Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 20 September 2018[1]

Case C-313/17 P

George Haswani
v

Council of the European Union

(Appeal — Article 86 of the Rules of Procedure of the General Court — Admissibility — Procedure for modification of the application — Need to modify pleas in law and arguments — Restrictive measures against Syria — List of persons subject to the freezing of funds and economic resources — Inclusion of the applicant's name)

I. Introduction

1. What discretion is enjoyed by the General Court of the European Union with a view to determining whether an applicant must submit modified pleas in law and arguments where, in the context of a direct action, that applicant has extended its initial claim for annulment to include a measure with the same subject matter which was adopted in the course of proceedings?

2. That is, in essence, the question raised by the present appeal brought by Mr Haswani against the judgment of the General Court of 22 March 2017, *Haswani* v *Council* (T-231/15, not published, EU:T:2017:200) ('the judgment under appeal') in so far as the General Court dismissed as inadmissible his application for annulment of Council Decision (CFSP) 2016/850[2] of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria, and of Council Implementing Decision (EU) No 2016/840[3] of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria ('the measures of 27 May 2016').

3. The introduction of new forms of order sought and pleas in law is, in principle, prohibited. The principles of legal certainty and of the proper administration of justice require that the applications made by applicants before the Courts of the European Union are formulated clearly and precisely.[4] However, specifically in the area of restrictive measures adopted by the European Union, the measure initially contested is frequently replaced in the course of proceedings. Where this occurs, the parties may be allowed to revise their applications by modifying the form of order sought by them and, where appropriate, their pleas in law and arguments.

1 Original language: French.

2 OJ 2016 L 141, p. 125.

3 OJ 2016 L 141, p. 30.

4 The first paragraph of Article 21 of the Statute of the Court of Justice of the European Union provides, inter alia, that the application is to contain 'the forms of order sought and a brief statement of the pleas in law on which the application is based'.

4. This case gives the Court the opportunity to rule on the modus operandi of the General Court where a request to modify the form of order sought is made to it without modification of the pleas in law and arguments. Article 86(4) of the Rules of Procedure of the General Court,[5] the interpretation of which lies at the heart of this dispute, states that the statement of modification is to contain, in addition to the modified form of order sought, in particular, 'where appropriate, the modified pleas in law and arguments'. It is therefore necessary to determine the scope of the words 'where appropriate'.

5. This case brings to light the tension that may exist between, on the one hand, the parallel nature of the formal requirements which connects the rules relating to the modification of the form of order sought and of the pleas in law and arguments to those concerning the lodging of the initial application and, on the other, the requirements of procedural economy which seek to prevent the applicant from being required to bring a new action in respect of each act extending or amending an earlier decision adopted in his regard.

6. In order to answer the question raised in this case, the Court will be called upon to strike a fair balance between those rules and requirements by balancing the different principles at stake.

II. The contested measures, the procedure before the General Court and the judgment under appeal

7. The appellant is a Syrian businessman, an engineer by training and the founder of the company HESCO, a specialist in the oil and gas sector.

8. The appellant has been subject to restrictive measures under the Common Foreign and Security Policy (CFSP). His name was added to the list contained in Annex I to Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria[6] by Implementing Decision (CFSP) 2015/383 of 6 March 2015[7] and to the list contained in Annex II to Council Regulation No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation No 442/2011[8] by Implementing Regulation (EU) No 2015/375[9] ('the measures of 6 March 2015'). In particular, Article 28(1) of Decision 2013/255 provides for the freezing of all funds and economic resources belonging to persons and entities benefiting from or supporting the regime.

9. By the measures of 6 March 2015, the appellant's assets were frozen for the following reasons:

'Prominent Syrian businessman, co-owner of HESCO Engineering and Construction Company, a major engineering and construction company in Syria. He has close ties to the Syrian regime.

George Haswani provides support and benefits from the regime through his role as a middleman in deals for the purchase of oil from ISIL by the Syrian regime.

He also benefits from the regime through favourable treatment including the award of a contract (as a subcontractor) with Stroytransgaz, a major Russian oil company.'

5 Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1). Article 1(7) of the amendments to the Rules of Procedure of 13 July 2016 (OJ 2016 L 217, p. 73), which entered into force on 1 September 2016, changed the numbering of Article 86(3) to (6). Those paragraphs have become paragraphs 4 to 7 of that article. Although the judgment under appeal referred to the new numbering of Article 86, I should point out that the parties' pleadings in the appeal have sometimes wrongly referred to the old numbering, which may cause confusion.

