Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 November 2012*

Table of contents

* Language of the case: Dutch.

(Appeals — Common foreign and security policy — Combating terrorism — Restrictive measures against certain persons and entities — Freezing of assets — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Inclusion of an organisation on the list of persons, groups and entities involved in terrorist acts and maintaining it on that list — Conditions — Decision of a competent authority — Repeal of a national measure — Actions for annulment — Admissibility of the appeal — Right to respect for property — Principle of proportionality — Article 253 EC — Obligation to state the reasons on which a decision is based)

In Joined Cases C-539/10 P and C-550/10 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 18 and 23 November 2010, respectively,

Stichting Al-Aqsa (C-539/10 P), established in Heerlen (Netherlands), represented by M.J.G. Uiterwaal and A.M. van Eik, advocaten,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by E. Finnegan and by B. Driessen and R. Szostak, acting as Agents,

defendant at first instance,

supported by:

Kingdom of the Netherlands, represented by C.M. Wissels, and M. Bulterman, acting as Agents,

European Commission, represented by S. Boelaert and P. van Nuffel, acting as Agents, with an address for service in Luxembourg,

interveners at first instance,

and

Kingdom of the Netherlands (C-550/10 P), represented by C.M. Wissels and M. Noort, acting as Agents,

appellant,

the other parties to the proceedings being:

Stichting Al-Aqsa, established in Heerlen (Netherlands), represented by A.M. van Eik, advocaat,

applicant at first instance,

Council of the European Union, represented by E. Finnegan, B. Driessen and R. Szostak, acting as Agents,

defendant at first instance,

European Commission, represented by S. Boelaert and P. van Nuffel, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (Third Chamber),

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

Advocate General: V. Trstenjak,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2012,

gives the following

Judgment

1 By their appeals, Stichting Al-Aqsa ('the appellant') (C-539/10 P) and the Kingdom of the Netherlands (C-550/10 P) request the Court of Justice to set aside the judgment of the General Court of the European Union of 9 September 2010 in Case T-348/07 *Al-Aqsa* v *Council* [2010] ECR II-4575('the judgment under appeal'), by which the General Court annulled:

— Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58),

— Council Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/445 (OJ 2007 L 340, p. 100),

— Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/868 (OJ 2008 L 188, p. 21),

— Council Decision 2009/62/EC of 26 January 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2008/583 (OJ 2009 L 23, p. 25), and

— Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2009/62 (OJ 2009 L 151, p. 14)

(collectively referred to as 'the contested acts'), in so far as those acts concern the appellant.

I – Legal context

A – *Resolution 1373 (2001) of the United Nations Security Council*

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

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

B – *Common Position 2001/931/CFSP*

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

5 Under Article 1(1) thereof, the Common Position applies 'to persons, groups and entities involved in terrorist acts and listed in the Annex'. Article 1(2) defines what is meant by 'persons, groups and entities involved in terrorist acts'.

6 Article 1 of Common Position 2001/931 provides:

'(3) For the purposes of this Common Position, "terrorist act" shall mean one of the following intentional acts, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:

(i) seriously intimidating a population, or

(ii) unduly compelling a Government or an international organisation to perform or abstain from performing any act, or

(iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:

…

(k) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.

…

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

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

…

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

C – *Regulation (EC) No 2580/2001*

7 Considering that a regulation was necessary to implement, at Community level, the measures set out in Common Position 2011/931, the Council adopted Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70, and corrigendum OJ 2010 L 52, p. 58).

8 In so far as concerns the notion of 'terrorist act', Article 1(4) of that regulation refers to the definition provided in Article 1(3) of Common Position 2001/931.

9 Under Article 2 of Regulation No 2580/2001:

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

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

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

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

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

(i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

(iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or

(iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).’

10 The initial version of the list provided for in Article 2(3) of Regulation No 2580/2001 (‘the list at issue’) was established by Decision 2001/927/EC (OJ 2001 L 344, p. 83), in which the appellant’s name did not appear.

11 The appellant’s name was added to the list by Council Decision 2003/480/EC of 27 June 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2002/974/EC (OJ 2003 L 160, p. 81).

12 The appellant’s name was maintained on the list at issue by subsequent Council decisions, in particular:

— Council Decision 2003/646/EC of 12 September 2003 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2003/480 (OJ 2003 L 229, p. 22),

— Council Decision 2006/379/EC of 29 May 2006 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2005/930/EC (OJ 2006 L 144, p. 21), and

— the contested acts.

II – Background to the dispute and the contested acts

13 For a summary of the early background to this case, in paragraph 1 of the judgment under appeal reference is made to the judgment of the General Court of 11 July 2007 in Case T-327/03 *Al-Aqsa* v *Council*, by which the General Court gave judgment on the appellant's action seeking, inter alia, the annulment in part of Decision 2003/480.

14 The following is stated in paragraphs 15 to 21 of that judgment:

'15 The file shows that the applicant is a foundation governed by Netherlands law, constituted in 1993. It describes itself as an Islamic social welfare institution. It states that, according to its constitution, its objects include the social welfare and improvement of the living conditions of Palestinians living in the Netherlands and also the provision of assistance to Palestinians living in the territories occupied by Israel … The applicant states that it is politically unaffiliated and claims to have collected almost EUR 1 million by way of donations in the Netherlands in the financial year 2001-02.

16 On 3 April 2003 the Minister for Foreign Affairs of the Netherlands adopted, on the basis of Security Council Resolution 1373 (2001) and of the Sanctiewet 1977 (Netherlands Law on sanctions of 1977), as amended by a law of 16 May 2002, the Sanctieregeling Terrorisme 2003 (Regulation on sanctions for the suppression of terrorism 2003, Staatscourant of 7 April 2003, No 68, p. 11, "the Sanctieregeling"), [by] which the freezing of all the applicant's funds and financial assets [was ordered, inter alia].

17 It is clear from the statement of reasons in the Sanctieregeling that, pending the adoption of a Community decision directed at the applicant on the basis of … [R]egulation [No 2580/2001], the Sanctieregeling was adopted on the ground that there was evidence that the applicant had made transfers of funds to organisations supporting terrorism in the Middle East. The statement of reasons for the Sanctieregeling makes it clear that the latter will be repealed as soon as such a Community decision enters into force.

18 The applicant brought proceedings against the Netherlands State before the [voorzieningenrechter ("the court hearing the application for interim measures")] seeking, in particular, suspension of the application of the measures laid down by the Sanctieregeling.

19 By … interim order of 13 May 2003, the court hearing the application for interim measures held that the Sanctieregeling was based primarily on an official memorandum sent by the director of the Algemene Inlichtingen- en Veiligheidsdienst (General Intelligence and Security Service) ("the AIVD") to the Director General of Political Affairs of the Netherlands Ministry of Foreign Affairs of 9 April 2003 … The court hearing the application for interim measures held that that memorandum contained only general assertions and that factual information to substantiate those assertions was lacking, … that the Netherlands Government had proposed that the court alone should inspect the information from the AIVD on the basis of which the memorandum had been drawn up, that the applicant had not disputed the Government's interest in keeping that information secret and that it had in addition agreed that matters should proceed in that way … In that regard, the court hearing the application for interim measures observed that confidential inspection of the relevant documents by the court … was … possible … on grounds of public order … The court hearing the application for interim measures accordingly ordered the Netherlands Government to put it in a position in which it could carry out a confidential inspection of the AIVD's file of confidential information on which the memorandum was based. The Netherlands Government complied with that [judgment] and on 21 May 2003 the court hearing the application for interim measures inspected the file in question in the offices of the AIVD.

