JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

22 November 2018 (*)

(Common foreign and security policy — Restrictive measures taken in view of the situation in Egypt — Freezing of funds — Objectives — Criteria for inclusion of persons targeted — Renewal of the applicants' designation on the list of persons targeted — Factual basis — Plea of illegality — Legal basis — Proportionality — Right to a fair trial — Presumption of innocence — Principle of good administration — Error of law — Manifest error of assessment — Right to property — Rights of defence — Right to effective judicial protection)

In Cases T−274/16 and T−275/16,

Suzanne Saleh Thabet, residing in Cairo (Egypt), represented by B. Kennelly QC, J. Pobjoy, Barrister, G. Martin, M. Rushton and C. Enderby Smith, Solicitors,

applicant in Case T−274/16,

Gamal Mohamed Hosni Elsayed Mubarak, residing in Cairo,

Alaa Mohamed Hosni Elsayed Mubarak, residing in Cairo,

Heidy Mahmoud Magdy Hussein Rasekh, residing in Cairo,

Khadiga Mahmoud El Gammal, residing in Cairo,

represented by B. Kennelly, J. Pobjoy, G. Martin, M. Rushton and C. Enderby Smith,

applicants in Case T−275/16,

v

Council of the European Union, represented initially by S. Kyriakopoulou and M. Veiga, and subsequently by S. Kyriakopoulou and J. Kneale, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment of (i) Council Decision (CFSP) 2016/411 of 18 March 2016 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2016 L 74, p. 40); (ii) Council Decision (CFSP) 2017/496 of 21 March 2017 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2017 L 76, p. 22); and (iii) Council Implementing Regulation (EU) 2017/491 of 21 March 2017 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2017 L 76, p. 10), in so far as those acts apply to the applicants,

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias (Rapporteur), President, I. Labucka and I. Ulloa Rubio, Judges,

Registrar: N. Schall, Administrator,

having regard to the written part of the procedure and further to the hearing on 25 January 2018,

gives the following

Judgment

I. Background to the dispute and factual context

1 In the wake of the political events which took place in Egypt from January 2011, the Council of the European Union adopted, on 21 March 2011, on the basis of Article 29 TEU, Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 63).

2 Recitals 1 and 2 of Decision 2011/172 state:

‘(1) On 21 February 2011, the European Union declared its readiness to support the peaceful and orderly transition to a civilian and democratic government in Egypt based on the rule of law, with full respect for human rights and fundamental freedoms and to support efforts to create an economy which enhances social cohesion and promotes growth.

(2) In this context, restrictive measures should be imposed against persons having been identified as responsible for misappropriation of Egyptian State funds and who are thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country.’

3 Article 1(1) of Decision 2011/172 provides:

‘All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for misappropriation of Egyptian State funds, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.’

4 The second paragraph of Article 5 of Decision 2011/172, in its original version, provided that that decision was to apply until 22 March 2012. The third paragraph of Article 5 of that decision provides that the decision is to be kept under constant review and is to be renewed or amended as appropriate, if the Council deems that its objectives have not been met. Pursuant to that last provision, Decision 2011/172 was successively renewed by Council Decision 2012/159/CFSP of 19 March 2012 (OJ 2012 L 80, p. 18), Council Decision 2013/144/CFSP of 21 March 2013 (OJ 2013 L 82, p. 54), Council Decision 2014/153/CFSP of 20 March 2014 (OJ 2014 L 85, p. 9), Council Decision (CFSP) 2015/486 of 20 March 2015 (OJ 2015 L 77, p. 16), Council Decision (CFSP) 2016/411 of 18 March 2016 (OJ 2016 L 74, p. 40), and Council Decision (CFSP) 2017/496 of 21 March 2017 (OJ 2017 L 76, p. 22).

5 Since the adoption of Decision 2011/172, the applicants, that is to say, the applicant in Case T−274/16, Ms Suzanne Saleh Thabet, and the applicants in Case T−275/16, Mr Gamal Mohamed Hosni Elsayed Mubarak, Mr Alaa Mohamed Hosni Elsayed Mubarak, Ms Heidy Mahmoud Magdy Hussein Rasekh and Ms Khadiga Mahmoud El Gammal, have been designated in the second, fifth, third, fourth and sixth lines, respectively, of the list annexed to that decision.

6 The identifying information in respect of each of the applicants appearing in that list is, as regards the applicant in Case T−274/16, ‘Spouse of Mr. Mohamed Hosni Elsayed Mubarak, former President of the Arab Republic of Egypt — Date of birth: 28.2.1941 — Female’; as regards the first applicant in Case T−275/16, Mr Gamal Mubarak, ‘Son of Mr. Mohamed Hosni Elsayed Mubarak, former President of the Arab Republic of Egypt — Date of birth: 28.12.1963 — Male’; as regards the second applicant in Case T−275/16, Mr Alaa Mubarak, ‘Son of Mr. Mohamed Hosni Elsayed Mubarak, former President of the

Arab Republic of Egypt — Date of birth: 26.11.1960 — Male'; as regards the third applicant in Case T-275/16, Ms Rasekh, 'Spouse of Mr. Alaa Mohamed Hosni Elsayed Mubarak, son of former President of the Arab Republic of Egypt — Date of birth: 5.10.1971 — Female'; and, as regards the fourth applicant in Case T-275/16, Ms El Gammal, 'Spouse of Mr. Gamal Mohamed Hosni Elsayed Mubarak, son of former President of the Arab Republic of Egypt — Date of birth: 13.10.1982 — Female'.

7 The grounds for the designation of the applicants were originally as follows: 'Person subject to judicial proceedings by the Egyptian authorities in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption'. That ground for designation was maintained in respect of the applicants throughout successive renewals of Decision 2011/172, until the adoption of Decision 2017/496. The latter decision amended that ground to read as follows: 'Person subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against Corruption'.

8 On the basis of Article 215(2) TFEU and Decision 2011/172, the Council adopted, on 21 March 2011, Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4). That regulation reproduces, in essence, the provisions of Decision 2011/172, and the list in Annex I to the regulation is identical to the list annexed to that decision, including as regards the grounds for designation of the persons included in that list, notably the applicants. Council Implementing Regulation (EU) 2017/491 of 21 March 2017 implementing Regulation No 270/2011 (OJ 2017 L 76, p. 10) introduced amendments to the list in Annex I to that regulation that correspond to those introduced by Decision 2017/496.

II. Procedure and forms of order sought

9 By applications lodged at the General Court Registry on 27 May 2016, the applicants brought the present actions.

10 On 14 September 2016, the Council lodged its defence in each of the present cases.

11 By decision of 3 October 2016, the present cases were reassigned to the Fifth Chamber, following a change in the composition of the Chambers of the General Court.

12 The replies and rejoinders were lodged on 3 November 2016 and 20 December 2016 respectively.

13 On 12 January 2017, the applicants requested a hearing.

14 On 31 May 2017, pursuant to Article 86 of the Rules of Procedure of the General Court, the applicants lodged a statement of modification in each of the present cases to extend the forms of order sought in the application to include Decision 2017/496 and Implementing Regulation 2017/491.

15 On 19 July 2017, the Council submitted its observations on those statements of modification.

16 By a measure of organisation of procedure dated 16 October 2017, the Court invited the applicants to set out their views on the possible joinder of the present cases for the purposes of the oral part of the procedure and, if appropriate, the decision closing the proceedings. By letters dated 20 and 30 October 2017, respectively, the Council and the applicants submitted their observations in that regard. By decision of 7 November 2017, the Court decided to join the present cases for the purposes of the oral part of the procedure.

17 By a measure of organisation of procedure dated 14 November 2017, the Court put questions to the parties and requested that they produce certain documents. The applicants and the Council replied to the Court by letters dated 28 and 29 November 2017, respectively.

18 The hearing was held on 25 January 2018. During that hearing, the parties were invited by the Court to make submissions on the question of the admissibility of the applicants' claims for annulment of Implementing Regulation 2017/491.

19 By letter of 13 March 2018, the applicant in Case T−274/16 requested that the oral part of the procedure be reopened pursuant to Article 113(2)(c) of the Rules of Procedure, and enclosed with that letter documents to support her request. By letters from the Registry of 26 March 2018, the parties in Case T−274/16 were informed that the decision on that request had been reserved.

20 By letters of 3 April 2018, the applicants submitted a request for the oral part of the procedure to be reopened with a view to their lodging a statement of modification in each of the present cases to cover Council Decision (CFSP) 2018/466 of 21 March 2018 amending Decision 2011/172 (OJ 2018 L 78I, p. 3) and Council Implementing Regulation (EU) 2018/465 of 21 March 2018 implementing Regulation No 270/2011 (OJ 2018 L 78I, p. 1), in so far as those acts concerned them. That request was refused by decision of the President of the Fifth Chamber of 9 April 2018.

21 The applicants claim that the Court should:

– annul Decisions 2016/411 and 2017/496 and Implementing Regulation 2017/491, in so far as those acts apply to them (together, 'the contested acts');

– order the Council to pay the costs.

22 The Council contends that the Court should:

– dismiss the actions in their entirety;

– in the alternative, in the event that Decision 2017/496 and Implementing Regulation 2017/491 are annulled as regards the applicants, order that the effects of that decision be maintained with regard to the applicants until the annulment of that regulation takes effect;

– order the applicants to pay the costs.

III. Law

23 After hearing the views of the parties in this respect, the Court has decided to join the present cases for the purposes of the judgment, in accordance with Article 68 of the Rules of Procedure.

24 In their applications, the applicants seek annulment of the contested acts in so far as, by those acts, the Council maintained their designation on the lists annexed to Decision 2011/172 and Regulation No 270/2011.

25 The Court considers it appropriate to examine, first, the action in Case T−274/16 and then, second, the action in Case T−275/16.

A. The action in Case T−274/16

1. The request of 13 March 2018 for the oral part of the procedure to be reopened

26 Under Article 113(2)(c) of the Rules of Procedure, the Court may order the reopening of the oral part of the procedure where requested by a main party who is relying on facts which are of such a nature as to be a decisive factor for the Court's decision but which that party was unable to put forward before the oral part of the procedure was closed.

27 In support of her request, the applicant submits that her argument, that she was never a member of the board of directors of the authority that regulates non-governmental organisations (NGOs) in Egypt, let alone head of that board of directors, is substantiated by a memorandum from the Egyptian authorities of 5 February 2018. According to the applicant, that document, which she did not have at the time of the hearing, would enable the erroneous statements which the Council made in that respect during the hearing to be corrected, and is therefore a fact which is of such a nature as to be a decisive factor for the final decision of the Court.

28 According to settled case-law, the lawfulness of an EU measure is to be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see judgments of 3 September 2015, *Inuit Tapiriit Kanatami and Others* v *Commission*, C−398/13 P, EU:C:2015:535, paragraph 22 and the case-law cited, and of 4 September 2015, *NIOC and Others* v *Council*, T−577/12, not published, EU:T:2015:596, paragraph 112 and the case-law cited).

29 As noted in paragraph 24 above, the present action concerns the continued designation of the applicant by the contested acts. It is not claimed that the information contained in the memorandum from the Egyptian authorities of 5 February 2018, enclosed with the applicant's request, was known to the Council at the time when it adopted those acts. It should moreover be noted that, as is apparent from the letter from the Egyptian embassy in Brussels (Belgium) enclosing the memorandum, the latter is a response to a *note verbale* from the European External Action Service (EEAS) of 31 January 2018. Consequently, the content of that document, of which the Council became aware after the date of the contested acts, is not a new fact which is of such a nature as to be a decisive factor for the final decision of the Court on the present action.

30 Accordingly, it is not appropriate to order that the oral part of the procedure be reopened.

2. Admissibility of the claim for annulment of the continuation, by means of Implementing Regulation 2017/491, of the applicant's designation on the list annexed to Regulation No 270/2011

31 According to settled case-law, the admissibility of a claim for annulment is a matter of public policy which the Courts of the European Union may consider at any time, even of their own motion (see, to that effect, judgment of 27 February 2014, *Stichting Woonpunt and Others* v *Commission*, C−132/12 P, EU:C:2014:100, paragraph 45 and the case-law cited).

32 In the present case, the Court considers it necessary to raise of its own motion the question of the admissibility of the form of order sought in the statement of modification, by which the applicant asks the Court to annul the continuation, by means of Implementing Regulation 2017/491, of her designation on the list annexed to Regulation No 270/2011. The parties were invited to comment on that point at the hearing.

33 It should be recalled in that regard that Article 86(1) of the Rules of Procedure provides that where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

34 It follows from those provisions that, in the context of a statement of modification, an applicant is entitled to seek annulment of a measure replacing or amending another measure only if annulment of the latter measure was sought in the application (see, to that effect, judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, T−255/15, not published, EU:T:2017:25, paragraphs 37 to 39 and the case-law cited).

35 In the present case, as the applicant moreover confirmed at the hearing, she did not intend to seek, in the application, annulment of Regulation No 270/2011 in so far as that act related to her. Admittedly, in the context particularly of the first and third pleas in law, she refers to the criteria in Article 1(1) of Regulation No 270/2011. However, it is common ground that the present action is not a claim for annulment of her designation on the list annexed to that regulation. In those circumstances, the applicant is not entitled to

seek, by way of modification of the form of order sought, annulment of Implementing Regulation 2017/491, in so far as that regulation maintained her designation on that list. The claim for annulment of Implementing Regulation 2017/491 must, therefore, be dismissed as inadmissible.

3. Substance

36 In support of her action, the applicant puts forward six pleas in law. In the context of the first plea, she raises a plea of illegality in respect of Article 1(1) of Decision 2011/172, as renewed by Decisions 2016/411 and 2017/496, and in respect of Article 2(1) of Regulation No 270/2011. By the second, third, fourth, fifth and sixth pleas she alleges, respectively, infringement of Article 6 TEU, in conjunction with Articles 2 and 3 TEU and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union ('the Charter'), in that the Council treated the judicial proceedings against the applicant as compliant with fundamental rights;infringement of the general criteria under Article 1(1) of Decision 2011/172 and Article 2(1) of Regulation No 270/2011;infringement of the obligation to state reasons;infringement of the rights of the defence, of the right to good administration and of the right to effective judicial protection;and the unjustified and disproportionate restriction of the right to property and of the freedom to conduct a business.

(a) First plea in law: plea of illegality in respect of Article 1(1) of Decision 2011/172, as renewed by Decisions 2016/411 and 2017/496, and in respect of Article 2(1) of Regulation No 270/2011

37 This plea is in two parts, alleging (i) that Article 1(1) of Decision 2011/172, as renewed by Decisions 2016/411 and 2017/496, has no legal basis, and breach, on account of that renewal, of the principle of proportionality, and (ii) that Article 2(1) of Regulation No 270/2011 has no legal basis.

(1) First part of the first plea in law, alleging that Article 1(1) of Decision 2011/172, as renewed by Decisions 2016/411 and 2017/496, has no legal basis, and breach, on account of that renewal, of the principle of proportionality

38 According to the applicant, even if Article 1(1) of Decision 2011/172 could have been founded on the objectives referred to in recital 1 of that decision when the decision was adopted, that was no longer the case at the time of the adoption of Decisions 2016/411 and 2017/496, owing to the political and judicial developments in Egypt indicated in the information sent to the Council prior to the adoption of those decisions. Thus, the applicant submits that that provision can no longer be based on an objective of 'support for the new Egyptian authorities', first, because those authorities were deposed after the adoption of Decision 2011/172; second, because of the political instability in Egypt, marked by violations of fundamental rights and of the rule of law; and, third, because the Council had become aware of information that established that the Egyptian authorities would not guarantee fair, impartial and independent judicial treatment of the applicant or respect for the rule of law in her case. In the statement of modification, the applicant further maintains that the evidence she submitted to establish that Article 1(1) of Decision 2011/172 has no legal basis also demonstrates the disproportionate nature of those provisions having regard to the Council's objectives.

39 The Council contends that the question of the appropriateness of the legal basis of Decision 2011/172 has already been settled by the Courts of the European Union in the judgment of 27 February 2014, *Ezz and Others* v *Council* (T−256/11, EU:T:2014:93), upheld on appeal by the judgment of 5 March 2015, *Ezz and Others* v *Council* (C−220/14 P, EU:C:2015:147), and in the order of 15 February 2016, *Ezz and Others* v *Council* (T−279/13, not published, EU:T:2016:78). Furthermore, the Council argues that Decisions 2016/411 and 2017/496 form part of an EU policy of support for the Egyptian authorities and therefore satisfy the objectives of the common foreign and security policy (CFSP). It maintains that as long as the misappropriation of State funds referred to in Decision 2011/172 continues, it causes a loss to the Egyptian State.

40 As a preliminary point, it must be noted that the complaint that Article 1(1) of Decision 2011/172, as renewed by Decisions 2016/411 and 2017/496, has no legal basis, and the complaint of a breach by the

Council of the principle of proportionality as a result of those renewals, are two separate complaints which must be examined separately.

(i) Complaint as to the lack of a legal basis

41 First of all, it should be borne in mind that, according to settled case-law, review of the legal basis for an act enables the powers of the author of the act to be verified and the procedure for the adoption of that measure to be checked as to whether it is tainted by any irregularity. Moreover, the choice of legal basis for an EU measure must rest on objective factors amenable to judicial review, factors which include the purpose and content of the measure (see judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraph 42 and the case-law cited; order of 15 February 2016, *Ezz and Others* v *Council*, T−279/13, not published, EU:T:2016:78, paragraph 47).

42 In this complaint, the applicant takes issue, in particular, with the application in the present case of the reasoning that led the Court to consider, in paragraph 47 of the order of 15 February 2016, *Ezz and Others* v *Council* (T−279/13, not published, EU:T:2016:78), that the 'social and legal developments' that had occurred since the initial designation of the applicants in that case, and on which they were relying in the context of a plea that similarly alleged the lack of a legal basis, could influence only the merits of the grounds of the disputed measures and could not be examined in the context of the review of the choice of legal basis for those measures.

43 According to the applicant, it is evident from the case-law that, where the aim and content of an act are premised on a particular social and legal context, the review of the legal basis of that act must include consideration of the development of that context.

44 However, it must be held that the Court's reasoning as referred to in paragraph 42 above can be applied to the present case.

45 It should be recalled in that regard that, under Article 1(1) of Decision 2011/172, the purpose of that decision is to freeze the assets of persons having been identified as responsible for misappropriation of Egyptian State funds and of persons associated with them, as listed in the annex to that decision. As is apparent from recital 1 thereof, that decision forms part of a policy of support vis-à-vis the Egyptian authorities that is based, in particular, on the objectives of consolidation of and support for democracy, the rule of law, human rights and the principles of international law set out in Article 21(2)(b) TEU (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 44). The Court thus inferred from that that Decision 2011/172 could be lawfully based on Article 29 TEU, and that the decision also met the other conditions for being adopted on that basis (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraphs 41 and 44 to 47).

46 Thus, according to the case-law, it is sufficient that Decision 2011/172 pursues objectives related to those set out in Article 21 TEU for that decision to be regarded as falling within the CFSP. In addition, as the Court of Justice has ruled, in view of the broad scope of the aims and objectives of the CFSP, as expressed in Article 3(5) and Article 21 TEU, and specific provisions relating to the CFSP, in particular Articles 23 and 24 TEU, disputing the merits of an act in the light of the objectives defined in Article 21 TEU is not capable of establishing that that act has no legal basis (see, to that effect, judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraphs 45 and 46).

47 The same reasoning applies in the context of Decisions 2016/411 and 2017/496, which merely renewed Decision 2011/172 and form part of the same policy aimed, as indicated in recital 1 of the latter decision, at supporting the process of Egypt's political and economic stabilisation, while respecting the rule of law and fundamental rights.

48 Even on the assumption that the situation in Egypt in respect of which the Council adopted Decision 2011/172 has evolved, and in a manner contrary to the democratisation process which the policy

underpinning that decision is intended to support, that circumstance cannot, in any event, affect the Council's power to renew that decision on the basis of Article 29 TFEU. Notwithstanding that circumstance, the aims pursued by Decisions 2016/411 and 2017/496 and the rules whose validity they renew would nonetheless remain within the scope of the CFSP, which is sufficient for the applicant's complaint to be rejected in the present case (see, to that effect and by analogy, judgment of 14 June 2016, *Parliament* v *Council*, C−263/14, EU:C:2016:435, paragraphs 45 to 54).

49 The case-law cited by the applicant cannot call those findings into question.

50 With regard, in the first place, to the judgment of 8 June 2010, *Vodafone and Others* (C−58/08, EU:C:2010:321), it is sufficient to note that the Court of Justice did not consider in that case whether a provision of the EU Treaty falling within the CFSP constituted an appropriate legal basis, but whether that was so as regards Article 95(1) EC, which involved consideration of the general context and the specific circumstances of the field harmonised by the act adopted on that basis as these appeared at the time of its adoption (see, to that effect, judgment of 8 June 2010, *Vodafone and Others*, C−58/08, EU:C:2010:321, paragraphs 32 to 35 and 39 to 47). The Court's reasoning in that judgment is not, therefore, capable of being applied to the present case.

51 As regards, in the second place, paragraphs 191 to 193 of the judgment of 11 July 2007, *Sison* v *Council* (T−47/03, not published, EU:T:2007:207), these relate to the General Court's examination of a plea alleging failure to state reasons, and not to a plea alleging the lack of a legal basis. They are not relevant, therefore.

52 As regards, in the third place, paragraph 110 of the judgment of 22 April 2015, *Tomana and Others* v *Council and Commission* (T−190/12, EU:T:2015:222), it must be noted that that paragraph must be read in the context of the General Court's reasoning of which it forms part. In its reasoning, the General Court did not seek to review the merits of the Council's assessments of developments in the situation in Zimbabwe and the need to maintain the restrictive measures adopted in the light of those developments, but only to verify whether, by those measures, the Council had intended to pursue aims falling within the CFSP (see, to that effect, judgment of 22 April 2015, *Tomana and Others* v *Council and Commission*, T−190/12, EU:T:2015:222, paragraphs 93 to 111).

53 Accordingly, the complaint as to the lack of a legal basis must be rejected.

(ii) Complaint as to breach of the principle of proportionality

54 As a preliminary point, it should be noted that the Council enjoys, in general terms, a broad discretion to adopt acts in the context of the CFSP, which is an area that involves political, economic and social choices on its part, and in which it is called upon to undertake complex assessments (see, to that effect, judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C−348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited). Likewise, according to the case-law, the Council must be allowed a broad discretion in establishing the general criteria defining the category of persons that could be made subject to restrictive measures, in the light of the objectives underpinning those measures (see, to that effect, judgments of 21 April 2015, *Anbouba* v *Council*, C−605/13 P, EU:C:2015:248, paragraph 41, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 48). The Council must therefore be allowed a similar margin of discretion with regard to the renewal of the application of those criteria.

55 Thus, it is not for the Court to rule, in the present action, on the merits of the Council's policy of supporting the process of political stabilisation in Egypt, as referred to in recital 1 of Decision 2011/172, a policy of which that decision and the subsequent decisions form part.

56 Nor, moreover, is it for the Court to substitute its own assessment for that of the Council as regards the geographical or political context to which Decision 2011/172 relates and the need to renew that decision in the light of that context.

57 However, in so far as Decision 2011/172 forms part of a policy of support for the Egyptian authorities based, in particular, on the objectives of consolidating and supporting democracy, the rule of law, human rights and principles of international law, the possibility that that decision is manifestly inappropriate in the light of those objectives because of serious and systematic violations of fundamental rights cannot be ruled out.