6 OJ 2013 L 147, p. 14.

7 OJ 2015 L 64, p. 41.

8 OJ 2011 L 16, p. 1.

9 OJ 2015 L 64, p. 10.

10. On 5 May 2015, the appellant brought the action before the General Court seeking the annulment of the measures of 6 March 2015.

11. On 28 May 2015, the Council adopted Decision (CFSP) 2015/837 amending Decision 2013/255,[10] which extends the latter decision until 1 June 2016 and amends Annex I to that decision. On the same day, the Council also adopted Implementing Regulation (EU) 2015/828 implementing Regulation No 36/2012,[11] amending Annex II to that regulation ('the measures of 28 May 2015').

12. By a statement lodged at the General Court Registry on 23 June 2015, the appellant modified the application with a view to seeking annulment of the measures of 28 May 2015 too ('the first statement of modification').

13. On 12 October 2015, the Council adopted, first, Decision (CFSP) 2015/1836 amending Decision 2013/255,[12] and, second, Implementing Regulation (EU) No 2015/1828 amending Regulation No 36/2012[13] ('the measures of 12 October 2015'). In particular, Decision 2015/1836 adds a paragraph 2 to Article 28 of Decision 2013/255, pursuant to which the funds and economic resources belonging, inter alia, to 'leading businesspersons operating in Syria' are to be frozen.

14. By letter dated 29 April 2016, the Council notified the appellant of its intention to maintain him on the lists at issue and of the amendment of the reasons relied on in his regard. The appellant, through his lawyer, responded to the Council by letter dated 12 May 2016.

15. By the measures of 27 May 2016, the Council included the appellant's name in the annexes to those measures for the following reasons:

'Leading businessperson operating in Syria, with interests and/or activities in the engineering, construction and oil and gas sectors. He holds interests in and/or has significant influence in a number of companies and entities in Syria, in particular HESCO Engineering and Construction Company, a major engineering and construction company.

George Haswani has close ties to the Syrian regime. He provides support and benefits from the regime through his role as a middleman in deals for the purchase of oil from ISIL by the Syrian regime. He also benefits from the regime through favourable treatment including the award of a contract (as a subcontractor) with Stroytransgaz, a major Russian oil company.'

16. By a statement lodged at the General Court Registry on 7 July 2016, the appellant modified the application at first instance with a view to seeking annulment of the measures of 27 May 2016 too ('the second statement of modification' or 'the second request to modify the application').

17. By letter dated 22 July 2016, the Council submitted its observations on that statement.

18. In the judgment under appeal, the General Court first dismissed as inadmissible the second request to modify the application on the ground that the second statement of modification should have set out the modified pleas in law and arguments in support of the claim for annulment, pursuant to Article 86(4) of the Rules of Procedure of the General Court.

10 OJ 2015 L 132, p. 82.
11 OJ 2015 L 132, p. 3.
12 OJ 2015 L 266, p. 75.
13 OJ 2015 L 266, p. 1.

19. More specifically, the General Court held, in essence, in paragraphs 41 to 47 of the judgment under appeal, that, since the legal framework relating to the restrictive measures and/or the listing criteria had changed, it fell to the applicant to modify his pleas in law and arguments to take account of that change. In addition, in the view of the General Court, that requirement was not satisfied because the request to modify the application at issue sought simply to extend the form of order sought in the application, without providing further explanation or putting forward new matters of fact or of law in the light of the development of the applicable legal framework, in particular the introduction of new listing criteria.

20. The General Court likewise dismissed as unfounded the claim for damages made by the applicant because the existence of loss or harm was not demonstrated.

21. Secondly, the General Court upheld the third plea in law alleging an error of assessment by the Council and annulled the measures of 6 March 2015 and the measures of 28 May 2015. In the view of the General Court, the material presented in the present case by the Council did not constitute a set of indicia sufficiently specific, precise and consistent to establish to the requisite legal standard that the reasons relied on against the applicant are well founded, since the Council failed to adduce evidence capable of demonstrating the existence of a link between the applicant and the Syrian regime.

III. Procedure before the Court and forms of order sought

22. By its appeal, the appellant claims that the Court should:

– set aside the judgment under appeal in so far as it declares the application for annulment of the measures of 27 May 2016 inadmissible, dismisses the claim for damages and orders the applicant to bear two thirds of the costs incurred by the Council as well as the costs related to his own applications;

– rule on the substance of the case, order that the appellant's name be removed from the annexes to the abovementioned acts, and dispose of the case and annul the measures of 12 October 2015;

– order the Council to pay EUR 700 000 in damages to compensate all forms of loss suffered;

– order the Council to pay the costs before the Court of Justice and all the costs before the General Court.

