented by F. Erlbacher, M. Konstantinidis and A. Bordes, acting as Agents,

intervener,

APPLICATION for annulment, first, of Council Decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 63) and, secondly, of Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4), in so far as those acts concern the applicants,

* Language of the case: English.

THE GENERAL COURT (Third Chamber),

composed of O. Czúcz, President, I. Labucka and D. Gratsias (Rapporteur), Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 12 March 2013,

gives the following

Judgment

Background to the dispute

1 In the wake of the political events which took place in Egypt in and after January 2011, the Council of the European Union adopted, on 21 March 2011, citing Article 29 TEU, Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 63) ('Decision 2011/172').

2 Recitals 1 and 2 in the preamble to Decision 2011/172 state:

'(1) On 21 February 2011, the European Union declared its readiness to support the peaceful and orderly transition to a civilian and democratic government in Egypt based on the rule of law, with full respect for human rights and fundamental freedoms and to support efforts to create an economy which enhances social cohesion and promotes growth.

(2) In this context, restrictive measures should be imposed against persons having been identified as responsible for misappropriation of Egyptian State funds and who are thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country.'

3 Article 1 of Decision 2011/172 provides:

'1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for misappropriation of Egyptian State funds, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of, natural or legal persons, entities or bodies listed in the Annex.

3. The competent authority of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:

(a) necessary to satisfy the basic needs of the natural persons listed in the Annex and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources; or

(d) necessary for extraordinary expenses …

4. By way of derogation from paragraph 1, the competent authority of a Member State may authorise the release of certain frozen funds or economic resources, provided that the following conditions are met:

(a) the funds or economic resources in question are the subject of a judicial, administrative or arbitral lien established prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 was listed in the Annex, or of a judicial, administrative or arbitral judgment rendered prior to that date;

(b) the funds or economic resources in question will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the lien or judgment is not for the benefit of a person, entity or body listed in the Annex; and

(d) recognising the lien or judgement is not contrary to public policy in the Member State concerned.

…

5. Paragraph 1 shall not prevent a listed natural or legal person, entity or body from making a payment due under a contract entered into prior to the date on which such person, entity or body was listed in the Annex, provided that the Member State concerned has determined that the payment is not directly or indirectly received by a person, entity or body referred to in paragraph 1.

6. Paragraph 2 shall not apply to the addition to frozen accounts of:

(a) interest or other earnings on those accounts; or

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2,

provided that any such interest, other earnings and payments remain subject to the measures provided for in paragraph 1.'

4 Article 2(1) of Decision 2011/172 provides:

'The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall decide to establish and amend the list in the Annex.'

5 Article 3(1) of Decision 2011/172 provides:

'The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Article 1(1).'

6 Article 4 of Decision 2011/172 provides:

'In order to maximise the impact of the measures referred to in Article 1(1) and (2), the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.'

7 Article 5 of Decision 2011/172 provides:

‘This Decision shall enter into force on the date of its adoption.

This Decision shall apply until 22 March 2012.

This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met’.

8 Decision 2011/172 includes, as an annex, a ‘[l]ist of natural and legal persons, entities and bodies referred to in Article 1’.

9 The seventh item in that list contains the entry ‘Ahmed Abdelaziz Ezz’ in the first column, headed ‘Name’. In the second column, headed ‘Identifying information’, it is stated: ‘Former Member of the Parliament. Date of birth: 12.01.1959. Male’. Lastly, in the third column, the ‘[g]rounds for designation’ are stated.

10 The entry ‘Abla Mohamed Fawzi Ali Ahmed’ appears in the eighth item, in the first column, headed ‘Name’. In the second column, ‘Identifying information’, it is stated: ‘Spouse of Mr Ahmed Abdelaziz Ezz. Date of birth: 31.01.1963. Female.’ Lastly, in the third column the ‘[g]rounds for designation’ are stated.

11 The ninth item contains the entry ‘Khadiga Ahmed Ahmed Kamel Yassin’ in the first column, headed ‘Name’. In the second column, ‘Identifying information’, it is stated: ‘Spouse of Mr Ahmed Abdelaziz Ezz. Date of birth: 25.05.1959. Female.’ Lastly, in the third column the ‘[g]rounds for designation’ are stated.

12 The entry ‘Shahinaz Abdel Aziz Abdel Wahab Al Naggar’ appears in the tenth item, in the first column, headed ‘Name’. In the second column, headed ‘Identifying information’, it is stated: ‘Spouse of Mr Ahmed Abdelaziz Ezz. Date of birth: 09.10.1969. Female.’ Lastly, in the third column, the ‘[g]rounds for designation’ are stated.

13 Citing Article 215(2) TFEU and Decision 2011/172, the Council adopted Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4) (‘Regulation No 270/2011’). Article 2(1) and (2) of that regulation repeats, in essence, the provisions of Article 1(1) and (2) of the Decision 2011/172. That regulation includes an ‘Annex I’, which is identical to the Annex to Decision 2011/172. As is apparent from recital 2 in the preamble to Regulation No 270/2011, that regulation was adopted because the measures imposed by Decision 2011/172 ‘f[ell] within the scope of the [TFEU with the result that] … regulatory action at the level of the Union [was] necessary in order to implement them’.

14 On 22 March 2011, a notice for the attention of the persons to which restrictive measures provided for in Decision 2011/172 and in Regulation No 270/2011 apply was published in the *Official Journal of the European Union* (OJ 2011 C 90, p. 3).

15 In the course of proceedings, the Council twice extended the application of the measures provided for in Decision 2011/172. First of all, by its Decision 2012/159/CFSP of 19 March 2012, amending Decision 2011/172 (OJ 2012 L 80, p. 18), it extended the application of those measures until 22 March 2013. Then, by its Decision 2013/144/CFSP of 21 March 2013, amending Decision 2011/172 (OJ 2013 L 82, p. 54), it extended the measures until 22 March 2014.

Procedure and forms of order sought

16 By application lodged at the Court Registry on 20 May 2011, Mr Ahmed Abdelaziz Ezz and his spouses, namely, Ms Abla Mohammed Fawzi Ali Ahmed, Ms Khadiga Ahmed Ahmed Kamel Yassin and Ms Shahinaz Abdel Azizabdel Wahab Al Naggar ('the first applicant', 'the second applicant', 'the third applicant' and 'the fourth applicant', respectively) brought the present action, by which they claim that the Court should:

— annul Decision 2011/172 and Regulation No 270/2011, in so far as those acts apply to them;

— order the Council to pay the costs.

17 On 29 July 2011, the Commission lodged its defence. It claims that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

18 By document lodged at the Court Registry on 11 August 2011, the European Commission sought leave to intervene in support of the form of order sought by the Council.

19 The reply and the rejoinder were lodged, respectively, by the applicants on 29 September 2011 and by the Council on 23 November 2011.

20 By order of 14 October 2011, the President of the Third Chamber of the Court gave the Commission leave to intervene in support of the form of order sought by the Council.

21 By document lodged at the Court Registry on 25 November 2011, the Commission stated that it did not intend to submit a statement in intervention.

22 Acting upon a proposal of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure. By way of a measure of organisation of procedure, it requested the applicants and the Council to produce various documents.

23 By documents lodged at the Court Registry on 19 and 20 February 2013 respectively, the Council and the applicants complied with that request.

24 By document lodged at the Court Registry on 5 March 2013, the applicants submitted further evidence.

25 At the hearing on 12 March 2013, the parties presented oral argument and replied to the questions put by the Court.

Law

26 Decision 2011/172, adopted on the basis of Article 29 TEU, establishes a freezing of assets, and comprises five articles. Article 1(1) lays down the criteria which a person must meet if he is to be subject to such a freezing of assets. Article 1(2), (5) and (6) makes clear the extent of that freeze, and Article 1(3) and (4) determines the circumstances in which it is possible to derogate from it. Article 2 states the competent authority for designating persons meeting the criteria laid down in Article 1(1) and also lays down, in particular, the procedural rules applicable during such a designation. Article 3 lays down the formal requirements to be complied with when a person is designated as meeting the criteria laid down in Article 1(1). Article 4, which does not have binding force, encourages third States to adopt similar measures. Lastly, Article 5 sets out the period in which the decision in

question is applicable. In short, Articles 1 to 3 and 5 of Decision 2011/172 apply to objectively determined situations and produce binding legal effects with respect to categories of persons envisaged in general and in the abstract. The Annex to Decision 2011/172 lists by name the 19 natural persons which the Council regards as meeting the criteria laid down in Article 1(1). Consequently, that annex constitutes a series of individual measures intended to implement Article 1.

27 Regulation No 270/2011 has a similar structure to Decision 2011/172. It is important to note, in particular, that Annex I to Regulation No 270/2011, which is identical to the Annex to Decision 2011/172, is a measure which implements Article 2(1) of that regulation, which is worded in similar fashion to Article 1(1) of Decision 2011/172.

28 In the present case, the applicants seek the annulment of Decision 2011/172 and Regulation No 270/2011 in so far as those acts concern them. More specifically, they seek the annulment of the Annex to Decision 2011/172 and Annex I to Regulation No 270/2011 in so far as they are listed in those annexes. They put forward eight pleas in law in support of their action.