20 By a second interim order of 3 June 2003 ("the order of the court hearing the application for interim measures"), the court hearing the application for interim measures dismissed the proceedings brought by the applicant. In point 3.2 of that … order, the court hearing the application for interim measures held, on the basis of its investigations, that the findings of the AIVD provided adequate grounds to support the latter's conclusion that the funds collected by the applicant in the Netherlands had been used for the benefit of organisations linked to the Palestinian Islamist movement Hamas, and also the conclusion that several of those organisations linked to Hamas provided funds enabling the perpetration or facilitation of terrorist acts by Hamas. In point 3.3 of that order, the court hearing the application for interim measures added that it had uncovered no fact or circumstance that might show that the AIVD had performed improperly the task entrusted to it under the Wet op de inlichtingen- en veiligheidsdiensten (Law on the intelligence and security services).

21 The Sanctieregeling was repealed on 3 August 2003 (Stcrt. 2003, No 146[, p. 9]).'

15 By application lodged at the Registry of the General Court on 19 September 2003, the appellant brought an action for the annulment of Decisions 2003/480 and 2003/646, in so far as those acts concerned it. Given that, during the procedure, those decisions were repealed and replaced by subsequent decisions and that the appellant declared that it had adapted the form of order which it sought in line with that development, the General Court considered that its review would concern only the decision which was still in force on the date of closure of the oral procedure, namely Decision 2006/379. By the judgment in *Al-Aqsa* v *Council*, the General Court annulled that decision in so far as it concerned the appellant, essentially on the basis that sufficient grounds were not given for the decision.

16 The more recent background to the case is summarised as follows in paragraphs 3 to 10 of the judgment under appeal:

'3 By letter of 23 April 2007, the Council … informed the applicant that, in its view, the reasons for including it originally in the list [at issue] … were still valid, and that it therefore intended to continue to include the applicant in that list. Enclosed with that letter was the Council's statement of reasons. The applicant was also informed that it could submit observations to the Council on the latter's intention to continue to include it on the list and on the reasons stated in that regard, together with any supporting documents, within a period of one month.

4 In the statement of reasons enclosed with the letter the Council noted the following:

"The [applicant] was constituted in the Netherlands in 1993 as a foundation governed by Netherlands law. It raised funds for certain organisations belonging to the Palestinian movement Hamas, which appears on the list of groups involved in terrorist acts within the meaning of Article 1(2) of … Common Position 2001/931 … Some of those organisations make funds available for the commission, or for facilitation in the commission, of terrorist acts. Such acts are those which fall within Article 1(3)(k) of Common Position 2001/931 and are committed with the aims set out in Article 1(3)(i) and (iii) of that Common Position.

The [applicant] therefore falls within Article 2(3)(ii) of Regulation ... No 2580/2001.

The [Netherlands] Ministers for Foreign Affairs and for Finance decided, by Ministerial Regulation DJZ/BR/219-03 of 3 April 2003 (the Sanctieregeling Terrorisme), which was published in the *Staatscourant* (Netherlands Official Journal) on 7 April 2003, to freeze all assets belonging to the [applicant]. That decision was endorsed by Order LJN AF9389, delivered on 3 June 2003 by the President of the Civil Law Section of the Rechtbank 's-Gravenhage (District Court, The Hague). That order stated that the [applicant] must be regarded as an organisation supporting Hamas and enabling the latter to commit or facilitate terrorist activities.

A decision was therefore taken in respect of the [applicant] by a competent authority within the meaning of Article 1(4) of Common Position 2001/931.

The Council is therefore convinced that the reasons that justified inclusion of the [applicant] in the [list at issue] are still valid."

5 It is agreed between the parties that the Ministerial Regulation and the order referred to in that statement of reasons are the Sanctieregeling and the order of the court hearing the application for interim measures.

6 By letter of 25 May 2007, the applicant submitted to the Council its observations in response. It criticised both the substantive reasons given by the Council as justification for continuing to include the applicant's name on the list at issue and the procedure it had followed.

7 On 28 June 2007 …, the Council adopted Decision 2007/445 … By that decision, the Council continued to include the appellant's name on the list at issue.

8 Recital [5] in the preamble to the contested decision reads:

"The Council has carried out a complete review of the list of persons, groups and entities to which Regulation … No 2580/2001 applies, as required by Article 2(3) of that Regulation. In this regard, it has taken account of observations and documents submitted to the Council by certain persons, groups and entities concerned."

9 Recital [6] in the preamble to the contested decision reads:

"Following this review, the Council has concluded that the persons, groups and entities listed in the Annex to this Decision have been involved in terrorist acts within the meaning of Article 1(2) and (3) of Common Position [2001/931], that a decision has been taken with respect to them by a competent authority within the meaning of Article 1(4) of that Common Position, and that they should continue to be subject to the specific restrictive measures provided for in Regulation No 2580/2001."

10 [Decision 2007/445] was notified to the applicant under cover of a letter from the Council dated 29 June 2007. The statement of reasons enclosed with that letter ("the statement of reasons") is identical to that enclosed with the letter from the Council of 23 April 2007 …'

III – The procedure before the General Court and the judgment under appeal

17 By application lodged at the Registry of the General Court on 12 September 2007, the applicant (now the appellant) brought an action, by which it requested the General Court to:

— annul Decision 2007/445 in so far as it concerned it;

— declare that Regulation No 2580/2001 was not applicable to it;

— order the Council to pay the costs.

18 The Council requested the General Court to dismiss the action as unfounded in its entirety, and order the appellant to pay the costs.

19 The Kingdom of the Netherlands and the Commission of the European Communities, which were granted leave to intervene before the General Court, supported the form of order sought by the Council.

20 During the proceedings, the Council adopted Decisions 2007/868, 2008/583 and 2009/62 and Regulation No 501/2009 repealing and replacing, first of all, Decision 2007/445, then, each of those three decisions, and the appellant subsequently requested authorisation to amend its initial form of order sought so as to include, in its action, also the annulment of those decisions and of that regulation in so far as they concerned it. The General Court granted those applications in paragraphs 31 to 45 of the judgment under appeal.

21 In support of the form of order which it sought, the appellant relied, in essence, on five pleas in law. The first alleged infringement of Article 1(1), (2) and (4) of Common Position 2001/931 and of Article 2(3) of Regulation No 2580/2001. The second alleged infringement of the principle of proportionality. The third alleged infringement of Article 1(6) of Common Position 2001/931, of Article 2(3) of Regulation No 2580/2001 and of an essential procedural requirement. The fourth alleged infringement of the fundamental right to unfettered enjoyment of property. Lastly, the fifth alleged infringement of the obligation to state reasons laid down in Article 253 EC.

