Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

4 September 2019*

(Common foreign and security policy – Restrictive measures against persons, groups and entities with a view to combating terrorism – Freezing of funds – Whether an authority of a third State can be classified as a competent authority within the meaning of Common Position 2001/931/CFSP – Factual basis of the decisions to freeze funds – Obligation to state reasons – Error of assessment – Principle of non-interference – Rights of the defence – Right to effective judicial protection – Authentication of the Council measures)

In Case T-308/18,

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

applicant,

v

Council of the European Union, represented initially by B. Driessen and A. Sikora-Kalėda, then by M. Driessen and S. Van Overmeire, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment, first, of 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) and of 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), and, second, of 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 2018/475 (OJ 2018 L 194, p. 144) and of 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 2018/468 (OJ 2018 L 194, p. 23),

THE GENERAL COURT (First Chamber),

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

* Language of the case: French.

Registrar: E. Coulon,

gives the following

Judgment

Background to the dispute

United Nations Security Council Resolution 1373 (2001)

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

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

EU law

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

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

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

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

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

The contested measures

The measures of March 2018

8 On 30 November 2017, the Council wrote to the applicant's lawyer informing her that it had received new information relevant for the establishment of the list of persons, groups and entities subject to the restrictive measures provided for in Regulation No 2580/2001 and that it had amended the statement of reasons accordingly. It invited the applicant to submit its comments on that updated statement of reasons by 15 December 2017.

9 The applicant did not respond to that letter.

10 On 21 March 2018, the Council adopted, first, Decision (CFSP) 2018/475 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision (CFSP) 2017/1426 (OJ 2018 L 79, p. 26), and, second, Implementing Regulation (EU) 2018/468 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) 2017/1420 (OJ 2018 L 79, p. 7) (together, 'the measures of March 2018'). The name '"Hamas", including "Hamas-Izz al-Din al-Qassem"' was retained on the lists annexed to those measures ('the lists at issue of March 2018').

11 By letter of 22 March 2018, the Council sent the applicant's lawyer the statement of reasons that justified retaining the name '"Hamas", including "Hamas-Izz al-Din al-Qassem"' on the lists at issue of March 2018 and informed her of the possibility of requesting a review of those lists under Article 2(3) of Regulation No 2580/2001 and Article 1(6) of Common Position 2001/931.

12 In addition, on 22 March 2018 the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities mentioned on the list referred to in Article 2(3) of Regulation No 2580/2001 (OJ 2018 C 107, p. 6).

13 By that notice, the Council, inter alia, informed the persons and entities concerned, first, that it had determined that the reasons for including their names on the lists adopted pursuant to Regulation No 2580/2001 were still valid and that it had therefore decided to keep their names on the lists at issue of March 2018; second, that they could submit a request to the Council to obtain its statement of reasons for keeping their names on those lists; third, that they could at any time submit a request for the Council to reconsider the decision to include their names on the lists in question; and, fourth, that requests to be taken into account in the next review, in accordance with Article 1(6) of Common Position 2001/931, were to be submitted to the Council by 25 May 2018.

14 The applicant did not respond to that letter or that notice.

15 It is apparent from the statements of reasons relating to the measures of March 2018 that, in order to include '"Hamas", including "Hamas-Izz al-Din al-Qassem"' on the lists at issue of March 2018, the Council relied on four national decisions.

16 The first national decision was Order No 1261 of the United Kingdom Secretary of State for the Home Department of 29 March 2001 amending the United Kingdom Terrorism Act 2000 and proscribing Hamas-Izz al-Din al-Qassem, considered to be an organisation concerned in terrorism ('the Home Secretary's decision').

17 The second national decision was a decision of the United States Secretary of State of 8 October 1997 designating, for the purposes of the United States Immigration and Nationality Act ('the INA'), Hamas as a foreign terrorist organisation ('the 1997 US decision').

18 The third national decision was issued by the United States Secretary of State and had been adopted on 31 October 2001 pursuant to Executive Order 13224 ('the 2001 US decision').

19 The fourth national decision was dated 23 January 1995 and had been adopted pursuant to Executive Order 12947 ('the 1995 US decision').

20 In the main part of the statements of reasons relating to the measures of March 2018, the Council stated, first of all, 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 stated that it had considered whether it had in its possession material indicating that the applicant's name should be removed from the lists at issue of March 2018 and had found none. Last, it stated that the reasons for including the applicant's name on the lists of funds to be frozen remained valid and concluded that it should be maintained on the lists at issue of March 2018.

21 In addition, the statement of reasons relating to the measures of March 2018 contained an Annex A concerning the 'decision of the competent authority of the United Kingdom' and an Annex B concerning the 'decisions of the authorities of the United States'. Each of those annexes contained a description of the national legislation under which the decisions of the competent national authorities had been adopted, a presentation of the definitions of the concepts of terrorism that appeared in that legislation, a description of the procedures for reconsideration of those decisions, a description of the facts on which those authorities had relied and the finding that those facts constituted acts of terrorism within the meaning of Article 1(3) of Common Position 2001/931.

22 In paragraph 14 of Annex A to the statement of reasons relating to the measures of March 2018, the Council set out different facts taken into consideration by the Home Secretary in order to proscribe Hamas-Izz al-Din al-Qassem. Those facts had occurred in 1994 and 1996.

23 In paragraph 15 of Annex A of the statement of reasons relating to the measures of March 2018, the Council added that, in the United Kingdom, the proscription had been reconsidered in September 2016 by the inter-ministerial group responsible for reviewing proscriptions and that that group had concluded, on the basis of the material to which it referred, that it was reasonable to think that Hamas-Izz al-Din al-Qassem continued to be involved in terrorism.

24 In paragraph 10 of Annex B to the statement of reasons relating to the measures of March 2018, the Council stated that the most recent review of the designation of Hamas as a foreign terrorist organisation had taken place on 27 July 2012 and had led the United States Government to conclude that the circumstances on which the 1997 US decision was based had not changed in such a way as to justify cancelling the designation.

25 Last, in paragraph 17 of Annex B to the statement of reasons relating to the measures of March 2018, the Council listed various facts that had occurred between 2003 and 2016 on which the United States authorities had relied in order to classify the applicant as a foreign terrorist organisation, without specifying the decisions in which they originated.

The measures of July 2018

26 On 30 July 2018, the Council adopted, first, Decision (CFSP) 2018/1084 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931, and repealing Decision 2018/475 (OJ 2018 L 194, p. 144), and, second, Implementing Regulation (EU) 2018/1071 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2018/468 (OJ 2018 L 194, p. 23) (together, 'the measures of July 2018'). The name '"Hamas", including "Hamas-Izz al-Din al-Qassem"' was maintained on the lists annexed to those measures ('the lists at issue of July 2018').

27 By letter of 31 July 2018, the Council sent the applicant's lawyer the statement of reasons for maintaining the name '"Hamas", including "Hamas-Izz al-Din al-Qassem"' on the lists at issue of July 2018, informing her of the possibility of requesting a review of those lists under Article 2(3) of Regulation No 2580/2001 and Article 1(6) of Common Position 2001/931.

28 In addition, on 31 July 2018 the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2018 C 269, p. 3).

29 By that notice, the Council, inter alia, informed the persons and entities concerned, first, that it had determined that the reasons for including their names on the lists adopted pursuant to Regulation No 2580/2001 were still valid and that it had therefore decided to keep their names on the lists at issue of July 2018; second, that they could submit a request to obtain its statement of reasons for keeping them on those lists; third, that they could at any time submit a request for the Council to reconsider the decision to include them on the lists in question; and, fourth, that requests to be taken into account in the next review, in accordance with Article 1(6) of Common Position 2001/931, were to be submitted to the Council by 1 October 2018.

30 That statement of reasons was identical to that relating to the measures of March 2018, apart from some procedural differences and a reference, in paragraph 16 of Annex B, to the 'right to effective judicial protection', and no longer to the 'right to judicial protection'.

