Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

23 November 2021 *

(Appeal – Common foreign and security policy – Fight against terrorism – Restrictive measures against certain persons and entities – Freezing of funds – Common Position 2001/931/CFSP – Regulation (EC) No 2580/2001 – Continued inclusion of an organisation on the list of persons, groups and entities involved in terrorist acts – Statement of individual reasons notified to the organisation set out in a separate document from that containing a general statement of reasons – Authentication of the statement of individual reasons – Article 297(2) TFEU)

In Case C-833/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 November 2019,

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

appellant,

the other party to the proceedings being:

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

applicant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Prechal, E. Regan, S. Rodin and I. Jarukaitis, Presidents of Chambers, T. von Danwitz (Rapporteur), M. Safjan, F. Biltgen, P.G. Xuereb, N. Piçarra and L.S. Rossi, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 3 June 2021,

* Language of the case: French.

gives the following

Judgment

1 By its appeal, the Council of the European Union asks the Court of Justice to set aside the judgment of the General Court of the European Union of 4 September 2019, *Hamas* v *Council* (T-308/18, EU:T:2019:557, 'the judgment under appeal'), by which the General Court annulled:

– Council Decision (CFSP) 2018/475 of 21 March 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2017/1426 (OJ 2018 L 79, p. 26);

– Council Implementing Regulation (EU) 2018/468 of 21 March 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2017/1420 (OJ 2018 L 79, p. 7);

– Council Decision (CFSP) 2018/1084 of 30 July 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/475 (OJ 2018 L 194, p. 144); and

– Council Implementing Regulation (EU) 2018/1071 of 30 July 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2018/468 (OJ 2018 L 194, p. 23);

(together, 'the acts at issue'), in so far as those acts concern Hamas, including Hamas-Izz al-Din al-Qassem.

Legal context

United Nations Security Council Resolution 1373 (2001)

2 On 28 September 2001, the United Nations Security Council adopted Resolution 1373 (2001) setting out wide-ranging strategies to combat terrorism and, in particular, the funding of terrorism. Paragraph 1(c) of that resolution provides, in particular, that all States are to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled by them, and of persons and entities acting on behalf of, or at the direction of such persons and entities.

3 The resolution does not provide for a list of persons to whom those restrictive measures are to be applied.

EU law

Common Position 2001/931/CFSP

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

5 Article 1 of that common position provides, in paragraphs 1, 4 and 6:

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

…

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

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

…

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

6 The name ‘Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)’ appeared on the ‘first list of persons, groups and entities referred to in Article 1’ of Common Position 2001/931, annexed thereto.

Regulation (EC) No 2580/2001

7 In order to implement, at Community level, the measures described in Common Position 2001/931, the Council adopted Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70). In particular, Article 2(3) of that regulation provides that the Council, acting by unanimity, is to establish, review and amend the list of persons, groups and entities to which that regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931.

8 On the same day, the Council adopted Decision 2001/927/EC establishing the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2001 L 344, p. 83), on which the name ‘Hamas-Izz al-Din al-Qassem’ appeared, just as it did on the list annexed to Common Position 2001/931.

9 The lists of persons, groups and entities annexed to Common Position 2001/931 and Decision 2001/927 were regularly updated in application of Article 1(6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001. The name 'Hamas-Izz al-Din al-Qassem', and subsequently 'Hamas (including Hamas-Izz al-Din al-Qassem)' ('Hamas'), remained on the lists annexed to subsequent acts.

The Council's Rules of Procedure

10 The preamble to Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ 2009 L 325, p. 35) states:

'(1) The Treaty of Lisbon brings several modifications to the functioning of the Council and of its Presidency, to the Council structure, as well as to the different types of Union legal acts and to the process for adopting acts, notably by distinguishing between legislative and non-legislative acts.

(2) It is therefore necessary to replace the Rules of Procedure adopted on 15 September 2006 by Rules of Procedures which comprise the modifications necessary for the implementation of the Treaty of Lisbon'.

11 Under the heading 'Ordinary written procedure and silence procedure', Article 12 of the Council's Rules of Procedure, annexed to that decision, provides in paragraphs 1 and 3:

'1. Acts of the Council on an urgent matter may be adopted by a written vote where the Council or [the Committee of Permanent Representatives (Coreper)] unanimously decides to use that procedure. In special circumstances, the President may also propose the use of that procedure; in such a case, written votes may be used where all members of the Council agree to that procedure.