23. The Council contends that the Court should:

– dismiss the appeal as manifestly inadmissible and/or manifestly unfounded;

– order the appellant to pay the costs.

24. Pursuant to Article 172 of the Rules of Procedure of the Court of Justice, the European Commission, an intervener at first instance, has lodged a response in which it endorses the form of order sought by the Council and contends that the Court should dismiss the appeal in its entirety and order the appellant to pay the costs.

IV. Analysis

25. In support of his appeal, which concerns paragraphs 39 to 47 of the judgment under appeal, the applicant puts forwards five grounds of appeal. In essence, three of those grounds concern the first paragraph of the operative part of the judgment under appeal and complain that the General Court infringed Article 86(4) and (5) of its Rules of Procedure in so far as it dismissed his second request to modify the application as inadmissible. The fourth ground seeks the annulment of the measures of 12 October 2015 and the award of the damages sought at first instance, whilst the fifth ground concerns the fourth and fifth paragraphs of the operative part of the judgment under appeal in so far as the General Court ordered the applicant to bear some of its own costs and some of the costs incurred by the Council.

26. I will focus below on examining the first three grounds of appeal, which in my view must be upheld. However, the fourth ground — by which the appellant seeks the annulment of the measures of 12 October 2015 — appears to me to be manifestly inadmissible, since those two measures were not contested at first instance. The fate of the fifth ground will, in turn, depend essentially on whether or not the Court of Justice may dispose of the action brought before the General Court. I should state at the outset that the state of the proceedings do not appear to me to permit final judgment to be given. I am therefore of the view that the case will have to be referred back to the General Court and that the costs will have to be reserved.[14]

A. The first three grounds of appeal, alleging infringement of Article 86(4) and (5) of the Rules of Procedure of the General Court

1. Summary of the arguments of the parties

27. The appellant states that Article 86(4) of the Rules of Procedure of the General Court does not allow the General Court to find the second request to modify the application to be inadmissible. Unlike Article 86(5) of the Rules of Procedure, paragraph 4 of that article by no means states that if the expected contents of a statement of modification are not provided that statement is therefore rendered inadmissible. The appellant submits that the General Court cannot reject the form of order sought by a statement of modification without even examining whether or not the Registrar had requested that the applicant put the statement in order. To reach that conclusion, the appellant extends to Article 86(4) the explicit obligation laid down in paragraph 5 of that article, pursuant to which the Registrar must request that the failure to attach the measure justifying the modification to the statement is rectified before the General Court can declare, where appropriate, the statement of modification to be inadmissible. Furthermore, the appellant submits that the words 'where appropriate', contained in Article 86(4)(b) of the Rules of Procedure of the General Court, mean that the statement of modification has to contain modified pleas in law and arguments only where they are necessary, that it to say only where the contested decisions are substantially different, going beyond mere changes in wording. In the appellant's view, that is not the case here. It claims that the amendment of the reasons for listing included in the measures of 27 May 2016 did not necessitate modification of the pleas in law and arguments set out in the context of the application at first instance, contrary to the finding of the General Court.

14 I must clarify that that proposal applies to the costs related to the procedure concerning the second request to modify the application, which formed the subject matter of paragraph 5 of the operative part of the judgment under appeal. It should be observed that, in its fourth head of claim, the appellant also seeks the annulment of paragraph 4 of the operative part of the judgment under appeal in so far as it leaves the applicant to bear two thirds of its own costs as regards the procedure concerning the measures of 6 March 2015 and of 28 May 2015. However, since those measures were annulled by the General Court, the applicant cannot reserve criticism of the General Court's decision regarding the burden and the amount of the costs related to the part of the procedure concerning the legality of those measures for the appeal stage, since in those circumstances such criticism would be inadmissible pursuant to the second paragraph of Article 58 of the Statute of the Court of Justice of the European Union. I will not return to this point in the remainder of this Opinion.

28. As a preliminary point, the Council, supported by the Commission, claims that the appellant fails to specify to the requisite legal standard those provisions of EU law which it criticises the General Court for infringing, meaning that the first three grounds of appeal are inadmissible. The Commission adds that, by submitting that the reasons for listing have not changed, the appellant seeks to call into question the assessment of the facts relied on by the General Court, which is inadmissible at the appeal stage.