58 In addition, it should be noted that the purpose of the asset freeze imposed by Decision 2011/172 is to facilitate the Egyptian authorities' identification of any misappropriation of State funds that has taken place and to ensure that it remains possible for those authorities to recover the proceeds of misappropriation. It is, therefore, purely precautionary and has no criminal-law aspect (see, to that effect, judgments of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraphs 77, 78 and 206, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 62 and 64).

59 That purpose is irrelevant, however, in the light of the objectives of the policy of which Decision 2011/172 forms part, if the Egyptian authorities' finding that State funds have been misappropriated is vitiated by a denial of justice and, a fortiori, arbitrariness.

60 The Court must therefore examine whether, in assessing the need to renew Decision 2011/172, the Council did not manifestly disregard the importance and gravity of the material concerning the political and judicial context in Egypt invoked by the applicant, in the light of the other information at its disposal and the objectives of that decision, and, if necessary, whether it was under an obligation, in the light of that material, to carry out further checks.

61 The Court must rule on the applicant's various arguments in support of the present complaint in the light of those considerations.

– *The first argument, alleging that the 'new Egyptian authorities', supported by the Council, have been deposed*

62 It should be borne in mind that, in paragraph 44 of the judgment of 27 February 2014, *Ezz and Others* v *Council* (T−256/11, EU:T:2014:93), the Court found that Decision 2011/172 formed part of a 'policy of supporting the new Egyptian authorities'. In the context of the first argument, the applicant relies on that paragraph in maintaining that the renewal of that decision can no longer be based on that objective because of the overthrow of those 'new authorities'. However, that argument is based on an incorrect premiss.

63 First, it is apparent from paragraph 44 of the judgment of 27 February 2014, *Ezz and Others* v *Council* (T−256/11, EU:T:2014:93), that, by the expression 'policy of supporting the new Egyptian authorities', the Court intended to refer to the '[policy of support for] the peaceful and orderly transition to a civilian and democratic government in Egypt based on the rule of law, with full respect for human rights and fundamental freedoms', which is referred to in recital 1 of Decision 2011/172. It is true that, as the documents produced by the applicant show, the President of the Republic who was elected in Egypt in June 2012 in the context of the process of transition to democracy, Mr Morsi, was removed from office in June 2013. However, contrary to the assumption underlying the applicant's argument, there is no suggestion in the wording of recital 1 of Decision 2011/172 that the policy of support for that process was limited to support for the government that was formed by that leader, and which was the first civilian government to result from elections following the departure of the former President of the Republic, Mr Mubarak, in February 2011. In any event, as indicated in paragraph 55 above, it is not for the Court to rule on the question whether that policy continued to be relevant after Mr Morsi ceased to hold office.

64 Second, in the light of the purpose of the restrictive measures imposed under Decision 2011/172, referred to in paragraph 58 above, those measures must, in principle, be maintained until the conclusion of the judicial proceedings in Egypt in order to ensure their effectiveness. Consequently, their renewal cannot depend on successive changes of government, in the context of the process of political transition which the policy of which Decision 2011/172 forms part is intended to support.

65 The first argument must therefore be rejected.

– *The second argument, relating to the risks caused by the instability of Egyptian politics and alleged infringements of the rule of law and fundamental rights*

66 In the first place, it should be noted that, in support of her claim for annulment of Decision 2016/411, the applicant submitted a number of public documents that demonstrate, in her view, the instability of Egyptian politics and the violations of the rule of law and of fundamental rights that have taken place in that context since the events of 2011. Those documents include, on the one hand, reports from NGOs and press reports and, on the other, statements of EU authorities or on behalf of the European Union, condemning those violations.

67 However, those reports and statements are not such as to demonstrate that the renewal of Decision 2011/172 by Decision 2016/411 was manifestly contrary to the objectives referred to in recital 1 of the latter decision.

68 It must be noted in that regard that those documents do not support the conclusion that the political and institutional instability that characterised Egyptian politics after the events of 2011 had the effect of compromising any capacity of the Egyptian judicial system to guarantee respect for the rule of law and fundamental rights, and that the asset freeze imposed by Decision 2011/172 in the context of a policy aimed, in particular, at respect for those principles had therefore become manifestly inappropriate. The same applies to the violations of fundamental rights and of the rule of law mentioned in those documents, notably as regards the repression of protesters or political opponents and the restriction of civil liberties.

69 It is not apparent from the information in those documents that that context could have influenced the judicial proceedings in the light of which the list of persons subject to the asset freeze imposed by Decision 2011/172, annexed to that decision, was drawn up.

70 In particular, it must be noted that the statements made by EU authorities or on behalf of the European Union on which the applicant relies do not concern the judicial proceedings which the Council took into account in connection with Decision 2011/172. Furthermore, the fact that EU authorities have expressed their concerns about violations of fundamental rights and the undermining of the rule of law in Egypt or have asked the Egyptian authorities to refrain, including in a judicial setting, from such violations or undermining does not, in itself, preclude the Council from providing the Egyptian authorities with assistance in the context of judicial proceedings. In particular it should be noted that, in the context of a policy aimed, in particular, at respect for the rule of law and fundamental rights in Egypt, assisting the Egyptian authorities with a view to combating the misappropriation of State funds is not at odds with the expression of concerns or demands that those principles be observed by those authorities themselves, but, on the contrary, is complementary thereto. This assessment is confirmed by the fact that several of the statements relied on by the applicant include references to the policy of cooperation between the European Union and the Arab Republic of Egypt.

71 The documents supplied in connection with the statement of modification do not cast doubt on that assessment.

72 First of all, as regards the report by the International Commission of Jurists (ICJ) of September 2016, entitled ‘Egypt’s Judiciary: A Tool of Repression — Lack of Effective Guarantees of Independence and Accountability’, the applicant confirmed at the hearing that she had not sent this to the Council before the adoption of Decision 2017/496. The Council cannot therefore be criticised for having failed to take account of the findings in that report in determining whether or not the renewal of Decision 2011/172 was compatible with the objectives of the policy of which that decision forms part. In any event, the report focuses on the conduct of the judicial authorities towards opponents of the political authorities, or those considered to be opposing those authorities. It does not, however, relate to their conduct in the context of judicial proceedings for misappropriation of State funds, as in the present case. Nor, moreover, can it be

inferred that the capacity of the Egyptian judicial authorities to safeguard effective judicial protection is systematically compromised, including in the context of such judicial proceedings.

73 Next, the applicant referred to two public statements by the NGO Amnesty International, dated 19 and 27 April 2017 respectively, the former entitled ‘New draconian amendments in the name of counter-terrorism: Another nail in the coffin of fair trial standards in Egypt’, the latter entitled ‘New legislation threatens judicial independence in Egypt’.Suffice it to note, however, that those statements relate to changes to Egyptian law made after the adoption of Decision 2017/496, which cannot therefore, in any event, constitute relevant evidence for the purpose of assessing the lawfulness of that decision.

74 In the second place, it must be emphasised that, in order to assess the need for the renewal of Decision 2011/172, the Council has to strike a balance between the various relevant elements, which include, in particular, the taking into account, on the one hand, of the purpose of that decision and, on the other, of the objectives of the policy of which it forms part, namely support for the process of political and economic stabilisation of Egypt while respecting the rule of law and fundamental rights.

75 In that regard, in so far as the sole purpose of the scheme of restrictive measures laid down by Decision 2011/172 is to facilitate the Egyptian authorities’ identification of any misappropriation of State funds that has taken place and to ensure that it remains possible for those authorities to recover the proceeds of misappropriation, it is not inconceivable that the renewal of that regime retains its relevance, including in the event of political and judicial developments detrimental to progress towards democracy, the rule of law or respect for fundamental rights. Accordingly, it was for the Council to assess whether, in the light of the information at its disposal, it could reasonably conclude that continued assistance to the Egyptian authorities in combating the misappropriation of State funds remained, even in that context, an appropriate means of promoting political stability and respect for the rule of law in that country.

76 First, as noted in paragraphs 68 to 73 above, the evidence provided by the applicant does not, in itself, support the conclusion that the capacity of the Egyptian judicial authorities to ensure that the rule of law and fundamental rights are upheld in the context of the judicial proceedings on which Decision 2011/172 is based is definitively compromised by the political and judicial developments referred to above.

77 Second, the Council was entitled to take into consideration the existence of safeguards available under Egyptian law. Thus, it is apparent from the information contained in the memorandum of 2 January 2016 from the Egyptian Prosecutor General’s Office, added to the court file by the Council following a measure of organisation of procedure, that the criminal proceedings on which Decision 2011/172 is based take place in the context of a legal framework that offers guarantees with regard to the effective judicial protection of the persons concerned and, in particular, the possibility of bringing an appeal before the Egyptian Court of Cassation. Moreover, it is apparent from the update in respect of the relevant judicial proceedings, also provided by the Egyptian authorities in the light of the adoption of Decisions 2016/411 and 2017/496, that some of the persons designated in the annex to Decision 2011/172 were acquitted following an appeal to that court.

78 Therefore, the Council did not make a manifest error of assessment in finding that it had sufficient information at its disposal with regard to the political and judicial context in Egypt to continue to cooperate with the Egyptian authorities in connection with Decision 2011/172 and that the information produced by the applicant did not warrant further checks being undertaken prior to the renewal of that decision. The second argument must therefore be rejected.

– *The third argument, concerning the risk that the applicant’s right to a fair trial may not be respected in the criminal proceedings against her in Egypt*

79 It must be noted with regard to this argument that, even if the evidence produced by the applicant did indicate a risk that the Egyptian authorities may not guarantee that her right to a fair trial is respected, that could not affect the legality, overall, of the renewal of the fund-freezing scheme provided for by Article 1(1) of Decision 2011/172.

80 The criteria laid down by that provision provide, in general and abstract terms, for the designation of persons responsible for misappropriation of Egyptian State funds and of persons associated with them. Those criteria do not imply the existence of a link between the designation of those persons and the judicial proceedings brought specifically against the applicant and members of her family. Furthermore, as regards the arguments concerning infringement of the right to a fair trial of the former President of the Republic, suffice it to note that neither those criteria nor the grounds for the designation of the persons on the list annexed to Decision 2011/172 make the freezing of their assets and the renewal thereof contingent on their relationship with that political leader. In addition, the likelihood of infringements of the latter's right to a fair trial cannot, by itself, constitute evidence of systematic infringements of that right that would be capable of affecting the rights of all those designated in the annex to Decision 2011/172.

81 Consequently, in so far as it is put forward in support of a plea of illegality in respect of Article 1(1) of Decision 2011/172, as renewed by Decision 2015/486, the present argument is ineffective. That argument may be relevant only in connection with the second plea, alleging infringement, by Decisions 2016/411 and 2017/496, of the obligation to respect the fundamental rights of the applicant, and it should therefore be examined in that context.

82 Accordingly, it follows from all of the foregoing that the applicant has not established that the renewal, by Decisions 2016/411 and 2017/496, of Article 1(1) of Decision 2011/172 is manifestly inappropriate in view of the situation in Egypt and, consequently, that there has been a breach of the principle of proportionality. The first part of the present plea in law must therefore be rejected in its entirety.

(2) Second part, alleging that Article 2(1) of Regulation No 270/2011 has no legal basis

83 By the second part of this plea, the applicant relies on the lack of a legal basis for Regulation No 270/2011, which, in her view, cannot be based on Article 215(3) TEU, in the absence of a valid decision.

84 In that regard, it is sufficient to note that, as is apparent from paragraphs 41 to 82 above, the first part of the present plea, which relates to Article 1(1) of Decision 2011/172, as renewed by Decisions 2016/411 and 2017/496, must be rejected. Thus, the present part, which is based on the premiss that that decision is unlawful, is unfounded and must be rejected without there being any need to consider its admissibility.

85 Accordingly, the present part of the first plea must be rejected, as, therefore, must the first plea in its entirety.

(b) Second plea in law: infringement of Article 6 TEU, in conjunction with Articles 2 and 3 TEU and Articles 47 and 48 of the Charter

86 The second plea is in two parts.

87 In the first part, the applicant submits that, pursuant to Article 6 TEU, in conjunction with Article 2 and Article 3(5) TEU, the Council is under an obligation to promote fundamental rights. In the present case, according to the applicant, the Council failed to satisfy itself that her fundamental rights had been respected and, moreover, proceeded on the basis of an irrefutable presumption that the Egyptian authorities conducted themselves in accordance with those rights, contrary to the requirements of the case-law (judgments of 21 December 2011, *N.S. and Others*, C−411/10 and C−493/10, EU:C:2011:865, paragraphs 105 and 106, and of 16 October 2014, *LTTE* v *Council*, T−208/11 and T−508/11, EU:T:2014:885, paragraph 139). She submits that those requirements are confirmed by the Opinion of Advocate General Sharpston in *Council* v *LTTE* (C−599/14 P, EU:C:2016:723, paragraphs 65, 66 and 71). The applicant argues that her links to the former Egyptian Head of State expose her, particularly, to politically motivated prosecutions and infringements of her right to a fair trial, as enshrined in Articles 47 and 48 of the Charter, and, moreover, that that right has been infringed in the legal proceedings brought against her in Egypt. On being asked, in the context of the measure of organisation of procedure of 14 November 2017, about the effect, in terms of the present case, of the judgment of 26 July 2017, *Council*

v *LTTE* (C−599/14 P, EU:C:2017:583), in which the Court of Justice considered the Council's appeal against the judgment of the General Court referred to above, the applicant maintained that that judgment confirms that her arguments in support of the present plea are well founded.

88 Furthermore, as indicated in paragraph 81 above, the present plea also incorporates the argument raised by the applicant in the context of the first part of the first plea, that the objectives of Decision 2011/172 referred to in recital 1 of that decision preclude her re-designation, in view of the risk, indicated by the evidence she produced to the Council, that the Egyptian authorities would not guarantee that her right to a fair trial would be observed. That argument, the basis of which is distinct from that of the applicant's arguments in support of the first part of the present plea, must be regarded as constituting the second part of this plea.

89 In its defence, the Council contends that the principles derived from the case-law cited by the applicant are not relevant to the present case. In the first place, according to the Council, it did not proceed on the basis of the kind of irrefutable presumption examined by the Court of Justice in the judgment of 21 December 2011, *N.S. and Others* (C−411/10 and C−493/10, EU:C:2011:865), which was delivered in the context of the transfer of asylum seekers to a Member State where they faced the risk of inhuman or degrading treatment. In addition, in the present case, unlike the situation examined by the Court of Justice in that judgment, there is no causal link between Decisions 2016/411 and 2017/496 and the alleged infringement of the applicant's fundamental rights. In the second place, the Council submits that the freezing of the applicant's assets does not constitute a criminal sanction and that it did not result in any violation of the presumption of innocence. In the third place, according to the Council, Decision 2011/172 and the subsequent decisions are autonomous measures which are not based on a request from the Egyptian authorities and are not therefore comparable with the mechanism introduced by Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), which was at issue in the judgment of 16 October 2014, *LTTE* v *Council* (T−208/11 and T−508/11, EU:T:2014:885). On being questioned in the context of the measure of organisation of procedure of 14 November 2017, the Council maintained that the reasoning underpinning the judgment of 26 July 2017, *Council* v *LTTE* (C−599/14 P, EU:C:2017:583), cannot be applied to the present case.

(1) Preliminary considerations

90 First of all, it should be noted that the debate between the parties in the context of the present plea does not concern, as in the context of the first part of the first plea, the question whether the Council's failure to ascertain whether the rule of law and fundamental rights were being observed in Egypt affected, overall, the lawfulness of the renewal of the scheme of restrictive measures adopted under Decision 2011/172. It concerns the question whether the alleged failure on the part of the Council to have regard to infringements of the applicant's right to a fair trial in the judicial proceedings brought against her, or at least the risk that that right might be infringed, affected the lawfulness of Decisions 2016/411 and 2017/496.

91 In that regard, in the first place, it should be borne in mind that Article 2 and Article 3(5) TEU require the institutions of the European Union to promote, notably in the context of international relations, the values and principles on which the Union is founded, that is in particular, respect for human dignity, the rule of law and fundamental rights.

92 In the second place, as the Court of Justice has pointed out, compliance with those principles is required of all actions of the European Union, including actions under the CFSP, as is clear from the provisions, read together, set out in the first subparagraph of Article 21(1), Article 21(2)(b) and (3), and Article 23 TEU (see, to that effect, judgment of 14 June 2016, *Parliament* v *Council*, C−263/14, EU:C:2016:435, paragraph 47).

93 In particular, Article 21(1) TEU provides that the European Union's action on the international scene is to seek to advance in the wider world, inter alia, the rule of law, the universality and indivisibility of human rights and respect for international law.

94 In the third place, as regards specifically the right to a fair trial and to respect for the presumption of innocence, infringement of which is alleged in this instance, it must be noted that, according to the European Court of Human Rights ('the ECtHR'), the right to a fair trial, as embodied in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, to which Articles 47 and 48 of the Charter correspond in the EU legal order, holds, particularly in criminal matters, a prominent place in a democratic society (ECtHR, 7 July 1989, *Soering v. United Kingdom*, CE:ECHR:1989:0707JUD001403888, paragraph 113).

95 Similarly, it must be emphasised that the principles of judicial independence and impartiality and the right to effective judicial protection are standards that are essential for respect for the rule of law, which is itself one of the primary values on which the European Union is founded, as is stated in Article 2 TEU, the preambles to the EU Treaty and the Charter (see, to that effect, judgment of 15 September 2016, *Klyuyev* v *Council*, T−340/14, EU:T:2016:496, paragraphs 87 and 88).

96 In the fourth and final place, as the ECtHR has stated in essence, the requirements that flow from the right to a fair trial and respect for the presumption of innocence are aimed, particularly in criminal proceedings, at ensuring that the decision containing a definitive ruling on the substance of the charges against the person concerned is reliable and is not tainted by a denial of justice or even arbitrariness, which would constitute the very negation of the rule of law (see, to that effect and by analogy, ECtHR, 17 January 2012, *Othman (Abu Qatada) v. United Kingdom*, CE:ECHR:2012:0117JUD000813909, paragraph 260, and of 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland*, CE:ECHR:2016:0621JUD000580908, paragraphs 145 and 146).

97 In the present case, it cannot be inferred from the case-law that the characteristics of the scheme established by Decision 2011/172 would justify an exception to the Council's general obligation when adopting restrictive measures to respect the fundamental rights that form an integral part of the EU legal order (see, to that effect, judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraph 25 and the case-law cited), an exception which would have the effect of exempting the Council from any verification of the protection of fundamental rights afforded in Egypt to persons subject to the measures in question.

98 It is admittedly apparent from the case-law that the existence of ongoing judicial proceedings in Egypt constitutes, in principle, a sufficiently solid factual basis for the designation of the persons on the list annexed to Decision 2011/172 as well as for the renewal of that decision (see, to that effect and by analogy, judgments of 14 April 2016, *Ben Ali* v *Council*, T−200/14, not published, EU:T:2016:216, paragraph 156, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 65 and 68 and the case-law cited). However, that can be so only if the Council is reasonably entitled to assume that the decision taken at the end of those proceedings will be reliable, particularly as it is not, in principle, for the Council itself to assess the accuracy and the relevance of the evidence on which those proceedings are based.

99 Furthermore, it must be noted that, in a case relating to restrictive measures adopted in view of the situation in Tunisia, analogous to Decisions 2016/411 and 2017/496, the Court held that it could not be ruled out that the Council would carry out the necessary checks where there was objective, reliable, specific and consistent evidence such as to raise legitimate questions concerning observance of the applicant's right in that case to have his case heard within a reasonable time in the context of the ongoing judicial investigation in Tunisia which served as the basis for the freezing of his assets in the European Union. The Court stated, in particular, that the principle that proceedings should be concluded within a reasonable time formed part of the right to a fair trial, which is safeguarded by the provisions of a number of binding instruments of international law, such as Article 14(3)(c) of the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly on 16 December 1966 (judgment of 5 October 2017, *Mabrouk* v *Council*, T−175/15, EU:T:2017:694, paragraphs 64 and 65). The parties were invited to comment on that judgment in their oral submissions at the hearing.

100 Thus, in the light of the judgment of 5 October 2017, *Mabrouk* v *Council* (T−175/15, EU:T:2017:694, paragraphs 64 and 65), it cannot be ruled out, in the context of Decision 2011/172, that the Council is required to carry out checks in the light of allegations concerning, more generally, infringements of the right to a fair trial that are such as to raise legitimate questions in that regard. In particular, it should be noted that Article 14(3) of the International Covenant on Civil and Political Rights protects all aspects of the right to a fair trial, including the principle of the presumption of innocence, and that the Arab Republic of Egypt is a party to that international treaty.

101 Furthermore, notwithstanding its precautionary nature, the freezing of assets provided for in the scheme under Decision 2011/172 has a substantial negative impact on the rights and freedoms of the persons affected, so that, in order to ensure a fair balance between the objectives of that asset freeze and the protection of those rights and freedoms, it is essential that the Council can, if necessary, make an appropriate assessment, subject to review by the Courts of the European Union, of the risk that such infringements of their fundamental rights may occur (see, to that effect and by analogy, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraphs 131 and 132).

102 That analysis is not called into question by the arguments put forward by the Council in connection with the present plea.

103 In the first place, the line of argument put forward by the Council with a view to establishing that it is not for the Council to ascertain whether safeguards equivalent to those offered under EU law in relation to fundamental rights are provided in Egyptian judicial proceedings is not relevant in the context of the present plea. As the applicant confirmed, moreover, at the hearing, she does not maintain in the context of the present plea that the Council is required to verify whether the level of protection of the right to a fair trial in Egypt is equivalent to that offered under EU law. She merely claims that the evidence she produced to the Council in relation to the infringement of that right in her case warranted the Council's carrying out certain checks. The Council's reference to paragraph 175 of the judgment of 7 July 2017, *Azarov* v *Council* (T−215/15, under appeal, EU:T:2017:479) must be rejected for the same reasons. That paragraph, as paragraph 166 of that judgment shows, sought to reject an argument of the applicant in that case to the effect that it fell to the Council, before adopting the contested decision, to ascertain whether the Ukrainian legal system guaranteed protection of fundamental rights at least equivalent to that guaranteed in the European Union.

104 In the second place, the Council cannot simply contend that the case-law relied on by the applicant is inapplicable to the present case given the difference in the factual and legal context.

105 First of all, as recalled in paragraphs 91 to 93 above, the Council's obligation to ensure that the rule of law and fundamental rights are respected and to promote that respect in the wider world arises in all actions conducted under the CFSP. Furthermore, Decision 2011/172 was adopted in the context of a policy intended to ensure such promotion.

106 Next, the fact that, unlike Common Position 2001/931, Decision 2011/172 does not provide for the designation of a person on the list annexed to that decision necessarily to be based on the existence of a decision taken in respect of that person by the Egyptian authorities is not conclusive as to whether the Council must satisfy itself that that person's fundamental rights are being respected by those authorities.

107 In that regard, the Court found in paragraph 98 above that the existence of ongoing judicial proceedings in Egypt could not constitute a sufficiently solid factual basis for the re-designation of the persons on the list annexed to Decision 2011/172 if the Council could not reasonably assume that the decision taken at the end of those proceedings would be reliable, that is to say, in particular, if it was reasonable to fear that that decision would be tainted by a denial of justice because of infringement of the right to a fair trial and failure to apply the presumption of innocence.

108 Further, it should be noted that the Court of Justice has held that the requirement laid down in Article 1(4) of Common Position 2001/931, that the initial entry of a person or entity on the list at issue must be based on a decision taken by a competent authority, was designed to protect the persons or entities concerned by ensuring that they were first included on that list only on a sufficiently solid factual basis. However, according to the Court of Justice, that objective cannot be attained unless the decisions of third States on which the Council bases initial listings of persons or entities are adopted in accordance with the rights of the defence and the right to effective judicial protection (see judgment of 26 July 2017, *Council* v *LTTE*, C−599/14 P, EU:C:2017:583, paragraphs 25 and 26).