…

3. The General Secretariat shall establish that the written procedures have been completed.'

12 Article 15 of the Council's Rules of Procedure, headed 'Signing of acts', provides:

'The text of the acts adopted by the Council and that of the acts adopted by the European Parliament and the Council in accordance with the ordinary legislative procedure shall be signed by the President in office at the time of their adoption and by the Secretary-General. The Secretary-General may delegate his or her power to sign to Directors-General of the General Secretariat.'

The acts at issue

Decision 2018/475 and Implementing Regulation 2018/468

13 On 21 March 2018, the Council adopted Decision 2018/475 and Implementing Regulation 2018/468. Hamas' name was maintained on the lists annexed to those acts.

14 Recitals 2 to 6 of Decision 2018/475 were worded as follows:

'(2) On 4 August 2017, the Council adopted Decision (CFSP) 2017/1426 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position [2001/931] ("the list").

(3) In accordance with Article 1(6) of Common Position [2001/931], it is necessary to review the names of persons, groups and entities on the list at regular intervals to ensure that there are grounds for keeping them thereon.

(4) This Decision sets out the result of the review that the Council has carried out in respect of persons, groups and entities to which Articles 2, 3 and 4 of Common Position [2001/931] apply.

(5) The Council has verified that competent authorities as referred to in Article 1(4) of Common Position [2001/931] have taken decisions with regard to all persons, groups and entities on the list to the effect that they have been involved in terrorist acts within the meaning of Article 1(2) and (3) of Common Position [2001/931]. The Council has also concluded that the persons, groups and entities to which Articles 2, 3 and 4 of Common Position [2001/931] apply should continue to be subject to the specific restrictive measures provided for therein.

(6) The list should be updated accordingly and Decision (CFSP) 2017/1426 should be repealed'.

15 As regards Implementing Regulation 2018/468, recitals 1 to 6 stated as follows:

'(1) On 4 August 2017, the Council adopted Implementing Regulation (EU) 2017/1420 implementing Article 2(3) of Regulation [No 2580/2001], establishing an updated list of persons, groups and entities to which Regulation [No 2580/2001] applies ("the list").

(2) The Council has provided all the persons, groups and entities with statements of reasons explaining why they were entered into the list, where practically possible.

(3) By way of a notice published in the *Official Journal of the European Union*, the Council informed the persons, groups and entities on the list that it had decided to keep them thereon. The Council also informed the persons, groups and entities concerned that it was possible to request a statement of the Council's reasons for entering them into the list where such a statement had not already been communicated to them.

(4) The Council has reviewed the list as required by Article 2(3) of Regulation [No 2580/2001]. When carrying out that review, the Council took into account the observations submitted to it by those concerned as well as the updated information received from the competent national authorities on the status of listed individuals and entities at the national level.

(5) The Council has verified that competent authorities as referred to in Article 1(4) of Common Position [2001/931] have taken decisions with regards to all persons, groups and entities to the effect that they have been involved in terrorist acts within the meaning of Article 1(2) and (3) of Common Position [2001/931]. The Council has also concluded that the persons,

groups and entities to which Articles 2, 3 and 4 of Common Position [2001/931] apply should continue to be subject to the specific restrictive measures provided for in Regulation [No 2580/2001].

(6) The list should be updated accordingly and Implementing Regulation (EU) 2017/1420 should be repealed'.

16 Decision 2018/475, Implementing Regulation 2018/468 and the statement of reasons relating to those acts were adopted by the Council by a written procedure, as provided for in Article 12(1) of the Council's Rules of Procedure.

17 By letter of 22 March 2018, the Council sent Hamas' lawyer the statement of reasons that justified retaining Hamas on the lists annexed to Decision 2018/475 and Implementing Regulation 2018/468.

18 It is apparent from that statement of reasons that, in order to keep Hamas on those lists, the Council relied, first, on a decision of the United Kingdom Secretary of State for the Home Department of 29 March 2001 ('the United Kingdom Home Secretary's 2001 decision') and, secondly, on three decisions adopted by the authorities of the United States of America on 23 January 1995, 8 October 1997 and 31 October 2001 ('the US authorities' decisions'). In the main part of the statement of reasons, the Council stated, after having examined the information in those national decisions separately, that each of them provided sufficient grounds to justify including Hamas on those lists. In that regard, it explained that those national decisions constituted decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/931 and that they were still in force. Next, it emphasised that the reasons for including Hamas on those lists remained valid and that its name should therefore be kept on them.