31 The applicant did not respond to that letter or that notice.

Procedure and forms of order sought

32 By application lodged at the Court Registry on 17 May 2018, the applicant brought the present action.

33 On 13 September 2018, the Council lodged the defence.

34 By a document lodged at the Court Registry on 14 September 2018, the applicant, on the basis of Article 86 of the Rules of Procedure of the General Court, modified the application to take account of the measures of July 2018, in so far as they concerned it.

35 By letters of 13 December 2018 and of 1 March and 10 April 2019, the Court, in the context of measures of organisation of procedure, put a number of questions to the parties. The parties replied within the prescribed period.

36 As no request for a hearing was submitted to the Court within the prescribed period, it decided, in application of Article 106(3) of the Rules of Procedure, to rule on the action without an oral part of the procedure.

37 The applicant claims that the Court should:

– annul the measures of March and July 2018 ('the contested measures'), in so far as they concerned it, including Hamas-Izz al-Din al-Qassem;

– order the Council to pay all of the costs.

38 The Council contends that the Court should:

– dismiss the action in its entirety;

– order the applicant to pay the costs.

Law

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

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

– errors as to the accuracy of the facts;

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

– breach of the principle of non-interference;

– failure to take sufficient account of the development of the situation owing to the passage of time;

– breach of the obligation to state reasons;

– breach of the principle of respect for the rights of the defence and of the right to effective judicial protection.

40 On 19 March 2019, in answer to a question which had been put to it by the Court on 1 March 2019 in the context of a measure of organisation of procedure, the applicant raised an eighth plea, alleging 'failure to authenticate the statements of reasons'.

41 The Court considers it appropriate to examine the sixth plea second.

First plea: infringement of Article 1(4) of Common Position 2001/931

42 In the context of the first plea, the applicant, having commented on the identification of the organisations covered by the decisions of the Home Secretary and the 1995, 1997 and 2001 US decisions (together, 'the US decisions'), complains that the Council infringed Article 1(4) of Common Position 2001/931 when it classified those decisions as decisions taken by competent authorities within the meaning of that provision.

43 In that regard, it should be observed that the provision to which the applicant refers concerns the inclusion of the names of persons or entities on the fund-freezing lists, while the present action relates to decisions adopted on the basis of Article 1(6) of Common Position 2001/931, which concerns the retention of such listings.

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

45 The plea is therefore effective.

46 In order to examine it, it is appropriate, after establishing which organisations are covered by the decisions of the competent authorities relied on by the Council, to examine the criticisms that are specific to the decisions of the United States authorities before those that are common to the decisions of the United States authorities and the Home Secretary's decision.

The identification of the organisations covered by the decisions of the competent authorities relied on by the Council

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

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

49 In that regard, it should be noted that the US decisions explicitly mention 'Hamas', that designation being supplemented, in the 1997 and 2001 US decisions, by a dozen or so other names, including 'Izz al-Din Al Qassam Brigades', by which that movement was also known.

50 That fact cannot be interpreted, contrary to the applicant's suggestion, as meaning that the United States authorities thereby intended to restrict the designation to 'Hamas-Izz al-Din al-Qassem' alone. First of all, those additional names include names that refer to Hamas as a whole, such as 'Islamic Resistance Movement', which is the English translation of 'Harakat Al-Muqawama Al-Islamia', another name that is included and of which 'Hamas' is the acronym. Further, the

references to the various names are merely intended to ensure that the measure adopted in respect of Hamas is actually effective, by enabling the measure to reach Hamas through all of its known names and wings.

51 It follows from these considerations that the Home Secretary's decision covers Hamas-Izz al-Din al-Qassem, whereas the US decisions cover Hamas, including Hamas-Izz al-Din al-Qassem.

The criticisms specific to the decisions of the United States authorities

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

53 On that point, the applicant submits, principally, that the system established by Article 1(4) of Common Position 2001/931 is underpinned by confidence in national authorities, a confidence which is based on the principle of sincere cooperation between the Council and the Member States of the European Union, and relies on the sharing of common values enshrined in the Treaties, and on being subject to shared rules, including the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the Charter of Fundamental Rights of the European Union. It maintains that the authorities of third States cannot enjoy that confidence.

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

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

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

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

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

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

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

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

62 The Court must examine the arguments raised by the applicant with regard, first, to the principle of respect for the rights of the defence and, second, to the right to effective judicial protection, in the light of the case-law recalled in paragraphs 58 to 61 above.

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

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

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

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

67 In paragraph 16 of Annex B to the statement of reasons relating to the contested measures, the Council makes the following assertion:

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

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

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

70 It follows from this that respect for the rights of the defence is not established in respect of those two decisions and that, therefore, under the case-law recalled in paragraphs 58 to 61 above, they cannot serve as a basis for the contested measures.

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

72 In those circumstances, the Court must consider whether the indication that a decision is published in an official journal of the third State is sufficient to conclude that the Council has, in accordance with the case-law cited in paragraphs 58 to 61 above, fulfilled its obligation to verify whether, in the third States in which the decisions underpinning the contested measures originate, the rights of the defence have been respected.

73 It is appropriate, in doing so, to refer to the case that gave rise to the judgments of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583), and of 16 October 2014, *LTTE* v *Council* (T-208/11 and T-508/11, EU:T:2014:885). In that case, the Council had indicated, in the statement of reasons for one of the acts concerned, that the decisions of the authorities of the third State in question had been published in that State's official journal, without providing further information (judgment of 16 October 2014, *LTTE* v *Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 145).

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

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

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

77 However, since Article 1(4) of Common Position 2001/931 does not require Council measures to be based on several decisions of competent authorities, the contested measures could nevertheless, so far as the inclusion of the applicant's name on the lists at issue of March and of July 2018 ('the lists at issue') is concerned, refer to the Home Secretary's decision alone, and it is therefore appropriate for the Court to proceed in its examination of the action by limiting that examination to the contested measures in so far as they are based on the latter decision.

The criticisms common to the Home Secretary's decision and to the decisions of the United States authorities

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

79 Those reasons will be examined below in so far as they concern the Home Secretary's decision, in accordance with paragraph 77 above.

– *The preference to be given to judicial authorities*

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

81 The Council disputes that line of argument.

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

83 Even if the second subparagraph of Article 1(4) of Common Position 2001/931 contains a preference for decisions from judicial authorities, it in no way excludes the taking into account of decisions from administrative authorities where (i) those authorities are actually vested, in national law, with the power to adopt restrictive decisions against groups involved in terrorism

and (ii) those authorities, although only administrative, may nevertheless be regarded as 'equivalent' to judicial authorities (judgment of 16 October 2014, *LTTE* v *Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 107).

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

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

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

87 In those circumstances, it appears that decisions of the Home Secretary are open to judicial review and therefore that, in accordance with the case-law referred to in paragraphs 83 and 84 above, that administrative authority must be regarded as equivalent to a judicial authority and thus as a competent authority, as contended by the Council, within the meaning of Article 1(4) of Common Position 2001/931, as has repeatedly been held in the case-law (judgments of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T-256/07, EU:T:2008:461, paragraph 144, and of 16 October 2014, *LTTE* v *Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraphs 120 to 123).

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

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

89 The applicant claims that the action taken by the competent authorities concerned by the contested measures, including the Home Secretary, consists, in practice, in drawing up lists of terrorist organisations in order to impose a restrictive regime on them. This listing activity does not, in the applicant's submission, constitute a criminal jurisdiction akin to the 'instigation of investigations or prosecution' or to 'condemnation', to cite the powers which, according to Article 1(4) of Common Position 2001/931, the 'competent authority' should have.

90 The Council disputes the merits of that line of argument.

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

92 In that sense, the Court of Justice has held that protection of the persons concerned is not called into question if the decision taken by the national authority does not form part of a procedure seeking to impose criminal sanctions, but of a procedure aimed at the adoption of preventive measures (judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 70).

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

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

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

96 Consequently, the applicant is wrong to claim that a listing power cannot characterise a competent authority for the purposes of Article 1(4) of Common Position 2001/931.

97 That position is unaffected by the other arguments put forward by the applicant.

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

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

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

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

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

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

104 It is only exceptionally, where the applicant disputes, on the basis of concrete evidence, that the authorities of the Member States observed fundamental rights, that the Court must ascertain whether those rights were indeed observed (see, by analogy, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the judicial system)*, C-216/18 PPU, EU:C:2018:586, paragraph 36).

