ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

LUXEMBOURG

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

16 October 2014*

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Freezing of funds — Applicability of Regulation (EC) No 2580/2001 to situations of armed conflict — Possibility for an authority of a third State to be classified as a competent authority within the meaning of Common Position 2001/931/CFSP — Factual basis of the decisions to freeze funds — Reference to terrorist acts — Need for a decision of a competent authority for the purpose of Common Position 2001/931)

In Joined Cases T-208/11 and T-508/11,

Liberation Tigers of Tamil Eelam (LTTE), established in Herning (Denmark), represented by V. Koppe, A. M. van Eik and T. Buruma, lawyers,

applicant,

v

Council of the European Union, represented by G. Étienne and E. Finnegan, acting as Agents,

defendant,

supported by

Kingdom of the Netherlands, represented, in Case T-208/11, initially by M. Bulterman, N. Noort and C. Schillemans, and subsequently, as well as in Case T-508/11, by C. Wissels, M. Bulterman and J. Langer, acting as Agents,

intervener in Cases T-208/11 and T-508/11,

by

* Language of the case: English.

United Kingdom of Great Britain and Northern Ireland, represented initially by S. Behzadi-Spencer, H. Walker and S. Brighouse, and subsequently by S. Behzadi-Spencer, H. Walker and E. Jenkinson, acting as Agents, assisted by M. Gray, Barrister,

intervener in Case T-208/11,

and by

European Commission, represented initially by F. Castillo de la Torre and S. Boelaert, and subsequently by Castillo de la Torre and É. Cujo, acting as Agents,

intervener in Cases T-208/11 and T-508/11,

APPLICATION, initially, in Case T-208/11, for annulment of Council Implementing Regulation (EU) No 83/2011 of 31 January 2011 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 610/2010 (OJ 2011 L 28, p. 14), and, in Case T-508/11, for annulment of Council Implementing Regulation (EU) No 687/2011 of 18 July 2011 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 Regulations (EU) No 610/2010 and No 83/2011 (OJ 2011 L 188, p. 2), in so far as those measures apply to the applicant,

THE GENERAL COURT (Sixth Chamber, Extended Composition),

composed of F. Dehousse (Rapporteur), acting as President, I. Wiszniewska-Białecka, E. Buttigieg, A. M. Collins and I. Ulloa Rubio, Judges,

Registrar: S. Spyropoulos, Administrator,

further to the hearing on 26 February 2014,

gives the following

Judgment

Facts and procedure

1 On 27 December 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), 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).

2 On 29 May 2006, the Council adopted Decision 2006/379/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2005/930/EC (OJ 2006 L 144, p. 21). By Decision 2006/379, the Council placed the applicant, the Liberation Tigers of Tamil Eelam (LTTE), on the list relating to frozen funds provided for in Article 2(3) of Regulation No 2580/2001 ('the list relating to frozen funds'). Its name has remained on that list ever since.

3 On 31 January 2011, the Council adopted Implementing Regulation (EU) No 83/2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 610/2010 (OJ 2011 L 28, p. 14). The LTTE was maintained on the list annexed to Implementing Regulation No 83/2011.

4 By document lodged at the Court Registry on 11 April 2011, the LTTE brought an action, registered as Case T-208/11, for annulment of Implementing Regulation No 83/2011 in so far as that measure concerned it.

5 By letter of 30 May 2011, the Council sent the LTTE the reasons why it intended to maintain LTTE's name on that list when the list relating to frozen funds next came up for review.

6 By documents lodged at the Court Registry on 28 July, 2 and 3 August 2011 respectively, the Kingdom of the Netherlands, the European Commission and the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in support of the form of order sought by the Council in Case T-208/11. After hearing the parties, the President of the Second Chamber of the Court granted those applications by order of 16 September 2011.

7 On 18 July 2011, the Council adopted Implementing Regulation (EU) No 687/2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulations (EU) No 610/2010 and No 83/2011 (OJ 2011 L 188, p. 2). The LTTE was maintained on the list annexed to Implementing Regulation No 687/2011.

8 By letter of 19 July 2011, the Council sent the LTTE the reasons for maintaining it on that list.

9 By document lodged at the Court Registry on 28 September 2011 and rectified on 19 October 2011, the LTTE brought an action, registered as Case T-508/11, for annulment of Implementing Regulation No 687/2011 in so far as that measure concerned it.

10 By documents lodged at the Court Registry on 9 and 17 January 2012 respectively, the Kingdom of the Netherlands and the Commission applied for

leave to intervene in support of the form of order sought by the Council in Case T-508/11. After hearing the parties, the President of the Second Chamber of the Court granted those applications by orders of 9 March 2012.

11 By letter of 18 November 2011, the Council sent the LTTE the reasons why it intended to maintain its name on the list relating to frozen funds when it next came up for review.

12 On 22 December 2011, the Council adopted Implementing Regulation (EU) No 1375/2011 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 687/2011 (OJ 2011 L 343, p. 10). The LTTE was maintained on the list annexed to Implementing Regulation No 1375/2011.

13 By letter of 3 January 2012, the Council sent the LTTE the reasons for maintaining it on that list.

14 By letter lodged at the Court Registry on 27 February 2012, the LTTE requested that Cases T-208/11 and T-508/11 be joined and sought leave to amend the forms of order sought in the present actions so that they would apply to Implementing Regulation No 1375/2011; it also lodged offers of evidence.

15 By documents of 24 and 25 May 2012, the Commission, the Council and the Kingdom of the Netherlands submitted their observations on the offers of evidence and the request for leave to amend the forms of order sought.

16 After hearing the parties, the President of the Second Chamber of the Court joined Cases T-208/11 and T-508/11 by order of 15 June 2012.

17 On 25 June 2012, the Council adopted Implementing Regulation (EU) No 542/2012 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 1375/2011 (OJ 2012 L 165, p. 12). The LTTE was maintained on the list annexed to Implementing Regulation No 542/2012.

18 By letter of 26 June 2012, the Council sent the LTTE the reasons for maintaining it on that list.

19 By letter lodged at the Court Registry on 19 July 2012, the LTTE sought leave to amend the forms of order sought in the present actions so that they would apply to Implementing Regulation No 542/2012.

20 Since the letters of 27 February and 19 July 2012 had been added to the file as requests for leave to amend the forms of order sought, the LTTE lodged on 2 August 2012, at the request of the Court, a document amending the forms of order sought in the present actions so that they applied to Implementing Regulations No 1375/2011 and No 542/2012.

21 By documents lodged at the Court Registry on 5 and 6 September 2012, the United Kingdom, the Commission and the Council submitted their observations on that amendment of the forms of order sought.

22 On 10 December 2012, the Council adopted Implementing Regulation (EU) No 1169/2012 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 542/2011 (OJ 2012 L 337, p. 2). The LTTE was maintained on the list annexed to Implementing Regulation No 1169/2012.

23 On 7 February 2013, the LTTE lodged a document amending the forms of order sought in the present actions so that they applied to Implementing Regulation No 1169/2012.

24 By documents lodged at the Court Registry on 21 February, 12 and 13 March 2013, the Commission, the Council and the United Kingdom submitted their observations on that amendment of the forms of order sought.

25 On 25 July 2013, the Council adopted Implementing Regulation (EU) No 714/2013 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 1169/2012 (OJ 2013 L 201, p. 10). The LTTE was maintained on the list annexed to Implementing Regulation No 714/2013.

26 On 22 August 2013, the LTTE lodged a document amending the forms of order sought in the present actions so that they applied to Implementing Regulation No 714/2013.

27 By documents lodged at the Court Registry on 9, 17 and 25 September 2013, the Commission, the Kingdom of the Netherlands, the United Kingdom and the Council submitted their observations on that amendment of the forms of order sought.

28 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present cases were accordingly allocated.

29 By decision of 13 November 2013, the Court referred the present cases to the Sixth Chamber, Extended Composition.

30 By letter of 15 January 2014, the Court requested the parties to reply to certain questions. The parties complied with that request by documents lodged at the Court Registry on 6 February 2014.

31 On 10 February 2014, the Council adopted Implementing Regulation (EU) No 125/2014 implementing Article 2(3) of Regulation No 2580/2001 and

repealing Implementing Regulation No 714/2013 (OJ 2014 L 40, p. 9). The LTTE was maintained on the list annexed to Implementing Regulation No 125/2014.

32 On 18 February 2014, the LTTE lodged a document amending the forms of order sought in the present actions so that they applied to Implementing Regulation No 125/2014.

33 On 25 February 2014, as a member of the Chamber was unable to sit, the President of the General Court designated another Judge to complete the Chamber pursuant to Article 32(3) of the Rules of Procedure of the Court.

34 At the hearing of 26 February 2014, the Kingdom of the Netherlands, the United Kingdom, the Council and the Commission stated that they did not have any objections to the amendment of the forms of order sought on 18 February 2014.

35 On 22 July 2014, the Council adopted Implementing Regulation (EU) No 790/2014 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 125/2014 (OJ 2014 L 217, p. 1). The LTTE was maintained on the list annexed to Implementing Regulation No 790/2014, on the basis of modified reasons.

36 On 20 August 2014, the LTTE lodged a document amending the forms of order sought in the present actions so that they applied to Implementing Regulation No 790/2014.

37 By documents lodged at the Court Registry on 23 and 25 September 2014, the Council and the Kingdom of the Netherlands submitted their observations on that amendment of the forms of order sought.

Forms of order sought

38 The LTTE claims that the Court should:

– annul Implementing Regulations No 83/2011, No 687/2011, No 1375/2011, No 542/2012, No 1169/2012, No 714/2013, No 125/2014 and No 790/2014 (‘the contested regulations’) in so far as they concern the LTTE;

– order the Council to pay the costs.

39 The Council — supported, in Case T-208/11, by the Kingdom of the Netherlands, the United Kingdom and the Commission and, in Case T-508/11, by the Kingdom of the Netherlands and the Commission — contends that the Court should:

– dismiss the actions as unfounded;

– order the LTTE to pay the costs.

Law

40 The LTTE raises, in essence, seven pleas in law, six of which apply both in Case T-208/11 and in Case T-508/11, and one of which applies only in Case T-508/11.

41 The six pleas common to both actions allege (i) inapplicability of Regulation No 2580/2001 to the conflict between the LTTE and the Government of Sri-Lanka; (ii) wrongful categorisation of the LTTE as a terrorist organisation for the purposes of Article 1(3) of Common Position 2001/931; (iii) lack of any decision taken by a competent authority; (iv) failure to undertake the review required under Article 1(6) of Common Position 2001/931; (v) breach of the obligation to state reasons; and (vi) infringement of the rights of defence and the right to effective judicial protection. Solely in Case T-508/11 it alleges (vii) infringement of the principles of proportionality and subsidiarity.