19 The statement of reasons includes, moreover, an Annex A concerning the United Kingdom Home Secretary's 2001 decision and an Annex B concerning the US authorities' decisions. Each of those annexes contains a description of the national legislation under which the decisions of the national authorities were adopted, a presentation of the definitions of the concepts of 'terrorism' that appear in that legislation, a description of the procedures for reconsideration of those decisions, a description of the facts on which those authorities relied and the finding that those facts constituted terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

Decision 2018/1084 and Implementing Regulation 2018/1071

20 On 30 July 2018, the Council adopted Decision 2018/1084 and Implementing Regulation 2018/1071. Hamas was maintained on the lists annexed to those acts.

21 The reasons given in recitals 2 to 6 of Decision 2018/1084 and recitals 1 to 6 of Implementing Regulation 2018/1071 correspond, in essence, to those given, respectively, in recitals 2 to 6 of Decision 2018/475 and recitals 1 to 6 of Implementing Regulation 2018/468, set out in paragraphs 14 and 15 of the present judgment. Similarly, Decision 2018/1084 and Implementing Regulation 2018/1071 and the statement of reasons relating to those acts were adopted by the Council by a written procedure, as provided for in Article 12(1) of its Rules of Procedure.

22 By letter of 31 July 2018, the Council sent Hamas' lawyer the statement of reasons that justified retaining that organisation on the lists annexed to Decision 2018/1084 and Implementing Regulation 2018/1071. That statement of reasons was largely identical to the statement sent to Hamas to justify its retention on the lists annexed to Decision 2018/475 and Implementing Regulation 2018/468, referred to in paragraphs 17 to 19 of the present judgment.

The action before the General Court and the judgment under appeal

23 By application lodged at the General Court Registry on 17 May 2018, Hamas brought an action for annulment of Decision 2018/475 and Implementing Regulation 2018/468. Those acts having been repealed and replaced, respectively, by Decision 2018/1084 and Implementing Regulation 2018/1071, Hamas modified the form of order initially sought, so as to ensure that its action also covers the annulment of the latter acts, in so far as they concern it.

24 In support of its claim for annulment of the acts at issue, Hamas put forward seven pleas in law, alleging (i) infringement of Article 1(4) of Common Position 2001/931; (ii) errors as to the accuracy of the facts; (iii) an error of assessment as to the terrorist nature of the organisation; (iv) breach of the principle of non-interference; (v) failure to take sufficient account of the development of the situation owing to the passage of time; (vi) breach of the obligation to state reasons; and (vii) breach of the principle of respect for the rights of the defence and of the right to effective judicial protection. In answer to a question put by the General Court in the context of a measure of organisation of procedure, Hamas raised an eighth plea, alleging failure to authenticate the statements of reasons.

25 The General Court, first of all, examined the first seven pleas in paragraphs 42 to 261 of the judgment under appeal. In paragraph 76 of the judgment under appeal, it held that, in the present case, the statement of reasons relating to the US authorities' decisions was insufficient, and that therefore those decisions could not serve as a basis for the acts at issue. The General Court inferred from this, in paragraph 77 of that judgment, that it was appropriate for it to proceed in its examination of the action by limiting that examination to the acts at issue in so far as they were based on the United Kingdom Home Secretary's 2001 decision. At the end of that examination, the General Court rejected the first seven pleas as being unfounded.

26 The General Court then examined the eighth plea, which it considered, in paragraph 269 of the judgment under appeal, to be an issue of public policy. After referring, in paragraphs 270 and 271 of the judgment under appeal, to the first subparagraph of Article 297(2) TFEU and Article 15 of the Council's Rules of Procedure, the General Court found, in paragraphs 272 to 277 of that judgment, that the rules set out with regard to acts of the Commission in the judgment of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247 ('the judgment in *Commission* v *BASF*'), according to which the authentication of acts of an institution by means of their signing is intended to guarantee legal certainty and is an essential procedural requirement, had to be transposed to acts of the Council. The General Court also noted, in paragraphs 278 to 280 of the judgment under appeal, that, on the one hand, the statements of reasons relating to the acts at issue that were communicated to Hamas did not contain a signature and, on the other hand, those acts, signed by the President and the Secretary-General of the Council, did not contain the statements of reasons that justified their adoption.

27 In paragraphs 281 and 282 of the judgment under appeal, the General Court considered that, pursuant to Article 296 TFEU and in the light of the principles laid down in the judgment in *Commission* v *BASF*, acts adopted by the Council must state the reasons on which they are based and that the operative part and the statement of reasons constitute an indivisible whole, so that the act and the statement of reasons must be authenticated where, as in the present case, they are in separate documents, and the presence of a signature on one of them cannot give rise to a presumption that the other has also been authenticated.