22 First of all, the General Court examined the first plea, which was subdivided into four parts, alleging (i) that the appellant was not a person, group or entity within the meaning of the provisions that had allegedly been infringed, (ii) that no competent authority had taken a decision in respect of it within the meaning of Article 1(4), (iii) that it had not been established that the appellant intended to facilitate the commission of terrorist acts, and (iv) that the appellant could no longer be regarded as facilitating the commission of such acts.

23 The General Court rejected all parts of that plea as unfounded.

24 As regards the second part of the first plea, the General Court stated, inter alia, in paragraphs 97 to 102 of the judgment under appeal, taking account of the context and purpose of Article 1(4) of Common Position 2001/931, that that provision did not require that the national 'decision' be taken in the context of criminal proceedings *stricto sensu*. It was necessary only for that decision to form part of national proceedings seeking, directly and chiefly, the imposition on the person concerned of measures of a preventive or punitive nature, in connection with the combating of terrorism and by reason of that person's involvement in terrorism. The General Court found, in that case, that the order of the court hearing the application for interim measures formed a sufficiently direct part of national proceedings seeking chiefly to impose an economic sanction on the appellant, namely the freezing of its funds under the Sanctieregeling itself, as a result of that person's involvement in terrorist activity.

25 The General Court concluded, in paragraphs 104 and 105 of the judgment under appeal, that the order of the court hearing the application for interim measures, taken together with the Sanctieregeling, appeared, in the light of the relevant national legislation, to be a decision of a competent national authority meeting the definition contained in Article 1(4) of Common Position 2001/931 and that it could therefore, in principle, have been regarded as justifying the adoption as such of a measure freezing the appellant's funds under Article 2(3) of Regulation No 2580/2001.

26 In so far as concerns the third part of the first plea, the General Court found, in paragraph 127 of the judgment under appeal, that, in the light of the interim order of the court hearing the application for interim measures of 13 May 2003 and the definitive order of that court, that without committing the slightest error of assessment it was possible for the Council to consider that the appellant had knowledge, within the meaning of Article 1(3)(k) of Common Position 2001/931, that its activity raising funds and making them available would contribute to the criminal activities of a terrorist group, in this case, Hamas. According to paragraph 128 of the judgment under appeal, the factual findings and assessments made by the court hearing the application for interim measures in the light of the AIVD memorandum and the documents on the file substantiating it showed that that court was clearly convinced that the appellant had knowledge that its funds were ultimately being used for terrorist purposes.

27 Next, the General Court examined the third plea, which it upheld. By that plea, the appellant submitted that the Council did not review whether it was appropriate to continue to include it on the list at issue and that it had thus infringed Article 1(6) of Common Position 2001/931, Article 2(3) of Regulation No 2580/2001 and an essential procedural requirement.

28 After setting out, in paragraphs 161 to 169 of the judgment under appeal, its case-law concerning the importance of subsequent developments in the national procedure at issue in the context of the examination of whether to continue to include a person's name on the list at issue in accordance with Article 1(6) of Common Position 2001/931, the General Court considered, in paragraph 172 of that judgment, that, since the repeal of the Sanctieregeling within the Netherlands legal order, the order of the court hearing the application for interim measures, which was an inseparable whole with the Sanctieregeling, could no longer provide a valid basis for a Community measure freezing the appellant's funds.

29 In paragraphs 173 to 180 of the judgment under appeal, the General Court held that, since the Sanctieregeling definitively ceased to have any legal effects as a result of its repeal, the same must necessarily apply, in consequence, to the legal effects attaching to the order of the court hearing the application for interim measures, which had simply refused to suspend the effect of the Sanctieregeling and which contained only an interim ruling. The fact that the appellant did not appeal against the order of the court hearing the application for interim measures or bring substantive proceedings was irrelevant. The Council thus overstepped the bounds of its discretion by continuing to include the appellant indefinitely on the list at issue when periodically reviewing the latter's situation.

30 The General Court concluded, in paragraphs 183 and 184 of the judgment under appeal, that, since the third plea was founded, it was necessary to annul the contested acts, without there being any need to examine the appellant's other pleas and arguments, with the result that there was also no need to rule on the claim that Regulation No 2580/2001 should be declared unlawful, pursuant to Article 241 EC.

31 In the operative part of the judgment under appeal, the General Court, first, annulled the contested acts in so far as they concerned the appellant and, second, dismissed the action as to the remainder.

IV – Forms of order sought by the parties and the procedure before the Court of Justice

32 By its appeal in Case C-539/10 P, the appellant requests the Court of Justice to:

— set aside the judgment under appeal in so far as pleas and arguments were directed, in the appellant's name, against grounds of that judgment, and give a new ruling upholding the claims put forward at first instance with correction of the grounds on which the judgment under appeal is based;

— order the Council to bear the costs of both sets of proceedings.

33 The Council contends that the Court of Justice should:

— primarily, dismiss the appeal as inadmissible;

— in the alternative, dismiss the appeal as unfounded; and

— order the appellant to pay the costs.

34 The Kingdom of the Netherlands requests the Court of Justice, primarily, to declare the appellant's appeal inadmissible and, in the alternative, to reject the grounds of appeal raised by the appellant.

35 The Commission requests the Court of Justice to declare the appeal brought by the appellant inadmissible.

36 By its appeal in Case C-550/10 P, the Kingdom of the Netherlands requests the Court of Justice to set aside the judgment under appeal, to refer the case to the General Court and order the appellant to pay the costs.

37 In its response to that appeal, the applicant requests the Court of Justice to:

— dismiss the appeal brought by the Kingdom of the Netherlands;

— set aside the judgment under appeal in so far as pleas and arguments were directed, in the appellant's name, against grounds of that judgment, and give a new ruling upholding the claims put forward at first instance with correction of the grounds on which the judgment under appeal is based; and

— order the Kingdom of the Netherlands to pay the costs of the present proceedings and uphold the order as to costs made by the General Court in the judgment under appeal.

38 The Commission requests the Court of Justice to declare the appeal brought by the Kingdom of the Netherlands founded, set aside the judgment under appeal and refer the case back to the General Court.

39 By order of the President of the Court of 4 February 2011, Cases C-539/10 P and C-550/10 P were joined for the purposes of the written and oral procedures and of the judgment.

V – The appeals

A – *The appellant's appeal (C-539/10 P)*

1. Arguments of the parties

40 The appellant submits that its appeal is admissible even though it seeks the annulment of incidental parts of the judgment under appeal. The appellant claims that that judgment contains a certain number of considerations that are detrimental to it. If the Kingdom of the Netherlands adopted, in accordance with those considerations, a new Ministerial Regulation which was then used by the Council to re-include the appellant on the list at issue, a long and costly procedure would be carried out again. Moreover, in such a procedure, the appellant might no longer be able to rely on the pleas rejected by the General Court in the judgment under appeal on account of the force of *res judicata*.