105 Conversely, where authorities of third States are involved, the Council is automatically required, as noted in paragraphs 58 and 59 above, to satisfy itself that those safeguards were in fact applied and to give reasons for its decision on that point.

106 It follows from the foregoing considerations that the contested measures cannot be annulled on the ground that the Home Secretary's action consisted in drawing up lists of terrorist organisations.

– The absence of serious and credible evidence or clues underpinning the Home Secretary's decision

107 The applicant maintains that, since the Council relied on an administrative decision and not on a judicial decision, it was required to establish that that decision was 'based on serious and credible evidence or clues', as required by Article 1(4) of Common Position 2001/931.

108 Since that argument does not concern the classification of a 'decision taken by a competent authority' within the meaning of Article 1(4) of Common Position 2001/931, which is the object of the present plea, it will be examined in the context of the sixth plea, below.

– The confusion between the facts allegedly based on the national decisions relied on and those allegedly based on other sources

109 As regards the facts that justify its name being retained on the lists at issue, the applicant maintains that the Council ought to have indicated in the statement of reasons relating to the contested measures whether they originated in a national decision or in another public source, since the rules of evidence are different in the two cases. In the former case, the Council should have shown that the national decision was taken by a competent national authority within the meaning of Article 1(4) of Common Position 2001/931, whereas in the latter case the evidence could be taken freely.

110 However, in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the Council did not indicate the origin of the facts that occurred between July 2014 and April 2016, which could not originate in decisions classifying the applicant as a foreign terrorist organisation, since, as stated in paragraph 10 of that annex, the most recent review carried out in that regard dated from July 2012.

111 As that question does not relate to Article 1(4) of Common Position 2001/931, on the inclusion of terrorist persons and entities on the fund-freezing lists, but relates to the statements of reasons for the contested measures, it will be answered in the context of the sixth plea, examined below.

Conclusion on the first plea

112 It is apparent from paragraphs 58 to 76 above that, as regards the inclusion of the applicant's name on the lists at issue, the US decisions cannot serve as a basis for the contested measures, since the Council failed to fulfil its obligation to state reasons with regard to verification of the application of the principle of respect for the rights of the defence in the United States.

113 In addition, it is apparent from paragraphs 49 to 51 above that those US decisions concerned Hamas as a whole, while the Home Secretary's decision related only to Hamas-Izz al-Din al-Qassem.

114 In the applicant's submission, that means that the contested measures must be annulled in so far as they concern Hamas and can remain in force only in so far as they relate to Hamas-Izz al-Din al-Qassem. Those two entities should be distinguished, as Hamas is a political party that lawfully participates in the elections and the government in Palestine and Hamas-Izz al-Din al-Qassem is a resistance movement against Israeli occupation.

115 That position is criticised by the Council, which contends that no distinction can be drawn between the two entities. In support of its position, the Council cites, in particular, in its defence, a statement by the applicant in which it presents its organisation as encompassing both entities. The terms of that statement are as follows (see paragraph 19 of the defence, which reproduces paragraphs 7 and 8 of the application lodged by the applicant in the case that gave rise to the judgment of 14 December 2018, *Hamas* v *Council* (T-400/10 RENV, under appeal, EU:T:2018:966)):

'Hamas has a political bureau and an armed wing: the Ezzedine Al-Qassam Brigades [= Hamas IDQ]. The leadership of Hamas is characterised by its bicephalous nature. The internal leadership, divided between the West Bank and the Gaza Strip and the external leadership in Syria. … Although the armed wing is relatively independent, it is still subject to the general

strategies drawn up by the political bureau. The political bureau takes the decisions, and the Brigades comply with them because of the strong sense of solidarity engendered by the religious component of the movement.'

116 That statement has significant probative value, since, as the Council observes, it is made by the applicant itself and, moreover, it has not subsequently been disputed by the applicant on the basis of specific tangible factors.

117 In that regard, it must be observed that the applicant did not make use of the opportunity, available under Article 83(2) of the Rules of Procedure, to supplement the file after the Court decided, in application of paragraph 1 of that provision, that a second exchange of pleadings was unnecessary.

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

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

120 For the reasons set out above, and subject to examination of the line of argument mentioned in paragraphs 107, 109 and 110 above, the plea must be rejected as unfounded.

Sixth plea: breach of the obligation to state reasons

121 The sixth plea may be broken down into three parts.

The first part of the sixth plea

122 As already observed in paragraph 107 above, the applicant maintains that the Council ought to have stated, in the statements of reasons relating to the contested measures, the 'serious and credible evidence or clues' on which the decisions of the competent authorities were based.

123 The Council contends that the argument is unfounded.

124 Having regard to paragraph 77 above, this plea must be examined solely in so far as it concerns the Home Secretary's decision.

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

126 In any event, the argument is unfounded.

127 It must be noted in that regard that, according to the first subparagraph of Article 1(4) of Common Position 2001/931, fund-freezing lists are to be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act, 'based on serious and credible evidence or clues', or condemnation for such deeds.

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

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

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

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

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

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

134 In that regard, the fact that the Home Secretary is an administrative authority is irrelevant, since, as is apparent from paragraphs 86 and 87 above, the Home Secretary's decisions are open to judicial review and, accordingly, the Home Secretary must be regarded as equivalent to a judicial authority.

135 As these facts do not have to be mentioned, they do not, *a fortiori*, have to be proved by the Council.

136 The Council cannot therefore be criticised for not having indicated, in the statements of reasons relating to the contested measures, the 'serious and credible evidence and clues' that served as the basis for the Home Secretary's decision or for not having proved them.

137 The first part of the sixth plea must therefore be rejected as unfounded.

Second part of the sixth plea

138 It follows from the case-law that, when a significant period of time elapsed between the national decision that served as the basis for the initial entry and the adoption of the measures intended to retain that entry, the Council cannot, in order to conclude that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, merely establish that that decision has remained in force, but must carry out an up-to-date assessment of the situation, and take account of more recent facts which demonstrate that that risk still exists (see, to that effect, judgments of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 54 and 55, and of 26 July 2017, *Council* v *Hamas*, C-79/15 P, EU:C:2017:584, paragraphs 32 and 33).

139 It also follows from that case-law that the more recent facts that serve as the basis for retaining the name of a person or entity on the fund-freezing lists may come from sources other than national decisions adopted by competent authorities (see, to that effect, judgments of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 72, and of 26 July 2017, *Council* v *Hamas*, C-79/15 P, EU:C:2017:584, paragraph 50).

140 In the presence case, the Home Secretary's initial decision dates from 2001, whereas the contested measures were adopted in March and July 2018.

141 As a period of 17 years separated the Home Secretary's initial decision and the contested measures, the Council, in application of the case-law cited in paragraph 138 above, could not merely establish that the Home Secretary's decision was still in force, without referring to more recent evidence showing that the risk that the applicant was involved in terrorist activities still existed.

142 Such more recent facts were provided by the Council in the statement of reasons relating to the contested measures.

143 Thus, in paragraph 15 of Annex A to the statement of reasons relating to the contested measures, the Council mentioned two facts connected with the procedure for reconsideration of the Home Secretary's decision which had taken place in September 2016.

144 Furthermore, 13 facts were reported by the Council in paragraph 17 of Annex B to the statement of reasons relating to the contested measures in connection with the United States authorities' classification of the applicant as a foreign terrorist organisation. Those facts are described as follows:

– 'Hamas claimed responsibility for a suicide attack carried out in September 2003, which killed 9 Israeli Defense Forces soldiers and wounded 30 people outside the Assaf Harofeh Hospital and the Tzrifin army base (Israel);

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

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

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

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

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

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

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

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

– on 7 July 2014, Hamas claimed responsibility for the rocket attacks on the Israeli towns of Ashdod, Ofa[q]im, Ashkelon and Netivot;

– in August 2014, Hamas claimed responsibility for the kidnapping and killing of three Israeli teenagers in the West Bank in June 2014;

– in November 2014, Hamas claimed responsibility for the ram-raid attack on a group of pedestrians in Jerusalem;

– in April 2016, Hamas claimed responsibility for a bus bombing in Jerusalem, which left 18 persons injured.'

