Provisional text

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

6 March 2019 (*)

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — Whether an authority of a third State can be classified as a competent authority within the meaning of Common Position 2001/931/CFSP — Factual basis of the decisions to freeze funds — Obligation to state reasons — Error of assessment — Right to property)

In Case T−289/15,

Hamas, established in Doha (Qatar), represented by L. Glock, lawyer,

applicant,

v

Council of the European Union, represented initially by B. Driessen and N. Rouam, and subsequently by B. Driessen, F. Naert and A. Sikora-Kalėda, acting as Agents,

defendant,

supported by

European Commission, represented initially by F. Castillo de la Torre and R. Tricot, and subsequently by F. Castillo de la Torre, L. Baumgart and C. Zadra, acting as Agents,

intervener,

APPLICATION under Article 263 TFEU for annulment of (i) 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), and (ii) 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 (EU) No 790/2014 (OJ 2015 L 82, p. 1), in so far as those measures concern the applicant,

THE GENERAL COURT (First Chamber, Extended Composition),

composed of I. Pelikánová, President, V. Valančius, P. Nihoul (Rapporteur), J. Svenningsen and U. Öberg, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 12 July 2018,

gives the following

Judgment

Background to the dispute

United Nations Security Council Resolution 1373 (2001)

1 On 28 September 2001, the United Nations Security Council adopted Resolution 1373 (2001) setting out wide-ranging strategies to combat terrorism and, in particular, the financing of terrorism. Paragraph 1(c) of that resolution notably provided that all States were to freeze without delay funds and other financial assets or economic resources of persons who committed, or attempted to commit, terrorist acts or participated in or facilitated 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.

2 The resolution did not provide for a list of persons, entities or groups to whom those measures were to be applied.

EU law

3 On 27 December 2001, noting that action by the European Union was necessary in order to implement Resolution 1373 (2001), the Council of the European Union adopted Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93). In particular, Article 2 of Common Position 2001/931 provided for the freezing of the funds and other financial assets or economic resources of persons, groups and entities involved in terrorist acts and listed in the annex to that common position.

4 On the same day, in order to implement at EU level the measures described in Common Position 2001/931, the Council adopted Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70), and Decision 2001/927/EC establishing the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2001 L 344, p. 83).

5 The name ‘Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)’ appeared on the list annexed to Common Position 2001/931 and the list in Decision 2001/927. Those two measures were regularly updated in application of Article 1(6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001, and the name ‘Hamas-Izz al-Din al-Qassem’ remained on those lists.

6 On 12 September 2003, the Council adopted Common Position 2003/651/CFSP updating Common Position 2001/931 and repealing Common Position 2003/482/CFSP (OJ 2003 L 229, p. 42), and Decision 2003/646/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/480/EC (OJ 2003 L 229, p. 22). The name of the organisation included on the lists associated with those measures was ‘Hamas (including Hamas-Izz al-Din al-Qassem)’.

7 The name of that organisation remained on the lists annexed to subsequent measures.

Contested measures

8 On 20 February 2015, the Council disclosed to the applicant’s lawyer the grounds on which it was proposing to maintain the applicant’s name on the fund-freezing lists and indicated to her that she could submit observations to the Council concerning that proposal, together with any supporting document, by 6 March 2015 at the latest.

9 The applicant did not respond to that letter.

10 On 26 March 2015, the Council adopted Decision (CFSP) 2015/521 updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931, and repealing Decision 2014/483/CFSP (OJ 2015 L 82, p. 107), and Implementing Regulation (EU) 2015/513 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU)

No 790/2014 (OJ 2015 L 82, p. 1) (together, ‘the contested measures’). The name ‘“Hamas”, including “Hamas-Izz al-Din al-Qassem”’, was maintained on the lists annexed to those measures (‘the lists at issue’).

11 By letter of 27 March 2015, the Council sent to the applicant’s lawyer the statement of reasons for maintaining the name ‘Hamas (including Hamas-Izz al-Din al-Qassem)’ on the lists at issue, and informed her of the possibility of requesting that those lists be reviewed under Article 2(3) of Regulation No 2580/2001 and Article 1(6) of Common Position 2001/931.

12 The applicant did not respond to that letter.

13 In the statement of reasons enclosed with the letter of 27 March 2015 (‘the statement of reasons relating to the contested measures’), the Council took into account the following national decisions: (i) an order of the United Kingdom’s Secretary of State for the Home Department (‘the Home Secretary’) of 29 March 2001 amending the United Kingdom Terrorism Act 2000 and proscribing Hamas-Izz al-Din al-Qassem, considered to be an organisation concerned in terrorism (‘the Home Secretary’s decision’); (ii) a decision of the United States Secretary of State of 8 October 1997 designating, for the purposes of the United States Immigration and Nationality Act (‘the INA’), Hamas as a foreign terrorist organisation (‘the 1997 US decision’); (iii) a decision of the United States Secretary of State of 31 October 2001 pursuant to Executive Order 13224 (‘the 2001 US decision’); and (iv) a decision of 23 January 1995 pursuant to Executive Order 12947 (‘the 1995 US decision’).

14 In the main part of the statement of reasons relating to the contested measures, the Council found, first of all, that each of those national decisions constituted a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931 and that they were still in force. It went on to state that it had considered whether there was any information in its possession that would militate for the applicant’s removal from the lists at issue and that it had found none. Last, it stated that it considered that the reasons justifying Hamas’ entry on the lists at issue were still valid and concluded that Hamas should remain on the lists at issue.

15 In addition, the statement of reasons relating to the contested measures included an Annex A concerning the ‘decision of the competent authority of the United Kingdom’ and an Annex B concerning the ‘decisions of the competent authorities of the United States’. Each of those annexes contained a description of the national legislation under which the decisions of the national authorities had been adopted, a presentation of the definitions of terrorism in the legislation concerned, a description of the procedures for reviewing those decisions, a description of the facts on which those authorities had relied and the finding that those facts constituted terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

16 In paragraph 15 of Annex A to the statement of reasons relating to the contested measures, the Council indicated that, in the United Kingdom, the proscription had been reviewed in October 2014 by the cross-government Proscription Review Group which had concluded, on the basis of the stated information, that it was reasonable to consider that Hamas-Izz al-Din al-Qassem continued to be concerned in terrorism.

17 In paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the Council referred to various events that took place in the period from 2003 to 2011 on which the United States authorities had relied in designating the applicant as a foreign terrorist organisation, without specifying the decisions that mentioned them.

