Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

20 July 2017*

(Common foreign and security policy — Restrictive measures taken against certain persons and entities in view of the situation in the Central African Republic — Freezing of funds — Initial listing decision — List of persons and entities to which the freezing of funds and economic resources applies — Inclusion of the applicants' names — Implementation of a UN resolution — Obligation to state reasons — Rights of defence — Presumption of innocence — Manifest error of assessment)

In Case T-619/15,

Bureau d'achat de diamant Centrafrique (Badica), established in Bangui (Central African Republic),

Kardiam, established in Antwerp (Belgium),

represented by D. Luff and L. Defalque, lawyers,

applicants,

v

Council of the European Union, represented by M. B. Driessen and P. Mahnič Bruni, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for the annulment of Council Implementing Regulation (EU) 2015/1485 of 2 September 2015 implementing Article 17(1) of Regulation (EU) No 224/2014 concerning restrictive measures in view of the situation in the Central African Republic (OJ 2015 L 229, p. 1),

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni, President, L. Madise (Rapporteur) and K. Kowalik-Bańczyk, Judges,

Registrar: M. L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 3 April 2017,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 The applicants, namely the Bureau d'achat de diamant Centrafrique (Badica), which is a company incorporated under the laws of the Central African Republic, and Kardiam, its sister company, which is a company incorporated under the laws of Belgium, carry out purchases and sales of diamonds.

2 The Central African Republic is a developing country, part of whose resources consist in the export of diamonds and gold. In particular, diamonds represent 40% of the value of the exports of the Central African Republic.

3 In March 2013, Mr Francis Bozizé, president of the Central African Republic, was overthrown by a predominantly Muslim coalition, the Séléka. Mr Michel Djotodia, his political opponent, became president of the Central African Republic. That event triggered violence between the Séléka and groups consisting mainly of Christians and Animists, called 'anti-balaka'.

4 In order to prevent 'conflict diamonds' from fuelling armed conflicts by supplying rival groups with a source of revenue, the Kimberley Process was established, which is an international certification scheme for rough diamonds. In accordance with, in particular, Section 4(a) of the Kimberley Process, each participant must 'establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory'. 'Conflict diamonds' are defined by the Kimberley Process as 'rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council … resolutions'. A certificate is granted to diamonds satisfying the conditions set by the Kimberley Process.

5 In May 2013, the Central African Republic was temporarily suspended from the Kimberley Process certification scheme. As a result of that suspension, the export of Central African diamonds was forbidden. In July 2014, the Kimberley Process published an administrative decision to exclude Central African diamonds from lawful trade.

Measures introduced by the UN

6 On 5 December 2013, in response to the civil war in the Central African Republic, the United Nations Security Council ('the Security Council') adopted Resolution 2127 (2013) in which it expressed its 'deep concern at the continuing deterioration of the security situation in the [Central African Republic], characterised by a total breakdown in law and order, the absence of the rule of law, inter-sectarian tensions'. In paragraph 16 of that resolution, it '[c]ondemn[ed] the illegal exploitation of natural resources in the [Central African Republic] which contributes to the perpetuation of the conflict, and underline[d] the importance of bringing an end to these illegal activities, including by applying the necessary pressure on the armed groups, traffickers and all other actors involved'.

7 In that context, in Paragraph 54 of Resolution 2127 (2013), the Security Council imposed an arms embargo. In paragraph 56 of that resolution, it also expressed 'its strong intent to swiftly consider imposing targeted measures, including travel bans and asset freezes, against individuals who act to undermine the peace, stability and security, including by … supporting the illegal armed groups or criminal networks through the illicit exploitation of natural resources, including diamonds, in the [Central African Republic] …'.

8 In the context of the measures referred to in paragraph 7 above, in Paragraph 57 of Resolution 2127 (2013), the Security Council established a Sanctions Committee in relation to the Central African Republic ('the Sanctions Committee') charged with overseeing the implementation of those measures. In Paragraph 59 of that resolution, the Security Council also requested the Secretary-General of the United Nations (UN), in consultation with the Sanctions Committee, to establish, for an initial period of 13 months, a group consisting of no more than five experts ('the panel of experts') under the direction of the Sanctions Committee and responsible, inter alia, for assisting the latter in the fulfilment of its mandate by supplying it with information. Paragraph 59(c) of Resolution 2127 (2013) in particular provided that the panel of experts '[p]rovide to the [Security] Council, after discussion with the [Sanctions] Committee, an update no later than 5 March 2014, an interim report by 5 July 2014 and a final report no later than 5 November 2014'.

9 On 28 January 2014, the Security Council adopted Resolution 2134 (2014) according to which 'all Member States shall, for an initial period of one year from the date of the adoption of this resolution, freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the [Sanctions] Committee established pursuant to Paragraph 57 of resolution 2127 (2013)'. It stated that the measures provided for applied also to individuals and entities designated by the Sanctions Committee as 'providing support for armed groups or criminal networks through the illicit exploitation of natural resources, including diamonds and wildlife and wildlife products, in the [Central African Republic]'.

10 On 26 June 2014, the panel of experts, in accordance with Paragraph 59(c) of Resolution 2127 (2013), issued its activity report on the Central African Republic. It summarised the situation with respect to the trade in natural resources as follows:

'Armed groups have been involved in the illicit trade and exploitation of natural resources, namely gold and diamonds. … In the east, Séléka forces retain a tight grip on artisanal gold mines like Ndassima (Ouaka Province). State mining authorities are gradually re-establishing control in diamond-producing areas around Bria and Sam-Ouandja (Haute-Kotto Province) and resuming official trade to Bangui … The temporary suspension of the Central African Republic from the Kimberley Process Certification Scheme in May resulted in a ban on official diamond exports. Buying houses in Bangui have nevertheless continued to officially purchase and stock diamonds from all production areas, while fraudulent trade, routed either through Bangui or through neighbouring States, is on the rise … .'

11 On 28 October 2014, in accordance with Paragraph 59(c) of Resolution 2127 (2013), the panel of experts issued its final report on the Central African Republic ('the UN final report'), It summarised the situation with respect to the trade in natural resources as follows:

'Since the suspension of the Central African Republic from the Kimberley Process in May 2013, an additional 140,000 carats of diamonds, valued at USD 24 million, are estimated to have been smuggled out of the country. In May 2014, Belgian authorities seized 6 634 carats that had been sent through Kinshasa and then Dubai to a company based in Antwerp, Belgium, called Kardiam. Kardiam is the Belgian branch of the Central African diamond-trading company Badica.