The first plea in law: inapplicability of Regulation No 2580/2001 to the conflict between the LTTE and the Government of Sri-Lanka

Arguments of the parties

42 The LTTE submits that Regulation No 2580/2001 is not applicable to situations of armed conflict, since those conflicts — and therefore the acts committed in that context — can, in its opinion, only be governed by international humanitarian law.

43 However, the historical facts show that the LTTE was involved in armed conflict against the armed forces of the Government of Sri-Lanka, seeking self-determination for the Tamil people and their 'liberation from the oppression' of that government. Given the way in which the LTTE's armed forces were organised and their manner of conducting operations, the members of those forces meet all the requirements laid down by international law for recognition as 'combatants'. That status gave them immunity in respect of acts of war that were lawful under the terms of the law on armed conflict and meant that, in the case of unlawful acts, the LTTE would be subject only to that law, and not to any anti-terrorism legislation. Since legitimate acts of war cannot be categorised as unlawful under national law, they fall outside the scope of Common Position 2001/931, which, as provided under Article 1(3) thereof, does not apply to acts which are not offences under national law.

44 The placing of the LTTE on the list relating to frozen funds accordingly constitutes interference by a third country in an armed conflict, contrary to the principle of non-interference under international humanitarian law.

45 In its replies, the LTTE claims that a clear distinction should be made between armed conflict and terrorism. The first question is not whether an event has the characteristics of a terrorist act, but whether there is an ongoing armed conflict, in which case the only law that applies is humanitarian law. Humanitarian law does not preclude armed conflicts; homicides committed in the context of war, but not

in breach of the law on armed conflict, are excusable. It follows that to categorise a suicide attack against enemy headquarters as a terrorist act — as the Council did in the circumstances of these cases — is to criminalise an act of war which is nevertheless acceptable under international humanitarian law.

46 In support of its arguments, the LTTE relies moreover on a judgment of the Rechtbank's-Gravenhague (District Court of The Hague (Netherlands)) of 21 October 2011 and a judgment of the Tribunale di Napoli (Court of Naples (Italy)) of 23 June 2011, which held that the LTTE was involved in an 'internal armed conflict' within the meaning of international law and refused to accept that the LTTE could properly be categorised as a 'terrorist' organisation.

47 The Council, supported by the interveners, disputes the LTTE's arguments. It states that, under international law, categorisation as 'armed conflict' does not preclude the application — where terrorist acts are committed — of the international law rules relating to the fight against terrorism, a fight in which the European Union actively participates in support of the measures adopted by the Security Council of the United Nations ('the Security Council'). International humanitarian law does not preclude the application of specific conventions relating to the fight against terrorism. The definition of 'terrorist acts' in Common Position 2001/931 remains valid whatever the circumstances in which such acts are committed. The Council disputes the argument that the LTTE's categorisation of the situation in Sri-Lanka can exempt it from the application of the international legislation relating to the fight against terrorism.

48 In its rejoinders, the Council maintains its position. With regard to the judgment of the Rechtbank's-Gravenhague, it observes that that judgment is under appeal and argues that the General Court cannot attach to that judgment the consequences that the LTTE wishes to attribute to it with regard to the interpretation of international humanitarian law and European law.

49 The Commission argues that the LTTE is mistaken in asserting an incompatibility between armed conflicts and terrorist acts. There are no principles of immunity for combatants in respect of terrorist acts perpetrated during armed conflict. The LTTE does not substantiate its claim that the acts of which it is accused in the grounds for the contested regulations are lawful acts of war. The LTTE is wrong to claim that terrorist acts committed in the context of an armed conflict are subject only to humanitarian law. The institutions of the European Union enjoy a broad discretion as regards the European Union's external relations and the factors to be taken into consideration for the purposes of adopting measures to freeze funds. The European Union compiles a list of terrorist organisations in order to deprive them of their sources of income, and it does this whether or not they are participants in an armed conflict. That approach is consistent with the European Union's view — broadly shared, moreover, by the rest of the world — that all terrorist acts are reprehensible and must be eradicated, whether committed in times of peace or of armed conflict.

50 It is not necessary, therefore, to determine the exact nature of the conflict — whether armed or not, whether internal or international, whether a war of liberation or not — between the LTTE and the Government of Sri-Lanka.

51 With regard to the alleged breach of the principle of non-interference, the Commission notes that that principle is established for the benefit of States and, accordingly, can be invoked only by them, and not by 'rebel groups'. The fact that only the LTTE — and not the Government of Sri-Lanka — is on the list relating to frozen funds is an argument of opportunity which cannot be considered by the Court. The reference to Article 6(5) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), of 8 June 1977 is not relevant.

52 The Commission disputes, as do the other interveners, the relevance or the substance of the references made by the LTTE to the judgments of the Rechtbank's-Gravenhague and the Tribunale di Napoli.

53 It is clear that the question whether a particular attack is of a terrorist nature is not dependent upon the political cause in the name of which the attack was launched, but rather on the means and methods used. The law on armed conflicts does not allow any exception to the prohibition of acts of terror and there is no rule of humanitarian law that precludes the adoption of measures, such as the freezing of funds, designed to stop the financing of terrorism, wherever it is committed.

Findings of the Court

54 By the present plea, the LTTE maintains, in essence, that, in a case of armed conflict within the meaning of international humanitarian law — which, in its view, is the case here — only that law is applicable to any unlawful acts committed within the context of that conflict, and not the law organising the prevention and suppression of terrorism. LTTE is, it claims, a liberation movement which led an armed conflict against an 'oppressive government'. The placing of the LTTE on the list relating to frozen funds constitutes an infringement of the principle of non-interference under international humanitarian law and the Council was wrong to apply to the LTTE the provisions of EU law on terrorism.

55 In support of its arguments, the LTTE puts forward various references to provisions of international law and EU law.

56 However, contrary to what the LTTE claims, the applicability of international humanitarian law to a situation of armed conflict and to acts committed in that context does not imply that legislation on terrorism does not apply to those acts. That is true both of the provisions of EU law applied in the present case, in particular Common Position 2001/931 and Regulation No 2580/2001, and of international law invoked by the LTTE.

57 As regards, in the first place, EU law, it should be noted that the existence of an armed conflict within the meaning of international humanitarian law does not exclude the application of provisions of EU law concerning terrorism to any acts of terrorism committed in that context.

58 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, as the Council rightly points out, 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.

59 It is notably to implement, at EU level, Security Council Resolution 1373 (2001) of 28 September 2001, which 'reaffirm[s] the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts' and 'calls on Member States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism', that the Council adopted Common Position 2001/931 (see recitals 5 to 7 to that common position) and then, in accordance with that common position, Regulation No 2580/2001 (see recitals 3, 5 and 6 to that regulation).

60 As regards, in the second place, the international law invoked by the LTTE, it should be noted that, apart from the fact that an armed conflict may undeniably give rise to acts corresponding, by their nature, to terrorist acts, international humanitarian law expressly classifies such acts as 'terrorist acts' that are contrary to that law.

61 The Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War expressly provides, in Article 33, that all measures of terrorism are prohibited. Similarly, Additional Protocols I and II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International and Non-International Armed Conflicts, of 8 June 1977, which seek to ensure better protection of those victims, provide that acts of terrorism are prohibited at any time and in any place whatsoever (Article 4(2) of Additional Protocol II) and that acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited (Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II).

62 It follows from the foregoing considerations that the perpetration of terrorist acts by participants in an armed conflict is expressly covered and condemned as such by international humanitarian law.

63 Further, the existence of an armed conflict within the meaning of international humanitarian law does not appear to preclude, in the case of a terrorist act committed in the context of that conflict, the application not only of provisions of

that humanitarian law on breaches of the laws of war, but also of provisions of international law specifically relating to terrorism.

64 Thus, the International Convention for the Suppression of the Financing of Terrorism, signed in New York on 9 December 1999 ('the 1999 New York Convention'), expressly envisages the commission of terrorist acts in the context of an armed conflict within the meaning of international law. In Article 2(1)(b) thereof, it renders unlawful 'any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act'.

65 That convention confirms that, even in an armed conflict within the meaning of international humanitarian law, there may be terrorist acts liable to be punished as such and not only as war crimes. Those acts include those intended to cause death or serious bodily injury to civilians.

66 The LTTE's *a contrario* argument that Article 2(1)(b) of the 1999 New York Convention excludes from the scope of that convention any act directed against persons 'taking an active part in the hostilities in a situation of armed conflict' in no way calls into question that finding.

67 The LTTE is therefore wrong to claim that, in international law, the notions of armed conflict and of terrorism are incompatible.

68 It is also apparent from the foregoing considerations that the fact that terrorist acts emanate from 'freedom fighters' or liberation movements engaged in an armed conflict against an 'oppressive government' is irrelevant. Such an exception to the prohibition of terrorist acts in armed conflicts has no basis in European law or even in international law. In their condemnation of terrorist acts, European law and international law do not distinguish between the status of the author of the act and the objectives he pursues.

69 As for the LTTE's reference to the principle of non-interference which, in its opinion, the Council infringed by placing it on the list relating to frozen funds, it should be noted that that customary international law principle, also called the principle of non-intervention, concerns the right of any sovereign State to conduct its affairs without external interference and constitutes a corollary of the principle of sovereign equality of States (judgment of the International Court of Justice of 26 November 1984 in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), on competence and admissibility, ICJ Reports 1984, p. 392, paragraph 73, and of 27 June 1986, on the substance, ICJ Reports 1986, p. 96, paragraph 202). As the Council points out, that principle of international law is set out for the benefit of sovereign States, and not for the benefit of groups or movements. Contrary to the LTTE's submissions,

the placing on the list relating to frozen funds of a movement — even if it is a liberation movement — in a situation of armed conflict with a sovereign State, on account of the involvement of that movement in terrorism, does not therefore constitute an infringement of the principle of non-interference.

70 In addition, the LTTE's argument that the interference by the European Union stems from the discriminatory nature of the European Union's position, consisting in adopting restrictive measures only against the LTTE and not against the Democratic Socialist Republic of Sri-Lanka, cannot succeed.

71 The lawfulness of measures taken by the Council against a group, on the basis of Common Position 2001/931, depends on whether that institution complied, in its decision, with the conditions and requirements defined in that common position, and not on whether other parties could possibly be subject to restrictive measures. Common Position 2001/931 and its implementation by the Council do not seek to determine who, in a conflict between a State and a group, is right or wrong, but to combat terrorism. In that context, having regard to the broad discretion conferred on the EU institutions as regards the European Union's external relations (see, to that effect, judgments of 28 October 1982 in *Faust* v *Commission*, 52/81, ECR, EU:C:1982:369, paragraph 27; of 16 June 1998 in *Racke*, C-162/96, ECR, EU:C:1998:293, paragraph 52, and of 27 September 2007 in *Ikea Wholesale*, C-351/04, ECR, EU:C:2007:547, paragraph 40; order of 6 September 2011 in *Mugraby* v *Council and Commission*, T-292/09, EU:T:2011:418, paragraph 60), there is no need, for the purposes of the present dispute, to examine whether restrictive measures under EU law could have been adopted with regard to the Democratic Socialist Republic of Sri-Lanka. In any event, even if the Democratic Socialist Republic of Sri-Lanka were to have committed acts which are liable to give rise to criticism and be the basis for an action of the European Union, it should be noted that the principle of equal treatment must be reconciled with the principle of legality, according to which no one may rely, to his own benefit, on an unlawful act committed in favour of another (judgments of 9 July 2009 in *Melli Bank* v *Council*, T-246/08 and T-332/08, ECR, EU:T:2009:266, paragraph 75, and of 14 October 2009 in *Bank Melli Iran* v *Council*, T-390/08, ECR, EU:T:2009:401, paragraphs 56 and 59).