Procedure and forms of order sought

18 By application lodged at the General Court Registry on 2 June 2015, the applicant brought the present action.

19 By decision of the President of the General Court of 18 June 2015, the case was assigned to the Sixth Chamber.

20 By decision of 28 July 2015, the President of the Sixth Chamber of the General Court decided, pursuant to Article 69(d) of the Rules of Procedure, to stay the proceedings pending the final decisions of the Court of Justice in Cases C−599/14 P, *Council* v *LTTE*, and C−79/15 P, *Council* v *Hamas*.

21 By document lodged at the General Court Registry on 16 September 2015, the European Commission applied for leave to intervene in the present proceedings in support of the form of order sought by the Council.

22 On 3 October 2016, the case was reassigned to the First Chamber.

23 By letter of 27 July 2017, the parties were requested to submit their observations on the appropriate conclusions to be drawn from the judgments of 26 July 2017, *Council* v *LTTE* (C−599/14 P, EU:C:2017:583), and of 26 July 2017, *Council* v *Hamas* (C−79/15 P, EU:C:2017:584), for the present case.

24 The Council replied to that request on 14 September 2017.

25 On 27 November 2017, the Council lodged its defence.

26 By decision of 6 December 2017, the President of the First Chamber granted the Commission leave to intervene. The Commission lodged its statement in intervention and the main parties lodged their observations thereon within the prescribed periods.

27 The parties presented oral argument and replied to the questions put by the Court at the hearing on 12 July 2018.

28 The applicant claims that the Court should:

– annul the contested measures, in so far as they concern it, ‘including Hamas-Izz al-Din al-Qassem’;

– order the Council to pay the costs.

29 The Council, supported by the Commission, contends that the Court should:

– dismiss the action in its entirety;

– order the applicant to pay the costs.

Law

30 The applicant puts forward seven pleas in law, alleging, respectively:

– infringement of Article 1(4) of Common Position 2001/931;

– errors as to the accuracy of the facts;

– an error of assessment as to the terrorist nature of the Hamas organisation;

– breach of the principle of non-interference;

– breach of the obligation to state reasons;

– breach of the principle of respect for the rights of the defence and of the right to effective judicial protection in the national proceedings;

– breach of the right to property.

31 The fifth plea in law will be examined second.

First plea in law, alleging infringement of Article 1(4) of Common Position 2001/931

32 In the context of the first plea, the applicant, having commented on the identification of the organisations covered by the decisions of the United Kingdom and United States authorities, complains that the Council infringed Article 1(4) of Common Position 2001/931 when it classified those decisions as decisions taken by competent authorities within the meaning of that provision.

33 The retention of the name of a person or an entity on a fund-freezing list is, in essence, an extension of the original listing and presupposes, therefore, that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, as initially established by the Council on the basis of the national decision on which that original listing was based (judgments of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 61, and of 26 July 2017, *Council* v *Hamas*, C−79/15 P, EU:C:2017:584, paragraph 39).

34 The plea is therefore effective.

35 It is appropriate, after establishing which organisations are covered by the decisions relied on by the Council, to examine the criticisms that are specific to the decisions of the United States authorities before those that are common to both the United States and the United Kingdom authorities.

Concerning the identification of the organisations covered by the decisions of the United Kingdom authorities and those of the United States authorities

36 The applicant notes that, according to the statement of reasons supplied by the Council, the contested measures are based on a decision of the Home Secretary proscribing Hamas-Izz al-Din al-Qassem, the armed wing of Hamas, and on three United States decisions, which refer to Hamas without providing further details.

37 The applicant doubts that the United States authorities intended to list Hamas in its entirety and submits that the Council, in considering that they did, gave their decisions a broad interpretation which did not follow clearly from the lists published by those authorities.

38 In that regard, it should be noted that the United States decisions explicitly mention ‘Hamas’, that designation being supplemented, in the 1997 US decision, by a dozen or so other names, including ‘Izz al-Din Al Qassam Brigades’, by which that movement was also known.

39 That fact cannot be interpreted, contrary to the applicant’s suggestion, as meaning that the United States authorities thereby intended to restrict the designation to ‘Hamas-Izz al-Din al-Qassem’ alone. First of all, those additional names include names that refer to Hamas as a whole, such as ‘Islamic Resistance Movement’, which is the English translation of ‘Harakat Al-Muqawama Al-Islamia’, another name that is included and of which ‘Hamas’ is the acronym. Further, the references to the various names are merely intended to ensure that the measure adopted in respect of Hamas is actually effective, by enabling the measure to reach Hamas through all of its known names and wings.

40 It follows from these considerations that the Home Secretary’s decision covers Hamas-Izz al-Din al-Qassem, whereas the United States decisions cover Hamas, including Hamas-Izz al-Din al-Qassem.

Concerning the criticisms specific to the decisions of the United States authorities

41 According to the applicant, the Council was not entitled to base the contested measures on the decisions of the United States authorities because the United States is a third State and, as a matter of principle, the authorities of those States are not 'competent authorities' within the meaning of Article 1(4) of Common Position 2001/931.

42 On that point, the applicant submits, principally, that the system established by Article 1(4) of Common Position 2001/931 is underpinned by confidence in national authorities, a confidence which is based on the principle of sincere cooperation between the Council and the Member States of the European Union, the sharing of common values enshrined in the Treaties, and being subject to shared rules, including the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the Charter of Fundamental Rights of the European Union. It argues that the authorities of third States would be unable to enjoy that confidence.

43 It must be noted in that regard that, according to the Court of Justice, the term 'competent authority' used in Article 1(4) of Common Position 2001/931 is not limited to the authorities of Member States but may, in principle, also include the authorities of third States (judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 22).

44 The interpretation adopted by the Court of Justice is justified, first, in the light of the wording of Article 1(4) of Common Position 2001/931, which does not limit the concept of 'competent authorities' to the authorities of the Member States, and, second, in the light of the objective of that common position, which was adopted in order to implement United Nations Security Council Resolution 1373 (2001), which seeks to intensify the global fight against terrorism through the systematic and close cooperation of all States (judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 23).

45 Alternatively, in the event that it is accepted that the authority of a third State can constitute a competent authority within the meaning of Article 1(4) of Common Position 2001/931, the applicant submits that the validity of the measures adopted by the Council is also contingent on the checks which the Council is required to carry out in order to satisfy itself, in particular, that the United States legislation is compatible with the principle of respect for the rights of the defence and the right to effective judicial protection.

46 In the present case, however, the Council had, in its reasoning for the contested measures, in essence merely described the review procedures and observed that it was possible to bring an appeal, without verifying whether the rights of the defence and the right to effective judicial protection were safeguarded.