The [p]anel believes that some of the diamonds seized in Belgium came from Sam-Ouandja and Bria (Haute-Kotto Province) in the east of the country, where former Séléka forces impose taxes on aircraft transporting diamonds and receive security payments from diamond collectors …

An estimated two tons of gold is trafficked each year from the Central African Republic, mainly through Cameroon. This illicit trade involves collectors from Yaloké (Ombella-Mpoko Province) and Boda (Lobaye Province) who fled to Cameroon as a consequence of attacks based on religion committed by anti-balaka groups starting in January 2014, which resulted in the takeover of artisanal gold mines in the vicinity of Yaloké … .'

12 On 22 January 2015, the Security Council adopted Resolution 2196 (2015) in which it, in particular, extended the fund-freezing measures established by Resolution 2134 (2014). It stated, in Paragraph 7 of that resolution, that 'all Member States shall, through 29 January 2016, continue to freeze … all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them'. It stated in Paragraph 12(d) of that resolution, that 'the measures contained in paragraph … 7 shall also apply to the individuals and entities designated by the Committee as providing support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold, wildlife as well as wildlife products in or from the [Central African Republic]'.

13 On 11 March 2015, the applicants addressed a 'counter report' ('the counter report') to the President and Members of the Security Council designed to shed 'a different light on the allegations made against Badica and Kardiam [and to] correct the inadequacies and inaccuracies [of the UN final report]' as well as to obtain a correction from the panel of experts of the facts alleged in the UN final report.

14 On 8 and 27 April and 2 June 2015, the applicants wrote to the Sanctions Committee to draw attention to irregularities in the investigation conducted by the panel of experts. In their email of 27 April 2015, they, moreover, requested access to the file.

15 On 28 April 2015, the coordinator of the panel of experts ('the coordinator') indicated to the Sanctions Committee, by email, that the investigation had been properly conducted, in accordance with UN rules and that the applicants' rights of defence had been respected. He noted, in that regard, that the panel of experts had heard the applicants, despite the latter's reluctance.

16 On 20 August 2015, in accordance with Paragraph 59(d) of Resolution 2127 (2013), the Sanctions Committee published on the UN website a 'narrative summary of reasons for the listing for individuals and entities included in the sanctions list' ('the summary of the Sanction Committee's reasons'), including those relating to the applicants. The summary of the Sanction Committee's reasons is worded as follows:

'Reasons for listing:

On 20 August 2015, pursuant to [paragraph 12(d)] of Resolution 2196 (2015), [Badica and Kardiam] were included on the list of persons and entities 'providing support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold, wildlife as well as wildlife products in or from the [Central African Republic]'.

Additional information:

[Badica and Kardiam] provided support for armed groups in the Central African Republic, namely former Séléka and anti-Balaka forces, through the illicit exploitation and trade of natural resources, in particular diamonds and gold.

In 2014, [Badica] continued to purchase diamonds from Bria and Sam-Ouandja (Haute Kotto province) in the east of the Central African Republic, where former Séléka forces impose taxes on aircraft transporting diamonds and receive security payments from diamond collectors. Several of [Badica]'s supplying collectors in Bria and Sam-Ouandja are closely associated with former Séléka commanders.

In May 2014, Belgian authorities seized two diamond parcels sent to [Badica's] office in Antwerp, which is registered in Belgium under the name of K[ardiam]. According to the experts, there is a high probability that the diamonds seized are of Central African origin since they display characteristics typical of Sam-Ouandja and Bria, as well as Nola (Sangha Mbaéré province), in the south-west of the country.

Traders who were purchasing diamonds illegally trafficked from Central African Republic to foreign markets, in particular from the western part of the country, were operating in Cameroon on behalf of [Badica].

In May 2014, B[adica] also exported gold produced in Yaloké (Ombella-Mpoko), where artisanal gold mines fell under control of Séléka until the beginning of February 2014, before falling into the hands of anti-Balaka groups.'

17 On 24 August 2015, the applicants acknowledged, by email sent to the Sanctions Committee, their inclusion on the list of sanctions provided for by Resolution 2196 (2015). While pointing out their 'serious concerns' having regard to the legality of the investigation carried out by the panel of experts, they, in particular, repeated their request for access to the file.

18 On 23 September 2015, the applicants noted that, following the meeting of that day with the Secretary of the Sanctions Committee, their request for access to the file was refused, due to the 'diplomatic' nature of the process leading to the imposition of sanctions.

19 On 16 October 2015, the coordinator requested information from the applicants concerning their activities in the Central African Republic since the adoption of UN Security Council resolution 2196 (2015) and, in particular, concerning the payments made by Badica to former Séléka forces in Bria (Central African Republic) and Sam-Ouandja (Central African Republic) so as to guarantee the security of its collectors and concerning the knowledge that the directors of Badica had of those payments and of taxes paid to former Séléka forces by the collectors and artisanal miners who supply diamonds to Badica.

20 On 23 October 2015, the applicants replied to the coordinator's questions. They also expressed a number of complaints relating to the investigation led by the panel of experts. In particular, they claimed that the panel of experts should have granted access to the evidence on which its conclusions are based, that it had not heard Badica officials and that it relied on rumours of anonymous witnesses. The applicants also pointed out that the panel of experts had investigated accompanied by unknown third persons and that they had solely carried out an incriminating investigation.

21 On 7 December 2015, the coordinator replied to the applicants' email of 23 October 2015. After taking note of the fact that the applicants wished to obtain from the panel of experts additional evidence to that presented in the UN final report, it, in particular, stated that certain specific evidence relating to the counter report would be included in the next report of the panel of experts whose publication was scheduled before 31 December 2015.

22 By letter of 21 December 2015, the panel of experts issued a new report on the Central African Republic ('the UN report of 21 December 2015') in which it confirmed the conclusions of the UN final report (see paragraph 11 above).

23 By letter of 2 March 2016 to the Sanctions Committee, the applicants expressed observations concerning the UN report of 21 December 2015.

Measures imposed by the European Union

24 For the purposes of implementing Security Council resolutions 2134 (2014) and 2196 (2015), the Council of the European Union introduced restrictive measures against the Central African Republic by adopting, in particular, Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic (OJ 2014 L 70, p. 1), as amended by Council Regulation (EU) 2015/734 of 7 May 2015 (OJ 2015 L 117, p. 11) ('the Basic Regulation').

25 Article 5 of the Basic Regulation provides:

'(1) All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body listed in Annex I shall be frozen.

(2) No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of any natural or legal person, entity or body listed in Annex I.

(3) Annex I shall include natural or legal persons, entities and bodies identified by the Sanctions Committee as engaging in or providing support for acts that undermine the peace, stability or security of the Central African Republic, including acts that threaten or violate transitional agreements, or that threaten or impede the political transition process, including a transition towards free and fair democratic elections, or that fuel violence:

…

(d) providing support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold and wildlife, as well as wildlife products, in or from the Central African Republic;

… .'

