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

15 November 2018 (*)

(Common foreign and security policy — Restrictive measures imposed on the PKK with a view to combating terrorism — Freezing of funds — Powers of the Council — Whether an authority of a third State can be classified as a competent authority within the meaning of Common Position 2001/931/CFSP — Factual basis of the decisions to freeze funds — Reference to terrorist acts — Judicial review — Obligation to state reasons — Plea of illegality)

In Case T-316/14,

Kurdistan Workers' Party (PKK), represented by A. van Eik, T. Buruma and M. Wijngaarden, lawyers,

applicant,

v

Council of the European Union, represented initially by F. Naert and G. Étienne, and subsequently by F. Naert and H. Marcos Fraile, acting as Agents,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by C. Brodie and V. Kaye, subsequently by C. Brodie and S. Brandon, subsequently by C. Brodie, C. Crane and R. Fadoju, subsequently by C. Brodie, R. Fadoju and P. Nevill, and then by R. Fadoju, acting as Agents,

and by

European Commission, represented initially by F. Castillo de la Torre and D. Gauci, subsequently by D. Gauci, J. Norris-Usher and T. Ramopoulos, and then by J. Norris-Usher, T. Ramopoulos and R. Tricot, acting as Agents,

interveners,

APPLICATION pursuant to Article 263 TFEU seeking, initially, the annulment of Council Implementing Regulation (EU) No 125/2014 of 10 February 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 Regulation (EU) No 714/2013 (OJ 2014 L 40, p. 9), in so far as that act concerns the applicant, and, subsequently, the annulment of other consequential acts, in so far as they concern the applicant,

THE GENERAL COURT (Third Chamber, Extended Composition),

composed of S. Frimodt Nielsen, President, V. Kreuschitz, I.S. Forrester (Rapporteur), N. Półtorak and E. Perillo, Judges,

Registrar: K. Guzdek, Administrator,

having regard to the written part of the procedure and further to the hearing on 16 April 2018,

gives the following

Judgment

Background to the dispute

1 On 28 September 2001 the United Nations Security Council adopted Resolution 1373 (2001) laying out wide-ranging strategies to combat terrorism, and in particular the financing of terrorism.

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

3 On the same date, in order to implement at EU level the measures described in Common Position 2001/931, the Council adopted Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) and Decision 2001/927/EC establishing the list provided for in Article 2(3) of Regulation No 2580/2001 (OJ 2001 L 344, p. 83). The applicant was not named in that initial list.

4 On 2 May 2002 the Council adopted Common Position 2002/340/CFSP updating Common Position 2001/931 (OJ 2002 L 116, p. 75). The Annex to Common Position 2002/340 updates the list of persons, groups and entities to whom the restrictive measures laid down by Common Position 2001/931 apply and, in particular, inserts the name of the Kurdistan Workers' Party (PKK), the applicant, identified as follows: 'Kurdistan Workers' Party (PKK)'.

5 On the same date, the Council also adopted Decision 2002/334/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2001/927/EC (OJ 2002 L 116, p. 33). That decision named the applicant in the list provided for in Article 2(3) of Regulation No 2580/2001, in the same terms as those used in the Annex to Common Position 2002/340.

6 Those instruments have since been regularly updated in accordance with Article 1(6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001. The PKK has always been named in the lists — of groups and entities subject to the restrictive measures imposed by the abovementioned instruments — annexed to those instruments ('the lists at issue'). Since 2 April 2004, the entity named on the lists at issue is the 'Kurdistan Workers' Party ("PKK") (also known as "KADEK", also known as "KONGRA-GEL")'.

7 The Council adopted in particular, on 10 February 2014, 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), whereby the restrictive measures imposed on the applicant were maintained. The statement of reasons accompanying Regulation No 125/2014 was based on, inter alia, an order of the Home Secretary of the United Kingdom dated 29 March 2001 proscribing the PKK under the Terrorism Act 2000 (United Kingdom) ('the order of the United Kingdom Home Secretary'), as supplemented by an order of 14 July 2006, which entered into force on 14 August 2006, stating that 'KADEK' and 'Kongra Gel Kurdistan' were to be treated as other names for the PKK ('the order of 14 July 2006'); a decision of the United States Government designating the PKK as a Foreign Terrorist Organisation under Section 219 of the United States Immigration and Nationality Act, as amended ('the FTO designation'), and a decision of the United States Government designating the PKK as a Specially Designated Global Terrorist under Executive Order No 13224 ('the SDGT designation'). That statement of reasons also referred to a list of many incidents, committed between November 2003 and October 2011, that were classified as acts of terrorism and were alleged to have been committed by the PKK, as well as a number of judgments of the State Security Courts of the Republic of Turkey. Regulation No 125/2014 was the initial subject matter of the present action.