145 As stated in paragraphs 109 and 110 above, the applicant takes issue with the Council for having failed to state whether the facts that occurred between July 2014 and April 2016 came from a decision of a national authority or from another source.

146 In the applicant's submission, the identification of the source of the fact cited is important because it determines the form of proof to be used by the Council. If the fact cited came from a national decision, the Council should prove that that decision was taken by a competent authority within the meaning of Article 1(4) of Common Position 2001/931, whereas, if it came from another source, the Council could take evidence of it freely.

147 In that regard, it must be borne in mind that, in paragraph 71 of the judgment of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583), and in paragraph 49 of the judgment of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584), the Court of Justice held that, in the action challenging the retention of their names on the list at issue, the person or entity concerned may dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources.

148 The Court of Justice further held that, in the event of challenge, it was for the Council to establish that the facts alleged were well founded and for the Courts of the European Union to determine whether they were made out (judgments of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 71, and of 26 July 2017, *Council* v *Hamas*, C-79/15 P, EU:C:2017:584, paragraph 49).

149 It follows from that case-law that the evidence used by the Council in order to establish that the risk of involvement in terrorist activities is ongoing that comes from national decisions must be proved in the same way as the evidence from other sources.

150 In those circumstances, it must be considered that, contrary to the applicant's assertion, the Council is not required to indicate, in the statements of reasons relating to the contested measures, the source of the evidence relied on in order to retain a person or an entity on a fund-freezing list and that, accordingly, if that evidence comes from a national decision, the Council is not required to prove that that decision was taken by a competent authority within the meaning of Article 1(4) of Common Position 2001/931.

151 As regards the latter provision, it should further be borne in mind that it concerns the entry of the names of persons or entities on the fund-freezing lists, and not the retention of that entry, which is governed by Article 1(6) of Common Position 2001/931. It cannot therefore be relied on in order to require the Council to indicate the source of the facts on which it bases the re-entry of the name of a person or an entity on the fund-freezing lists.

152 The second part of the sixth plea must therefore be rejected as unfounded.

The third part of the sixth plea

153 The applicant maintains that the statement of reasons on which a measure is based must express the institution's own choice. That is not the position here, however, since, in order to state the reasons for the contested measures, the Council merely copied and pasted documents published on the Internet. That is particularly so in the case of the descriptions of the national procedures.

154 In that regard, is should be borne in mind that, according to a consistent body of case-law, the purpose of the requirement to state reasons is, first, to provide the person concerned with sufficient information to enable him or her to ascertain whether the act is well founded or whether it is vitiated by a defect that may permit its legality to be contested before the Courts of

the European Union and, second, to enable those Courts to review the legality of that act (see judgment of 21 April 2016, *Council* v *Bank Saderat Iran*, C-200/13 P, EU:C:2016:284, paragraph 70 and the case-law cited).

155 In the present case, the applicant does not state the reasons why the fact that the Council reproduced documents published on the Internet, even on the assumption that it is correct, would have prevented the statement of reasons for the contested measures from meeting those objectives.

156 The obligation to state reasons cannot therefore be considered to have been breached solely because the Council reproduced extracts from documents published on the Internet.

157 The third part of the sixth plea must therefore be rejected as unfounded.

158 In the light of the foregoing considerations, the sixth plea must therefore be rejected.

Second plea: 'errors as to the accuracy of the facts'

159 In its second plea, alleging 'errors as to the accuracy of the facts', the applicant criticises the facts mentioned by the Council in the statements of reasons relating to the contested measures, on the grounds that the manner in which they are set out is too imprecise, that they are not established and that they are too old to justify retaining the applicant's name on the lists at issue.

160 This plea must be examined only in so far as it concerns the facts on which the Council relied in order to retain the applicant's name on the lists at issue. As is apparent from the examination of the first part of the sixth plea, the facts that serve as the basis for the Home Secretary's decision are not required to be indicated in the contested measures or proved by the Council.

161 In order to justify retaining the applicant's name on the lists at issue, the Council, in accordance with the case-law of the Court of Justice referred to in paragraph 138 above, relied on various facts which it mentioned in the annexes to the statements of reasons relating to the contested measures.

162 Those facts are, first, those reported by the Council in connection with the reconsideration procedure that took place in the United Kingdom in September 2016 (paragraph 15 of Annex A to the statement of reasons relating to the contested measures) and, second, those mentioned in connection with the decisions in which the applicant was classified as a foreign terrorist organisation by the United States authorities (paragraph 17 of Annex B to the statement of reasons relating to the contested measures).

163 As regards the facts mentioned in paragraph 15 of Annex A to the statement of reasons relating to the contested measures, the Council stated that, in the United Kingdom, the proscription of the applicant had been the subject of a review, in September 2016, by the inter-ministerial group responsible for reviewing proscriptions and that it had concluded that Hamas-Izz al-Din al-Qassem continued to be involved in terrorism, on the basis of two facts:

– during the hostilities between Israel and Gaza in the summer of 2014, six Israeli civilians and a Thai national were killed in rocket attacks and a German cruise ship was hit by rocket attacks;

– Hamas used social media to alert, among others, United Kingdom airlines that it intended to attack Ben-Gurion airport in Tel Aviv (Israel), which could have caused civil victims, and Hamas did in fact attack the airport in July 2014.

164 As for the facts mentioned in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, they were reproduced in paragraph 144 above.

165 When recent facts are supplied in order to justify retaining the name of a person or an entity on fund-freezing lists, the Court of Justice has considered that the Courts of the European Union are required to determine, in particular, first, whether the obligation to state reasons laid down in Article 296 TFEU has been complied with and, second, whether those reasons were substantiated (judgments of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 70, and of 26 July 2017, *Council* v *Hamas*, C-79/15 P, EU:C:2017:584, paragraph 48).

166 In the light of that case-law and the applicant's criticisms, it is necessary to examine whether the facts referred to in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures are sufficiently reasoned and whether their accuracy is established.

The statements of reasons for the facts mentioned in paragraph 15 of Annex A and paragraph 17 of Annex B to the statement of reasons relating to the contested measures

167 The applicant claims that the facts set out in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures are stated in too imprecise a fashion, on the ground that the dates and locations are not specified, that it is impossible to see how they were attributed to Hamas or to Hamas-Izz al-Din al-Qassem and that the Council has not indicated how the facts attributed to the latter could also be attributed to the former.

168 In that regard, it should be borne in mind that, according to the Court of Justice, the Courts of the European Union are required to determine, in particular, whether the obligation to state reasons laid down in Article 296 TFEU has been complied with and, therefore, whether the reasons relied on are sufficiently detailed and specific (judgments of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 70, and of 26 July 2017, *Council* v *Hamas*, C-79/15 P, EU:C:2017:584, paragraph 48).

169 According to a consistent body of case-law, the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measures and enable the court having jurisdiction to exercise its power of review (see judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 50 and the case-law cited).

170 It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 53, and of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 82).

171 In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him or her to understand the scope of the measure concerning him or her (judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 54, and of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 82).

172 In the present case, it must be stated that the facts referred to, first, in paragraph 15 of Annex A to the statement of reasons relating to the contested measures (see paragraph 163 above) and, second, in paragraph 17 of Annex B to that statement of reasons (see paragraph 144 above) specify the dates, at least, as regards the year, as regards the month, and indeed as regards the day on which they took place.

173 Furthermore, it should be observed that those facts took place in a context known to the applicant, since they occurred, or are supposed to have occurred, in one or more territories well known to the applicant, in which it has members capable of communicating to it any information that would be useful for the purposes of identifying them.

174 Last, for most of them, the type of attack carried out and the identity of the victims are specified, which further facilitates the identification of the facts in question.

175 In those circumstances, it must be considered that the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures are described in a sufficiently detailed and specific manner to be disputed by the applicant and reviewed by the Court.