109 Thus, it must be held that, notwithstanding the differences between the objective of Common Position 2001/931, which is to combat terrorism, and that of Decision 2011/172, the requirement that there must be a sufficiently solid factual basis in order to proceed with the designation of the persons or entities affected is common to both acts.

110 In the third and last place, the fact that, as the Council submits, it adopted Decision 2011/172 and the subsequent decisions on the basis of its autonomous power under the CFSP, and more specifically Article 29 TEU, confirms the Court's analysis. Under the principle of good administration, the Council is specifically required, in the exercise of that autonomous power, to examine, carefully and impartially, all the relevant evidence in the case, including the applicant's allegations of infringements of fundamental rights affecting the judicial proceedings that form the factual basis of her designation on the list annexed to Decision 2011/172 (see, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraphs 114, 115 and 119).

111 It is in the light of those considerations that the Court must examine the applicant's arguments in support of the present plea.

(2) First part of the second plea, alleging that the Council failed to satisfy itself that the applicant's fundamental rights had been respected and applied an irrefutable presumption that the Egyptian authorities had respected those fundamental rights

112 As a preliminary point, it should be noted that the effectiveness of the judicial review guaranteed by Article 47 of the Charter requires, in principle, a full review of the lawfulness of the grounds which are the basis of the decision to include a person's name on the list of persons subject to restrictive measures. In particular, the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis (see, to that effect, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 49 and the case-law cited). In this instance, as has been noted in paragraphs 98 and 107 above, that cannot be the case if it is reasonable to fear that the judicial proceedings which constitute that factual basis would result in a decision adopted in breach of the right to a fair trial and to respect for the presumption of innocence.

113 It is therefore incumbent on the General Court to carry out, in principle, a full review as to whether the Council has discharged its duty of careful and impartial examination by satisfying itself on the basis of the information available to it that the judicial proceedings brought against the applicant could be considered reliable, or whether it was necessary, in order to satisfy that requirement, for checks to be undertaken with the Egyptian authorities.

114 Admittedly, the Council could not be obliged to request additional information from the Egyptian authorities if there was no specific evidence to substantiate the applicant's allegations regarding the infringement of her fundamental rights. However, it did not have any discretion to determine whether the evidence supplied by the applicant required it to take that step (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 68 to 73).

115 In the present case, the applicant relies on documents relating to the fundamental rights situation in Egypt, as well as documents relating to judicial proceedings against the former Egyptian Head of State in relation

to the killing of protesters. According to the applicant, those proceedings are tainted by an infringement of fundamental rights and abuse of power for political ends.

116 As regards the first category of documents, it must be noted that this comprises, on the one hand, statements emanating from EU institutions or made on behalf of the European Union and, on the other, reports by NGOs and press cuttings.

117 In that regard, irrespective of whether the Council could be considered to have been aware of the information contained in those documents, it is sufficient to note that those documents relate for the most part to the general situation as regards fundamental rights and the rule of law in Egypt in the period from 2013 to 2016.

118 Furthermore, where those documents are based on specific examples, these have no apparent connection with the applicant's situation, with the exception of the European Parliament resolution of 15 January 2015 on the situation in Egypt (2014/3017(RSP)) (OJ 2016 C 300, p. 34), which refers to two of the judicial proceedings involving the former Egyptian Head of State, the second relating also to his sons. However, it is apparent from the content of that resolution that that reference serves to illustrate not an infringement of the fundamental rights of the applicant's family members but, on the contrary, the difference in treatment between, on the one hand, those family members, who are subject to judicial proceedings with a favourable outcome as a result of procedural errors, and, on the other hand, the members and followers of certain political groups, who are convicted and given particularly harsh prison sentences in a mass trial breaching fundamental rights.

119 As regards the ICJ report and the statements by Amnesty International relied on in the statement of modification, for the reasons set out in paragraphs 72 and 73 above, in the context of the examination of the first part of the first plea, those documents cannot be taken into account in relation to the risk of infringements of the right to a fair trial in the context of the judicial proceedings underpinning the designation of the persons on the list annexed to Decision 2011/172.

120 Consequently, it cannot be concluded from those documents that the interference with the right to a fair trial by the Egyptian judicial authorities is systemic, and thus that the Council should regard as plausible the risk that that interference may affect the judicial proceedings brought against the applicant (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 73).

121 The second category of documents concerns developments in the judicial proceedings in Case No 3642 of 2011. The documents in question are, respectively, a translation of the judgment of the Egyptian Court of Cassation of 13 January 2013, a translation of the judgment of the North Cairo Criminal Court (Egypt) of 29 November 2014 delivered in a retrial following the judgment of the Egyptian Court of Cassation referred to above, and various documents concerning the retrial conducted before the latter court following the judgment of the North Cairo Criminal Court.

122 The applicant relies on those documents in maintaining that the Egyptian authorities manipulated the proceedings for purely political purposes in the first trial of the former Egyptian Head of State, in which he was associated with the killing of protesters.

123 First of all, it should be pointed out that the applicant admitted at the hearing that the documents at issue had not been communicated to the Council prior to the adoption of Decision 2016/411. Accordingly, the Council could not take them into account in the review of the applicant's designation prior to the adoption of that decision, but only, if at all, in the context of a similar review carried out for the purpose of the adoption of Decision 2017/496, the Court having sent those documents to the Council together with the application in the context of the present proceedings.

124 Next, it must be noted that the applicant's arguments relate only to judicial proceedings involving the former Egyptian Head of State, but not the applicant herself. However, as is apparent from the grounds for

the designation of the applicant, the freezing of her assets is not based on her links with that person. Furthermore, the charges which resulted in the alleged infringements concern complicity in the killing of protesters and have no apparent connection to misappropriation of State funds as referred to in the grounds for the applicant's designation. That designation cannot therefore be based on those charges or on any associated judicial proceedings that may involve the applicant. Consequently, the infringements of the right to a fair trial of the former Egyptian Head of State which it is claimed took place in the proceedings based on those charges cannot, in themselves, have any effect on the outcome of the judicial proceedings on which the applicant's designation is based.

125 Furthermore, in so far as the applicant's arguments are intended to show that, as a member of the family of the former Egyptian Head of State, she runs the risk of being exposed to politically motivated proceedings and to infringements of her right to a fair trial similar to those presumed to have affected her husband's situation in Case No 3642 of 2011, the following considerations arise.

126 First, the fact that the judicial proceedings brought in Egypt against the persons designated on the list annexed to Decision 2011/172 are politically significant because of their links to the former Egyptian Head of State is not, by itself, capable of giving rise to legitimate questions as to whether their right to a fair trial in the context of those proceedings is being respected. Thus it is only if sufficiently precise, specific and consistent evidence exists such as to make it plausible that the fairness, impartiality and independence of those proceedings has been seriously impaired on the basis of purely political considerations that such legitimate questions might arise.

127 Second, even if it were established, the existence of infringements of the right to a fair trial in the judicial proceedings referred to in paragraph 122 above or, at least, the very strong likelihood that they might arise does not, in itself, enable the conclusion to be drawn that there is a risk of such infringements arising in the judicial proceedings involving the applicant. In particular, in the present case, in the judicial proceedings in question, Mr Mubarak was accused, in essence, of having failed to fulfil his duty as Egypt's Head of State to protect the population by failing to take the measures necessary to prevent the deaths of protesters that were caused by the police. Those facts related, therefore, to a presumed criminal offence allegedly committed by that person in the context of his official duties and without any apparent connection to his private and family life.

128 In any event, the evidence put forward by the applicant with regard to infringements of the right to a fair trial of her husband in the context of the trial relating to the killing of protesters was not such as to give rise to legitimate questions in that respect on the part of the Council.

129 As regards the evidence submitted by the applicant to challenge the renewal of her designation in 2016, it is clear from the documents in the file that, first, in the judgment of 13 January 2013, the Egyptian Court of Cassation granted her husband's appeal against his convictions in the lower court and that, second, following the retrial ordered in that judgment, the North Cairo Criminal Court, in its judgment of 29 November 2014, dismissed as inadmissible the proceedings relating to Mr Mubarak's presumed involvement in the killing of protesters. It is also apparent from the evidence which the applicant submitted in the context of the statement of modification that the acquittal of Mr Mubarak was upheld by the judgment of 2 March 2017 of the Egyptian Court of Cassation.

130 Consequently, even on the assumption that the initial convictions of Mr Mubarak were tainted by infringements of his right to a fair trial and respect for the presumption of his innocence, that had no impact on the determination, by a final court decision, of his responsibility in the circumstances to which the aforementioned prosecution relates.

131 The same considerations apply to the evidence produced by the applicant in order to demonstrate that the Egyptian authorities used delaying tactics to delay the commencement of the retrial of the former Egyptian Head of State before the Egyptian Court of Cassation, following delivery of the judgment of 29 November 2014. In addition, if, by that evidence, the applicant intends to claim that there has been an infringement of her husband's right to be tried within a reasonable time, suffice it to note that, whilst commencement of the

retrial before the Egyptian Court of Cassation seems to have been delayed somewhat, the overall duration of the proceedings, which started in 2011, does not appear in any event to be such as to give rise to legitimate questions in that regard, given the complexity of the case, its importance, and the various procedural steps that have taken place.

132 Consequently, none of the evidence relating to the alleged infringement of Mr Mubarak's right to a fair trial put forward by the applicant was such as to indicate a risk that the judicial proceedings brought against her might themselves be tainted by such infringements. The Council was not, therefore, obliged, in the light of that evidence, to undertake further checks, and therefore the first part of the present plea must be rejected.

(3) Second part, alleging that the renewal of the applicant's designation is contrary to the objectives referred to in recital 1 of Decision 2011/172

133 As a preliminary point, it should be borne in mind that, as stated in paragraph 59 above, the purpose of Decision 2011/172, to facilitate the Egyptian authorities' identification of any misappropriation of State funds that has taken place and to ensure that it remains possible for those authorities to recover the proceeds of misappropriation, is irrelevant in the light in particular of the objectives of the promotion of democracy, the rule of law and human rights referred to in recital 1 of that decision, to which that freezing of assets contributes, if there are reasons to believe that that identification and recovery will be tainted by a denial of justice and, a fortiori, arbitrariness.

134 Such an asset freeze would clearly be neither capable of contributing to the Egyptian authorities' fight against the misappropriation of State funds, nor, a fortiori, capable of contributing to the objectives of the policy of promoting democracy, the rule of law and human rights, of which Decision 2011/172 forms part, and would therefore be manifestly disproportionate in the light of those objectives.

135 However, in the context of the present part of this plea, the applicant maintains that the evidence she submitted to the Council demonstrates that the Council was required to act on the basis that the Egyptian authorities would not afford her fair, independent or unbiased treatment in the criminal proceedings brought against her. Consequently, if those arguments are to be accepted, the evidence provided by the applicant must refer clearly to sufficiently serious infringements of the right to a fair trial and respect for the presumption of innocence so as to lead to the conclusion that she is likely to suffer irreversible harm in the judicial proceedings in which she is involved, and that their outcome is likely to result in a denial of justice. That evidence thus had to be sufficiently conclusive to convince the Council, on the basis of its examination alone, that it could no longer renew the applicant's asset freeze without adopting a decision that was manifestly inappropriate in the light of its objectives.

136 In the light of the considerations set out in paragraphs 115 to 132 above in the context of the first part of the present plea, it must be held that the evidence produced by the applicant does not satisfy the requirements set out in paragraph 135 above.

137 In the context of those considerations, the Court has carried out a comprehensive review as to whether the evidence submitted by the applicant raised legitimate questions that would justify the Council's undertaking checks with the Egyptian authorities, and found that it did not. In those circumstances, that same evidence could not, a fortiori, have convinced the Council, on the basis of its examination alone, that the renewal of the applicant's designation was manifestly contrary to the objectives of the policy of which that decision formed part.

138 Accordingly, the second part of the present plea must be rejected, as, therefore, must this plea in its entirety.

(c) Third plea in law: infringement of the general criteria under Article 1(1) of Decision 2011/172 and Article 2(1) of Regulation No 270/2011

139 According to the applicant, the Council made an error of assessment in taking the view that the evidence available to it for the purposes of renewing her designation, namely two letters from the Egyptian Prosecutor General's Office of 2 January and 22 February 2016, satisfied the designation criteria. She maintains that she was not subject to any judicial proceedings in the three cases mentioned in the letter of 2 January 2016, which had been sent to her on 25 February 2016. Furthermore, the Council had not produced any evidence that she was subject to one of the fund-freezing orders referred to in the letter of 22 February 2016. The applicant claims to have provided concrete and relevant evidence calling into question the allegations made by the Egyptian authorities, which ought to have been taken into account by the Council, particularly as the letters from those authorities contained manifest errors and human rights were being flagrantly and systematically infringed in Egypt at that time.

140 In her reply, the applicant maintains that the letter of 22 February 2016 was provided to her only after Decision 2016/411 was adopted. Furthermore, she alleges that it was only in the context of the present action that she had become aware of the evidence that is relied on by the Council in the defence and which is contained in the full table of cases concerning various members of the family of the former Egyptian Head of State, annexed to the letter from the Egyptian Prosecutor General's Office of 2 January 2016 ('the table of cases of 2 January 2016'). In relying on that material, she submits, the Council failed to observe the principle that the legality of acts of the institutions must be assessed on the basis of the elements of fact and law on the basis of which they were adopted, and infringed her rights of defence. In any event, the cases invoked by the Council in the defence (Cases No 756 of 2012 and No 53 of 2013) also failed to meet the designation criteria with regard to the applicant.

141 In the statement of modification, the applicant relies on the same complaints and submits new factual evidence in support of her arguments. She adds that, contrary to what is stated in the grounds for her designation, as amended by Decision 2017/496, she is not subject to an asset recovery process initiated by the Egyptian authorities following a final court ruling.

142 In the defence, the Council begins by observing that, far from accepting the allegations of the Egyptian authorities, it had considered the applicant's observations and subsequently asked the authorities for updated information regarding the applicant's precise situation. Moreover, the Council denies that it is under an obligation to ascertain that the judicial proceedings relating to the applicant in Egypt are well founded or to conduct its own 'independent' investigation into the facts at issue in those proceedings. According to the Council, it is apparent from the memorandum from the Egyptian Prosecutor General's Office of 22 February 2016 that the prohibition order of 28 February 2011 — which applies to the applicant — is still in force. The Council further contends that the applicant is under investigation for conduct which could be characterised as misappropriation of State funds in five cases that are currently pending.

(1) Preliminary considerations

143 In the first place, it should be noted that, in so far as it concerns an infringement of the criteria set out in Article 2(1) of Regulation No 270/2011, the present plea is ineffective. The subject matter of the present dispute is confined to the renewal of the applicant's designation on the list annexed to Decision 2011/172, and not the continuation of her designation on the list in Annex I to Regulation No 270/2011. Those criteria are not, therefore, applicable in the present case. Thus, it is appropriate to examine the substance of the present plea only in so far as it concerns infringement of the criteria set out in Article 1(1) of Decision 2011/172 and renewed by Decisions 2016/411 and 2017/496.

144 In the second place, as regards the concept of misappropriation of Egyptian State funds, it must be borne in mind that, according to the case-law, Article 1(1) of Decision 2011/172, which determines the categories of person covered by the asset freeze imposed by that decision, must be interpreted broadly, preference being given to the interpretation which ensures that that provision retains its effectiveness (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 67; see also, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 82 and 85). In that regard, it must be held that the concept of

misappropriation of Egyptian State funds encompasses any unlawful use of resources which belong to, or are under the control of, the Egyptian public authorities, for a purpose contrary to that for which those resources were intended, particularly for private purposes, and which leads to those authorities incurring financial harm (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 98).

145 Furthermore, it must be noted that, while that definition must be given an autonomous interpretation, it does cover, at the very least, actions capable of being characterised in terms of Egyptian criminal law as misappropriation of State funds, in so far as it thus enables persons subject to judicial investigation by the Egyptian authorities on account of actions characterised by them as misappropriation of State funds to be included within the scope of Decision 2011/172 (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 95).

146 In the third place, it must be borne in mind that what the Council had to ascertain in the present case was whether the evidence available to it proved (i) that, as indicated by the grounds for the applicant's designation, she was subject to one or more sets of ongoing judicial proceedings in conjunction with criminal prosecutions for acts that could be characterised as misappropriation of State funds, and (ii) that the facts to which those proceedings related were such that she could be characterised, in accordance with the criteria laid down in Article 1(1) of Decision 2011/172, either as a person responsible for such misappropriation or as an associated person (see, to that effect, judgments of 14 April 2016, *Ben Ali* v *Council*, T−200/14, not published, EU:T:2016:216, paragraph 156, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 65).

147 In the context of the cooperation with the Egyptian authorities that is governed by Decision 2011/172, it is not, in principle, for the Council itself to examine and assess the accuracy and relevance of the information on which the criminal proceedings involving the applicants are based. It is therefore for the Egyptian authorities, in those proceedings, to verify the information on which they rely and to draw the appropriate conclusions as regards the outcome of those proceedings (see, to that effect and by analogy, judgments of 14 April 2016, *Ben Ali* v *Council*, T−200/14, not published, EU:T:2016:216, paragraph 158, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 66). In addition, it must be noted that, in paragraph 77 of its judgment of 5 March 2015, *Ezz and Others* v *Council* (C−220/14 P, EU:C:2015:147), the Court of Justice confirmed that interpretation when it ruled, in circumstances similar to those of the present case, that it was not for the Council or the General Court to verify whether the investigations to which the appellants in that case were subject were well founded, but only whether that was the case as regards the decision to freeze funds in the light of the Egyptian authorities' request for assistance.

148 It is admittedly also apparent from the case-law that the Council must assess whether or not it is necessary to seek disclosure of further information or evidence from the competent authorities in discharging its duty of careful and impartial examination, in the light, in particular, of any exculpatory evidence submitted by the applicant. In particular, it is not inconceivable that the Council might be obliged to seek clarification with regard to the stage which the criminal proceedings in Egypt have reached and the material on which those proceedings are based (see, to that effect and by analogy, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraph 115, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 68). However, the Council cannot be under an obligation to verify if there is no concrete evidence that would give rise to legitimate questions on its part as to the existence or basis of the judicial proceedings in question.

149 In the fourth place, as indicated in paragraph 7 above, in the context of Decision 2017/496, the original ground for designating the applicant — which related to the existence of judicial proceedings brought against her by the Egyptian authorities in respect of the misappropriation of State funds on the basis of the United Nations Convention against Corruption, adopted by the United Nations General Assembly on 31 October 2003 ('the UNCAC') — was supplemented by a second ground concerning the existence of an

asset recovery process initiated by the Egyptian authorities following a final court ruling in respect of the misappropriation of State funds.

150 In that regard, first of all, it should be noted that, as indicated by the coordinating conjunction 'or', which links the two grounds for the applicant's designation on the list annexed to Decision 2011/172, as amended by Decision 2017/496, these are alternative grounds, so that each one of them is sufficient, by itself, to justify that designation. Consequently, in accordance with the case-law, it is sufficient that one of those grounds is substantiated (see, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraph 119).

151 Next, as the Council stated, in essence, at the hearing, the addition of the second ground under Decision 2017/496 seeks to take account of the fact that, in some of the proceedings initiated by the Egyptian authorities, a judicial decision has been delivered giving a final ruling on the responsibility of the applicant or of persons associated with her, and that, on the basis of such a decision, those persons are subject to a process for the recovery of misappropriated assets that is ongoing.

152 That being the case, it should be noted that, as the Council admitted at the hearing, the fact that persons are designated in the annex to Decision 2011/172 because they are subject to a process for the recovery of misappropriated assets in a particular case does not mean that they cannot also be designated on the ground that they continue to be subject, in the same case, to judicial proceedings.

153 First, it should be pointed out that the concept of judicial proceedings is not necessarily limited, in its accepted meaning, to the stage preceding a judicial decision in which a final ruling is given on the parties' claims. It may also include the stage after that decision covering its enforcement, which may, moreover, require further judicial decisions to be delivered in relation to such enforcement.

154 Second, the fact that, according to the case-law, the criteria set out in Article 1(1) of Decision 2011/172 encompass both persons being prosecuted for their involvement, to varying degrees, in the misappropriation of Egyptian State funds, and persons associated with them who are subject to proceedings connected to those prosecutions, does not mean that the scope of those provisions is limited to those two categories of persons. On the contrary, as the General Court found, and the Court of Justice confirmed on appeal, the first and second categories of persons covered by those criteria comprise, respectively, persons who, at the end of judicial proceedings, have been found guilty of the misappropriation of Egyptian State funds, and persons who have been found by a criminal court to have been their accomplices (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 67, upheld on appeal by judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraphs 71 and 72).

155 It must further be noted that, even if a strict interpretation of Article 1(1) of Decision 2011/172 were to prevail, a literal reading of those provisions which refer to the freezing of assets, inter alia, of 'persons having been identified as responsible for misappropriation of Egyptian State funds' and 'natural ... persons ... associated with them' would in any event have led the Court to consider that the two categories of persons mentioned above were being referred to.

156 As the General Court found, the ground on which the assets of the persons whose names are included on the list annexed to Decision 2011/172 were frozen must be interpreted, if possible, in a manner consistent with the provisions of Article 1(1) of Decision 2011/172 (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 91).

157 Thus, it must be concluded that a person designated on the list in the annex to Decision 2011/172 who has been held responsible for misappropriation of State funds or as an accomplice thereto in a final ruling by the Egyptian courts must be considered to be subject to judicial proceedings, in so far as enforcement of that decision is still ongoing. The same applies to persons who are not covered by such a decision but who are subject to related judicial proceedings in connection with its enforcement, such as a freezing or preservation order in respect of their assets.

158 That interpretation is confirmed by the need to preserve the effectiveness of the asset freeze imposed by Decision 2011/172. In the light of the purpose of that decision recalled in paragraph 58 above, a contrary interpretation would clearly not enable that effectiveness to be achieved, in so far as the persons held responsible for offences in connection with the misappropriation of State funds, or persons associated with them, but in respect of whom it cannot be established that a process for the recovery of misappropriated assets has already been initiated by the Egyptian authorities, might, in the meantime, have enough time to transfer those assets out of the European Union (see, to that effect and by analogy, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 66).

159 The applicant's arguments and the facts she has put forward in support of those arguments should be examined in the light of those considerations.

(2) The argument relating to the Council's late disclosure of the evidence provided by the Egyptian authorities

160 In the context of the present plea, the Court must examine the applicant's complaint that the Council disclosed only belatedly documents from the Egyptian authorities on which it relies in finding that her designation must be renewed, in so far as that complaint seeks to challenge the Council's ability to rely on those documents.

161 First of all, as regards the part of the table of cases of 2 January 2016 which concerns the applicant specifically, it must be noted that the applicant herself states that this was provided to her on 25 February 2016. In any event, therefore, the applicant had sufficient time before the adoption of Decision 2016/411 on 18 March 2016 to submit her observations, which she did, moreover, by letters of 29 February and 10 March 2016.

162 Next, as regards the letter from the Egyptian Prosecutor General's Office of 22 February 2016, it must be stated that, given the date of that letter, the Council was in a position to take into account the information it contains in renewing the applicant's designation in 2016 and in 2017.

163 It is admittedly apparent from the material in the file that that document was disclosed to the applicant by the Council in an annex to its letter of 21 March 2016 in response to her observations of 29 February 2016 and informing her of the reasons for its decision to renew her designation. It was not, therefore, in a position to assess whether those observations were such as to call into question the information provided by the Egyptian authorities. However, that circumstance can be taken into account in the context of the present plea only in so far as the applicant in Case T−274/16 establishes that those observations are well founded, which will have to be verified in the particular context of the examination of her arguments in relation to that information (see paragraphs 192 to 203 below).