41 In its rejoinder, the appellant adds that it was unsuccessful, in part, in its submissions at first instance within the meaning of Article 56 of the Statute of the Court of Justice of the European Union. It claims that it requested the General Court not only to annul the contested acts, but also to rule that Regulation No 2580/2001 underlying those acts was not applicable to it. The General Court granted only the first head of claim of its application, rejecting the action as to the remainder. Moreover, the rejection of the first plea as unfounded was decisive for the rejection of the remainder of the action. Only a judgment on the applicability of Regulation No 2580/2001 as such would cover any future such decisions to freeze assets and would remove the need to bring another action for annulment of such decisions, which would indeed be likely.

42 The Council, the Kingdom of the Netherlands and the Commission contend that the appellant's appeal is inadmissible, submitting, inter alia, that that appeal has not been brought against the operative part of the judgment under appeal, but against the grounds of that judgment and that the appellant was not unsuccessful in its submissions before the General Court within the meaning of Article 56 of the Statute of the Court of Justice.

2. Findings of the Court

43 Under Article 113(1) of the Rules of Procedure of the Court of Justice, applicable at the time the appeal was brought, an appeal must seek to set aside, in whole or in part, the decision of the General Court.

44 However, in the present case, the appellant's appeal seeks not to have the judgment under appeal set aside, even in part, that is to say the operative part thereof (see, to that effect, Case C-263/09 P *Edwin* v *OHIM* [2011] ECR I-5853, paragraphs 83 to 85, and the judgment of 21 December 2011 in Case C-329/09 P *Iride* v *Commission*, paragraph 48), but merely the amendment of some of the grounds of that judgment, as the appellant itself acknowledges in its appeal.

45 As regards the application for the annulment of the contested acts, the appellant was successful at first instance, on the basis of its third plea, and is seeking only to substitute the grounds relating to two parts of the first plea which were rejected by the General Court.

46 Moreover, in so far as concerns the application for a declaration that Regulation No 2580/2001 is inapplicable, which was dismissed by the General Court in point 2 of the operative part of the judgment under appeal, it must be found that the appellant has merely pointed to that circumstance in the grounds of its rejoinder, without concluding that that part of the operative part of the judgment under appeal should be annulled.

47 Accordingly, the appeal is inadmissible.

48 That conclusion cannot be affected by the appellant's arguments based on the force of *res judicata*.

49 The force of *res judicata* extends only to the grounds of a judgment which constitute the necessary support of its operative part and are, therefore, inseparable from it (see Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraph 54; Joined Cases C-442/03 P and C-471/03 P *P&O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission* [2006] ECR I-4845, paragraphs 44 and 47; and the judgment of 19 April 2012 in Case C-221/10 P *Artegodan* v *Commission*, paragraph 87). In the present case, only the grounds relating to the third plea at first instance and considered to be founded by the General Court are inseparable from the annulment of the contested acts declared in point 1 of the operative part of the judgment under appeal.

50 It is apparent from the foregoing that the appellant's appeal must be dismissed as inadmissible.

B – *The appeal of the Kingdom of the Netherlands (C-550/10 P)*

1. Arguments of the parties

51 By its single ground of appeal, the Kingdom of the Netherlands accuses the General Court of having misinterpreted Article 1(4) and (6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001, in considering that, after repealing the Sanctieregeling, the order of the court hearing the application for interim measures could no longer serve as a basis for keeping the appellant's name on the list at issue.

52 First of all, it claims that the General Court misinterpreted Article 1(4) of Common Position 2001/931 in considering, in paragraphs 85 to 87 of the judgment under appeal, the order of the court hearing the application for interim measures, together with the Sanctieregeling, to be 'a decision taken by a competent authority'.

53 That order satisfies, in itself, the precise criteria set out by the General Court (Case T-341/07 *Sison* v *Council* [2009] ECR II-3625, paragraph 111), pursuant to which a decision must form part of national proceedings seeking, directly and chiefly, the imposition on the person concerned of measures of a preventive or punitive nature, in connection with the combating of terrorism and by reason of that person's involvement in terrorism. The decision of the court hearing the application for interim measures regarding the appellant's involvement in the financing of terrorism constitutes the main part of its order, which, moreover, was delivered in the context of a national procedure seeking to impose preventive measures on the appellant with a view to combating terrorism.

54 Second, the Kingdom of the Netherlands argues that, in paragraphs 172 and 180 of the judgment under appeal, the General Court misinterpreted the obligation on the Council when carrying out periodic reviews under Article 1(6) of Common Position 2001/931, by automatically inferring from the repeal of the Sanctieregeling that it was no longer justified to continue to include the appellant on the list at issue.

55 Even if that repeal constitutes a circumstance to be taken into consideration in the context of a periodic review, the Council should also take account of the reason behind that repeal. In the present case, the measure was not repealed out of conviction that it was no longer necessary to freeze the appellant's funds, but out of a desire to avoid an overlap of the national measure and the Community measures, as set out in the statement of reasons for the Ministerial Regulation repealing the Sanctieregeling. Accordingly, the Council was entitled not to infer automatically from the repeal of the Sanctieregeling that it was no longer necessary to continue to include the appellant on the list at issue.

56 The Commission supports the position of the Kingdom of the Netherlands, adding that it may be inferred from the grounds for the contested acts that the Council considered the order of the court hearing the application for interim measures alone to be the 'decision taken by a competent authority'. In any event, account needs to be taken of the Council's assertion in the proceedings before the General Court that it had based the contested acts solely on the order of the court hearing the application for interim measures.

57 Moreover, the Commission submits that, in the order of the court hearing the application for interim measures, the question whether the appellant was involved in terrorist activities was not addressed only incidentally and indirectly. In order to be able to decide whether it was necessary to suspend the implementation of the Sanctieregeling, the court hearing the application for interim measures had to examine the central issue – which it in fact did – of determining whether there was sufficient evidence to consider that the appellant had raised funds for organisations related to Hamas, which make funds available for the commission, or for facilitation in the commission, of terrorist acts.

58 Finally, the Commission submits that the General Court wrongly applied Article 1(6) of Common Position 2001/931 by failing to take account of both the grounds for repealing the Sanctieregeling and the fact that the appellant had neither appealed against the order of the court hearing the application for interim measures, nor brought an action on the merits.

59 By contrast, the appellant considers, first, that the order of the court hearing the application for interim measures, as such, does not satisfy the specific requirements which the General Court has set for there to be a decision for the purposes of Article 1(4) of Common Position 2001/931. In particular, there were no national proceedings seeking, directly and chiefly, to impose on the person concerned measures of a preventive or punitive nature. A court hearing an application for interim measures has only limited powers. Its rulings are provisional in nature and it cannot deliver declaratory judgments. Its functions are necessarily limited to a limited weighing up of the interests in the case. The rejection by that court of the appellant's action, brought to prevent the Kingdom of the Netherlands from continuing to freeze its assets, thus does not imply approval of the conduct of that Member State.

60 Second, the appellant points out the decisive importance accorded to the national decision, for the purposes of Article 1(4) of Common Position 2001/931, in the process of adopting a decision to continue to include a person on the list at issue. The interpretation of the Kingdom of the Netherlands would grant the Council a freedom which would not be compatible with the very prejudicial nature of an asset freeze, or with legal protection.