29. With regard to the substance of the case, the Council takes the view that the issue of 'regularisation' referred to in Article 86(5) of the Rules of Procedure of the General Court is not raised, since the second statement of modification was indeed accompanied by the measures justifying the modification of the application and, therefore, there was no need for any regularisation. Furthermore, according to the Council, it follows from Article 86(4) of the Rules of Procedure that the individual concerned has an obligation to submit the modified pleas in law and arguments 'where appropriate'. That obligation must be applied on a case-by-case basis, which requires a substantive assessment — conducted by the General Court — of the need to submit modified pleas in law and arguments. In this regard, the Council takes the view that, since the General Court held that the listing criteria and the reasons for listing applicable to the applicant had been amended by the adoption of the measures referred to in the applicant's second statement of modification, it fell to the applicant to submit pleas in law and arguments modified in line with the changes to the applicable legal framework. Accordingly, it was for the applicant to set out in the second statement of modification arguments capable of initiating substantive debate vis-à-vis the legality of the measures of 27 May 2016 and to allow the Council to prepare its defence.

30. Endorsing the Council's view, the Commission adds that the appellant, in its second statement of modification, failed to act with due diligence by submitting a particularly incomplete statement which in no way satisfied the requirements laid down.

2. Assessment

31. First of all, the pleas that the appeal is inadmissible raised by the Council and the Commission should be quickly dismissed. With regard to the plea raised by the Council, there is not the slightest doubt that, by the first three ground of appeal, the appellant claims that the General Court's failure to have regard to Article 86(4) and (5) of its own Rules of Procedure where the General Court held, in paragraphs 39 to 47 of the judgment under appeal, that the second request to modify the application had to be regarded as inadmissible because it did not contain modified pleas in law and arguments.

32. The objection raised by the Commission, namely that the appellant is simply calling into question the finding of fact made by the General Court that the legal framework and the individual reasons for listing the applicant have been 'changed', is similarly unconvincing. In that connection, it must be noted that the appellant criticises, in essence, the legal consequences drawn by the General Court from the introduction of new listing criteria and from the amendment of the reasons for his listing for the purposes of interpreting Article 86(4) of the Rules of Procedure of the General Court. In other words, it is the appellant's view that the finding that the relevant legal framework and the individual reasons for listing have been amended is not sufficient to dismiss a statement of modification of an application which does not contain modified pleas in law and arguments, in accordance with Article 86(4) of those Rules of Procedure. That question is certainly a question of law, which falls within the jurisdiction of the Court of Justice in an appeal.

33. Having made those preliminary observations, I will now turn to the crux of the dispute referred to the Court.

34. It should be observed that, in accordance with case-law, the forms of order sought by the parties may not, in principle, be altered. [15]

35. The Court has, however, allowed, at the very least, one exception to that principle, namely the ability of the parties to modify the form of order sought by them and their pleas in law where the contested act is, in the course of proceedings, replaced or amended by a new measure with the same subject matter. [16]

36. That exception is justified by the principle of the proper administration of justice and the requirement of procedural economy, which prevent the applicant from having to make a fresh application. Furthermore, it is likewise based on the fact that it would be inequitable if the institution in question were able, in order to counter criticisms of a measure contained in an application to the Courts of the European Union, to amend the contested measure or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending its original pleadings to the later measure or of submitting supplementary pleadings directed against that measure. [17]

37. As the Court has already held, Article 86 of the Rules of Procedure of the General Court is the codification of the case-law cited above on that exception to the principle that the forms of order sought by the parties are unalterable. [18]

38. Article 86 of the Rules of Procedure of the General Court in fact states 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 General Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

39. Paragraph 4 of that article clarifies that the statement of modification is to contain not only the modified form of order sought, but also, '*where appropriate*, the modified pleas in law and arguments'. [19]

40. Furthermore, under Article 86(5) of the Rules of Procedure of the General Court, the statement of modification must be accompanied by the measure justifying the modification of the application. If that measure is not produced, the Registrar is to prescribe a reasonable time limit within which the applicant is to produce it. If the applicant fails to produce the measure within the time limit prescribed, the General Court is to decide whether the non-compliance with that requirement renders the statement modifying the application inadmissible.

41. Lastly, paragraph 6 of that same article provides that, *without prejudice to the decision to be taken by the General Court on the admissibility of the statement modifying the application*, the President is to prescribe a time limit within which the defendant may respond to the statement of modification.

42. *In its first and second grounds of appeal*, the applicant submits, with reference to Article 86(5) of the Rules of Procedure of the General Court, that the General Court could not declare the second request to modify the application inadmissible because the failure to submit modified pleas in law and arguments is not explicitly sanctioned by inadmissibility. In the alternative, the applicant submits that,

15 See judgment of 9 November 2017, *HX* v *Council* (C-423/16 P, EU:C:2017:848, paragraph 18 and the case-law cited).

16 See, to that effect, judgment of 10 April 2003, *Hendrickx* v *Cedefop* (C-217/01 P, EU:C:2003:226, paragraph 29 and the case-law cited).

