



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

22 April 2021 *

(Appeal – Common Foreign and Security Policy – Combating terrorism – Restrictive measures taken against certain persons and entities – Freezing of funds – Common Position 2001/931/CFSP – Article 1(3), (4) and (6) – Regulation (EC) No 2580/2001 – Article 2(3) – Retention of an organisation on the list of persons, groups and entities involved in terrorist acts – Conditions – Decision by a competent authority – Ongoing risk of involvement in terrorist activities – Factual basis of the decisions to freeze funds – Decision to review the national decision on which the initial inclusion was based – Obligation to state reasons)

In Case C-46/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 January 2019,

Council of the European Union, represented by B. Driessen and S. Van Overmeire, acting as Agents,
appellant,

supported by:

French Republic, represented by A.-L. Desjonquères, B. Fodda and J.-L. Carré, acting as Agents,

Kingdom of the Netherlands, represented by M.K. Bulterman and J. Langer, acting as Agents,

interveners in the appeal,

the other parties to the proceedings being:

Kurdistan Workers' Party (PKK), represented by A.M. van Eik and T.M.D. Buruma, advocaten,

applicant at first instance,

European Commission, represented by R. Tricot, T. Ramopoulos and J. Norris, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented initially by S. Brandon, acting as Agent, and by P. Nevill, Barrister, and subsequently by F. Shibli and S. McCrory, acting as Agents, and by P. Nevill, Barrister,

interveners at first instance,

* Language of the case: English.

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Second Chamber, A. Kumin, T. von Danwitz (Rapporteur) and P.G. Xuereb, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, the Council of the European Union seeks the setting aside of the judgment of the General Court of the European Union of 15 November 2018, *PKK v Council* (T-316/14, EU:T:2018:788; ‘the judgment under appeal’), whereby the General Court annulled:

- Council Decision (CFSP) 2015/521 of 26 March 2015 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2014/483/CFSP (OJ 2015 L 82, p. 107);
- Council Decision (CFSP) 2015/1334 of 31 July 2015 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision 2015/521 (OJ 2015 L 206, p. 61); and
- Council Decision (CFSP) 2017/1426 of 4 August 2017 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2017/154 (OJ 2017 L 204, p. 95)

(together, ‘the decisions at issue’), as well as

- Council Implementing Regulation (EU) No 125/2014 of 10 February 2014 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 Implementing Regulation (EU) No 714/2013 (OJ 2014 L 40, p. 9);
- Council Implementing Regulation (EU) No 790/2014 of 22 July 2014 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 Implementing Regulation No 125/2014 (OJ 2014 L 217, p. 1);
- Council Implementing Regulation (EU) 2015/513 of 26 March 2015 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 Implementing Regulation No 790/2014 (OJ 2015 L 82, p. 1);

- Council Implementing Regulation (EU) 2015/1325 of 31 July 2015 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 Implementing Regulation 2015/513 (OJ 2015 L 206, p. 12);
- Council Implementing Regulation (EU) 2015/2425 of 21 December 2015 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 Implementing Regulation 2015/1325 (OJ 2015 L 334, p. 1);
- Council Implementing Regulation (EU) 2016/1127 of 12 July 2016 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 Implementing Regulation 2015/2425 (OJ 2016 L 188, p. 1);
- Council Implementing Regulation (EU) 2017/150 of 27 January 2017 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 Implementing Regulation 2016/1127 (OJ 2017 L 23, p. 3); and
- Council Implementing Regulation (EU) 2017/1420 of 4 August 2017 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 Implementing Regulation 2017/150 (OJ 2017 L 204, p. 3)

(together, ‘the regulations at issue’), in so far as those decisions and regulations (together, ‘the acts at issue’) concern the Kurdistan Workers’ Party (PKK).

Legal context

United Nations Security Council Resolution 1373 (2001)

- 2 On 28 September 2001 the United Nations Security Council adopted Resolution 1373 (2001) laying out wide-ranging strategies to combat terrorism and, in particular, the financing of terrorism. Point 1(c) of that resolution provides, inter alia, that all States must 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 names of persons to whom those restrictive measures must be applied.

European Union law

Common Position 2001/931/CFSP

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

5 Article 1(1), (3), (4) and (6) of that common position is worded as follows:

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

...

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:
 - (a) attacks upon a person’s life which may cause death;
 - (b) attacks upon the physical integrity of a person;
 - (c) kidnapping or hostage taking;
 - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
 - (e) seizure of aircraft, ships or other means of public or goods transport;
 - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
 - (g) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;
 - (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
 - (i) threatening to commit any of the acts listed under (a) to (h);
 - (j) directing a terrorist group;
 - (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.

For the purposes of this paragraph, “terrorist group” shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist acts. “Structured group” means a group that is not randomly formed for the immediate commission of a terrorist act and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

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

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

...

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

Regulation (EC) No 2580/2001

6 Considering that a regulation was necessary in order to implement at EU level the measures set out in Common Position 2001/931, 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).

7 Article 2 of that regulation provides:

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

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

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

3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position [2001/931]; 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 [or] legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).’