26 Article 17 of the Basic Regulation provides:

'(1) Where the … Security Council or the Sanctions Committee lists a natural or legal person, entity or body and has provided a statement of reasons for the designation, the Council shall include that natural or legal person, entity or body in Annex I. The Council shall communicate its decision and the statement of reasons to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing that natural or legal person, entity or body an opportunity to present observations.

(2) Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person, entity or body accordingly.

(3) Where the United Nations decides to de-list a person, entity or body, or to amend the identifying data of a listed person, entity or body, the Council shall amend Annex I accordingly.'

27 On 2 September 2015, the Council adopted, first, Council Implementing Decision (CFSP) 2015/1488 implementing Decision 2013/798/CFSP concerning restrictive measures against the Central African Republic (OJ 2015 L 229, p. 12) and, secondly, Council Implementing Regulation (EU) 2015/1485 implementing Article 17(1) of the Basic Regulation (OJ 2015 L 229, p. 1) ('the contested act').

28 Article 1 of the contested act states that the 'persons and entity listed in the Annex to this Regulation shall be added to the list set out in Annex I to [the Basic Regulation]'.

29 Point B.1 of the list in the annex to the contested act adds the applicants to the list annexed to the Basic Regulation. The statement of reasons in that point reproduces, in developments entitled 'Information from the narrative summary of reasons for listing provided by the Sanctions Committee' and 'Additional information', the reasons for the listing relied on by the Sanctions Committee (see paragraph 16 above). It is pointed out, in that regard, in the first development referred to above, that, '[Badica and Kardiam] were listed on 20 August 2015, pursuant to paragraphs … 12(d) of Resolution 2196 (2015) as "providing support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold, and wildlife as well as wildlife products, in the [Central African Republic]"'.

30 On 2 October 2015, the applicants informed the Council, by email, that they had received no notification of the contested act, although their addresses were known. Moreover, they contested the UN final report and the resulting sanctions and applied to the Council for disclosure of documentation supporting that report.

31 On 16 December 2015, the Council replied to the applicants' letter of 2 October 2015. It stated that the request for access to elements in the file had been communicated to the President of the Sanctions Committee and enclosed the latter's response, dated 8 October 2015. In his response, the President of the Sanctions Committee stated that the counter report had been sent to the members of the Sanctions Committee. He also referred, in respect of the information requested by the applicants on their designation, to the UN final report and to the summary of the Sanction Committee's reasons.

Procedure and forms of order sought

32 By an Application lodged at Registry of the General Court on 6 November 2015, the applicants brought the present action.

33 The applicants claim that the Court should:

– annul the contested act in so far as it concerns them;

– order the Council to pay the costs.

34 The Council contends that the Court should:

– dismiss the application;

– order the applicants to pay the costs.

Law

35 In the application, the applicants invoke three pleas in law, alleging, firstly, infringement of the rights of the defence, of the right to a fair hearing and to effective judicial protection, secondly, an error of assessment of the facts and, thirdly, a failure to examine the circumstances of the case on the part of the Council. In the reply, the applicants invoke a new plea in law alleging an infringement of the obligation to state reasons.

36 It is necessary to examine, first of all, the new plea in law alleging an infringement of the obligation to state reasons, next, the plea alleging infringement of the rights of the defence, of the right to a fair hearing and to effective judicial protection, then the plea alleging an error of assessment of the facts and, finally, the plea alleging a failure to examine the circumstances of the case by the Council.

The plea alleging infringement of the obligation to state reasons

37 The applicants claim that the Council justifies the lawfulness of the contested act by the submission, annexed to the defence, of matters of fact and of law postdating the contested act, namely the report drafted by Amnesty International on 30 September 2015, the panel of experts' reply to the applicants of 7 December 2015 and the UN report of 21 December 2015.

38 According to the applicants, the legality of an act adopted by an EU institution must be assessed on the basis of the matters of fact and law existing at the time when the act was adopted. That position is consistent in the case-law of the Court of Justice. The applicants claim, in that regard, that the statement of reasons must be included in the act itself and that it is not enough, in order to comply, that it can be derived from matters in the file and still less when those matters are subsequent to the adoption of the act.

39 Consequently, by justifying the contested act by means of matters of fact and law subsequent to the adoption thereof and which came to light in the course of the procedure, the Council infringed its formal obligation to state reasons.

40 The applicants point out that that plea, despite being new, may be raised in so far as, under Article 84(1) of the Rules of Procedure of the General Court, new pleas may be introduced where they are based on matters of fact and law which came to light in the course of the procedure, which is the situation in the present case.

41 The Council disputes those arguments.

42 It should be noted at the outset that it has consistently been held that an absence of or an inadequate statement of reasons constitutes an infringement of essential procedural requirements for the purposes of Article 263 TFEU and is a plea involving a matter of public policy which may, and even must, be raised by the EU Courts of their own motion (see judgment of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 34 and the case-law cited).

43 In those circumstances, the Court has jurisdiction to hear the applicants' plea alleging infringement of the obligation to state reasons, without it being necessary to examine whether, in accordance with Article 84(1) of the Rules of Procedure, that plea is based on 'matters of law or of fact which came to light in the course of the procedure'.

44 In the present case, the applicants claim, in essence, that, by justifying the contested act in the defence by matters of fact and law subsequent to the drafting of that act, the Council infringed the obligation to state reasons.

45 However, firstly, the applicants in no way contest the sufficiency of the statement of reasons as it is included in the contested act.

46 Secondly, as the applicants themselves note (see paragraph 38 above), in an action for annulment under Article 263 TFEU, the legality of an EU measure must be assessed on the basis of the elements of fact and of law existing at the time when the measure was adopted (see judgment of 15 June 2005, *Corsica Ferries France* v *Commission*, T-349/03, EU:T:2005:221, paragraph 142 and the case-law cited). It follows that, even assuming that the Council tried, in the course of the present judicial proceedings, to provide additional reasons for the contested act, that fact cannot, in itself, undermine the legality of that measure, in so far as that measure is not capable of establishing that the reasons included in the contested act at the time of its adoption were insufficient (see, to that effect, judgment of 15 June 2005, *Corsica Ferries France* v *Commission*, T-349/03, EU:T:2005:221, paragraph 287 and the case-law cited).

47 In those circumstances, the argument alleging that the Council introduced, at the stage of the defence, matters of fact and law subsequent to the contested act must be rejected as ineffective, in so far as it seeks to establish an infringement of the obligation to state reasons, without prejudice to admissibility of those matters in the context of the examination of the merits of the contested act.