28 Lastly, the General Court rejected the arguments put forward by the Council, stating, in paragraphs 297 and 299 of the judgment under appeal, that the essential procedural requirement that that signature constitutes cannot be replaced by the description of the procedure followed within the Council for the purpose of adopting the acts in question and that it is the mere failure to authenticate an act which constitutes the infringement of an essential procedural requirement.

29 Consequently, in paragraph 305 of the judgment under appeal, the General Court upheld the eighth plea and annulled the acts at issue in so far as they concern Hamas. In addition, the General Court ordered the Council to bear its own costs and to pay those incurred by Hamas.

Forms of order sought

30 The Council claims that the Court should:

– set aside the judgment under appeal;

– give final judgment in the matters that are the subject of the appeal; and

– order Hamas to pay the costs incurred by the Council at first instance and in the appeal.

31 Hamas contends that the Court should:

– dismiss the appeal; and

– order the Council to pay the costs incurred by Hamas at first instance and in the appeal.

The appeal

32 The Council raises two grounds in support of its appeal. By its first ground of appeal, it submits that the General Court made an error of law in its assessment of the eighth plea in the action, alleging a failure to authenticate the statements of reasons for the acts at issue. By its second ground of appeal, the Council claims that the General Court wrongly concluded that the US authorities' decisions did not constitute a sufficient basis for entering Hamas on the lists annexed to the acts at issue ('the lists at issue').

The second ground of appeal

Arguments of the parties

33 By the second ground of appeal, which it is appropriate to examine first, the Council claims that the General Court's reasoning, by which it concluded, in paragraphs 65 to 76 of the judgment under appeal, that the US authorities' decisions could not serve as a basis for the acts at issue, is wrong.

34 The Council states in that regard that those decisions were published and that the statements of reasons for the acts at issue explain sufficiently the procedures under which they were adopted, the review processes and the legal remedies available to Hamas under United States law. It submits that the Court's case-law does not require the national decisions serving as the basis for an entry on the list in question to have been taken in a specific legal form or to have been published or notified. Lastly, a certain number of incidents on which those authorities relied are mentioned in the statements of reasons for the acts at issue.

35 Hamas contends that the second ground of appeal is inadmissible, arguing, in particular on the basis of the order of 8 April 2008, *Saint-Gobain Glass Deutschland* v *Commission* (C-503/07 P, EU:C:2008:207, paragraph 48), that to have an interest in bringing proceedings presupposes that the appeal is capable, if successful, of procuring an advantage to the party bringing it. In the present case, it is true that the General Court found that the Council had not provided sufficient reasons for using the US authorities' decisions as a basis for the acts at issue. However, the General Court proceeded with its examination in so far as those acts were based on the United Kingdom Home Secretary's 2001 decision and ruled that the Council had not infringed the provisions of Common Position 2001/931; therefore the Council could not derive any benefit from challenging the judgment under appeal in that respect. Moreover, that ground of appeal is unfounded.

Findings of the Court

36 Under Article 169(1) of the Rules of Procedure of the Court of Justice, an appeal is to seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision.

37 That provision lays down the basic principle applying to appeals, namely that an appeal must be directed against the operative part of the General Court's decision and may not merely seek the amendment of some of the grounds of that decision (see, to that effect, judgment of 14 November 2017, *British Airways* v *Commission*, C-122/16 P, EU:C:2017:861, paragraph 51 and the case-law cited).

38 In the present case it must be noted, however, as the Advocate General observed in point 81 of his Opinion, that, by the second ground of its appeal, the Council – having been successful in relation to the first seven pleas raised by Hamas before the General Court – seeks not to have the operative part of the judgment under appeal set aside, even in part, but merely the amendment of some of the grounds of that judgment concerning the first seven pleas.

39 As is apparent from paragraph 77 of the judgment under appeal, which is not criticised by the Council in its appeal, Article 1(4) of Common Position 2001/931, according to which a decision must have been taken by a competent authority in respect of the persons, groups and entities

concerned, does not require Council measures to be based on several decisions of competent authorities. Therefore, having taken the view that the acts at issue could refer, as regards Hamas' inclusion on the lists at issue, to the United Kingdom Home Secretary's 2001 decision alone, the General Court proceeded in its examination of the action by limiting that examination to the acts at issue in so far as they were based on that decision and, upholding the Council's arguments, rejected the first seven pleas in that action.

40 It follows that the second ground of appeal must be rejected as being inadmissible.

The first ground of appeal

Arguments of the parties

41 By the first ground of appeal, the Council claims that the acts at issue were duly authenticated and that the General Court's analysis in paragraphs 270 to 305 of the judgment under appeal contains several errors of law.