1. *The first plea in law, alleging that Decision 2011/172 and Regulation No 270/2011 have no legal basis*

29 The applicants submitted, in the reply, that Decision 2011/172 and Regulation No 270/2011 had no legal basis.

30 In their view, the 'Treaty provides no legal basis for a measure which imposes a total and indefinite freeze on the assets of individuals in the European Union with the sole aim of assisting the authorities of a country outside the European Union with recovering assets at the end of a set of judicial proceedings'. In addition, the applicants submit that it is apparent from the case-law on Articles 60 EC and 301 EC that Article 215 TFEU only authorises the Council to impose restrictive measures on individuals where there is a sufficient link between the individual and a third country government, namely rulers or their associates. However, in the present case, the Council did not even allege that, as at the date of the contested acts, the applicants were rulers or members of the government of Egypt, or associates of such persons.

As regards the scope of the applicants' arguments

31 As stated in paragraph 28 above, the applicants seek the annulment only of the Annex to Decision 2011/172 and Annex I to Regulation No 270/2011. However, those annexes were not adopted directly on the basis of a provision of the Treaties, but pursuant to Article 1(1) of Decision 2011/172 and Article 2(1) of Regulation No 270/2011, respectively. Consequently, in pleading an infringement of the Treaties, the applicants in fact raise two pleas of illegality for the purpose of Article 277 TFEU: they challenge the legality of Article 1(1) of Decision 2011/172 and of Article 2(1) of Regulation No 270/2011 in the light of the Treaties.

32 It follows from the considerations set out in paragraph 30 above that the applicants put forward specific arguments in support of both pleas of illegality: in support of the plea of illegality raised against Article 1(1) of Decision 2011/172, the applicants submitted, in essence, that that article could not have been adopted on the basis of Article 29 TEU since the sole aim of the freeze on assets which it imposed was to assist the Egyptian authorities with recovering assets at the end of various judicial proceedings; in addition, in support of the plea of illegality raised against Article 2(1) of Regulation No 270/2011, the applicants referred to the case-law on Articles 60 EC and 301 EC and submitted that Article 215 TFEU authorised the Council to impose restrictive measures on individuals only where – which was not the applicants' case – there is a sufficient link between the individual and a third country government.

As regards the plea of illegality raised against Article 1(1) of Decision 2011/172

33 Before examining the plea of illegality raised against Article 1(1) of Decision 2011/172, the meaning and scope of Article 29 TEU must first of all be determined.

Meaning and scope of Article 29 TEU

34 Title V of the EU Treaty consists of two chapters. The first contains the 'general provisions on the Union's external action' and the second 'specific provisions on the common foreign and security policy'.

35 Article 23 TEU, which falls within Chapter 2 of Title V, provides:

'The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.'

36 Article 21 TEU, which falls within Chapter 1 of Title V, provides:

'1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

…

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

…

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

…

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty …

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union [on the Union's external action] …'

37 Article 24(1) TEU provides:

'The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence. …'

38 Article 25 TEU provides:

‘The Union shall conduct the common foreign and security policy by:

…

(b) adopting decisions defining:

(i) actions to be undertaken by the Union;

(ii) positions to be taken by the Union;

(iii) arrangements for the implementation of the decisions referred to in points (i) and (ii) …’

39 The first subparagraph of Article 28(1) TEU provides:

‘Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

…’

40 Article 29 TEU provides:

‘The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature …’

41 The combined effect of those provisions is that decisions which (i) come within the framework of the common foreign and security policy (CFSP), as defined in Article 24(1) TEU, (ii) relate to a ‘a particular matter of a geographical or thematic nature’ and (iii) are not in the nature of ‘operational action’ within the meaning of Article 28 TEU constitute ‘approaches of the Union’ within the meaning of Article 29 TEU.

42 The concept of ‘approach of the Union’ therefore lends itself to a broad interpretation, so that, provided that the conditions set out in paragraph 41 above are met, not only acts programmatic in nature or mere declarations of intent, but also, in particular, decisions providing for measures capable of directly affecting the legal position of individuals may be adopted on the basis of Article 29 TEU. That is moreover confirmed by the wording of the second paragraph of Article 275 TFEU.

43 The applicants do not challenge directly the conclusion drawn in the two preceding paragraphs. They simply claim that a decision seeking to assist foreign authorities with recovering assets at the end of various judicial proceedings cannot be adopted on the basis of Article 29 TEU. However and in any event, the Court cannot a priori rule out that a decision of that kind may meet the three criteria set out in paragraph 41 above and, in particular, come within the CFSP framework.

Compliance with the provisions of Article 29 TEU

44 In the present case, first, as is apparent from recital 1 in the preamble thereto, Decision 2011/172 seeks, firstly, ‘to support the peaceful and orderly transition to a civilian and democratic government in Egypt based on the rule of law, with full respect for human rights and fundamental freedoms’ and, secondly, to support ‘efforts to create an economy which enhances social cohesion and promotes growth’. In so doing, that decision forms part of a policy of supporting the new Egyptian authorities,

intended to promote both the economic and political stability of Egypt and, in particular, to assist the authorities of that country in their fight against the misappropriation of State funds. It is therefore fully based on the CFSP and satisfies the objectives referred to in Article 21(2)(b) and (d) TEU.

45 Secondly, given its subject-matter, Decision 2011/172 relates to a 'particular matter of a geographical or thematic nature'. Indeed, both its title and recitals show that it was adopted in view of the 'situation' in a third country, namely the Arab Republic of Egypt.

46 Thirdly, Decision 2011/172 is not in the nature of 'operational action' within the meaning of Article 28 TEU, since it does not entail any operation, whether civil or military, led by one or more Member States, outside the European Union.

47 It follows from all the foregoing that Article 1 of Decision 2011/172 meets the three criteria set out in paragraph 41 above, so that it could be lawfully adopted on the basis of Article 29 TEU.

As regards the plea of illegality raised against Article 2(1) of Regulation No 270/2011

48 Article 215 TFEU provides:

'1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.'

49 In the present case, Regulation No 270/2011 was adopted citing Article 215(2) TFEU and Decision 2011/172. Contrary to the applicants' claims, Article 215(2) TFEU does not restrict its scope to decisions directed at rulers of third States or their associates. It may serve as a legal basis for adopting restrictive measures against any person, irrespective of status, on condition that those measures have been provided for by a decision taken under the CFSP.

50 In the present case, it must be stated that the wording of Article 2(1) of Regulation No 270/2011, which defines the scope of the freezing of assets established by that regulation, reproduces the provisions of Article 1(1) of Decision 2011/172. Consequently, the freezing of assets established by it was provided for by a decision taken under the CFSP and satisfies the conditions laid down by Article 215(2) TFEU.

51 That conclusion cannot moreover be called in question by relying on the case-law on Articles 60 EC and 301 EC.

52 Admittedly, according to the case-law, Articles 60 EC and 301 EC, applicable prior to the entry into force of the Treaty of Lisbon, do not provide for any express or implied powers of action to impose restrictive measures on persons or entities in no way linked to the governing regime of a third country (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, paragraph 216). Consequently, in order to adopt such measures,

before the Treaty of Lisbon entered into force, Articles 60 EC, 301 EC and 308 EC had to be relied on jointly (*Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 216, and Case C-130/10 *Parliament* v *Council* [2012] ECR, paragraph 53).

53 However, the Treaty of Lisbon changed the law as it stood by inserting a new Article 215 TFEU. While the first paragraph of that article covers the areas previously within the ambit of Articles 60 EC and 301 EC (*Parliament* v *Council*, cited at paragraph 52 above, paragraph 52), the second paragraph thereof, on which Regulation No 270/2011 is based, enables the Council to adopt, by an act laid down in Article 288 TFEU, restrictive measures against any 'natural or legal person', 'non-State entity' or any 'group' on the sole condition that a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union provides for such measures. In other words, if that latter condition is satisfied, Article 215(2) TFEU enables the Council to adopt in particular, as noted in paragraph 49 above, acts imposing restrictive measures against addressees in no way linked to the governing regime of a third country.

54 The first plea must therefore be rejected in any event without the need to rule on whether its submission, in the reply, was out of time (see, by analogy, judgment of 28 July 2011 in Case C-403/10 P *Mediaset* v *Commission*, not published in the ECR, paragraph 51; Joined Cases T-125/96 and T-152/96 *Boehringer* v *Council and Commission* [1999] ECR II-3427, paragraph 143).

2. *The second plea in law, alleging the failure to observe the criteria whereby certain persons may be listed in the annexes to Decision 2011/172 and Regulation No 270/2011*

55 The applicants state that the ground for listing them in the Annex to Decision 2011/172 is not one of those laid down in Article 1 of that decision. They also state that the ground for listing them in Annex I to Regulation No 270/2011 is not one of those laid down in Article 2 of that regulation.

56 In order to respond to the present plea, the Court must first of all determine the criteria which the Council must observe when it decides to list the persons or entities in the Annex to Decision 2011/172 and identify the ground for listing the applicants in that annex.