48 Consequently, the plea alleging a failure to state reasons must be rejected.

The first plea in law, alleging infringement of the rights of the defence, of the right to a fair hearing and to effective judicial protection

49 The first plea in law is divided into two parts, the first alleging, in essence, the absence of individual notification to the applicants of the contested act and, the second, the 'absence of communication of evidence, of access to the file and infringement of the principle of an adversarial process and of transparency'.

The first part of the first plea in law, alleging the absence of individual notification to the applicants of the contested act

50 In the first part of the first plea in law, the applicants claim an infringement of Article 17(1) of the Basic Regulation, in so far as the contested act was not notified to them by the Council although their addresses were known to the latter.

51 However, it must be declared that the applicants' arguments are unfounded.

52 Firstly, while it is true that an act adopting or maintaining restrictive measures against a person or entity must be notified to that person or entity and it is that notification which starts time running for the purpose of the bringing of an action, by the person or entity concerned, for annulment of the act in question pursuant to the fourth paragraph of Article 263 TFEU, that does not mean that the absence of such notification justifies, by itself, the annulment of the act in question (judgment of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 112).

53 In that regard, as the Council points out, the applicants do not put forward any arguments that would demonstrate that, in the present case, the absence of individual communication of the contested act resulted in an infringement of their rights which would justify the annulment of the latter in so far as it concerns them (see, to that effect, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 122 and the case-law cited).

54 Secondly, the existence of such an infringement is also not apparent from the evidence in the file, given, first of all, that the reasons stated in regard to the applicants in the contested act are identical to those in the Sanctions Committee's summary of reasons, of which they were aware, next, that they were able to bring an action for annulment of the contested act and, finally, that they were able to learn of the contested act from another source and to attach a copy of it to their application (see, to that effect, judgment of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 113).

55 In those circumstances, the first part of the first plea must be rejected.

The second part of the first plea in law, alleging the 'absence of communication of evidence, of access to the file and infringement of the principle of an adversarial process and of transparency'

56 In the first place, the applicants claim that they were subject to international and European sanctions without having access to the file, without their counter report being taken into account by the UN and without receiving any response from the UN.

57 Firstly, the applicants state, in essence, that they were not able to have access to the file either before the UN or before the Council, in breach of the judgement of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 281 to 285). The applicants note, in that regard, that access to the file is a fundamental requirement of EU law allowing respect of the rights of the defence to be ensured.

58 Secondly, the applicants claim that the panel of experts failed to produce a new report in response to the counter report and did not conduct a further investigation, despite the proposals for cooperation which they had made in writing. In the counter report, the applicants had pointed out that the UN final report was not based on an in-depth inquiry into the facts and had not been drawn up in accordance with the general principles of international law, the rules proposed by the UN in their 'own report of 2006' and the core principles set out by the experts themselves in the introduction to the UN final report.

59 Thirdly, the applicants maintain that the UN final report, in so far as it concerns them, was made solely against them, in contravention of Article 14(3)(e) of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966, and of the key principles of the rights of the defence. The applicants add that Badica did not benefit from any right of reply at the stage of the draft report and that statements favourable to Badica were not mentioned in the UN final report. Finally, they state that after the adoption of sanctions, the coordinator of the panel of experts requested Badica to provide it with negative evidence, in a language other than its own, without a copy being sent to its advisors and within five working days.

60 In the second place, the applicants claim that the panel of experts' investigation derives from criminal proceedings brought in Antwerp (Belgium) against Kardiam, following the seizure of two diamond parcels suspected to have come from the Central African Republic. Since that investigation was still ongoing, Kardiam was not able to access the file and enjoys a presumption of innocence. The applicants state, in that regard, in the reply that, in the judgment of 2 September 2009, *El Morabit* v *Council* (T-37/07 and T-323/07, not published, EU:T:2009:296, paragraph 48), the decision to freeze funds had been adopted by the Council by relying on a conviction by a national court. In the present case, there has as yet been no conviction in Belgium, so that the measure infringes the principle of the presumption of innocence.

61 In the third place, the applicants claim that, while the Council acknowledged that it was not in possession of any documents from the Sanction Committee's file, it could not consider that it is in a situation of circumscribed powers and that it must implement automatically 'the UN resolutions', in disregard of the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), without having first verified the accuracy of the facts and circumstances justifying those resolutions and their respect for fundamental rights – in particular, the right of access to the file and the right to be heard. The applicants complain that the Council, in that regard, did not produce any information or evidence going beyond the reasons that the Sanctions Committee published on 20 August 2015, in its summary of reasons, and that it transposed the sanctions automatically.

62 The Council disputes those arguments.

63 In the first place, it is necessary to respond to the applicants' arguments alleging an infringement of the right of access to the file, an infringement of the principle of an adversarial process by the UN and an investigation into the panel of experts in the context of the drawing up of the UN final report.

64 In that regard, in so far as the applicants invoke an infringement of those fundamental rights by the UN, it is apparent from the judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 326), that the Courts of the European Union must, in accordance with the powers conferred on them by the Treaties, ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the European Union legal order, including review of such measures as are designed to give effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations.

65 However, it does not follow from that that the Courts of the European Union have jurisdiction to review acts adopted by the Security Council per se or whether the investigations conducted by the UN bodies comply with fundamental rights.

66 It follows from Article 263(1) TFEU and from Article 275(2) TFEU, that, while the EU judicature has jurisdiction to review the legality of the acts of the EU institutions and, in particular, the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council, it has no such jurisdiction to review the international agreement on which such EU measures are based.

67 In that regard, it must be emphasised that, in circumstances such as those of these cases, the review of lawfulness thus to be ensured by the EU Courts applies to the Union act intended to give effect to the international agreement at issue, and not to the latter as such. With more particular regard to a Union act which, like the contested act, is intended to give effect to a Security Council resolution, it is not, therefore, for the EU Courts to review the lawfulness of such a resolution adopted by an international body (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 286 and 287), or the enquiry underlying it.

68 In those circumstances, in so far as they contest the lawfulness of UN acts in the light of the fundamental rights set out in paragraph 63 above, the applicants' arguments must be rejected as having been brought before a court that has no jurisdiction to hear them.

69 In the second place, it is necessary to respond to the applicants' arguments alleging an infringement of the right of access to the file and an infringement of the principle of presumption of innocence in so far as those arguments are directed against the Council as the author of the contested act.