Background to the dispute and the acts at issue

- 8 In paragraphs 1 to 7, 56 to 61 and 81 to 93 of the judgment under appeal, the General Court provided a summary of the factual background to the dispute before it. As regards the examination of the present appeal, the following aspects of that summary must be upheld.
- 9 On 2 May 2002, the Council adopted Common Position 2002/340/CFSP updating Common Position 2001/931 (OJ 2002 L 116, p. 75). The Annex to Common Position 2002/340 updated the list of persons, groups and entities to whom the restrictive measures laid down by Common Position 2001/931 apply ('the list at issue') and, in particular, inserted the name of the Kurdistan Workers' Party (PKK), identified as follows: 'Kurdistan Workers' Party (PKK)'. On the same date, the Council adopted Decision 2002/334/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2001/927/EC (OJ 2002 L 116, p. 33). In that decision, the name of the PKK is included in the list provided for in Article 2(3) of Regulation No 2580/2001 in the same terms as those used in the list at issue.
- 10 The inclusion of the PKK in that list was maintained, inter alia, by the acts at issue. Since 2 April 2004, the list at issue has referred, as regards the PKK, to the 'Kurdistan Workers' Party ("PKK") (also known as "KADEK", also known as "KONGRA-GEL")'.
- 11 In the statements of reasons relating to Implementing Regulations No 125/2014 and No 790/2014 ('the 2014 acts'), the Council described the PKK as an entity involved in terrorist acts and one which, from 1984 onwards, had committed numerous acts of that nature, causing the death of more than 30 000 Turkish citizens and foreign nationals.
- 12 The Council stated that the terrorist activities of the PKK had been ongoing, notwithstanding a number of ceasefires which had been unilaterally declared by the PKK in particular since 2009. In that regard, the Council explained that the terrorist acts committed by the PKK included bomb attacks, rocket attacks, the use of explosives, the murder or abduction of Turkish citizens and foreign tourists, hostage-taking, attacks on Turkish security forces and armed confrontations with those security forces, attacks on oil facilities, public transport, Turkish diplomatic, cultural and commercial facilities in various countries, extortion targeting Turkish citizens living abroad, and other criminal acts aimed at financing its activities. By way of example, the Council drew up a list of 69 incidents which had occurred between 14 November 2003 and 19 October 2011. Subsequently, the Council classified those acts, which it attributes to the PKK, as 'terrorist acts' within the meaning of Article 1(3) of Common Position 2001/931.
- 13 The Council added that the PKK had been the subject of three national decisions, the first of which had been adopted on 29 March 2001 by the Secretary of State for the Home Department (Home Secretary of the United Kingdom; 'the Home Secretary') on the basis of the UK Terrorism Act 2000, as supplemented by a decision of 14 July 2006, which entered into force on 14 August 2006, taking the view that 'KADEK' and 'KONGRA-GEL' were other names for the PKK ('the Home Secretary's decision of 2001'). By that decision, the Home Secretary, in the light of the perpetration of terrorist acts by the PKK and its participation in such acts, proscribed the PKK as an organisation involved in terrorist acts. The Council explained that that decision was reviewed regularly by an internal government committee.
- 14 The other two national decisions were adopted by the Government of the United States of America. These are, first, the decision classifying the PKK as a 'foreign terrorist organisation' under Section 219 of the United States Immigration and Nationality Act, as amended, and, second, the decision classifying the PKK as a 'specially designated global terrorist' under Executive Order No 13 224 (together, 'the decisions of the United States authorities'). As regards those decisions of the United States authorities,

the Council remarked that the decision classifying the PKK as a ‘foreign terrorist organisation’ could be subject to judicial review, while the decision classifying the PKK as a ‘specially designated global terrorist’ could give rise to both administrative and judicial review.

- 15 In those circumstances, the Council considered that the three national decisions referred to in the two previous paragraphs had been adopted by ‘competent authorities’ within the meaning of Article 1(4) of Common Position 2001/931. The Council also remarked that those three national decisions were still in force and considered that the grounds which had justified the initial inclusion of the PKK in the list at issue were still valid.
- 16 In the statements of reasons relating to the decisions at issue and the regulations at issue adopted between 2015 and 2017 (‘the 2015 to 2017 acts’), the Council stated that the continued inclusion of the PKK in the list at issue was based on decisions adopted by three competent authorities, in particular the Home Secretary’s decision of 2001 and the decisions of the United States authorities, which are the subject of Annexes A and C to those statements of reasons respectively. In that regard, it emphasised, first of all, that it had independently examined the information contained in those decisions and that, according to its findings, each of those decisions contained sufficient reasons to justify the inclusion of the PKK, at EU level, in the list at issue.
- 17 Next, the Council stated that, according to the case-law of the General Court, the Home Secretary and the United States authorities may each be regarded as a ‘competent authority’ within the meaning of Article 1(4) of Common Position 2001/931, while explaining that it had verified that the facts on which those decisions were based were covered by the concepts of ‘terrorist acts’ and ‘terrorist group’ and that those decisions remained in force. Lastly, the Council specified that it had no evidence to support removing the PKK from the list at issue and that the reasons justifying the inclusion of that organisation in that list remained valid, with the result that that listing had to be maintained.
- 18 The statements of reasons relating to the 2015 to 2017 acts set out, in the annexes thereto, in respect of each national decision, a description of the definition of the concept of ‘terrorism’ in national law, a description of the national administrative and judicial procedures applicable, a summary of the procedural history and the aftermath of the national decision concerned, a summary of the conclusions reached by the competent authorities with regard to the PKK, a description of the acts relied on by those competent authorities, and the finding that those acts constituted ‘terrorist acts’ within the meaning of Article 1(3) of Common Position 2001/931.
- 19 In Annex A to the statements of reasons for the 2015 to 2017 acts, the Council stated that the Home Secretary’s decision of 2001 had proscribed the PKK, since there were reasonable grounds for believing that the PKK was committing, or participating in, ‘terrorist acts’ within the meaning of Article 1(3) of Common Position 2001/931. By decision of 3 December 2014 (‘the Home Secretary’s review decision of 2014’), the Home Secretary had rejected a request that the proscription of the PKK be withdrawn, relying on recent terrorist attacks which, according to the Home Secretary, had been committed by the PKK and indicated that the PKK was still involved in ‘terrorist acts’ within the meaning of Article 1(3) of Common Position 2001/931.
- 20 In Annex C to those statements of reasons, which concerns the decisions of the United States authorities, the Council stated that the 2013 annual report on terrorism, drawn up by the US Department of State, contained the specific reasons on the basis of which the decision to designate the PKK as a ‘foreign terrorist organisation’ had been taken and maintained.

Procedure before the General Court and the judgment under appeal

- 21 By application lodged at the Registry of the General Court on 1 May 2014, the PKK brought an action seeking, in the final version of its pleadings, annulment of the acts at issue in so far as they concern it, that organisation having modified its heads of claim in the course of the proceedings as and when one of the acts at issue repealed and replaced the act preceding it.
- 22 The European Commission and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in the proceedings before the General Court in support of the form of order sought by the Council.
- 23 In support of its action for annulment of the acts at issue, the PKK raised, in essence, eight pleas in law. The General Court confined itself to examining the seventh plea, alleging infringement of the obligation to state reasons. By the judgment under appeal, the General Court held that that plea was well founded and, accordingly, annulled the acts at issue in so far as they concern the PKK.
- 24 In the context of the examination of the seventh plea, the General Court first of all recalled that it was necessary to distinguish between the acts by which the name of a person or entity was initially included in a list relating to the freezing of funds, which are governed by Article 1(4) of Common Position 2001/931, and the acts maintaining that name on that list, which are governed by Article 1(6) of that common position.
- 25 The General Court then held that the reasons for the 2014 acts and the 2015 to 2017 acts were not stated to the requisite legal standard.