42 In that regard, the Council explains, first of all, that neither Article 297 TFEU nor Article 15 of the Council's Rules of Procedure indicates that the document containing the statement of reasons for an act must be signed. Next, the Council states that it is its practice, in implementing Common Position 2001/931, to separate the acts concerned from the statements of reasons relating to them, in accordance with the case-law of the General Court arising from the judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council* (T-228/02, EU:T:2006:384, paragraph 147).

43 The Council is also of the view that the General Court wrongly applied the case-law derived from the judgment in *Commission* v *BASF* to the present case. Whereas, in the case that gave rise to that judgment, various amendments had been identified in the statement of reasons for the decision in question as compared to the text that was submitted to the college of Commissioners and discussed and adopted by it, it is, in the Council's submission, common ground that, in the present case, the acts at issue, including their statement of reasons, were adopted by the Council at the same time and in accordance with the same decision-making process, the statement of reasons being indissociable from those acts, and they reflect the Council's intention. Furthermore, unlike the situation underlying the judgment in *Commission* v *BASF*, the text of the statement of reasons that was notified to Hamas is identical to the statement of reasons adopted by the Council.

44 Moreover, according to the Council, the document processing systems used, involving an electronic signature, stamp and time stamp, would have made it impossible to change a document after its adoption, and the signatures of the President and the Secretary-General of the Council at the bottom of the acts at issue have the effect of authenticating those statements of reasons. Under those systems, the acts at issue, including the statements of reasons notified to Hamas, are fixed and unalterable, particularly as regards their author and their content in all the languages concerned. Indeed, Hamas had not claimed that the text of the statements of reasons that had been sent to it differed from that adopted by the Council. The Council adds in that regard that the letters of notification addressed to Hamas that accompanied those statements of reasons were stamped by the Council's General Secretariat.

45 According to Hamas, the first ground of appeal must be rejected as being inadmissible and, in any event, unfounded.

46 In that regard, Hamas maintains that the Council's arguments to the effect that the case-law derived from the judgment in *Commission* v *BASF* cannot be applied to the present case, because of the Council's practice in implementing Common Position 2001/931, differences as compared to the case giving rise to that judgment, and the use of integrated document management systems are inadmissible. According to Hamas, the Council has not identified, precisely, the elements of the judgment under appeal that are contested and does not explain how its arguments contradict the grounds of that judgment.

47 As regards, the substance, Hamas claims that the General Court was fully entitled to consider that, since the statement of reasons for an act is indissociable from its operative part, authentication must relate not only to the operative part but also to the reasons for the act. The Council not only disregarded the case-law deriving from the judgment in *Commission* v *BASF* but contradicts itself in so far as the Council itself acknowledges that inseparability. Hamas adds that, since Article 297 TFEU and Article 15 of the Council's Rules of Procedure do not provide for any derogation from the rules on authentication, it is for the Council to establish procedures that will satisfy those rules in connection with Common Position 2001/931.

48 In addition, according to Hamas, the General Court rightly recalled, first, that the signature required by those provisions is intended in particular to enable third parties to satisfy themselves that acts notified to them have indeed been adopted by the institution concerned and, secondly, that it is the mere failure to authenticate an act which constitutes the infringement of an essential procedural requirement. From the point of view of third parties, the conduct of the procedure within the Council is irrelevant, the only aspect that is important being the authentication of the act that concerns them, with respect both to its reasons and to the operative part. However, in the present case, the statements of reasons relating to the acts at issue which were communicated to Hamas do not contain a signature or even a date that would enable them to be identified as acts emanating from the Council and to determine exactly when they were adopted. Furthermore, the Council has not claimed that it was impossible for it to authenticate the statements of reasons in question. Its arguments in relation to the conduct of that procedure are therefore ineffective and unfounded, and the fact that the statements of reasons communicated to Hamas are consistent with those adopted by the Council is also ineffective.

49 Hamas also argues that the electronic signature, stamp and date stamp are provided for neither in Article 297 TFEU nor in Article 15 of the Council's Rules of Procedure, and that, where the Council communicates statements of reasons by post, as well as electronically, it cannot rely on an electronic signature. Lastly, Hamas explains that it cannot be certain that the statements of reasons that were communicated to it were authentic.

Findings of the Court

50 As a preliminary point, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court that an appeal must indicate precisely the contested paragraphs of the judgment under appeal and the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal concerned may be inadmissible (see, to that effect, judgment of 10 September 2020, *Hamas* v *Council*, C-122/19 P, not published, EU:C:2020:690, paragraph 26 and the case-law cited).