70 As regards, first, the applicants' argument alleging that the Council, despite their requests, did not give them access to the UN file, it should be noted that, as in the present case, the fact that the competent European Union authority does not make accessible to the person concerned information or evidence which is in the sole possession of the Sanctions Committee or the Member of the UN concerned, and which relates to the summary of reasons underpinning the decision at issue, cannot, as such, justify a finding that the rights of the defence and the right to effective judicial protection have been infringed (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 137 and 139).

71 As regards, secondly, the alleged infringement of the presumption of innocence by the Council, it should be noted that that principle, set out in Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and in Article 48(1) of the Charter of Fundamental Rights of the European Union, which requires that any person charged with a criminal offence is to be presumed innocent until proved guilty according to law, does not preclude the adoption of precautionary measures for the freezing of funds, provided that

they are not intended to commence criminal proceedings against the person concerned (judgments of 13 September 2013, *Anbouba* v *Council*, T-592/11, not published, EU:T:2013:427, paragraph 40, and of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 69).

72 Such measures must however, in light of their seriousness, be laid down by law, be adopted by a competent authority and be limited in time (judgments of 2 September 2009, *El Morabit* v *Council*, T-37/07 and T-323/07, not published, EU:T:2009:296, paragraph 40; of 13 September 2013, *Anbouba* v *Council*, T-592/11, not published, EU:T:2013:427, paragraph 40, and of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 69).

73 Firstly, the restrictive measures at issue, even if prescriptive, are not intended to commence criminal proceedings seeking to establish the applicants' guilt. The argument alleging that the measures at issue derive from ongoing criminal proceedings initiated in Antwerp against Kardiam, cannot, therefore, succeed.

74 Secondly, it must be noted that the measures at issue are provided for by EU legislation and that the Council was competent to adopt them, which is, moreover, not contested by the applicants.

75 Thirdly, it should finally be noted that, although, as the Council confirmed following a measure of organisation of procedure, the contested act does not include an expiry date of the listing as regards the EU, in the present case, the measure at issue is not definitive. The Council is required to revise it at any time at EU level, either pursuant to Article 17(2) of the Basic Regulation, '[w]here observations are submitted, or where substantial new evidence is presented', or pursuant to Article 17(3) of the Basic Regulation, '[w]here the United Nations decides to de-list [the] person … or to amend the identifying data of [that] person … .' In that regard, in Paragraph 61 of Resolution 2127 (2013), the Security Council affirmed that it 'shall keep the situation in the [Central African Republic] under continuous review and that it shall be prepared to review the appropriateness of the measures contained in this resolution, including the … suspension or lifting of the measures, as may be needed at any time in light of the progress achieved in the stabilisation of the country and compliance with this resolution'.

76 Therefore, in the present case, in the light of the above, the infringement of the principle of presumption of innocence cannot be established.

77 In the third place, it is necessary to respond to the applicants' argument that, in essence, the Council transposed the UN resolution which was the basis for their listing in a way which was 'almost mechanistic' without checking the accuracy of the facts and circumstances underlying the listing measure and compliance, by that measure, with fundamental rights, in the context of the panel of experts' investigation.

78 As regards the applicants' argument, it should be noted, first of all, that the legal nature of the restrictive measures is an important aspect which defines the scope of the reassessment which the Council may carry out of the evidence accepted in the present case by the UN Sanctions Committee. In principle, it is consistently accepted by the case-law that an asset freeze, imposed by the Council on the basis of the powers conferred on it by Articles 21 TEU and 29 TEU, has no criminal-law aspect. Contrary to what the applicants suggest, it cannot therefore be treated in the same way as a decision to freeze assets that has been taken by a national judicial authority of a Member State in the relevant criminal proceedings, respecting the safeguards provided by those proceedings (see judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 64 and the case-law cited).

79 In that regard, it should be noted that, in proceedings relating to the adoption of the decision to list or maintain the listing of the name of an individual, where, beforehand, under the relevant Security Council resolutions, the Sanctions Committee has decided to list the name of that person on its own

list, respect for the rights of the defence and the right to effective judicial protection requires that the competent Union authority disclose to the individual concerned the evidence against that person available to that authority and relied on as the basis of its decision, that is to say, at the very least, the summary of reasons provided by the Sanctions Committee, so that that individual is in a position to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in bringing an action before the EU Courts (see judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 111 and the case-law cited).

80 When that disclosure takes place, the competent Union authority must ensure that that individual is placed in a position in which he may effectively make known his views on the grounds advanced against him (see judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 112 and the case-law cited).

81 However, in the context of an initial listing, contrary to the position in respect of the procedure for maintaining the name of a person on the list, compliance with that dual procedural obligation must not precede the adoption of the decision (see, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 113 and the case-law cited).

82 In the present case, it must be noted, in that regard, that Article 17 of the Basic Regulation distinguishes the procedure for adopting the initial listing act from the procedure for reviewing that act.

83 In the first case, it is provided that, '[w]here the … Security Council or the Sanctions Committee lists a natural or legal person, entity or body, and has provided a statement of reasons for the designation, the Council shall include that natural or legal person, entity or body in Annex I' and that '[t]he Council shall communicate its decision and the statement of reasons to the natural or legal person, entity or body concerned … providing that natural or legal person, entity or body with an opportunity to present observations' (Article 17(1) of the Basic Regulation).

84 In that regard, it follows from Article 5(3) of the Basic Regulation that the listing took place 'on the basis of the Sanction Committee's findings'.

85 In the second case, it is provided that, '[w]here observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body concerned accordingly'.

86 It should be noted that, in accordance with settled case-law, the Council must take its decision 'on the basis of the statement of reasons provided by the Sanctions Committee'. There is no provision for that committee automatically to make available to the competent European Union authority, for the purposes of the adoption by that committee of its decision, any material other than that statement of reasons (judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 107, and of 13 December 2016, *Al-Ghabra* v *Commission*, T-248/13, EU:T:2016:721, paragraph 73).

87 It follows that, in the present case, contrary to what is claimed by the applicants, as is apparent from Article 17(1) of the Basic Regulation, the Council was not bound, in the context of the implementation of the Security Council resolution, to verify 'the accuracy of the facts and circumstances' underlying the listing measure taken against the applicants.

88 It is when comments are made by the individual concerned on the summary of reasons that the competent European Union authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory

evidence provided with those comments (see judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 114 and the case-law cited), namely, in the present case, on the basis of Article 17(2) of the Basic Regulation, which provides that '[w]here observations are submitted …, the Council shall review its decision … .'

89 In those circumstances, the Council cannot be criticised, in the present case, for having failed to obtain from the Sanctions Committee information or evidence in support of the allegations made against the applicants and for having, therefore, according to the applicants, 'quasi mechanically transposed' that listing measure, without examining the facts and circumstances underlying it (see, to that effect, judgment of 13 December 2016, *Al-Ghabra* v *Commission*, T-248/13, EU:T:2016:721, paragraph 76).