Procedure before the Court of Justice and forms of order sought

- 26 By decisions of the President of the Court of 13 and 20 May 2019, the Kingdom of the Netherlands and the French Republic were granted leave to intervene in support of the form of order sought by the Council.
- 27 The Council and the United Kingdom claim that the Court should:
- set aside the judgment under appeal;
 - give final judgment in the matters that are the subject of the present appeal and dismiss the action brought by the PKK; and
 - order the PKK to pay the costs incurred by the Council in connection with the present appeal and with Case T-316/14.
- 28 The Commission claims that the Court should uphold the appeal.
- 29 The French Republic claims that the Court should:
- set aside the judgment under appeal and
 - give final judgment on the matters that are the subject of the Council's appeal and dismiss the action brought by the PKK.
- 30 The PKK contends that the Court should:
- dismiss the appeal lodged by the Council in its entirety;

- confirm the judgment of the General Court;
- order the Council to pay the costs incurred by the PKK in connection with the present appeal and confirm the judgment under appeal in so far as it orders the Council to pay the costs of the proceedings before the General Court; and
- in the alternative, remit the case to the General Court in order that it may give a ruling on the other pleas raised by the PKK in its action for annulment.

The appeal

- 31 In support of its appeal, the Council raises seven grounds of appeal.
- 32 By the first ground of the appeal, the Council disputes the General Court’s findings that the decisions at issue are decisions to maintain falling exclusively within the scope of Article 1(6) of Common Position 2001/931.
- 33 The second to fifth grounds of the appeal concern the grounds of the judgment under appeal relating to the 2014 acts. The second ground of appeal alleges that the General Court wrongly held that the decisions of the United States authorities could not serve as a basis for the initial inclusion of the PKK in the list at issue. The third ground of appeal concerns the grounds of the judgment under appeal according to which the Council failed to fulfil its obligation to state reasons inasmuch as it failed to set out the reasons why the national decisions constituted decisions adopted by a ‘competent authority’ within the meaning of Article 1(4) of Common Position 2001/931. By the fourth ground of appeal, the Council disputes the General Court’s findings that, in the light of the unilateral declaration of the PKK of a number of ceasefires and the peace negotiations undertaken with the Turkish Government, it was required to base the continued inclusion of the PKK in the list at issue on more recent material. The fifth ground of appeal concerns the grounds of the judgment under appeal according to which the Council failed to fulfil its obligation to state reasons as regards the 69 incidents on the basis of which that institution had stated that there was an ongoing risk of the PKK participating in terrorist activities.
- 34 The sixth and seventh grounds of the appeal concern the General Court’s findings regarding the 2015 to 2017 acts. The sixth ground of appeal alleges that the General Court wrongly held that the Council could not establish, in the reasoning relating to those acts, that there was an ongoing risk of the PKK participating in terrorist activities by referring to decisions reviewing the national decisions on which the initial inclusion of that organisation’s name in the list at issue had been based. By the seventh ground of appeal, the Council disputes the General Court’s findings that the Council’s letter of 27 March 2015, by which it had notified the PKK of the statement of reasons relating to Implementing Regulation 2015/513 and Decision 2015/521, while responding, in that letter, to arguments put forward by the PKK during the procedure leading to the adoption of that regulation and that decision, could not be taken into account as part of the reasoning behind that regulation and that decision.

The first ground of appeal

Arguments of the parties

- 35 The first ground of appeal concerns paragraphs 52 to 54, 103 and 104 of the judgment under appeal, in which the General Court held, in essence, that the acts at issue fell exclusively within the scope of Article 1(6) of Common Position 2001/931. According to the Council, supported by the French

Republic, the United Kingdom and the Commission, those acts also fell within the scope of Article 1(4) of that common position. Accordingly, the General Court should also have examined their legality in the light of the latter provision.

36 The PKK disputes those arguments and contends that the first ground of appeal should be rejected.

Findings of the Court

37 According to the settled case-law of the Court of Justice, it is necessary to distinguish between the acts whereby the name of a person or entity is initially included in a list relating to the freezing of funds, which are governed by Article 1(4) of Common Position 2001/931, and the acts whereby that person or entity's name is maintained on that list, which are governed by Article 1(6) of that common position (see, to that effect, judgments of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 58 to 62; of 26 July 2017, *Council v Hamas*, C-79/15 P, EU:C:2017:584, paragraphs 36 to 40; and of 20 June 2019, *K.P.*, C-458/15, EU:C:2019:522, paragraphs 50 to 52).

38 Consequently, in examining the decisions at issue, whereby the PKK was maintained on the list at issue, exclusively in the light of Article 1(6) of Common Position 2001/931, the General Court did not err in law.

39 It follows that the first ground of appeal must be set aside as unfounded.

The third and fifth grounds of appeal

40 The third and fifth grounds of the appeal, which it is appropriate to examine together, are directed against paragraphs 67, 68, 77 and 78 of the judgment under appeal, in which the General Court held that the 2014 acts were vitiated by a failure to state reasons inasmuch as they were based on the Home Secretary's decision of 2001 and the decisions of the United States authorities, as well as a list of 69 incidents which had occurred between 14 November 2003 and 19 October 2011.

41 As regards, more specifically, the Home Secretary's decision of 2001, the General Court noted, in paragraph 68 of the judgment under appeal, that the statements of reasons relating to the 2014 acts did not contain any description of the reasons underlying that decision; nor did they specify the reasons why the Council had considered that the facts concerned fell within the scope of the concept of a 'terrorist act' within the meaning of Article 1(3) of Common Position 2001/931 or the reasons which had led it to consider that that decision constituted a decision of a 'competent authority' within the meaning of Article 1(4) of that common position. In that regard, the General Court emphasised that the PKK had challenged that classification in the course of the proceedings before it.

