ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

CVRIA
LUXEMBOURG

JUDGMENT OF THE GENERAL COURT (Third Chamber)

28 March 2017 *

(Common foreign and security policy — Restrictive measures taken against Libya — Freezing of funds — Restrictions on the entry into and transit through the territory of the European Union — Retention of the applicant's name — Rights of the defence — Obligation to state reasons)

In Case T-681/14,

Aisha Muammer Mohamed El-Qaddafi, residing in Muscat (Oman), represented initially by J. Jones QC, and subsequently by S. Bafadhel, Barrister,

applicant,

v

Council of the European Union, represented by S. Kyriakopoulou and A. de Elera-San Miguel Hurtado, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU for annulment, first, of Council Decision 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2014 L 183, p. 52), in so far as it maintains the applicant's name on the list in Annexes I and III to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 53), and, secondly, of Council Implementing Regulation (EU) No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya (OJ 2014 L 183, p. 1), in so far as it maintains the applicant's name on the list in Annex II to Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1),

THE GENERAL COURT (Third Chamber),

* Language of the case: English.

composed of S. Papasavvas, President, E. Bieliūnas and I.S. Forrester (Rapporteur), Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure and further to the hearing on 8 November 2016,

gives the following

Judgment

Background to the dispute

1 The applicant, Ms Aisha Muammer Mohamed El-Qaddafi, is a Libyan national and the daughter of former Libyan leader Muammar Qadhafi.

2 On 26 February 2011, the United Nations Security Council ('the Security Council') adopted resolution 1970 (2011), which introduced restrictive measures against Libya and against persons and entities involved in serious human rights abuses in Libya.

3 On 28 February 2011, the Council of the European Union adopted Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 53).

4 Article 5(1)(a) of Decision 2011/137 provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of persons covered by resolution 1970 (2011) or designated in accordance with that resolution, as listed in Annex I to that decision.

5 Article 6(1)(a) of Decision 2011/137 provides that funds, other financial assets and economic resources, owned or controlled, directly or indirectly, by persons listed in Annex III are to be frozen.

6 On 2 March 2011, the Council adopted Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1).

7 Article 5 of Regulation No 204/2011 provides for all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed, inter alia, in Annex II to be frozen.

8 The applicant is among the persons covered by resolution 1970 (2011) and thus included on the lists in Annexes I and III to Decision 2011/137 and Annex II to Regulation No 204/2011, with the following statement of reasons:

'QADHAFI, Aisha Muammar. Date of birth: 1978. Place of birth: Tripoli, Libya. Daughter of Muammar Qadhafi. Closeness of association with regime. Date of UN designation: 26.2.2011.'

9 By letter of 4 April 2013, the applicant's representative contacted the Council to request, on behalf of his client, the 'immediate termination' of the restrictive measures against her ('the letter of 4 April 2013').

10 On 23 June 2014, the Council adopted Decision 2014/380/CFSP amending Decision 2011/137 (OJ 2014 L 183, p. 52), and Implementing Regulation (EU) No 689/2014 implementing Article 16(2) of Regulation No 204/2011 (OJ 2014 L 183, p. 1) ('the contested measures'). The amendments made by the contested measures did not relate to the applicant, whose name was therefore retained on the lists in Annexes I and III to Decision 2011/137 and Annex II to Regulation No 204/2011.

11 By letter of 24 June 2014, sent to 'Doughty Street Chambers' in London (United Kingdom) and intended for the applicant's representative, the Council informed him that, following a review, it had decided that the applicant should continue to be included on the lists of persons subject to restrictive measures in the annexes to Decision 2011/137, as amended by Decision 2014/380, and to Regulation No 204/2011, as implemented by Implementing Regulation No 689/2014 ('the lists at issue').

12 In addition, on 24 June 2014, the Council published in the *Official Journal of the European Union* a Notice for the attention of persons and entities subject to the restrictive measures provided for in Decision 2011/137 and in Regulation No 204/2011 (OJ 2014 C 193, p. 19).