176 As for the applicant's argument that the facts were not imputed, as regards Hamas, to the political wing of the organisation, or to the resistance movement Hamas-Izz al-Din al-Qassem, it is ineffective, since, as is clear from paragraphs 116 to 118 above, those two entities must be regarded as constituting one and the same organisation for the application of the rules relating to the fight against terrorism.

177 It must therefore be considered that the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures are sufficiently reasoned.

The accuracy of the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures

178 In the applicant's submission, the facts set out in paragraph 15 of Annex A (see paragraph 163 above) and in paragraph 17 of Annex B (see paragraph 144 above) to the statement of reasons relating to the contested measures cannot serve as a basis for retaining its name on the lists at issue. In the first place, those facts, particularly those earlier than 2009, are too old to justify retaining the applicant's name on those lists. In the second place, those facts are not proved. In that regard, the applicant claims that the facts of August 2014, November 2014 and April 2016 referred to in paragraph 17 of Annex B to the statement of reasons relating to the contested measures were not claimed by Hamas and that the fact of 7 July 2014, referred to in the same paragraph, should be considered in the light of the war that took place in Gaza in 2014.

179 The Council disputes the merits of this plea.

180 As regards the applicant's argument derived from the time which has elapsed since the facts occurred, it should be stated that, in paragraph 33 of the judgment of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584), the Court of Justice held that, since a period of nine years had elapsed between, on the one hand, the adoption of the national decisions which had served as the basis for the original entry of the applicant's name on the fund-freezing lists and the original listing and, on the other, the adoption of the acts retaining the applicant's name on the lists at issue, the Council was required to rely on more recent factors.

181 For analogous reasons, the Court considers that, as the applicant submits, in the present case the first six facts referred to in paragraph 17 of Annex B to the statement of reasons relating to the contested measures (see paragraph 144 above), which took place between 2003 and 2008, namely more than nine years before the adoption of the contested measures, are too old to justify retaining the applicant's name on the lists at issue.

182 So far as their date is concerned, the other seven facts referred to in paragraph 17 of Annex B to the statement of reasons relating to the contested measures may be divided into two groups, namely those that occurred in 2010 and 2011 and those that occurred in 2014 and 2016. In addition to the latter facts are two facts referred to in paragraph 15 of Annex A, which occurred in 2014.

183 Among those facts, the Court considers that the three facts that occurred in 2010 and 2011, referred to in the seventh, eighth and ninth places in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, are also too old to justify retaining the entry of the applicant's name on the lists at issue, which date from 2018. Having regard to the requirement imposed by the Court of Justice to establish the 'most recent' elements to serve as the basis for retaining the entry of the name of a person or an entity on the fund-freezing lists, it must be considered that a gap of seven or eight years is not fundamentally different from a gap of nine years, which the Court of Justice has already held to be too great, in the judgment of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584).

184 It follows that only the last four facts referred to in paragraph 17 of Annex B to the statement of reasons relating to the contested measures and the two facts referred to in paragraph 15 of Annex A, all of which occurred in 2014 or 2016, are sufficiently recent to serve as a basis for the contested measures.

185 It is therefore solely by reference to those six facts that the applicant's argument alleging insufficiency of the evidence adduced by the Council must be examined.

186 In that regard, it should be borne in mind that, according to the case-law, when it disputes evidence adduced by one party, the other party must satisfy two cumulative requirements.

187 In the first place, its objections cannot be general, but must be specific and detailed (see, to that effect, judgment of 16 September 2013, *Duravit and Others* v *Commission*, T-364/10, not published, EU:T:2013:477, paragraph 55).

188 In the second place, the objections concerning the truth and accuracy of the facts must be clearly set out in the first procedural document relating to the contested measure (see, to that effect, judgment of 22 April 2015, *Tomana and Others* v *Council and Commission*, T-190/12, EU:T:2015:222, paragraph 261).

189 The purpose of those requirements is to enable the defendant to ascertain precisely, at the stage of the application, the criticisms made of it by the applicant and thus to prepare its defence accordingly.

190 In the present case, the criticisms relating to the facts that occurred in August and November 2014, referred to in the 11th and 12th places in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, are sufficiently specific to be taken into consideration by the Court.

191 With respect to the fact that occurred in August 2014, the applicant claims, and provides a supporting document, the following in paragraph 98 of the application:

'… Hamas never organised or claimed responsibility [for] that abduction. It was the Israeli Government that fallaciously imputed to the applicant responsibility for that tragic act, in order to justify its military intervention in Gaza in 2014. Subsequently, several especially authorised players, like the former leader of Shin Bet Yuval Diskin, contradicted the Israeli Government's analysis in the press and maintained that the kidnappers were isolated and had acted on their own behalf.'

192 Likewise, with respect to the fact that occurred in November 2014, the applicant states, and provides a supporting document, the following in paragraph 99 of the application:

'… Hamas never claimed that attempt and, according to the correspondent to the newspaper *Le Monde*, attacks of that type, and in particular, the November 2014 attack, are the work of "isolated" Palestinians who on their own behalf resist the "purely security approach".'

193 Conversely, with respect to the fact that occurred in April 2016, referred to in the 13th place in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the applicant merely asserted, in paragraph 99 of the application, that 'Hamas never organised or claimed responsibility for bombings in 2016, contrary to the Council's assertion'.

194 That criticism is too general, in the light of the criteria set out in paragraph 187 above, to be capable of being taken into consideration by the Court.

195 As for the fact that occurred on 7 July 2014, referred to in 10th place in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, the applicant asserts, in paragraph 100 of the application, that the Council's assertions 'must be considered in the light of what has already been said about the 2014 Gaza war, *a fortiori* as regards their imputation to the political wing of Hamas'.

196 As that criticism relates to whether a fact that occurred in the context of an armed conflict may be classified as a terrorist act and not to whether the fact in question did or did not occur, or whether it may be imputed to the applicant, it will be examined below in the context of the third plea.

197 The two facts dating from 2014, referred to in paragraph 15 of Annex A to the statement of reasons relating to the contested measures, were not the subject of a specific and detailed objection.

198 It follows from the foregoing that, among the six facts that occurred in 2014 and 2016, only those that occurred in August and November 2014 have been validly criticised.

199 Those criticisms are ineffective, however, since the other four facts, namely the facts that occurred in 2014 referred to in paragraph 15 of Annex A to the statement of reasons relating to the contested measures and the facts that occurred on 7 July 2014 and in April 2016 referred to in the 10th and 13th places in paragraph 17 of Annex B, have not been validly criticised by the applicant and since they are sufficient in any event to justify retaining the inclusion of the applicant's name on the lists at issue.

200 Subject to examination of the line of argument referred to in paragraph 196 above, the second plea must therefore be rejected as unfounded.

Third plea: error of assessment as regards the terrorist nature of the applicant

201 The applicant maintains that, in adopting the contested measures, the Council made an error of assessment by classifying the facts which it established in the statements of reasons relating to the contested measures as terrorist acts and classifying the applicant as a terrorist organisation.

202 It is apparent from the applicant's arguments that those criticisms relate both to the facts underpinning the decisions of the competent authorities that served as the basis for the inclusion of the applicant's name on the fund-freezing lists and to the facts that justify retaining it on those lists and are referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures.

203 In order to answer this plea, it is necessary to draw a distinction between those two categories of facts.

The facts underpinning the decisions of the competent authorities on which the Council relied in order to place the applicant's name on the lists at issue

204 In the light of the answer given to the first plea, this first part of the third plea will have to be examined only in so far as it relates to the facts serving as the basis of the Home Secretary's decision.

205 As regards those facts, it should be borne in mind that, in answer to the first part of the sixth plea, it was held in paragraph 133 above that they did not have to be mentioned by the Council in the statements of reasons relating to the contested measures.

206 The Council cannot therefore be required to verify the classification of those facts by the national authority and to state in the contested measures the result of that classification.

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

208 The applicant's criticisms with regard to the facts underpinning the Home Secretary's decision are therefore ineffective.