90 The Council can also not be criticised for having 'transposed' the Security Council decision without verifying that that resolution takes the respect of fundamental rights into account. As follows, firstly, from Article 17(1) of the Basic Regulation, read in the light of Article 5(3) of that regulation and, secondly, from the case-law referred to in paragraph 86 above, the Council takes the decision 'on the basis of the statement of reasons provided by the Sanctions Committee'.

91 In the light of all the foregoing, the first plea must be rejected.

The second plea in law, alleging a manifest error of assessment

92 In essence, the applicants assert that the Council's findings in the reasons which were communicated to them are inaccurate or, in any event, insufficiently substantiated to establish support for armed groups through the illicit exploitation or trade of natural resources in the Central African Republic.

93 It should be noted that amongst the circumstances set out in point B.1 of the annex to the contested act, under the section 'Additional information', justifying the listing measure decided by the Council, are the following five reasons:

'[Badica and Kardiam] provided support for armed groups in the Central African Republic, namely former Séléka and anti-Balaka forces, through the illicit exploitation and trade of natural resources, in particular diamonds and gold.

In 2014, [Badica] continued to purchase diamonds from Bria and Sam-Ouandja (Haute Kotto province) in the east of the Central African Republic, where former Séléka forces impose taxes on aircraft transporting diamonds and receive security payments from diamond collectors. Several of B[adica]'s supplying collectors in Bria and Sam-Ouandja are closely associated with former Séléka commanders.

In May 2014, the Belgian authorities seized two diamond parcels sent to B[adica]'s representation in Antwerp, which is registered in Belgium under the name of K[ardiam]. According to the experts, there is a high probability that the diamonds seized are of Central African origin since they display characteristics typical of Sam-Ouandja and Bria, as well as Nola (Sangha Mbaéré province), in the south west of the country.

Traders who were purchasing diamonds illegally trafficked from Central African Republic to foreign markets, in particular from the western part of the country, were operating in Cameroon on behalf of B[adica].

In May 2014, B[adica] also exported gold produced in Yaloké (Ombella-Mpoko), where artisanal gold mines fell under control of Séléka until the beginning of February 2014, before falling into the hands of anti-Balaka groups.'

94 First of all, it should be noted, that the Council was entitled to rely on the UN final report to support the reasons communicated to the applicants. The fact that the applicants contested the allegations in that report does in itself allow the conclusion that the Council could not refer to it (judgment of 14 January 2015, *Gossio* v *Council*, T-406/13, not published, EU:T:2015:7, paragraph 72). Moreover, the applicants' claims do not prevent the General Court from relying on the UN final report.

95 In accordance with the panel of experts' commitment set out in paragraph 7 of the UN final report, the applicants had access to the main evidence supporting the contested act and, in particular, to the report and the annexes thereto, since that report is, moreover, public. In addition, it is apparent from the UN final report and from the coordinator's email of 28 April 2015 that the applicants were heard on at least two occasions by the panel of experts, namely in April 2014 and in January 2015, and that they did not respond to the request for an interview made in June 2014 by that group. Finally, it is apparent from paragraphs 5 to 8 of that report that the panel of experts relied on a rigorous methodology, predefined by the competent UN body and which respects the rights of the defence.

96 The judicial review of the lawfulness of the decision in question extends to the assessment of the facts and circumstances relied on as justifying the decision to freeze funds, and to the evidence and information on which that assessment is based (judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 37).

97 Consequently, the Council's discretion in the area does not preclude the Courts of the European Union from determining, as part of the review of lawfulness, the accuracy of the evidence relied upon by the Council. The effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights requires in particular that the Courts of the European Union are to ensure that a decision which affects the person or entity concerned individually is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119; see, also, judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 45 and the case-law cited).

98 Therefore, having regard to the preventive nature of the restrictive measures at issue, if, in the course of its review of the lawfulness of the contested decision, the Courts of the European Union consider that, at the very least, one of the reasons mentioned in the summary provided by the Sanctions Committee is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself a sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 130).

99 Such an assessment must be carried out by examining the evidence and information not in isolation but in its context. The Council discharges the burden of proof borne by it if it presents to the EU Courts a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the entity subject to a measure freezing its funds and the regime or, in general, the situations, being combated (see judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraphs 51 and 53 and the case-law cited).

100 It is in the light of the case-law referred to in paragraph 99 above that it is necessary to examine the arguments invoked by the applicants regarding the reasons noted in paragraph 93 above.

101 In the first place, the applicants contest the unlawful nature of the purchases referred to by the second reason, in particular, where the diamonds at issue were not exported.

102 However, as is apparent from paragraph 99 above, the assessment of information must take place not in isolation, but in its context.

103 The second reason which describes, at the very least, 'support' for armed groups, must be read, in particular, with the third and fourth reasons which describe an illegal diamond trade. That is all the more the case as the UN final report expressly makes a connection between, on the one hand, the purchase of diamonds in Bria and Sam-Ouandja by the applicants (second reason) and, on the other hand, the seizure of diamonds sent to the applicants in Antwerp, probably originating in those areas (third reason).

104 Therefore, the UN final report states, in Paragraph 127, that '[t]he [p]anel believes that diamonds illegally traded from Bria and Sam-Ouandja, areas under former Séléka control, by or on behalf of Badica have ended up in the shipments seized in Antwerp'.

105 That connection is, moreover, clearly expressed in the summary of the UN final report, where it is stated that '[t]he [p]anel believes that some of the diamonds seized in Belgium came from Sam-Ouandja and Bria (Haute-Kotto Province) in the east of the country, where former Séléka forces impose taxes on aircraft transporting diamonds and receive security payments from diamond collectors ...'. Moreover, the applicants do not dispute that connection in their pleadings.

106 It follows that the applicants' argument alleging that the purchases were not unlawful must be rejected. It is apparent from the above that the diamonds referred to in the second plea in law were indeed exported and, therefore, were subject to illegal exploitation, in so far as, in accordance with the Kimberley Process, all exports of diamonds were forbidden at the time at issue.

107 In that regard, the small number of purchases invoked and the alleged need to raise advances paid to security collectors and to maintain the network of the latter, have no relevance to, first, the existence of support to armed groups and, secondly, the illegal nature of the trade at issue.