Procedure and developments during the proceedings

8 By application lodged at the Registry of the General Court on 1 May 2014, the applicant brought the present action, seeking annulment of Implementing Regulation No 125/2014, in so far as that regulation concerned it, and a declaration that Regulation No 2580/2001 did not apply to it.

9 In the written part of the procedure, by document lodged on 15 September 2014, the Council lodged a Statement of Defence, to which the Council annexed, inter alia, the order of the United Kingdom Home Secretary, the order of 14 July 2006, the FTO designation, the SDGT designation, a number of annual reports of the Office of the United States Coordinator for Counterterrorism of the United States Department of State and a number of press releases. By document dated 31 March 2015, the Council subsequently lodged a rejoinder, to which it annexed, inter alia, extracts of a judgment of 23 April 2013 of the cour d'appel de Paris (Paris Court of Appeal, France) and of a judgment of 21 May 2014 of the Cour de cassation (Court of Cassation, France).

10 By document lodged at the Court's Registry on 8 September 2014, the European Commission sought leave to intervene in the present proceedings in support of the Council. By order of 7 January 2015, under Article 116(1) of the Rules of Procedure of the General Court of 2 May 1991, the President of the Third Chamber of the Court granted leave to intervene. By document lodged at the Court's Registry on 19 March 2015, the Commission lodged its statement in intervention. Both the applicant and the Council submitted their observations within the prescribed period.

11 By document lodged at the Court's Registry on 29 June 2015, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in the present case in support of the form of order sought by the Council. By decision of 12 August 2015, under Article 144(4) of the Court's Rules of Procedure, the President of the Third Chamber of the Court granted leave to intervene, the rights of the United Kingdom being restricted however to those under Article 116(6) of the Rules of Procedure of 2 May 1991.

12 By decision of 16 May 2016, under Article 70(1) of the Rules of Procedure, the President of the Third Chamber of the Court stayed the proceedings pending the delivery of the judgments in the cases *A and Others* (C-158/14), *Council* v *LTTE* (C-599/14 P) and *Council* v *Hamas* (C-79/15 P). Following the delivery of the judgments of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202); of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583); and of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584), the proceedings automatically resumed.

13 By decision of 5 September 2017, adopted as a measure of organisation of procedure under Article 89(3)(c) of the Rules of Procedure, the Court (Third Chamber) requested the parties to submit their observations on the judgments of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202); of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583); and of 26 July 2017,

Council v *Hamas* (C-79/15 P, EU:C:2017:584).

14 By document lodged at the Court's Registry on 29 September 2017, the applicant submitted its comments on the judgments of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202); of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583); and of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584). First, the applicant submits that the judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202) does not definitively answer the questions of law raised in its first and second pleas in law. Second, according to the applicant, it is apparent from the judgments of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583), and of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584), that a list of incidents that are categorised as terrorist acts, such as that used in this case, cannot be regarded as a decision of a competent national authority; that the Council is obliged to provide, in the statement of reasons relating to decisions of authorities of a third State, evidence that the Council has ensured that the applicant's rights of defence and its right to effective judicial protection are respected, as the Council failed to do in this case, and that the fact that a significant period of time has elapsed since the adoption of the national decisions that served as the basis for the initial designation of the applicant on the lists at issue may impose on the Council the obligation to produce additional arguments to justify the retention of the applicant's name on the lists at issue. The applicant also produces a judgment of the cour d'appel de Bruxelles (Brussels Court of Appeal, Belgium) of 14 September 2017 ('the judgment of the Brussels Court of Appeal') which, according to the applicant, held that the applicant cannot be regarded as a terrorist organisation and that acts attributed to the Kurdistan Freedom Hawks (TAK) are not attributable to the PKK.

15 By documents lodged at the Court's Registry on 5 October 2017, the Council and the Commission lodged their observations on the judgments of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202); of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583); and of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584). They contend that the first and second pleas in law relied on by the applicant have to be rejected in the light of the judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202). What is more, the judgment of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583) confirms that the Council's decision to keep the applicant on the lists at issue can be based on decisions of third-State authorities and on evidence other than a decision of competent national authorities.

16 By means of Implementing Regulation (EU) No 790/2014 of 22 July 2014 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 125/2014 (OJ 2014 L 217, p. 1), the restrictive measures imposed on the applicant were maintained, the grounds for the applicant's continued listing not being altered.

17 By letter lodged at the Court's Registry on 20 August 2014, the applicant sought leave to modify its form of order so that its pleas in law and claims would apply *mutatis mutandis* to Regulation No 790/2014 and to the statement of reasons accompanying it. By letter lodged at the Court's Registry on 15 September 2014, the Council raised no objections to the applicant's request and referred *mutatis mutandis* to its defence.