Procedure and forms of order sought

13 The applicant brought the present action by application lodged at the General Court Registry on 18 September 2014.

14 By separate document, lodged at the General Court Registry on 19 December 2014, the Council put forward a plea of inadmissibility pursuant to Article 114 of the Rules of Procedure of the General Court of 2 May 1991. The applicant submitted her observations on that plea of inadmissibility on 16 February 2015.

15 On 22 January 2015, as a measure of organisation of procedure, the Court requested the parties to produce, within a period of 15 days, the authorisation ('power of representation') given by the applicant to her representative, Mr J. Jones QC, referred to in the first paragraph of his letter to the Council of 4 April 2013. The parties responded within the prescribed period.

16 By order of 19 March 2015, the Court decided to reserve its decision on the plea of inadmissibility for the final judgment.

17 Following the death of the applicant's original legal representative, the hearing, originally listed for 13 September 2016, was postponed until 26 October 2016, and then until 8 November 2016 at the request of the applicant.

18 By letter lodged at the General Court Registry on 31 October 2016, the applicant introduced a request pursuant to Article 85(3) of the Rules of Procedure of the General Court for additional evidence, notably seven documents, to be admitted in support of her application. The Court registered that request and the documents produced, whilst reserving its decision on their admissibility.

19 Having been invited, by letter of 3 November 2016, to respond to the new evidence, the Council lodged written observations on 7 November 2016. The Council, in essence, asked the Court not to accept the additional evidence produced by the applicant at that stage.

20 The parties presented oral argument and replied to the questions put by the Court at the hearing on 8 November 2016.

21 The applicant claims that the Court should:

– by way of a measure of organisation of procedure under Article 64 of the Rules of Procedure of 2 May 1991, require the Council to disclose all the information supporting her inclusion on the lists at issue;

– annul Decision 2011/137, as amended by Decision 2014/380, in so far as it concerns the applicant;

– annul Regulation No 204/2011, as implemented by Implementing Regulation No 689/2014, in so far as it concerns the applicant;

– order the Council to pay the costs.

22 The Council contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

Law

23 It is appropriate to examine, first of all, the admissibility of the action, then the admissibility of the request for additional evidence to be admitted and, lastly, the merits of the applicant's pleas.

Admissibility of the action

24 The Council claims that the action is inadmissible as it is out of time.

25 On the basis of the provisions of the fourth and sixth paragraphs of Article 263 TFEU in conjunction with Article 102 of the Rules of Procedure of 2 May 1991, the Council asserts that the period for bringing an action started to run from 24 June 2014, the date of receipt of the individual notification which the Council sent to the applicant's representative. The Council submits that the period itself amounts to only two months plus the single period on account of distance of 10 days, the additional period of 14 days mentioned in Article 102 of the Rules of Procedure of 2 May 1991 being inapplicable. Consequently, the deadline for bringing the action was 4 September 2014, whilst the applicant did not bring her action until 18 September 2014.

26 The applicant contends that her representative did not receive the Council's notification on 24 June 2014. First, the date specified on the posting attached to the letter is 25 June 2014. Secondly, her representative only discovered the letter a fortnight later because the Council's letter was addressed generally to 'Doughty Street Chambers, 53-54 Doughty Street, London, WC1N 2LS, United Kingdom', and not specifically to her representative. Because of the way in which barristers' Chambers such as Doughty Street Chambers are organised, comprising as they do a large number of independent barristers, it took a certain amount of time to identify to whom the letter in question was addressed.

27 Furthermore, the applicant notes that, in its reply of 29 January 2015 to the measure of organisation of procedure adopted by the Court, the Council conceded that the applicant's authorisation of her representative was not enclosed with the letter of 4 April 2013. For that reason, the applicant submits that the Council could not have considered her representative to be her legal representative, duly authorised to receive notifications on her behalf. Therefore, according to the applicant, the letter of 24 June 2014 sent to the address of 'Doughty Street Chambers' should not be regarded as 'notification to the plaintiff' within the meaning of Article 263 TFEU. Consequently, the period for bringing the action started to run from the publication of the notice in the *Official Journal of the European Union* on 24 June 2014 and expired on 18 September 2014, and therefore the action was not brought out of time.