47 In that regard, it must be noted that, according to the Court of Justice, when the Council relies on a decision of a third State, it must first check whether that decision has been taken in accordance with the rights of the defence and the right to effective judicial protection (see, to that effect, judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 31).

48 In the statements of reasons relating to its own acts, the Council is required to provide the particulars from which it may be concluded that it did carry out that check (see, to that effect, judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 31).

49 To that end, the Council must refer, in those statements of reasons, to the reasons that caused it to consider that the decision of the third State on which it relies has been adopted in accordance with the principle of the rights of the defence and of the right to effective judicial protection (judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 33).

50 According to the case-law, the information to be included in the statements of reasons in relation to that assessment may, if necessary, be brief (see, to that effect, judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 33).

51 The Court must examine the arguments raised by the applicant with regard, first, to the principle of respect for the rights of the defence and, second, the right to effective judicial protection, in the light of the case-

law recalled in paragraphs 47 to 50 above.

52 As regards respect for the rights of the defence, the applicant submits that, in the statement of reasons relating to the contested measures, the Council failed to indicate the reasons that caused it to consider, after checking, that, in the United States, respect for that principle was guaranteed in the administrative procedures for the designation of organisations as terrorist organisations.

53 Moreover, in the applicant's submission, United States legislation does not require that decisions adopted by the relevant authorities be notified or even that they be reasoned decisions. According to the applicant, although Section 219 of the INA, which underpins the 1997 US decision, contains an obligation to publish the designation decision in the Federal Register, the same does not apply to Executive Order 13224, which underpins the 2001 US decision and makes no provision for any measure of that nature.

54 In that regard, it should be borne in mind that, according to the case-law, the principle of respect for the rights of the defence requires that persons subject to decisions that significantly affect their interests be placed in a position in which they may effectively make known their views on the evidence on which the decisions in question are based (see, to that effect, judgment of 26 September 2013, *Texdata Software*, C−418/11, EU:C:2013:588, paragraph 83 and the case-law cited).

55 In the case of measures to place the names of persons or entities on a fund-freezing list, that principle entails the grounds for those measures being notified to those persons or entities at the same time as, or immediately after, the measures are adopted (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C−27/09 P, EU:C:2011:853, paragraph 61).

56 As it did in respect of the right to effective judicial protection, the Council states in paragraph 16 of Annex B to the statement of reasons relating to the contested measures:

'With respect to the said review processes and the description made of the legal remedies available, the Council considers that the relevant US legislation ensures protection of the rights of defence …'

57 The information provided by the Council in the statement of reasons relating to the contested measures then differs depending on the United States decision being considered.

58 First, for Executive Orders 12947 and 13224, which underpin the 1995 and 2001 US decisions, the general description provided by the Council does not refer to any obligation on the part of the United States authorities to disclose a statement of reasons to the persons concerned, or even to publish those decisions.

59 It follows from this that respect for the rights of the defence is not established in respect of those two decisions and that, therefore, under the case-law recalled in paragraphs 47 to 50 above, they cannot serve as a basis for the contested measures.

60 Second, with regard to the 1997 US decision, the Council does state that, pursuant to the INA, designations of foreign terrorist organisations or decisions following revocation of those designations are published in the Federal Register. However, it provides no indication as to whether, in the present case, the publication of the 1997 US decision contained any statement of reasons. Nor, moreover, is it apparent from the statement of reasons relating to the contested measures that, apart from the operative part of the decision, a statement of reasons of any kind was made available to the applicant in any form.

61 In those circumstances, the Court must consider whether the indication that a decision is published in an official journal of the third State is sufficient to conclude that the Council has, in accordance with the case-law cited in paragraphs 47 to 50 above, fulfilled its obligation to verify whether, in the third States in which the decisions underpinning the contested measures originate, the rights of the defence have been respected.

62 It is appropriate, in doing so, to refer to the case that gave rise to the judgments of 26 July 2017, *Council* v *LTTE* (C−599/14 P, EU:C:2017:583), and of 16 October 2014, *LTTE* v *Council* (T−208/11 and T−508/11,

EU:T:2014:885). In that case, the Council had indicated, in the statement of reasons for one of the acts concerned, that the decisions of the authorities of the third State in question had been published in that State's official journal, without providing further information (judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 145).

63 In the judgment of 26 July 2017, *Council* v *LTTE* (C−599/14 P, EU:C:2017:583, paragraphs 36 and 37), the Court of Justice, considering as a whole all the particulars relating to the decisions of the authorities of the third State that were set out in the statement of reasons for the Council's regulation, held that those particulars were insufficient for the purpose of establishing that the Council had carried out the requisite verification as to whether the rights of the defence had been respected in that third State.

64 The same conclusion must be drawn, on the same grounds, in the present case with regard to the single reference in the statement of reasons relating to the contested measures, according to which the 1997 US decision had been published in the United States in the Federal Register.

65 For those reasons, and without there being any need to examine whether the right to effective judicial protection was respected, it must be held that, in the present case, the statement of reasons relating to the United States decisions is insufficient, and that therefore those decisions cannot serve as a basis for the contested measures.

66 Since Article 1(4) of Common Position 2001/931 does not require Council measures to be based on several decisions of competent authorities, the contested measures could nevertheless refer to the Home Secretary's decision alone, and it is therefore appropriate for the Court to proceed in its examination of the action by limiting that examination to the contested measures in so far as they are based on the latter decision.

Concerning the criticisms common to the decisions of the United States authorities and to those of the United Kingdom authorities

67 The applicant submits that, for three reasons, the decisions of the United States authorities and of the United Kingdom authorities on which the contested measures are based are not 'decisions of competent authorities' for the purposes of Article 1(4) of Common Position 2001/931.

68 Those reasons will be examined below in so far as they concern the Home Secretary's decision, in accordance with paragraph 66 above.

– *Concerning the preference to be given to judicial authorities*

69 The applicant maintains that, according to Article 1(4) of Common Position 2001/931, the Council can rely on administrative decisions only if the judicial authorities have no competence in the fight against terrorism. That, the applicant submits, is not the case here, since, in the United Kingdom, the judicial authorities do have competence in that area. The Home Secretary's decision could not, therefore, have been taken into consideration by the Council in the contested measures.

70 The Council disputes that line of argument.

71 In that regard, it should be noted that, according to the case-law, the administrative and non-judicial nature of a decision is not decisive for the application of Article 1(4) of Common Position 2001/931, since the actual wording of that provision expressly provides that a non-judicial authority may be classified as a competent authority for the purposes of that provision (judgments of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T−256/07, EU:T:2008:461, paragraphs 144 and 145, and of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 105).