108 Moreover, it should be noted that the fact noted in the second reason that, '[i]n 2014, [Badica] continued to purchase diamonds' in the areas of Bria and Sam-Ouandja, even assuming it is interpreted in isolation, is also likely to reflect illicit trade, even though the Kimberley Process covers, in principle, only exports of diamonds. As the Council points out, the applicants do not put forward any arguments regarding the claim in paragraph 60 of the panel of experts' activity report of 1 July 2014, according to which:

'In March, … Badica … had 760 carats in stock. Badica's managing director told the [p]anel that the company had stopped purchases owing to the suspension from the Kimberley Process Certification Scheme … . However, a second stock-taking exercise at Badica in April 2014 found that the company had purchased another 1 698 carats, valued at USD 292 917, from Bria and Sam-Ouandja. The diamond parcels that Badica had in stock had not yet been sealed and dated by the responsible mining authorities, as required by a road map that the Central African authorities had put forward in June 2013 to reintegrate the Central African Republic into the Kimberley Process.'

109 Moreover, in the context of the second reason, according to which the former Séléka authorities receive security payments from diamond collectors, the applicants claim, in essence, that they are not responsible for the support provided to the former Séléka by the making of those payments. They point out, in that regard, that the collectors and artisanal miners behind the security payments made to the former Séléka are, in accordance with the Central African mining code, independent. Consequently, Badica could not be held responsible for the behaviour of the collectors, about which, moreover, it had no information. The second reason is therefore insufficient, in itself, in order to characterise support to armed forces.

110 However, it must be noted that the applicants do not contest either the purchase of diamonds from collectors, who themselves obtain supplies from artisanal miners, or the payment of taxes by those intermediaries in the diamond trade to former Séléka elements. In those circumstances, it must be held that, in the light of the above, by continuing to purchase diamonds from collectors during the period at issue, which they do not deny, the applicants necessarily gave support to armed groups.

111 In that regard, the absence of direct security payments to former Séléka forces made by the applicants, even if established, has no relevance to the existence of support for those forces. The summary of reasons merely refers, in general, to support and not to direct support.

112 Moreover, it cannot be excluded that at least part of the taxes paid to the former Séléka forces by the intermediaries in the diamond trade was reflected in the final price paid by the applicants, while conducting their diamond purchasing activities.

113 Finally, it must be noted that, having regard to the circumstances at issue, characterised by, first, the outbreak of civil war in the Central African Republic and, secondly, the corresponding suspension of the Central African Republic from the Kimberley Process, the applicants could not fail to be aware of the collection of taxes by the armed forces which are in conflict in the mines under their control.

114 In those circumstances, the argument alleging that the applicants were unaware of the payment of those taxes by the intermediaries in the diamond trade must be rejected as unfounded.

115 Moreover, in so far as the applicants consider that the evidence relied upon by the second reason to establish support to armed groups, by the making of security payments, first, and by the payment of landing taxes, secondly, is insufficiently substantiated, it must be concluded that that claim is unfounded.

116 First of all, the applicants are wrong to plead that the landing taxes paid by Minair, a sister company of Badica, are modest, and that the fact that those taxes were paid by all the undertakings chartering flights in the regions at issue. First, it is apparent from paragraph 123 of the UN final report that the amount of those taxes was, for each landing, between USD 75 in Bria and USD 100 in Sam-Ouandja. Regardless of the fact that the payment of those taxes amounts, in any event, to support for armed forces, such taxes cannot be considered negligible in the dramatic economic context of the Central African Republic at the time of the civil war. Secondly, the fact that those taxes were paid by all the operators, also, does not alter the fact that the payment of those taxes amounted to support for armed forces.

117 Next, it must be noted that, contrary to what is claimed by the applicants, the panel of experts did not investigate the complaint alleging the payment of landing taxes and security payments to former Séléka factions two months after their listing by the Sanctions Committee. It is apparent from footnotes No 90 and 91 to the UN final report that that complaint is based on interviews carried out in July and September 2014, that is to say almost one year prior to the listing of the applicants.

118 Finally, contrary to what is claimed by the applicants, the accusations concerning support for former Séléka forces through security payments and the payment of landing taxes are supported by the evidence.

119 First, as regards the security payments, it is apparent from paragraph 124 of the UN final report, which is based on two concurring declarations by a collector in Sam-Ouandja of 4 September 2014 and by a commander of the specific anti-fraud unit in Bangui (Central African Republic) of 21 July 2014, that '[c]ollectors (intermediary diamond traders) in Sam-Ouandja … provide daily allowances to former Séléka soldiers guarding their premises', that, '[i]n May 2014, the [p]anel observed former Séléka soldiers in Bria guarding the premises of principal collectors and businessmen' and that '[a]

commander of the Special Anti-Fraud Unit confirmed that former Séléka forces in Sam-Ouandja benefit from the diamond trade through their security arrangements with collectors'. The Council's findings concerning security payments are therefore sufficiently substantiated.

120 Secondly, as regards the payment of landing taxes, Badica claims that it did not make such payments to former Séléka forces, since those taxes were paid to airport 'authorities', and that Minair is 'distinct from Badica', so that the latter could not be held responsible for the former's behaviour.

121 However, firstly, it is apparent from the UN final report that the landing taxes were imposed by the former Séléka forces and not by the airport 'authorities'. In that regard, paragraph 123 of the UN final report, which is based on an interview with a collector in Sam-Ouandja of 4 September 2014 and an interview with the manager of Bangui airport of 21 July 2014, states the following:

'[P]rior to the arrival of international forces in April 2014 in Bria, former Séléka forces had levied USD 75 in landing taxes at the Bria airstrip … . In Sam-Ouandja, where rough diamond production has, according to satellite imagery, been rapidly increasing in recent months …, no international forces are present. Former Séléka forces under zone commander Beya Djouma levy USD 100 in aircraft landing taxes. Almost every week, there are commercial flights to Bria and Sam-Ouandja. Taxes are generally paid by the company that charters the aircraft.'

122 Secondly, as is apparent from paragraph 122 of the UN final report, Minair and Badica are part of the same group, namely the Groupe Abdoulkarim, directed by Mr Abdoul-Karim Dan Azoumi. It must be noted that the taxes at issue were paid in relation to the transport of Badica's diamonds. In that regard, as is apparent from paragraph 111 above, the summary of reasons merely makes a general reference to support and not to direct support.

123 In the second place, concerning the third reason, the applicants claim that the assessment that 'the diamonds seized have a high probability to be of Central African origin, and that they display characteristics typical of Sam-Ouandja and Bria, as well as Nola (Sangha Mbaéré province), in the south west of the country', is contradicted by the statement of the president of the Dubai Diamond Exchange, reproduced in the press, to the effect that '[the diamonds] could originate in Guinea, South Africa or many other places' (Annex 23 to the UN final report).