42 As regards the list of 69 incidents which had occurred between 14 November 2003 and 19 October 2011, the General Court held, in paragraphs 77 and 78 of the judgment under appeal, that, since the PKK had disputed, during the proceedings before it, whether some of those incidents had actually occurred, whether they could be attributed to the PKK, and the circumstances in which they had been committed, it was for the Council to establish, in the reasoning relating to the 2014 acts, whether the facts alleged were well founded, and it was for the General Court to determine whether those facts were made out. According to the General Court, the information set out in the statements of reasons for the 2014 acts did not enable it to exercise its power of review, since those statements of reasons did not contain any indication of the evidence on which the Council had relied in order to conclude that the incidents in question had been established, were attributable to the PKK, and fulfilled the criteria laid down in Article 1(3) of Common Position 2001/931.

Arguments of the parties

- 43 The Council, supported by the French Republic, the United Kingdom and the Commission, submits that, in paragraphs 67 and 68 of the judgment under appeal, the General Court erred in law in finding that the Council was required to set out, in the statements of reasons for the 2014 acts, the reasons which had led it to consider that the Home Secretary's decision of 2001 and the decisions of the United States authorities constituted decisions by competent authorities within the meaning of Article 1(4) of Common Position 2001/931 and related to 'terrorist acts' within the meaning of Article 1(3) thereof. The Council considers that, in so doing, the General Court imposed on it a requirement which is not laid down in Article 1(4) of that common position.
- 44 According to the Council, the General Court was also wrong to find, in paragraphs 77 and 78 of the judgment under appeal, a failure to state reasons as regards the 69 incidents which had occurred between 14 November 2003 and 19 October 2011. That institution argues that, in order to fulfil the obligation to state reasons, it is sufficient for it to indicate the evidence relied on against the person or entity concerned in the statements of reasons, in order that that person or entity may be in a position to understand the reasons why its name was maintained on the list relating to the freezing of funds, without being required to establish that the facts alleged are well founded or to set out in detail the entirety of its reasoning in the statements of reasons. The evidence of the alleged conduct relates to the lawfulness of the grounds on which the act in question is based and not to the obligation to state reasons.
- 45 The PKK contends that the third and fifth grounds of appeal should be rejected. In its view, the General Court was right to hold that the Council was required to set out, in the statements of reasons for the 2014 acts, the reasons why it had considered that the national decisions on which the initial inclusion of the PKK's name had been based constituted decisions of a 'competent authority' within the meaning of Article 1(4) of Common Position 2001/931, and that those decisions concerned 'terrorist acts' within the meaning of Article 1(3) of that common position. In addition, the Council should have specified why the 69 incidents referred to in those statements of reasons also constituted such acts, attributable to the PKK. In particular, in the statement of reasons for Regulation No 790/2014, the Council should have taken account of the objections raised by the PKK in that regard in the context of its action against Regulation No 125/2014.

Findings of the Court

- 46 As a preliminary point, it should be pointed out that the third and fifth grounds of the appeal relate, in essence, to the scope of the Council's obligation to state reasons with regard to the 2014 acts, by which the Council continued to include the PKK in the list at issue. However, it follows from the case-law cited in paragraph 37 of the present judgment that Article 1 of Common Position 2001/931 establishes a distinction between the initial inclusion of a person or entity in a list relating to the freezing of funds, on the one hand, which is referred to in Article 1(4) of that common position, and the maintaining on that list of that person or entity, who has already been included in that list, on the other, which is referred to in Article 1(6) of that common position. Contrary to the Council's assertions, the conditions to which such maintaining is subject are therefore only those laid down in Article 1(6) of Common Position 2001/931 and, even though the parties' arguments refer to Article 1(3) and (4) of that common position, it is only in the light of Article 1(6) thereof that it is necessary to examine the scope of the Council's obligation to state reasons.
- 47 According to the settled case-law of the Court, the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure for the purpose of assessing whether it is well founded and to enable the court having

jurisdiction to exercise its power of review (see, to that effect, judgments of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 138, and of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraph 29).

- 48 The statement of reasons thus required must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. In particular, it is not necessary for the reasoning to go into all the relevant facts and points of law or to provide a detailed answer to the considerations set out by the person concerned when consulted prior to the adoption of that same measure, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. Consequently, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him or her to understand the scope of the measure concerning him or her (see, to that effect, judgments of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 139 to 141; of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraphs 120 and 122; and of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others v Council*, C-225/17 P, EU:C:2019:82, paragraph 69 and the case-law cited).
- 49 As regards, more specifically, acts containing a decision to retain a person or entity on a list relating to the freezing of funds, such as the 2014 acts, it should be borne in mind that, in the context of a review carried out pursuant to Article 1(6) of Common Position 2001/931, the Council may maintain the person or entity concerned on that list if it concludes that there is an ongoing risk of that person or entity being involved in the terrorist activities which justified their initial inclusion in the list, that maintaining being, therefore, in essence, an extension of the initial inclusion of the person or entity concerned in that list. To that end, the Council is required to verify whether, since that initial inclusion or since the last review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion in relation to the involvement of that person or entity in terrorist activities (see, to that effect, judgments of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 46 and 51 and the case-law cited, and of 20 June 2019, *K.P.*, C-458/15, EU:C:2019:522, paragraph 43).
- 50 In the process of verifying whether the risk of the person or entity concerned being involved in terrorist activities is ongoing, the subsequent fate of the national decision that served as the basis for the initial inclusion of that person or entity in the list relating to the freezing of funds must be duly taken into consideration, in particular the repeal or withdrawal of that national decision as a result of new facts or material or any modification of the competent national authority's assessment (judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraph 52).
- 51 In addition, the mere fact that the national decision that served as the basis for the initial inclusion is still in force may, in view of the passage of time and in the light of changes in the circumstances of the case, no longer be sufficient to support the conclusion that the risk of the person or entity concerned being involved in terrorist activities is ongoing. In such a situation, the Council is required to base the retention of that person or entity on the list on an up-to-date assessment of the situation, and to take into account more recent facts which demonstrate that that risk still exists. To that end, the Council may rely on recent material taken not only from national decisions adopted by competent authorities but also from other sources and, accordingly, from its own assessments (see, to that effect, judgments of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 52, 62 and 72; of 26 July 2017, *Council v Hamas*, C-79/15 P, EU:C:2017:584, paragraphs 40 and 50; and of 20 June 2019, *K.P.*, C-458/15, EU:C:2019:522, paragraphs 52, 60 and 61).