28 It must be noted, as a preliminary point, that, according to the sixth paragraph of Article 263 TFEU, 'proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be'.

29 In addition, it is clear from Article 102(1) of the Rules of Procedure of 2 May 1991 that, where that period must be calculated from the publication of the measure in question, it runs from the end of the 14th day after that publication in

the *Official Journal of the European Union*. Lastly, under Article 102(2) of the Rules of Procedure of 2 May 1991, that period must be extended on account of distance by a single period of 10 days.

30 In the present case, it should be noted at the outset that the contested measures were published in the *Official Journal of the European Union* on 24 June 2014. However, as provided for by Article 9(3) of Decision 2011/137 and Article 16(3) of Regulation No 204/2011 respectively, the contested measures were also required to be communicated to the persons and entities covered by them. It is apparent from the material in the file that, on the one hand, the contested measures were communicated to the applicant's representative and, on the other, the Council opted for publication of a notice in the *Official Journal of the European Union*.

31 As regards the alleged individual notification, it is apparent from the case-law that the Council may not, in principle, discharge its obligation to communicate to the person concerned an act containing restrictive measures imposed on him, as provided for by the relevant legislation, by sending the notification of that act to the lawyers who represent him. Notification to an applicant's representative amounts to notification to the addressee only where such a form of notification is expressly provided for in the legislation or where there is an agreement to that effect between the parties (see, to that effect, judgment of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 74 and the case-law cited).

32 In this instance, the applicant's representative wrote to the Council in the letter of 4 April 2013 in the following terms:

'I am writing to you on behalf of my client, Mrs Aisha Muammer Mohamed El-Qaddafi … My authorisation to write to you on her behalf is enclosed with this letter.

On behalf of Mrs El-Qaddafi I am writing to the Council of the European Union to request the immediate termination of the restrictive measures against Mrs El-Qaddafi …

In accordance with Article 9(4) of the Council Decision 2011/137/CFSP and Article 16(4) of Council Regulation (EU) No 204/2011, the Council of the European Union should immediately inform me of the action taken with regard to this letter.'

33 However, as the Council conceded in its reply to the measure of organisation of procedure adopted by the Court and mentioned in paragraph 15 above, the applicant's authorisation of her representative was not enclosed with that letter.

34 In those circumstances, it must be held that the notification given by the Council did not amount to direct notification of the contested measures to the applicant, inasmuch as, in the absence of proof of the existence of authorisation given by the

applicant to her representative, the Council was not entitled to consider the applicant to have consented to all correspondence or information concerning her, and thus any official notifications, being directly addressed to that representative.

35 Consequently, it must be concluded that the Council did not properly communicate the decision to the applicant and that the period for bringing an action ran from 24 June 2014, the date on which the contested measures were published, as provided for in Article 102(1) of the Rules of Procedure of 2 May 1991.

36 Taking as the point at which time began to run the date on which the notice was published in the *Official Journal of the European Union*, namely 24 June 2014, the two-month period for bringing proceedings, as provided for in the sixth paragraph of Article 263 TFEU, extended by 14 days and by the single period on account of distance of 10 days provided for in Article 102 of the Rules of Procedure of 2 May 1991, expired on 18 September 2014. Having lodged her application on 18 September 2014, the applicant therefore complied with the time limit for bringing an action.

37 In those circumstances, the Council's plea of inadmissibility, alleging that the action was brought out of time, must be rejected.