As regards the criteria for listing in the Annex to Decision 2011/172

57 The English-language version of Article 1(1) of Decision 2011/172 – English being the language of the present case – provides that the assets of 'persons having been identified as responsible for misappropriation of Egyptian State funds, and natural or legal persons, entities or bodies associated with them, as listed in the Annex' must be frozen. In other words, in that language version of Decision 2011/172, reference is made, first, to persons having been 'identified' as responsible for misappropriation of Egyptian State funds and, secondly, to their associates.

58 However, as the applicants noted in a letter dated 13 May 2011 to the Council, the French-language version of Decision 2011/172 refers to the persons 'reconnues' ('found/recognised as') responsible for misappropriating Egyptian State funds and not, as in the English-language version, to the persons 'identified' as responsible for such offending conduct.

59 That is an appreciable difference between the two language versions.

60 The French-language version seems to require a strict interpretation of the wording of Article 1(1) of Decision 2011/172. The use of the verb 'reconnaître' ('to find/recognise as'), commonly used in legal language alongside the adjective 'coupable' ('guilty'), tends to indicate that the persons referred to in Article 1(1) have been formally 'found' guilty of misappropriating Egyptian State funds or of being a party to such misappropriation, such a finding of guilt having as a rule to be made by a criminal court.

61 By contrast, the English-language version permits a broad interpretation of Article 1(1) of Decision 2011/172. In that language version, the use of the verb 'to identify', more imprecise than the verb 'to find/recognise as', suggests that, on the basis of consistent information, the Council itself 'identifies' the persons which may be considered 'responsible' for misappropriating Egyptian State funds and also their associates.

As to the need to interpret Article 1(1) of Decision 2011/172

62 According to settled case-law, the need for a uniform interpretation of European Union acts makes it impossible, in case of doubt, for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see Case C-412/10 *Homawoo* [2011] ECR I-11603, paragraph 28 and the case-law cited).

63 In addition, where there is divergence between language versions of a European Union legal text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see Case C-510/10 *DR and TV2 Danmark* [2012] ECR, paragraph 45 and the case-law cited).

64 In the present case, if only because of the disparities between the English-language and French-language versions, it is necessary to interpret Article 1(1) of Decision 2011/172 in the light of all the language versions. That interpretation must take into account the purpose and general scheme of the rules of which those provisions form part.

As to the interpretation of Article 1(1) of Decision 2011/172

65 First of all, it must be stated that, in most of the language versions other than English and French, the wording of Article 1(1) of Decision 2011/172 is similar to that of the English-language version.

66 Next, as noted in paragraph 44 above, Decision 2011/172 seeks, in particular, to assist the Egyptian authorities with fighting against the misappropriation of State funds, by freezing the assets of persons who according to the English-language version may be 'identified' as responsible for the offending conduct, or according to the French-language version be 'found/recognised as' 'responsible' for such conduct. However, if the Council had to wait until those persons had been convicted in the Egyptian courts, the effectiveness of Decision 2011/172 would be seriously undermined. In such a case, the persons concerned would, during the criminal proceedings, have enough time to transfer their assets to States having no form of cooperation with the Egyptian authorities.

67 In those circumstances, Article 1(1) of Decision 2011/172 must be interpreted broadly. That provision must therefore be interpreted as being directed at five separate categories of person. The first category comprises those who, at the end of judicial proceedings, have been found guilty of the 'misappropriation of Egyptian State funds'. The second category comprises the 'associates' of such persons in the strict sense, namely those who have been found to be their accomplices by a criminal court. The third category comprises those persons being prosecuted for the 'misappropriation of Egyptian State funds'. The fourth category encompasses those persons being prosecuted for being their associates (that is their accomplices). The fifth category corresponds to all those persons the subject of judicial proceedings connected to criminal proceedings for 'misappropriation of Egyptian State funds' who may on that basis be described as persons associated with the individuals the subject of those criminal proceedings. That fifth category of persons groups together, in particular, those persons who, possibly without their knowledge, may have benefited from the proceeds of the 'misappropriation of Egyptian State funds' and on that basis are subject to protective measures, prescribed in a judicial context, intended to preserve the assets arising from such misappropriation.

Whether the interpretation of Decision 2011/172 is compatible with principles or legal rules of a higher order

68 According to settled case-law, when the wording of secondary law is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with the Treaties and other rules having the same legal status (Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52, and Case T-576/08 *Germany* v *Commission* [2011] ECR II-1578, paragraph 103).

69 In this particular case, it is important to ascertain whether the broad interpretation of Article 1(1) of Decision 2011/172, which is given in paragraph 67 above, is compatible with the principle that provisions laying down administrative penalties must be interpreted strictly and with the principle of the presumption of innocence.

– As regards the principle that provisions laying down administrative penalties must be interpreted strictly

70 According to the case-law, the principle of legality in relation to crime and punishment, enshrined in the first sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, requires that a provision of the criminal law may not be applied extensively to the detriment of the defendant (Joined Cases C-74/95 and C-129/95 *X* [1996] ECR I-6609, paragraph 25).

71 That principle may be relied on not only against decisions imposing criminal penalties in the strict sense, but also against those imposing administrative ones (see, to that effect, Case C-352/09 P *ThyssenKrupp Nirosta* v *Commission* [2011] ECR I-2359, paragraph 80).

72 Accordingly, the principle of legality in relation to crime and punishment requires that provisions laying down administrative penalties may not be applied extensively to the detriment of the person concerned.

73 Consequently, if Decision 2011/172 laid down administrative penalties and, therefore, came within the scope of the first sentence of Article 49(1) of the Charter of Fundamental Rights, it would have to be interpreted strictly.

74 That, however, is not the position.

75 The provisions of the first sentence of Article 49(1) of the Charter of Fundamental Rights are identical those of the first sentence of Article 7(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. In accordance with Article 52(3) of the Charter of Fundamental Rights, those provisions must be interpreted in the light of the case-law of the European Court of Human Rights ('the ECHR').

76 According to that case-law, Article 7 of that convention may be properly relied upon only for the purposes of challenging a 'penalty'. The starting-point in any assessment of the existence of a 'penalty' is whether the measure in question is imposed following conviction for a 'criminal offence'. Other relevant factors in that regard are the characterisation of the measure under the applicable law, its nature and purpose, the procedures involved in its making and implementation, and its severity. The severity of the measure is not, however, decisive, since, for instance, many non-penal measures of a preventive nature may have a substantial impact on the person concerned (*M. v. Germany*, no. 19359/04, § 120, ECHR 2009).

77 In the present case, first, no provision of EU law confers a criminal-law aspect on the freezing of assets established by Article 1 of Decision 2011/172.

78 Secondly, the provisions establishing the scheme for that asset-freezing seek neither to punish, nor to prevent the repetition of any conduct. Their sole purpose is to preserve the assets held by the persons, entities and bodies referred to in Article 1 of Decision 2011/172 in accordance with the objectives referred to in Article 21(2)(b) and (d) TEU (see paragraph 44 above) (see, to that effect and by analogy, the judgment of 11 July 2007 in Case T-47/03 *Sison* v *Council*, not published in the ECR, paragraph 101, and Case T-49/07 *Fahas* v *Council* [2010] ECR II-5555, paragraph 67).

79 Thirdly, the effects of those provisions are limited in time and reversible: the freezing of assets provided for in them must be applied, in accordance with Article 5 of Decision 2011/172, during a specified period, and the Council, which keeps it under constant review, may at any time bring it to an end.

80 Accordingly, that freezing of assets does not constitute an administrative penalty nor does it come within the scope of the first sentence of Article 49(1) of the Charter of Fundamental Rights.

81 It follows that the principle that provisions imposing administrative penalties must be interpreted strictly does not preclude the Court from interpreting Article 1(1) of Decision 2011/172 broadly as in paragraph 67 above.

– As regards the principle of the presumption of innocence

82 It is indeed true that the presumption of innocence is enshrined, in the European Union legal order, in Article 48(1) of the Charter of Fundamental Rights. That principle, which, in accordance with Article 52(3) of that charter, must be interpreted in the light of the ECHR's case-law, requires that no representative of an official authority may declare a person guilty of a criminal offence before he has been proved guilty by a court (see *Allenet de Ribemont v. France*, 10 February 1995, §§ 35-36, Series A no. 308, and *Lizaso Azconobieta v. Spain* no. 28834/08, § 37, 28 June 2011). In addition, the presumption of innocence is breached by statements or decisions which reflect the sentiment that the person is guilty, which encourage the public to believe in his guilt or which prejudge the assessment of the facts by the competent court (see *Pandy v. Belgium*, no. 13583/02, § 42, 21 September 2006, and *Pavalache v. Romania*, no. 38746/03, § 116, 18 October 2011).

83 However, in adopting Decision 2011/172, the Council did not itself declare the persons referred to in Article 1(1) thereof guilty of conduct punished under Egyptian criminal law or the law of an EU Member State. In addition, it did not encourage the 'public' to believe incorrectly in the guilt of those persons. Lastly, it did not prejudge the assessment of the facts by the competent court, in Egypt. The Council simply specified that the various categories of person referred to in paragraph 67 above were to have their assets frozen, which, as made clear in paragraph 77 above, does not itself have any criminal-law aspect.