- 52 In that regard, it should be specified that, regarding acts which continue to include a person or entity in the list relating to the freezing of funds in question, the Courts of the European Union are required to determine, first, whether the obligation to state reasons laid down in Article 296 TFEU has been complied with and, therefore, whether the reasons relied on are sufficiently detailed and specific, and, second, whether those reasons are substantiated, which requires those courts to ensure, as part of the review of the substantive legality of those reasons, that those acts have a sufficiently solid factual basis and to verify the facts alleged in the statement of reasons underpinning those acts (see, to that effect, inter alia, judgments of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 118 and 119, and of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraph 70).
- 53 Regarding that review, the person or entity concerned may, in the action challenging their retention on the list relating to the freezing of funds in question, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources. In the event of challenge, it is for the Council to establish that the facts alleged are well founded and for the Courts of the European Union to determine whether they are made out (judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraph 71 and the case-law cited).
- 54 Furthermore, while it is only in the event of challenge for the competent European Union authority to establish that the reasons relied on against the person or entity concerned are well founded, that person or entity cannot be required, for the purposes of that challenge, to adduce evidence of the negative, namely evidence that those reasons are not well founded (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 121).
- 55 That being said, it should be emphasised that the issue of the statement of reasons, which concerns an essential procedural requirement, is separate from that of the evidence of the alleged conduct, which concerns the substantive legality of the act in question and involves assessing the truth of the facts set out in that act and the classification of those facts as evidence justifying the use of restrictive measures against the person concerned (see, to that effect, judgments of 16 November 2011, *Bank Melli Iran v Council*, C-548/09 P, EU:C:2011:735, paragraph 88, and of 15 November 2012, *Council v Bamba*, C-417/11 P, EU:C:2012:718, paragraph 60).
- 56 It follows from the foregoing that, in order to fulfil the obligation to state reasons laid down in Article 296 TFEU, it was, in the present case, for the Council to provide sufficiently detailed and specific reasons to enable the PKK to know the reasons relied on for the purpose of continuing, by the 2014 acts, to include the PKK in the list at issue and to enable the General Court to exercise its power of review. However, contrary to what the General Court held in paragraphs 68, 77 and 78 of the judgment under appeal, the Council was not required to establish, in the reasoning relating to those acts, the truth of the facts underlying the reasons relied on for the purpose of continuing to include the PKK in the list at issue, or to provide, in that reasoning, a legal classification of those facts in the light of Article 1(3) and (4) of Common Position 2001/931. Indeed, the evidence thus required by the General Court concerns, according to the case-law recalled in paragraphs 52 to 55 of the present judgment, not the obligation to state reasons, but the substantive legality of those acts; an issue unrelated to the seventh plea relied on at first instance which was upheld in the judgment under appeal.
- 57 It follows that the General Court erred in law in finding, in paragraphs 68, 77 and 78 of the judgment under appeal, that the Council failed to fulfil its obligation to state reasons inasmuch as the statements of reasons for the 2014 acts refer to the Home Secretary's decision of 2001 and to a list of 69 incidents which had occurred between 14 November 2003 and 19 October 2011.

- 58 However, according to settled case-law, if the grounds of a decision of the General Court reveal an infringement of EU law, but the operative part of the judgment under appeal can be seen to be well founded on other legal grounds, that infringement is not capable of leading to the annulment of that decision (judgment of 26 July 2017, *Council v LTTE*, C-599/14 P, EU:C:2017:583, paragraph 75). It is therefore necessary to ascertain, in addition, whether that error of law vitiating the judgment under appeal is such as to invalidate the conclusion reached by the General Court in paragraph 80 of that judgment or whether, by contrast, it is apparent from the material in the file that the 2014 acts were, in any event, vitiated by a failure to state reasons.
- 59 In that regard, it is apparent from the statements of reasons for the 2014 acts, as summarised in paragraphs 11 to 15 of the present judgment, that, for the purpose of continuing to include the PKK in the list at issue, the Council relied, taking account of the history of the PKK's terrorist activities since 1984 and the ceasefires declared unilaterally by the PKK in particular since 2009, on the fact that the Home Secretary's decision of 2001 that had served as a basis for the initial inclusion of the PKK in that list was still in force and, in particular, on a list of 69 incidents which had occurred between 14 November 2003 and 19 October 2011 which the Council regarded as constituting 'terrorist acts' within the meaning of Article 1(3) of Common Position 2001/931, and which were attributable to the PKK.
- 60 As regards the Home Secretary's decision of 2001, which initially served as the basis for that inclusion, it is apparent from those statements of reasons that the Council stated that that decision had been adopted by a competent authority within the meaning of Article 1(4) of Common Position 2001/931, that it was subject to regular checks by a United Kingdom government committee, and that it was still in force. Accordingly, the Council explained that it carried out the examination required under the case-law recalled in paragraphs 49 and 50 of the present judgment and that it concluded that the subsequent fate of that decision does not indicate a change such as that referred to in those paragraphs of the present judgment. Those reasons are sufficiently detailed and specific to enable the PKK to know the reasons why the Council, inter alia, based its continued inclusion in the list at issue on that decision, and to enable the General Court to exercise its power of review in that regard.
- 61 As regards the list of 69 incidents which had occurred between 14 November 2003 and 19 October 2011, the Council mentioned in the statements of reasons relating to the 2014 acts, in particular, 17 incidents, which had occurred between 17 January 2010 and 19 October 2011, which, according to the Council, were not only subsequent to the ceasefires unilaterally declared by the PKK since 2009, but also sufficiently recent to justify the continued inclusion of that organisation in, inter alia, the list at issue in February and July 2014. With regard to those 17 most recent incidents, the Council specified the exact date of the incidents, the city or province where they had occurred, the nature of the incidents, and the number and type of victims.
- 62 Contrary to what the General Court held in paragraphs 68, 77 and 78 of the judgment under appeal, in so doing, the statements of reasons relating to the 2014 acts enabled the PKK to know the actual and specific reasons why the Council had considered that, notwithstanding the ceasefires declared unilaterally since 2009, there was still a risk of that organisation being involved in terrorist activities. Thus, the facts set out in those statements of reasons were sufficient to place the PKK in a position to understand the accusations made against it (see, by analogy, judgments of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 4 and 142, and of 20 June 2019, *K.P.*, C-458/15, EU:C:2019:522, paragraphs 53 and 54).
- 63 It should be added that, although the General Court noted, in paragraphs 68, 77 and 78 of the judgment under appeal, that the PKK had put forward arguments intended to challenge the Home Secretary's decision of 2001 and the 69 incidents referred to in the statements of reasons relating to the 2014 acts, it is apparent from paragraphs 77 and 78 of that judgment and from the PKK's arguments as summarised in paragraph 45 of the present judgment that those arguments are intended to challenge the truth of the facts referred to and their legal classification, which is intended not to