72 Even if the second subparagraph of Article 1(4) of Common Position 2001/931 contains a preference for decisions from judicial authorities, it in no way excludes the taking into account of decisions from

administrative authorities where (i) those authorities are actually vested, in national law, with the power to adopt restrictive decisions against groups involved in terrorism, and (ii) those authorities, although only administrative, may be regarded as 'equivalent' to judicial authorities (judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 107).

73 According to the case-law, administrative authorities must be regarded as equivalent to judicial authorities if their decisions are open to judicial review (judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T−256/07, EU:T:2008:461, paragraph 145).

74 Consequently, the fact that the courts of the relevant State have powers concerning the suppression of terrorism does not preclude the Council from taking account of decisions taken by the national administrative authority entrusted with the adoption of restrictive measures in relation to terrorism (see, to that effect, judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 108).

75 In the present case, it is apparent from information provided by the Council that appeals against decisions of the Home Secretary may be brought before the Proscribed Organisations Appeal Commission (POAC) (United Kingdom), which would determine the matter in the light of judicial review principles, and that either party may bring an appeal on a question of law against the decision of the POAC before a court of appeal with the permission of the POAC or, if permission is refused, of the appeal court (see, to that effect, judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council*, T−228/02, EU:T:2006:384, paragraph 2).

76 In those circumstances, it appears that decisions of the Home Secretary are open to judicial review and therefore that, in accordance with the case-law referred to in paragraphs 72 and 73 above, that administrative authority must be regarded as equivalent to a judicial authority and thus as a competent authority, as contended by the Council, within the meaning of Article 1(4) of Common Position 2001/931, as has repeatedly been held in the case-law (judgments of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T−256/07, EU:T:2008:461, and of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885).

77 The applicant acknowledges that, in a number of judgments, the Court has accepted that the Home Secretary had the capacity of a competent authority, but emphasises that, in those cases, the Home Secretary's decisions were coupled with a judicial decision, which the applicant submits is not the case here.

78 It must be noted in that regard that, contrary to what is asserted by the applicant, the decisions of the administrative authorities in question were not accompanied in every case of a judgment concerning acts based on a decision of the Home Secretary by a judicial decision. Accordingly, there was no such decision in the case that gave rise to the judgment of 16 October 2014, *LTTE* v *Council* (T−208/11 and T−508/11, EU:T:2014:885). In the case giving rise to the judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council* (T−256/07, EU:T:2008:461), the Court referred to a judicial decision in addition to the administrative decision. However, that reference was made in a particular context in which the administrative decision had been challenged at a national level by the applicant, which is not the case here.

79 It follows from the above that the contested measures cannot be annulled on the basis that the Council referred, in the statement of reasons for those measures, to a decision of the Home Secretary, who is an administrative authority.

– *Concerning the fact that the Home Secretary's decision consists of a list of terrorist organisations*

80 The applicant submits that the action taken by the competent authorities concerned by the contested measures, including the Home Secretary, consists, in practice, in drawing up lists of terrorist organisations in order to impose a restrictive regime on them. This listing activity does not, in the applicant's submission,

constitute a criminal jurisdiction akin to the ‘instigation of investigations or prosecution’ or to ‘condemnation’, to cite the powers which, according to Article 1(4) of Common Position 2001/931, the ‘competent authority’ should have.

81 The Council disputes that line of argument.

82 It should be noted in that regard that, according to the case-law, Common Position 2001/931 does not require that the decision of the competent authority should be taken in the context of criminal proceedings *stricto sensu*, provided that, in the light of the objectives of that common position in implementing United Nations Security Council Resolution 1373 (2001), the purpose of the national proceedings in question is to combat terrorism in the broad sense (judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 113).

83 In that sense, the Court of Justice has held that protection of the persons concerned is not called into question if the decision taken by the national authority does not form part of a procedure seeking to impose criminal sanctions, but of a procedure aimed at the adoption of preventive measures (judgment 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 70).

84 In the present case, the Home Secretary’s decision imposes measures proscribing organisations considered to be terrorist organisations and therefore forms part, as required by the case-law, of national proceedings seeking, primarily, the imposition on the applicant of measures of a preventive or punitive nature, in connection with the fight against terrorism (see, to that effect, judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 115).

85 As to the fact that the activity of the authority in question results in the establishment of a list of persons or entities involved in terrorism, it should be pointed out that that does not mean, in itself, that that authority did not carry out an individual appraisal in respect of each of those persons or entities prior to their inclusion in those lists, or that the appraisal must necessarily be arbitrary or unfounded (see, to that effect, judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 118).

86 Thus, it is not so much the fact that the activity of the authority in question leads to the establishment of a list of persons or entities involved in terrorism that is at issue, as the question whether that activity is carried out with sufficient safeguards to allow the Council to rely on it to found its own listing decision (see, to that effect, judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 118).

87 Consequently, the applicant is wrong to claim that to accept that a listing power may characterise a competent authority would, as a matter of principle, be inconsistent with Common Position 2001/931.

88 That position is unaffected by the other arguments advanced by the applicant.

89 In the first place, the applicant maintains that, according to Article 1(4) of Common Position 2001/931, only lists drawn up by the United Nations Security Council may be taken into account by the Council.

90 That argument cannot be accepted, since the purpose of the last sentence of the first subparagraph of Article 1(4) of Common Position 2001/931 is only to afford the Council an additional listing possibility alongside the listings which it can make on the basis of decisions of competent national authorities.

91 In the second place, the applicant claims that, in so far as it reproduces lists put forward by the competent authorities, the EU list can be described as a list of lists which thus comes within the scope of national administrative measures adopted, in some cases, by the authorities of third States without the relevant persons being informed of this and without those persons being in a position to defend themselves effectively.

92 In that regard, it should be noted that, as the applicant indicates, when the Council identifies the persons or entities to be made subject to fund-freezing measures, it relies on the findings made by the competent authorities.

93 In the context of Common Position 2001/931, a specific form of cooperation was introduced between the authorities of the Member States and the EU institutions, giving rise, for the Council, to an obligation to defer as far as possible to the assessment conducted by the competent national authorities (see, to that effect, judgments of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T−256/07, EU:T:2008:461, paragraph 133, and of 4 December 2008, *People's Mojahedin Organization of Iran* v *Council*, T−284/08, EU:T:2008:550, paragraph 53).

94 As a rule, it is not for the Council to decide whether the fundamental rights of the party concerned were observed by the authorities of the Member States, that being a power that belongs to the competent national courts (see, to that effect, judgment of 11 July 2007, *Sison* v *Council*, T−47/03, not published, EU:T:2007:207, paragraph 168).