84 It follows from this that the principle of the presumption of innocence does not preclude the interpretation of Article 1(1) of Decision 2011/172 set out in paragraph 67 above (see, to that effect and by analogy, the judgment of 2 September 2009 in Joined Cases T-37/07 and T-323/07 *El Morabit* v *Council*, not published in the ECR, paragraph 40).

As regards the ground for listing the applicants in the Annex to Decision 2011/172

As regards the need to interpret the ground for listing the applicants in the Annex to Decision 2011/172

85 It must be noted that listing the applicants in the Annex to Decision 2011/172 had the effect of freezing their assets under the scheme laid down in Articles 1, 2, 3 and 5 of that decision. In addition, it must be pointed out that the Annex to Decision 2011/172 was published in all the official languages of the European Union.

86 The English-language version of that annex states that the applicants' assets were frozen on the ground that they were each subject to 'judicial proceedings by the Egyptian authorities in respect of the misappropriation of State Funds on the basis of the United Nations Convention against Corruption'. That language version therefore refers simply to judicial 'proceedings' concerning the applicants. In the absence of any clarification in that regard, those proceedings can be proceedings merely connected to criminal proceedings for 'misappropriation of Egyptian State funds'.

87 By contrast, the French-language version of the Annex to Decision 2011/172 which, as noted in paragraph 58 above, was relied on by the applicants in a letter dated 13 May 2011 to the Council, states that the applicants were '[prosecuted] by the Egyptian authorities for the misappropriation of State Funds on the basis of the United Nations Convention against Corruption'. It seems from reading that version that it was because there was a 'prosecution', which by its nature relates to the criminal law, brought against them for misappropriation of State funds, that the applicants had their assets frozen.

88 Consequently, there are significant disparities between the French-language and English-language versions of the Annex to Decision 2011/172.

89 Where there are differences between certain language versions of an individual measure addressed to a person subject to the jurisdiction of a non-member country, that act must be interpreted in the light, first, of the other language versions and, secondly, of the purpose and general scheme of the legislation on the basis of which it was adopted.

90 In addition, the Court has consistently held that an implementing measure must be given, if possible, an interpretation consistent with the provisions of the basic act (see, to that effect, Case C-61/94 *Commission* v *Germany*, cited at paragraph 68 above, paragraph 52 and the case-law cited).

91 In the present case, as was stated in paragraph 26 above, the Annex to Decision 2011/172 constitutes a series of individual measures intended to implement Article 1(1) of that decision. The ground on which the applicants' assets were frozen, set out in that annex, must therefore be interpreted in accordance with the principles identified in the two preceding paragraphs.

As to the interpretation of the ground for listing the applicants in the Annex to Decision 2011/172

92 First of all, it must be noted that the different language versions of the Annex to Decision 2011/172 may be divided into two groups of comparable size: in certain official languages of the European Union, that annex is drafted in a manner analogous to the English-language version, whereas, in other official language versions, the wording is close to the French-language version. The comparison of the language versions of that annex is therefore of no assistance: it neither shows the intention of those drafting the measure nor reveals a possible clerical mistake affecting one or more language versions.

93 Next, it is apparent that, whichever language version is taken, the ground on which the applicants' assets were frozen, set out in the Annex to Decision 2011/172, is consistent with Article 1(1) of that decision, as interpreted in paragraph 67 above. That article lays down that not only the assets of those 'prosecuted' in their personal capacity, in Egypt, for misappropriating State funds are to be frozen, but also, in particular, those of persons concerned, in that country, simply by 'judicial proceedings' connected to criminal proceedings for the 'misappropriation of Egyptian State funds'.

94 Lastly, it must be noted that Article 1(1) of Decision 2011/172 enables the assets of five categories of person to be frozen (see paragraph 67 above). However, the French-language version of the Annex to that decision enables only one of those categories to be targeted, namely persons being prosecuted for 'misappropriation of Egyptian State funds' (see paragraph 87 above). The English-language version of that annex covers three categories of person, that is, in addition to persons being prosecuted for 'misappropriation of Egyptian State funds', those prosecuted as a party to that misappropriation and those subject to judicial proceedings connected to criminal proceedings for 'misappropriation of Egyptian State funds' (see paragraph 86 above). Consequently, under the English-language version, the ground for listing the applicants in the Annex to Decision 2011/172 has a meaning and scope that encompasses the scope of Article 1(1) of that decision more extensively. It is therefore more consonant with the objective pursued by that article.

95 In accordance with the wording of the English-language version, it must therefore be found that the Council intended to freeze the applicants' assets on the ground that they were subject to judicial proceedings in Egypt linked, in whatever form, to investigations concerning the misappropriation of State funds.

As regards compliance with the criteria laid down in Article 1(1) of Decision 2011/172

96 According to the criteria laid down in Article 1(1) of Decision 2011/172, the persons falling within the five categories set out in paragraph 67 above could be listed in the Annex to Decision 2011/172.

97 In the present case, as stated in paragraph 95 above, the Council listed the applicants in the Annex to Decision 2011/172 on the sole ground that they were subject to judicial proceedings linked to investigations concerning the misappropriation of State funds.

98 As noted in paragraphs 94 and 95 above, such a ground is among those laid down in Article 1(1) of that decision. Indeed, it refers to three of the five cases envisaged by that article.

99 It follows that, in listing the applicants in the Annex to Decision 2011/172, the Council did not infringe the criteria which it had itself laid down in Article 1(1) of that decision.

As regards compliance with the criteria laid down in Article 2(1) of Regulation No 270/2011

100 First of all, it must be noted that the structure of Regulation No 270/2011 is similar to that of Decision 2011/172, so that the considerations set out in paragraph 26 above are to be applied, as noted in paragraph 27 above, *mutatis mutandis* as regards Regulation No 270/2011 and Annex I thereto. Consequently, the persons referred to in Annex I must meet the criteria laid down in Article 2(1) of Regulation No 270/2011.

101 Next, it must be noted that those criteria are identical to those laid down in Article 1(1) of Decision 2011/172. In that regard, Article 2(1) of Regulation No 270/2011 is drafted in similar terms to Article 1(1) to Decision 2011/172, to which it indeed refers.

102 Lastly, the grounds for listing the applicants in Annex I to Regulation No 270/2011 are identical to those for listing them in the Annex to Decision 2011/172.

103 Accordingly, for the reasons set out above, it must be concluded that the criteria laid down in Article 2(1) of Regulation No 270/2011 have been complied with in the present case.

104 It follows from all the foregoing that the second plea in law must be rejected.

3. *The third plea in law, alleging breach of the obligation to state reasons*

105 As provided in the second paragraph of Article 296 TFEU: 'Legal acts shall state the reasons on which they are based …'

106 Under Article 41(2)(c) of the Charter of Fundamental Rights, the right to good administration includes, in particular, 'the obligation of the administration to give reasons for its decisions'.

107 It has consistently been held that the statement of reasons required by Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights must be appropriate to the contested act and to the context in which it was adopted. It 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 measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case (see Case C-417/11 P *Council* v *Bamba* [2012] ECR, paragraphs 50 and 53 and the case-law cited).

108 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 meets the requirements of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights 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. Thus, first, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to the person concerned and which enables him to understand the scope of the measure concerning him (see *Council* v *Bamba*, cited at paragraph 107 above, paragraphs 53 and 54 and the case-law cited). Secondly, the degree of precision of the statement of the reasons for a measure must be weighed against practical realities and the time and technical facilities available for taking the measure (see Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 141 and the case-law cited).

109 In particular, the statement of reasons for a measure freezing assets cannot, as a rule, consist merely of a general, stereotypical formulation (see, to that effect, *Organisation des Modjahedines du peuple d'Iran* v *Council*, cited at paragraph 108 above, paragraph 143). Subject to the reservations set out in paragraph 108 above, such a measure must, on the contrary, indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (see *Organisation des Modjahedines du peuple d'Iran* v *Council*, cited at paragraph 108 above, paragraph 143 and the case-law cited; see, to that effect, *Council* v *Bamba*, cited at paragraph 107 above, paragraph 52).

110 In the present case, the applicants submit that the reasons given in Decision 2011/172 and Regulation No 270/2011 are insufficient.

111 In support of that plea, the applicants state, first, that the Council has failed to demonstrate in a clear manner why it considered that they met the criterion set out in Article 1 of Decision 2011/172.

112 Secondly, the applicants submit that the reasons given in the Annex to Decision 2011/172 are not detailed enough. Indeed, that annex mentions a 'vague allegation relating to judicial proceedings under a Convention unknown to the Applicants'. In any event, the statements in that annex do not, in their view, make it possible to know why the Council considers that the imposition of restrictive measures remains justified.

113 However, it is apparent that Decision 2011/172 refers clearly to Article 29 TEU, on the basis of which it was adopted. Next, it is apparent from the title of the Annex to Decision 2011/172 that that annex comprises a '[l]ist of natural and legal persons, entities and bodies referred to in Article 1'. Lastly, Regulation No 270/2011 cites Article 215(2) TFEU. As to Annex I to that regulation, it states clearly that it comprises a '[l]ist of natural and legal persons, entities and bodies referred to in Article 2(1)'. Consequently, the Council has shown in an unequivocal manner what, in its view, was the legal basis of Decision 2011/172, Regulation No 270/2011 and the annexes to those acts.