The facts relied on by the Council in order to retain the applicant's name on the lists at issue and referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures

209 In the statements of reasons relating to the contested measures, the Council classified the facts referred to in paragraph 15 of Annex A as terrorist acts within the meaning of Article 1(3)(iii)(a), (d), (f), (g) and (i) of Common Position 2001/931 with a view to attaining the ends set out in Article 1(3)(i) and (ii) of that common position and, moreover, the facts referred to in paragraph 17 of Annex B as terrorist acts within the meaning of Article 1(3)(iii)(a), (b), (c) and (f) of Common Position 2001/931 with a view to attaining the ends set out in Article 1(3)(i) and (ii) of that common position.

210 The applicant maintains that the Council erred in classifying the facts concerned as terrorist acts. First of all, the fact that the acts at issue all took place in the context of the war of occupation conducted by Israel in Palestine ought to have caused the Council not to apply that classification to it. Next, even on the assumption that those facts were established, the acts to which they relate were carried out in order to release the Palestinian people, and not for the aims cited by the Council and set out in Article 1(3)(i), (ii) and (iii) of Common Position 2001/931.

211 By those arguments, the applicant claims that the Council, when classifying the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, ought to have taken into consideration the fact that the Israeli-Palestinian conflict came under the law on armed conflicts and that its objective was to liberate the Palestinian people.

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

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

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

215 That position is not altered by the following arguments.

216 In the first place, the applicant contends that, in the judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraph 87), the Court of Justice did not rule on the situation in which the armed conflict is based on the right to self-determination, which is a principle of customary law. Classifying the actions of a national liberation movement like Hamas or Hamas-Izz al-Din al-Qassem that resists the illegal occupation of Palestinian territory by the State of Israel as terrorist acts constitutes a breach of that principle.

217 In that regard, it should be observed that, as the applicant submits, the Court of Justice, in the judgment of 21 December 2016, *Council* v *Front Polisario* (C-104/16 P, EU:2016:973, paragraph 88), considered that the customary principle of self-determination referred to, in particular, in Article 1 of the Charter of the United Nations, is a principle of international law applicable to all non-self-governing territories and to all peoples who have not yet attained independence.

218 Without taking a position on its application in the present case, it should be observed that that principle does not mean that, in order to exercise the right to self-determination, a people or the inhabitants of a territory may have recourse to means that fall under Article 1(3) of Common Position 2001/931.

219 In fact, a distinction must be drawn between, on the one hand, the objective which a people or the inhabitants of a territory seek to attain and, on the other, the conduct in which they engage in order to attain it.

220 As already stated in paragraphs 212 to 214 above, the rules adopted in the European Union in order to combat terrorism apply to all forms that terrorism may take, irrespective of the objective of the conflict, provided that conduct which meets the conditions and requirements expressed in those rules is employed.

221 In the second place, the applicant denies the intention of establishing an Islamic State, which was ascribed to it by the Council in the statement of reasons relating to the contested measures and which justified the inclusion of its name on the lists at issue.

222 It is true that, at the beginning of the statement of reasons relating to the contested measures, the Council asserts:

‘Harakat al-Muqawamah al-Islamiyyah (Hamas) is a group which seeks to put an end to the Israeli occupation in Palestine and to create an Islamic State.’

223 However, it follows from the statement of reasons relating to the contested measures, taken as a whole, that it is not that assertion that serves as a basis for including or retaining the applicant’s name on the lists at issue.

224 As is apparent from the examination of the first, second and sixth pleas above, the inclusion of the applicant’s name on the lists at issue and its retention on those lists is based on the fact that the Home Secretary’s decision remains in force, and also on the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, within the limits indicated in the context of the examination of the second plea.

225 In all of the contested measures, the phrase highlighted by the applicant plays only a contextual role, the wrongful nature of which, if it were to be established, could not entail annulment of those measures.

226 For those reasons, the third plea must be rejected as unfounded.

Fourth plea: breach of the principle of non-interference

227 The applicant claims that, in adopting the contested measures, the Council breached the principle of non-interference, which is derived from Article 2 of the Charter of the United Nations and is a principle of *jus cogens* resulting from the sovereign equality of States in international law. That principle precludes a State or a government from being considered to be a terrorist entity.

228 Hamas is not a mere non-governmental organisation, still less an informal movement, but a legal political movement which has been successful in the elections in Palestine and which forms the core of the Palestinian Government. As Hamas has been called upon to occupy posts which go beyond those of an ordinary political party, its acts in Gaza are comparable to those of a State authority and thus cannot be condemned under anti-terrorist measures. The applicant is the only one among the persons and entities whose names are on the lists at issue to be in such a situation.

229 In that regard, it should be observed that, as it constitutes a corollary of the principle of sovereign equality of States, the principle of non-interference, also known as the principle of non-intervention, is a principle of customary international law involving the right of every sovereign State to conduct its affairs without external interference.

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

231 Being neither a State nor the government of a State, Hamas cannot benefit from the principle of non-interference.

232 The fourth plea must therefore be rejected as unfounded.

Fifth plea: failure to have sufficient regard to the development of the situation owing to the passing of time

233 The applicant takes issue with the Council for not having correctly carried out the examination provided for in Article 1(6) of Common Position 2001/931, for a number of reasons.

234 In the first place, in order to retain the applicant's name on the lists at issue, the Council merely asserted that the national decisions were still in force and, in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, listed a series of facts without ascertaining whether the retention of the applicant's designation as a foreign terrorist organisation by the US review decision of 27 July 2012 was substantiated by serious and credible evidence and clues and whether those facts should be classified as terrorist acts within the meaning of Common Position 2001/931.

235 In any event, the US review decision of 27 July 2012 is too old to justify retaining the applicant's name on the lists at issue and that obsolescence cannot be remedied by the United Kingdom decision of September 2016, which related only to Hamas-Izz al-Din al-Qassem.

236 In that regard, it should be borne in mind that, as is apparent from paragraphs 138 to 144 and 161 to 163 above, the grounds on which the applicant's name was retained on the lists at issue consist in the fact that the Home Secretary's decision is still in force and, within the limits indicated in the context of the examination of the second plea, the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures.

237 In so far as they relate to the US review decision of 27 July 2012, the criticisms formulated by the applicant in the context of the present plea are ineffective, since the retention of its name on the lists at issue is not legally based on that decision.

238 In the second place, the applicant maintains that the facts that took place between 2014 and 2016 could not be imputed to Hamas or to Hamas-Izz al-Din al-Qassem.

239 As that criticism has already been examined in the context of the second plea, reference is made to paragraph 176 above.

240 In the third place, the applicant takes issue with the Council for not having taken any exculpatory evidence into account. In that regard, it submits, first, that Hamas's Charter, published in 2017, bases its action on the principle of self-determination and acknowledges respect for the borders established by the United Nations Organisation (UNO) plan in 1967 and, second, that, according to observers, since 2014, acts of violence have been committed by isolated persons, while Hamas-Izz al-Din al-Qassem observes the ceasefire.

241 In that regard, it should be observed that, following the letters of 30 November 2017 and 22 March 2018, the applicant, in spite of being invited to do so by the Council, has not contacted that institution in order to put forward such exculpatory evidence. In those circumstances, the Council cannot be criticised for not having taken such evidence into consideration in the statements of reasons relating to the contested measures.

242 In any event, it follows from the examination of the second plea that the re-entry of the applicant's name on the lists at issue is based to the requisite legal standard on the Home Secretary's decision and on the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures, within the limits indicated in the context of the examination of that plea.

243 The fifth plea must therefore be rejected as unfounded.

Seventh plea: breach of the principle of respect for the rights of the defence and of the right to effective judicial protection

244 The seventh plea consists of two parts.

First part of the seventh plea

245 In the first part of its seventh plea, the applicant maintains that, when it relies on national decisions taken by an authority of a third State, the Council is required to ascertain that the procedural rights were actually respected during the national proceedings that led to the adoption of those measures and that the Court must ensure that that examination was carried out.

246 The applicant submits that in the present case its procedural rights were not respected by the United States authorities. It received no information concerning the decision concerning it taken in the United States, although notification of that decision was perfectly possible, since it has an 'establishment' in Damascus (Syria) and in Gaza. It was thus prevented from submitting comments and from exercising its right of appeal. Even though the United States legislation provides for a judicial remedy, the lack of notification or of a statement of reasons breached the applicant's right to effective judicial protection. At the very least, the Council should prove that the United States Government attempted to alert the applicant and that its attempt to do so failed.