Admissibility of additional evidence

38 As noted in paragraph 18 above, the applicant requested that the Court admit new evidence intended to demonstrate that she did not represent a threat to peace and security in Libya and that the restrictive measures imposed on her were incorrect and unfair. The evidence comprises the following seven documents:

– letter from the Libyan Minister for Justice dated 10 October 2016;

– Opinion of the United Nations Working Group on Arbitrary Detention, adopted on 19 April 2016;

– judgment of the African Court on Human and People's Rights of 3 June 2016;

– briefing on Libya by the United Nations Support Mission in Libya to the Security Council, dated 13 September 2016;

– report of the United Kingdom's House of Commons Foreign Affairs Committee, published on 14 September 2016;

– email correspondence between former United States Secretary of State, Mrs Hillary Clinton, and Mr Blumenthal, of 5 April 2011;

– email correspondence between the applicant's representatives and the Office of Financial Sanctions Implementation ('the OFSI'), part of HM Treasury

(United Kingdom), in the period from 8 October 2015 to 15 September 2016.

39 In order to justify the late submission of this material, the applicant states that the documents in question were not available until after her last submissions were lodged on 12 June 2015. Furthermore, the applicant invokes the 'severe delays' in obtaining the licence from the OFSI that she needed in order to instruct a new legal representative following the death of her original representative, Mr Jones.

40 In its written observations of 7 November 2016, first, the Council accuses the applicant of excessive delay in submitting the new documents to the Court. The Council emphasises that six of the seven documents submitted were released between February 2016 and 15 September 2016. It is only the letter from the Libyan Minister for Justice that was released on 10 October 2016, that is 21 days before the new evidence was submitted to the Court.

41 Secondly, the Council maintains that new evidence must be assessed by the Council as an institution, not by its agents in the context of the present proceedings.

42 Thirdly, the Council claims that the documents in question are of no relevance since six of them were released after the applicant was retained on the lists of restrictive measures in view of the situation in Libya.

43 It should be noted in that regard that, under Article 85(3) of the Rules of Procedure, it is only 'exceptionally [that the main parties may] produce or offer further evidence before the oral part of the procedure is closed or before the decision of the General Court to rule without an oral part of the procedure, provided that the delay in the submission of such evidence is justified'.

44 In the present case, it is apparent from the file that the applicant obtained the licence from the OFSI that she needed in order to instruct a new legal representative on 15 September 2016, which would have enabled her new representative to submit six of the seven documents to the Court as from that date. The applicant does not plead any special circumstances that would justify their production more than one month later, or any circumstances to explain the 21-day delay in submitting to the Court the letter from the Libyan Minister for Justice dated 10 October 2016.

45 In those circumstances, it must be held that the applicant has not justified, for the purposes of Article 85(3) of the Rules of Procedure, the belated submission of the additional evidence. Consequently, that material is inadmissible and will not be taken into account by the Court in its examination of the present action.

Substance

46 In support of her action, the applicant relies on three pleas in law, alleging (i) infringement of the rights of the defence and of the right to effective judicial

protection; (ii) infringement of the right to property and of the right to respect for family life; and (iii) the unlawfulness of the restrictive measures applying to her.

47 In support of her first plea, the applicant submits, in essence, that there is no clear and specific information as to why she was made subject to the restrictive measures. Apart from the information 'Daughter of Muammar Qadhafi. Closeness of association with regime', she was not informed of any particular reasons for the imposition of restrictive measures and their continued application, even after the fall of the regime that was targeted by those measures. The applicant submits that the Council denied her an opportunity to make observations to her advantage.

48 In those circumstances, the applicant maintains that the Council did not comply with the requirements in relation to respect for the rights of the defence and the right to effective judicial protection that apply as a result of the judgment of 18 July 2013, *Commission* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518).

49 The applicant asserts, in particular, that respect for the rights of the defence and the right to effective judicial protection requires that the competent EU authority disclose to the individual concerned the evidence against that person available to that authority and relied on as the basis of its decision, so that that individual is in a position to defend his rights in the best possible conditions. When that disclosure takes place, the competent EU authority must ensure that that individual is placed in a position in which he may effectively make known his views on the grounds advanced against him. When comments are made by the individual concerned on the summary of reasons, the competent authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, assessing whether it is necessary to seek the assistance of the Sanctions Committee (judgment of 18 July 2013, *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 111, 112, 114 and 115).