95 It is only exceptionally, where the applicant disputes, on the basis of concrete evidence, that the authorities of the Member States observed fundamental rights, that the Court must ascertain whether those rights were indeed observed.

96 However, where authorities of third States are involved, the Council is automatically required, as has been noted in paragraphs 47 and 48 above, to satisfy itself that those safeguards were in fact applied and to give reasons for its decision on that point.

– *Concerning the failure to indicate the serious and credible evidence and clues underpinning the Home Secretary's decision*

97 The applicant claims in essence that, in so far as the Council relied on an administrative decision and not on a judicial decision, it had to establish, in the contested measures, that that decision was 'based on serious and credible evidence or clues', as Article 1(4) of Common Position 2001/931 requires.

98 Since that argument does not concern the classification of a 'decision taken by a competent authority' within the meaning of Article 1(4) of Common Position 2001/931, which is the object of the present plea, but the statement of reasons for the contested measures, that argument will be examined in the context of the fifth plea, in which it is also invoked.

Conclusion

99 It appears from paragraphs 47 to 65 above that the United States decisions cannot serve as a basis for the contested measures, in so far as the Council failed to fulfil its obligation to state reasons with regard to verification that the principle of the rights of the defence had been observed in the United States.

100 In addition, it is evident from paragraphs 38 to 40 above that the decisions of the United States authorities to which that plea relates concerned Hamas as a whole, whereas the decision of the United Kingdom authorities related only to Hamas-Izz al-Din al-Qassem.

101 According to the applicant, that means that the contested measures must be annulled in so far as they concern Hamas and can be maintained only in so far as they relate to Hamas-Izz al-Din al-Qassem.

102 For its part, the Council contends that no distinction can be made between those two 'movements' or 'parts of a movement', the applicant having presented its organisation, in the application relating to the judgment of 14 December 2018, *Hamas* v *Council* (T−400/10 RENV, EU:T:2018:966), as encompassing both of them.

103 In that regard, it quotes paragraphs 7 and 8 of that application:

‘Hamas has a political bureau and an armed wing: the Ezzedine Al-Qassam Brigades [= Hamas IDQ]. The leadership of Hamas is characterised by its bicephalous nature. The internal leadership, divided between the West Bank and the Gaza Strip and the external leadership in Syria ... Although the armed wing is relatively independent, it is still subject to the general strategies drawn up by the political bureau. The political bureau takes the decisions, and the Brigades comply with them because of the strong sense of solidarity engendered by the religious component of the movement.’

104 As the Court held in paragraph 293 of the judgment of 14 December 2018, *Hamas* v *Council* (T−400/10 RENV, EU:T:2018:966), that statement has a strong probative value, since, as the Council points out, it is made by the applicant and, moreover, the applicant put it at the forefront of its arguments in the application relating to the case that gave rise to that judgment.

105 In its pleadings, the applicant explained that, in fact, the two ‘movements’ or ‘parts of a movement’ could not be confused or even associated with each other, as they operate entirely independently.

106 In the context of measures of organisation of procedure, the Court asked the applicant to provide proof of its assertions, but the applicant was unable to produce any.

107 In those circumstances, it cannot be concluded, for the purpose of determining the effects of the response given to the first plea in the present action, that Hamas-Izz al-Din al-Qassem is an organisation separate from Hamas (see, to that effect, judgments of 29 April 2015, *Bank of Industry and Mine* v *Council*, T−10/13, EU:T:2015:235, paragraphs 182, 183 and 185, and of 29 April 2015, *National Iranian Gas Company* v *Council*, T−9/13, EU:T:2015:236, paragraphs 163 and 164).

108 That is particularly so since, although it has been subject to fund-freezing measures for several years, Hamas did not seek to demonstrate to the Council that it was not in any way involved in the acts that triggered the adoption of those measures, by dissociating itself unequivocally from Hamas-Izz al-Din al-Qassem, which, according to the applicant, was solely responsible for them.

109 It follows that the plea must be rejected.

Fifth plea in law, alleging breach of the obligation to state reasons

110 As has already been indicated in paragraph 99 above, the applicant maintains that the Council should have indicated, in the statement of reasons relating to the contested measures, ‘the serious and credible evidence and clues’ on which the decisions of the competent authorities were based.

111 The Council, supported by the Commission, considers that argument to be unfounded.

112 In the light of paragraph 66 above, this plea must be examined only in so far as it concerns the Home Secretary’s decision.

113 In that regard, it must be held that the plea is factually incorrect. Contrary to the applicant’s assertion, the Council did set out the facts underlying the Home Secretary’s decision, in paragraph 14 of Annex A to the statement of reasons relating to the contested measures.

114 In all events, the argument is unfounded.

115 It must be noted in that regard that, according to the first subparagraph of Article 1(4) of Common Position 2001/931, fund-freezing lists are to be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons 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.

116 It follows from the general structure of that provision that the Council's obligation to verify, before adding the names of persons or entities to fund-freezing lists on the basis of decisions taken by competent authorities, that those decisions are 'based on serious and credible evidence or clues' concerns only decisions to instigate investigations or prosecution, and not condemnation decisions.

117 The distinction thus made between those two types of decision flows from the application of the principle of sincere cooperation between the institutions and the Member States, a principle which encompasses the adoption of restrictive measures in the fight against terrorism and pursuant to which the Council must base the entry of terrorist persons or entities on the fund-freezing lists on decisions adopted by the national authorities, without being required, or even able, to call them into question.

118 As thus defined, the principle of sincere cooperation applies to national condemnation decisions and, as a result, the Council is not required to verify, before adding the names of persons or entities to the fund-freezing lists, that those decisions are based on serious and credible evidence or clues and must defer, in that respect, to the national authority's appraisal.

119 National decisions relating to the instigation of investigations or prosecution are, by definition, taken at the beginning or in the course of a procedure that has not yet been concluded. To ensure that this fight is effective, it has been considered necessary for the Council to be able to rely on such decisions for the purpose of adopting restrictive measures, even if those decisions are merely preparatory in nature, whilst also making provision, to ensure that the persons affected by those procedures are protected, for that practice to be subject to verification by the Council that the decisions are based on serious and credible evidence or clues.

120 In the present case, the Home Secretary's decision is final in the sense that it does not have to be followed by an investigation. Furthermore, as is apparent from the Council's answer to a question put by the Court, its purpose is to ban the applicant in the United Kingdom, with consequences in criminal law for anyone maintaining any kind of link with the applicant.

121 In those circumstances, the Home Secretary's decision does not constitute a decision in respect of the instigation of investigations or prosecution, and must be treated as a condemnation decision, so that, pursuant to Article 1(4) of Common Position 2001/931, the Council was not required to indicate, in the statement of reasons relating to the contested measures, the serious evidence and clues underpinning that authority's decision.