2. Findings of the Court

61 By its single ground of appeal, the Kingdom of the Netherlands submits, in essence, that the General Court erred in law in considering that, after repealing the Sanctieregeling, there was no longer any 'substratum' in national law that justified, to the required legal standard, continuing to include the appellant on the list at issue.

62 In order to give judgment on the substance of this ground of appeal, it needs to be examined whether the General Court was right to consider that the contested acts had been adopted on the basis of precise information or material in the relevant file which indicates that a decision within the meaning of Article 1(4) of Common Position 2001/931 had been taken by a competent authority against the appellant, but that the repeal of the Sanctieregeling meant that the appellant could not be kept on the list at issue.

63 To that end, it is necessary to interpret Article 1(4) and (6) of Common Position 2001/931, to which Article 2(3) of Regulation No 2580/2001 refers, by taking account not only of its wording, but also of the context in which it occurs and the objectives pursued by the rules of which it forms part (see, inter alia, Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 50; Case C-162/09 *Lassal* [2010] ECR I-9217, paragraph 49; and Joined Cases C-509/09 and C-161/10 *eDate Advertising and Martinez* [2011] ECR I-10269, paragraph 54). Moreover, the particular circumstances of the present case need to be taken into account.

a) Interpretation of Article 1(4) of Common Position 2001/931

64 As regards, first of all, the wording of Article 1(4) of Common Position 2011/931, that provision provides that the list at issue is to be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds.

65 Pursuant to the second sentence of the first subparagraph of Article 1(4), persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in that list.

66 In accordance with the second subparagraph of Article 1(4), 'competent authority' is to mean a judicial authority, or, where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area.

67 Next, as regards the essential aim and purpose of Regulation No 2580/2001 and Common Position 2001/931, it is apparent from the recitals in the preambles thereto that they seek to combat international terrorism, cutting it off from its financial resources by freezing the economic funds and resources of persons or entities suspected of involvement in activities linked to terrorism (see, to that effect, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraphs 169 and 222, relating to specific restrictive measures against certain persons and entities related to Usama bin Laden, the Al-Qaeda network and the Taliban). Thus, those acts do not seek to accompany or support national criminal law procedures, but to prevent new terrorist acts from being committed.

68 Moreover, it is apparent from the references to a national decision, 'precise information' and 'serious and credible evidence or clues' that Article 1(4) of Common Position 2001/931 aims to protect the persons concerned by ensuring that they are included on the list at issue only on a sufficiently solid factual basis, and that the Common Position seeks to attain that objective by requiring a decision taken by a national authority.

69 In the absence of means on the part of the European Union to carry out its own investigations regarding the involvement of a given person in terrorist acts, that requirement aims to establish that evidence or serious and credible clues exist of the involvement of the person concerned in terrorist activities, regarded as reliable by the national authorities and having led them, at the very least, to adopt measures of inquiry, without requiring the national decision to have been taken in a specific legal form or to have been published or notified.

70 That protection of the persons concerned is not called into question if the decision taken by the national authority does not form part of a procedure seeking to impose criminal sanctions, but of a procedure aimed at the adoption of preventive measures. In that regard, account should be taken of the fact that Article 1(4) of Common Position 2001/931 refers to 'the instigation of investigations or prosecution', without specifying the nature or character of the investigations or prosecutions to which it refers.

71 That protection of the persons concerned is also ensured where the decision taken by the national authority is not the decision which instigates the investigation, but the decision which draws consequences from an investigation by imposing a measure of a preventive nature on the person concerned, though not a criminal conviction.

72 That conclusion is corroborated by the fact, noted in paragraph 65 above, that an inclusion on the list at issue can also be founded on a sanction ordered by the United Nations Security Council. In so far as such sanctions are not, in general, of a criminal nature, an asset freeze such as that imposed in the present case by the Sanctieregeling is wholly comparable to a sanction decided on by the Security Council.

73 It is apparent from the foregoing that Article 1(4) of Common Position 2001/931 enables the Council to rely on a decision which, following the investigation into the involvement of the person concerned in the financing of terrorist activities, imposes preventive measures such as a freezing of funds.

74 In addition, in the present case, the information of the AIVD concerning the financial support of Hamas terrorist activities by the appellant, on the basis of which the Sanctieregeling was adopted, were considered to be reliable not only by the two ministers responsible for the adoption of the Sanctieregeling, but also by the court hearing the application for interim measures after having been made aware of the AIVD's confidential file.

75 Moreover, the Sanctieregeling was adopted by a competent authority within the meaning of the second subparagraph of Article 1(4) of Common Position 2001/931.

76 It was adopted by the Netherlands Minister for Foreign Affairs, in agreement with the Minister for Finance, on the basis of the Law on sanctions of 1977 (Sanctiewet 1977, Stb. 1980, Nos 93 and 170), as amended by a Law of 16 May 2002 (Stb. 2002, No 270). That law empowers those authorities to freeze the funds of persons and entities, in particular in the context of the implementation of resolutions of the United Nations Security Council relating to combating terrorism. As the General Court rightly noted in paragraph 91 of the judgment under appeal, it is not claimed that an act such as the Sanctieregeling falls within the competence of the judicial authorities except with regard to judicial review of its lawfulness.

77 It is apparent from the foregoing that the General Court was rightly able to consider that the Council held precise information and evidence from the file showing that a decision falling within the definition of Article 1(4) of Common Position 2001/931 had been taken against the appellant by a competent authority.

b) Requirements resulting from Article 1(6) of Common Position 2001/931

78 Pursuant to Article 1(6) of Common Position 2001/931, 'the names of persons and entities on the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list'.

79 With a view to assessing the possible consequences of repealing the Sanctieregeling for the decisions which the Council has been required to take in accordance with that provision, the Court of Justice notes that the wording of Article 1(4) of Common Position 2001/931 refers to the decision taken by a national authority by requiring that precise information or evidence in the file exists which shows that such a decision has been taken.

80 It is not apparent from that wording, nor the wording or Article 1(6) of Common Position 2001/931 that, beyond that condition, the decision taken in the past must necessarily still be in force or produce legal effects at the time the Council decides to continue to include a person on the list at issue.

81 Moreover, account should be taken of the purpose of the reference to a national decision, as noted in paragraph 68 above, which seeks to ensure that the decision of the Council be taken on a sufficient factual basis enabling the latter to conclude that there is a danger that, if preventive measures are not taken, the person concerned may continue to be involved in terrorist activities.

82 Accordingly, the essential question when reviewing whether to continue to include a person on the list at issue is whether, since that person was included in that list or since the last review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion in relation to the involvement of the person at issue in terrorist activities.

83 In the present case, the repeal of the Sanctieregeling was not based on the emergence of new facts or evidence indicating that the appellant was no longer involved in the financing of terrorism or a change in the assessment of such involvement by the competent national authorities.