establish that the Council has failed to fulfil its obligation to state reasons, but to challenge the substantive legality of those acts and thus to trigger the Council's obligation to establish that the reasons relied on are well founded.

- 64 In so far as the General Court considered, in paragraph 78 of the judgment under appeal, that the brevity of the information contained in the statements of reasons for the 2014 acts did not allow it to exercise its power of judicial review with respect to the incidents that were disputed by the PKK, given that those statements contain no indication of the material on which the Council relied in order to conclude that the incidents in question had been established, were attributable to the PKK, and fulfilled the criteria laid down in Article 1(3) of Common Position 2001/931, it should be noted that it follows from the case-law recalled in paragraphs 53 to 55 of the present judgment that the review of substantive legality thus incumbent on the General Court must be carried out in the light not only of the material set out in the statements of reasons of the acts at issue, but also in the light of the material provided by the Council, in the event of challenge, to the General Court in order to establish that the facts alleged in those statements are made out.
- 65 Accordingly, the error of law noted in paragraph 56 of the present judgment is such as to invalidate the conclusion reached by the General Court in paragraph 80 of the judgment under appeal.
- 66 Therefore, the fifth ground of the appeal must be upheld, as must the third ground of the appeal in so far as it relates to the findings of the General Court concerning the Home Secretary's decision of 2001.
- 67 It follows that the claim that the judgment under appeal should be set aside must be upheld in so far as the General Court annulled the 2014 acts on the ground of a failure to state reasons, without it being necessary to rule on the errors of law alleged in the second and fourth grounds of the appeal or on the arguments put forward in the context of the third ground of the appeal, which dispute the General Court's findings concerning the decisions of the United States authorities.

The sixth and seventh grounds of appeal

- 68 The sixth and seventh grounds of the appeal, which it is appropriate to examine together, are directed against paragraphs 95 to 98, 103 to 106 and 110 to 114 of the judgment under appeal, in which the General Court held that the 2015 to 2017 acts were vitiated by a failure to state reasons.
- 69 In paragraphs 95 to 98 and 103 to 106 of the judgment under appeal, the General Court held, in essence, that the Council had failed to fulfil its obligation to state reasons inasmuch as the statements of reasons relating to the 2015 to 2017 acts refer to the Home Secretary's review decision of 2014 and to the maintaining, after review, of the United States Government's decision to designate the PKK as a 'foreign terrorist organisation'. As regards, in particular, the Home Secretary's review decision of 2014, the General Court held that the Council could not rely on that national decision for the purpose of continuing to include the PKK in the list at issue, without having examined and attempted to establish whether the facts alleged were well founded; however, no indication of this had been provided in those statements of reasons. In addition, the Council had also failed to state, in those statements of reasons, the reasons why it considered that that national decision supported, to the requisite legal standard, the conclusion that there was still a risk of the PKK being involved in terrorist activities. In that context, the General Court also noted that the PKK had challenged the incidents referred to in the Home Secretary's review decision of 2014 in its statement of modification of its action before the General Court of 26 May 2015.
- 70 In addition, the General Court held, in paragraphs 110 to 114 of the judgment under appeal, that the Council had not responded to the requisite legal standard to the arguments which the PKK had put forward, in a letter of 6 March 2015, during the procedure leading to the adoption of Decision 2015/521 and Implementing Regulation 2015/513. According to the General Court, the explanation

provided in the statements of reasons relating to the 2015 to 2017 acts, in which the Council indicated that it had sought, to no avail, to ascertain whether there was evidence in its possession which supported removing the PKK's name from the list at issue, is insufficient in that regard. In addition, the General Court considered that the Council's letter of 27 March 2015, by which the statement of reasons relating to that decision and that regulation had been notified to the PKK, could not remedy that insufficient reasoning. First, that letter post-dated the adoption of that decision and that regulation. Second, the General Court noted that, although that letter indicated that the existence of Kurdish groups combating the 'Islamic State' group did not affect the Council's assessment as to whether the risk of the PKK being involved in terrorist activities was ongoing, that institution had failed to specify the material which had led it to conclude that there was still such a risk.