72 In order to contest the applicability of Regulation No 2580/2001 to terrorist acts committed in the context of an armed conflict, the LTTE is also wrong to rely on Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ 2002 L 164, p. 3) and, in particular, recital 11 to that Framework Decision, according to which '[a]ctions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed' by that Framework Decision. The LTTE adds that Framework Decision 2002/475 was accompanied by a statement by the Council explicitly excluding from its scope armed resistance

such as that conducted by the various European resistance movements during World War II.

73 Regulation No 2580/2001 was not adopted pursuant to Framework Decision 2002/475, which concerns criminal law, but pursuant to Common Position 2001/931. Framework Decision 2002/475 cannot therefore determine the scope of Regulation No 2580/2001.

74 Moreover, Common Position 2001/931, just like Security Council Resolution 1373 (2001) which it implements at EU level, does not contain any provision comparable to recital 11 to Framework Decision 2002/475.

75 It follows that the LTTE's reference to Framework Decision 2002/475 and to a statement of the Council accompanying that Framework Decision is irrelevant.

76 Moreover, the Court considers, like the Commission, that the absence, in Common Position 2001/931, of a recital comparable to recital 11 to Framework Decision 2002/475 must, at best, be interpreted as expressing the Council's intention not to provide for any exception to the application of EU provisions when it comes to preventing terrorism by combating its financing. That lack of any exception is in accordance with the 1999 New York Convention which also contains no provision of the type contained in recital 11 to Framework Decision 2002/475.

77 As for the LTTE's reference to the European Parliament recommendation on the role of the European Union in combating terrorism [2001/2016 (INI)] (OJ 2002 C 72 E, p. 135), it should be noted that it refers to a non-binding document. Moreover, that recommendation does not legitimise the commission of terrorist acts by liberation movements. In a recital to that recommendation, the Parliament merely draws a distinction between terrorist acts committed within the European Union — the Member States of which are governed by the rule of law — and 'acts of resistance in third countries against state structures which themselves employ terrorist methods'.

78 The LTTE's reference to Article 6(5) of Additional Protocol II to the Geneva Conventions of 12 August 1949 (see paragraph 61 above) is irrelevant. That provision, according to which, '[a]t the end of [the internal] hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict', concerns the criminal proceedings that may be brought by the government concerned against, inter alia, members of armed groups having taken up arms against it, whereas Regulation No 2580/2001 does not concern the imposition of such criminal proceedings and sanctions, but the adoption by the European Union of preventive measures on terrorism.

79 As for the expression 'as defined as an offence under national law' found in Article 1(3) of Common Position 2001/931 — an expression from which the

LTTE deduces the recognition by the European Union, in its Common Position, of an immunity from the application of measures to freeze funds in cases of lawful acts of war — it should be stated that that expression actually relates to the immunity of combatants in armed conflicts for lawful acts of war, an immunity which Additional Protocols I and II (see paragraph 61 above) express in the following similar terms: no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed (Article 75(4)(c) of Additional Protocol I and Article 6(2)(c) of Additional Protocol II).

80 The presence of that expression in Common Position 2001/931 therefore does not alter the fact that Regulation No 2580/2001 is applicable to terrorist acts, which still constitute unlawful acts of war when committed within the context of armed conflicts.

81 It follows from all of the foregoing considerations that, contrary to what the LTTE claims, Regulation No 2580/2001 is applicable to terrorist acts committed within the context of armed conflicts.

82 The LTTE cannot therefore invoke the existence of an alleged armed conflict between it and the Government of Sri-Lanka in order to exclude itself from the application of Common Position 2001/931 for any terrorist acts which it committed in that context.

83 This plea in law must therefore be rejected.

The third plea in law: lack of any decision taken by a competent authority

Arguments of the parties

84 The LTTE maintains that the grounds for the contested regulations contain, after a list of attacks imputed to it, references to British and Indian decisions. It claims that none of those grounds can amount to a decision by a competent authority for the purposes of Common Position 2001/931.

85 With regard, first, to the list of attacks imputed to the LTTE, it is clear that this is not a decision by a competent authority. None the less, that does not preclude the observation that that list and the alleged attacks therein are unsubstantiated and they cannot therefore serve as a basis for maintaining the LTTE's name on the list relating to frozen funds.

86 Second, the United Kingdom ('UK') decisions invoked in the grounds for the contested regulations are not decisions taken by competent authorities. Since those decisions do not condemn any acts that are relevant in the context of Common Position 2001/931, they cannot serve as a lawful basis unless they concern the instigation of investigations or prosecutions and if they are based on serious and

credible evidence or indicia. That is not the position in the case of the UK decisions, which are administrative — rather than criminal — decisions categorising the LTTE as a terrorist group and freezing its funds. Only decisions taken within the context of criminal procedures can be used as a basis for a decision placing a body on the list relating to frozen funds. The only case of non-criminal decisions accepted as a basis for listing are decisions of the Security Council, as referred to in Article 1(4) of Common Position 2001/931.

87 The LTTE adds that the UK authorities at issue are not competent authorities, in so far as none of them are judicial authorities, despite the fact that there are judicial authorities in the United Kingdom with competence in the field covered by Article 1(4) of Common Position 2001/931.

88 Alternatively, in the event that the Court should hold that the UK decisions amount to the instigation of investigations or prosecutions, or condemnation for a terrorist act, the LTTE submits that those decisions are not based on serious and credible evidence or indicia. In that regard, the grounds for the contested regulations do not identify the bases for those UK decisions. The LTTE notes that its categorisation by the UK authorities was not made individually, but 'collectively' with 20 other groups.

89 With regard, third, to the Indian decisions, the LTTE submits, in essence, that, in the light of the principle of sincere cooperation, only decisions of a national authority of a Member State — with the exception of those of the Security Council — may be considered to be decisions of competent authorities. To hold otherwise would thwart the EU system of sanctions by 'undermining' the leading role of the Member States in that respect and leading the Council to rely on information from third countries which are not bound by the principle of sincere cooperation and whose decisions the Council cannot assume to be consistent with European Union standards in terms of protection of the rights of defence and the right to effective judicial protection.

90 Alternatively, in the event that the Court should hold that the Council could rely on a decision taken by an authority of a third country, the LTTE submits that the Indian decisions at issue cannot be considered to be decisions of competent authorities. As in the case of the UK decisions, they do not amount to the instigation of investigations or prosecutions, or to condemnations, and there are Indian courts with jurisdiction to deal with terrorist matters.

91 Furthermore, although provision is made under Indian law for any association declared unlawful to have a right of referral to a tribunal, so that that body can decide whether the declaration is well founded, the LTTE has never been so referred and the statements of reasons for the decisions maintaining its name on the list relating to frozen funds adopted by the European Union make no mention of that fact; nor is there anything in those statements to show that the decisions

made by the Indian Government are indeed decisions adopted by a competent authority for the purposes of Common Position 2001/931.

92 In the further alternative, in the event that the Court should hold that the Indian decisions amount to the instigation of investigations or prosecutions, or to condemnation for a terrorist act, the LTTE submits that those decisions are not based on serious and credible evidence or indicia. In that regard, the grounds for the contested regulations in no way identify the bases for those Indian decisions. The Council cannot simply rely on decisions taken by national authorities without ensuring that they are decisions for the purposes of Article 1(4) of Common Position 2001/931. That is all the more so in the case of a decision taken by a State which is not a Member State of the European Union.

93 Lastly, the Indian authorities cannot be regarded as a reliable source of information since they have adopted a 'biased position' in the conflict between the LTTE and the Government of Sri-Lanka.

94 The LTTE submits that the Council's argument, according to which it is for the LTTE to challenge before the national courts the facts set out in the statements of reasons for the decisions maintaining its name on the list relating to frozen funds, fails to have regard to the fact that the Council itself offers no evidence as to how the national decisions on which it relied examined and imputed those facts to the LTTE. The argument that the Council need not provide additional evidence because the European Union measure is administrative and not of a penal nature is unfounded. Furthermore, the LTTE cannot be obliged to bring actions in each of the national legal systems where the decisions on which the Council bases its decision have been taken.

95 The Council, supported by the interveners, disputes the LTTE's arguments.

96 With regard to the list of attacks set out in the statements of reasons for the decisions maintaining the LTTE's name on the list, the Council denies that it is required to provide additional evidence concerning the imputation of those acts to the LTTE. The Council contends that if the LTTE wishes to contest the accuracy of the facts imputed to it, it should do so before the national courts of the States that initially adopted measures against it.

97 With regard to the UK decisions, the Council contests the argument that they are not decisions of competent authorities because they did not instigate any investigation or prosecution and are not based on serious and credible evidence or indicia. It also contests the argument that the UK authorities in question are not judicial authorities. It contends that Common Position 2001/931 does not require the national decision to be a criminal decision. As regards the assessment of evidence and indicia on which the national decision was based, the principle of sincere cooperation entails an obligation for the Council to rely as much as possible on the assessment made by the competent national authority, since the

prime consideration for the Council is its perception or evaluation of the danger that, in the absence of a measure to freeze funds, the funds at issue could be used to finance terrorism. The fact that the national authority is an administrative authority and not a judicial authority is not decisive.

98 More specifically, with regard to the decision of the UK Secretary of State for the Home Department ('the Home Secretary') of 29 March 2001, the Council notes that the Court has already held that this was a decision of a competent authority for the purposes of Common Position 2001/931. The Council notes that that decision was adopted by the Home Secretary under Section 3(3)(a) of the UK Terrorism Act 2000, under which, after receiving the approval of Parliament, the Home Secretary has competence to ban any organisation which he considers to be 'involved in terrorism'.

99 That decision of the Home Secretary is sufficient, in itself, to be a basis for the Council decisions, without it even being necessary to examine the decision of the UK Treasury of 6 December 2001 on the freezing of funds, a decision referred to in the statement of reasons of 15 November 2010 on which Implementing Regulation No 83/2011 was based, and then omitted because there was no longer any separate fund-freezing decision in force in the United Kingdom. The Council notes that the content of that decision was then reproduced in a subsequent decision of 7 October 2009 of the same nature and with the same effect in terms of freezing funds, and contends that, like the decision of the Home Secretary, it constitutes a decision of a competent authority for the purposes of Common Position 2001/931.