114 In addition, it is apparent from Decision 2011/172 and Regulation No 270/2011 that the applicants were made subject to restrictive measures 'in view of the situation in Egypt' on the ground that they were subject to judicial proceedings in Egypt linked to investigations concerning the misappropriation of State funds (see paragraph 86 above). The considerations of fact that were the basis for the Council's view that the applicants had to have their assets frozen as provided for by Article 1(1) of Decision 2011/172 are sufficiently detailed to enable the applicants to challenge their correctness before the Council and then before the Courts of the European Union. Moreover, in English, the language used by the applicants in their correspondence with the Council and during the present proceedings, those considerations are unequivocal.

115 Moreover, the considerations are not stereotypical in nature. They do not just copy the wording of a general provision. It is true that they are the same as those on the basis of which the other natural persons mentioned in the Annex to Decision 2011/172 and in Annex I to Regulation No 270/2011 had their assets frozen. However, they seek to describe the particular situation of the applicants who, like others, have, in the Council's view, been subject to judicial proceedings linked to investigations concerning the misappropriation of State funds.

116 It follows from this that the contested acts contain a statement of the points of law and facts on which, according to the Council, those acts are based. Consequently, their wording discloses in a clear fashion the Council's reasoning.

117 In those circumstances, the third plea must be rejected.

4. *The fourth plea in law, alleging errors of fact and in the legal characterisation of the facts*

118 As stated above, it is apparent from the Annex to Decision 2011/172 and from Annex I to Regulation No 270/2011 that the applicants have each had their assets frozen solely on the ground that they were subject to judicial proceedings in Egypt linked to investigations concerning the misappropriation of State funds.

119 The applicants submit, in essence, that that ground is vitiated by errors of fact and in the legal characterisation of the facts. That plea is divided into two parts.

120 By the first part, the applicants submit that the second, third and fourth applicants are not subject to any judicial proceedings in Egypt.

121 By the second part, the applicants submit that, while the first applicant 'is currently subject to judicial proceedings', those proceedings do not relate to misappropriation of State funds as referred to in the Annex to Decision 2011/172.

As regards the first part of the plea

122 By letter of 1 April 2011, the applicants informed the Council that they assumed that the first applicant had been listed in the Annex to Decision 2011/172 and Annex I to Regulation No 270/2011 because of a request from a person or body within Egypt. They also asked the Council to confirm who that person or body was and provide a copy of that request and supporting documentation.

123 By letter of 7 June 2011, the Council explained to the applicants' lawyers that it had received a 'letter dated 13 February 2011 from the Egyptian Ministry of Foreign Affairs with a request by the Egyptian Prosecutor General to freeze the assets of certain former Ministers and officials', which included the first applicant. A copy of a document dated 13 February 2011 on the headed notepaper of the Office of the Egyptian Minister of Foreign Affairs was enclosed with that letter from the Council. In that unsigned document, reference was made to a request from the Egyptian Prosecutor General to freeze the assets of 'former [Egyptian] Ministers, officials and nationals'. The first applicant was one of the persons the subject of that request, but not the second, third and fourth applicants.

124 In the meantime, the applicants' lawyers asked the Council, by letter of 13 May 2011, to provide them, in particular, with all the evidence on the basis of which it had frozen their clients' assets. Those lawyers subsequently sent two other letters to the Council on 9 June and 15 July respectively.

125 By letter of 29 July 2011, the Council replied to the letters from the applicants' lawyers dated 13 May, 9 June and 15 July 2011. In that reply, no reference is made to possible court proceedings against the second, third and fourth applicants. Only the following is stated:

'[They] appear on the list of persons subject to the above-mentioned request for judicial assistance by the Egyptian authorities (they appear under nos. 2, 3 and 4 on the enclosed list). The request states that orders have been issued by the Egyptian Prosecutor General for the seizure of the assets of all the persons on the list, and that this order was endorsed by the criminal court.'

126 The Council's letter of 29 July 2011 included in annex a note dated 24 February 2011 (Ref NV93/11/ms), by which the Embassy of the Arab Republic of Egypt in Brussels (Belgium) requested the High Representative of the Union for Foreign Affairs and Security Policy to transmit to the 'competent [judicial] authorities' a request for judicial assistance from the Office of the Egyptian Prosecutor General.

127 Three documents were included in annex to that note.

128 The first document was the undated and unsigned text of the request for judicial assistance. That request, drafted in English, sought to 'freeze, confiscate and return assets of some former ministers and officials'. It referred to 'the investigation carried out by the Egyptian Prosecution General in the [Cases Nos] 162 and 234 for the year 2010 ...; 34, 36, 38, 39, 55 and 70 for the year 2011 ... and [in Case No] 137/2011 ... regarding crimes of corruption, usurping of public assets, and money laundering crimes committed by former ministers and officials' and listed fifteen individuals, including the four applicants. The request went on to state, first, that the Egyptian Prosecutor General had decided to seize the assets of the persons thus listed and, secondly, that that seizure had been 'endorsed by the criminal court'.

129 The second document annexed to the note of 24 February 2011 was a 'list of former officials, [their] wives and children' in which the second, third and fourth applicants appeared second, third and fourth, respectively.

130 The third document annexed to the note of 24 February 2011 was presented as a summary of the allegations against the first applicant in '[Case No] 38 for the year 2011', a case referred to in the request for judicial assistance referred to in paragraph 128 above. That document was undated, and

was not on headed notepaper or signed. However, as with the note of 24 February 2011 and all the other documents annexed thereto, it bore the stamp of the Embassy of the Arab Republic of Egypt in Brussels.

131 In short, none of the above-mentioned documents suggests that the second, third and fourth applicants have been prosecuted in Egypt for the misappropriation of State funds.

132 On the other hand, the request for judicial assistance referred to in paragraph 128 above shows, unequivocally, that, on 24 February 2011, less than one month before Decision 2011/172 and Regulation No 270/2011 were adopted, all the applicants were the subject of an order of the Egyptian Prosecutor General seeking to seize their assets, which had been endorsed by a criminal court and was linked to investigations concerning misappropriation of State funds.

133 The applicants have not moreover produced any evidence to cast doubt on the accuracy of the information entered on that request for judicial assistance. On the contrary, a decision of the Egyptian courts, a translation of which was lodged at the Court Registry on 5 March 2013, confirms that the second applicant still had her assets frozen on 30 January 2013. In addition, the applicants did not dispute, at the hearing, that the above-mentioned order for seizure existed.

134 As they were the subject of the above-mentioned order of the Egyptian Prosecutor General, the second, third and fourth applicants were persons subject to judicial proceedings in Egypt linked to investigations concerning misappropriation of State funds. In describing them in that manner in the Annex to Decision 2011/172, the Council did not therefore err in fact or in its legal characterisation of the facts.

135 The first part of the plea must accordingly be rejected.

As regards the second part of the plea

136 In support of the second part of the plea, the applicants submit that the first applicant is only alleged to have been complicit in conduct which may be categorised as the improper grant of licences.

137 However, it is clear from the document referred to in paragraph 130 above that, in '[Case No] 38 for the year 2011', the first applicant was 'accused' first of 'usurping the assets' of a 'public sector company with State-owned shares' and, secondly, of 'committing crimes of profiteering and [intentionally] harming public assets, as well as usurping and … facilitating the usurpation of [such] assets'.

138 More specifically, in that document, the first applicant was accused of:

— using his influence, as Chief Executive Officer of a 'public-sector company with State-owned shares', in order, first, to exchange shares for the benefit of a 'private company' which he controlled, secondly, to enable that private company to achieve commercial success at the expense of the 'public-sector company' in question and, thirdly, to increase unlawfully the shares of the 'private company' in question in the capital of the above-mentioned 'public-sector company';

— and failing to pay his debts to that company and the banks.

139 Consequently, the first applicant was prosecuted in Egypt for what the Egyptian public prosecutor categorised as the 'usurping of public assets'.

140 The Court finds that that categorisation corresponds, in essence, to the 'misappropriation of … State funds' found in Decision 2011/172 and Regulation No 270/2011.

141 In those circumstances, the Council did not err in fact or in the categorisation of the facts by listing the first applicant in the annexes to the contested acts.

142 In seeking to challenge that conclusion, the applicants submitted, in the reply, that neither the request for judicial assistance described in paragraph 128 above nor the documents annexed thereto enabled them to be identified as people 'responsible for misappropriation of Egyptian State funds', who were thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country, or as people associated with them.

143 However, in any event, such a fact cannot render the contested acts unlawful. In that regard, it must be noted that Article 1(1) of Decision 2011/172, which sets out the criteria for listing in the Annex to that decision, is directed only at the categories of person referred to in paragraph 67 above. Admittedly, the second recital in the preamble to Decision 2011/172 states that those persons are 'thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country'. However, that statement does not constitute an additional condition which must be met when a new person is listed in the Annex to Decision 2011/172. It is only a clarification of the ultimate objective of that decision. That recital simply explains that the persons referred to in Article 1(1) of Decision 2011/172 are in a position to deprive 'the Egyptian people of the benefits of the sustainable development of their economy and society and [of hindering] the development of democracy in the country'.

144 In addition, it must be noted that none of the five arguments put forward by the applicants in support of the complaint referred to in paragraph 142 above is well founded.