122 In that regard, the fact that the Home Secretary is an administrative authority is irrelevant, since, as is apparent from paragraphs 75 and 76 above, the Home Secretary's decisions are open to judicial review and, accordingly, the Home Secretary must be regarded as equivalent to a judicial authority.

123 Consequently, the fifth plea in law must be rejected as unfounded.

Second plea in law, alleging an error as to the accuracy of the facts

124 In point II.7 of the statement of reasons relating to the contested measures, the Council noted that the decisions of the competent authorities on which it had relied in entering the applicant's name on the lists at issue were still in force.

125 In paragraph 15 of Annex A to the statement of reasons, the Council added that, in the United Kingdom, the proscription of the applicant had been reviewed by the cross-government Proscription Review Group, which had concluded that Hamas-Izz al-Din al-Qassem continued to be concerned in terrorism on the basis of facts cited by way of examples.

126 Those facts are as follows. First, during the Israeli-Gaza conflict in the summer of 2014, six Israeli civilians and one Thai national had been killed in rocket attacks and shrapnel had fallen on a German cruise ship. Second, Hamas had used social media to issue warnings to United Kingdom airlines, amongst

others, that it intended to attack Ben Gurion Airport in Tel Aviv (Israel), and that those attacks could result in civilian casualties, and Hamas had in fact attempted to attack the airport in July 2014.

127 In reply to a question put to it by the Court, the Council confirmed that the review of the Home Secretary's decision by the cross-government Proscription Review Group had not resulted in a new decision.

128 Furthermore, in paragraph 10 of Annex B to the statement of reasons relating to the contested measures, the Council indicated that the most recent review of the 1997 US decision, designating Hamas as a foreign terrorist organisation, had been completed on 27 July 2012 and had led the government to conclude that the circumstances on which that decision was based had not changed in such a way as to justify revoking that designation.

129 In addition, in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the Council set out various facts from the period 2003-2011 on the basis of which the United States authorities had designated the applicant as a foreign terrorist organisation, without indicating the precise origin of those facts.

130 On being questioned about this in the context of a measure of organisation of procedure, the Council stated that some of those facts came from a 2008 review of the 1997 US decision, which is not mentioned in the statement of reasons relating to the contested measures.

131 The facts set out in paragraph 17 of Annex B to the statement of reasons relating to the contested measures are as follows:

– Hamas claimed responsibility for a suicide attack carried out in September 2003, which killed nine Israeli Defense Forces soldiers and wounded 30 people outside the Assaf Harofeh Hospital and the Tzrifin army base (Israel);

– in January 2004, in Jerusalem, a suicide bomber destroyed a bus near the Prime Minister's residence, killing 11 civilians and injuring 30 others; Hamas and the Al-Aqsa Martyrs' Brigade claimed joint responsibility for the attack;

– in January 2005, terrorists activated an explosive device on the Palestinian side of the Karni Crossing, blowing a hole which allowed Palestinian gunmen to enter the Israeli side; they killed six Israeli civilians and injured five others; Hamas and the Al-Aqsa Martyrs' Brigade claimed joint responsibility for the attack;

– in January 2007, Hamas claimed responsibility for kidnapping three children in the Gaza Strip;

– in January 2008, a Palestinian sniper from the Gaza Strip killed a 21-year-old Ecuadorian volunteer as he was working in the fields of Kibbutz Ein Hashlosha (Israel); Hamas claimed responsibility;

– in February 2008, a Hamas suicide bomber killed an elderly woman and wounded 38 others at a shopping centre in Dimona (Israel); a police officer shot and killed a second terrorist before he could detonate his explosive belt; Hamas characterised that attack as 'heroic';

– on 14 June 2010 in Hebron (West Bank), armed assailants fired upon a police car, killing one officer and wounding two others; a joint operation by the Israel Security Agency, the Israel Police and Tzahal enabled the assailants to be captured on 22 June 2010; during interrogations, the Hamas squad responsible for the attack indicated that they had been formed several years ago and that they had equipped themselves with weapons, including Kalashnikov assault rifles; during the interrogation, it was also revealed that the squad was planning to carry out other attacks, including the abduction of a soldier or a civilian in the Etzion Block area north of Mount Hebron;

– in April 2011, Hamas launched a Kornet missile that struck an Israeli school bus, critically injuring a 16-year-old schoolboy and slightly injuring the bus driver; the warhead used in the attack was capable of penetrating the armour of a modern tank;

– on 20 August 2011, in Ofaqim (Israel), assailants fired rockets at a community, injuring two children and another civilian; Hamas claimed responsibility for the attack.

132 In paragraph 32 of the judgment of 26 July 2017, *Council* v *Hamas* (C−79/15 P, EU:C:2017:584), the Court of Justice held that, where, as in this case, the mere fact that the national decision that served as the basis for the original listing remained in force no longer supported the conclusion that there was an ongoing risk of the person or entity concerned being involved in terrorist activities, the Council was obliged to base the retention of the name 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 demonstrated that that risk still existed.

133 In the present case, in the light of paragraphs 124 to 131 above, it must be concluded that the Council based the re-listing of the applicant's name on the lists at issue, first, on the fact that decisions classified as decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/931 remained in force and, second, on the facts set out in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures, those facts constituting the more recent information on which the Council independently relied and which were required to demonstrate that the risk of Hamas being involved in terrorist organisations was ongoing.

134 In the context of its second plea, the applicant submits that, by proceeding on the basis of the facts mentioned in the contested measures, the Council infringed the obligation to state reasons and, moreover, that it made errors as to the accuracy of those facts.

135 In the light of the response given to the fifth plea in law and the matters referred to in paragraphs 117 to 122 and 133 above, it is not necessary to examine the present plea save in so far as it concerns the facts mentioned in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures.

Concerning breach of the obligation to state reasons

136 The applicant submits that the facts mentioned in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures are too imprecise because dates or locations are not stated or because the Council does not explain on what basis the acts were imputed to Hamas.

137 According to the Court of Justice, the Courts of the European Union are required to determine, in particular, 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 (judgments of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 70, and of 26 July 2017, *Council* v *Hamas*, C−79/15 P, EU:C:2017:584, paragraph 48).

138 It is settled case-law that 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 measures 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 judgment of 15 November 2012, *Council* v *Bamba*, C−417/11 P, EU:C:2012:718, paragraph 50 and the case-law cited).