100 As regards the decision adopted by the Indian Government in 1992 under the Unlawful Activities Act of 1967, as amended in 2004, the Council contends that it is entitled to adopt fund-freezing measures based on decisions adopted by the competent authorities of a third country, either on a proposal from a Member State submitted to that end following an initial examination of the case concerned or at the request of the relevant third country itself. The Council states that it must then ensure that the decisions concerned have been adopted with due regard for the fundamental principles governing the protection of human rights, the rule of law, the principle of the presumption of innocence, the right to a fair trial and the right not to be judged or convicted twice for the same crime or offence. That was the case in this instance.

101 In the rejoinder, the Council, while maintaining its position in essence, refers, as regards the UK decisions, to information provided in the United Kingdom's statement in intervention. It adds that it took cognisance of the following information, according to which the LTTE has continued without interruption to be the subject of proscription measures adopted by the Indian authorities: the most recent decision entered into force on 14 May 2010 for two years and was confirmed on 12 November 2010 in the context of a judicial review. The LTTE therefore continues to be listed as a terrorist organisation in India.

102 The United Kingdom contends, in its statement in intervention, that the decisions of the Home Secretary and the UK Treasury satisfy the necessary requirements to be classified as decisions of competent authorities. As regards the Indian decision, the United Kingdom agrees with the Council's position, according to which that decision falls to be categorised as a decision of a competent authority.

Findings of the Court

103 The LTTE states, correctly, that the list of facts placed at the top of the grounds for the contested regulations does not constitute a competent authority; it also claims that the UK and Indian decisions invoked in the grounds for the contested regulations are not decisions of competent authorities for the purposes of the second subparagraph of Article 1(4) of Common Position 2001/931.

104 As for the general objection that the UK and Indian authorities at issue are not competent authorities because they are not judicial authorities and there are judicial authorities with jurisdiction to deal with terrorist matters in those countries, it should be rejected for the following reasons.

105 The Court has already held, in the case of a decision of a Dutch administrative authority (a regulation on sanctions ('Sanctieregeling') for the suppression of terrorism adopted by the Netherlands Ministers for Foreign Affairs and for Finance), that the fact that that decision constituted an administrative decision and not a judicial decision was not in itself decisive, since the actual wording of Article 1(4) of Common Position 2001/931 expressly provided that a non-judicial authority might also be classified as a competent authority for the purposes of that provision (judgment of 9 September 2010 in *Al-Aqsa* v *Council*, T-348/07, ECR, EU:T:2010:373, paragraph 88, 'the judgment in *Al-Aqsa* T-348/07'). In its judgment on appeal against the judgment in *Al-Aqsa* T-348/07, the Court of Justice confirmed, in essence, that the Sanctieregeling could be regarded as a decision of a competent authority (judgment of 15 November 2012 in *Al-Aqsa* v *Council*, C-539/10 P and C-550/10 P, ECR, EU:C:2012:711, paragraphs 66 to 77, 'the judgment in *Al-Aqsa* C-539/10 P').

106 In a previous judgment concerning a decision of the Home Secretary, the Court held that that decision did indeed appear, in the light of the relevant national legislation, to be a decision of a competent national authority meeting the definition in Article 1(4) of Common Position 2001/931 (judgment of 23 October 2008 in *People's Mojahedin Organization of Iran* v *Council*, T-256/07, ECR, EU:T:2008:461, paragraphs 144 and 145, last sentence, 'the judgment in *PMOI* T-256/07'; see also, to that effect, the judgment in *Al-Aqsa* T-348/07, paragraph 105 above, EU:T:2010:373, end of paragraph 89).

107 Thus, 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) where those authorities, although only administrative, may nevertheless be regarded as 'equivalent' to judicial authorities.

108 The fact alleged by the LTTE that UK and Indian courts have powers concerning the suppression of terrorism does not therefore imply that the Council was not able to take account of the decisions of the national administrative authority entrusted with the adoption of restrictive measures on terrorism.

109 In that regard, it should be noted that the LTTE does not claim that the decisions adopted by the UK and Indian authorities in question were adopted by authorities unauthorised for this purpose under the national laws of the States concerned.

110 It follows from the foregoing considerations that the LTTE's general objection (see paragraph 104 above) must be rejected.

111 Furthermore, the LTTE claims that, since the national decisions mentioned in the grounds for the contested regulations do not contain any condemnation of the LTTE, they can serve as a lawful basis only if they concern the instigation of investigations or prosecutions and if they are based on serious and credible evidence or indicia. That is not the case for national decisions, which are administrative — rather than criminal — determinations categorising the LTTE as a terrorist group and freezing its funds. Only decisions taken within the context of criminal procedures can be used as a basis for a decision placing a body on the list relating to frozen funds. The only case of a non-criminal decision accepted as a basis for such listing are decisions of the Security Council, as referred to in Article 1(4) of Common Position 2001/931.

112 By those arguments, the LTTE argues, in essence, that only criminal decisions can constitute decisions of competent authorities for the purposes of Common Position 2001/931. The LTTE also suggests that mere listing decisions are not sufficient.

113 It should be remembered that 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*, even if that is more often the case. However, in the light of the objectives of Common Position 2001/931, in the context of the implementation of Security Council Resolution 1373 (2001), the purpose of the national proceedings in question must none the less be to combat terrorism in the broad sense. Those assessments made by the General Court in the judgment in *Al-Aqsa* T-348/07, paragraph 105 above (EU:T:2010:373, paragraphs 98 and 100) were, in essence, confirmed in the judgment in *Al-Aqsa* C-539/10 P, paragraph 105 above (EU:C:2012:711, paragraph 70), since the Court of Justice held that the protection of the persons concerned was not called into question if the decision taken by the national authority did not form part of a procedure

seeking to impose criminal sanctions, but of a procedure aimed at the adoption of preventive measures.

114 The General Court has also held that a decision to 'instigat[e] … investigations or prosecut[e]' must, if the Council is to be able validly to invoke it, form part of national proceedings seeking, directly and primarily, the imposition on the person concerned of measures of a preventive or punitive nature, in connection with the combating of terrorism and by reason of that person's involvement in terrorism. The Court held that that requirement is not satisfied by a decision of a national judicial authority ruling only incidentally and indirectly on the possible involvement of the person concerned in such activity in relation to a dispute concerning, for example, rights and duties of a civil nature (judgment of 30 September 2009 in *Sison* v *Council*, T-341/07, ECR, EU:T:2009:372, paragraph 111, 'the judgment in *Sison* T-341/07').

115 In the present case, it should be noted that, although the decisions adopted by the UK authorities (namely the Home Secretary and the UK Treasury) and Indian authorities do not in fact constitute, strictly speaking, decisions for the 'instigation of investigations or prosecutions for an act of terrorism' or 'condemnation for such deeds', within the strict criminal sense of the term, the fact remains that those decisions lead to the ban on the LTTE in the United Kingdom and the freezing of its funds, and also the proscription of the LTTE in India, and that they therefore clearly form part of national proceedings seeking, primarily, the imposition on the LTTE of measures of a preventive or punitive nature, in connection with the fight against terrorism.

116 To that extent, and contrary to what LTTE suggests, the fact that the national decisions at issue in the present case do not correspond exactly to the wording of Article 1(4) of Common Position 2001/931 in no way leads, in itself, to the conclusion that they could not be taken into account by the Council.

117 Therefore, the LTTE is incorrect to claim that the only case of a non-criminal decision accepted as a basis for listing are decisions of the Security Council, as mentioned in Article 1(4) of Common Position 2001/931. The purpose of the last sentence of the first subparagraph of Article 1(4) of that common position 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.

118 It is true that the activity of the administrative authorities in question leads, in the end, to classification in a list. None the less, that fact does not mean, in itself, that those authorities did not carry out an individual appraisal of each of the groups concerned prior to their insertion in those lists, or that those appraisals should necessarily be arbitrary or unfounded. Thus, what matters is not that the activity of the authority in question leads to classification in a list of persons, groups or entities involved in terrorism, but that that activity is carried out with sufficient safeguards to allow the Council to rely on it to found its own listing decision.

119 That said and beyond the general objections examined above, it must be determined whether, specifically, the administrative authorities in question in the present case, namely (i) the Home Secretary and the UK Treasury and (ii) the Indian Government, could have been considered competent authorities within the meaning of Common Position 2001/931.

120 As regards, first, the Home Secretary, it should be noted that the Court has already held, in the light of the relevant national law, that that authority was a competent authority within the meaning of Article 1(4) of Common Position 2001/931 (judgment in *PMOI*, T-256/07, paragraph 106 above, EU:T:2008:461, paragraph 144).

121 Beyond the general arguments already mentioned and rejected by the Court (see paragraphs 104 to 118 above), the LTTE puts forward no argument to the contrary other than that alleging that its classification as a terrorist organisation in the United Kingdom took place simultaneously with 20 other groups and that the House of Commons of the United Kingdom allegedly had no other option than to wholly accept or refuse the list that was submitted to it by the Home Secretary, without being able to treat each organisation individually.

122 However, it is not apparent from the extract, produced by the LTTE, of the debates of the House of Commons of 13 March 2001 relating to the draft order submitted for its approval by the Home Secretary on 28 February 2001 that the House of Commons was deprived of the possibility of individually examining the situation of each of the organisations included in that draft order. First, all the members of the House of Commons received a summary of the facts concerning each of the organisations included in the list of the draft order, which implied the possibility of an individual examination by the House of Commons. Secondly, the debates of the House of Commons were in fact able to cover individual organisations, in particular so far as concerns the 'Revolutionary Organisation 17 November'. Finally, the fact that the measures submitted for the approval of the House of Commons were submitted to it in the form of a single order and not in the form of as many orders as organisations concerned did not imply that an actual individual examination was impossible, since the House of Commons remained free, in any event, to refuse to approve the draft order.

123 It follows from the foregoing considerations that the capacity of the Home Secretary as a competent authority is not called into question by the LTTE's arguments.

124 The same applies to the UK Treasury, to which the Council only refers in the grounds of Implementing Regulation No 83/2011 but not in the grounds of subsequent regulations. In the present actions, the LTTE, however, makes no particular challenge to the capacity of the UK Treasury as a competent authority beyond the general arguments mentioned in paragraphs 104 to 118 above, which have already been rejected by the Court.

125 As regards, lastly, the Indian government, the LTTE, by contrast, puts forward detailed arguments. It considers, primarily, that, having regard to the principle of sincere cooperation, which, it claims, exists only between the European Union and the Member States, an authority of a third State cannot be recognised as a competent authority within the meaning of Common Position 2001/931.

126 That argument of principle, according to which an authority of a third State cannot be recognised as a competent authority within the meaning of Common Position 2001/931, must be rejected for the following reasons.