247 Since, first, in answer to the first plea, the Court considered that the US decisions could not validly serve as a basis for the inclusion of the applicant's name on the lists at issue and since, second, the retention of its name on those lists is based on the fact that the Home Secretary's decision is still in force and on the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures (see paragraphs 138 to 144 and 161 to 163 above), and not on the decisions from which those facts are taken, the first part of the seventh plea cannot be effectively relied on.

Second part of the seventh plea

248 In the second part of its seventh plea, the applicant maintains that the principle of respect for the rights of the defence was breached by the Council during the procedure leading to the adoption of the contested measures, for three reasons.

249 In the first place, the applicant takes issue with the Council for not having provided it with the serious evidence and clues on which the US decisions were based so that it might make known its views in that respect.

250 Since, in the context of the first plea, the Court held that the US decisions could not validly serve as the basis for placing the applicant's name on the lists at issue and since, moreover, the retention of its name on those lists is based on the fact that the Home Secretary's decision remains in force and on the facts referred to in paragraph 15 of Annex A and in paragraph 17 of Annex B to the statement of reasons relating to the contested measures (see paragraphs 138 to 144 and 161 to 163 above), and not on the decisions from which those facts are taken, that argument must be rejected as ineffective.

251 In the second place, the applicant takes issue with the Council for not having communicated to it, before adopting the contested measures, the information and evidence relating to the facts that did not originate in national decisions and for not having heard it concerning that information and evidence. The applicant also maintains that the Council ought to have made clear in the letter of 30 November 2017 that the applicant was entitled to request that material.

252 In that regard, it should be borne in mind that, in accordance with the case-law, it is only at the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see, to that effect, judgments of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 92; of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 87; and of 28 July 2016, *Tomana and Others* v *Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraph 66 and the case-law cited).

253 In the present case, the applicant did not make such a request.

254 As for the fact that the letter of 30 November 2017 did not expressly mention the possibility that the applicant could request the Council to provide the information and evidence relating to the facts that did not originate in national decisions, it should be observed that that letter stated the address to which the applicant could address its observations on the Council's intention to retain its name on the lists at issue of March 2018. It is clear that it was open to the applicant to use that address in order to request that information and that evidence, which it did not do.

255 In those circumstances, the measures of March 2018 cannot be annulled on the ground that the Council did not communicate the information and evidence relating to the facts that did not originate in national decisions.

256 In the third place, the applicant maintains that the letters of 22 March and 31 July 2018, containing the statements of reasons relating to the contested measures, ought to have been addressed to it, rather than to its counsel, since it has an establishment in Damascus and in Doha (Qatar).

257 In that regard, it should be observed that the obligation to notify actual specific reasons individually to the persons and entities against whom restrictive measures are adopted is essentially intended to supplement the publication of a notice in the Official Journal, which informs the persons or entities concerned that restrictive measures have been adopted against them and invites them to request communication of the statement of reasons on which those measures are based by supplying the precise address to which that request may be sent. Individual notification to the persons and entities concerned is therefore not the only mechanism used in order to inform them of the measures taken against them (judgment of 14 December 2018, *Hamas* v *Council*, T-400/10 RENV, under appeal, EU:T:2018:966, paragraph 175).

258 Furthermore, it is apparent from the case-law that the obligation to notify individually the statement of reasons on which restrictive measures are based does not apply in all cases, but only where it proves possible (see judgment of 14 December 2018, *Hamas* v *Council*, T-400/10 RENV, under appeal, EU:T:2018:966, paragraph 176 and the case-law cited).

259 In the present case, it is apparent that, even in the context of these proceedings, the applicant's address remains unknown, since the only information supplied by the applicant to the Court is limited to the name of a town and a country (Doha in Qatar and Gaza) (see, to that effect, judgment of 14 December 2018, *Hamas* v *Council*, T-400/10 RENV, under appeal, EU:T:2018:966, paragraph 177).

260 The Council was therefore entitled, in addition to publishing the notices of 22 March and 31 July 2018, to send the applicant's lawyer the statements of reasons relating to the contested measures.

261 In the light of all of the foregoing elements, the seventh plea must be rejected as unfounded.

Eighth plea: 'failure to authenticate the statements of reasons'

262 In the answer which it submitted on 19 March 2019 to the question put to it on 1 March 2019 by the Court in the context of a measure of organisation of procedure, the applicant raises an eighth plea, alleging 'failure to authenticate the statements of reasons'.

263 The applicant observes that the statements of reasons relating to the contested measures, which were communicated by the Council to the applicant's lawyer by letters of 22 March and 31 July 2018, were not signed by the President of the Council and that they had therefore not been authenticated, contrary to the requirements of Article 15 of the Council's Rules of Procedure, as adopted by Decision 2009/937/EU of 1 December 2009 (OJ 2009 L 325, p. 35).

264 The applicant maintains that, in the absence of such authentication, there can be no certainty that the statements of reasons communicated to it correspond to those adopted by the Council.

265 Although it does not claim that the plea is inadmissible, the Council states, in its observations on the eighth plea, that the applicant raised the plea only in answer to a question from the Court and that it had not raised it either in the application or in the pleading adapting the application.

266 In that regard, it must be borne in mind that, in application of Article 84 of the Rules of Procedure, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

267 In the present case, the eighth plea was raised by the applicant in its answer to a question put by the Court in the context of a measure of organisation of procedure, when it could have been raised in the application. It must therefore be considered inadmissible.

268 Nonetheless, the Court may at any time, after hearing the parties, adjudicate of its own motion on a matter of public policy (see, to that effect, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraphs 48 and 49 and the case-law cited).

269 As lack of authentication constitutes a breach of an essential procedural requirement within the meaning of Article 263 TFEU (see, to that effect, judgment of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraph 76), the eighth plea goes to an issue of public policy (see, to that effect, judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 67, and of 30 March 2000, *VBA* v *Florimex and Others*, C-265/97 P, EU:C:2000:170, paragraph 114), and it is therefore appropriate to examine it.

270 As regards the substance, it should be borne in mind that the first subparagraph of Article 297(2) TFEU states the following:

'Non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.'

271 Furthermore, Article 15 of the Council's Rules of Procedure provides:

'The text of the acts adopted by the Council … 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.'

272 In the judgment of 15 June 1994, *Commission* v *BASF and Others* (C-137/92 P, EU:C:1994:247, paragraph 75), cited by the applicant, the Court of Justice held, with regard to a decision adopted by the European Commission, that the purpose of the authentication provided for in the Commission's Rules of Procedure was to guarantee legal certainty by ensuring that the text adopted by the College of Commissioners becomes fixed in the languages which are binding.

273 According to the Court of Justice, the authentication provided for in the Commission's Rules of Procedure ensures that, in the event of dispute, it can be verified that the texts notified or published correspond precisely to the text adopted by the institution and so with the intention of the author (judgment of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraph 75).

274 It follows, according to the Court of Justice, that the authentication required by the Commission's Rules of Procedure constitutes, within the meaning of Article 263 TFEU, an essential procedural requirement breach of which gives rise to an action for annulment (judgment of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraph 76).

275 Those rules, set out in the judgment of 15 June 1994, *Commission* v *BASF and Others* (C-137/92 P, EU:C:1994:247, paragraphs 75 and 76), with regard to acts of the Commission, must be transposed to acts of the Council.

276 As in the case of acts of the Commission, the principle of legal certainty requires that third parties have a means of ascertaining that the acts of the Council that are published or notified correspond to those that were adopted.

277 The same applies even though, unlike the Commission, the Council is not a college. In the judgment of 15 June 1994, *Commission* v *BASF and Others* (C-137/92 P, EU:C:1994:247), the Court of Justice relied, in particular, in order to justify the obligation to authenticate acts, on the need to ensure legal certainty, by making it possible to verify, in the event of dispute, that the texts notified or published correspond fully with the text adopted by the institution. Legal certainty is a general principle of law that applies to all the institutions, especially when, as is the case here, they adopt acts intended to have effects on the legal position of legal or private persons.