17 See, to that effect, judgments of 3 May 1982, *Alpha Steel* v *Commission* (14/81, EU:C:1982:76, paragraph 8), and of 14 July 1988, *Stahlwerke Peine-Salzgitter* v *Commission* (103/85, EU:C:1988:398, paragraphs 11 and 12). See also judgment of 25 January 2017, *Almaz-Antev Air and Space Defence* v *Council* (T-255/15, not published, EU:T:2017:25, paragraph 36 and the case-law cited).

18 See, to that effect, judgment of 9 November 2017, *HX* v *Council* (C-423/16 P, EU:C:2017:848, paragraph 18).

19 My emphasis.

assuming that the General Court may declare the second request to modify the application inadmissible on account of the lack of modified pleas in law and arguments, the General Court should, in any event, have invited the applicant beforehand to put that request in order, pursuant to Article 86(5) of the Rules of Procedure of the General Court.

43. I find that argument unconvincing.

44. Firstly, as for the main line argument advanced, it is my view that the applicant's reading of Article 86 of the Rules of Procedure of the General Court is incomplete. Paragraph 6 of that article grants the General Court the ability to declare the statement of modification of the application inadmissible, even if that statement has been notified to the defendant, for any reason other than that laid down in Article 86(5) of the Rules of Procedure of the General Court, namely failing to produce the measure justifying the modification of the application. In other words, by stating that the General Court invites the defendant to respond to the statement of modification 'without prejudice to the decision to be taken by the General Court on the admissibility of the statement modifying the application', Article 86(6) of the Rules of Procedure of the General Court necessarily covers all situations other than that specifically governed by paragraph 5 of that article.

45. As the appellant claims, limiting the power of the General Court to declare the statement of modification of the application inadmissible solely to the situation referred to in Article 86(5) of its Rules of Procedure would mean, for example, that the General Court would be prohibited from declaring such a statement inadmissible where it has not been lodged within the time limit laid down in the sixth paragraph of Article 263 TFEU, to which reference is made in Article 86(2) of the Rules of Procedure.

46. I cannot believe that that was the Council's intention in adopting the Rules of Procedure of the General Court.[20]

47. Article 86(6) of the Rules of Procedure of the General Court must therefore be read, in my view, as authorising the General Court to rule on the admissibility of the statement modifying the application in respect of any failure to comply with the requirements laid down in that article.

48. Secondly, with regard to the line of argument advanced by the appellant in the alternative, and contrary to the appellant's claim, I do not consider it to be possible to rely on Article 86(5) of the Rules of Procedure of the General Court with a view to requiring the General Court to ask the applicant to put its statement in order or to rectify it before declaring a statement of modification of an application inadmissible.

49. It is true that such a request by the General Court is not limited to the situation where there is a failure to produce the measure justifying the modification of the application, explicitly provided for in Article 86(5) of the Rules of Procedure of the General Court.

50. In the judgment of 9 November 2017, *HX* v *Council* (C-423/16 P, EU:C:2017:848, paragraphs 22 to 27), the Court of Justice set aside a judgment of the General Court in which the latter had declared a request to modify the application inadmissible on the ground that that request had not been made by a separate document pursuant to Article 86(2) of the Rules of Procedure of the General Court. The Court of Justice thus found that, if the General Court considered that the request to modify the application, submitted orally at the hearing before it, did not comply with the form required by its Rules of Procedure, it fell to the General Court, 'at the very least, to inform the appellant of his error and to place him in a position of being able to rectify it'.

20 Moreover, even if that had been the Council's intention, since the provisions governing the time limits for bringing legal actions are a matter of public policy and are not subject to the discretion of the parties, the Rules of Procedure of the General Court could thus be regarded as being incompatible with the sixth paragraph of Article 263 TFEU.

51. Although it did not rule out the possibility of the General Court sanctioning the failure to comply with such a formal requirement laid down in its Rules of Procedure by declaring the statement of modification of the application inadmissible, the Court of Justice did, however, make that power subject to the obligation on the General Court to invite the applicant, beforehand, to regularise or rectify his request.

52. Nevertheless, a valid finding vis-à-vis an extension to formal requirements other than that laid down in Article 86(5) of the Rules of Procedure of the General Court cannot, in my view, be transposed to the content of the statement of modification.

53. Just as the General Court cannot invite an applicant to extend the scope of its form of order sought to encompass a new measure, where that applicant has failed to modify that form of order [21] and therefore failed to contest that measure, nor can it ask such an applicant to modify the form of order sought by it or its arguments, even though that applicant — whether deliberately or not — has failed to modify them.