51 In the present case, contrary to Hamas' contention, the appeal indicates precisely the contested paragraphs of the judgment under appeal in the context of the first ground of appeal, and sets out the reasons why those paragraphs are, according to the Council, vitiated by an error of law, enabling the Court to exercise its power of review of their lawfulness.

52 In addition, inasmuch as Hamas criticises the Council for merely repeating the arguments which it presented to the General Court and thus asking for a simple review of those arguments, it must be noted that, by its first ground of appeal, the Council challenges the General Court's interpretation and application of EU law, which led the General Court to find, notwithstanding the arguments put forward by the Council, that an essential procedural requirement had been infringed in the adoption of the acts at issue.

53 Provided that the appellant challenges the General Court's interpretation or application of EU law, the points of law examined at first instance may be argued again in the course of an appeal. Indeed, if an appellant could not thus base its appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraph 34 and the case-law cited).

54 It follows that the first ground of appeal is admissible.

55 As to whether that ground of appeal is well founded, it must be noted, in the first place, that the principle of legal certainty requires that any act of the administration that has legal effects must be definitive, in particular as regards its author and content. Checking compliance with the requirement of authentication and, thus, of the definitive nature of the act is a preliminary to any other review, such as that of the competence of the author of the act, of compliance with the principle of collegiality or of the duty to provide reasons for the act (judgment of 6 April 2000, *Commission* v *ICI*, C-286/95 P, EU:C:2000:188, paragraphs 45 and 46).

56 Since authentication constitutes an essential procedural requirement, breach of that requirement may give rise to annulment of the relevant act and may be raised by the Court of its own motion (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and CRU*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 152 and the case-law cited).

57 In addition, it is apparent from the case-law of the Court that the handwritten signature on an act, in particular of the President of the institution which adopted it, constitutes a means of authenticating the act, which is intended to guarantee legal certainty by ensuring that the text adopted by that institution becomes fixed in the languages which are binding. Such authentication thus ensures, in the event of a dispute, that it is possible to verify that the texts notified or published correspond precisely to the text adopted by the college and so with the intention of the author (see, to that effect, judgment in *Commission* v *BASF*, paragraphs 74 and 75).

58 The Court nevertheless held, in the case giving rise to the judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and CRU*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraphs 66 and 163), that authentication of the acts of an EU body could depend on the application of specific internal procedures put in place for that purpose by that body and that, in that case, the handwritten signature of the Chair of the Single Resolution Board (SRB) on a routing

slip referring in particular to an annex to the decision of that body at issue in that case was sufficient, in the light of all of the matters brought to the attention of the Court, to ensure authentication of that annex.

59 As regards, in the second place, the judgment in *Commission* v *BASF*, it is true that the Court of Justice recalled, in paragraph 67 of that judgment, that the operative part of, and the statement of reasons for, a decision constitute an indivisible whole, and that it found, in paragraph 77 of that judgment, that the relevant decision relating to a proceeding pursuant to Article 85 EEC had not been authenticated in accordance with the first paragraph of Article 12 of the Commission's Rules of Procedure, then in force, according to which 'acts adopted by the Commission … shall be authenticated in the language or languages in which they are binding by the signatures of the President and the Executive Secretary', because the text adopted by the college of Commissioners and the text of the same decision as published and notified to its addressees did not correspond, and because of differences between the language versions of the text adopted by that college.

60 However, first, it is common ground that, as the General Court found in essence in paragraph 279 of the judgment under appeal, the acts at issue do, unlike the decision at issue in the case giving rise to the judgment in *Commission* v *BASF*, bear the signature of the President of the institution that adopted them, namely the Council, and of its Secretary-General. Those acts, as published, include a general statement of reasons justifying their adoption, according to which, as is apparent from paragraphs 14, 15 and 21 of the present judgment, the Council concluded following its review that the persons, groups and entities included on the lists at issue were to remain subject to restrictive measures.

61 Secondly, in the judgment in *Commission* v *BASF*, as the Advocate General noted in point 73 of his Opinion, the issue raised was not whether the entire statement of reasons for an act must be authenticated by means of a handwritten signature where part of that statement of reasons appears in a separate document, to which that act relates, but the lack of correspondence between, on the one hand, the text of a decision adopted by the college of Commissioners and, on the other hand, the text of the same decision as published and notified to certain addressees, and differences between the language versions of the text adopted by that college.

62 In the light of those various points, the Court's considerations in the judgment in *Commission* v *BASF* cannot be applied to the present case. Consequently, the General Court was wrong to reject the argument relating to the difference in factual context as compared to the judgment invoked by the Council, referred to in paragraph 298 of the judgment under appeal.