50 Furthermore, the applicant observes that the statement of reasons provided by the competent authority must identify the individual, specific and concrete reasons why it was considered that the individual concerned had to be subject to restrictive measures (judgment of 18 July 2013, *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 116). In the present case, in her submission, the summary of reasons provided by the Council gives no specific, individual or concrete reason as to why the continued application of restrictive measures against her is justified. The applicant submits that the situation in Libya changed dramatically after the fall of the Qadhafi regime, which also altered the nature of the purported links between her and that regime. The applicant complains that she remains subject to restrictive measures when the objectives of resolution 1970 (2011) have already been achieved, the fact that she is the daughter of the leader of the previous regime no longer being sufficient to justify her retention on the lists at issue. The applicant refers in this regard to the judgment of 24 September 2014, *Kadhaf Al Dam* v *Council* (T-348/13, not published, EU:T:2014:806), which she claims confirms her point of view.

51 The Council disputes the applicant's arguments and contends that the requirements of respect for the rights of the defence and the right to effective judicial protection have been fully complied with in this case. First, the Council asserts that the statement of reasons in the lists at issue reproduces, in almost identical terms, the summary of reasons provided in resolution 1970 (2011).

52 Secondly, the Council maintains that the requirement that the competent authority must enable the person concerned effectively to make known his views was also complied with, in so far as the publication in the *Official Journal of the European Union* of 3 March 2011 of the Notice for the attention of persons and entities subject to the restrictive measures provided for in Decision 2011/137 and in Regulation No 204/2011 (OJ 2011 C 68, p. 1) allowed the applicant to be informed of her inclusion on the lists at issue and of the possibility of contesting the listing.

53 Thirdly, with regard to the requirement to examine carefully and impartially the allegations against the person concerned and the possibility of consulting the Sanctions Committee established pursuant to resolution 1970 (2011), the Council maintains that it complied fully with that requirement. In particular, the Council observes that, after consulting the Sanctions Committee, it replied, by letter of 18 December 2014, to the arguments presented by the applicant in the letter of 4 April 2013, informing her of the existence of an additional reason for her listing, as communicated by the Sanctions Committee, namely the infringement of the travel ban in violation of resolution 1970 (2011). In addition, the Council states that, by letter of 4 May 2015, it communicated to the applicant 'information received from the Libyan authorities on 10 March 2015'.

54 Fourthly, the Council adds that the current situation in Libya is one of civil war. It states that several factions are fighting for control of the country and one of them, supported by 'Qadhafi loyalists', is involved in the use of force, repression and violent attacks against civilians. The Council submits that although Mr Qadhafi is no longer in power, his supporters still play a role in the Libyan situation and are involved in attacks against civilians. In the Council's view, in these circumstances, the initial grounds for the listing of the applicant remain adequate despite the evolution of the situation in Libya.

55 First of all, the Court must examine the applicant's complaints relating to the statement of reasons for the restrictive measures to which she is subject. It must be made clear that those complaints are effective only in so far as they are intended to procure annulment of the contested measures, since the initial 2011 listing measures are clearly not the subject of the present action, not having been challenged in good time before the Courts of the European Union.

56 As a preliminary point, it must be borne in mind that, according to a consistent body of case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned

with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act (see judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 49 and the case-law cited).

57 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 person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review (see judgments of 24 September 2014, *Kadhaf Al Dam* v *Council*, T-348/13, not published, EU:T:2014:806, paragraph 63 and the case-law cited, and of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 27 and the case-law cited).