54. That approach stems from the function of the Courts of the European Union under the system governing judicial review proceedings. I would point out that that system is characterised by the principle that the subject matter of an action is delimited by the parties, in accordance with which it is the parties that take the initiative in pursuing and delimiting the subject matter of the case and, in consequence, the court may go no further than that subject matter. [22]

55. The principle that the subject matter of an action is delimited by the parties is specifically embodied in the various rules governing the procedure before the Courts of the European Union, particularly Article 21 of the Statute of the Court of Justice of the European Union, Article 120(c) of the Rules of Procedure of the Court of Justice and Article 76(d) of the Rules of Procedure of the General Court, under which cases are to be brought before the Courts of the European Union by a written application which must state, inter alia, the subject matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based. [23]

56. It is clear, in my view, that that same principle is likewise embodied in Article 86(4) of the Rules of Procedure of the General Court, which lists the elements which the statement of modification is to contain, as Article 76 of the Rules of Procedure does in relation to the lodging of the application. This means that the General Court cannot — without disregarding the principles of the autonomy of the parties and of institutional balance — invite an applicant to put its statement of modification of the

21 In this regard, I do not agree with the *obiter dictum* set out in paragraph 42 of the judgment of 31 May 2017, *DEI* v *Commission* (C-228/16 P, EU:C:2017:409) in which the Court, referring to Article 86 of the Rules of Procedure of General Court, stated that it was 'permissible' for the General Court to ask the applicant in that case if, following a confirmatory decision, 'it intended to amend its pleadings [seeking annulment of]' an earlier decision and direct them against the confirmatory decision too. First, as is clear from the judgment of the Court of Justice, in the specific context of that case, two separate actions had been brought before the General Court: one against the first decision (Case T-639/14, the subject matter of the appeal in Case C-228/16 P) and the other against the confirmatory decision (Case T-352/15). In addition, once two separate actions have been brought before the General Court against measures with the same subject matter, the issue is no longer the application of Article 86 of its Rules of Procedure but rather one of the possible joining of the two actions. Second, the General Court cannot examine claims for annulment of its own motion. In other words, the General Court learns of the existence of a measure modifying or replacing an earlier measure, which has the same subject matter, only if claims for annulment in the context of a separate action, pursuant to Article 76 of its Rules of Procedure, or claims modifying the form of order sought, pursuant to Article 86 of the Rules of Procedure, have been brought before it beforehand. Accordingly, in the first scenario, as I have stated above, the dispute falls outside the scope of Article 86 of the Rules of Procedure of the General Court, and there is no need to invite the applicant to modify the form of order sought. Similarly, in the second scenario, there is no need whatsoever to invite the applicant to modify the form of order sought, since the request to modify the application has already been submitted.

22 See point 84 of my Opinion in *British Airways* v *Commission* (C-122/16 P, EU:C:2017:406), to which the Court refers in paragraph 87 of the judgment of 14 November 2017, *British Airways* v *Commission* (C-122/16 P, EU:C:2017:861).

23 See my Opinion in *British Airways* v *Commission* (C-122/16 P, EU:C:2017:406, footnote 39) and, to that effect, the judgment of 14 November 2017, *British Airways* v *Commission* (C-122/16 P, EU:C:2017:861, paragraph 86).

application in order to ensure that the applicant modifies its pleas in law and arguments, even though that applicant initially took the view that that was not necessary. The question whether and to what extent an applicant asserts his rights before the courts ultimately depends to a very great extent on that applicant's intent, and it is not for the Courts of the European Union to take his place.

57. Accordingly, the jurisdiction of the General Court to declare inadmissible a statement of modification of the application, which does not contain modified pleas in law and arguments, is not subject to a prior invitation to the applicant to put that statement in order.

58. However, that jurisdiction does not mean that the General Court may immediately reject any statement of modification of the application which does not contain modified pleas in law and arguments.

59. Pursuant to Article 86(4)(b) of the Rules of Procedure of the General Court, that jurisdiction is subject to verification by the General Court whether it was indeed appropriate for such modified pleas in law and arguments to be set out.

60. As has been submitted both by the applicant *in its third ground of appeal* and by the Council, the question whether such action is 'appropriate', within the meaning of Article 86(4)(b) of the Rules of Procedure of the General Court, involves examining, in each individual case, the need for the applicant to make that modification.[24]

61. That criterion of 'need' is interpreted in the light of the purposes of Article 86 of the Rules of Procedure of the General Court. It would be contrary to the principles of the proper administration of justice and of procedural economy to require an applicant, *who has modified the form of order sought by it*, to repeat in its statement of modification of the application pleas in law and arguments identical to those advanced against the measure contested initially.