127 In the first place, it is apparent from recitals 5 and 7 to Common Position 2001/931 that that common position was adopted within the context and for the purposes of the implementation of Security Council Resolution 1373 (2001), a resolution in which the Security Council decided that 'all States [were to] take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information' (paragraph 2(b) of Security Council Resolution 1373 (2001)) and 'afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings' (paragraph 2(f) of Security Council Resolution 1373 (2001)). In its resolution, the Security Council also called upon 'all States … to exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts' (paragraph 3(b) of Security Council Resolution 1373 (2001)).

128 It should be observed that, as the Court of Justice has held, although, because of the adoption of a common position, the European Union is obliged to take, under the Treaty, the measures necessitated by that common position, that obligation means, when the object is to implement a resolution of the Security Council adopted under Chapter VII of the Charter of the United Nations, that in drawing up those measures the European Union is to take due account of the terms and objectives of the resolution concerned and of the relevant obligations under the Charter of the United Nations relating to such implementation (judgment of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, ECR, EU:C:2008:461, paragraph 296; see also judgment of 13 March 2012 in *Melli Bank* v *Council*, C-380/09 P, ECR, EU:C:2012:137, paragraph 55).

129 Having regard both to the objectives of Security Council Resolution 1373 (2001), aimed at the intensification of the fight against terrorism at global level by the systematic and close cooperation of all States, and to the fact that Common Position 2001/931 was adopted in order to implement that resolution, the LTTE's argument, put forward even though that common position does not contain any a priori limitation as regards the nationality of competent authorities, disregards both the wording and the objective of that Common Position and is thus

incompatible with the implementation, at EU level, of the Security Council resolution.

130 In addition, it should be noted that recital 6 to Regulation No 2580/2001 states that '[that] Regulation is a measure needed at Community level and complementary to administrative and judicial procedures regarding terrorist organisations in the European Union and third countries'.

131 In the second place, it must be held that the LTTE's argument is based on an incorrect perception of the function of the principle of sincere cooperation within the framework of the scheme created by Common Position 2001/931 and the adoption by the Council of restrictive measures.

132 Under Article 4(3) TEU, relations between the Member States and the EU institutions are governed by reciprocal duties to cooperate in good faith (judgment in *Sison*, T-341/07, paragraph 114 above, EU:T:2009:372, paragraph 94).

133 As established by the case-law, the principle of sincere cooperation entails for the Council, in the context of the application of Article 1(4) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001, the obligation to defer as far as possible to the assessment by the competent national authority of the Member State concerned, at least where it is a judicial authority, in particular in respect of the existence of 'serious and credible evidence or clues' on which the decision is based (judgment in *Sison*, T-341/07, paragraph 114 above, EU:T:2009:372, paragraph 95).

134 Contrary to what the LTTE suggests, that principle therefore does not concern the question of the classification of a national authority as a competent authority within the meaning of Common Position 2001/931, but only the scope of the Council's obligations with regard to the decisions of such an authority, where the latter is an authority of a Member State.

135 The fact that the principle of sincere cooperation applies only in relations between the European Union and Member States therefore does not mean that an authority of a third country cannot be classified as a competent authority within the meaning of Common Position 2001/931 and that the Council cannot, if necessary, rely on the assessments of that authority.

136 It follows from the foregoing considerations that the LTTE's main argument that the inapplicability of the principle of sincere cooperation in the relations between the Union and third States precludes, as a matter of principle, an authority of a third State being classified as a competent authority must be dismissed. The aim pursued by Common Position 2001/931 leads to the opposite conclusion.

137 None the less, the fact remains that, as the Court inferred from the provisions of Common Position 2001/931, since the mechanism established by that common position has the effect of allowing the Council to include a person on a list relating

to frozen funds on the basis of a decision taken by a national authority, verification that there is a decision of a national authority fulfilling the definition of Article 1(4) of Common Position 2001/931 is an essential precondition for the adoption, by the Council, of its own decision to freeze funds (see, to that effect, judgment in *Sison*, T-341/07, paragraph 114 above, EU:T:2009:372, paragraph 93).

138 That condition, laid down by the Court in the context of decisions adopted by authorities of EU Member States, is all the more important in the case of decisions adopted by authorities of a third State. Unlike Member States, many third States are not bound by the requirements stemming from the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and none of them is subject to the provisions of the Charter of Fundamental Rights of the European Union.

139 Therefore the Council must, before acting on the basis of a decision of an authority of a third State, carefully verify that the relevant legislation of that State ensures protection of the rights of defence and a right to effective judicial protection equivalent to that guaranteed at EU level. In addition, there cannot be evidence showing that the third State in practice fails to apply that legislation. In that case, the existence of legislation formally satisfying the conditions set out above would not allow the conclusion that the decision was one of a competent authority within the meaning of Common Position 2001/931.

140 It should be added that, in the absence of equivalence between the level of protection ensured by the legislation of a third State and that ensured at EU level, a finding that a national authority of a third State had the status of a competent authority within the meaning of Common Position 2001/931 would entail a difference in treatment between the persons covered by EU fund-freezing measures, according to whether the national decisions underlying those measures emanated from authorities of third States or authorities of Member States.

141 However, the Court finds, as the LTTE has submitted, that the grounds for the contested regulations do not contain any evidence to suggest that the Council carried out such a thorough verification of the extent to which the rights of defence and the right to effective judicial protection were safeguarded under the Indian legislation. Those grounds are limited to the following considerations in Implementing Regulations Nos 83/2011 through to 125/2014:

‘Having regard to the commission and participation in acts of terrorism by the [LTTE], the Government of India proscribed LTTE in 1992 under the Unlawful Activities Act 1967 and subsequently included it in the list of terrorist organisations in the Schedule to the Unlawful Activities Prevention (Amendment) Act 2004.

Decisions in respect of the [LTTE] have thus been taken by competent authorities within the meaning of Article 1(4) of Common Position 2001/931.'

142 By contrast, in the case of the UK authorities which are authorities of an EU Member State, the Council was at pains to state, after the reference to the applicable legislation, that the decisions of those authorities were subject to periodic review by a Governmental Commission (fifth paragraph of the grounds for the various contested regulations) or to judicial review (sixth paragraph of the grounds of 25 August and 15 November 2010). However, for the Indian authorities (a third State), the Council does not provide any assessment of the levels of protection of the rights of defence and to judicial protection provided by the Indian legislation.

143 In that regard, the Council unconvincingly suggested at the hearing that the failure to assess the protection levels in the case of the Indian authorities resulted from the fact that the contested regulations concerned reviews and not the initial listing, which would have given rise to a more detailed statement of reasons reflecting a more detailed initial assessment of the Indian legislation.

144 First, that suggestion is contradicted by the repeated specific statement of reasons as regards the UK authorities in all of the various successive contested regulations. Secondly, the Council does not produce, in support of its suggestion, the allegedly more detailed grounds for the initial listing regulation and does not claim, still less prove, that it communicated them to the LTTE. If the Council's suggestion were proved, it would follow at the very least, owing to the transmission to the LTTE of the resulting incomplete statement of reasons, that there was an infringement of the rights of defence. Thirdly, it should be noted that fund-freezing measures, notwithstanding their preventive nature, are measures which may have a very substantial negative impact on the persons and groups concerned (see, to that effect, judgment of 18 July 2013 in *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, ECR, EU:C:2013:518, paragraph 132 and the case-law cited). Therefore, both the adoption and the extension of those measures must be based on a sufficiently sound and express statement of reasons.

145 As regards Implementing Regulation No 790/2014, the grounds for maintenance are supplemented by the indications that Sections 36 and 37 of the Unlawful Activities Act 1967 include provisions for the review and revision of the list and that the decision proscribing the LTTE as an unlawful association is periodically reviewed by the Home Affairs Minister of India. The Council adds that the last revision took place on 14 May 2012 and that, following the revision made by the tribunal established under the Unlawful Activities Act 1967, the designation of the LTTE was confirmed by the Home Affairs Minister of India on 11 December 2012. The Council states that those decisions were published by notification in the Official Journal of India.

146 As regards a third State, in the light of the considerations set out in paragraphs 138 to 140 above, the Council must, inter alia, carefully verify that the relevant legislation of the third State ensures protection of the rights of defence and a right to effective judicial protection equivalent to that guaranteed at EU level. In that context, the mere reference to sections of legislative provisions and to a periodical revision by the Home Affairs Minister is insufficient to support a conclusion as to the existence of a thorough examination of the guarantees provided by the third State at issue as to the protection of the rights of defence and the right to effective judicial protection.

147 It follows from the foregoing considerations that, in the light of the grounds for the contested regulations, the Council cannot be considered to have carried out, prior to maintaining the LTTE on the list relating to frozen funds, a thorough verification that the third State in question had legislation ensuring compliance with the rights of defence and the right to effective judicial protection to an extent equivalent to that guaranteed at EU level.

148 That is particularly so because the grounds for the contested regulations make no mention of Indian provisions, in particular the Prevention of Terrorism Act (POTA). The defence indicates, but *a posteriori* before the Court, that they were relevant since they determined the procedure applicable to the proscription of groups regarded as infringing the Indian laws on illegal activities. That lacuna in the statement of reasons for the contested regulations confirms the lack of a thorough examination, which is particularly important in the case of decisions of authorities of third States.

149 That lack of thorough examination at the stage of the adoption of the contested regulations, and the resulting infringement of the obligation to state reasons, cannot be remedied by the Council's references and explanations made for the first time before the Court.

150 Finally, it should be noted, in connection with the considerations expressed in the second sentence of paragraph 139 above, that neither the Council nor any intervener in its support responds to the arguments in the application, which are reproduced in the reply, that the repeal of the POTA in 2004 arose from the fact that it had led to arbitrary detentions, acts of torture, disappearances and extrajudicial executions, and that the legislative amendments made after that repeal did not solve the problems.

151 Consequently, whereas the Council was entitled to classify the UK authorities mentioned in the grounds for the contested regulations as competent authorities, that could not, at the very least as the grounds for the contested regulations are formulated, be the case for the Indian authorities.

152 It is therefore appropriate to uphold the present plea in so far as it concerns the Indian authorities and to reject it in so far as it concerns the UK authorities.

153 The Court will continue its examination of the actions by considering the LTTE's criticisms of the approach followed by the Council and the reasons given by the Council for maintaining the LTTE's name on the list relating to frozen funds and, in particular, by considering the criticism that the imputation to the LTTE of the violent acts mentioned in the grounds for the contested regulations has no sufficient factual or legal basis.

154 For this purpose, it is appropriate to examine the fourth to sixth pleas, taken together with the second plea.

The fourth to sixth pleas, taken together with the second plea

Arguments of the parties

155 The LTTE claims that, far from having carried out a serious examination of the developments in procedures at national level, as required by Article 1(6) of Common Position 2001/931, the Council based the contested regulations not so much on decisions of competent authorities but on a list of acts directly attributed by the Council to the LTTE. That list does not constitute a decision of a competent authority. The imputation in it has no sufficient factual or legal basis (second and fourth pleas). In addition, there are too many gaps in the grounds for the contested regulations to enable the LTTE to mount an effective defence and to allow judicial review (fifth and sixth pleas).