58 As regards restrictive measures, without going so far as to require a detailed response to the comments made by the person concerned, the obligation to state reasons laid down in Article 296 TFEU entails in all circumstances, not least when the reasons stated for the EU measure represent reasons stated by an international body, that that statement of reasons identifies the individual, specific and concrete reasons why the competent authorities consider that the person concerned must be subject to restrictive measures. The Courts of the European Union must, therefore, in particular determine whether the reasons relied on are sufficiently detailed and specific (see, to that effect, judgments of 18 July 2013, *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 116 and 118, and of 18 February 2016, *Council* v *Bank Mellat*, C-176/13 P, EU:C:2016:96, paragraph 76). Accordingly, the statement of reasons for a Council measure freezing funds cannot, as a rule, consist merely of a general, stereotypical formulation (see judgment of 30 June 2016, *Al Matri* v *Council*, T-545/13, not published, EU:T:2016:376, paragraph 146 and the case-law cited).

59 The statement of reasons required by Article 296 TFEU must, however, be appropriate to the measure at issue and the context in which it was adopted. It must be appraised by reference to 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. It is not necessary for it to go into all the relevant facts and points of law, 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 (see judgments of 24 September 2014, *Kadhaf Al Dam* v *Council*, T-348/13, not published, EU:T:2014:806, paragraph 66 and the case-law cited, and of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 30 and the case-law cited).

60 In particular, 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 to understand the scope of the measure concerning him (see judgments of 24 September 2014, *Kadhaf Al Dam* v *Council*, T-348/13, not published, EU:T:2014:806, paragraph 67 and the case-law cited, and of 20 September 2016, *Alsharghawi* v *Council*, T-485/15, not published, EU:T:2016:520, paragraph 31 and the case-law cited).

61 It follows that, in order to determine whether the contested measures satisfy the obligation to state reasons, it is necessary to ascertain whether, in the grounds stated in those measures, the Council set out, in a manner that is comprehensible and sufficiently precise, the reasons that led it to conclude that the retention of the applicant's name on the lists at issue was justified in the light of the legal criteria applicable.

62 In the present case, first of all, it must be noted that neither Decision 2014/380 nor Implementing Regulation No 689/2014, as such, mentions information, much less an individual, specific and concrete reason, that would explain why the Council retained the applicant's name on the lists at issue in June 2014, apart from the reasons that were put forward to justify the entry of her name on those lists in February 2011.

63 Next, it must be noted that, while the Council's grounds for entering the applicant's name on the lists at issue must be considered to meet the requirements laid down by the case-law, in so far as they were not challenged in good time before the Courts of the European Union, they do not make it possible to understand the reasons that led the Council to maintain the restrictive measures against the applicant in the contested measures (see, to that effect, judgment of 24 September 2014, *Kadhaf Al Dam* v *Council*, T-348/13, not published, EU:T:2014:806, paragraph 71).

64 As the applicant has repeatedly stated in her written submissions, it is common ground that the context in which the contested measures were adopted differs considerably from the situation that obtained when Decision 2011/137 and Regulation No 204/2011 were adopted. The Council does not contest that assertion and acknowledges, in particular, in the rejoinder, the 'evolution of the situation in Libya' and the fact that Mr Qadhafi is no longer in power.

65 When considered in a context that is substantially different from that which prevailed in 2011, statements such as 'daughter of Muammar Qadhafi' and 'closeness of association with regime' do not make it possible to understand the individual, specific and concrete reasons why the applicant's name was retained on 23 June 2014 on the lists of persons subject to the restrictive measures adopted by the Council on 28 February 2011. It will be recalled that those measures had been taken 'against … persons and entities involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities', with the aim

of ending 'the situation unfolding in Libya' and, in particular, 'the violence and use of force against civilians' and 'the repression against peaceful demonstrators', as stated in recitals 1 to 5 of Decision 2011/137 (see, to that effect, judgment of 24 September 2014, *Kadhaf Al Dam* v *Council*, T-348/13, EU:T:2014:806, paragraph 73).