145 First, the applicants submitted that the documents annexed to the request for judicial assistance described in paragraph 128 above did not 'refer to any conviction for any offence' or to an indictment. Those documents simply 'summarise[d] certain complaints made against the first applicant' and ultimately give 'no indication of whether any or all of the complaints [referred to in them] gave rise to judicial proceedings … for misappropriating State funds'.

146 It is true that the documents annexed to the request for judicial assistance referred to in paragraph 128 above do not refer to any criminal conviction. However, that is irrelevant. The persons targeted in Article 1(1) of Decision 2011/172 are not only those convicted for the misappropriation of State funds but also, in particular, those concerned by judicial proceedings linked to investigations concerning such misappropriation (see paragraph 67 above).

147 In addition, it is incorrect to claim that none of the documents annexed to the request for judicial assistance concerned an indictment for misappropriation of State funds. As noted in paragraphs 139 and 140 above, the document described in paragraph 130 above referred to a criminal prosecution, in Egypt, of the first applicant for conduct which may be characterised as misappropriation of State funds.

148 Secondly, the applicants stated that the application for judicial assistance described in paragraph 128 above 'g[ave] no indication of the quantum of funds frozen or what kind of judicial assistance it requests, from which court, or why such assistance [was] necessary'.

149 However, that fact that the evidence relied on by the Council contains no such information has no effect on the outcome of the dispute. It cannot, in any event, show that it made an error of fact in taking the view that the applicants were subject to judicial proceedings linked to investigations concerning the misappropriation of State funds.

150 Thirdly, the applicants stated that the application for judicial assistance described in paragraph 128 above 'd[id] not even suggest legislative action by the European Union'.

151 However, that argument is based on the incorrect premiss that the Council could freeze the assets of an applicant only if it had received a request to that effect from the Egyptian authorities. On the contrary, the Council had the authority to freeze the assets of all those persons meeting the criteria laid down in Article 1(1) of Decision 2011/172, regardless of whether the situation of those persons was made known by the Egyptian authorities or by other sources.

152 Fourthly, the applicants submitted that the application for judicial assistance described in paragraph 128 above was inaccurate. First of all, there was a reference in the documents annexed to that request to debts of 7 billion Egyptian pounds, when this related to a complaint which the authorities investigated and did not proceed with. Next, the 'other complaints' do not relate to misappropriation of public funds, but instead to acts concerning a company in which the Egyptian State held only a minority stake. Those other complaints have also been brought without any supporting evidence. Lastly, those complaints relate to acts committed not by the first applicant but by companies in which he held a majority shareholding.

153 It is true that in the document referred to in paragraph 130 above, it was stated, in the description of the only case concerning the first applicant, namely '[Case No] 38 for the year 2011', that he had refrained from paying his debts amounting to 7 billion Egyptian pounds. However, the applicants fail to produce any evidence to show that that statement is inaccurate. In any event, any inaccuracy in that statement could not in any way affect the outcome of the proceedings. In the light of the considerations set out in paragraphs 137 to 140 above, such an inaccuracy would not be sufficient of its own to prove that, on the basis of the document referred to in paragraph 130 above, the Council was not entitled to characterise the first applicant as being subject to judicial proceedings linked to investigations for misappropriation of State funds.

154 As to the other contentions in paragraph 152 above, these relate, in the applicants' view, to 'complaints' other than that relating to the debt of 7 billion Egyptian pounds mentioned in paragraph 153 above. They thus relate to cases other than '[Case No] 38 for the year 2011' referred to in the document mentioned in paragraph 130 above, cases which the Council did not rely on in order to draw up the contested acts.

155 Fifthly, the applicants submitted that the documents in support of the request for judicial assistance described in paragraph 128 above were incomplete. They argued that the United Kingdom authorities had refused to grant a request seeking to freeze the applicants' assets, because the Egyptian authorities had given the United Kingdom authorities insufficient information to justify such a measure.

156 However, as has been noted, it must be found that the information provided in the request for judicial assistance and the annexes thereto supports the conclusion that the applicants were subject to judicial proceedings linked to investigations concerning the misappropriation of State funds. In addition, it is important to note that the claim concerning the conduct of the United Kingdom authorities concerns facts extraneous to the present dispute. Such facts are therefore irrelevant to its outcome, all the more so since the applicants do not specify which documents had been sent by the Egyptian authorities to the United Kingdom authorities.

157 The second part of the plea must therefore be rejected in its entirety, with the result that the plea cannot be upheld.

5. *The fifth plea, alleging that the rights of the defence and the right to effective judicial protection have been infringed*

158 The applicants submit that the rights of the defence and the right to effective judicial protection have been infringed. This plea is in three parts.

As regards the first part

159 The applicants state that the evidence on the basis of which their assets were frozen was not communicated to them.

160 Such an argument has no basis in fact.

161 According to the case-law, it is only on the request of the party concerned that the Council is required to provide access to the evidence on the basis of which it froze assets. It would be excessive to require spontaneous communication of such evidence (see, to that effect Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 97).

162 In the present case, the applicants requested the Council to provide them with the evidence on the basis of which Decision 2011/172 and Regulation No 270/2011 had been formulated. As was noted in paragraph 122 above, the applicants' lawyers stated, by letter of 1 April 2011, that they assumed that Decision 2011/172 and Regulation No 270/2011 had been adopted because of a 'request [to that effect] from a person or body within Egypt' and asked the Council to 'provide a copy of [that] request and supporting documentation'. In addition, it is apparent from paragraph 124 above that, by letter of 13 May 2011, those same lawyers noted that the applicants 'need[ed] evidence and information [in order to be in a position] to refute the case against them which is said to justify their listing [in the Annex to Decision 2011/172]'.

163 However, it must be stated that the Council complied fully with the applicants' requests.

164 First, the documents in the file before the Court show that, by a letter of 7 June 2011 referred to in paragraph 123 above, the Council replied to the request of 1 April 2011, stating that it was referring the applicants to a document 'dated 13 February 2011 from the Egyptian Ministry of Foreign Affairs with a request by the Egyptian Prosecutor General to freeze the assets of certain former Ministers and officials, based on the United Nations Convention against Corruption, and which includes [the first applicant] on the list of persons concerned'. That document dated 13 February 2011 was enclosed with the Council's letter.

165 Secondly, by a letter of 29 July 2011 referred to in paragraph 125 above, the Council replied, inter alia, to the letter of 13 May 2011. In the letter of 29 July 2011 it referred the applicants' lawyers not only to the 'information … already communicated … in the Council's previous letter of 7 June 2011', but also to a 'communication … from the Egyptian Mission to the E[uropean] U[nion] dated 24 February 2011, enclosing a request for judicial assistance from the Egyptian Prosecutor General'. That communication together with the request for judicial assistance, described in paragraphs 126 and 128 above respectively, were enclosed with the Council's letter of 29 July 2011.

166 Accordingly, the first part of the plea must be rejected.

As regards the second part

167 The applicants submit, in their application, that the ground on which their assets were frozen is too vague. In addition, they submit, in their reply, that it was only in the defence that the Council gave the true ground for freezing their assets. Therefore, they were not given an opportunity to challenge that ground properly at the time when Decision 2011/172 and Regulation No 270/2011 were adopted.

168 However, those arguments are based, in any event, on an incorrect premiss.

169 Contrary to the applicants' arguments, Decision 2011/172 and Regulation No 270/2011 are sufficiently reasoned (see paragraph 116 above). Their reasoning was indeed reproduced by the applicants in their letter of 13 May 2011 to the Council.

170 The second part of the plea must therefore be rejected.

As regards the third part

171 First, the applicants state that although they sent the Council various comments by letter of 13 May 2011, the Council failed to respond, in its letter of 29 July 2011, to all of the arguments put forward in their letter. The applicants submit that the Council failed to respond, in particular, either to the comments concerning the political motivation of the prosecution, in Egypt, of the first applicant or to those concerning the breach of the rights of the defence during that prosecution.

172 Secondly, the applicants submit that neither Decision 2011/172 nor Regulation No 270/2011 specify the grounds for the individual freezing measures concerning them and the evidence on which those measures are based must be communicated to them. They add that those acts fail to state that the persons whose assets are frozen must be heard and their views taken into account. Lastly, they submit that Decision 2011/172 and Regulation No 270/2011 'provide no procedure for communicating the evidence on which the decision to include the Applicants was based, nor for hearing their response and properly testing the allegations and evidence justifying the decision to list and continue to list the Applicants'.

173 Thirdly, the applicants submit that the grounds for the freezing measures against them were not communicated to them in advance of publication of Decision 2011/172 and Regulation No 270/2011. They also state that they had no prior notice of being the subject of freezing measures.

174 Those arguments cannot succeed.

175 First, neither Decision 2011/172, Regulation No 270/2011 nor any other text or principle requires the Council to respond to each of the submissions made to it by the applicants after Decision 2011/172 and Regulation No 270/2011 were adopted, failing which the individual asset-freezing measures adopted on the basis of the provisions of general scope of those acts are rendered unlawful. Consequently, the mere fact that the Council did not respond specifically to the applicants' claims that the prosecution, in Egypt, of the first applicant was politically motivated and breached the rights of the defence cannot affect the lawfulness of the proceedings after Decision 2011/172 and Regulation No 270/2011 were adopted, regardless of whether those claims are well founded.