124 However, it must be noted that, first, the statement of the president of the Dubai Diamond Exchange was made on the basis of pictures which are different from those giving rise to the seizure by the Belgian authorities and, secondly, the assessment that it is 'highly probable that the diamonds seized originated in the Central African Republic' is substantiated by statements made by the working group of diamond experts of the Kimberley Process, reported in paragraph 115 of the UN final report.

125 Moreover, as follows from paragraph 121 of the UN final report, the assessment with regard to the probable origin of the Central African Republic diamonds was confirmed, by email, by the president of the Working Group of Diamond Experts of the Kimberley Process, in the context of the procedure initiated in Belgium against the applicants by the Belgian federal authorities.

126 In that regard, it should be noted that, according to Paragraph 121 of the UN final report, in the context of emails exchanged with the Belgian authorities, 'some of the rough diamonds in the pictures of seized shipments display characteristics typical of diamonds originating in Nola (Sangha Mbaéré Province) in the west of the Central African Republic, whereas other diamonds display characteristics typical of diamonds originating in Sam-Ouandja and Bria (Haute-Kotto Province), in the east of the country'.

127 Moreover, in so far as the applicants criticise the failure of the panel of experts to make contact with the two Dubai suppliers behind the dispatch of diamonds seized in Belgium or with the investigating judge responsible for the investigation in Belgium, it must be noted that they do not show how such a failure to make contact vitiates the procedure or even that such an obligation existed in the context of the investigation carried out by the panel of experts.

128 Finally, contrary to what is claimed by the applicants, the fact that the 18 consignments preceding the disputed consignments were not regarded as suspicious by the Belgian authorities has no bearing on the assessment of the two disputed consignments identified by those authorities.

129 In the third place, concerning the fourth reason, the applicants contest whether the assessment that '[t]raders who were purchasing diamonds illegally trafficked from Central African Republic to foreign markets, including from the western part of the country, have operated in Cameroon on behalf of B[adica]' is substantiated. However, it should be noted that that assessment is addressed in detail in the UN final report. That report states, in particular, in paragraph 125, by reference to numerous declarations, that '[t]he Panel obtained detailed testimonies from industry and government sources claiming that Badica is also dealing in diamonds from the Central African Republic that are trafficked abroad'. It states that, '[a]ccording to these sources, an individual named AlHadj Idriss Goudache traffics diamonds on behalf of Badica' and that, '[a]fter former Séléka president Djotodia resigned in January 2014, Goudache left the Central African Republic for Cameroon, spent time in Garoua Boulai, Bertoua and Douala and then settled down in Kousseri in the extreme north of Cameroon, near N'Djamena'.

130 In that regard, in so far as the applicants claim that those declarations do not include the name of the person making the declarations and are not based on appropriate reports, it should be noted that the Council's obligations in the context of the contested act cannot be equated with those of a national judicial authority of a Member State in the context of criminal proceedings (see paragraph 78 above), especially where, as in the present case, the investigation took place in a State at civil war (see, to that effect, judgment of 7 April 2016, *Akhras* v *Council*, C-193/15 P, EU:C:2016:219, paragraph 57 and the case-law cited).

131 In the fourth place, as regards the fifth reason, the applicants claim that the export of gold referred to in that reason was carried out lawfully, as is evidenced by the official authorisation included in Annex 33 to the UN final report. In that regard, as the applicants correctly assert, the fifth reason is based, in the present case, as is apparent from paragraph 136 of the UN final report, on an official pass of 5 May 2014, included in Annex 33 to that report, authorising the export of 827 grams of gold. In those circumstances, there is no evidence establishing the unlawful nature of the May 2014 exports referred to in the fifth reason. Therefore, the export of gold referred to in the fifth reason does not establish the existence of support to armed groups through the illicit exploitation or trafficking of gold.

132 However, the fact that the fifth plea in law does not make it possible to reach the conclusion alleging support to armed groups through the illicit exploitation or trafficking of gold is irrelevant for the purpose of determining whether the contested act is well founded. As was pointed out in paragraph 98 above, having regard to the preventive nature of the restrictive measures at issue, if, in the course of its review of the lawfulness of the contested decision, the Courts of the European Union consider that, at the very least, one of the reasons mentioned in the summary provided by the Sanctions Committee is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 130).

133 It must be stated that, taken together, the other reasons mentioned in the summary provided by the Sanctions Committee are, in the context of the present case, sufficiently specific, detailed and substantiated to constitute, in themselves, a sufficient basis to support the contested act, by establishing support to armed groups through the illegal exploitation or trafficking of natural resources in the Central African Republic.

134 In the light of the foregoing, the second plea in law must be rejected without the need to rule on the admissibility of the UN report of 21 December 2015, in so far as the latter is subsequent to the contested act, to establish the complaint alleging security payments. Since, as is apparent from paragraph 119 above, the complaint alleging the making of security payments is sufficiently substantiated, the argument alleging that that complaint is justified by subsequent evidence must be rejected as ineffective. Moreover, the same applies to the argument based on the production, at the time of the defence, of the report drafted by Amnesty International on 30 September 2015 and the panel of experts' reply to the applicants of 7 December 2015, since the reasons for listing were sufficiently substantiated in the UN final report, the admissibility of which is not contested.

The third plea in law, alleging a failure on the part of the Council to assess the circumstances of the case

135 The applicants claim that, by merely transposing the decision of the Security Council of 20 August 2015, the Council failed to carry out a genuine assessment of the circumstances of the case. In that regard, there is no information in the file indicating that the Council verified the relevance and validity of the evidence concerning the applicants, thereby rendering the contested act unlawful. The Council therefore transposed the UN sanctions automatically in disregard of the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518). The applicants note, in that regard, that, when the Council requested evidence from the Sanctions Committee, the latter failed to provide them.

136 The Council disputes those arguments.

137 As was stated in paragraphs 86 to 89 above, the Council was not bound to verify the facts and circumstances justifying the UN listing. In accordance with the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 114 and the case-law cited), it is when comments are made by the individual concerned on the summary of reasons that the competent European Union authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments. Therefore, the Council cannot be criticised for having failed, at the stage of implementation of the resolution underlying the contested act, to obtain from the Sanctions Committee information or evidence in support of the allegations made against the applicants and for having, therefore, according to the applicants, 'automatically transposed the UN sanctions'.

138 In the light of the foregoing, the third plea in law must be rejected and, consequently, the action must be dismissed in its entirety.

Costs

139 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. Dismisses the action;

2. Orders the Bureau d'achat de diamant Centrafrique (Badica) and Kardiam to pay the costs.

Gervasoni Madise Kowalik-Bańczyk

Delivered in open court in Luxembourg on 20 July 2017.

[Signatures]