63 It is accordingly necessary to determine, in the third place, whether the first subparagraph of Article 297(2) TFEU and Article 15 of the Council's Rules of Procedure require, in the case of acts such as the acts at issue, the signing not only of the act itself with a general statement of reasons, which has been published, but also of the statement of reasons specifying the individual reasons for the fund-freezing measure adopted in respect of the person or entity concerned, which has been notified to that person or entity in a separate document.

64 Under the first subparagraph of Article 297(2) TFEU, non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, are to be signed by the President of the institution which adopted them. The second subparagraph of Article 297(2) TFEU provides, inter alia, that regulations and decisions which do

not specify to whom they are addressed are to be published in the *Official Journal of the European Union*. Lastly, in accordance with the third subparagraph of Article 297(2) TFEU, decisions which specify to whom they are addressed are, alone, subject to a notification obligation.

65 As regards the particular case of acts that provide for restrictive measures, such as the acts at issue, the Court of Justice has already ruled that such acts have a particular nature, resembling as they do, at the same time, both measures of general application, in that they impose on a category of addressees determined in a general and abstract manner a prohibition on, inter alia, making available funds and economic resources to persons and entities named in the lists contained in their annexes, and also a bundle of individual decisions affecting those persons and entities (see, to that effect, 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, paragraphs 241 to 244, and of 23 April 2013, *Gbagbo and Others* v *Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 56).

66 Thus, as the Advocate General noted in point 55 of his Opinion, it follows from the rule set out in the first subparagraph of Article 297(2) TFEU that acts such as the acts at issue, which are non-legislative acts adopted in the form either of regulations or of decisions which do not specify to whom they are addressed, must be signed by the President of the Council, in so far as they resemble measures of general application, within the meaning of the case-law referred to in the preceding paragraph.

67 In the present case, as has already been noted in paragraph 60 of this judgment, the acts at issue, as published in the *Official Journal of the European Union*, were indeed signed by the President of the Council, and also, as required by Article 15 of the Council's Rules of Procedure, by its Secretary-General.

68 However, to the extent that the acts at issue resemble a bundle of individual decisions, they are not subject to a requirement that they be signed by the President of the Council, under the first subparagraph of Article 297(2) TFEU, but only to the notification obligation under the third subparagraph of Article 297(2) TFEU, which, as has been recalled in paragraph 64 of the present judgment, covers decisions which specify to whom they are addressed and thus have individual character.

69 As the Advocate General noted in point 56 of his Opinion, the statements of reasons that accompany the entry of a person, group or entity on the lists of persons, groups and entities subject to restrictive measures concern the individual grounds for such a listing. Consequently, those statements of reasons, such as those accompanying the acts at issue and notified to Hamas, do not fall within the scope of the general character of those acts but rather within that of the facet of those acts that renders them akin to a bundle of individual decisions.

70 It follows from the above analysis that, in the case of acts that introduce or maintain restrictive measures, such as the acts at issue, contrary to the considerations set out by the General Court in paragraph 288 of the judgment under appeal, the first subparagraph of Article 297(2) TFEU does not impose an obligation on the President of the Council to sign, in addition to the act containing a general statement of reasons for those restrictive measures, the statement of individual reasons for the entry of a person, group or entity on the lists of persons, groups and entities subject to those measures. It is sufficient that the latter statement of reasons be duly authenticated by other means.

71 The same applies to Article 15 of the Council's Rules of Procedure.

72 In that regard, by merely specifying that the 'text' of the acts adopted by the Council must be signed by the President and the Secretary-General of that institution, Article 15 does not specify what that term covers.

73 However, it follows from the preamble to Decision 2009/937, in essence, that the Council's Rules of Procedure were adopted in order to take account of the amendments made by the Treaty of Lisbon to the provisions of EU primary law in relation to the functioning of the Council and of its Presidency and to the process for adopting acts by them. It follows that Article 15 of those rules of procedure, concerning in particular the signing of acts of the Council, must be interpreted in the light of the relevant provisions of the Treaties concerning that functioning and that process, which include Article 297 TFEU. Article 15 of the Council's Rules of Procedure cannot therefore be interpreted as imposing on the President and on the Secretary-General of the Council a stricter signature requirement than that which arises under the first subparagraph of Article 297(2) TFEU.

74 It must be added that, contrary to what the General Court held in paragraphs 281 to 283 of the judgment under appeal, such a formal obligation to sign statements of individual reasons cannot be inferred from the obligation to state reasons provided for in Article 296 TFEU either. That provision requires the statement of reasons to disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review, and that statement of reasons must be appropriate to the measure at issue and the context in which it was adopted (judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraphs 68 and 69 and the case-law cited). As is apparent from the case-law referred to in paragraph 55 of the present judgment, those requirements must not be confused with those relating to the authentication of an EU act, checking compliance with the latter requirement being a preliminary to any other review of that act.