176 Secondly, an initial decision to freeze funds, such as that taken against the applicants by means of the Annex to Decision 2011/172 and Annex I to Regulation No 270/2011, must be able to take advantage of a surprise effect. Accordingly, the Council cannot be required to communicate the grounds for that measure to the person concerned before such a measure is adopted (*Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraph 338). Similarly, the Council is not under an obligation to inform the persons concerned by a measure of that kind of its imminent adoption.

177 Thirdly, as is apparent from the two preceding paragraphs, no provision or principle requires that the EU measures defining the set of rules to be followed by individual asset-freezing measures must include provisions or establish procedures such as those described in paragraph 172 above.

178 Moreover, even if by the arguments in paragraphs 171 to 173 above the applicants also intended to argue, first, that neither the evidence on the basis of which their assets were frozen nor the grounds for that freezing were communicated to them after Decision 2011/172 and Regulation No 270/2011 were adopted, and, secondly, that the Council has not heard the applicants, such a line of argument must be rejected.

179 Firstly, the argument to the effect that the Council failed to communicate the evidence on which it relied must be rejected on the grounds set out in paragraphs 161 to 165 above.

180 Secondly, the principle of the observance of the rights of the defence and the right to an effective remedy guaranteed by the first paragraph of Article 47(1) of the Charter of Fundamental Rights require, as a rule, that the European Union authority which adopts an act imposing restrictive measures in respect of a person or entity communicate the grounds for that act, at least as swiftly as possible after it was adopted, in order to enable those persons or entities to defend their interests or exercise their right to bring an action (see, to that effect, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraphs 335 and 336, and *Bank Melli Iran* v *Council*, cited at paragraph 161 above, paragraph 92). The Council is, as a rule, required to communicate a decision individually to satisfy that obligation (Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraphs 52 and 55).

181 None the less, the fact that the Council has not itself communicated the grounds for an act imposing restrictive measures is not capable of affecting the validity of that act when such a failure did not have the effect of depriving the person or entity concerned of an opportunity of knowing, in good time, the reasons for that act or of assessing its validity (see, to that effect, the judgment in Case C-548/09 P, *Bank Melli Iran* v *Council*, cited at paragraph 180 above, paragraph 55).

182 In the present case, in any event, it is apparent from the wording of the above-mentioned letter from the applicants' lawyers to the Council on 13 May 2011, and from the application, that the applicants were able to have access to the grounds of Decision 2011/172 and Regulation No 270/2011 in sufficient time in order to be in a position to challenge those acts. In particular they reproduced, on the third page of that letter, part of the grounds of those acts.

183 Thirdly, the natural or legal persons to which an initial decision to freeze their funds applies have the right to be heard by the Council after that decision has been adopted. However, the Council is not required automatically to conduct a hearing (*Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraph 341, and judgment in Case T-390/08, *Bank Melli Iran* v *Council*, cited at paragraph 161 above, paragraph 98).

184 In the present case, it is not apparent from any of the documents in the file before the Court that the applicants, who submitted – in particular by letters of 1 April and 13 May 2011 – their written observations regarding Decision 2011/172 and Regulation No 270/2011, asked to be heard by the Council after those acts were adopted. In those circumstances, the applicants, who did not in any event have any right to be heard before Decision 2011/172 and Regulation No 270/2011 were adopted (*Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraph 341), have no ground for their complaint that they were not heard by the Council.

185 The third part of the fifth plea must be rejected, so that the plea cannot be upheld.

6. *The sixth plea in law, alleging infringement of the right to property*

186 The applicants allege that the right to property has been infringed. They put forward four sets of arguments in support of that plea.

187 Firstly, they submit that the Council has not demonstrated that a total asset freeze was the least onerous means of ensuring the objective pursued by Decision 2011/172 and Regulation No 270/2011. In the applicants' view, the freezing of their assets by the Council is therefore disproportionate. In support of their assertion, they add, first of all, that no indication was given of the quantum of assets they were said to have misappropriated. Next, they assert that the freezing of their assets in Egypt is sufficient, since it relates to assets far greater in value than those which they are alleged to have misappropriated.

188 Secondly, the applicants state, in their reply, that the prevention of third parties making economic resources available to them, under Article 1(2) of Decision 2011/172, is illogical, disproportionate and counterproductive to the objective pursued by the Council, namely the recovery, at the end of judicial proceedings in Egypt, of the public funds which may have been misappropriated.

189 Thirdly, the applicants submit that Decision 2011/172 and Regulation No 270/2011 have a marked and long-lasting impact on their reputation, since their effect is not only to freeze all of their assets within the European Union but also to 'brand' them as people who have stolen Egyptian assets and are thus enemies of the Egyptian people.

190 Fourthly, the applicants submit that the Council has not demonstrated that a 'travel ban' was justified and proportionate.

191 In that regard, the Court finds at the outset that the third set of arguments, stated in paragraph 189 above must, in any event, be rejected. The importance of the aims pursued by Decision 2011/172 and Regulation No 270/2011 is such as to justify their possible - even substantial - negative consequences for the applicants without that affecting their lawfulness (see, to that effect, Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 26, and Case T-390/08 *Bank Melli Iran* v *Council*, cited at paragraph 161 above, paragraph 70).

192 In addition, the fourth set of arguments, stated in paragraph 190 above, is unfounded. Neither Decision 2011/172 nor Regulation No 270/2011 imposes a travel ban on the applicants.

193 In short, only the first two sets of arguments, stated in paragraphs 187 and 188 above, are capable of supporting the plea alleging breach of the right to property. They will therefore be examined below in turn.

As regards the first set of arguments

194 Article 17(1) of the Charter of Fundamental Rights provides:

'Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.'

195 In the present case, the Council froze, by Decision 2011/172 and Regulation No 270/2011, during a definite period, the assets held, inter alia, by the applicants. Consequently, the Council must be regarded as having limited the exercise, by the applicants, of the right referred to in Article 17(1) of the Charter of Fundamental Rights (see, to that effect, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraph 358). However, the right to property, as protected by that article, does not constitute an unfettered prerogative (see, to that effect, Case 4/73 *Nold* v *Commission* [1974] ECR 491, paragraph 14, and *Kadi and Al Barakaat*

International Foundation v *Council and Commission*, cited at paragraph 52 above, paragraph 355) and may therefore be limited, under the conditions laid down in Article 52(1) of the Charter of Fundamental Rights.

196 Article 52(1) of the Charter of Fundamental Rights provides, first, that '[an]y limitation on the exercise of the rights and freedoms recognised by [the Charter of Fundamental Rights] must be provided for by law and respect the essence of those rights and freedoms', and, secondly, that '[s]ubject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the [European] Union or the need to protect the rights and freedoms of others'.

197 Consequently, in order to comply with EU law, a limitation on the exercise of the right to property must, in any event, satisfy three conditions.

198 First, the limitation must be 'provided for by law' (see, to that effect, Case C-407/08 P *Knauf Gips* v *Commission* [2010] ECR I-6375, paragraph 91). In other words, the measure in question must have a legal basis.

199 Secondly, the limitation must refer to an objective of general interest, recognised as such by the European Union. Those objectives include those pursued under the CFSP, and referred to in Article 21(2)(b) and (d) TEU, namely supporting democracy, the rule of law and human rights as well as sustainable development of developing countries with the essential objective of eradicating poverty.

200 Thirdly, the limitation may not be excessive: it must be necessary and proportional to the aim sought (see, to that effect, *Bosphorus*, cited at paragraph 191 above, paragraph 26, and *Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraphs 355 and 360) and the 'essential content', that is, the substance, of the right or freedom at issue must not be impaired (see, to that effect, *Nold* v *Commission*, cited at paragraph 195 above, paragraph 14, and *Kadi and Al Barakaat International Foundation* v *Council and Commission*, cited at paragraph 52 above, paragraph 355).

201 In the present case, each of these conditions is met.

202 First, the limitation on the exercise of the right to property in question must be regarded as 'provided for by law', within the meaning of Article 52(1) of the Charter of Fundamental Rights, given that the criteria laid down in Article 1(1) of Decision 2011/172 and in Article 2(1) of Regulation No 270/2011 have been complied with (see paragraphs 99 and 103 above).

203 Secondly, as noted in paragraph 44 above, Decision 2011/172 and the Annex thereto contribute to the attainment of the general interest objectives referred to in Article 21(2)(b) and (d) TEU. The same is true with regard to Regulation No 270/2011 and Annex I thereto, in so far as they reflect the provisions of Decision 2011/172.

204 Thirdly, contrary to the applicants' claims (see paragraph 187 above), the restriction on their exercise of the right to property is not disproportionate.

205 The principle of proportionality, as one of the general principles of EU law, requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81, and the judgment of 6 May 2010 in Case T-388/07 *Comune di Napoli* v *Commission*, not published in the ECR, paragraph 143).