62. With that in mind, modified pleas in law and arguments must be submitted where, although the subject matter is the same,[25] the measure justifying the modification of the application contains substantive differences from the measure initially contested and not purely formal differences.[26] If the later measure contains purely formal differences from the measure initially contested, the implicit extension of the pleas in law and arguments put forward against that measure — which stems from the explicit modification of the form of order sought — is sufficient.

63. However, in the present case, first, despite it being undisputed that all the measures at issue have the same subject matter, it is clear from the judgment under appeal that the General Court simply stated or found that the *reasons for listing* the applicant had been amended, without explaining how, on the one hand, the measures of 6 March 2015 (the measures initially contested) and those of 28 May 2015 (the measures which formed the subject matter of the first request to modify the application) and, on the other, the measures of 27 May 2016 (which formed the subject matter of the second request to modify the application) were substantively different, thus necessitating the submission of modified pleas in law and arguments.

24 See also, to that effect, Opinion of Advocate General Kokott in *HX* v *Council* (C-423/16 P, EU:C:2017:493, point 34).

25 Naturally, if the subject matter of the later measure is not the same as that of the measure initially contested, a new application initiating proceedings will have to be lodged in accordance with the conditions laid down in Article 76(d) of the Rules of Procedure of the General Court.

26 See, to that effect, the line of argument developed by the General Court in paragraphs 61 to 73 of the judgment of 28 January 2016, *Klyuyev* v *Council* (T-341/14, EU:T:2016:47).

64. In paragraph 42 of the same judgment, the General Court 'stated' that 'the reasons for listing the applicant and maintaining his name on the lists at issue have changed', before simply citing, in the remainder of that paragraph and in paragraph 43 of the judgment under appeal, the two versions of the individual reasons relied on against the applicant which justified his listing.

65. In addition, the General Court did not identify any substantive difference between the individual reasons relied on against the applicant contained, on the one hand, in the measures of 6 March and of 28 May 2015 and, on the other, in those of 27 May 2016. Moreover, it is clear just from reading those citations, reproduced in points 9 and 15 of this Opinion, that no substantive difference can be held to exist between those reasons.

66. Identifying such a substantive difference in the individual reasons for listing the appellant was all the more important, in my view, since the General Court found that the Council had failed to substantiate the appellant's role as a middleman in deals for the purchase of oil or the existence of a link between the appellant and the Syrian regime, and had failed to provide sufficient details regarding the award of a contract with the company Stroytransgaz, reasons which it is established are identical both in the measures of 6 March and 28 May 2015 which the General Court annulled and in those of 27 May 2016 which justified the second request to modify the application.

67. Secondly, if I understand the line of argument advanced by the General Court correctly, it appears that a mere modification of the *legal framework*, following the lodging of the application, may be sufficient to require that the applicant must modify his pleas in law and arguments.

68. In paragraph 41 of the judgment under appeal, the General Court first of all 'found that the legal framework relating to the restrictive measures was amended' by the measures of 12 October 2015. Next, in paragraph 44 of the judgment under appeal, the General Court reiterated and observed that 'the reasons initially relied on … were amended and replaced by the reasons set out in the annexes' to the measures of 27 May 2016, stating that those measures 'take account — inter alia — of the listing criteria added' by the measures of 12 October 2015, 'in particular that … pursuant to which all funds and economic resources belonging to leading businesspersons operating in Syria are to be frozen …'. It concludes from the foregoing, in paragraph 45 of the judgment under appeal, that 'since [the measures of 12 October 2015] were adopted … after the application was lodged, the applicant could not take account in that application of the listing criteria introduced by those measures in order to contest the reasons relied on in relation to him in [the measures of 27 May 2016]. Accordingly, in order to satisfy the requirements laid down in Article 86(4) of the Rules of Procedure, it fell to the applicant to modify his pleas in law and arguments in order to take account of those listing criteria'.

69. However, at no point in the judgment under appeal does the General Court either explain a fortiori or demonstrate that the amendment of the listing criteria gave rise to a substantive difference in the reasons for listing the appellant and maintaining his name on the lists.

70. In particular, the General Court provides no explanation whatsoever of the relationship between Article 28(1) of Decision 2013/255, which states that all funds and economic resources belonging to 'persons … benefiting from or supporting the regime' are to be frozen, and Article 28(2) of that decision, inserted by Decision 2015/1836 of 12 October 2015, which clarifies that all funds and economic resources belonging to 'leading businesspersons operating in Syria' are to be frozen.