156 The Council, supported by the interveners, disputes the LTTE's arguments and contends that it undertook a detailed review before deciding, by the contested regulations, to maintain the LTTE's name on the list relating to frozen funds. The outcome of that review is a political question to be decided only by the legislator. The Council enjoys a wide discretion. With regard to its consideration of developments in procedures at national level, the Council refers to two applications for removal from the list made by LTTE to the Home Secretary in 2007 and 2009, which were rejected. The Council denies not having duly taken into consideration developments in the situation in Sri-Lanka since the military defeat of the LTTE in 2009. It considers that it fully complied with its obligation to state reasons and disputes that the LTTE's rights of defence were infringed. It was for the LTTE to challenge the facts attributed to it, if necessary, at national level. Moreover, those facts constitute contextual material of public knowledge, of which the LTTE had been aware for a long time, but which it challenges only before the Court.

Findings of the Court

157 First, it should be noted that following the adoption, on the basis of decisions of competent national authorities, of a decision placing a person or group on the list relating to frozen funds, the Council must, at regular intervals, and at least once every six months, be satisfied that there are grounds for continuing to include the party concerned in the list at issue.

158 While verification that there is a decision of a national authority as defined in Article 1(4) of Common Position 2001/931 is an essential precondition for the adoption by the Council of an initial decision to freeze funds, verification of the consequences of that decision at national level is essential for the adoption of a subsequent decision to freeze funds (judgments of 12 December 2006 in *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, ECR, EU:T:2006:384, paragraph 117, 'the judgment in *OMPI* T-228/02', and of 11 July 2007 in *Sison* v *Council*, T-47/03, EU:T:2007:207, paragraph 164). The essential question when reviewing whether to continue to include a person on the list at issue is whether, since the inclusion of that person in that list or since the last review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion concerning the involvement of that person in terrorist activities (judgment in *Al-Aqsa* C-539/10, paragraph 105 above, EU:C:2012:711, paragraph 82).

159 Secondly, the Court has consistently held that the statement of reasons required by Article 296 TFEU, which must be appropriate to the measure at issue and the context in which it was adopted, must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power to review its lawfulness. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see judgment in *OMPI* T-228/02, paragraph 158 above, EU:T:2006:384, paragraph 141 and the case-law cited).

160 In the context of the adoption of a decision to freeze funds under Regulation No 2580/2001, the statement of reasons for that decision must be assessed primarily in the light of the legal conditions for the application of that regulation to a particular case, as laid down in Article 2(3) thereof and, by reference, to either Article 1(4) or Article 1(6) of Common Position 2001/931, depending on whether it is an initial decision or a subsequent decision to freeze funds (judgment in *OMPI* T-228/02, paragraph 158 above, EU:T:2006:384, paragraph 142).

161 The Court cannot accept that the statement of reasons may consist merely of a general, stereotypical formulation modelled on the wording of Article 2(3) of Regulation No 2580/2001 and Article 1(4) or (6) of Common Position 2001/931. In accordance with the principles referred to above, the Council is required to state the matters of fact and law that constitute the legal basis of its decision and the considerations which led it to adopt that decision. The grounds for such a measure must therefore indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (see judgment in *OMPI* T-228/02, paragraph 158 above, EU:T:2006:384, paragraph 143 and the case-law cited).

162 Therefore, both the statement of reasons for an initial decision to freeze funds and the statement of reasons for subsequent decisions must refer not only to the legal conditions for the application of Regulation No 2580/2001, in particular the existence of a national decision taken by a competent authority, but also to the actual and specific reasons why the Council considers, in the exercise of its discretion, that the party concerned must be made the subject of a fund-freezing measure (judgment in *Sison* T-341/07, paragraph 114 above, EU:T:2009:372, paragraph 60).

163 Thirdly, with regard to the review carried out by the Court, the latter has recognised that the Council has broad discretion as to what matters to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 75 TFEU, 215 TFEU and 352 TFEU, consistent with a common position adopted on the basis of the common foreign and security policy. This discretion concerns, in particular, the assessment of the considerations of appropriateness on which such decisions are based (see judgment in *Sison* T-341/07, paragraph 114 above, EU:T:2009:372, paragraph 97 and the case-law cited). However, although the Court acknowledges that the Council has a broad discretion in that sphere, that does not mean that the Court will refrain from reviewing the Council's interpretation of the relevant facts. The European Union judicature must not only establish whether the evidence put forward is factually accurate, reliable and consistent but must also determine whether that evidence contains all the relevant data that must be taken into consideration in appraising the situation and whether it is capable of substantiating the conclusions drawn from it. However, when conducting such a review, it must not substitute its own assessment of what is appropriate for that of the Council (see judgment in *Sison* T-341/07, paragraph 114 above, EU:T:2009:372, paragraph 98 and the case-law cited).

164 Fourthly, as regards the factual or legal grounds of a fund-freezing decision concerning terrorism, it should be noted that, according to Article 1(4) of Common Position 2001/931, the list relating to frozen funds is to be drawn up on the basis of precise information or material in the relevant file which indicates that a decision was taken by a competent authority in respect of that person, group or entity, irrespective of whether it concerns the instigation of investigations or prosecutions for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or indicia, or condemnation for such deeds.

165 In its judgment in *Al-Aqsa* C-539/10 P, paragraph 105 above, (EU:C:2012:711), the Court of Justice noted that it is apparent from the references, in Article 1(4) of Common Position 2001/931, to a decision of a 'competent authority', 'precise information' and 'serious and credible evidence or [indicia]' that that provision aims to protect the persons concerned by ensuring that they are included on the list at issue only on a sufficiently solid factual basis, and that the common position seeks to attain that objective by requiring a decision taken by a national authority

(paragraph 68 of the judgment). The Court of Justice observed that the European Union does not have the means to carry out its own investigations regarding the involvement of a person in terrorist acts (paragraph 69 of the judgment).

166 The grounds put forward by the Council to found the contested regulations should be examined in the light of the foregoing considerations.

167 Those grounds begin with a paragraph in which the Council (i) describes the LTTE as a 'terrorist group' formed in 1976 which fights for a separate Tamil State in the north and east of Sri-Lanka, (ii) states that the LTTE has carried out 'a number of terrorist acts including repeated attacks on and intimidation of civilians, frequent attacks against government targets, disruption of political processes and kidnappings and political assassinations' and (iii) submits that 'while the recent military defeat of the LTTE has significantly weakened its structure, the likely intention of the organisation is to continue terrorist attacks in Sri-Lanka' (first paragraphs of the grounds for the contested regulations).

168 Next the Council draws up a list of the 'terrorist attacks' which it claims that the LTTE carried out from August 2005 until April 2009 or — according to the contested regulations — until June 2010 (second paragraphs of the grounds for the contested regulations).

169 After stating that 'those acts fall within the provision of Article 1(3), subpoints (a), (b), (c), (f) and (g) of Common Position 2001/931, and were committed with the aims set out in Article 1(3), points (i) and (iii) thereof' and that '[the LTTE] falls within Article 2(3)(ii) of Regulation No 2580/2001' (third and fourth paragraphs of the grounds for the contested regulations), the Council refers to decisions that the UK and Indian authorities adopted in 1992, 2001 and 2004 against the LTTE (fifth and sixth paragraphs of the grounds for Implementing Regulations Nos 83/2011 through to 125/2014), as well as in 2012 (sixth and seventh paragraphs of the grounds for Implementing Regulation No 790/2014).

170 As regards the UK decisions and — solely in the grounds for Implementing Regulation No 790/2014 — the Indian decisions, the Council refers to the fact that they are reviewed regularly or are subject to review or appeal.

171 The Council deduces from those considerations that '[d]ecisions in respect of the [LTTE] have thus been taken by competent authorities within the meaning of Article 1(4) of Common Position 2001/931' (seventh paragraphs of the grounds for the contested regulations).

172 Finally, the Council 'notes that the above decisions … still remain in force, and is satisfied that the reasons for including [the LTTE] on the list [relating to frozen funds] remain valid' (eighth paragraphs of the grounds for the contested regulations). The Council concludes from this that the LTTE must continue to appear on that list (ninth paragraphs of the grounds for the contested regulations).

173 It should be noted, first of all, that, even though the list of acts drawn up by the Council in the second paragraphs of the grounds for the contested regulations plays a decisive role in the assessment of the appropriateness of continuing the freezing of the LTTE's funds, since that list is the basis for the finding by the Council of the existence of terrorist acts committed by the LTTE, none of those acts were examined in the national decisions invoked in the fifth and sixth paragraphs of the grounds for Implementing Regulations Nos 83/2011 through to 125/2014 and in the sixth and seventh paragraphs of the grounds for Implementing Regulation No 790/2014.

174 Regarding Implementing Regulations Nos 83/2011 through to 125/2014, all those acts are subsequent to the national decisions relied on in the grounds for those regulations. Accordingly, they cannot have been examined in those decisions.

175 Although the grounds for Implementing Regulations Nos 83/2011 through to 125/2014 state that the national decisions to which they refer have remained in force, they still do not contain any reference to more recent national decisions and, still less, to the grounds of such decisions.

176 In response to the LTTE's criticisms in this regard, the Council does not produce any more recent decision of the UK or Indian authorities which it proves that it had at its disposal at the time of the adoption of Implementing Regulation Nos 83/2011 through to 125/2014 and from which it is apparent, in concrete terms, that the acts listed in the grounds had actually been examined and confirmed by those authorities.

177 As for the UK procedure, the Council produces only the 2001 decisions referred to in the grounds for the contested regulations. The Council does not produce any subsequent UK decision and, still less, the grounds of such a decision. At most, the Council refers to a decision of the UK Treasury of 7 December 2009 and to the rejections of two applications submitted by the LTTE in 2007 and 2009 seeking its removal from the UK list relating to frozen funds, but does not produce them or give any precise indication as to their specific statement of reasons.

178 In the light of the considerations in paragraphs 138 to 140 above, the Indian judicial decision of 12 November 2010 produced by the Council at the stage of its rejoinders and an Indian judicial decision of 7 November 2012, produced in the Council's reply of 6 February 2014 to questions put by the General Court, are irrelevant. Furthermore, and for the sake of completeness, it should be noted that those decisions fail to mention, still less rule on, any of the 24, subsequently 21, acts specifically listed in the grounds for Implementing Regulations Nos 83/2011 through to 125/2014.

179 As regards Implementing Regulation No 790/2014, the same considerations as those set out in paragraph 178 above apply with regard to the Indian decisions of

2012 (including the judicial decision of 7 November 2012) mentioned, for the first time, in the seventh paragraph of the grounds for that regulation.