164 Last, as regards the whole of the table of cases of 2 January 2016, it is apparent from the material in the file that it was sent to the applicant's legal advisers by the Council on 12 February 2016.

165 It is true that, as the applicant indicates in the reply, that letter was addressed to her lawyers only in their capacity as legal advisers to the applicants in Case T−275/16, those lawyers not having informed the Council that they represented the applicant until their letter of 23 February 2016. It is, moreover, also true that, in its letter of 25 February 2016, the Council merely sent that part of the table of cases of 2 January 2016 which dealt with those cases that specifically concerned the applicant, registered under reference MD/287/16/RELEX, and did not mention the other cases included in that table.

166 However, the applicant's lawyers could not have been unaware of the fact that other parts of that table related to cases in which she was expressly mentioned, particularly in the section covering cases involving her husband. Their letter of 23 February 2016 mentioned in paragraph 165 above confirms this. In that letter, the applicant's lawyers state their intention, in dealing with her case, to use the documents enclosed with the Council's letter of 12 February 2016 addressed to the applicants in Case T−275/16. In addition, in its letter of 21 March 2016 referred to in paragraph 163 above, the Council expressly referred to the

proceedings involving the applicant and her husband mentioned in the table of cases of 2 January 2016, thus stating unambiguously that it had not relied only on the judicial proceedings involving the applicant alone referred to in the extract from the table of cases enclosed with its letter of 25 February 2016.

167 In particular, it must be held that, in order to renew the applicant's designation in 2016 and in 2017, the Council relied on Cases No 756 of 2012 and No 53 of 2013, to which it refers in the defence. In the description of those cases in the section of the table of cases of 2 January 2016 covering the former Egyptian Head of State, the Egyptian authorities expressly refer to the applicant's involvement.

168 Therefore, contrary to what is suggested by the applicant in the reply, the examination of the lawfulness of Decision 2016/411 in the light of cases not included in the part of the table of cases of 2 January 2016 sent by the Council on 25 February 2016 is not inconsistent with the case-law according to which the lawfulness of contested acts may be assessed only on the basis of the elements of fact and of law on the basis of which they were adopted. The Court must verify only whether the observations which the applicant includes in the reply in relation to Cases No 756 of 2012 and No 53 of 2013 are such as to call into question the Council's assessment that the judicial proceedings in those cases constituted a sufficient factual basis (see paragraphs 204 to 216 below).

(3) The argument relating to the Council's obligation to verify whether the judicial proceedings involving the applicant concern acts that are such as to undermine the rule of law in Egypt

169 As the applicant states in the reply, the arguments in the present plea are based in part on the premiss that the criteria in Article 1(1) of Decision 2011/172 must be interpreted as meaning that the Council is required to verify whether the acts of misappropriation of State funds at issue in the judicial proceedings to which she is subject are, having regard to the amount, the type of funds misappropriated or the context in which those acts took place, such as to undermine the rule of law in Egypt.

170 However, that premiss is incorrect.

171 First, it does not follow from the case-law recalled in paragraphs 144 and 145 above that the scope of the concept of misappropriation of State funds, within the meaning of Article 1(1) of Decision 2011/172, should be limited to acts which, having regard to the amount of funds misappropriated, the type of funds or the context in which the acts in question took place, are such as to undermine the rule of law in Egypt.

172 Second, it should be borne in mind that, in another case in which the question of the criteria in Article 1(1) of Decision 2011/172 arose, the Court ruled that the Council had been fully entitled to place the applicants concerned on the list annexed to Decision 2011/172 on the sole ground that they were subject to judicial proceedings in Egypt linked, in whatever form, to investigations concerning the misappropriation of State funds (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraphs 67 and 95 to 99). Furthermore, ruling in the appeal against that judgment in Case C−220/14 P, the Court of Justice confirmed the General Court's reasoning (judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraphs 71 to 73). It must therefore be inferred that the criteria in Article 1(1) of Decision 2011/172 may be applied to anyone who is subject to judicial proceedings in Egypt that are linked to investigations concerning acts of misappropriation of State funds, irrespective of the particular circumstances characterising those acts.

173 Third, it should be recalled that, as this Court has held, Decision 2011/172 is fully based on the CFSP and satisfies the objectives referred to in Article 21(2)(b) and (d) TEU (see paragraph 46 above). The Court has also ruled that the statement in recital 2 of Decision 2011/172, that the persons referred to in Article 1(1) of that decision 'are thus depriving the Egyptian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country', does not constitute an additional condition which must be met when a new person is designated on the list annexed to Decision 2011/172. It is only a clarification of the ultimate objective of that decision (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 143). That

reasoning has, in essence, been upheld by the Court of Justice (judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraphs 44 to 46 and 70).

174 Furthermore, the applicant cannot refer to the General Court's case-law on restrictive measures imposed in the context of decisions adopted by the Council in view of the situation in Ukraine, since the general criteria for determining the category of persons subject to those measures were interpreted by the General Court in the light of the particular legal context of those decisions, which is distinct from that of Decision 2011/172.

175 In that regard, it should be recalled that the cases that gave rise to the judgments of 15 September 2016, *Klyuyev* v *Council* (T−340/14, EU:T:2016:496), and of 15 September 2016, *Yanukovych* v *Council* (T−348/14, EU:T:2016:508), cited by the applicant, related to Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26). In particular, it must be noted that recital 2 of that decision states:

'The Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine.'

176 The purpose of the freezing of assets of, inter alia, persons identified as responsible for the misappropriation of State funds is thus to consolidate and support the rule of law and respect for human rights in Ukraine. It is in that context that the Court was able to find that the listing criterion laid down by Decision 2014/119 had to be interpreted as meaning that it did not concern, in abstract terms, any act classifiable as misappropriation of State funds, but rather that it concerned acts classifiable as misappropriation of State funds or public assets which, having regard to the amount, the type of funds or assets misappropriated or the context in which those acts took place, were, at the very least, such as to undermine the legal and institutional foundations of Ukraine, in particular the principles of legality, prohibition of arbitrary exercise of power by the executive and equality before the law and the right to effective judicial protection, and, ultimately, to undermine respect for the rule of law in that country (judgments of 15 September 2016, *Klyuyev* v *Council*, T−340/14, EU:T:2016:496, paragraph 91, and of 15 September 2016, *Yanukovych* v *Council*, T−348/14, EU:T:2016:508, paragraph 102).

177 By contrast, in the present case, as is apparent, in particular, from the case-law recalled in paragraph 45 above, the purpose of Decision 2011/172 is to contribute to the Egyptian authorities' fight against the misappropriation of State funds, respect for the rule of law and fundamental rights constituting only one of the general objectives of the Council's policy of support vis-à-vis those authorities overall, a policy of which, inter alia, that decision forms part. In addition, in contributing to that fight, the freezing of assets of the persons responsible for the misappropriation of State funds or of persons associated with them as referred to in Article 1(1) of Decision 2011/172 is presumed to be consistent with those general objectives. The principles laid down by the Court in the judgments referred to in paragraphs 175 and 176 above cannot therefore be applied to the present case. The arguments in support of the present plea that are founded on those principles, set out with regard to the various judicial proceedings related to the applicant, must therefore be rejected outright.

(4) The arguments relating to each of the cases on which the renewal of the applicant's designation is based

178 As regards the arguments of the applicant that are specific to each of the cases on which the renewal of her designation in 2016 and in 2017 is based, it must be noted that the Council did not explicitly indicate in its correspondence with her whether it intended to rely on all of the proceedings in which she was involved or only on some of them. However, at the hearing, the Council explained that, in accordance with the case-law, it was relying only on judicial proceedings that were ongoing and not on those which the Egyptian authorities had stated had been concluded or closed. In any event, it is apparent from the case-law that the

existence of a single set of ongoing judicial proceedings relating to conduct that could be characterised as misappropriation of State funds may constitute a sufficient factual basis for the renewal of the applicant's designation (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 49 and 100).

179 The arguments and facts put forward by the applicant in support of her claim for annulment of Decision 2016/411, and those put forward in support of her claim for annulment of Decision 2017/496, must be examined separately.

(i) The evidence relating to the ongoing judicial proceedings underpinning the renewal of the applicant's designation by means of Decision 2016/411

180 It is appropriate to examine, first, the applicant's arguments relating to Cases No 552 and No 1021 of 2011, second, those concerning the judicial proceedings mentioned in the letter from the Egyptian Prosecutor General's Office of 22 February 2016 and, third, those relating to the judicial proceedings in Cases No 756 of 2012 and No 53 of 2013.

– *The arguments relating to the judicial proceedings in Cases No 552 and No 1021 of 2011*

181 The applicant submits that there are no longer any judicial proceedings against her in Cases No 1021 of 2011 and No 552 of 2011, since these were closed on 21 February 2016 and 26 February 2015 respectively, as confirmed in certificates issued by the Egyptian Prosecutor General's Office.

182 In that regard, with respect to the renewal of the applicant's designation in 2016, it must be noted that Cases No 552 and No 1021 of 2011 appear both in the table of cases of 2 January 2016, sent to the applicant's legal advisers on 12 February 2016, and in the extract from that document concerning the applicant specifically, which was sent to the same legal advisers on 25 February 2016. The information relating to those two cases refers to ongoing investigations concerning acts of misappropriation of public funds involving the applicant in connection with educational and cultural projects.

183 However, as the applicant indicated, she placed on the file the certified translation of two certificates issued by the Egyptian Prosecutor General's Office, as well as the originals, dated 24 and 25 February 2016, from which it appears that the allegations of misappropriation of public funds against the applicant were dropped and that the cases in question have been closed. It is not disputed that those documents were indeed sent to the Council with the letter from the applicant of 29 February 2016 which expressly refers to them and mentions them as being enclosed. It must further be noted that although, in the defence, the Council put forward arguments in favour of rejection of the third plea, it did not contest the evidence submitted by the applicant in respect of the two cases in question.

184 In particular, the Council did not produce any evidence that it had subsequently obtained from the Egyptian authorities information that, notwithstanding the contents of the documents sent to it by the applicant, would establish that the proceedings in question were still pending or, at the very least, that it had carried out checks to that effect.

185 The documents sent by the applicant were, at the very least, capable of eliciting serious doubts that the judicial proceedings in the two cases in question were still pending.

186 Consequently, in the light of the contents of those documents, the information provided by the Egyptian authorities in the table of cases of 2 January 2016 was not sufficient to enable the Council to rely on those two cases for the purpose of renewing the applicant's designation by means of Decision 2016/411.

– *The arguments relating to the judicial proceedings in Case No 144 of 2012*

187 So far as concerns Case No 144 of 2012, in the application, the applicant maintains that she has never been aware of any details concerning that case and that no judicial proceedings have ever been commenced

against her. In any event, she claims that the allegations relating to that case do not concern the misappropriation of Egyptian State funds.

188 First of all, it should be noted that the mere fact that the applicant may not previously have been aware of any investigations in that case and that she has not been questioned in that regard by the Egyptian authorities, if established, is not sufficient to cast doubt on the existence of those investigations. It should be borne in mind that, according to the case-law, Article 1(1) of Decision 2011/172 may be applied not only to persons found responsible for misappropriation of State funds by a final judicial decision in criminal proceedings, but also to persons subject to ongoing investigations by the judicial authorities with a view to establishing their responsibility in the context of such proceedings (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 67, upheld on appeal by judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraph 72; see also, to that effect, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 86). Therefore, the fact that the investigations being conducted in that case have not reached a stage at which the applicant has been questioned or served notice that proceedings have been commenced against her cannot be taken into account.

189 Furthermore, in so far as the applicant seeks to call into question the existence of judicial proceedings in the case concerned, on the ground that the related investigations are not being overseen by, and have not been endorsed by, a judge, suffice it to note that she does not dispute that those investigations are being directed by Egypt's Prosecutor General, who must be considered a judicial body (see, to that effect, judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraph 81).

190 As to whether the investigations in question relate to acts of misappropriation of State funds, it must be stated that the summary of that case in the table of cases of 2 January 2016 indicates that the applicant is accused, on the one hand, of misappropriation of funds owned by NGOs, in her capacity as head of the board of directors of the authority responsible for regulating those NGOs, and, on the other, of having laundered the proceeds of that misappropriation in order to conceal their origin.

191 There is nothing in that summary to indicate that, in the present case, the funds in question were of a State origin or that the nature of the oversight exercised by the authority referred to above in respect of the NGOs or their funds would, having regard to Egyptian criminal law, be such as to result in those funds being characterised as State funds. Consequently, the information relating to the case in question in the table of cases of 2 January 2016 could not, by itself, constitute a sufficient factual basis for the renewal of the applicant's designation.

– *The arguments relating to the judicial proceedings mentioned in the letter from the Egyptian Prosecutor General's Office of 22 February 2016*

192 The applicant maintains that none of the asset-freezing procedures mentioned in the letter from Egypt's Prosecutor General of 22 February 2016 relates to the judicial investigations mentioned in the letter from the same authority of 2 January 2016. Furthermore, under Article 208 bis (B) of the Egyptian Code of Criminal Procedure, the final acquittal of the former Egyptian Head of State and of the first two applicants in Case T−275/16, pronounced in Case No 3642 of 2011, meant that the freezing order imposed in that case lapsed. Moreover, in Case No 10427 of 2012, the relevant asset-freezing order was annulled by the criminal court. The applicant also claims that there is nothing to indicate that the asset-freezing orders made in Cases No 70 of 2014 and No 22 of 2011 applied to her. Finally, the Council had not provided any concrete evidence of the existence of the first of those orders or of any link between the second and investigations concerning the misappropriation of State funds.

193 The Council counters that it has information provided by the Egyptian authorities indicating that the asset-freezing orders relating to the applicant and her family are still in force and have not been challenged, which constitutes a sufficient factual basis.

194 In that regard, first of all, it is clear from the letter from the Egyptian Prosecutor General's Office of 22 February 2016 that, under Article 208 bis (A) of the Egyptian Code of Criminal Procedure, the Prosecutor General may freeze the assets of defendants, their spouses and their children if there are any doubts that those assets are the proceeds of crimes committed by those defendants. That letter goes on to state that there are three freezing orders in force against the former Egyptian Head of State and members of his family, against which no appeals have been lodged. According to that letter, the first of those orders concerns the investigations registered as No 1 of the year 2011, which resulted in two separate proceedings, one in Case No 3642 of 2011 and the other in Case No 10427 of 2012, and that order was upheld on 8 March 2011 by the competent court. Again according to that letter, the second freezing order was made against the former Egyptian Head of State, his two sons and their spouses in Case No 70 of 2014, which concerns money laundering investigations. Last, the letter mentions the existence of a third freezing order, covering all the members of the family of the applicant and relating to the investigations in Case No 22 of 2011, which concern illicit gain. It states that that order was upheld by the competent court on 27 October 2011.

195 With regard to the first of those orders, it must be noted that the applicant's assertions are not such as to raise any doubts as to its existence.

196 First, the documents in the file do not call into question the statement of Egypt's Prosecutor General in his letter of 22 February 2016 that that order had been made in the context of investigations which initially related to acts that subsequently became the subject matter of Cases No 3642 of 2011 and No 10427 of 2012.

197 In that regard, the fact that, in Case No 10427 of 2012, another freezing order, made after that order, was set aside by the competent court, is not determinative. In particular, in the light of that court's ruling, a translation of which was annexed to the application, it must be observed that there is only a very slight overlap in scope between the two orders in question, the order mentioned in the letter of 22 February 2016 referring to all members of the applicant's family whereas the second covers all the defendants in Case No 10427 of 2012.

198 Moreover, the applicant maintains that, under Article 208 bis (B) of the Egyptian Code of Criminal Procedure, a decision freezing assets automatically lapses when there has been a final acquittal in the criminal proceedings to which that decision relates. However, that interpretation does not follow clearly from the text of the provisions invoked, a translation of which is annexed to the application. Consequently, it does not render implausible the Egyptian authorities' assertion that the order made in the context of the investigations initially relating to acts that subsequently became the subject matter of Cases No 3642 of 2011 and No 10427 of 2012 is still in force, even though the applicant's husband and sons were acquitted in the first of those cases.

199 Second, the applicant does not dispute that, as the Council maintains, no appeal against the order in question was brought before the Egyptian courts, either by her or by the other persons concerned. The question whether that order can be maintained in her case in connection with the criminal proceedings in Cases No 3642 of 2011 and No 10427 of 2012, which is raised in her arguments in the present case, falls under the jurisdiction of the Egyptian courts, which it is for her to seise if she thinks she has a case in that respect. Therefore, notwithstanding the existence of that question, the Council was entitled to rely on the existence of that order in proceeding with the renewal of the applicant's designation.

200 As regards the order linked to the criminal proceedings in Case No 70 of 2014, it must be noted that the letter from the Egyptian Prosecutor General's Office of 22 February 2016 does not indicate that the scope of that order extends to the applicant's assets. Reference is merely made in that regard to the former Egyptian Head of State, his sons and their spouses. Those particulars were not, therefore, such that the Council could conclude that that order related to the applicant.

201 It must also be pointed out that it is merely indicated in the letter of 22 February 2016 that that order relates to money laundering, and no further details are provided. It is not certain, therefore, that it relates to

criminal proceedings linked to acts that might be characterised as misappropriation of State funds (see, to that effect and by analogy, judgment of 28 May 2013, *Al Matri* v *Council*, T−200/11, not published, EU:T:2013:275, paragraphs 48 and 49).

202 As regards the order linked to the criminal proceedings in Case No 22 of 2011, the same considerations apply as in paragraph 201 above. It must be pointed out that, in the documents emanating from the Egyptian authorities, reference is made, as regards those criminal proceedings, only to investigations relating to illicit gain and to undeclared foreign assets. The link with acts that might be characterised as misappropriation of State funds is not established, therefore.

203 Accordingly, it must be held that, although the Council did not have sufficient information as regards the orders linked to the criminal proceedings in Cases No 70 of 2014 and No 22 of 2011, it was, at the very least, entitled to rely, for the purpose of renewing the applicant's designation in 2016, on the freezing order that concerns the investigations registered as No 1 of 2011.

– *Cases No 756 of 2012 and No 53 of 2013*

204 As regards Case No 756 of 2012, the applicant maintains that the material in the file does not indicate any involvement on her part. Furthermore, the fact that she is merely being investigated by the Egyptian prosecutors in that case is not, in her view, a sufficient basis for concluding that she is subject to judicial proceedings. The applicant contends that such an interpretation would deprive her of the safeguards of judicial endorsement and involvement, which would be contrary to the objectives of Decision 2011/172 and Article 21 TEU. Moreover, she contends that the allegations do not relate to acts that might be characterised as misappropriation of State funds within the meaning of the case-law. Last, she alleges that the prohibition order in that case was set aside on the ground that the total value of the alleged gifts had been repaid. The applicant puts forward similar arguments with regard to Case No 53 of 2013, except for that relating to the repayment of the sums claimed.

205 The Council contends that the acts to which the investigations in those two cases relate constitute misappropriation of State funds.

206 As regards, first of all, the applicant's involvement in Case No 756 of 2012, this is apparent from the documents issued by the Egyptian Prosecutor General's Office annexed to the defence, namely (i) the table of cases of 2 January 2016, and (ii) the memorandum of the same date in response to requests for information concerning the cases involving members of the family of the former President of the Republic, registered under reference MD/294/16/RELEX.

207 According to those documents, the former Egyptian Head of State, his principal associates, the applicant and the applicants in Case T−275/16 received, between 2006 and 2011, luxury gifts purchased improperly by the State-owned *Al-Ahram* newspaper, and those acts may be characterised as misappropriation of State funds, since the receipt of such gifts constitutes a crime of damaging public funds and improperly profiting from public office on the part of those involved. Those documents also indicate that the case was referred to an investigating magistrate and that the investigation is ongoing. It must be noted that that information could constitute a sufficient factual basis for the Council to find that the applicant was subject to judicial proceedings initiated by the Egyptian authorities in respect of the misappropriation of State funds, in accordance with the wording of the reason for her designation, and, moreover, that she could be characterised as a person responsible for misappropriation of State funds or, at the very least, as a person associated with such a person responsible, within the meaning of Article 1(1) of Decision 2011/172.

208 The applicant's arguments cannot call that finding into question.

209 In the first place, the applicant submits that Case No 756 of 2012 is not mentioned in that part of the table of cases of 2 January 2016 which the Council sent with a letter of 25 February 2016. However, that is irrelevant. That particular part of the table relates to the judicial proceedings involving only the applicant, not the other members of her family. Case No 756 of 2012 does not concern the applicant alone but also

the other members of her family. In addition, the applicant's claim that she has not been questioned in that case does not affect her involvement.

210 In the second place, the applicant seeks to demonstrate that the proceedings to which she is subject, in the present case, do not constitute judicial proceedings but a mere investigation which is not being conducted in a judicial context, that is to say, which does not have 'judicial endorsement'. However, it is apparent from the information provided by the Egyptian authorities recalled in paragraph 207 above that the case in question was referred to an investigating magistrate and that the investigation is ongoing. Consequently, for the same reasons as those given in paragraphs 188 and 189 above, that line of argument is without substance.

211 In the third place, the applicant seeks to call into question the characterisation by Egypt's Prosecutor General of the facts underlying Case No 756 of 2012 as misappropriation of State funds.

212 However, it follows from the principles set out in paragraphs 146 and 147 above that, where the facts to which the Egyptian authorities' investigations relate have been characterised as criminal in terms corresponding to the concept of misappropriation of State funds, the Council is entitled to rely on those investigations. By contrast, it is not for the Council to examine the accuracy and relevance of that characterisation, that being a task that falls within the jurisdiction of the Egyptian courts.

213 In the present case, the applicant does not dispute that the facts to which the investigations in the case in question relate may be characterised as misappropriation of State funds under Egyptian criminal law. In that regard, it must be noted that, in so far as the facts relate to the purchase of luxury consumer goods by an Egyptian State-owned entity whose funds are therefore capable of being controlled by the State, with a view to offering them to senior State officials, in particular to the former Egyptian Head of State and to his family, the link with the concept of misappropriation of State funds within the meaning of Article 1(1) of Decision 2011/172 appears to be sufficiently clear and does not require further clarification by the Egyptian authorities. Moreover, for the same reasons, the Council was not obliged to prove that the Egyptian authorities had suffered quantifiable financial harm in this instance, since the possibility that such harm may have resulted from the purchase of the gifts in question is sufficiently clear from the Egyptian authorities' description of the case. In addition, for the reasons set out in paragraphs 171 to 177 above, the Council cannot in any event be required to establish that the applicant's alleged conduct, under investigation in this case, had undermined the legal and institutional foundations of Egypt.

214 In the fourth and last place, the fact that, in that case, the freezing order was set aside by a criminal court, notably with respect to the applicant, on the ground that the total value of the alleged gifts had been repaid, does not preclude the Council from being able to rely on the criminal proceedings pending in that case. That decision to set aside, which relates only to a precautionary measure adopted in that case, is without prejudice to the assessment of the facts to be made in the final decision delivered at the end of the proceedings and the possible consequences that may flow from it as regards the applicant's criminal liability.

215 As regards Case No 53 of 2013, the applicant relies on arguments similar to those relating to Case No 756 of 2012, but without mentioning repayment of the sums claimed.