139 It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons 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 (judgments of 15 November 2012, *Council* v *Bamba*, C−417/11 P, EU:C:2012:718, paragraph 53, and of 14 October 2009, *Bank Melli Iran* v *Council*, T−390/08, EU:T:2009:401, paragraph 82).

140 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 (judgments of 15 November 2012, *Council* v *Bamba*, C−417/11 P, EU:C:2012:718, paragraph 54, and of 14 October 2009, *Bank Melli Iran* v *Council*, T−390/08, EU:T:2009:401, paragraph 82).

141 In the present case, since the events mentioned by the Council in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures took place in a context which was known to the applicant, it must be held that they are described in a sufficiently detailed and specific way to be challenged by the applicant and reviewed by the Court, even if the precise location or precise date on which they took place or the reasons why they were imputed to Hamas are not expressly stated.

142 The first part of the second plea must therefore be rejected as unfounded.

Concerning errors as to the accuracy of the facts

143 The applicant states that it is for the Council to prove the accuracy of the facts set out in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures. It maintains that that proof has not, however, been furnished in the present case.

144 Specifically, the applicant disputes the January 2004 incident, mentioned in paragraph 17 of Annex B, concerning the bombing of a bus, on the ground that responsibility was claimed not by Hamas but by the Al-Aqsa Martyrs' Brigade, the armed wing of Fatah.

145 At the hearing, the applicant's lawyer confirmed that Hamas disputed all the facts mentioned by the Council in the contested measures.

146 In response to a question put by the Court in the context of a measure of organisation of procedure, the Council provided various articles and publications to demonstrate that those facts are correct.

147 In that regard, it should be pointed out that, in the case of subsequent fund-freezing decisions, the Court of Justice considers that the Courts of the European Union are required to determine not only whether the obligation to state reasons has been complied with, as referred to in paragraphs 136 to 142 above, but also whether those reasons are substantiated (judgments of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 70, and of 26 July 2017, *Council* v *Hamas*, C−79/15 P, EU:C:2017:584, paragraph 48).

148 The Court of Justice also considers that the person or entity concerned may, in the action challenging the retention of their name on the lists at issue, 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 (judgments of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 71, and of 26 July 2017, *Council* v *Hamas*, C−79/15 P, EU:C:2017:584, paragraph 49).

149 The Court of Justice adds that, 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 (judgments of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 71, and of 26 July 2017, *Council* v *Hamas*, C−79/15 P, EU:C:2017:584, paragraph 49).

150 In that regard, it should be noted that, as the case-law shows, if the evidence adduced by one party is challenged by the other party, that other party must satisfy two cumulative requirements.

151 In the first place, its challenge may not be in general terms, but must be specific and detailed (see, to that effect, judgment of 16 September 2013, *Duravit and Others* v *Commission*, T−364/10, not published,

EU:T:2013:477, paragraph 55).

152 In the second place, challenges relating to the accuracy of the facts must feature clearly in the first procedural document concerning the contested measure (see, to that effect, judgment of 22 April 2015, *Tomana and Others* v *Council and Commission*, T−190/12, EU:T:2015:222, paragraph 261). That means, in the present case, that only the challenges set out in the application can be taken into consideration.

153 The purpose of those requirements is to enable the defendant to understand precisely, at the stage of the application, the complaints which the applicant has made against it, and thus to be able properly to prepare a defence.

154 In the present case, among the facts mentioned in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the January 2004 incident was the only one that was challenged relatively clearly and specifically in the application; there was no specific criticism in respect of the other acts at that stage of the proceedings. The other acts were challenged only at the hearing stage, by means of a general statement in which the applicant disputed that 'the events put forward by the Council to justify the retention of this organisation on the list of terrorist organisations can be imputed to the political wing of Hamas'.

155 In those circumstances, it must be held, first, that the challenge thus formulated in general terms at a late stage of the proceedings does not meet the conditions under case-law for being taken into consideration, and, second, that the challenge relating to the January 2004 incident, assuming it to be well founded, would in any event be ineffective since the other actions mentioned by the Council in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures, having not been validly disputed, can be taken into account for the purpose of demonstrating the ongoing nature of the risk of the applicant's participation in terrorist activities.

156 Of those, the events of 2011 to 2014 are certainly sufficiently recent to justify the contested measures.

157 The second plea in law must therefore be rejected.

Third plea in law, alleging an error of assessment as to the terrorist nature of the Hamas organisation

158 The applicant submits that, in adopting the contested measures, the Council made an error of assessment as regards the applicant's classification as a terrorist organisation. In its view, the General Court's jurisdiction extends to verification of the Council's classification of the deeds which it invokes as acts of terrorism, and that verification is required both in respect of the deeds invoked independently by the Council and in respect of those invoked in the decisions of the competent authorities.

Concerning the decisions of the competent authorities

159 So far as concerns the deeds invoked in the decisions of the competent authorities, the Court should, according to the applicant, check that the classification adopted by those authorities is based on the definition of terrorism in Common Position 2001/931. In the present case, that check could not be undertaken because of the Council's failure to provide information about that classification.

160 In view of the answer given to the first plea, this part of the plea will be considered only in so far as it concerns the Home Secretary's decision.

161 Since, in response to the fifth plea, it has been held that the evidence and clues on which that decision is based do not have to be indicated in the statement of reasons relating to the contested measures, the Council cannot be expected to verify the national authority's classification of those deeds and to indicate in those measures the outcome of that classification.

162 In the present case, that is particularly so since the decision comes from a Member State for which Article 1(4) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001 introduced a specific form of cooperation with the Council, entailing, for that institution, the obligation to defer as far as possible to the assessment conducted by the competent national authority (judgments of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T−256/07, EU:T:2008:461, paragraph 133, and of 4 December 2008, *People's Mojahedin Organization of Iran* v *Council*, T−284/08, EU:T:2008:550, paragraph 53).

Concerning the deeds invoked independently by the Council

163 In the statement of reasons relating to the contested measures, the Council classified, first, the facts mentioned in paragraph 15 of Annex A as terrorist acts within the meaning of Article 1(3)(iii)(a), (d), (f), (g) and (i) of Common Position 2001/931 for the purpose of achieving the aims set out in Article 1(3)(i) and (ii) of that common position, and, second, the facts mentioned in paragraph 17 of Annex B as terrorist acts within the meaning of Article 1(3)(iii)(a), (b), (c) and (f) of Common Position 2001/931 for the purpose of achieving the aims set out in Article 1(3)(i) and (ii) of that common position.