75 It follows from all of the above considerations that the General Court erred in law in ruling, in paragraphs 283 and 305 of the judgment under appeal, that, since the statements of reasons relating to the retention of Hamas on the lists annexed to the acts at issue were not signed by the President and the Secretary-General of the Council, the eighth plea raised before it had to be upheld and the acts at issue annulled, in so far as they concerned that organisation.

76 It follows that the first ground of appeal is well founded and that the judgment under appeal must be set aside in so far as it upholds the eighth plea relied on at first instance, annuls the acts at issue in consequence and rules on costs.

The action before the General Court

77 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, where it sets aside the decision of the General Court, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

78 In the present case, the state of the proceedings in the action for annulment of the acts at issue brought by Hamas at first instance is such that the Court of Justice can itself give final judgment in the matter and it is therefore appropriate that it does so, within the limits of the matter before it (see, to that effect, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraph 108).

79 In that action, Hamas relied on eight pleas, as mentioned in paragraph 24 of the present judgment.

80 The General Court rejected the first seven pleas, and, as is apparent from paragraphs 36 to 40 of the present judgment, the second ground of this appeal, which seeks modification of certain grounds of the judgment under appeal concerning those pleas, is inadmissible.

81 In addition, it is common ground that Hamas did not challenge, in the context of a cross-appeal, the merits of that part of the judgment under appeal, and so the setting aside of that judgment by the Court of Justice does not affect that judgment inasmuch as the General Court rejected those pleas (see, to that effect, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraph 109).

82 It must be noted that Hamas could have brought a cross-appeal challenging the General Court's rejection of those first seven pleas put forward at first instance, since Article 178(1) of the Rules of Procedure provides that the form of order sought in the cross-appeal is to seek to have set aside, in whole or in part, the decision of the General Court, without limiting the scope of the form of order sought to the decision of the General Court as set out in the operative part of that decision, unlike Article 169(1) of those rules, which relates to the form of order sought in the appeal. In the absence of such a cross-appeal, the judgment under appeal therefore has the force of *res judicata* in so far as the General Court rejected the first seven pleas (see, to that effect, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraph 110).

83 As regards the eighth plea, alleging failure to authenticate the statements of reasons for the acts at issue, it must be noted that the Council produced copies of the various documents sent electronically, jointly, to the delegations of the Member States called upon to vote, and screen shots with the electronic signature and stamp of the Council's General Secretariat, as well as a time stamp confirming the date and time of signature, demonstrating that those statements of reasons had been adopted, under the written procedure provided for in Article 12(1) of the Council's Rules of Procedure, simultaneously with the acts at issue signed by the President and the Secretary-General of the Council, to which they were, as the Advocate General noted in point 63 of his Opinion, inseparably attached.

84 Furthermore, Hamas has not put forward any evidence or precise information that could call into question the fact that the text of the statements of reasons that were notified to it and the text adopted by the Council correspond perfectly. In those circumstances and in the light also of the considerations in paragraphs 63 to 74 of the present judgment, it must be held that the authenticity of those statements of reasons has not been validly challenged and, therefore, the eighth plea must be rejected as being unfounded.

85 It follows that the action brought by Hamas must be dismissed in its entirety.

Costs

86 In accordance with Article 184(2) of the Rules of Procedure of the Court, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs. Article 138 of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, provides in paragraph 1 that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

87 Since the Council has applied for Hamas to be ordered to pay the costs and Hamas has been unsuccessful, Hamas must be ordered to bear its own costs and to pay the costs incurred by the Council in the present appeal and at first instance.

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

1. **Sets aside the judgment of the General Court of the European Union of 4 September 2019, *Hamas* v *Council* (T-308/18, EU:T:2019:557), in so far as it upholds the eighth plea relied on at first instance and annuls Council Decision (CFSP) 2018/475 of 21 March 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2017/1426; Council Implementing Regulation (EU) 2018/468 of 21 March 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2017/1420; Council Decision (CFSP) 2018/1084 of 30 July 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/475; and Council Implementing Regulation (EU) 2018/1071 of 30 July 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2018/468, in so far as those acts concern Hamas, including Hamas-Izz al-Din al-Qassem;**

2. **Dismisses the action brought in Case T-308/18 by Hamas;**

3. **Orders Hamas to bear its own costs and to pay the costs incurred by the Council of the European Union in the present appeal and at first instance.**

[Signatures]