84 The sole reason justifying that repeal was the objective of preventing an overlap between the national fund freezing measure, imposed by the Sanctieregeling, and the fund freezing measure prescribed at European Union level by Regulation No 2580/2001, following the inclusion of the appellant on the list at issue. That objective is apparent from the grounds for the Ministerial Regulation repealing the Sanctieregeling. It is corroborated by the fact that that repeal was effected *ex nunc*, without retroactive effect, and that its repeal on the entry into force of a decision on the freezing of funds at European Union level had already been notified in the grounds for the Sanctieregeling (Stcrt. 2003, No 68, p. 11).

85 Thus, the sole objective of that repeal was compliance with the second paragraph of Article 288 TFEU, which provides that a regulation of the European Union is to be binding in its entirety and directly applicable in all Member States, which, in accordance with settled case-law, precludes in principle the Member States from adopting or maintaining national provisions in parallel.

86 Indeed, the Court of Justice has ruled that the direct applicability of a regulation precludes, unless otherwise provided, the Member States from taking steps which are intended to alter the scope of the regulation itself (see, to that effect, Case 40/69 *Bollmann* [1970] ECR 69, paragraph 4, and Case 74/69 *Waren-Import-Gesellschaft Krohn* [1970] ECR 451, paragraphs 4 and 6).

87 Moreover, the Court of Justice has held that, by virtue of the obligations arising from the FEU Treaty and assumed on ratification, Member Sates are under a duty not to obstruct the direct applicability inherent in regulations, given that the scrupulous observation of this duty is an indispensable requisite for the simultaneous and uniform application of European Union regulations throughout the Union (see, to that effect, Case 34/73 *Variola* [1973] ECR 981, paragraph 10; Case 94/77 *Zerbone* [1978] ECR 99, paragraphs 24 and 25; and Case 272/83 *Commission* v *Italy* [1985] ECR 1057, paragraph 26). In particular, Member States must not adopt a measure by which the Community nature of a legal rule and the consequences which arise from it are concealed from the persons concerned (see *Variola*, paragraph 11; *Zerbone*, paragraph 26; Case C-113/02 *Commission* v *Netherlands* [2004] ECR I-9707, paragraph 16; and Case C-316/10 *Danske Svineproducenter* [2011] ECR I-13721, paragraph 41).

88 A freezing of funds imposed by national provisions against a person who is also subject to a freezing of funds imposed by a European Union regulation may affect the scope of that regulation, in particular as a result of the fact that the definition of the funds concerned by the fund-freezing measure and the rules governing the exceptional authorisation of use of the frozen funds for certain expenses, such as those provided for in Articles 5 and 6 of Regulation No 2580/2001, may diverge at the national and European Union level.

89 Accordingly, and having regard to the wording and purpose of Article 1(6) of Common Position 2001/931, as set out in paragraphs 78 to 82 above, repealing the Sanctieregeling is not sufficient to render the maintenance of the applicant on the list at issue incompatible with Article 1(4) and (6) of Common Position 2001/931.

90 Moreover, it is not apparent from the judgment under appeal that there was evidence showing that, since the adoption of the Sanctieregeling, the factual situation or evaluation thereof by the national authorities had changed in so far as concerned the appellant's involvement in the financing of terrorist activities. Nor does the appellant submit that the General Court failed to take account of such evidence.

91 It follows from the foregoing that the General Court erred in law in its interpretation of Article 1(4) and (6) of Common Position 2001/931 by considering that, after repealing the Sanctieregeling, there was no longer any 'substratum' in national law that justified, to the required legal standard, continuing to include the appellant on the list at issue, without taking due account of the reason why the Sanctieregeling was repealed.

92 Consequently, the single ground of appeal raised by the Kingdom of the Netherlands is founded, with the result that the judgment under appeal must be set aside.

C – *The cross-appeal raised by the appellant in Case C-550/10 P*

93 The response lodged by the appellant in Case C-550/10 P is also entitled 'cross-appeal'.

94 However, under Article 117(2) of the Rules of Procedure, for a submission to be regarded as a cross-appeal, the party which relies on it must seek to set aside, in whole or in part, the judgment under appeal on a plea in law which was not raised in the appeal (see Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala* [2008] ECR I-4951, paragraph 186), irrespective of the name given to it.

95 In the present case, as the Commission rightly notes, it must be found that the wording of that response merely explains the reasons why, in the appellant's view, the two parts of the single ground of appeal of the Kingdom of the Netherlands cannot be upheld. By contrast, no grounds for a cross-appeal have been submitted. In that regard, it is not sufficient to request, in the introduction to the response, that the content of the appeal in Case C-539/10 P be regarded as repeated and inserted in the response.

96 Accordingly, the appellant's cross-appeal must be declared inadmissible.

VI – The action before the General Court

97 As provided in the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, the latter, when it quashes the decision of the General Court, may give final judgment in the matter where the state of proceedings so permits.

98 In the circumstances, the Court of Justice considers that the action for annulment of the contested acts brought by the appellant is ready for judgment and that it is necessary to give final judgment in it.

99 The Court of Justice points out that, in essence, the appellant raised five pleas in law.

A – *The first plea*

100 The first plea, alleging infringement of Article 1(1), (2) and (4) of Common Position 2001/931 and of Article 2(3) of Regulation No 2580/2001 is subdivided into four parts, as noted in paragraph 22 above.

101 The Court of Justice notes, at the outset, that the General Court rejected all the parts of that plea and that, in its appeal, the appellant merely criticised the rejection of the second and third parts thereof. Thus, the appellant no longer seeks the annulment of the contested acts on the basis of the arguments raised initially in the first and fourth parts of its first plea. Consequently, there is no need to examine those parts.

102 By the second part of its first plea, the appellant submits that no competent authority took a decision in respect of the applicant within the meaning of Article 1(4) of Common Position 2001/931. The appellant submits, in that regard, that neither the Sanctieregeling nor the order of the court hearing the application for interim measures falls within one of the categories of decisions referred to in that provision.

103 That part is not founded. It is apparent from paragraphs 64 to 77 above that the Council held precise information and evidence in the file showing that a decision falling within the definition in Article 1(4) of Common Position 2001/931 had been taken by a competent authority against the appellant.

104 As regards the Council's assertion in its defence before the General Court that the contested acts were based solely on the order of the court hearing the application for interim measures, the Court of Justice recalls the function of the reference to a national decision, made by Article 1(4) of Common Position 2001/931, of establishing the existence of evidence or serious and credible clues as to the involvement of the person concerned in terrorist activities, regarded as reliable by the national authorities. In addition, the statement of reasons which was communicated to the appellant on two occasions, by letters of 23 April and 29 June 2007, refers to the Sanctieregeling. Accordingly, that assertion of the Council constitutes only an argument raised in support of its claims which are not binding on the Court of Justice when evaluating the legality of the contested acts (see, by analogy, Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden and Others* v *API and Commission* [2010] ECR I-8533, paragraph 65).