66 As regards the Council's argument that the summary of reasons at issue reproduces, in almost identical terms, the summary of reasons provided in resolution 1970 (2011), it must be noted that the principles underlying the obligation to state reasons are applicable in all circumstances, not least when the reasons stated for the measure represent reasons stated by an international body (see, to that effect, judgment of 18 July 2013, *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 116). Although, in such circumstances, the Council may refer to the reasons given in the Security Council's decision, case-law makes it clear that the Council is not relieved of its obligation to ascertain whether those reasons comply with the principles referred to in paragraphs 56 and 57 above (see, to that effect, judgment of 26 November 2015, *HK Intertrade* v *Council*, T-159/13 and T-372/14, not published, EU:T:2015:894, paragraph 62).

67 The Council goes on to mention two additional grounds justifying the retention of the applicant's name on the lists at issue. In the first place, the Council invokes an infringement of the travel ban in violation of resolution 1970 (2011). This relates to the fact that, in October 2012, the applicant left Algeria to move to Oman.

68 In the second place, the Council relies on 'new information' relating to alleged serious crimes and opposition to the legitimate Libyan authorities, in respect of which the applicant is said to be under criminal investigation. The applicant is said to have made numerous public statements which represent, according to the Council, a threat to international peace and security.

69 It should be noted in that regard that those additional grounds are manifestly irrelevant inasmuch as they are not among the reasons on the basis of which the contested measures were adopted and, moreover, it is evident from the material in the file that they were brought to the Council's attention after the date on which those measures were adopted.

70 In particular, so far as concerns the infringement of the travel ban, it is evident from the file that the Council was informed of this by letter from the Sanctions Committee of 2 October 2014, that is more than three months after the adoption of the contested measures. By letter of 18 December 2014, the Council then informed the applicant of an 'additional reason' for designation which had been established by resolution 1973 (2011).

71 Furthermore, in so far as the Council refers to resolution 1973 (2011) in order to explain the continued application of restrictive measures, it should be noted that

that resolution is clearly not among the Security Council resolutions underpinning the adoption of the contested measures.

72 As to the 'new information' relied on by the Council, it is evident from the material in the file that the applicant received it on 4 May 2015, that is almost one year after the adoption of the contested measures. Consequently, that material cannot reasonably be put forward to justify a reinterpretation *a posteriori* of the contested measures, which date from June 2014.

73 Lastly, even if, as the Council maintains, the disputed grounds should have been understood in the light of the fact that supporters of Mr Qadhafi's ousted regime were continuing to play a role in the current situation in Libya and were involved in attacks against civilians and that, in those circumstances, the continued application of the restrictive measures against the applicant was justified, it must be held that those grounds manifestly do not include any information from which the applicant would have been able to infer — even on a broad interpretation of those grounds — what her individual, specific and concrete role was in those events.

74 Consequently, it must be concluded that the condition requiring the Council to notify the person targeted by the restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted or maintained was not satisfied in the present case. It is not possible to glean from the statement of reasons in the contested measures why the original grounds justifying the applicant's designation remained relevant notwithstanding the evolution of the situation in Libya, and the Council may not attempt to substitute the reasons underpinning the retention decision.

75 Taking all of the foregoing considerations into account, the applicant's complaints regarding the insufficiency of the statement of reasons are well founded.

76 The first plea in law must therefore be upheld and the contested measures annulled in consequence in so far as they concern the applicant, and there is no need to examine the second and third pleas in law put forward in support of the application for annulment or to require the Council to disclose all the information supporting the applicant's entry on the lists at issue.

Costs

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

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Annuls Council Decision 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya, in so far as it maintains the name of Ms Aisha Muammer Mohamed El-Qaddafi on the list in Annexes I and III to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya;**

2. **Annuls Council Implementing Regulation (EU) No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, in so far as it maintains the name of Ms El-Qaddafi on the list in Annex II to Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya;**

3. **Orders the Council of the European Union to pay the costs.**

Papasavvas Bieliūnas Forrester

Delivered in open court in Luxembourg on 28 March 2017.

E. Coulon

Registrar President