206 The measures which the Council took on the basis of Article 1(1) of Decision 2011/172 and Article 2(1) of Regulation No 270/2011 are appropriate in order to achieve the objectives referred to in paragraph 203 above. Those measures assist effectively with establishing misappropriation of State funds to the detriment of the Egyptian authorities and make it easier for those authorities to obtain the restitution of the proceeds of such misappropriation. As is apparent from paragraphs 139 to 141 above, the documents in the file before the Court show that the first applicant was prosecuted in Egypt for conduct which could be categorised as 'misappropriation of State funds'.

207 In addition, the applicants have not proved that the Council could envisage adopting measures that are less onerous than but equally appropriate as those provided for in Decision 2011/172 and Regulation No 270/2011.

208 In the absence of a judicial decision concerning the merits of the court proceedings in Egypt, the Council could not, when Decision 2011/172 and Regulation No 270/2011 were adopted, know the nature, or itself state the quantum, of any possible misappropriation of Egyptian State funds by the first applicant. It was not therefore in a position to distinguish between, first, the assets likely to have become part of the applicants' estates following such misappropriation and, secondly, the remainder of the goods comprising their estates. In those circumstances, nothing enabled the Council to assume that the seizure of the applicants' assets by the Egyptian authorities (see paragraph 132 above) was sufficient to cover any future conviction of the first applicant.

209 Lastly, the disadvantages caused by the asset-freezing measures at issue are not disproportionate to the objectives pursued. In that regard, it must in particular be noted, first, that those measures are by nature temporary and reversible (see paragraph 79 above) and do not therefore infringe the 'essential content' of the right to property, and, secondly, that, in accordance with Article 1(3) of Decision 2011/172, they may be derogated from in order to cover 'basic needs', legal costs or even the 'extraordinary expenses' of the persons concerned.

As regards the second set of arguments

210 By the argument referred to in paragraph 188 above, set out for the first time in the reply, the applicants essentially put forward a plea of illegality for the purpose of Article 277 TFEU, to the effect that the prevention of third parties making additional economic resources available to them, pursuant to Article 1(2) of Decision 2011/172, amounts to a disproportionate interference with the right to property.

211 First, in accordance with Article 52(3) of the Charter of Fundamental Rights, Article 17(1) of that charter, which enshrines the right to property, must be interpreted in the light of the ECHR's case-law on Article 1 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to the peaceful enjoyment of 'possessions'.

212 Secondly, according to the ECHR's case-law, Article 1 of Protocol No 1 does not guarantee the right to acquire 'property'. An applicant can allege a violation of that article only in so far as the impugned decisions relate to his 'possessions' within the meaning of that provision. 'Possessions' can be either 'existing possessions' or 'assets', including claims, in respect of which the applicant can argue that he or she has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right. Where the proprietary interest is in the nature of a claim it may be regarded as an 'asset' only where it has a sufficient basis in law (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35 and 52 and the case-law cited therein, ECHR 2004–IX).

213 In the present case, it is apparent from Article 1(6) of Decision 2011/172 that Article 1(2) of that decision does not preclude the addition to frozen accounts of interest or other earnings on those accounts or prohibit payments due under contracts, agreements or obligations that were concluded or

arose prior to the date on which those accounts were frozen. Consequently, only new payments of funds by third parties which, at the date on which that decision entered into force, were not provided for by a legal act are prohibited by Article 1(2) of Decision 2011/172.

214 If, however, by claiming that that provision was unlawful, the applicants sought to argue that it prevented third parties from making payments due under legal acts predating the entry into force of the freezing of their assets, it must therefore be found that, to that extent, their plea of illegality is based on an incorrect premiss.

215 As to future payments which, when the freezing of assets entered into force, were not provided for by any legal act, the applicants are incorrect to take the view that those payments fall within the scope of Article 17(1) of the Charter of Fundamental Rights. By preventing third parties from making such payments, the Council did not deprive the applicants of any 'possession', within the meaning of the ECHR's case-law referred to in paragraph 212 above.

216 Without having to rule on whether the submission, in the reply, of the argument referred to in paragraph 188 above was out of time (see paragraph 54 above), the Court must therefore reject that argument.

217 Consequently, having also found that the fifth plea in law, alleging infringement of the rights of the defence and of the right to effective judicial protection, had to be rejected, the Court must conclude that the sixth plea in law must also be rejected in its entirety.

7. *The seventh plea in law, alleging breach of the freedom to conduct a business*

218 Under Article 16 of the Charter of Fundamental Rights, '[t]he freedom to conduct a business in accordance with Union law and national laws and practices is recognised'.

219 In the present case, the applicants allege, implicitly, a breach of that provision. In support of that plea, they state that Decision 2011/172 and Regulation No 270/2011 completely prevent them from conducting any business in the European Union.

220 It must be found that the immediate aim of those acts is not to preclude the applicants from conducting such business.

221 In those circumstances, it must be found that, by the arguments referred to in paragraph 218 above, the applicants submit that, in freezing the assets which they had within the territory of the European Union and in preventing third parties from making additional economic resources available to them within the European Union, an indirect consequence of Decision 2011/172 and Regulation No 270/2011 is to prevent them, in practice, from conducting any business in the Union.

222 Even if interpreted in that manner, the seventh plea in law cannot be upheld.

223 As has just been noted, in support of the present plea in law the applicants have not argued that the various prohibitions laid down by Decision 2011/172 and Regulation No 270/2011 prevented them from carrying out business with natural and legal persons situated in the territory of the European Union, while they are resident outside that territory.

224 They have merely alleged that those acts prevented them, in practice, from conducting any business within the European Union.

225 However, the applicants, who are all Egyptian nationals, fail even to establish that they were authorised, before Decision 2011/172 and Regulation No 270/2011 were adopted, to conduct a business in the territory of a Member State as third-country nationals.

226 Consequently, they have no grounds for claiming that Decision 2011/172 and Regulation No 270/2011 had the effect of preventing them from conducting a business in the European Union.

227 Even if the applicants intended to advance the argument referred to in paragraph 223 above, the plea in law would in any event have to have been rejected.

228 It is true that, pursuant to Article 1(2) of Decision 2011/172, third parties are prohibited from making additional economic resources available to the applicants and that that prohibition has indirectly restricted their capacity to enter a business relationship with natural or legal persons resident or having their seat within the European Union.

229 However, first, that restriction, provided for by a provision of general scope of Decision 2011/172, is, as noted in paragraph 202 above, provided for by law.

230 Secondly, that restriction responds to the same general interest objective as that pursued by the freezing of the applicants' pre-existing assets (see paragraph 203 above).

231 Thirdly, the restriction at issue is not disproportionate.

232 That prohibition is appropriate in the light of the purpose of the contested acts, which is to assist the Egyptian authorities with establishing and recovering the assets from possible misappropriation of State funds. Any change to the asset situation of the applicants stemming from legal acts after Decision 2011/172 is liable to make it more complex, if not impossible, to distinguish between, on the one hand, the assets likely to stem from misappropriation of Egyptian State funds and, on the other, the remainder of the assets making up the applicants' estates. Consequently, the fact the applicants' estates cannot be increased by payments arising from matters after Decision 2011/172 is liable to assist with the identification and restitution to the Egyptian authorities of the Egyptian State funds which may have been misappropriated to the benefit of the applicants.

233 Moreover, there are no less onerous measures than the prohibition laid down in Article 1(2) of Decision 2011/172, coupled with the asset-freeze provided for in Article 1(1) of that decision, for freezing the applicants' estates within the European Union and thereby assisting with the establishment and restitution to the Egyptian authorities of the proceeds of any misappropriation of State funds to the benefit of the applicants.

8. *The eighth plea in law, alleging a 'manifest error of assessment'*

234 The applicants allege that there has been a 'manifest error of assessment'. They put forward two arguments in support of that plea.

235 By a first argument, they submit that, by listing them in the Annex to Decision 2011/172, the Council did not comply with the criteria set out in Article 1 of that decision and thus made a 'manifest error of assessment'.

236 However, the fact remains that, although that argument is put forward in support of the present plea, it is identical to the second plea in law, alleging, in particular, the failure to comply with the criteria laid down in Article 1(1) of Decision 2011/172. It must therefore be rejected on the grounds set out in paragraphs 57 to 99 above.

237 By a second argument, the applicants submit that the Council did not apparently seek to 'assess' whether they were 'actually' 'responsible' for misappropriating Egyptian State funds. In so doing, they presuppose that it was for the Council to ascertain whether they were criminally liable for misappropriation of Egyptian State funds.

238 However, as is apparent from paragraph 67 above, such an argument is based on the incorrect premiss that only persons who have been convicted of such offences could be the subject of the freezing of assets in question.

239 The eighth plea in law can therefore only be rejected.

240 It follows from all the foregoing that the action must be dismissed.

Costs

241 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

242 Under Article 87(4) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs.

243 In the present case, since the applicants have been unsuccessful, they must be ordered to pay the costs. In addition, as an intervening institution, the Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Ahmed Abdelaziz Ezz, Ms Abla Mohammed Fawzi Ali Ahmed, Ms Khadiga Ahmed Ahmed Kamel Yassin and Ms Shahinaz Abdel Azizabdel Wahab Al Naggar to bear their own costs and, in addition, to pay the costs incurred by the Council of the European Union;**

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

Czúcz Labucka Gratsias

Delivered in open court in Luxembourg on 27 February 2014.

[Signatures]

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