216 It must be noted in that regard that that case also relates to the distribution of gifts to high-ranking individuals by an Egyptian State-owned newspaper, *Al-Tahrīr*, and that the documents issued by the Egyptian Prosecutor General's Office, dated 2 January 2016, mention that the investigation is ongoing. In the memorandum registered under reference MD/294/16/RELEX, it is stated that the former Egyptian Head of State, the applicant herself, the applicants in Case T−275/16 and top associates were questioned in that case. Furthermore, in so far as those facts concern the unlawful purchase of gifts for senior officials paid for from the budget of a State-controlled body, they may be characterised as misappropriation of State funds. That information is therefore sufficient to support a finding that the applicant is subject to investigations relating to conduct which may be characterised in that way. The fact that the table of cases registered under reference MD/286/16/RELEX mentions, in relation to that case, only the value of the gifts

given to the applicant's husband is irrelevant. It is true that the applicant denies having been questioned in connection with that case. However, in the statement of modification, she stated that she had repaid the value of the gifts in the context of the ongoing investigations in that case. In addition, the arguments relating to the alleged lack of judicial proceedings in the present case and the absence of any link with misappropriation of Egyptian State funds must be rejected for the same reasons as those relied on in paragraphs 210 to 213 above.

217 In conclusion, the Council was entitled to consider that three of the judicial proceedings mentioned in the documents provided to it by the Egyptian authorities before the adoption of Decision 2016/411, namely the freezing order which concerns the investigations registered as No 1 of 2011 and the investigations in Cases No 756 of 2012 and No 53 of 2013, constituted a sufficient factual basis for the renewal of the applicant's designation in Decision 2016/411. Consequently, without there being any need to examine the applicant's arguments concerning the other judicial proceedings to which she is subject in Egypt, the third plea in law must therefore be rejected in so far as it concerns that decision.

(ii) The evidence relating to the ongoing judicial proceedings that served as a basis for the renewal of the applicant's designation in the context of Decision 2017/496

218 In the first place, with regard to the judicial proceedings in Cases No 552 and No 1021 of 2011, it is sufficient to point out that the table of cases of 6 January 2017 attached to the statement of modification mentions, for the first time, the closure of those two cases, and thus confirms that the Council was not in a position to rely on them for the renewal of the applicant's designation.

219 In the second place, with regard to the judicial proceedings in Case No 144 of 2012, the applicant, in the statement of modification, supplements the arguments in the application by claiming that, contrary to what is stated in the material produced by the Egyptian authorities, she has never been a member of the board of directors of the authority mandated to regulate NGOs, let alone the head of that board of directors. She further submits that that material does not make it possible to determine that the Egyptian authorities have suffered quantifiable harm, or that the alleged conduct undermined the rule of law or legal and institutional foundations of the Egyptian State. Last, she contends that the Egyptian authorities themselves recognise that the funds at issue in the present case are private funds, and Egypt's Prosecutor General had not even sought to estimate the amounts involved.

220 In its observations on the statement of modification, the Council contends, in particular, that it is apparent from the material produced by the Egyptian authorities that the funds were considered public funds under Egyptian law, because the State authority concerned was in possession of those funds.

221 In that regard, it is necessary to ascertain whether the new material of which the Council was aware prior to the adoption of Decision 2017/496 is such as to call into question the conclusion that that case could not constitute, by itself, a sufficient factual basis for the renewal of the applicant's designation.

222 It is apparent from the memorandum of the Egyptian authorities registered under reference WK 1216/2017 EXT 3 and sent to the applicant on 29 January 2017 that it is alleged in that case that she misappropriated funds intended to finance the activities of NGOs in Egypt while she was head of the authority that regulates and monitors those activities. Although those funds were in the possession and under the control of that authority, they were not paid to those NGOs. It is also alleged that the applicant laundered the proceeds of that misappropriation through her bank accounts and those of her sons. The Egyptian authorities state that those acts are punishable, in particular, under Articles 112 and 113 of the Egyptian Criminal Code and that, since the misappropriated funds were in the possession of the abovementioned authority, the funds are considered to be public funds under Egyptian law. They add that the investigations are still pending, awaiting the reports of the relevant committees which will determine the details of the violations committed, the amount misappropriated and the method used to launder those funds.

223 It must be held that, on the basis of those explanations, the Council had sufficient evidence to support its finding that the investigations in the case concerned related to acts that could be characterised as

misappropriation of State funds. It is apparent from the wording of Articles 112 and 113 of the Egyptian Criminal Code, the text of which was provided by the Egyptian authorities together with the memorandum referred to in paragraph 222 above, that they make it an offence for a public servant, first, to misappropriate funds in his possession as a result of the post he holds and, second, to appropriate illegally funds or documents or other items belonging to the authorities mentioned in Article 119 of the Criminal Code or to facilitate the commission of such an offence. It should be noted that, as is apparent from the text of that article annexed to the application in Case T−275/16, it covers those cases in which funds are considered to be public funds, for the purposes of establishing one of the offences mentioned in the same part of that code. Thus those provisions apply in particular to the punishment for misappropriation of State funds. Furthermore, the conduct of which the applicant in Case T−274/16 is accused may, given the details provided by the Egyptian authorities, correspond to the concept of misappropriation of State funds within the meaning of Article 1(1) of Decision 2011/172, since it covers the misappropriation of funds under the control of a body that has official powers as a public authority, by a person holding a post within that body.

224 The applicant's arguments are not capable of calling that assessment into question.

225 First, the fact that those funds may be characterised as private funds since NGOs are ultimately to be the recipients is not conclusive, it being apparent from the Egyptian authorities' memorandum that they found that, in so far as the funds were under the control of a public authority, they were classifiable as public funds for the purposes of the Egyptian Criminal Code. It follows from the principles set out in paragraphs 146 and 147 above that, where the facts to which the Egyptian authorities' investigations relate have been characterised as criminal in terms corresponding to the concept of misappropriation of State funds, the Council is entitled to rely on those investigations. By contrast, it is not for the Council to examine the accuracy and relevance of that characterisation, that being a task that falls within the jurisdiction of the Egyptian courts.

226 Second, the fact that funds controlled by a public authority and intended to be paid to NGOs are misappropriated for personal ends necessarily entails harm for that authority equivalent to the value of the sums misappropriated. The existence of such harm in the present case can therefore be inferred with sufficient clarity from the information provided by the Egyptian authorities.

227 Third, for the reasons set out in paragraphs 171 to 177 above, it is not for the Council to verify whether the misappropriation of State funds which the applicant is alleged to have committed is such as to undermine the rule of law and the institutional foundations of Egypt.

228 Fourth, as regards the investigations that are ongoing, the Egyptian authorities cannot be required to have determined the value of the misappropriated funds already.

229 Fifth, the applicant's assertion that she has never been a member of the board of directors of the authority responsible for regulating NGOs, let alone the head of that board of directors, merely calls into question the accuracy of the facts on which the judicial proceedings in question are based. It is, however, in principle for the Egyptian courts to verify, in their examination of the merits of the allegations against the applicant, whether she held the position in connection with which she is said to have committed the misappropriation of State funds of which she is accused. Admittedly, as recalled in paragraph 148 above, it cannot be ruled out that the Council may be obliged to seek clarification as to the basis of judicial proceedings if there is concrete evidence that raises legitimate questions. However, in the present case, the applicant did not put forward any concrete piece of evidence in support of her assertion that would enable its plausibility to be assessed. Thus, the Council was not obliged to carry out checks in the light of that assertion.

230 Accordingly, it follows from all the foregoing that the Council was entitled to rely on the material relating to the judicial proceedings in Case No 144 of 2012 for the purpose of renewing the applicant's designation in the context of Decision 2017/496.

231 In the third place, the applicant submitted new evidence to show that the conclusion of the proceedings in Case No 3642 of 2011 should result, under Egyptian law, in the first freezing order mentioned in the letter from Egypt's Prosecutor General of 22 February 2016 lapsing (see paragraphs 192 and 194 above), including opinions of experts on Egyptian law. However, in paragraphs 195 to 199 above, it has been found, first of all, that the documents in the file did not enable any doubt to be cast on the statement of the Egyptian authorities that that order had been made in the context of an investigation that initially related to acts that gave rise not only to Case No 3642 of 2011, but also to Case No 10427 of 2012. Next, it has been pointed out that the applicant did not dispute that that order was still in force and had not been the subject of any appeal before the Egyptian courts. Last, it has been stated that it was for the Egyptian courts to examine the question whether that order could be maintained with respect to the applicant in the light of the criminal proceedings in Cases No 3642 of 2011 and No 10427 of 2012. Since those considerations have not been called into question by the new evidence produced by the applicant, it must be held that the Council was entitled to continue to rely on the freezing order in question.

232 In the fourth place, in her statement of modification, the applicant indicates that she does not intend to deal with Case No 756 of 2012 (see paragraphs 204 to 214 above), because that case was not referred to either in the letters from the Council of 27 January and 22 March 2017 or in the material produced by the Egyptian authorities that was sent by the Council on 27 January and 6 February 2017. The applicant confirmed that position at the hearing. However, the Council, also at the hearing, confirmed that it intended to rely on that case because the updated information relating to that case, which appears in the Egyptian authorities' memorandum that was sent to the applicant on 6 February 2017, established that the judicial proceedings in that case were ongoing.

233 In that regard, it is apparent from the memorandum referred to above that Case No 756 of 2012 was referred to an investigating magistrate who recently made an order dismissing the charges against the defendants and closing the case, and that the Prosecutor General appealed against that order before the competent court. Therefore, since, as the Council confirmed at the hearing, that information was the most recent information available to the Council when it adopted Decision 2017/496, it must be held that the Council was entitled to continue to rely on that case in maintaining the applicant's designation. Since the decision to close that case is the subject of an appeal, the proceedings must be considered to be still pending, at least until the conclusion of that appeal.

234 In the fifth place, as regards Case No 53 of 2013, the applicant adds to the arguments in the application the point that she repaid the value of the sums she is alleged to have misappropriated. She states that this is recorded in minutes of the investigation of 18 February 2017. The Council was made aware of those facts in the letter of 24 February 2017. However, the applicant does not claim that the Egyptian authorities have drawn the appropriate conclusions from that repayment and exonerated her from any criminal liability or closed the case. In those circumstances, notwithstanding that information, the Council was entitled to continue to rely on the judicial proceedings in question for the purpose of renewing the applicant's designation in the context of Decision 2017/496.

235 In the sixth and last place, the applicant's complaint that there is no factual basis for concluding that she is subject to any asset recovery process initiated by the Egyptian authoritiesmust be rejected as ineffective. As is apparent from paragraph 150 above, it is not necessary for that ground to be substantiated, since the ground relating to the existence of ongoing judicial proceedings involving the applicant has been substantiated, which is sufficient, in itself, to justify the renewal of her designation, the two being alternative grounds. In the light of the foregoing considerations, it appears that the Council was entitled to take the view, at the date of the adoption of Decision 2017/496, that several sets of judicial proceedings involving the applicant and relating to the misappropriation of State funds were pending, namely the freezing order which concerns the investigations registered as No 1 of 2011 and the criminal proceedings pending in Cases No 144 and No 756 of 2012 and No 53 of 2013.

236 It follows from all of the above that the third plea must be rejected in its entirety.

(d) Fourth plea in law: failure to provide adequate reasons for Decisions 2016/411 and 2017/496

237 The applicant maintains that the grounds for her designation on the list annexed to Decision 2011/172 are general and stereotypical and fail to identify the specific reasons for her re-designation. Those grounds do not enable her to exercise her rights of defence. In relation to a renewal of the initial decision, and given the significant period of time which has passed since that decision was adopted, she claims that there is nothing that would justify such a brief statement of reasons.

238 The Council contends that the context and the circumstances, in particular its voluminous correspondence with the applicant's legal advisers in connection with the adoption of Decision 2016/411, enabled the grounds for the renewal of her designation to be supplemented in such a way as to enable her to understand the actual and specific reasons for it. Thus, according to the Council, that statement of reasons complies with the case-law.

239 It has consistently been held that the question whether a statement of reasons meets the requirements of Article 296 TFEU and Article 41(2)(c) of the Charter 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. Thus, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to the person concerned and which enables him to understand the scope of the measure concerning him. Furthermore, the statement of reasons for a measure freezing assets cannot, as a rule, consist merely of a general, stereotypical formulation. Such a measure must, on the contrary, indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (see judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 145 and 146 and the case-law cited).

240 In the present case, as regards first of all the renewal of the applicant's designation in the context of Decision 2016/411, it must be noted, first, that it is apparent from Decision 2011/172 that the applicant was designated in the annex to that decision in view of the situation in Egypt on the ground that she was subject to judicial proceedings brought by the Egyptian authorities for the misappropriation of State funds, on the basis of the UNCAC. As has been pointed out, that ground has not been amended, including when Decision 2016/411 was adopted. Those considerations of fact explain sufficiently clearly and unequivocally why the Council considered that the applicant's assets should be frozen as provided for by Article 1(1) of Decision 2011/172. Furthermore, although, as the applicant submits, that statement of reasons is identical for all the persons listed in the annex to that decision, it is not general or stereotypical in nature, in so far as it does not reproduce a general provision but seeks to describe the actual and specific situation of each person, including the applicant (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraphs 114 and 115, upheld on appeal by judgment of 5 March 2015, *Ezz and Others* v *Council*, C−220/14 P, EU:C:2015:147, paragraph 93).

241 Second, as the Council correctly points out, it is appropriate, in order to assess whether that statement of reasons is sufficient, to take account of the context in which Decisions 2016/411 and 2017/496 were adopted, in particular the letters which the Council sent to the applicant's legal advisers to provide them with information concerning the material transmitted by the Egyptian authorities and to respond to their observations.

242 In particular, first of all, it should be noted that, in its letter of 25 February 2016, the Council sent the extract from the table of cases of 2 January 2016 relating specifically to the proceedings in which only the applicant was involved, while recalling that that table had also been sent, in its entirety, to the applicant's legal advisers with the letter of 12 February 2016 concerning the applicants in Case T−275/16. Furthermore, as indicated in paragraph 166 above, the applicant's legal advisers were aware of the fact that the documents which had been sent to them on 12 February 2016 were also relevant to her. As is apparent from the examination of the third plea, all those documents contain precise, detailed and specific information about the conduct of the judicial proceedings involving the applicant and the acts to which those proceedings relate. Last, in its letter of 21 March 2016, notifying the applicant of Decision 2016/411, the Council responded to the observations presented by the applicant in her earlier letters and stated, referring to the information sent in the letters of 12 and 25 February 2016, that it considered her still to be

subject to judicial proceedings in Egypt in respect of the misappropriation of State funds. It also referred to the letter of 22 February 2016 from the Egyptian Prosecutor General's Office concerning the freezing orders made against members of the family of the former President of the Republic and enclosed that letter.

243 In those circumstances, the applicant was in a position to understand the actual and specific reasons why the Council had considered that she continued to satisfy the criterion laid down in Article 1(1) of Decision 2011/172 and, moreover, properly to challenge those reasons in the context of the present actions, notably by submitting her observations on the information provided to the Council by the Egyptian authorities, on the basis of any appropriate exculpatory evidence.

244 Those considerations apply to the renewal of the applicant's designation in the context of Decision 2017/496. It must be noted that, by letters of 27 January and 6 February 2017, the Council communicated the material provided by the Egyptian authorities to update the information relating to the judicial proceedings involving the applicant, as well as the explanations given by those authorities in response to the Council's queries concerning certain judicial proceedings. In addition, the reasons given in the letter of 22 March 2017, in which the Council explains why it decided to renew the applicant's designation until 22 March 2018, are similar to those given in its letter of 21 March 2016.

245 It follows from all the above that the fourth plea in law must be rejected.

(e) Fifth plea in law: infringement of the rights of the defence, the right to good administration and the right to effective judicial protection

246 In the context of this plea, the applicant raises three complaints. First, notwithstanding the time which has passed since the initial decision was adopted, the applicant states that she has not been given any serious and credible evidence or concrete evidence in support of a case that would justify the imposition of restrictive measures on her. Second, the Council failed to inform the applicant in advance of the actual grounds relied on in her case, and did not provide her with an opportunity to make her views known prior to the adoption of Decision 2016/411. In particular, the Council merely provided a letter from the Egyptian authorities without any indication as to which of the cases mentioned in that letter it was relying on. The applicant submits, moreover, that the Council did not communicate the letter of 22 February 2016 until after the adoption of Decision 2016/411, and that she was therefore unable to respond to the material contained in that letter. Third, there was no evidence that the Council had carried out a careful and impartial examination as to whether the alleged grounds were well founded, given the lack of response on its part to the exculpatory evidence presented by the applicant prior to Decision 2016/411, and in the light of the cursory rejection of her representations in the letter of 21 March 2016.

247 In the statement of modification, in support of the second complaint, the applicant accuses the Council of having failed to indicate the factual basis for the amendment of the ground for designation introduced by Decision 2017/496.Further, in support of the third complaint, the applicant submits that the Mashreq/Maghreb group, which is the preparatory body within the Council that is competent to deal with questions relating to Egypt, formulated its proposal to renew the applicant's designation on 20 February 2017, before the letters from the applicant of 28 February and 8 March 2017.

248 In its defence, the Council contends that it set out the grounds on which it intended to maintain the applicant's listing in the annex to Decision 2016/411 and that it took account of her observations, to which it responded in its letter of 21 March 2016.It relies, in essence, on similar arguments in its observations on the statement of modification.

249 According to settled case-law, the Courts of the European Union must ensure, in accordance with the powers conferred on them by the FEU Treaty, the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the EU legal order, which include, inter alia, respect for the rights of the defence and the right to effective judicial protection (judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C−402/05 P and C−415/05 P, EU:C:2008:461, paragraph 326, and of 18 July 2013,

Commission and Others v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraphs 97 and 98).

250 In particular, in a procedure for the adoption of the decision to designate a person on a list of persons and entities whose assets are to be frozen or the decision to renew that designation, respect for the rights of the defence 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 and to decide, with full knowledge of the relevant facts, whether there is any point in bringing an action before the Courts of the European Union. In addition, 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. Last, as regards a decision whereby the name of the individual concerned is to be maintained on such a list, compliance with that dual procedural obligation must, contrary to the position in respect of an initial listing, precede the adoption of that decision (see, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraphs 111 to 113 and the case-law cited). By contrast, it follows from the case-law that where that decision merely renews the designation of the individual concerned on such a list without amending the grounds for maintaining that listing, the Council cannot be required to comply with that dual procedural obligation (see, to that effect and by analogy, judgment of 18 June 2015, *Ipatau* v *Council*, C−535/14 P, EU:C:2015:407, paragraphs 26 and 27).

251 However, respect for the right to be heard presupposes that the individual concerned always retains the right to submit observations, a fortiori during regular reviews of the restrictive measures adopted against him (see, to that effect, judgment of 18 June 2015, *Ipatau* v *Council*, C−535/14 P, EU:C:2015:407, paragraph 28). The right to be heard also means that, when comments are made by the individual concerned on the summary of reasons, the competent EU authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments, since the obligation to state reasons for its decision by identifying the individual, specific and concrete reasons why the competent authorities consider that the individual concerned must be subject to restrictive measures is the corollary of that right (judgments of 22 November 2012, *M*., C−277/11, EU:C:2012:744, paragraph 88, and of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraphs 114 and 116).

252 It is also necessary to take into account the fact that the question whether there is an infringement of the rights of the defence and of the right to effective judicial protection must be examined in relation to the specific circumstances of each particular case, including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraph 102).

253 In the first place, the Court must examine the applicant's complaints in so far as they relate to the decision to renew her designation by means of Decision 2016/411.

254 As regards the first complaint, inasmuch as it relates to the failure to communicate evidence in connection both with the adoption of Decision 2011/172 and with the adoption of Decision 2016/411, it has been noted in paragraph 242 above that the Council communicated to the applicant's legal advisers, prior to the adoption of Decision 2016/411, the documents of 2 January 2016, which contain an updated report of the ongoing judicial proceedings to which she is subject in Egypt. As is apparent from the examination of the third plea, the applicant's name is mentioned in those documents in connection with at least some of the judicial proceedings listed in them. Consequently, irrespective of whether the Council was obliged to provide her with updated material in relation to the continuation of the freezing of her assets in Decision 2016/411 differing from the material available to it for the initial decision, it must be held, in any event, that the present complaint has no basis in fact.

255 In so far as that complaint relates to a lack of solid evidence or credible proof that would substantiate the renewal of the applicant's designation, it must be rejected as ineffective in the context of the present plea. That is a question which concerns the merits of that renewal, which has already been addressed, moreover, in the context of the third plea, and which is therefore separate from the question whether the applicant's rights of defence were infringed (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 134).

256 As regards the second complaint, it must be noted that, notwithstanding the communication of the documents of 2 January 2016 in conjunction with the letters of 12 and 25 February 2016, the Council communicated to the applicant the letter from the Egyptian authorities of 22 February 2016 only as an enclosure with its letter of 21 March 2016 notifying her of the adoption of Decision 2016/411. Consequently, the applicant was unable to submit her observations on the information provided by the Egyptian authorities in that letter prior to the adoption of that decision, and the Council was not in a position to take them into account. Furthermore, as stated in paragraph 165 above, prior to the defence, the Council had not expressly indicated to the applicant that it might rely not only on the judicial proceedings to which she was specifically subject and which were referred to in the document communicated to her by the Council on 25 February 2016, but also on other judicial proceedings involving her, which were mentioned in the documents of 2 January 2016 sent to her legal advisers on 12 February 2016.

257 However, it must be borne in mind that, according to established case-law, in order for the existence of an irregularity relating to the rights of the defence to result in annulment of the act at issue, it must have been possible for the procedure to have resulted in a different outcome due to that irregularity, thus in fact adversely affecting the rights of the defence (see, to that effect, judgments of 30 June 2016, *Jinan Meide Casting* v *Council*, T−424/13, EU:T:2016:378, paragraph 81, and of 18 September 2017, *Uganda Commercial Impex* v *Council*, T−107/15 and T−347/15, not published, EU:T:2017:628, paragraph 105).

258 In the present case, first, as stated in paragraph 166 above, the legal advisers of the applicant in Case T−274/16 could not have been unaware of the fact that the Council might rely on all the judicial proceedings involving her that were mentioned in the documents of 2 January 2016, sent to those lawyers on 12 February 2016. It was incumbent on them, if they believed themselves to be justified in doing so, to submit, on behalf of their client, exculpatory evidence concerning not only the proceedings mentioned in the document enclosed with the Council's letter of 25 February 2016 but also the other proceedings in which she was involved.

259 Furthermore, as regards the argument that the Council did not specify on which of the cases mentioned in the documents sent by the Egyptian authorities with their letter of 25 February 2016 it intended to rely, it must be noted that the applicant does not show what specific effect that alleged omission could have had on her rights of defence. The mere fact that, in the absence of such an indication, she had to submit observations on all the judicial proceedings mentioned in that letter clearly does not undermine her rights of defence, since she was in a position to make her views known effectively in that regard.

260 Second, the applicant has not demonstrated, in her action, that she would have been in a position to challenge the relevance of the information provided by the Egyptian authorities with regard to all of the judicial proceedings on which she did not submit observations prior to the adoption of Decision 2016/411. It is apparent from paragraphs 194 to 217 above that the material which she submitted in the context of her action is not such as to establish that the Council should have harboured legitimate doubts as to the possibility of relying on the freezing order relating to the investigations registered as No 1 of 2011 and on Cases No 756 of 2012 and No 53 of 2013 for the renewal of her designation. The second complaint must therefore be rejected.

261 As regards the third complaint, suffice it to note that the fact that the Council did not reply in detail to all the arguments which the applicant put forward in her letters prior to the adoption of Decision 2016/411 does not mean that it did not examine them to the requisite legal standard. Furthermore, as has been noted

in the examination of the fourth plea (see paragraphs 240 to 243 above), the reasons given for Decision 2016/411 were sufficient.