Arguments of the parties

- 71 By the sixth and seventh grounds of the appeal, the Council, supported by the French Republic, the United Kingdom and the Commission, submits that the General Court erred in law by holding, first, in paragraphs 95 to 99 and 103 to 109 of the judgment under appeal, that the reasoning behind the 2015 to 2017 acts was insufficient inasmuch as the statements of reasons relating to those acts were based on the national decisions adopted by the United Kingdom authorities and the decisions of the United States authorities reviewing the decisions of those authorities that served as the basis for the initial inclusion of the PKK in the list at issue. According to the Council, that error of law arises from the fact that the General Court wrongly based its assessment exclusively on Article 1(6) of Common Position 2001/931, whereas it should have applied Article 1(4) of that common position to those national review decisions. In those circumstances, the Council considers that it was not required to verify the facts underlying those national decisions or to produce evidence intended to establish that those facts, which should have been challenged before the national court, were well founded. Second, the Council calls into question paragraphs 110 to 114 of the judgment under appeal, inasmuch as the General Court held in those paragraphs that the Council had not responded to the requisite legal standard to the arguments which the PKK had put forward in the course of the proceedings before it. The Council maintains, in that regard, that its letter of 27 March 2015, which was enclosed with the statement of reasons for Decision 2015/521 and Implementing Regulation 2015/513, was an adequate response to those arguments.
- 72 The PKK contends that the entirety of the material on which the Council relied in order to demonstrate that there is still a risk of its being involved in terrorist activities may be challenged before the Courts of the European Union, irrespective of whether that material is drawn from a decision of a competent authority or from other sources. It argues that there is no need to distinguish between the material which may be challenged before the Courts of the European Union and that which may be challenged before the national courts. In any event, in the statements of reasons for the 2015 to 2017 acts, the Council did not indicate the reasons why the Home Secretary's review decision of 2014 concerned a 'terrorist act' within the meaning of Article 1(3) of Common Position 2001/931, whereas the definitions of the concept of 'terrorism' at national level and at EU level differ. As regards the considerations set out in paragraphs 110 to 114 of the judgment under appeal, the PKK maintains that any information relating to the grounds for inclusion in a list relating to the freezing of funds should be included not in the letter of notification of the act in question, but in the statement of reasons for that act.

Findings of the Court

- 73 As a preliminary point, as is apparent from the examination of the first ground of the appeal, the Council wrongly submits that the 2015 to 2017 acts fall within the scope of both Article 1(4) of Common Position 2001/931 and Article 1(6) of that common position. Consequently it is also wrong to argue, on the basis of the same arguments, that the PKK cannot challenge those acts inasmuch as they are based on the national review decisions referred to in paragraph 71 of the present judgment.

Furthermore, according to the case-law recalled in paragraphs 53 and 54 of the present judgment, the person or entity concerned may, in an action challenging their retention on the list relating to the freezing of funds, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources.

- 74 It must, however, be pointed out that the General Court erred in law in finding, in paragraphs 99 and 105 of the judgment under appeal, that the Council had failed to fulfil its obligation to state reasons inasmuch as the statements of reasons for the 2015 to 2017 acts are based on the Home Secretary's review decision of 2014. Contrary to the findings of the General Court in those paragraphs of the judgment under appeal, the Council was not required to establish, in the reasoning relating to those acts, the truth of the facts underlying that review decision on which the statements of reasons for those acts are based for the purpose of continuing to include the PKK in the list at issue, or, in that reasoning, to classify those facts in the light of Article 1(3) and (4) of Common Position 2001/931. Indeed, the evidence thus required by the General Court concerns, according to the case-law recalled in paragraphs 52 to 55 of the present judgment, not the obligation to state reasons, but the substantive legality of those same acts – an issue unrelated to the seventh plea raised at first instance which was upheld in the judgment under appeal.
- 75 In view of the case-law recalled in paragraph 58 of the present judgment, it is necessary to verify, in addition, whether that error of law vitiating the judgment under appeal is such as to invalidate the conclusion reached by the General Court in paragraph 115 of that judgment or whether, by contrast, it follows from the material in the case file that the 2015 to 2017 acts were, in any event, vitiated by a failure to state reasons.
- 76 In that regard, it is apparent from the statements of reasons for the 2015 to 2017 acts, as summarised in paragraphs 16 and 17 of the present judgment, that, for the purpose of continuing to include the PKK in the list at issue, the Council independently examined the information set out in the Home Secretary's review decision of 2014 and, *inter alia*, verified whether the reasons on which that decision was based fell within the scope of the concept of 'terrorist acts' for the purposes of Common Position 2001/931, while recalling the case-law of the General Court pursuant to which the Home Secretary is a 'competent authority' for the purposes of that common position. The Council further stated, in those statements of reasons, that that decision, like the other decisions adopted by the three national authorities referred to in those statements of reasons, was in itself sufficient for the PKK to continue to be included.
- 77 In addition, as is apparent from paragraphs 18 and 19 of the present judgment, the statements of reasons relating to the 2015 to 2017 acts did not merely refer to the Home Secretary's review decision of 2014, but contained, in Annex A thereto, a detailed description of that decision, specifying, *inter alia*, the scope of the definition of the concept of 'terrorism' at national level, on which that decision was based, and the fact that it had been adopted following a review procedure concerning the Home Secretary's decision of 2001. In particular, in point 17 of that Annex A, the Council explained that, in order to conclude that the PKK continued to be involved in terrorist activities, the Home Secretary's review decision of 2014 had relied, *inter alia*, on recent terrorist acts of the PKK and had mentioned, by way of example, two attacks allegedly perpetrated by the PKK in May and August 2014.
- 78 In that regard, it should be noted that the information that, 'in August 2014, the PKK attacked a solar energy production plant in Turkey and kidnapped three Chinese engineers' was insufficiently detailed and specific, inasmuch as it did not specify either the exact date, or the city or province where the alleged attack took place. As regards that alleged attack, the General Court could therefore legitimately conclude, in paragraph 99 of the judgment under appeal, that there was insufficient reasoning.