180 As regards the two French decisions of 23 November 2009 and 22 February 2012 (one at first instance and the other on appeal) referred to by the Council in its rejoinder in Case T-508/11, and which in its view took account of a number of acts listed in the grounds for the contested regulations, the following points should be noted.

181 First, those decisions are not mentioned in the grounds for the contested regulations adopted before the rejoinder. They therefore constitute an attempt to provide a belated statement of reasons, which is inadmissible (see, to that effect, judgments of 12 November 2013 in *North Drilling* v *Council*, T-552/12, EU:T:2013:590, paragraph 26, and of 12 December 2013 in *Nabipour and Others* v *Council*, T-58/12, EU:T:2013:640, paragraphs 36 to 39).

182 Secondly, and more fundamentally, those French decisions are not even mentioned in the contested regulations adopted subsequently to the rejoinder (Implementing Regulations Nos 542/2012, 1169/2012, 714/2013, 125/2014 and 790/2014). The Council cannot claim, as 'grounds' for its restrictive measures, national decisions which it does not invoke in the grounds for the contested regulations after it has become aware of those decisions.

183 The considerations set out in paragraphs 180 to 182 above apply equally with regard to a German decision referred to by the Council for the first time at the hearing.

184 In its rejoinder, the Council submits, however, that the acts listed in the statements of reasons 'fall within a context that all parties have been aware of … the context of the conflict in Sri-Lanka in which the applicant was one of the parties' and that 'the aim of this contextual material, based on well-publicised events, was to inform the party against which preventive measures were adopted of the Council's reasons for its assessment of the terrorist threat the applicant represents'. In order to support its reference to 'contextual material', the Council refers to the judgment in *PMOI* T-256/07, paragraph 106 above (EU:T:2008:461, paragraph 90). In support of its argument regarding the public knowledge of the acts which it imputes to the LTTE, the Council provides references to press articles from the internet.

185 The Council adds that 'those factual grounds were not intended to replace any judicial assessment, with the force of *res judicata*, of the civil or criminal liability of the perpetrators of those acts or of the allegation that those acts were committed by them; that was not their purpose'. It states that 'these elements were not only public but also perfectly well known to the [LTTE] at the date of the adoption of the [contested regulations]'.

186 Those arguments, combined with the lack of any reference in the grounds for the contested regulations to decisions of competent authorities which are more recent than the imputed acts and referring to such acts, clearly show that the Council based the contested regulations not on assessments contained in the decisions of competent authorities, but on information which it derived from the press and the internet.

187 However, as is apparent from the considerations set out in paragraphs 164 and 165 above, Common Position 2001/931 requires, for the protection of the persons concerned and having regard to the lack of the European Union's own means of investigation, that the factual basis of a decision of the European Union to freeze funds concerning terrorism be based not on information that the Council derived from the press or the internet, but on information which has been specifically examined and upheld in decisions of competent national authorities within the meaning of Common Position 2001/931.

188 It is only on such a reliable factual basis that the Council can then exercise its broad discretion in the context of the adoption of decisions to freeze funds at EU level, in particular as regards the considerations of appropriateness on which such decisions are based.

189 It is apparent from the foregoing considerations that the Council has failed to comply with those requirements of Common Position 2001/931.

190 The statement of reasons for the contested regulations reveals, moreover, that the Council's line of reasoning is contrary to the requirements of that common position.

191 Thus, instead of taking, for the factual basis of its assessment, decisions adopted by competent authorities that have taken into consideration the specific acts and acted on the basis of those acts, and then verifying that those acts are indeed 'terrorist acts' and that the group concerned is indeed 'a group', as defined in Common Position 2001/931, in order to decide, on that basis and in exercising its broad discretion, whether to adopt a decision at EU level, the Council does the reverse in the grounds for the contested regulations.

192 It begins with assessments which are, in actual fact, its own assessments, classifying the LTTE as a terrorist from the first sentence of the grounds — which determines the question which those grounds are supposed to resolve — and imputing to it a series of acts of violence which the Council took from the press and the internet (first and second paragraphs of the grounds for the contested regulations).

193 It should be noted in this respect that the fact that it is a case of a review of the list relating to frozen funds, which therefore takes place after previous examinations, cannot justify that a priori classification. Without ignoring the past, a review of a fund-freezing measure is by definition open to the possibility that the person or

group concerned is no longer terrorist at the time of the Council's decision. It is therefore only at the end of that review that the Council can reach its conclusion.

194 The Council then states that the acts which it imputes to the LTTE fall within the definition of terrorist act within the meaning of Common Position 2001/931 and that the LTTE is a group within the meaning of that position (third and fourth paragraphs of the grounds for the contested regulations).

195 It is only after those remarks that the Council refers to decisions of national authorities (fifth to eighth paragraphs of the grounds for the contested regulations), which, however, at least for Implementing Regulations Nos 83/2011 through to 125/2014, predate the imputed acts.

196 The Council does not seek to show, in the grounds for the latter implementing regulations, that subsequent national review decisions, or other decisions of competent authorities, actually examined and upheld the specific acts set out at the beginning of those grounds. In the grounds for Implementing Regulations Nos 83/2011 through to 125/2014, the Council merely cites the initial national decisions and states, without more, that they remain in force. It is only in the grounds for Implementing Regulation No 790/2014 that the Council mentions national decisions subsequent to the acts specifically imputed to the LTTE, but, once again, fails to show that those decisions — which are moreover irrelevant in the light of the considerations in paragraphs 138 to 140 above — actually examined and upheld the specific acts set out at the beginning of those grounds.

197 The present case is therefore clearly different from the first cases before the Court relating to fund-freezing measures concerning terrorism after the adoption of Common Position 2001/931 (*Al-Aqsa* v *Council*, *Sison* v *Council* and *People's Mojahedin Organization of Iran* v *Council*).

198 Whereas, in those first cases concerning terrorism, the factual basis of the Council regulations had its origin in decisions of competent national authorities, in the present case, the Council no longer relies on facts which were first of all assessed by national authorities, but itself makes its own independent imputations of fact on the basis of the press or the internet. In so doing, the Council exercises the functions of the 'competent authority' within the meaning of Article 1(4) of Common Position 2001/931, which, as the Court of Justice has essentially observed, is neither within its competence according to that common position nor within its means.

199 It is thus to no avail that the Council (see paragraph 184 above) refers in particular to the judgment in *PMOI* T-256/07, paragraph 106 above (EU:T:2008:461, paragraph 90). In that case, the acts listed in the grounds for freezing its funds which the Council sent to the People's Mojahedin Organization of Iran ('the PMOI') were not based on independent assessments of the Council, but on assessments of the competent national authority. As is apparent from paragraph 90

of the judgment in *PMOI* T-256/07, paragraph 106 above (EU:T:2008:461), the statement of reasons of 30 January 2007 sent to the group concerned (the PMOI) referred to acts of terrorism for which the PMOI was said to be responsible and stated that 'because of those acts, a decision had been taken by a competent national authority'. The acts listed in the Council's statement of reasons of 30 January 2007 sent to the PMOI had therefore been examined and upheld against that group by the competent national authority. Unlike the present case, their compilation did not stem from the Council's own independent assessments.

200 In the same way, in Case T-348/07, *Al-Aqsa* v *Council*, the Court had available to it the text of the decisions of competent authorities relied upon in the grounds for the contested regulations and analysed them in detail. It concluded that the Council had not made any manifest error of assessment in finding that the applicant knew that the funds which it was gathering would be used for the purposes of terrorism (judgment in *Al-Aqsa* T-348/07, paragraph 105 above, EU:T:2010:373, paragraphs 121 to 133). According to the findings of the Court, the factual basis on which the Council was working was therefore a fully sound factual basis arising directly from the findings made by the competent national authorities. In the judgment of 11 July 2007 in *Al-Aqsa* v *Council* (T-327/03, EU:T:2007:211) it is also clear from the grounds (paragraphs 17 to 20 of the judgment) that the assessments on which the EU fund-freezing measure was based derived from factual findings which were not specific to the Council but which came from decisions of competent national authorities.

201 Likewise, in Case T-341/07, *Sison* v *Council*, the assessments on which the fund-freezing measure was based derived from factual findings which were not specific to the Council but which came from decisions which had the force of *res judicata* and had been adopted by competent national authorities (Raad van State (Council of State, Netherlands) and Rechtbank (District Court, Netherlands)) (judgment in *Sison* T-341/07, paragraph 114 above, EU:T:2009:372, paragraphs 1, 88 and 100 to 105).

202 It is true that the factual statement of reasons for the contested regulations — the list of acts imputed by the Council to the LTTE in the present case — does indeed not constitute, to repeat the Council's argument (see paragraph 185 above), a 'judicial assessment with the force of *res judicata*'. Nevertheless that factual statement of reasons for the contested regulations played a decisive role in the Council's assessment of the appropriateness of maintaining the LTTE on the list relating to frozen funds and the Council, far from establishing that it derived that statement of reasons from decisions of competent authorities, in fact attests to having relied on information derived from the press and the internet.

203 The Court considers that that approach contravenes the two-tier system established by Common Position 2001/931 on terrorism.

204 Although, as the Court of Justice has observed, the essential question during a review is whether, since the inclusion of the person concerned in the list relating to frozen funds or since the last review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion concerning the involvement of that person in terrorist activities (judgment in *Al-Aqsa* C-539/10, paragraph 105 above, EU:C:2012:711, paragraph 82) — with the consequence that the Council may, if necessary and within the context of its broad discretion, decide to maintain a person on the list relating to frozen funds in the absence of a change in the factual situation — the fact remains that any new terrorist act which the Council inserts in its statement of reasons during that review for the purposes of justifying maintaining the person concerned on the list relating to frozen funds must, in the two-tier decision-making system of Common Position 2001/931 and because of the Council's lack of means of investigation, have been the subject of an examination and a decision by a competent authority within the meaning of that common position.

205 The Council and the Commission suggest to no avail that the lack of reference in the grounds for the contested regulations to specific decisions of competent authorities which specifically examined and upheld the acts set out at the top of those grounds is attributable to the LTTE, which, according to the Council and the Commission, could and should have challenged the restrictive measures concerning it at national level.

206 Firstly, the obligation upon the Council to base its fund-freezing decisions as far as concerns terrorism on a factual basis deriving from decisions of competent authorities arises directly from the two-tier system established by Common Position 2001/931, as confirmed by the judgment in *Al-Aqsa* C-539/10, paragraph 105 above (EU:C:2012:711, paragraphs 68 and 69). That obligation is not therefore subject to the action by the person or group concerned. On the basis of its duty to state reasons, which is an essential procedural requirement, the Council must state, in the grounds for its fund-freezing decisions, the decisions of competent national authorities which specifically examined and found the terrorist acts which it uses as a factual basis for its own decisions.