262 It follows from the foregoing that the present plea must be rejected in so far as it concerns the renewal of the applicant's designation in the context of Decision 2016/411.

263 In the second place, as regards the renewal of the applicant's designation in the context of Decision 2017/496, it must be recalled that, as has been noted in paragraph 244 above, the information provided by the Egyptian authorities on which the Council relied was, in any event, communicated to the applicant on a date that enabled her to submit observations before the adoption of Decision 2017/496. Moreover, the considerations set out in paragraph 259 above apply as regards the fact that the Council did not expressly indicate which of the judicial proceedings mentioned in the documents from the Egyptian authorities that were sent to the applicant might serve as a factual basis for the renewal of her designation in the context of Decision 2017/496.

264 As to the argument that the Council failed to indicate the factual basis for its addition of a further ground for the applicant's designation in the context of Decision 2017/496, it is ineffective for the reasons set out in paragraph 235 above.

265 The argument concerning the date on which the proposal to renew the applicant's designation was put forward by the Mashreq/Maghreb working party is also irrelevant. As is evident from the documents in the file, that proposal is merely a preparatory act which did not prejudge the possibility, for the Council, of taking into account the applicant's subsequent observations in its final decision. That is why, moreover, in its letter of 27 January 2017, the Council indicated to the applicant that it was intending to renew her designation and invited her to submit observations in that regard. In any event, the applicant submitted observations by letters of 15 December 2016 and 10 February 2017 and was able, in particular in the later letter, to submit observations on the information sent by the Council in its letters of 27 January and 6 February 2017. Those observations could thus be taken into account by the various competent Council bodies, including by the Mashreq/Maghreb working party, for the purpose of its proposal of 20 February 2017.

266 It follows from all of the foregoing that the fifth plea in law must be rejected.

(f) Sixth plea in law: unjustified and disproportionate restriction of the applicant's right to property and damage to her reputation

267 In the alternative, in the event that the Council is able to support the grounds it gave for retaining her name in the annex to Decision 2011/172, the applicant puts forward the sixth plea, alleging an unjustified and disproportionate restriction of her fundamental rights. She refers in this regard to Article 16 and Article 17(1) of the Charter, which recognise, respectively, the freedom to conduct a business and the right to property.

268 According to the applicant, the freezing of her assets within the European Union does not satisfy either of the two requirements laid down in the case-law as to the lawfulness of restrictive measures, namely that they must (i) pursue an objective of general interest and (ii) be necessary and proportional to the aim sought.

269 As to the first requirement, according to the applicant, the objective of supporting the rule of law in Egypt is not credible as an objective for the freezing of her assets, given that the Egyptian authorities have taken no steps to recover her assets in the European Union since 2011, contrary to what was declared in their letter of 22 February 2011, and the current Egyptian regime is undermining democracy, the rule of law, human rights and the principles of international law.

270 As to the second requirement, the applicant maintains that the asset freeze imposed by the Council is not necessary in so far as, in its letter of 21 February 2011, the Egyptian Government had requested the judicial

authorities of certain Member States to freeze the assets of the former Egyptian Head of State and members of his family. She submits that the Member States are better placed to assist the Egyptian authorities, and that intervention by the judicial authorities of those States would impinge on the applicant's fundamental rights to a lesser extent. Furthermore, none of the judicial proceedings relied upon by the Council involves an allegation that assets of the applicant were transferred to any Member State of the European Union. In addition, the Council failed to consider whether freezing all the applicant's assets in the European Union was the least onerous measure. In particular, it failed to examine whether an asset freeze not exceeding the amount claimed from the applicant would be sufficient, or whether the applicant had assets in Egypt that would enable her to satisfy any likely claim. Finally, since the Council had failed to carry out any investigation to determine the amount of misappropriated funds since 2011, it could no longer rely on the considerations of the Court in paragraph 208 of the judgment of 27 February 2014, *Ezz and Others* v *Council* (T−256/11, EU:T:2014:93), where the Court observed that, in the absence of a judicial decision, the Council could not be required to determine the nature and quantum of the possible misappropriations of Egyptian State funds at issue.

271 In the statement of modification, the applicant also relies in support of the present plea on the period of time for which her assets have been frozen, which has been renewed for the last six years and which she regards as excessive.

272 The Council contends that the applicant's submission that it is unnecessary and disproportionate to freeze her assets in the European Union is unsustainable having regard to the General Court's considerations in paragraphs 202 to 204 and 206 to 209 of the judgment of 27 February 2014, *Ezz and Others* v *Council* (T−256/11, EU:T:2014:93), which were upheld by the Court of Justice in paragraph 113 of its judgment of 5 March 2015, *Ezz and Others* v *Council* (C−220/14 P, EU:C:2015:147). In its rejoinder, the Council adds that, as the Egyptian courts have not yet issued a judgment on the merits, the Council is unable to determine clearly which assets were misappropriated by the applicant. Furthermore, a limitation on the freezing of her assets in the European Union would not be effective, given that the freezing measure is directly applicable in all Member States and it would consequently be impossible for the relevant operators to first determine the amount represented by assets already frozen.

273 As a preliminary point, it must be noted that while, in the heading of the sixth plea, the applicant refers to damage to her reputation, she relies in her arguments only on an infringement of Article 16 of the Charter, which affirms the freedom to conduct a business, and of Article 17 of the Charter, which affirms the right to property. In any event, the requirements laid down by the case-law for damage to one's reputation to be lawful are similar to those governing the lawfulness of an infringement of the freedom to conduct a business and of the right to property.

274 It should be borne in mind in that regard that, in view of the Council's broad discretion in the present case, the legality of restrictive measures can be affected only if the measures are manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue. The Council must be allowed that broad discretion, including in determining the nature and scope of those measures. Furthermore, it must also be noted that the right to property and the freedom to conduct a business are fundamental rights which are not, however, absolute, and whose exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union. Consequently, restrictions may be imposed on the exercise of the freedom to pursue a trade or profession, as on the exercise of the right to property, in particular in the context of a Council decision or regulation imposing restrictive measures, subject to the condition that the restrictions do in fact correspond to the objectives of general interest pursued and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 154 to 156 and the case-law cited). The same reasoning may be applied, *mutatis mutandis*, to the right to reputation (see, to that effect, judgment of 25 March 2015, *Central Bank of Iran* v *Council*, T−563/12, EU:T:2015:187, paragraph 115).

275 In the present case, first of all, the applicant disputes the fact that the continued freezing of her assets in the European Union, as a result of Decisions 2016/411 and 2017/496, meets the objective of supporting the rule of law in Egypt.

276 In that regard, it must be recalled at the outset that, as set out in paragraph 173 above, the objective of support for the rule of law in Egypt is indeed the ultimate objective of the policy of which Decision 2011/172 forms part, but not an additional condition for the lawfulness of the asset freeze imposed by that decision. The purpose of that freeze, specifically, as has been repeatedly observed, is to help the Egyptian authorities to combat the misappropriation of Egyptian State funds by facilitating the identification by those authorities of any misappropriation that has taken place and ensuring that it remains possible for them to recover the proceeds of any such misappropriation.

277 As regards, on the one hand, the argument that the Egyptian authorities have taken no steps since 2011 to recover sums misappropriated by the applicant, suffice it to note that those steps presuppose that the judicial proceedings involving the applicant have culminated in a final decision of the court having jurisdiction to establish that misappropriation. It is only on that basis that the Egyptian authorities can take the procedural steps necessary to request recovery of those funds from the States concerned.

278 It is apparent from the documents of 2 January 2016 that the judicial proceedings on which the Council was able to rely in this instance had not culminated in a decision containing a definitive ruling on the applicant's liability with regard to the acts of misappropriation of State funds at issue.

279 As regards, on the other hand, the applicant's argument concerning the current political situation in Egypt, it is sufficient to note that, as stated in paragraphs 66 to 78 above, the applicant has not established that the Council made a manifest error in its assessment of that political situation and in weighing that up against other factors, such as the purpose of the asset freeze at issue, when it found that that asset freeze should be renewed. Likewise, it is apparent from paragraphs 115 to 132 above that the applicant was unable to establish that the Council should have entertained legitimate questions as to the risk that, in the judicial proceedings to which she is subject in Egypt, her right to a fair trial is being infringed. Consequently, the applicant's submissions to the effect that the renewal of the freezing of her assets is not conducive to realising the objective of supporting democracy, the rule of law and fundamental rights in Egypt must be rejected.

280 Next, as regards the necessity of the asset freeze, it should be recalled, in the first place, that the measure freezing the applicant's funds, adopted on the basis of Article 29 TEU, is an independent measure designed to attain the objectives of the CFSP, not a measure designed to respond to a request by the Egyptian authorities for legal assistance (see, to that effect and by analogy, judgment of 5 October 2017, *Mabrouk* v *Council*, T−175/15, EU:T:2017:694, paragraph 146).

281 Therefore, for the purpose of assessing whether or not the freezing of the applicant's assets was necessary in the light of its objectives, which are specific to the CFSP, the question whether measures taken by Member States' judicial authorities would be best suited to meeting the Egyptian authorities' request for legal assistance and to best protecting the applicant's fundamental rights is irrelevant.

282 In any event, it should be noted that the applicant cannot claim that the judicial authorities of the Member States are better placed to provide support for the Egyptian authorities than the Council. Irrespective of whether the freezing of the applicant's assets in the European Union imposed under Decision 2011/172 may be treated in the same way as a decision taken by a judicial authority of a Member State that would have the equivalent effect (see, to that effect, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 64), suffice it to note that, inasmuch as it applies to the whole of the territory of the European Union, that measure is clearly better able to safeguard the integrity of the assets covered than decisions taken by Member States' authorities, whose remit is limited in each case to the territory of the Member State concerned.

283 Moreover, it must be recalled that the freezing of the applicant's assets is, by nature, temporary and reversible and is subject to certain limitations and derogations, under Article 1(3) to (5) of Decision 2011/172, and thus does not infringe the essence of her right to property or her freedom to conduct a business (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 163 and the case-law cited). Furthermore, it has consistently been held that the Courts of the European Union must ensure, in accordance with the powers conferred on them by the FEU Treaty, the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the EU legal order, notably the right to good administration, which includes the right to be heard and the right to have access to the file, as well as the right to effective judicial protection (see, to that effect, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraphs 127 and 128 and the case-law cited).

284 In those circumstances, the applicant has not established that her fundamental rights would be insufficiently protected in the procedure before the Council and in proceedings before the Courts of the European Union. Consequently, she has not established that it would be necessary, for the purpose of ensuring that protection, for her assets to be frozen as a result of the involvement of a judicial authority of a Member State.

285 In the second place, the Court has already held, in circumstances similar to those of the present case, that the fact that judicial proceedings to which the applicant in that case was subject in Tunisia did not refer to acts entailing the holding of unlawful assets in the European Union was irrelevant (see, to that effect and by analogy, judgment of 5 October 2017, *Mabrouk* v *Council*, T−175/15, EU:T:2017:694, paragraph 57 and the case-law cited). That reasoning may be applied in the present case to the applicant's argument that the grounds for her designation do not mention her having transferred the proceeds of the misappropriation in question into the European Union. The fact that the applicant is subject to ongoing judicial proceedings in Egypt linked to misappropriation of State funds was, in itself, sufficient for funds within the European Union to be frozen. In any event, it is apparent from the considerations set out in paragraph 158 above that the effectiveness of the freezing of assets would be undermined if its lawfulness were conditional on there being evidence to show that the applicant had transferred the proceeds of the misappropriation of State funds into the European Union.

286 In the third place, as regards the disproportionate nature of the asset freeze in dispute, it has repeatedly been held that a partial freezing of the assets of a person subject to restrictive measures such as those imposed under Decision 2011/172 would not enable the intended objective to be met. There is, therefore, no less onerous measure than the freezing of all the assets which the applicant holds in the European Union (see, to that effect and by analogy, judgments of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 233, and of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 161).

287 Furthermore, as indicated in paragraph 283 above, the freezing of the applicant's assets does not infringe the essence of her right to property and of her freedom to conduct a business.

288 As regards the right to reputation, it is sufficient to note, first, that the grounds for the applicant's designation in the annex to Decision 2011/172 and Regulation No 270/2011 do not mention the specific circumstances of the acts to which the judicial proceedings or the asset recovery proceedings concerning the applicant relate, but merely mention the Egyptian authorities' classification of those acts as criminal. Second, the Council confined itself to mentioning the existence of such proceedings without commenting on the question as to whether or not the applicant had been found guilty (see, to that effect and by analogy, judgment of 11 July 2018, *Klyuyev* v *Council*, T−240/16, not published, EU:T:2018:433, paragraph 182). The damage to the applicant's reputation does not therefore exceed that which is strictly necessary for the purposes of compliance with the obligation to state reasons.

289 Last, as regards the argument that, in essence, the Court is no longer able to rely on the reasoning in paragraph 208 of the judgment of 27 February 2014, *Ezz and Others* v *Council* (T−256/11, EU:T:2014:93),

this is, in any event, unfounded. In that paragraph, the Court found that, when Decision 2011/172 and Regulation No 270/2011 were adopted, the Council could not know the quantum of any possible misappropriation of State funds by the first applicant in that case. Suffice it to note that, for the reasons set out in paragraph 278 above, when Decision 2016/411 was adopted, the Council was in no better position to determine such quantum with respect to the applicant.

290 As regards the argument as to the length of time for which the applicant's assets have been frozen since her initial designation, which is referred to in the statement of modification, it should be noted that the length of the period during which a measure such as the measure at issue is applied is one of the factors which the Courts of the European Union must take into account when examining whether the measure is proportional (see, to that effect, judgment of 30 June 2016, *CW* v *Council*, T−516/13, not published, EU:T:2016:377, paragraph 172).

291 However, in the present case, in the light of all the relevant circumstances examined in paragraphs 277 to 289 above, that factor alone cannot, by itself, be sufficient to establish that the freezing of the applicant's assets is disproportionate. In that regard, first, as has already been pointed out in paragraph 64 above, in the light of the purpose of Decision 2011/172, the restrictive measures imposed in that context must, in principle, be maintained until the conclusion of the judicial proceedings in Egypt if their effectiveness is to be preserved. It has been established that, at the date of the renewal of the applicant's designation in 2017, the judicial proceedings to which she is subject in relation to the misappropriation of State funds were still ongoing. Furthermore, it must be noted that those proceedings, or at least some of them, relate to complex facts and there have been a number of developments. It is not, therefore, apparent from the documents in the file that the duration of those proceedings has been manifestly excessive. This argument must therefore be rejected.

292 It follows from all of the foregoing that the sixth plea in law must be rejected.

B. The action in Case T−275/16

293 As a preliminary point, for the reasons set out in paragraphs 31 to 35 above, it must be held, of the Court's own motion, that the plea for annulment of the applicants' continued designation, under Implementing Regulation 2017/491, on the list annexed to Regulation No 270/2011 is inadmissible, the parties having been heard on that issue at the hearing.

294 In support of their action, the applicants put forward the same pleas in law as those raised in support of the action in Case T−274/16.

1. First plea in law

295 In so far as the present plea is based on the same parts, complaints and arguments as the first plea in Case T−274/16,it must be rejected for the reasons set out in paragraphs 41 to 84 above. As regards the applicants' reference to the infringements of the right to a fair trial alleged in the context of the second plea, which are said to have arisen in the criminal proceedings to which the first two applicants are subject, that reference is, for the reasons set out in paragraph 80 above, ineffective in the context of the present plea. The first plea in law must therefore be rejected in its entirety.

2. Second plea in law

296 The second plea is in the same parts as the corresponding plea in support of the action in Case T−274/16 (see paragraphs 86 to 88 above). In its defence, the Council presents similar arguments to those it put forward in the context of that action. The arguments and facts relied on by the applicants must therefore be examined in the light of the general considerations set out in paragraphs 90 to 110 above.

(a) First part

297 First, the applicants put forward arguments that are, in essence, similar to those of the applicant in Case T−274/16, and rely, in particular, on the same public documents relating to the fundamental rights situation in Egypt and the judicial proceedings brought against the former Egyptian Head of State for complicity in the killing of protesters. Consequently, in so far as they relate to those documents, the applicants' arguments must, for the reasons set out in paragraphs 117 to 132 above, be rejected.

298 Second, the applicants also rely, in support of this plea, on alleged infringements of the right to a fair trial in the judicial proceedings to which they are themselves subject. In particular, referring to two complaints set out in connection with the third plea, they rely on the selective nature of the prosecution and treatment of the first two applicants in a case relating to Al Watany Bank of Egypt ('Al Watany Bank'), namely Case No 10427 of 2012, and the 'flagrant' breach of their right to a fair trial in a case relating to the refurbishment of private residences (Case No 8897 of 2013).

299 As a preliminary point, it should be noted that the applicants do not refer to infringements of the right to a fair trial and respect for the presumption of innocence in respect of the third and fourth applicants in the judicial proceedings to which they are subject. It must therefore be inferred from this that the applicants consider the unlawfulness of the designation of the third and fourth applicants to arise in consequence of the infringements of the fundamental rights of the first two applicants, as persons associated with them.

(1) The criminal proceedings in Case No 10427 of 2012

300 The Court must examine, first of all, the evidence submitted in the application in support of the claim for annulment of the applicants' re-designation in the context of Decision 2016/411.

301 As regards the selective nature of the prosecution and treatment of the first two applicants in Case No 10427 of 2012, the applicants claim, first, that the second applicant is the only private individual investor to have been charged in that case, which contradicts, according to them, a statement by the prosecutor at the hearing on 7 October 2012. Second, of those charged, only the first two applicants were held in preventive detention, which lasted for 18 months. Third, the applicants maintain that there is evidence to support the contention that an expert's report drawn up by the Egyptian Financial Supervisory Authority ('the EFSA') had been doctored to the detriment of the first two applicants. Fourth, the applicants contend that the procedural delays in that case, which, in their view, were deliberate, prevented them from presenting their arguments to the court having jurisdiction. The Council, which had become aware of that evidence, had not examined it. Thus, in essence, the applicants consider the criminal proceedings in question to be tainted by a lack of impartiality and independence on the part of the judicial authorities and by an infringement of their rights of defence and of their right to be tried within a reasonable period. According to the applicants, those alleged infringements should have induced the Council to carry out checks.

302 As a preliminary point, it should be stated that the complaints referred to above were set out by the applicants in their letter to the Council of 11 February 2016, enclosing documents substantiating those complaints which are annexed to the application. The Council was thus in a position to take note of those complaints and of those documents before the adoption of Decision 2016/411.

303 As regards the subject matter of the criminal proceedings concerned, it is apparent from the documents in the file, in particular the translation of the referral order in Case No 10427 of 2012 (Case No 2 in the table of cases of 2 January 2016), that the first applicant is accused in that case of complicity in the acquisition of illegal profits by means of the purchase of shares in Al Watany Bank through the Horus II investment fund, with the hidden intention of acquiring a majority shareholding in the capital of that bank and of transferring it to a strategic investor, in breach of the applicable rules. The second applicant is accused of the same type of conduct.

304 In the first place, it is not evident from the translation of the minutes of the hearing on 7 October 2012 that, as the applicants maintain, the Prosecutor General's representative stated, at that hearing, that there was no basis for bringing a case against private investors because of the absence of criminal intent in the

facts alleged. In any event, the fact that the second applicant was the sole individual investor in Al Watany Bank to have been prosecuted in that case cannot, in itself, constitute evidence that those proceedings were 'selective', that is to say, that they reflected an unfavourable bias on the part of the Egyptian authorities against the applicant in question and were thus tainted by a lack of impartiality.

305 In the second place, the fact that the first two applicants were kept in custody for more than 18 months' preventive detention when the other accused were released on bail is also not capable, by itself, of supporting the contention that the Egyptian authorities' handling of the case was biased against them, nor the contention that those authorities intended to exert some form of political pressure on them.

306 In any event, it is apparent from the documents in the file that, at the end of the hearing on 11 June 2013, the first two applicants were released although the criminal proceedings in Case No 10427 of 2012 were still pending, the maximum period of provisional detention having been attained.

307 In the third place, the applicants submit that the conclusions of the expert's report drawn up by the EFSA in the context of the criminal proceedings at issue were altered to remove exculpatory evidence favourable to them. Moreover, they alleged that steps were taken to withdraw the original report from the case file.

308 In that regard, it must be noted that the applicants produced two translations of the report at issue, corresponding to two different versions of that report.

309 It should be noted that a comparison of the two versions of that report supports the applicants' claims that the contents of that report were altered at the request of the leadership of the EFSA and that it is the altered version that served as the basis for the criminal proceedings initiated against the first two applicants.

310 However, it must be stated that that comparison does not support the applicants' assertion that those alterations are evidence of political pressure leading the authorities in charge of the investigations into the Al Watany Bank case to target the first two applicants. The comparison supports, moreover, the proposition that the conclusions of the original report were subject to a general review which did not relate only to the first two applicants and their families but resulted in the rephrasing of those conclusions with respect to all those involved, and, as a result of that rephrasing, it was left to Egypt's Prosecutor General, more so than in the original wording, to resolve definitively the question whether each of the individuals mentioned in that report had unlawfully used privileged information.

311 Furthermore, the applicants also produced a translation of custody minutes of 17 April 2013 from the central compliance department of the EFSA concerning the lodging for preservation, at the request of the Head of the EFSA, of all original documents and follow-up documents relating to the Al Watany Bank case.

312 It must be noted that those minutes are not such as to render plausible the applicants' claims that the Egyptian authorities intended to ensure that the original version of the expert's report in question was left out of the assessment of the court having jurisdiction. It is apparent from that document only that the decision was taken within the EFSA to collect together all the original documents relating to the investigations into Al Watany Bank for their preservation and protection and to place them in an envelope that was to bear an official seal and the signatures of the members of the committee established for that purpose. Thus, far from lending credibility to the assumption that the Egyptian authorities had an intention to conceal, those minutes — the existence of which is, moreover, hardly compatible with such an intention — rather reflect a desire to protect those documents from any alteration.

313 In any event, it is apparent from a reference 'in handwriting' at the beginning of the translation of the original expert's report produced by the applicants that they have that report as a result of its authorised transmission by the court of first instance of North Giza (Egypt) in the course of the proceedings in question. Consequently, it must be inferred from this that the original expert's report was part of the case file held by the courts having jurisdiction. Furthermore, it is not alleged that the first two applicants were unable to submit to the courts having jurisdiction their observations regarding the two versions of that

expert's report and the minutes of 17 October 2013. Last, as is evident from the documents in the file, the Cairo Court of Appeal ordered, on 9 October 2012, that the investigations be resumed with a view to reviewing all the facts on which the allegations against, in particular, the first two applicants were based. It can therefore reasonably be presumed that the subsequent findings of the court having jurisdiction will have been or will be based on those new investigations and not on the original investigations.

314 In the fourth and last place, the applicants invoke the procedural delays in Case No 10427 of 2012. Thus, they submit that investigations in that case began in March 2011 and that the case was referred to a court on 30 May 2012. In addition, the first two applicants have not yet been afforded any opportunity to present their arguments to the court having jurisdiction. Those delays constitute an abuse and are indicative of a political motivation.

315 In that regard, as has already been pointed out, the Cairo Court of Appeal ordered a fresh investigation on 9 October 2012. In addition, as is apparent from the minutes of the hearing on 11 June 2013, the proceedings were adjourned pending the outcome of new investigations. Further, according to that document, it was envisaged that the proceedings would resume on 19 March 2016, which is not disputed by the applicants. In those circumstances, and having regard to the complexity of the case and the number of individuals involved, it does not appear, in the light of the documents supplied to the Council before the adoption of Decision 2016/411, that the procedural delays in the case in question are manifestly excessive, still less that they are indicative of political objectives. Those documents did not therefore raise legitimate questions as to respect for the right of the first two applicants to be tried within a reasonable period and their rights of defence, or indeed as to the impartiality and independence of the Egyptian courts.