105 By the third part of the first plea, the appellant submits that neither the statement of reasons, the order of the court hearing the application for interim measures, the Sanctieregeling, nor even the AIVD memorandum, reveal the slightest intention, culpability or knowledge on its part concerning support of terrorist activities. The evidence of such factors, which in its view must be provided by the Council, is decisive for the purposes of applying Common Position 2001/931 and Regulation No 2580/2001. It claims that the Council committed a manifest error of assessment in assuming that it knew that some of the organisations to which donations were given were associated with Hamas and that those organisations were in turn using those funds to commit terrorist attacks.

106 In that regard, it is apparent from the circumstances specific to the present case, correctly set out in paragraphs 128 to 132 of the judgment under appeal, that the Council was able to consider, without committing an error of assessment, that the appellant had knowledge, within the meaning of Article 1(3)(k) of Common Position 2001/931, that its activity of raising funds and making them available contributed to terrorist activities.

107 Accordingly, the third part of the first plea and, consequently, that plea in its entirety must be rejected as unfounded.

B – *The third plea*

108 The third plea alleges an infringement of Article 1(6) of Common Position 2001/931, Article 2(3) of Regulation No 2580/2001 and of an essential procedural requirement. By this plea, the appellant submits that the Council did not review whether the grounds justifying the initial decision to freeze the appellant's funds still applied and whether it was still appropriate to continue to include the appellant on the list at issue, and that it thus infringed an essential procedural requirement.

109 The appellant submits that it no longer has any means of obtaining a review by a Netherlands court of the factual accuracy or inaccuracy of the accusations made by the AIVD in 2003, and still less of the current status of the organisations to which it sent funds. In addition, it claims that the Council did not take adequate account of the fact that the Sanctieregeling and the order of the court hearing the application for interim measures have not given rise in the Netherlands to the instigation of any investigations or prosecutions against it, even though the Sanctieregeling was repealed immediately after the adoption of the first Community measure freezing its funds.

110 In that regard, the Court of Justice notes, first of all, that it is apparent from paragraphs 78 to 89 above that the repeal of the Sanctieregeling as such is not sufficient to render the maintenance of the appellant on the list at issue incompatible with Article 1(4) and (6) of Common Position 2001/931.

111 Moreover, as noted in paragraph 90 above, it is not apparent from the judgment under appeal that there was evidence showing that, since the adoption of the Sanctieregeling, the factual situation or evaluation thereof by the national authorities had changed in so far as concerns the appellant's involvement in the financing of terrorist activities.

112 Nor does the applicant submit that the General Court failed to take account of such evidence or that the Council was in possession of evidence which could have led it to consider that, after the adoption of the Sanctieregeling, the appellant suspended or ceased to contribute to the financing of terrorist activities, irrespective of the fact that the freezing of its funds made such contributions more difficult, if not impossible.

113 Accordingly, it cannot be found that the Council failed to comply with its obligation to review under Article 1(6) of Common Position 2001/931.

C – *The second and fourth pleas*

1. Arguments of the parties

114 By its second and fourth pleas, the appellant submits that the contested acts infringe its fundamental right to unfettered enjoyment of its property, in infringement of general principles of Community law, in particular the principle of proportionality, of Article 6 EU and Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.

115 The appellant acknowledges that the freezing of funds does not infringe the actual substance of the property rights of the persons concerned over their financial assets, but only their use. However, it claims that, in the present case, the interference resulting from the contested acts is disproportionate. In its view, it would have been possible to choose between several adequate measures to combat the financing of terrorism, which in itself is a legitimate objective, and the measure chosen was not the least burdensome for the party concerned.

116 In that regard, the appellant accuses the Council of having frozen all of its assets, even though it could have just as effectively, and less restrictively, prevented it from transferring funds to specific organisations, or simply have prevented it from providing financial support for projects in Palestine, or from authorising the transfer of funds to specific humanitarian organisations, or set up a system of prior authorisation by a national authority prior to each financial transaction, or even have imposed a rigorous obligation on it to justify, *a posteriori*, how the funds transferred were used. The appellant did, none the less, suggest those alternative measures to the Council in its letter of 25 May 2007.

117 The appellant adds that account also needs to be taken of the excessive inconvenience which the contested acts cause it, in that they compromise its very existence as a donor to charitable organisations. As a result of the freezing of funds, it is no longer in a position to undertake any of the activities for which it was founded, including those for charitable purposes in the Netherlands.

118 Moreover, the imprecise and potentially unlimited duration of the measures at issue in the present case, which have already been in force for over four years, add to their disproportionate character. It is impossible to predict the period during which the Council will deem it necessary to apply those measures to it. The applicant itself cannot do anything to change its position.

119 The Council, the Kingdom of the Netherlands and the Commission consider that the contested acts comply with the principle of proportionality, with the result that the appellant's right to peaceful enjoyment of its property has not been infringed.

2. Findings of the Court

120 The freezing measure imposed by the contested acts constitutes a temporary precautionary measure which is not supposed to deprive the persons concerned of their property (see *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 358). It does, however, undeniably entail a restriction of the exercise of the appellant's right to property that must, moreover, be classified as considerable, having regard to the general application of the freezing measure and the fact that it was imposed on it for the first time by a decision of 27 June 2003.

121 According to settled case-law, the right to property under European Union law does not enjoy absolute protection. Consequently, the exercise of the right to property may be restricted, provided that those restrictions in fact correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right so guaranteed (see Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 21; *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 355; and Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraphs 89, 113 and 114).

122 Moreover, according to settled case-law, the principle of proportionality is one of the general principles of European Union law and requires that measures implemented through provisions of European Union law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (see, inter alia, Case C-176/09 *Luxembourg* v *Parliament and Council* [2011] ECR I-3727, paragraph 61 and the judgment of 13 March 2012 in Case C-380/09 P *Melli Bank* v *Council*, paragraph 52 and the case-law cited).

123 With reference to an objective of general interest as fundamental to the international community as the fight by all means, in accordance with the Charter of the United Nations, against the threats to international peace and security posed by acts of terrorism, the freezing of the funds, financial assets and other economic resources of the persons identified in accordance with the rules laid down in Regulation No 2580/2001 and by Common Position 2001/931 as being involved in the financing of terrorism cannot per se be regarded as inappropriate (see, to that effect, *Bosphorus*, paragraph 26; *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 363; and *Bank Melli Iran* v *Council*, paragraph 15).

124 The appellant itself acknowledges the legitimacy of the goal pursued, namely combating the financing of terrorism so as to maintain international peace and security, and it does not dispute the suitability of the freezing of funds for achieving that goal. It disputes only the necessity of the freezing of funds imposed by the contested acts and whether it is proportionate.

125 As regards the necessity of the measure, it should be noted that the alternative and less restrictive measures put forward by the appellant, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the goal pursued, namely combating the financing of terrorism, particularly given the possibility of circumventing such restrictions.

126 In addition, a partial freeze limited to assets related to the financing of terrorism is not provided for in either Common Position 2001/931 or Regulation No 2580/2001. The same is true of Resolution 1373 (2001) of the United Nations Security Council, Paragraph 1(c) of which provides, in a general manner, that States are to freeze funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts. Account must be taken of the wording and purpose of that resolution when interpreting provisions of European Union law which seek to implement that resolution (see, to that effect, inter alia, Case C-550/09 *E and F* [2010] ECR I-6213, paragraph 72; *Bank Melli Iran* v *Council*, paragraph 104; and *Melli Bank* v *Council*, paragraph 55).