- 79 However, that finding as regards the alleged attack committed in August 2014 cannot lead to the annulment of the 2015 to 2017 acts on the ground of a failure to fulfil the obligation to state reasons, since the statements of reasons relating to those acts were also based on other factors capable of ensuring that those acts were sufficiently reasoned. Annex A to those statements of reasons also mentioned, in point 17 thereof, another attack committed ‘on 13 May [2014], during which two soldiers [had been] injured at the construction site of a military outpost in Tunceli [(Turkey)]’ and referred, in point 18 thereof, to a warning from the PKK, expressed in October 2014, that the fragile peace process in which it was involved could be reduced to nothing if the Republic of Turkey did not intervene against the ‘Islamic State’ group.
- 80 Contrary to the findings of the General Court in paragraph 99 of the judgment under appeal, in so doing, the statements of reasons relating to the 2015 to 2017 acts enabled the PKK to know the actual and specific reasons which led the Council to conclude, on the basis of the findings set out in the Home Secretary’s review decision of 2014, that there was still a risk of its being involved in terrorist activities notwithstanding the peace process initiated. Thus, the duly reasoned material set out in the statements of reasons was sufficient to place the PKK in a position to understand the accusations made against it (see, by analogy, judgments of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 4 and 142, and of 20 June 2019, *K.P.*, C-458/15, EU:C:2019:522, paragraphs 53 and 54).
- 81 In so far as the General Court stated, in paragraph 103 of the judgment under appeal, that the PKK had put forward arguments challenging whether the incidents referred to in the Home Secretary’s review decision of 2014, as described in Annex A to the 2015 to 2017 acts, were attributable to the PKK and whether they could be classified as terrorist acts within the meaning of Article 1(3) of Common Position 2001/931, it must be pointed out that that line of argument seeks to challenge the truth of the facts referred to and their legal classification, which is intended not to establish a failure by the Council to fulfil its obligation to state reasons, but to challenge the substantive legality of those acts and thus to trigger the Council’s obligation to establish that the reasons relied on are well founded.
- 82 Furthermore, the General Court held, in paragraphs 110 to 114 of the judgment under appeal, that the statement of reasons relating to Decision 2015/521 and Implementing Regulation 2015/513 did not provide a sufficient response to the arguments put forward by the PKK in its letter of 6 March 2015. According to the General Court, the Council’s letter of 27 March 2015 could not remedy that deficiency, given its content and in so far as it had been notified after the adoption of that decision and that implementing regulation. For its part, the PKK maintains that the Council should have responded to its arguments, not in a letter, but in the statement of reasons itself.
- 83 As has been recalled in paragraph 48 of the present judgment, as the required statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted, the question whether a statement of reasons is sufficient must be assessed having regard not only to its wording but also to its context. Accordingly, in particular, it is not necessary for the statement of reasons to respond in detail to the observations made by the person concerned when consulted prior to the adoption of the measure in question, in particular where that measure was adopted in circumstances known to the person concerned which enable him or her to understand the scope of the measure taken concerning him or her.
- 84 In the present case, the statement of reasons relating to Decision 2015/521 and Implementing Regulation 2015/513 was notified to the PKK by the Council’s letter of 27 March 2015, in which that institution responded to the arguments put forward by the PKK in a letter of 6 March 2015.

- 85 First, in so far as that statement of reasons and that letter from the Council were notified to the PKK at the same time, the General Court was wrong to hold, in paragraph 114 of the judgment under appeal, that the information contained in that letter from the Council could not be taken into consideration for the purpose of assessing whether the reasoning contained in that statement of reasons was sufficient.
- 86 Second, it is apparent from paragraph 114 of the judgment under appeal itself that the Council had explained, in its letter of 27 March 2015, that the existence of Kurdish groups combating the ‘Islamic State’ group did not affect its assessment as to whether there was still a risk of the PKK being involved in terrorist activities and, therefore, that the Council had responded to the arguments put forward in the PKK’s letter of 6 March 2015 in a way that was sufficiently detailed and specific to enable the PKK to ascertain the reasons for those 2015 acts and to enable the General Court to exercise its power of judicial review.
- 87 It should be added that, in the light of the PKK’s line of argument as summarised in paragraph 72 of the present judgment, the information set out in the Council’s letter of 27 March 2015 must be regarded as forming part of the context of the reasoning set out in the statement of reasons relating to Decision 2015/521 and Implementing Regulation 2015/513 and thus as being known to the PKK for the purposes of the case-law recalled in paragraph 48 of the present judgment. In particular, the information set out in that letter from the Council enabled the PKK to understand that the reasoning set out in that statement of reasons had been adopted in consideration of the arguments put forward in the letter of 6 March 2015 and to ascertain the precise reasons why the Council had not accepted them.
- 88 It is true that the General Court considered, in paragraph 114 of the judgment under appeal, that, in addition to that response, the Council should have specified the actual material which had led it to conclude that there was still a risk. However, it must be pointed out that, in so doing, the General Court erred in law inasmuch as it disregarded the scope of the Council’s obligation, according to the case-law recalled in paragraphs 52 to 55 and 83 of the present judgment, whereby that institution is required to respond, in the statement of reasons for the decision in question, to the considerations set out by the person concerned when consulted prior to the adoption of that decision, without however being required to establish, in that statement of reasons, the truth of the facts alleged or to provide a legal classification of those facts in that statement.
- 89 Accordingly, the errors of law noted in paragraphs 74 and 88 of the present judgment are such as to invalidate the conclusion reached by the General Court in paragraph 115 of the judgment under appeal.
- 90 In the light of the foregoing considerations, the seventh ground of the appeal must be upheld, as must the sixth ground of appeal as regards the statement of reasons for the 2015 to 2017 acts, which is based on the Home Secretary’s review decision of 2014.
- 91 Accordingly, the present appeal must be declared well founded to the extent that it seeks the setting aside of the judgment under appeal in so far as that judgment upheld the action for annulment of the 2015 to 2017 acts on the ground of a failure to state reasons, without it being necessary to examine the arguments put forward in the sixth ground of the appeal which seek to challenge the General Court’s findings relating to the decisions of the United States authorities.
- 92 In the light of all the foregoing considerations, points 1 to 11, 13 and 14 of the operative part of the judgment under appeal, by which the General Court annulled the acts at issue, must be set aside.

The action before the General Court

- ⁹³ In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice may, where it has quashed the decision of the General Court, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- ⁹⁴ Since the General Court did not rule on the second to sixth and eighth pleas in law in the action at first instance, the Court of Justice considers that the state of the proceedings does not permit final judgment to be given. The case must therefore be referred back to the General Court and the costs must be reserved.

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

- 1. Sets aside points 1 to 11, 13 and 14 of the operative part of the judgment of the General Court of the European Union of 15 November 2018, *PKK v Council* (T-316/14, EU:T:2018:788);**
- 2. Refers the case back to the General Court of the European Union;**
- 3. Reserves the costs.**

Arabadjiev
von Danwitz

Lenaerts

Kumin
Xuereb

Delivered in open court in Luxembourg on 22 April 2021.

A. Calot Escobar
Registrar

A. Arabadjiev
President of the Second Chamber