316 Therefore, it is apparent from all of the foregoing that, prior to the adoption of Decision 2016/411, the applicants did not submit any evidence that might have given rise to legitimate questions concerning infringement of the right to a fair trial of the first two applicants in the context of Case No 10427 of 2012.

317 As regards the material submitted by the applicants in their statement of modification, in support of their claim for annulment of their re-designation by Decision 2017/496, they also provide a detailed chronological table of the facts and developments in the proceedings in that case that is intended to illustrate the allegedly deliberate nature of the procedural delays in Case No 10427 of 2012.

318 However, it must be noted that, at the hearing, the applicants, when questioned by the Court in that respect, indicated that they had not disclosed the table in question to the Council prior to the adoption of Decision 2017/496. They cannot therefore, in any event, rely on that document to maintain that the Council should, in the light of that document, have terminated their re-designation or carried out checks.

319 It follows from all of the foregoing that the material relating to the criminal proceedings in Case No 10427 of 2012 submitted by the applicants prior to the adoption of Decisions 2016/411 and 2017/496 was not such as to give rise to legitimate questions regarding the infringement of the first and second applicants' right to a fair trial.

(2) The criminal proceedings in Case No 8897 of 2013

320 In the application, the applicants maintain that the first two applicants' right to a fair trial was infringed, in a 'flagrant' manner, by the Egyptian Court of Cassation in the judgment of 9 January 2016 dismissing their appeal in Case No 8897 of 2013. The applicants claim in that regard that that court completely ignored four of the grounds of appeal and rejected the last ground of appeal having completely misrepresented it. The Egyptian Court of Cassation had also infringed the first two applicants' right to due process. The applicants put those complaints to the Council in their letter of 29 February 2016 and enclosed a number of documents in support of those complaints, including a translation of the extracts of the appeal of the first two applicants covering the grounds of appeal at issue.

321 As a preliminary point, it should be noted that, in the context of the third plea, the applicants invoked the infringement by the Egyptian Court of Cassation of the first two applicants' right to a fair trial only in the

alternative, for the event that their arguments to demonstrate that they are no longer subject to judicial proceedings in that case as a result of the agreement reached with the Egyptian authorities are rejected. However, for the reasons set out in paragraphs 371 to 384 below, that last line of argument must be rejected and the Court must therefore examine the present complaint, and do so in the context of the present plea, since that complaint relates to the Council's failure to take into account the applicants' claims in relation to the infringement of the right to a fair trial which vitiates the judgment of the Egyptian Court of Cassation of 9 January 2016.

322 It is apparent from the documents in the file that, in Case No 8897 of 2013, the former Egyptian Head of State and the first two applicants are accused of having misappropriated State funds by illegally redirecting funds allocated for the renovation of the communication centres of the Presidency of the Republic towards the renovation of their private residences. After quashing, in its judgment of 13 January 2015, the first judgment of the lower court, the Egyptian Court of Cassation, in a second judgment of 9 May 2015, convicted the individuals concerned, sentenced them to terms of imprisonment and ordered restitution of the sums misappropriated (21 197 018.53 Egyptian pounds (EGP), equivalent to EUR 1 018 136.64) and payment of a fine (EGP 125 779 237.53, equivalent to EUR 6 039 306.19). In its final judgment of 9 January 2016, the Egyptian Court of Cassation dismissed the appeal brought by the first two applicants against that second judgment.

323 As is clear from its judgment of 9 January 2016, the Egyptian Court of Cassation ruled only on the lower court's application of the law and declined to rule on the lower court's assessment of the facts of the case, in respect of which it considered the lower court to have absolute discretion. That in particular is why it rejected the first two applicants' grounds of appeal Nos 11 and 15 to 18 mentioned in their letter to the Council of 29 February 2016.

324 That approach towards the grounds of appeal of the first two applicants, which is comparable to the approach taken by supreme courts of Member States or of third countries, which are also named 'court of cassation', does not, by itself, amount to an infringement of the right to a fair trial. Thus, it is apparent from the case-law of the ECtHR that the specific nature of the role played by a court of cassation, whose review is limited to compliance with the law, is not, by itself, contrary to the right of access to a court or tribunal, since the conditions for the admissibility of an appeal on points of law may be more rigorous than for an appeal on fact and law (see, to that effect, ECtHR, 17 January 2008, *Vasilakis v. Greece*, CE:ECHR:2008:0117JUD002514505, paragraph 25). Thus, it does not appear that, in the judgment in question, the Egyptian Court of Cassation deliberately disregarded the grounds of appeal of the first two applicants. It appears, on the contrary, that it considered a review of the findings of fact of the lower court criticised in those grounds of appeal to be outside its jurisdiction. Furthermore, the memorandum from the Egyptian Prosecutor General's Office of 2 January 2016, the content of which is not disputed by the applicants, confirms that a judicial review by the Egyptian Court of Cassation, which it is empowered to carry out under Egyptian national law, is limited to points of law.

325 As regards ground of appeal No 11, alleging that the first two applicants' lawyers had not been invited to attend any meetings of the committee of experts which produced the report on the basis of which they were convicted, the applicants do not call into question the fact that the applicable provisions of the Egyptian Code of Criminal Procedure do not require litigants to be present during investigations carried out by experts instructed by Egypt's Prosecutor General. Consequently, it is not clear that, by rejecting that ground of appeal on the basis of those provisions, the Egyptian Court of Cassation infringed their rights of defence or their right to effective judicial protection.

326 The material submitted in connection with the application was not, therefore, such as to give rise to legitimate questions regarding any infringement by the Egyptian Court of Cassation of the first two applicants' right to a fair trial.

327 As regards the material submitted in connection with the statement of modification, it must be noted that the mere fact that Egypt's Prosecutor General considers that the payment made by the first two applicants in the case in question does not comply with the applicable law and that that payment cannot result in the

termination of the judicial proceedings cannot be interpreted, by itself, as an infringement of the right to a fair trial. In particular, the reasons relied on by that authority, as set out in the memorandum of the National Committee for the Recovery of Assets located abroad ('the NCRAA'), are based on the application of Egyptian criminal law, which it was not for the Council to call into question. Furthermore, that interpretation does not appear to be manifestly inconsistent or entirely unfounded given the wording of the provisions concerned. It cannot therefore be inferred, as the applicants suggest, that Egypt's Prosecutor General is deliberately impeding their right of access to a fair and impartial procedure.

328 Consequently, it follows from all of the above that the applicants have not put forward anything in relation to the judicial proceedings involving the first two applicants that might give rise to legitimate questions regarding the risk of infringement of the first two applicants' right to a fair trial in those proceedings. The Council cannot, therefore, be criticised for having failed, in the light of the material submitted to it, to carry out additional checks, and the first part of the present plea must accordingly be rejected in so far as it concerns the claim for annulment in Case T−275/16.

(b) Second part

329 The reasoning which the Court set out in paragraphs 136 and 137 above with regard to the second part of the second plea in Case T−274/16 can be applied to the present case. Suffice it to note that, in the light of the considerations set out in paragraphs 297 to 327 above in the context of the first part of the second plea, the Court concluded in paragraph 328 above that the material produced by the applicants did not raise legitimate questions regarding an infringement of the first two applicants' right to a fair trial that would justify the Council's carrying out checks with the Egyptian authorities. Consequently, a fortiori, that material cannot be sufficiently conclusive to convince the Council, on the basis of an examination alone, that it could no longer renew the freezing of their assets if it was not to adopt a manifestly inappropriate decision in the light of the objectives of the policy pursuant to which Decision 2011/172 was adopted.

330 The second part of the second plea must accordingly be rejected, as, therefore, must this plea in its entirety.

3. Third plea in law

331 The applicants put forward a line of argument that is, in essence, similar to that of the applicant in Case T−274/16. They dispute the fact that the 10 cases in relation to which their names are mentioned in the annex to the letter of 2 January 2016 from the Egyptian Prosecutor General's Office can serve as a basis for their designation. First of all, they observe that there is no reference to any case brought against the third and fourth applicants. As regards the first two applicants, they maintain that none of those judicial proceedings satisfies the designation criteria.In their reply, the applicants respond in detail to the Council's arguments concerning the cases referred to in the defence. They submit, moreover, that the Council cannot rely on the information contained in the August 2016 memorandum of Egypt's Prosecutor General.

332 The arguments put forward by the Council are similar to those advanced in Case T−274/16. The Council contends, in particular, that the applicants are still subject to ongoing judicial proceedings linked to matters that may be characterised as misappropriation of State funds.

333 As a preliminary point, it should be noted that the applicants' arguments must be examined in the light of the general considerations set out in paragraphs 143 to 158 above, in the context of the examination of the third plea in Case T−274/16.

334 In the first place, the applicants claim that the Council failed to provide any clear indication as to which of the judicial proceedings mentioned in the documents provided by the Egyptian authorities it relied on in renewing their designation.

335 It must be noted in that regard that that complaint can be examined only in connection with the fourth and fifth pleas, alleging, in the case of the former, a failure to state reasons and, in the case of the latter,

infringement of the rights of the defence (see paragraphs 410 and 411 to 416 below). In order to respond to the present plea, it is sufficient for the Court to examine whether or not any of the judicial proceedings mentioned above provide a sufficient factual basis for the renewal of the applicants' designation, on the one hand, by Decision 2016/411 and, on the other, by Decision 2017/496. Furthermore, it should be pointed out that, at the hearing, the Council, at the Court's request, clarified that it had relied on the judicial proceedings mentioned by the Egyptian authorities as being ongoing, but not on those mentioned as having been concluded. The present complaint must therefore be rejected as ineffective.

336 In the second place, irrespective of whether the information provided by the Egyptian authorities constitutes a sufficient factual basis for concluding that the applicants are subject to judicial proceedings that relate to the misappropriation of State funds, it is not apparent from that information, contrary to what is claimed by the applicants, that the Egyptian authorities deliberately intended to transmit false, incomplete or misleading information.

337 In particular, as the Council stated at the hearing, the fact that the Egyptian authorities mention in those documents proceedings that have already been concluded cannot but be interpreted as reflecting a willingness on the part of those authorities to provide exhaustive and up-to-date information about developments in all judicial proceedings brought against the applicants since 2011 which justified their initial designation or the continuation of that designation in previous renewals of Decision 2011/172. Furthermore, it was for the Council to assess, where appropriate, in the light of the applicants' observations, whether all of those proceedings supported the renewal of that designation by Decision 2016/411 or only some of them. The Council was not, moreover, obliged to freeze the applicants' assets solely because judicial proceedings involving them were mentioned in the documents sent by the Egyptian authorities (see, to that effect, judgment of 27 February 2014, *Ezz and Others* v *Council*, T−256/11, EU:T:2014:93, paragraph 151).

338 In the third place, for the same reasons as those set out in paragraphs 161 to 168 above, the complaint that the Council only belatedly disclosed the documents from the Egyptian authorities on which it relied must be rejected as ineffective in the context of the present plea and will have to be examined with the fourth and fifth pleas in so far as it relates to a failure to state reasons and an infringement of the rights of the defence (see paragraphs 410 and 411 to 416 below).

339 In any event, it has already been noted in paragraphs 164 and 165 above that the letter from the Egyptian Prosecutor General's Office of 2 January 2016, which mentions a number of judicial proceedings involving the first and second applicants or all of the applicants, was communicated to them on 12 February 2016. The applicants therefore had sufficient time to submit their observations on those judicial proceedings. As regards the letter from the same authority of 22 February 2016, relating to freezing orders against members of the applicants' families, which was enclosed with the Council's letter of 21 March 2016 informing the applicants of its decision to renew their designation, it will be for the Court, as indicated in paragraph 168 above, to verify whether the observations which they submitted in relation to those orders in the context of the present action are such as to call into question the Council's ability to rely on them.

340 Furthermore, in accordance with the principle that the lawfulness of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted, inasmuch as the present complaint seeks to call into question the Council's ability to rely on the information provided in the letters from the Egyptian authorities of 2 January and 22 February 2016, it must be rejected as unfounded, since the Council was in a position to take it into account for the renewal of the applicants' designation by Decision 2016/411.

341 By contrast, still in the light of the same principle, the applicants correctly maintain, in essence, that the lawfulness of the renewal of their designation by Decision 2016/411 cannot, in this instance, be examined in the light of the complementary memorandum of Egypt's Prosecutor General of 18 August 2016, invoked by the Council in the defence.

342 In the fourth place, for the reasons set out in paragraphs 171 to 177 above, the Court cannot accept the applicants' premiss that the criteria in Article 1(1) of Decision 2011/172 must be interpreted as meaning that the Council is required to verify whether the acts of misappropriation of State funds at issue in the judicial proceedings to which they are subject are, having regard to the amount or type of funds misappropriated or to the context in which those acts took place, such as to undermine the rule of law in Egypt.

343 In the fifth place, the applicants submit that the third and fourth applicants are not mentioned in the table of cases of 2 January 2016 provided by the Egyptian authorities.

344 In that regard, suffice it to note that those individuals are expressly mentioned in that document and in the accompanying memorandum as being or having been subject to investigation in three of the cases listed there. Those individuals are, moreover, also referred to in the letter of 22 February 2016 mentioned above as being the subject of the three freezing orders described in that letter. That complaint must therefore be rejected, the question whether each set of judicial proceedings could constitute a sufficient factual basis for maintaining the designation of those individuals being one that must be examined separately.

345 In the sixth and last place, it is necessary to examine in detail the applicants' arguments in relation to each of the judicial proceedings on which the Council was likely to rely in order to renew their designation, first, by means of Decision 2016/411 and, second, by means of Decision 2017/496.

(a) The arguments seeking to call into question the Council's ability to rely on the judicial proceedings mentioned by the Egyptian authorities in the context of Decision 2016/411

346 The Court must examine, first, the applicants' arguments in relation to Case No 10427 of 2012; second, those concerning Cases No 756 of 2012 and No 53 of 2013; and, third, those relating to Case No 8897 of 2013.

(1) The judicial proceedings pending in Case No 10427 of 2012

347 In the first place, the applicants maintain that what is alleged in those judicial proceedings cannot be characterised as misappropriation of State funds, either under 'European standards' or the criteria of the UNCAC and 'general' international law. In the second place, the applicants claim that there is no objective basis for the factual allegations against the first two applicants. Thus, the judicial proceedings in question are entirely politically motivated. In the third place, the applicants maintain that, contrary to what is stated in the letter of 22 February 2016, no freezing order has been made in the case in question against the third and fourth applicants. In the reply, the applicants add that the steps taken by the Council, after the adoption of Decision 2016/411, to verify the nature of the proceedings in question demonstrate that the Council did not have all the necessary information when it adopted the decision. In addition, it has not been demonstrated that what is alleged would undermine the legal and institutional foundations of the Egyptian State.

348 The facts of the case in Case No 10427 of 2012 are summarised in paragraph 303 above. As has been pointed out in paragraph 315 above, after the Cairo Court of Appeal ordered a fresh investigation, the proceedings in that case were adjourned and the trial was due to resume on 19 March 2016.

349 Accordingly, it appears that the judicial proceedings were still ongoing when Decision 2016/411 was adopted, which the applicants do not dispute.

350 Therefore, in accordance with the considerations set out in paragraphs 144 to 147 above, the Council was required only to verify whether the judicial proceedings in question related to conduct characterised by the Egyptian authorities as criminal, in the light of the applicable criminal law, in terms corresponding to the concept of misappropriation of State funds within the meaning of Article 1(1) of Decision 2011/172. It is for the applicants to demonstrate that the Council had been aware of specific evidence such as to raise

legitimate questions about the basis of those judicial proceedings and justify further checks being carried out by the Council.

351 Thus, contrary to the premiss underlying the applicants' arguments, it is not, in principle, for the Council to take a view on the accuracy and relevance of the criminal characterisation adopted by Egypt's Prosecutor General in the case in question.

352 In this instance, it should be noted that, as is evident from the table of cases of 2 January 2016, the first two applicants were brought before a court in the case in question for illegal profiteering, in connection with deliberate harm to public property. As the applicants submit, the description of the alleged conduct in that table incorrectly mentions illegal transactions relating to majority shares in the National Bank of Egypt. However, the memorandum accompanying that table contains a detailed description of the alleged conduct which the applicants do not dispute and which corresponds to the information they themselves produced, that is, as indicated in paragraph 303 above, a description of complicity in the acquisition of illegal profits made in the context of transactions involving shares in Al Watany Bank.

353 Furthermore, it is apparent from the referral order of 12 June 2012 in that case, which the applicants sent to the Council before the adoption of Decision 2016/411, that they are accused of being accomplices to illegal profiteering by other individuals in connection with their official positions as, on the one hand, chairman of the board of Al Watany Bank and, on the other, members of the board of that bank, in which the Egyptian State is a shareholder and which is subject to the control and supervision of the Central Bank of Egypt.

354 It is therefore apparent from all the documents mentioned above that Egypt's Prosecutor General found that the actions in question had been taken by individuals in connection with positions that had to be regarded as public positions, that those actions had been harmful to public property, that the first two applicants were accomplices in this and that all those individuals had profited illegally from those actions. The characterisation adopted therefore corresponds to the concept of misappropriation of State funds within the meaning of Article 1(1) of Decision 2011/172, referred to in paragraph 144 above. That characterisation covers the illegal use of funds held, at least in part, by public entities and, in any event, placed under the control of those entities, for purposes that are contrary to those authorised by the applicable rules and that have damaged the Egyptian State.

355 That analysis is confirmed by the fact that the referral order of 12 June 2012 refers, inter alia, to Article 119(h) and Article 119a(1)(e) of the Egyptian Criminal Code, the text of which was annexed to the application. The first of those provisions states that, in applying the provisions of that criminal code on the misappropriation of State funds, 'public funds' is to mean all or part of the funds and property owned by, or subject to the supervision or administration of, any entity or authority other than those expressly named in that article whose funds or property are considered by law to be public funds. The second of those provisions states that, in applying the same provisions of the Criminal Code on the misappropriation of State funds, civil servants (public officials) are to mean members of the boards of directors, the directors and all staff of the entities whose funds and property are considered public funds according to Article 119 of that code. The applicants, who dispute the validity of those definitions in the light of the UNCAC, rely precisely on the premiss that the Egyptian authorities applied them in the present case.

356 In those circumstances, the Council was fully entitled to consider that the judicial proceedings in question related to conduct corresponding to the misappropriation of State funds, within the meaning of Article 1(1) of Decision 2011/172.

357 The arguments set out by the applicants do not call that conclusion into question.

358 In the first place, it is apparent from paragraph 354 above that it cannot be maintained, as the applicants do, that that characterisation does not correspond to the concept of misappropriation of State funds under EU law.

359 The references made by the applicants to the case-law of the General Court and of the ECtHR in that respect are not relevant.

360 On the one hand, part of that case-law is not relevant to the interpretation of Article 1(1) of Decision 2011/172.

361 On the other, as regards the case-law applicable to those provisions, contrary to the applicants' contention, in paragraphs 94 and 95 of the judgment of 28 May 2013, *Trabelsi and Others* v *Council* (T−187/11, EU:T:2013:273), and in paragraphs 45 to 49 of the judgment of 28 May 2013, *Al Matri* v *Council* (T−200/11, not published, EU:T:2013:275), the General Court did not find that the concept of misappropriation of State funds did not include all wrongdoing that could be associated with or result in a loss to the public purse. By contrast, in a context in which the freezing of the assets of the applicants in those cases was based on judicial proceedings for money laundering, the Court did consider, first, that the concept of misappropriation of Tunisian State funds did not cover any economic offence or crime but was limited to actions liable to have jeopardised the proper functioning of Tunisian public authorities and, second, that the concept of money laundering did not cover solely actions that enable concealment of the illicit origin of assets deriving from misappropriation of State funds (see, to that effect, judgments of 28 May 2013, *Trabelsi and Others* v *Council*, T−187/11, EU:T:2013:273, paragraphs 91, 92 and 95, and of 28 May 2013, *Al Matri* v *Council*, T−200/11, not published, EU:T:2013:275, paragraphs 45, 46 and 49).

362 In the second place, contrary to what is maintained by the applicants, it is not relevant, for the purpose of assessing the lawfulness of their re-designation, to verify whether the Egyptian authorities' acceptance of conduct being characterised as criminal is or is not consistent with the provisions of the UNCAC. The concept of misappropriation of State funds is a concept of EU law, which must be given an autonomous interpretation (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 84). Furthermore, the reference to that convention in the grounds for the applicants' listing in the annex to Decision 2011/172 merely means that it was the Egyptian authorities who intended to refer to its provisions in the judicial proceedings concerned, and not that the Council intended to rely on those provisions in designating the applicants.

363 In any event, the provisions of Article 2(a)(iii) of the UNCAC, cited by the applicants, provide that 'public official' is to mean '[any] person defined as a "public official" in the domestic law of a State Party'. It does not follow from that definition that it precludes the recognition as a public official of a member of staff of a company, such as Al Watany Bank in this case, in which the State has a shareholding, albeit a minority shareholding, and which is under the control or supervision of public bodies. Consequently, it is not apparent from the evidence produced by the applicants themselves that the Egyptian authorities' characterisation of members of the board of directors of that bank was contrary to Article 2(a)(iii) of the UNCAC.

364 Furthermore, the principles of 'general' international law applicable to the responsibility of States for internationally wrongful acts, which are invoked in the present case, are also not relevant to assessing the characterisation of wrongful acts for the purpose of applying Egyptian criminal law.

365 In the third place, it is for the Egyptian courts, and not the Council or the General Court, to examine the factual basis of the judicial proceedings concerned. The applicants cannot therefore rely on factual errors allegedly made by Egypt's Prosecutor General with regard to the facts to which the case relates, nor to the conclusions to be drawn from expert testimony before those courts as regards their criminal liability. Moreover, the evidence which they submitted in support of their claims in that regard was not such as to raise legitimate questions concerning the basis of the judicial proceedings in question. The fact that, after the adoption of Decision 2016/411, the Council deemed it useful to carry out checks in relation to those proceedings is not conclusive in that respect, given the Council's broad discretion to undertake, on its own initiative, if it considers it necessary and at any time, checks with the Egyptian authorities (see, to that effect and by analogy, judgment of 5 October 2017, *Mabrouk* v *Council*, T−175/15, EU:T:2017:694, paragraphs 165 and 166). In any event, as has been noted in paragraph 315 above, the proceedings were

adjourned in that case following the hearing on 11 June 2013 pending the outcome of new investigations. Consequently, even on the assumption that the evidence on which the judicial proceedings in question were initially based was such as to raise legitimate questions, the Council was fully entitled to consider that it was not for it to prejudge the assessment of the court having jurisdiction in respect of the outcome of those new investigations.

366 In the fourth place, it has been explained in paragraphs 300 to 316 above, in the context of the second plea, that the evidence submitted by the applicants with regard to the present case in order to demonstrate that the right of the first two applicants to a fair trial had been infringed was not such as to raise legitimate questions in that respect. For the same reasons, that evidence cannot substantiate their claims that the judicial proceedings in question were manipulated by the prosecutor for purely political purposes.

367 In the fifth and last place, as regards the situation of the third and fourth applicants, the evidence submitted by the applicants is not such as to call into question the analysis in paragraphs 195 to 199 above, in the context of Case T−274/16, according to which there was, at the time when Decision 2016/411 was adopted, a freezing order in force that was made in connection with investigations that initially concerned conduct that subsequently became the subject matter of Cases No 3642 of 2011 and No 10427 of 2012. Furthermore, as was noted in paragraph 194 above, the order in question concerns the members of the family of the former President of the Republic of Egypt, including the third and fourth applicants. The applicants' arguments in that respect must therefore be rejected.