278 In the present case, it is common ground that the statements of reasons relating to the contested measures that were communicated to the applicant do not contain a signature, but are presented, in themselves, as typewritten documents with no letterhead containing nothing, not even a date, that would make it possible to identify them as acts issued by the Council and to determine when they were adopted.

279 In an annex to its observations on the eighth plea, the Council sent the Court the contested measures, dated and bearing the signature of its President and that of its Secretary-General.

280 It must be stated, however, that those measures do not contain the statements of reasons that justified their adoption.

281 Pursuant to Article 296 TFEU, acts adopted by the Council must state the reasons on which they are based; that provision requires, in accordance with a consistent body of case-law, that the institution concerned state the reasons that led it to adopt them, in order to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review (see, to that effect, judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 50 and the case-law cited).

282 The operative part of an act can be understood, and its full effect ascertained, only in the light of its statement of reasons. Since the operative part and the statement of reasons constitute an indivisible whole (judgments of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraph 67, and of 18 January 2005, *Confédération Nationale du Crédit Mutuel* v *Commission*, T-93/02, EU:T:2005:11, paragraph 124), no distinction can be drawn between the statement of reasons and the operative part of an act for the application of the provisions requiring its authentication. Where, as in the present case, the act and the statement of reasons are in separate documents, both must be authenticated, as required by those provisions, and the presence of a signature on one of them cannot give rise to a presumption, whether rebuttable or not, that the other has also been authenticated.

283 As the Council itself acknowledges in paragraph 29 of its observations on the eighth plea, the signature of its acts is an essential procedural requirement. Consequently, since it is apparent that that requirement was not met in the present case, the contested measures must be annulled.

284 That analysis is disputed by the Council.

285 In the first place, the Council claims that the case-law requires it to separate, in the context of Common Position 2001/931, the statements of reasons from the acts themselves. With regard to the restrictive measures adopted by the Council, it is therefore the case-law that gives rise to the present situation, in which the acts are signed, but the statements of reasons are not, so that no reproach can be directed at the Council on that point and the acts cannot therefore be annulled.

286 In that regard, it should be observed that, pursuant to the second paragraph of Article 296 TFEU, all acts are to state the reasons on which they are based and that, as stated in paragraph 282 above, the operative part and the statement of reasons of a decision constitute an indivisible whole.

287 It is true that, having regard to the fact that the detailed publication of the complaints put forward against the persons and entities concerned might conflict with the overriding considerations of public interest and jeopardise their legitimate interests, it has been accepted that the publication in the Official Journal of the operative part and a general statement of reasons for fund-freezing measures was sufficient, it being understood that the actual, specific statements of reasons for that decision had to be formalised and brought to the knowledge of the persons concerned by any other appropriate means (see, to that effect, judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384, paragraph 147).

288 However, that tolerance applies only to the publication of acts and not to the acts themselves and cannot therefore affect the obligation, laid down in the first subparagraph of Article 297(2) TFEU and Article 15 of the Council's Rules of Procedure, to sign them.

289 In the second place, the Council states that the contested measures and the statements of reasons underpinning them were adopted simultaneously by the Member States following a rigorous written procedure, as provided for in Article 12(1) of the Council's Rules of Procedure.

290 First, the Council's competent working party, namely the Working Party on restrictive measures to combat terrorism (COMET), discussed the possible retention of the applicant's name on the basis of the existing statement of reasons and considered that no new information argued in favour of deleting its name from the list. On that basis, COMET finalised the statements of reasons relating to all the entities and persons concerned.

291 Second, on 5 March and 3 July 2018 respectively, the European Union's High Representative for Foreign Affairs and Security Policy submitted his proposals for the adoption of the contested measures. On 8 March and 5 July 2018, those proposals were examined by a Council working party, namely the 'Working Party of Foreign Relations Counsellors' (RELEX), which finalised the text of the drafts.

292 Third, the General Secretariat of the Council prepared a note for the Committee of Permanent Representatives (Coreper) and the Council presenting all the documents to be adopted. On that basis, the General Secretariat of the Council then opened the written procedures in accordance with Article 12(1) of the Council's Rules of Procedure. The documents that initiated those written procedures gave precise details of the documents to which those procedures related and those documents included both the draft contested measures and the draft statements of reasons relating to them. All the delegations of the Member States marked their agreement on those drafts.

293 In the Council's submission, it is absolutely certain from the fact that those procedures were complied with and from the documents to which they gave rise the contested measures, including the statements of reasons, were adopted by the Council and that they are the result of its intention.

294 Such an argument cannot be upheld.

295 In that regard, it should be borne in mind that the signature of the acts of the Council by its President and its Secretary-General, which is provided for in the first subparagraph of Article 297(2) TFEU and Article 15 of the Council's Rules of Procedure, is intended, in particular, to enable third parties to be sure that the acts notified to them were indeed adopted by the Council.

296 In other words, the authentication of the acts of the Council may be analysed as the materialisation of the declaration by the President and the Secretary-General of the Council that the acts in question were indeed adopted by the Council.

297 That formality cannot be replaced by the description of the procedure followed within the Council for the purpose of adopting those acts. When the Treaty and an institution's Rules of Procedure require that institution to carry out a specific formality designed to ensure respect for the principle of legal certainty for the benefit of third parties, namely the signature of the acts adopted by it, that institution cannot waive that formality on the ground that the procedural rules provided for in the Rules of Procedure were observed.

298 In the third place, the Council claims that, in the present case, the factual context is different from that of the case that gave rise to the judgment of 15 June 1994, *Commission* v *BASF and Others* (C-137/92 P, EU:C:1994:247), in which the contested decision did not correspond to the version adopted by the Commission. It maintains that such a situation could not arise for acts of the

Council owing to the internal procedures applied within the Council and that, furthermore, the applicant has adduced no evidence suggesting that the statements of reasons were amended after being adopted.

299 In that regard, it should be observed that, according to the case-law, it is the mere failure to authenticate an act which constitutes the infringement of an essential procedural requirement and it is not necessary also to establish that the act is vitiated by some other defect or that the lack of authentication resulted in harm to the person relying on it (judgments of 6 April 2000, *Commission* v *ICI*, C-286/95 P, EU:C:2000:188, paragraph 42, and of 6 April 2000, *Commission* v *Solvay*, C-287/95 P and C-288/95 P, EU:C:2000:189, paragraph 46).

300 To the extent necessary, it must be stated that the Council has never claimed, in its written submissions, that it was impossible for it to authenticate the statements of reasons relating to the contested measures.

301 Having been placed on the contested measures, the signatures of the President and the Secretary-General of the Council could also have been placed on the statements of reasons relating to those measures. They ought to have been, since the contested measures and the statements of reasons were set out in separate documents and since, as is clear from paragraphs 281 and 282 above, the latter constituted the essential complement of the former.

302 As stated in paragraph 283 above, the Council itself recognised the importance of the signature of the legal acts which it adopts by describing it, in paragraph 29 of its answer to the question put by the Court, as an essential procedural requirement.

303 Last, the Council claims that, if the Court should consider that the contested measures were affected by a procedural defect, that defect would not be sufficient to annul the contested measures.

304 That argument must also be rejected. As the signature of the acts of the Council by their President and their Secretary-General constitutes an essential procedural requirement, breach of that requirement must, according to the case-law, entail the annulment of the contested measures (see, to that effect, judgment of 24 June 2015, *Spain* v *Commission*, C-263/13 P, EU:C:2015:415, paragraph 56 and the case-law cited).

305 In conclusion, as the statements of reasons relating to the contested measures were not signed by the President of the Council and its Secretary-General, although they were set out in separate documents, the eighth plea must be upheld and the contested measures must be annulled in so far as they concern the applicant.

Costs

306 In accordance with Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

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

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **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 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 2018/468 in so far as they concern '"Hamas", including "Hamas-Izz al-Din al-Qassem"';**

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

Pelikánová Nihoul Svenningsen

Delivered in open court in Luxembourg on 4 September 2019.

[Signatures]