207 Secondly, the argument advanced by the Council and Commission ultimately merely confirms the finding, which has already been made in paragraph 186 above, that the Council in fact relied not on assessments contained in decisions of competent authorities, but on information which it derived from the press and the internet. In this respect, it is paradoxical that the Council complains that the LTTE did not challenge at national level factual imputations which it does not itself manage to link to any specific decision of a competent authority.

208 Finally, that argument is problematic to say the least, inasmuch as it suggests that the national fund-freezing decisions on which the Council decides to rely in its specific practice under Common Position 2001/931, might themselves, if no

dispute has been raised by the party concerned at national level, not be based on any specific act of terrorism.

209 It is also to no avail that the Council and the Commission dispute the obligation to derive the factual basis of the fund-freezing regulations from decisions of competent authorities on the ground that that could lead, in the absence of such decisions, to unjustified removals of persons or groups from the list relating to frozen funds. The Council and the Commission refer in particular to the fact that the timing of review in the Member States may differ from the biannual review applicable at EU level.

210 Firstly, once again, that dispute is inconsistent with Common Position 2001/931 (Article 1(4) of Common Position 2001/931), as confirmed by the judgment in *Al-Aqsa* C-539/10, paragraph 105 above (EU:C:2012:711, paragraphs 68 and 69), which requires, for the protection of the persons concerned and having regard to the lack of the European Union's own means of investigation, that the factual basis of a decision of the European Union to freeze funds concerning terrorism be based on information which has been specifically examined and upheld in decisions of competent national authorities within the meaning of Common Position 2001/931. Secondly, it should be noted that, in the two-tier system of that Common Position and for the purposes of ensuring the effectiveness of the fight against terrorism, it is for the Member States to regularly transmit to the Council, and for the Council to collect, the decisions of competent authorities adopted within those Member States, as well as the grounds for those decisions.

211 Moreover, that necessary transmission and collection of decisions of competent authorities corresponds exactly to the circulation of information provided for, inter alia, in paragraphs 2, 3, 8 and 24 of the document entitled 'Working methods of the Working Party on implementation of Common Position 2001/931 on the application of specific measures to combat terrorism' which is set out in Annex II to Council document 10826/1/07 REV 1 of 28 June 2007.

212 If, despite that transmission of information, a decision of a competent authority concerning a specific act capable of constituting a terrorist act is not available to the Council, the Council, in the absence of its own means of investigation, must ask a competent national authority to assess that act, with a view to a decision being taken by that authority.

213 For this purpose, the Council may contact the 28 EU Member States and in particular the Member States which have already examined the situation of the person or group concerned. It may also contact a third State which satisfies the conditions required with regard to protection of the rights of defence and of the right to effective judicial protection. The decision in question, which must, in the words of Common Position 2001/931, be an 'instigation of investigations or prosecution … or [a] condemnation', does not necessarily have to be the national decision periodically reviewing the placement of the person or group concerned

on the national list relating to frozen funds. Even in the latter case, however, the existence at national level of a timing of periodic review which is different from that in force at EU level cannot justify the deferral by the Member State concerned of the examination of the act in question which the Council has requested. Having regard both to the two-tier structure of the system established by Common Position 2001/931 and to the mutual duties of sincere cooperation existing between the Member States and the European Union, the Member States must respond without delay to the Council's requests to them for an assessment and, where appropriate, a decision of a competent authority within the meaning of Common Position 2001/931 of an act capable of constituting a terrorist act.

214 It follows from the foregoing considerations that the argument that the requirement of a decision by a competent authority might lead to unjustified removals from the list relating to frozen funds is unconvincing.

215 It should be added, moreover, that the absence of any new terrorist act in respect of a given six month period does not in any way mean that the Council should withdraw the person or group concerned from the list relating to frozen funds. As the Court has already found, nothing in the provisions of Regulation No 2580/2011 and of Common Position 2001/931 precludes the imposition or maintenance of restrictive measures on persons or entities that have in the past committed acts of terrorism, despite the lack of evidence to show that they are at present committing or participating in such acts, if the circumstances warrant it (see, to that effect, the judgment in *PMOI* T-256/07, paragraph 106 above, EU:T:2008:461, paragraphs 107 to 113). Thus, the obligation to make new imputations of terrorist acts only on the basis of decisions of competent authorities does not in any way preclude the Council's right to maintain the person concerned on the list relating to frozen funds, even after the cessation of the terrorist activity in the strict sense, if the circumstances warrant it.

216 The possibility, also mentioned by the Council and the Commission, that decisions of competent authorities which are incompatible with decisions of the European Union might be adopted cannot constitute a valid reason for challenging the obligation to derive, in the interest of the protection of the persons and groups concerned, the factual basis of the decisions of the European Union from decisions of competent authorities.

217 Finally, contrary to what by the Council and the Commission suggest, such an obligation to derive the factual basis of the fund-freezing regulations from decisions of competent authorities is not such as to give rise to a risk of unjustifiably maintaining a person or group on the list relating to frozen funds.

218 Although Article 1(1) to (4) and (6) of Common Position 2001/931 precludes the Council from including, in the statement of reasons for its decision to place or maintain a person or group on the list relating to frozen funds, terrorist acts (including attempts, participation in or facilitation of such acts) which have not

been the subject of a decision of a competent authority (instigation of investigations or prosecutions, or condemnation), Common Position 2001/931 does not contain any comparable obligation as regards the non-maintenance by the Council of a person or group in the list relating to frozen funds. That decision not to maintain them on the list, which is favourable to the person or group concerned, is not subject to the same procedural requirements, even though, in the majority of cases, it will take place in the light of favourable decisions adopted at national level, such as an abandonment or discontinuance of investigations or prosecutions for terrorist acts, an acquittal in criminal proceedings or indeed the withdrawal of the person or group concerned from the national classification list.

219 It follows from the considerations set out in paragraphs 209 to 218 above that the Council and the Commission are wrong in claiming that the obligation on the Council to derive the factual basis of its fund-freezing decisions from decisions of competent authorities is such as to undermine the European Union's policy of combating terrorism.

220 It should be added that the Court's overall findings made above do not exceed the scope of the limited review which it is to carry out, whereby it is to check that the procedure has been complied with and that the facts are materially accurate, but without thereby calling in question the Council's broad discretion. In fact, in the judgment in *Sison* T-341/07, paragraph 114 above (EU:T:2009:372), the Court was prompted to check — and was able to find — that the factual allegations made against Mr Sison set out in the grounds for maintaining his name on the list relating to frozen funds were duly substantiated by the findings of fact made in the decisions of the Netherlands authorities (Raad van State and Rechtbank) on which the Council relied in those grounds (judgment in *Sison* T-341/07, paragraph 114 above, EU:T:2009:372, paragraphs 87 and 88).

221 By contrast, in the present case, in the grounds for the contested regulations there are no references to any decision of a competent authority to whose grounds the Court could link the factual evidence upheld by the Council against the LTTE.

222 Furthermore, and once more with regard to the judgment in *Sison* T-341/07, paragraph 114 above, (EU:T:2009:372), it should be noted that, while finding that the facts set out in the grounds for the Council's regulations did indeed come from the two Dutch decisions relied on in those same grounds, the Court none the less then held that those Dutch decisions were not decisions of competent authorities, on the ground that they did not concern the imposition on the person concerned of measures of a preventive or punitive nature in connection with the combating of terrorism (judgment in *Sison* T-341/07, paragraph 114 above, EU:T:2009:372, paragraphs 107 to 115).

223 If the Court was thus able dismiss the findings of fact nevertheless stemming from competent authorities on the ground that the decisions of those authorities were not 'condemnations or instigations of investigations or prosecutions', that implies

that it cannot, in the present case, grant press articles — which are in any event not mentioned in the grounds for the contested regulations — the procedural and probative status reserved by Common Position 2001/931 only for decisions of competent authorities.

224 Finally, the Court considers it appropriate to underline the importance of the guarantees provided by fundamental rights in that context (see Opinion in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, ECR, EU:C:2011:482, paragraphs 235 to 238).

225 In the light of all the foregoing considerations, from which it is apparent that Regulation No 2580/2001 is applicable in the case of armed conflict and, moreover, that the Council infringed both Article 1 of Common Position 2001/931 and — in the absence of a reference in the statement of reasons to decisions of competent authorities relating to the acts imputed to the LTTE — the obligation to state reasons, the contested regulations should be annulled in so far as they concern the LTTE.

226 The Court stresses that those annulments, on fundamental procedural grounds, do not imply any substantive assessment of the question of the classification of the LTTE as a terrorist group within the meaning of Common Position 2001/931.

227 So far as concerns the temporal effects of those annulments, it must be borne in mind that, under the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, by way of derogation from Article 280 TFEU, decisions of the General Court declaring a regulation to be void are to take effect only as from the date of expiry of the appeal period referred to in the first paragraph of Article 56 of that statute or, if an appeal has been brought within that period, as from the date of dismissal of the appeal. In any event, the Council therefore has a minimum period of two months, extended on account of distance by 10 days, as from the notification of this judgment, to remedy the infringements established by adopting, if appropriate, a new restrictive measure with respect to the LTTE.

228 However, and on the basis of the second paragraph of Article 264 TFEU, the General Court may provisionally maintain the effects of the annulled decision (see, to that effect, the judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 128 above, EU:C:2008:461, paragraphs 373 to 376, and the judgment of 16 September 2011 in *Kadio Morokro* v *Council*, T-316/11, EU:T:2011:484, paragraph 39).

229 In the circumstances of the present case, the Court finds that, to avoid the risk of a serious and irreversible impairment of the effectiveness of the restrictive measures, while taking account of the major impact of the restrictive measures in question on the rights and freedoms of the LTTE, the effects of Implementing

Regulation No 790/2014 must, by virtue of Article 264 TFEU, be maintained for a period of three months following delivery of this judgment.

Costs

230 Under Article 87(2) 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. Since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the LTTE.

231 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of the Netherlands, the United Kingdom and the Commission are to bear their own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. Annuls Council Implementing Regulation (EU) No 83/2011 of 31 January 2011, No 687/2011 of 18 July 2011, No 1375/2011 of 22 December 2011, No 542/2012 of 25 June 2012, No 1169/2012 of 10 December 2012, No 714/2013 of 25 July 2013, No 125/2014 of 10 February 2014 and No 790/2014 of 22 July 2014 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 Regulations (EU) Nos 610/2010, 83/2011, 687/2011, 1375/2011, 542/2012, 1169/2012, 714/2013 and 125/2014 in so far as those measures concern the Liberation Tigers of Tamil Eelam (LTTE);

2. Maintains the effects of Implementing Regulation No 790/2014 for three months following delivery of this judgment;

3. Orders the Council of the European Union to pay, in addition to its own costs, the costs of the LTTE;

4. Orders the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own respective costs.

Dehousse Wiszniewska-Białecka Buttigieg

Collins Ulloa Rubio

Delivered in open court in Luxembourg on 16 October 2014.

[Signatures]

Table of contents