368 Accordingly, it must be held that the Council was entitled to rely on the judicial proceedings in Case No 10427 of 2012 and on the first freezing order mentioned in the letter of 22 January 2016 in finding that the applicants were subject to judicial proceedings linked to the misappropriation of State funds that were ongoing when Decision 2016/411 was adopted.

(2) Cases No 756 of 2012 and No 53 of 2013

369 The applicants submit similar arguments in relation to these two cases as the arguments put forward by the applicant in Case T−274/16, whilst acknowledging, unlike the latter applicant, that they were questioned in Case No 756 of 2012.

370 For the same reasons as those given in paragraphs 210 to 214 and 216 above, those arguments must therefore be rejected. Consequently, it must be held that the Council was also entitled to rely on the judicial proceedings in those cases for the purpose of renewing the applicants' designation in the context of Decision 2016/411.

(3) The judicial proceedings in Case No 8897 of 2013

371 The applicants maintain that the first two applicants entered into an agreed settlement with the Egyptian authorities, ratified by the Cabinet on 9 March 2016, under which they repaid all misappropriated funds, and that they informed the Council of this. According to the applicants, the settlement of the funds in question (EGP 23 210 734.53, that is EUR 1 111 382.42) discharges the first two applicants from any obligation towards the Egyptian State. Thus, the continuation of the restrictive measures against those applicants can have no 'lawful basis', given that there are no longer any judicial proceedings in relation to the case in question and having regard to the objective of those measures, which is to enable the Egyptian authorities to recover misappropriated funds. In the alternative, the applicants contend that the right of the first two applicants to a fair trial was infringed by the judgment of the Egyptian Court of Cassation of 9 January 2016. In the reply, the applicants submit, in particular, that the financial penalties imposed by the Egyptian courts have no relevance to the asset freezing measure imposed by Decision 2011/172, which is not a penal measure. In addition, according to them, the Council did not carry out the necessary checks until after the adoption of Decision 2016/411, that is to say, on 29 July 2016.

372 The Council responds to the applicants' arguments by relying on the information submitted by the Egyptian authorities in their memorandum of 18 August 2016, according to which, first, the applicants'

claims in relation to the effect of the agreement reached with those authorities under Egyptian law are incorrect and, second, the judgment of 9 May 2015 of the trial court is final and enforceable, notably as regards the financial penalties imposed.

373 The facts to which the judicial proceedings in question relate are recalled in paragraph 322 above. It was also noted in the same paragraph that, in its judgment of 9 January 2016, which definitively ended the proceedings, the Egyptian Court of Cassation dismissed the appeal of the first two applicants against the judgment of the trial court of 9 May 2015, sentencing those applicants and their father to terms of imprisonment and ordering them to repay the misappropriated funds and to pay a fine.

374 As a preliminary point, it should be noted that the parties agree that, following the judgment of 9 January 2016 of the Egyptian Court of Cassation, the judgment of the trial court on the merits of the allegations against the first and second applicants in the case at issue became final. That assessment is confirmed by the memorandum from the Egyptian Prosecutor General's Office of 2 January 2016 concerning the legal framework of the proceedings underpinning Decision 2011/172 from which it is apparent, in particular, that, while the Egyptian Court of Cassation set aside a decision of the criminal trial court in a first appeal and referred the case back to that court for a retrial, the decision it delivered in a second appeal ended the proceedings.

375 However, in the light of the interpretation of the concept of judicial proceedings in paragraph 157 above, it is apparent from the documents in the file that, at the date of the adoption of Decision 2016/411, the Council did not have any information to indicate, as the applicants suggest, that the Egyptian authorities had ended the judicial proceedings in the case in question following an amicable settlement of the proceedings.

376 Admittedly, the evidence put forward by the applicants, some of which was submitted to the Council only in their letter of 13 March 2016, point to the existence of a conciliation process involving the Egyptian authorities. However, that evidence also tends to indicate that that process had not yet been completed, and that the penalties imposed on the first two applicants by the judgment of 9 May 2015 were still capable of being enforced.

377 In that regard, it is apparent from the wording of Article 18 bis (b) of the Egyptian Code of Criminal Procedure, a translation of which was annexed by the applicants to their application, that the criminal conciliation procedure provided for by that code has three stages. The first consists in the conclusion of an amicable settlement between an experts' committee formed by decree and the defendants concerned. The second involves the ratification of the minutes of the settlement by the Cabinet. In the third stage, where conciliation takes place after final judgment has been delivered and the convicted parties have been imprisoned pursuant to that judgment, the Egyptian Court of Cassation orders, at their request, which is referred to it by the Prosecutor General, a stay of execution of all penalties, if that court has ascertained that the amicable settlement has been concluded and all the requisite conditions have been satisfied.

378 In the present case, in their letter of 13 March 2016, the applicants referred only to the completion of the first two stages of the conciliation procedure mentioned in paragraph 377 above and did not provide any reliable evidence that would plausibly suggest that the third and final stage of that procedure was in progress at the date of that letter, much less that it had been completed. In particular, while they confirmed that the settlement had been ratified by the Cabinet and that they had paid the relevant sum, they did not state that the settlement had been submitted to the court with a view to terminating those judicial proceedings, or that those proceedings had in fact been terminated. On the contrary, they merely stated that that third stage of the conciliation process was 'purely procedural', thus implicitly acknowledging that it had not yet come to an end. This reading of the documents in the file is confirmed by the applicants' statements at the hearing.

379 Furthermore, as indicated in paragraph 374 above, the judgment of 9 May 2015 is final and, as is apparent from the documents in the file, it imposes prison sentences on the first two applicants. The Council was, therefore, fully entitled to infer from this, in the light of the wording of Article 18 bis (b) of the Egyptian

Code of Criminal Procedure, which the applicants had enclosed with their letter of 13 March 2016, that the conciliation procedure had to be presented to the Egyptian Court of Cassation in order for the criminal proceedings to be concluded in the case in question.

380 It follows from all of the above that the evidence submitted by the applicants prior to the adoption of Decision 2016/411 in relation to Case No 8897 of 2013 does not indicate that the judicial proceedings in that case had been brought to an end. In those circumstances, even if that evidence did indicate that a conciliation procedure involving the first two applicants and the Egyptian authorities was still in progress and was likely ultimately to culminate in the conclusion of those judicial proceedings, that circumstance cannot affect the lawfulness of Decision 2016/411.

381 In order for the Council to be able to renew the designation of the first two applicants, it was sufficient that the Council satisfied itself that those applicants were still subject to ongoing judicial proceedings in relation to the misappropriation of State funds, when Decision 2016/411 was adopted. The applicants do not dispute that the judicial proceedings in question were linked to such conduct, and the re-designation of the first two applicants in the context of that decision could, therefore, be based on those proceedings.

382 Admittedly, given the discretion referred to in paragraph 365 above, it was open to the Council, in the light of the evidence provided by the applicants, to carry out checks with the Egyptian authorities pursuant to the constant review under which Decision 2011/172 is kept in accordance with Article 5 thereof.

383 However, for the reasons set out in paragraphs 380 and 381 above, the Council cannot be criticised for having failed to carry out those checks prior to the adoption of Decision 2016/411. It is, moreover, for the Egyptian authorities and not for the Council to draw any appropriate conclusions from a settlement as regards the outcome of the judicial proceedings concerned. Were that not to be the case, there might be situations in which the Council could be prompted to draw conclusions that are premature, with the paradoxical result that, when the Egyptian authorities sought to recover the proceeds of the misappropriation identified by the court having jurisdiction, the relevant individual's assets in the European Union would no longer be frozen. Obviously, the effectiveness of Decision 2011/172 would not be guaranteed (see, to that effect and by analogy, judgment of 5 October 2017, *Mabrouk* v *Council*, T−175/15, EU:T:2017:694, paragraph 46 and the case-law cited).

384 As regards the applicants' reference to the removal of the name of one individual from the list annexed to a Council decision imposing restrictive measures in the light of the situation in Ukraine because of the repayment of the funds that she was accused of misappropriating and notwithstanding the continuation of criminal proceedings in her case,suffice it to note that, in the present case, the applicants have not established that the conciliation process involving the Egyptian authorities, upon which they rely, has been concluded. That reference is therefore not relevant. In any event, it is clear from the United Kingdom's Foreign and Commonwealth Office (FCO) document on which the applicants rely in that regard that the de-listing of the person in question was considered to be in line with the objective of the restrictive measures concerned: to change the behaviour of the individuals listed. In the present case however, the restrictive measures are not intended to serve as an incentive or deterrent (see, to that effect and by analogy, judgment of 30 June 2016, *Al Matri* v *Council*, T−545/13, not published, EU:T:2016:376, paragraph 62), their sole purpose being, as has repeatedly been noted, to facilitate the Egyptian authorities' identification of any misappropriation of State funds that has taken place and to ensure that it remains possible for those authorities to recover the proceeds of that misappropriation.

385 Consequently, the applicants' arguments relating to the settlement reached in the present case must be rejected.

386 The arguments put forward by the applicants in the alternative, relating to the alleged infringements of the right to a fair trial tainting the judgment of the Egyptian Court of Cassation of 9 January 2016 must also be rejected, for the reasons set out in paragraphs 322 to 325 above.

387 In conclusion, it is apparent from paragraphs 348 to 386 above that there were, at the date on which Decision 2016/411 was adopted, ongoing judicial investigations involving the first two applicants in relation to conduct that may be characterised as misappropriation of State funds, and those judicial proceedings constituted a sufficient factual basis for the re-designation of those individuals. In the case of the third and fourth applicants, it should be noted that although they are not subject to some of those judicial proceedings, they are at the very least affected by the first freezing order mentioned in the letter of 22 February 2016 and the judicial proceedings in Cases No 756 of 2012 and No 53 of 2013. Consequently, the fact that the applicants are not or are no longer subject to judicial proceedings in other cases mentioned by the Egyptian authorities in the documents sent to the Council is irrelevant and the applicants' arguments in that regard are therefore ineffective. Accordingly, without there being any need to examine those arguments, the Court must reject the third plea in so far as it relates to the renewal of the applicants' designation in the context of Decision 2016/411.

(b) The arguments seeking to call into question the Council's ability to rely on the judicial proceedings mentioned by the Egyptian authorities in the context of Decision 2017/496

388 In the first place, as regards Case No 10427 of 2012 (see paragraphs 348 to 368 above), the applicants essentially put forward two new points in the statement of modification. First, in support of their arguments in relation to the absence of conduct that might be characterised as misappropriation of State funds (see paragraph 347 above), they submit that the referral order by the Prosecutor General in that case refers to Article 115 of the Egyptian Criminal Code, which relates to a different offence than that of misappropriation of State funds. Second, they provide a detailed chronology of the facts and progress of the proceedings in that case, which is intended to substantiate their argument that the judicial proceedings were manipulated for political purposes.

389 In the defence, the Council, first, relies on the complementary memorandum of Egypt's Prosecutor General of 18 August 2016in noting, in particular, that the funds in a joint stock company such as Al Watany Bank are considered to be public funds and, second, observes that the chronology provided by the applicants is a document drawn up by the applicants themselves for the purpose of the present proceedings and is not corroborated by any evidence from an external source or any official document.

390 As regards the first point highlighted by the applicants, it has already been stated in paragraph 355 above that the referral order by Egypt's Prosecutor General of 12 June 2012 made reference, in particular, to Article 119(h) and to Article 119a(1)(e) of the Egyptian Criminal Code, which refer respectively to the concept of public funds and to that of the public official. That point must therefore be rejected.

391 As regards the second point, which has already been analysed in connection with the second plea, it has been found in paragraph 318 above that, according to the statements made by the applicants at the hearing, the document in question had not been communicated to the Council prior to Decision 2017/496 and cannot, therefore, be taken into account by the Court.

392 In the second place, as regards Case No 756 of 2012, the applicants do not put forward arguments that differ from those already set out in the application, which must be rejected for the reasons mentioned in paragraphs 210 to 214 and 216 above. Furthermore, as regards the claim that the Council did not intend to rely on the judicial proceedings in that case, it is sufficient to note that that case is mentioned in the memorandum of Egypt's Prosecutor General of 5 December 2016, which was enclosed with the Council's letters to each of the applicants of 27 January 2017, and in the memorandum from the NCRAA, enclosed with the letter of 6 February 2017. That analysis is confirmed by the statements made by the Council at the hearing, which indicated that, in so far as the proceedings in question were still pending, the Council considered them to constitute a sufficient factual basis for the renewal of the applicants' designation.

393 In the third place, as regards Case No 8897 of 2013, in addition to the evidence which the applicants submitted in the annex to their application in order to prove that they had repaid the misappropriated funds and that the Egyptian authorities had approved that repayment, they provide a translation of the settlement agreement ratified by the Cabinet.They contend that the statements made by Egypt's Prosecutor General in

the memorandum of 6 February 2017 with a view to demonstrating that that repayment had no impact on the outcome of the case in question are manifestly incorrect. In their view, those statements are not reliable and illustrate the fact that the treatment of the applicants served a political purpose and did not respect the right to a fair trial.

394 It must be held that the points put forward by the applicants are not such as to call into question the analysis set out in paragraphs 374 to 384 above. Those points do not demonstrate that, in this case, the judicial proceedings had come to an end following the restitution of the misappropriated funds; on the contrary, they confirm the opposite.

395 First of all, as regards the copy of the settlement which the first two applicants claim to have reached with the Egyptian public authorities, a translation of which was placed on the file, suffice it to note that, like the other documents relating to that settlement which were annexed to the application, the document in question refers, at most, to the completion of the second stage of the settlement procedure provided for by Article 18 bis (b) of the Egyptian Code of Criminal Procedure, but not to the third and final stage, which requires that the Egyptian Court of Cassation, at the request of the first two applicants, order a stay of execution of all penalties (see paragraphs 377 and 378 above). It must, moreover, be noted that, as the applicants themselves have indicated, that document was not obtained until May 2017, so that the Council could not have been aware of it for the purposes of the re-designation of the first two applicants in the context of Decision 2017/496.

396 Next, contrary to what the applicants seek to establish, the Council was entitled to rely on the explanations given in the memorandum from the Egyptian authorities of 6 February 2017 for the following reasons.

397 First, it should be noted that that memorandum was issued by the NCRAA, which is a body attached to Egypt's Prosecutor General, and thus a public authority that is, in principle, competent to provide the Council with explanations concerning the procedure for recovering funds identified as having been misappropriated in the case in question. The Council was not therefore obliged, as the applicants suggest, to contact other Egyptian public authorities, such as the Egyptian Minister for Justice.

398 Second, it is neither for the Council nor the General Court to comment on whether or not it is the case that, as the NCRAA states in its memorandum, the first two applicants approached a committee that was not competent to deal with their request for a settlement, under the relevant provisions, and that, pursuant to Law No 28 of 2015, they should have approached the NCRAA itself. It is sufficient to note that that view concerning the scope of the settlement is the view of the competent Egyptian authorities, and that it must be inferred from this that those authorities consider the settlement to have no influence on the judicial proceedings in question.

399 The fact that that view is the view of the competent Egyptian authorities is confirmed by the letter of 16 January 2017 from the Egyptian lawyers for the first two applicants, attached to the statement of modification. In that letter, the lawyers write to Egypt's Prosecutor General to explain why they take issue with that position and invite that authority to reconsider its decision to archive the request which they sent to it for onward transmission to the Egyptian Court of Cassation, in the context of the third and final stage of the conciliation procedure referred to in paragraph 377 above. It appears that, because the committee which the first two applicants approached has no jurisdiction, Egypt's Prosecutor General decided to archive their request to submit that settlement to the Egyptian Court of Cassation.

400 In any event, the applicants did not argue that the decision of Egypt's Prosecutor General not to transmit the settlement at issue to the Egyptian Court of Cassation was not a decision that could be challenged in the Egyptian courts. The Council was therefore entitled to assume that it was open to the first two applicants to bring that decision before the courts having jurisdiction, in accordance with the appropriate legal remedies.

401 Furthermore, it is not clear from the memorandum of 6 February 2017 or from the letter of 16 January 2017 from the Egyptian lawyers of the first two applicants that Egypt's Prosecutor General erred in that

decision in his interpretation of the applicable provisions.

402 Third, even if the NCRAA's assertion that the Cabinet refused to approve the first two applicants' request for settlement were disproved by the copy of the settlement attached to the statement of modification, which is not absolutely clear, that would have no impact given the considerations set out in paragraphs 395 to 400 above.

403 Fourth, the applicants admit that the information provided in the memorandum from the NCRAA establishes that the judicial proceedings in that case had not yet finally come to an end, which is sufficient, as indicated in paragraph 380 above, for the Council to be able to continue to rely on the proceedings in question.

404 Fifth, for the same reasons, the information provided by the applicants to counter the assertion made in the NCRAA memorandum that Egypt's Prosecutor General had not earmarked the sum paid by the first two applicants as restitution for the misappropriated funds is irrelevant, since it is common ground that that restitution did not, at that stage, bring to an end the judicial proceedings in question.

405 Last, it is apparent from the foregoing that the Council was fully entitled to find that the restitution to the Egyptian State, by the first two applicants, of the misappropriated funds in Case No 8897 of 2013 was of no effect unless the settlement procedure had been completed. It could therefore logically be inferred that the ongoing enforcement of the decision convicting the first two applicants continued to cover not only the payment of the fines imposed by that decision but also the restitution of the misappropriated funds ordered in that decision. Consequently, the question whether, as the applicants assert, the freezing of their funds in the European Union could or could not be based solely on non-payment to the Egyptian authorities of the fine that was imposed on them by the judgment of 13 January 2015, upheld by the Egyptian Court of Cassation, in addition to the order for restitution of the misappropriated funds (see paragraph 322 above),is of no relevance in the present case.

406 As regards the applicants' arguments challenging the Council's ability to rely on the ground that the first and second applicants were subject to an asset recovery process in the context of Case No 8897 of 2013, those arguments are ineffective. It is apparent from paragraphs 394 to 405 above that the Council was fully entitled to continue to rely on the ground that those applicants were subject to ongoing judicial proceedings, a ground which was sufficient for their re-designation in the context of Decision 2017/496.

407 In the fourth place, as regards Case No 53 of 2013, the applicants do not advance any arguments that differ from those of the applicant in Case T−274/16. For the reasons set out in paragraph 234 above, those arguments must be rejected.

408 In the fifth place, in the case of the third and fourth applicants, the arguments submitted by the applicants are not such as to call into question the finding in paragraph 387 above that they were concerned by three sets of ongoing judicial proceedings, that is the fund-freezing case mentioned in the letter of 22 February 2016 and the criminal proceedings in Cases No 756 of 2012 and No 53 of 2013. With regard to the first of those cases, it must be noted that, as the Council stated in its observations on the statement of modification,Egypt's Prosecutor General, in a complementary memorandum of 1 January 2017 that was sent to the applicants, indicated that the freezing order in question was still in force, which is not disputed by the applicants.

409 Therefore, it follows from all of the foregoing that, for the purposes of the applicants' re-designation in the context of Decision 2017/496, the Council was entitled to continue to rely on the judicial proceedings examined in paragraphs 388 to 408 above. The third plea must therefore be rejected in its entirety.

4. Fourth plea in law

410 The present plea is based on the same arguments as the fourth plea in law in Case T−274/16. Furthermore, the reasons for the renewal of the designation of the applicants and of the applicant in Case T−274/16 are

the same. In addition, prior to the adoption of Decision 2016/411 and that of Decision 2017/496, like the applicant in Case T−274/16, the applicants were provided by the Council with the information supplied by the Egyptian authorities in relation to the judicial proceedings to which they were subject (see letters of 12 February 2016 and of 27 January and 6 February 2017) and, by letters of 21 March 2016 and 22 February 2017 essentially similar, in content, to those forwarded on the same date to the applicant in Case T−274/16, the Council replied to some of the applicants' arguments and explained, to the requisite legal standard, why it remained of the view that they should continue to be listed in the annex to Decision 2011/172. Therefore, for the same reasons as those given in paragraphs 239 to 244 above, the fourth plea in law must be rejected.

5. Fifth plea in law

411 In the context of the fifth plea, the applicants put forward three complaints that are, in essence, similar to those set out in the context of the corresponding plea in Case T−274/16.

412 As regards the first complaint, this must be rejected for the same reasons as those set out in paragraphs 254 and 255 above.

413 As regards the second complaint, it is apparent from paragraph 347 to 387 above that the Council was likely to rely on a certain number of proceedings mentioned in the letter of 2 January 2016 in continuing to freeze the assets of all those designated, proceedings on which those persons were able to submit observations prior to the adoption of Decision 2016/411. Consequently, the fact that the letter from the Egyptian authorities of 22 February 2016 was communicated to them only after the adoption of Decision 2016/411 did not actually affect their rights of defence. Even if they had been in a position to submit observations in good time in respect of the freezing orders mentioned in that letter, it could not have resulted in a different outcome. That is particularly so in the case of the material which they submitted to this Court in relation to the freezing order concerning the investigations registered as No 1 of 2011 (see paragraph 367 above).

414 As regards the third complaint, even though the Council did not specifically respond in its letter of 21 March 2016 to the applicants' observations in relation to each set of judicial proceedings but replied in general terms, the applicants have not in any event established that their rights of defence and their right to effective judicial protection were infringed as a result. Consequently, the third complaint must also be rejected, as, therefore, must the present plea, in so far as it relates to Decision 2016/411.

415 In their statement of modification, the applicants advanced the same arguments as those examined by the Court in the context of Case T−274/16 in paragraphs 263 to 264 above. For the same reasons as those set out in those paragraphs, those arguments must be rejected.

416 It follows from the foregoing that the fifth plea must be rejected.

6. Sixth plea in law

417 In so far as the present plea is based on arguments that are, in essence, identical to those advanced in support of the sixth plea in Case T−274/16, it must be rejected for the reasons set out in paragraphs 273 to 291 above.

418 Furthermore, as regards the applicants' arguments concerning the alleged failure of the Egyptian authorities to take steps to recover the misappropriated assets, it must be pointed out that, with regard to Case No 8897 of 2013, the applicants do not dispute that the Egyptian authorities took steps to freeze their assets as a precautionary measure in several other States, and, moreover, they provide evidence that those steps were taken. In any event, the failure at that stage to take such steps would not call into question the possibility of the objective as regards the freezing of those assets in the European Union being achieved. It is apparent, in particular, from the considerations set out in paragraph 158 above that if the lawfulness of the freezing of the applicants' assets in the European Union depended on the existence of proceedings for

the recovery of those assets, its effectiveness could be seriously undermined since, in that situation, the applicants could transfer their assets out of the European Union in the period between their conviction in Egypt and commencement of those proceedings.

419 The sixth plea must therefore be rejected and, consequently, the action must be dismissed in its entirety.

IV. Costs

420 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.

421 Since the applicants have been unsuccessful in this case, they must be ordered to pay the costs, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Fifth Chamber),

hereby:

1. Orders that Cases T−274/16 and T−275/16 be joined for the purposes of the judgment;

2. Dismisses the actions;

3. Orders Ms Suzanne Saleh Thabet, Mr Gamal Mohamed Hosni Elsayed Mubarak, Mr Alaa Mohamed Hosni Elsayed Mubarak, Ms Heidy Mahmoud Magdy Hussein Rasekh and Ms Khadiga Mahmoud El Gammal to pay the costs.

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 22 November 2018.

E. Coulon D. Gratsias

Registrar President

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* Language of the case: English.