164 The applicant maintains that the Council erred in classifying the relevant deeds as terrorist acts. First, the fact that the acts in question all took place in the context of the war of occupation by Israel in Palestine should have caused the Council not to accept that classification in the applicant's case. Next, even if those deeds were established, it would not follow that they were committed with the aims referred to by the Council and mentioned in Article 1(3)(i), (ii) and (iii) of Common Position 2001/931.

165 Those two arguments relate in fact to the question whether, when classifying the facts mentioned in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the Council should have taken into consideration the fact that the Israeli-Palestinian conflict falls within the scope of the law of armed conflict.

166 In that regard, it must be noted that, according to settled case-law, the existence of an armed conflict within the meaning of international humanitarian law does not exclude the application of provisions of EU law concerning the prevention of terrorism, such as Common Position 2001/931 and Regulation No 2580/2001, to any acts of terrorism committed in that context (judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 57; see also, to that effect, judgment of 14 March 2017, *A and Others*, C−158/14, EU:C:2017:202, paragraphs 95 to 98).

167 In fact, Common Position 2001/931 makes no distinction as regards its scope according to whether or not the act in question is committed in the context of an armed conflict within the meaning of international humanitarian law. Moreover, the objectives of the European Union and its Member States are to combat terrorism, whatever form it may take, in accordance with the objectives of current international law (judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 58).

168 It is notably to implement, at EU level, United Nations Security Council Resolution 1373 (2001) (see paragraph 1 above), which 'reaffirm[s] the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts' and 'calls on Member States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism', that the Council adopted Common Position 2001/931 (see recitals 5 to 7 thereof) and then, in accordance with that common position, Regulation No 2580/2001 (see recitals 3, 5 and 6 of that regulation) (judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 59).

169 Accordingly, the third plea in law must be rejected as being unfounded.

Fourth plea in law, alleging breach of the principle of non-interference

170 The applicant claims that, by adopting the contested measures, the Council breached the principle of non-interference which stems from Article 2 of the Charter of the United Nations and constitutes a principle of *jus cogens* that flows from the sovereign equality of States in international law and which precludes a State, as well as the government of a State, from being considered a terrorist entity.

171 Yet the applicant, in its submission, is not merely a non-governmental organisation, much less an informal movement, but a legitimate political movement that won the elections in Palestine and forms the heart of the Palestinian government. It argues that since Hamas has had to take on functions beyond those of an ordinary political party, its actions in Gaza are in fact similar to those of a State authority and cannot therefore be censured from the aspect of antiterrorist measures. The applicant is the only one of the individuals and entities included on the lists at issue to be in that situation.

172 In that regard, it should be noted that the principle of non-interference, which is a principle of customary international law, also called the principle of non-intervention, concerns the right of any sovereign State to conduct its affairs without external interference and is a corollary of the principle of sovereign equality of States.

173 As the Council points out, that principle of international law is set out for the benefit of sovereign States, and not for the benefit of groups or movements (see judgment of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 69 and the case-law cited).

174 Since it is neither a State nor the government of a State, Hamas cannot benefit from the principle of non-interference.

175 The fourth plea in law must therefore be rejected as being unfounded.

Sixth plea in law, alleging breach of the principle of respect for the rights of the defence and of the right to effective judicial protection in the national proceedings

176 The applicant maintains that, in the present case, its procedural rights were not respected during the national proceedings, because it was not informed of the United States decisions or of the Home Secretary's decision, although Hamas has a presence in Doha (Qatar) and in Gaza. That failure to notify and to give reasons and the fact that it was impossible for Hamas to submit observations rendered any actions that might have been open to it ineffective.

177 The applicant claims that if the Council does not prove that the governments of the United States and the United Kingdom tried to notify Hamas but that the attempt failed for reasons beyond their control, the contested measures will have to be annulled for breach of the principle of respect for the rights of the defence and of the right to effective judicial protection.

178 In the light of the conclusion drawn in paragraph 66 above, this plea must be examined only in so far as it concerns the Home Secretary's decision.

179 However, at the hearing, the applicant withdrew its sixth plea, in so far as it concerned that decision.

180 There is therefore no longer any need to adjudicate on the sixth plea in law.

Seventh plea in law, alleging breach of the right to property

181 The applicant submits that the freezing of funds constitutes an interference with its right to property that is unjustified, in so far as the contested measures are unlawful for the reasons explained in the preceding pleas.

182 The Council, supported by the Commission, considers that argument to be unfounded.

183 Since the preceding pleas have been rejected, the present plea lacks any foundation and must, therefore, be rejected as being itself unfounded.

184 In any event, it should be recalled that fundamental rights, in particular the right to property, do not enjoy absolute protection under EU law. The exercise of those rights may be restricted provided, first, that such restrictions are duly justified by objectives of public interest pursued by the European Union and, second, that they do not constitute, in relation to those objectives, a disproportionate or intolerable interference, impairing the very substance of those rights (see, to that effect, judgment 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 121 and the case-law cited).

185 As regards the first condition, it should be recalled that the freezing of the funds, financial assets and other economic resources of the persons and entities identified in accordance with the rules laid down in Regulation No 2580/2001 and by Common Position 2001/931 as being involved in the financing of terrorism pursues an objective of public interest, since it is part of the fight against the threats to international peace and security posed by acts of terrorism (see, to that effect, judgment 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 123 and the case-law cited).

186 As to the second condition, it must be pointed out that the measures for the freezing of funds and, in particular, the retention of the applicant's name on the lists at issue do not appear to be disproportionate, intolerable or to impair the very substance of fundamental rights or of some of them.

187 Indeed, that type of measure is necessary, in a democratic society, to combat terrorism (see, to that effect, judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T−256/07, EU:T:2008:461, paragraph 129 and the case-law cited).

188 Moreover, the measures for the freezing of funds are not absolute but provide for the possibility, first, of authorising the use of frozen funds to meet essential needs or to satisfy certain commitments and, second, of granting specific authorisations, in certain circumstances, to unfreeze funds, other financial assets or other economic resources (see judgment 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 127 and the case-law cited).

189 In addition, the retention of the names of persons and entities on the fund-freezing lists is subject to periodic review so as to ensure that the names of those who no longer meet the necessary criteria are removed from those lists (judgment 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 129).

190 In those circumstances, the seventh plea in law must be rejected as being unfounded.

Costs

191 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.

192 Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council.

193 Furthermore, in accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs.

194 Consequently, the Commission must bear its own costs.

On those grounds,

hereby:

1. **Dismisses the action;**

2. **Orders Hamas to bear its own costs and to pay those incurred by the Council of the European Union;**

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

Pelikánová Valančius Nihoul

Svenningsen Öberg

Delivered in open court in Luxembourg on 6 March 2019.

[Signatures]

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* Language of the case: French.