71. Such an explanation would have been, in my view, particularly necessary in view of the fact, first, that the General Court annulled the measures of 6 March 2015 and of 28 May 2015 on the ground that the Council had not furnished any evidence capable of supporting or corroborating the existence of a link between the applicant and the Syrian regime, that is to say — ultimately — on the ground of

infringement of Article 28(1) of Decision 2013/255, and, second, that the 'leading' nature of the businesspersons referred to in Article 28(2) of that decision could constitute only a mere clarification of the link required between the individual concerned and the Syrian regime, to which reference is made in paragraph 1 of that article.

72. The fact that the listing criteria were amended after the application was lodged was therefore not sufficient grounds for the appellant to have to modify his pleas in law and arguments. A finding to the contrary, such as that made by the General Court, would mean that any statement of modification — which, by definition, is submitted following the adoption of a measure after the lodging of the application — would have to contain modified pleas in law and arguments, which would clearly be contrary to the wording ('where appropriate') and the purposes of Article 86(4) of the Rules of Procedure of the General Court.

73. I am therefore of the view that the General Court gave insufficient grounds for the requirement, set out in paragraph 46 of the judgment under appeal, that the applicant had to provide, with regard to the pleas seeking annulment of the action, explanations and new matters of fact and of law 'in the light of the development of the applicable legal framework, in particular the introduction of new listing criteria and the amendment of the reasons relied on in relation to him'.

74. In those circumstances, I propose that paragraph 1 of the operative part of the judgment under appeal be annulled in so far as it dismisses as inadmissible the second request to modify the application made by the appellant at first instance.

B. The fourth ground of appeal

75. In the context of its fourth ground of appeal, the appellant claims, first, that the measures of 12 October 2015, pursuant to which the funds and economic resources belonging to 'leading businesspeople operating in Syria' are to be frozen, should be declared illegal on the ground that such a broad and vague classification, which includes such a large number of people, is manifestly inconsistent with Chapter VI of the Charter of Fundamental Rights of the European Union. Second, he claims that he should be awarded EUR 700 000 in damages to compensate all forms of loss suffered.

76. Those claims are, in my view, clearly inadmissible.

77. As for the first claim, it must be observed that, in accordance with Article 170(1) of the Rules of Procedure of the Court of Justice, the subject matter of the proceedings before the General Court may not be changed in the appeal.

78. Thus, according to settled case-law, the jurisdiction of the Court of Justice in an appeal is limited to a review of the findings of law on the pleas argued before the General Court. Consequently, a party cannot put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court since that would allow that party to bring before the Court of Justice, whose jurisdiction in appeal proceedings is limited, a wider case than that heard by the General Court. [27]

79. It must be observed, as the Council rightly pointed out, that the annulment of the measures of 12 October 2015 sought was not requested at first instance. Accordingly, this complaint in the fourth ground of appeal is inadmissible.

27 Judgment of 13 July 2017, *Saint-Gobain Glass Deutschland* v *Commission* (C-60/15 P, EU:C:2017:540, paragraph 50 and the case-law cited).

80. The claim for damages should share the same fate. The appellant has in no way contested the reasons why the General Court, in paragraph 89 of the judgment under appeal, dismissed its claim for compensation of the losses allegedly suffered, a claim made at first instance. In addition, the appellant has not advanced any arguments in support of its head of claim that the Court should award it the damages sought.

C. The action before the General Court

81. As I have stated in points 73 and 74 of this Opinion, I ask the Court of Justice to annul paragraph 1 of the operative part of the judgment under appeal in so far as the General Court failed to provide sufficient reasons why it found the second request to modify the application inadmissible.

82. Under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may itself give final judgment in the matter where the state of the proceedings so permits.

83. That is not, in my view, the case here. The General Court dismissed the second statement of modification of the application as inadmissible without having heard the parties' arguments on the substantive nature of the differences existing between, on the one hand, the measures of 6 March 2015 (the measures initially contested) and of 28 May 2015 (the measures which formed the subject matter of the first request to modify the application) and, on the other, the measures of 27 May 2016 (the measures which formed the subject matter of the second request to modify the application), in the light of the measures of 12 October 2015 (which amended the listing criteria). It will therefore be for the General Court to hear the parties' arguments on that issue and to draw all the legal consequences from them. The case must therefore be referred back to the General Court.

V. Conclusion

84. In the light of the foregoing considerations, I propose that the Court should:

(1) annul paragraph 1 of the operative part of the judgment of the General Court of the European Union of 22 March 2017, *Haswani* v *Council* (T-231/15, not published, EU:T:2017:200);

(2) refer the case back to the General Court of the European Union in so far as it concerns the admissibility and, where appropriate, the substance of the second request to modify the application made at first instance by the appellant;

(3) reserve the costs.