127 As regards the alleged disproportionate nature of the maintenance of the appellant on the list at issue by the contested acts, the Court of Justice points out that Articles 5 and 6 of Regulation No 2580/2001 provide for the possibility, first, to authorise the use of frozen funds to meet essential needs or to satisfy certain commitments and, second, to grant specific authorisation to unfreeze funds, other financial assets or other economic resources (see, by analogy, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 364).

128 Moreover, account needs to be taken of the fact that, unlike the person concerned in the case which gave rise to the judgment in *Bosphorus*, the appellant contributed, by its conduct, to the situation which led to its inclusion on the list at issue, as is apparent from the Sanctieregeling and the order of the court hearing the application for interim measures.

129 Finally, the maintenance of the appellant on the list at issue by the contested acts cannot be qualified as disproportionate for being allegedly potentially unlimited, since such lists are subject to periodic review so as to ensure that the persons who, and entities which, no longer meet the necessary criteria are removed from the list at issue (see, by analogy, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 365).

130 It follows that, given the primordial importance of combating terrorism with a view to maintaining international peace and security, the restrictions on the appellant's right to property brought about by the contested acts are not disproportionate to the aims pursued.

131 Consequently, the second and fourth pleas are unfounded and must be rejected.

D – *The fifth plea*

1. Arguments of the parties

132 By its fifth plea in law, the appellant submits that Decision 2007/445 does not fulfil the requirement to state reasons laid down in Article 253 EC for several reasons.

133 First, it claims that the Council did not state the reasons why it considered that a decision had been taken in the present case by a competent authority within the meaning of Article 1(4) of Common Position 2001/931.

134 Second, the Council merely showed how the appellant fell, in its view, within the formal scope of Regulation No 2580/2001, without stating the reasons why it considered, in exercising its power of discretion in its assessment, that the appellant should in fact have its funds frozen.

135 Third, the Council did not state the specific and concrete reasons why it considered, after reassessment, that the freezing of the appellant's funds remained justified. According to the appellant, the Council merely expressed its 'conviction' that the reasons which initially justified including the appellant on the list at issue remained valid.

136 Fourth, the appellant accuses the Council of having failed to respond to the detailed comments which it sent to it in its letter of 25 May 2007.

137 The Council and the Commission consider that Decision 2007/445, read in conjunction with the statement of grounds and Regulation No 2580/2001, contains sufficient grounds.

2. Findings of the Court

138 According to settled case-law, the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and 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 persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review (see, inter alia, Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; *Bertelsmann and Sony Corporation of America* v *Impala*, paragraph 166; and *E and F*, paragraph 54).

139 The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see, inter alia, *Commission* v *Sytraval and Brink's France*, paragraph 63; *Bertelsmann and Sony Corporation of America* v *Impala*, paragraph 166; and *Melli Bank* v *Council*, paragraph 93).

140 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 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, inter alia, *Commission* v *Sytraval and Brink's France*, paragraph 63; Case C-42/01 *Portugal* v *Commission* [2004] ECR I-6079, paragraph 66; and *Bertelsmann and Sony Corporation of America* v *Impala*, paragraph 166).

141 First of all, it is apparent from that case-law that Article 253 EC cannot be interpreted as requiring that the Council provide a detailed answer to the observations made by the appellant at its consultation prior to the adoption of the decision at issue (see, by analogy, Joined Cases 3/58 to 18/58, 25/58 and 26/58 *Erzbergbau and Others* v *High Authority* [1960] ECR 173, 197, and Joined Cases 142/84 and 156/84 *British American Tobacco and Reynolds Industries* v *Commission* [1987] ECR 4487, paragraphs 72 and 73).

142 Moreover, the statement of reasons notified to the appellant, together with Decision 2007/445, sets out the individual and specific reasons which led the Council to consider, in accordance with Article 1(4) of Common Position 2001/931 on the basis of information considered to be reliable by a national authority, that the appellant was involved in the financing of terrorism. Such elements were sufficient to enable the appellant to understand the accusations made against it.

143 That conclusion is also valid for the other contested acts, given that it is not disputed that the statements of grounds relied on by the Council to justify those acts were identical to the statement of reasons referred to above.

144 As regards the appellant's second argument, it is apparent from Paragraph 1(c) of Resolution 1373 (2001) of the United Nations Security Council and Article 2(1) and (3) of Regulation No 2580/2001 that the freezing of the funds of persons involved in terrorist acts constitutes the rule. Therefore, the Council cannot be accused of having failed to provide additional reasons why it was led to consider that the appellant should in fact have its funds frozen.

145 In so far as concerns the appellant's third argument alleging a failure to set out the reasons why the Council considered that the freezing of the appellant's funds was justified, the Court of Justice notes that, as pointed out in paragraphs 111 and 112 above, there is nothing to suggest that, since the adoption of the Sanctieregeling, the factual situation or the assessment thereof by the national authorities had changed in relation to the appellant's involvement in the financing of terrorist

activities. Nor does the appellant claim that the Council was in possession of information which could have led it to consider that, after the adoption of the Sanctieregeling, the appellant had suspended or ceased to contribute to the financing of terrorist activities.

146 Accordingly, it was not necessary to set out in detail the reasons why the Council was convinced that the grounds which justified adding the appellant to the list at issue remained valid.

147 Consequently, the last plea in law must be rejected, as must, therefore, the action as a whole.

VII – Costs

148 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is not well founded or where the appeal is founded and the Court itself gives final judgment in the case, the Court is required to make a decision as to costs. Under Article 69(2) of those Rules of Procedure, applicable to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 69(4) of those Rules of Procedure provides that Member States and institutions which have intervened in the proceedings are to bear their own costs.

149 Since the appeal brought by the Kingdom of the Netherlands has been upheld and the appeal brought by the appellant and its action against the contested acts have been dismissed, it is appropriate, in accordance with the form of order sought by the Kingdom of the Netherlands and the Council, to order the appellant to bear, in addition to its own costs, those incurred by the Kingdom of the Netherlands and the Council in the context of the present appeals and those incurred by the Council at first instance.

150 The Commission, as intervener before the General Court and before the Court of Justice, and the Kingdom of the Netherlands, as intervener before the General Court, are to bear their own costs incurred at both instances.

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

1. **Sets aside the judgment of the General Court of the European Union of 9 September 2010 in Case T-348/07 *Al-Aqsa* v *Council;***

2. **Dismisses the action and the appeal brought by Stichting Al-Aqsa;**

3. **Orders Stichting Al-Aqsa to bear, in addition to its own costs, those incurred by the Kingdom of the Netherlands and the Council of the European Union in the context of the present appeals and those incurred by the Council at first instance;**

4. **Orders the European Commission, as intervener before the General Court of the European Union and before the Court of Justice of the European Union, and the Kingdom of the Netherlands, as intervener before the General Court, to bear their own costs incurred at both instances.**

[Signatures]