18 By Council Implementing Regulation (EU) 2015/513 of 26 March 2015 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation No 790/2014 (OJ 2015 L 82, p. 1), and by Council Decision (CFSP) 2015/521 of the same date updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2014/483/CFSP (OJ 2015 L 82, p. 107), the restrictive measures imposed on the applicant were maintained.

19 By letter of 27 March 2015, notified to the applicant on 1 April 2015, the Council sent to the latter the statement of reasons for its being kept on the lists at issue. In its letter of 27 March 2015, the Council stated, in response to the arguments put forward by the applicant, that the fact that there are some Kurdish groups among those fighting against the group known as ISIL did not affect its assessment that the PKK met the criteria for designation under Common Position 2001/931. In the statement of reasons annexed to that letter, the Council relied on three sets of national decisions: (i) the order of the United Kingdom Home Secretary, as supplemented by the order of 14 July 2006; (ii) the FTO designation and the SDGT designation, and (iii) a judgment of 2 November 2011 of the tribunal de grande instance de Paris (Paris Regional Court, France), whereby the centre culturel kurde Ahmet Kaya (Ahmet Kaya Kurdish Cultural Centre) was convicted of participation in a criminal association in order to prepare an act of terrorism and of financing a terrorist undertaking, that judgment being upheld on appeal by a judgment of 23 April 2013 of the cour d'appel de Paris (Paris Court of Appeal) and, on further appeal, by a judgment of 21 May 2014 of the Cour de cassation (Court of Cassation) (together, 'the French judicial decisions'). The Council held that each of those national decisions constituted a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931 and that those decisions still remained in force. The Council then stated that it had assessed whether there was anything in its possession that supported the delisting of the PKK from the lists at issue and that it had found nothing. The Council also stated its view that the grounds for the inclusion of the PKK in the lists at issue remained valid and concluded the PKK should continue to be named on the lists at issue.

20 Further, annexed to the statement of reasons was a description of each national decision, consisting of a presentation of how the concept of terrorism was defined under national law, a description of the applicable national administrative and judicial procedures, a summary of the procedural history and the aftermath of the national decision concerned, a summary of the conclusions reached by the competent authorities with regard to the applicant, a narration of the acts on which those competent authorities had based their decision and the finding that those acts constituted terrorist acts within the meaning of Article 1(3) of Common Position 2001/931. However, that statement of reasons no longer contained any reference to the judgments of the State Security Courts of the Republic of Turkey or to the list of incidents categorised as terrorist acts and allegedly committed by the applicant that were mentioned in the earlier statements of reasons.

21 By letter lodged at the Court's Registry on 26 May 2015, the applicant sought leave to modify its form of order so that its

pleas in law and claims would apply *mutatis mutandis* to Implementing Regulation 2015/513, to Decision 2015/521 and to the statement of reasons accompanying them. In its statement of modification, the applicant claims, inter alia, that the Council took no account of developments regarding the involvement of the PKK in fighting against ISIL. As regards the order of the United Kingdom Home Secretary, the applicant disputes the relevance of the fact that that order was confirmed in December 2014 following a re-examination, since the request for re-examination was not made by it. The applicant also claims that the description, in the statement of reasons, of incidents that occurred in 2014 and on which the United Kingdom Home Secretary relied is too vague to permit the conclusion that those incidents constitute terrorist acts attributable to the PKK. The applicant also denies responsibility for those incidents, which it says were committed by a group that is independent of the PKK, and does not accept that those incidents can be categorised as terrorist acts. Likewise, as regards the FTO designation and the SDGT designation, the applicant claims that the description of the incidents attributed to it is again too vague to permit the conclusion that those incidents constitute terrorist acts attributable to the PKK. As regards the French judicial decisions, the applicant claims that those should be disregarded since they concern an entity other than the PKK and are based on information that was not verified.

22 By letter lodged at the Court's Registry on 12 June 2015, the Council submitted its observations on the applicant's request to modify its form of order. The Council challenged, inter alia, whether the applicant had complied with Article 44(1) of the Rules of Procedure of 2 May 1991 and referred *mutatis mutandis* to its Defence. The Council did not, however, raise any objection to the substantive extension of the action sought by the applicant.

23 Thereafter, the applicant's name was retained on the lists at issue at each half-yearly review. Consequently, the applicant requested that it be permitted to modify its forms of order in such a way that its pleas in law and forms or order should be directed *mutatis mutandis* against new acts adopted by the Council.

24 Thus, by Council Implementing Regulation (EU) 2015/1325 of 31 July 2015 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2015/513 (OJ 2015 L 206, p. 12), and by Council Decision (CFSP) 2015/1334 of the same date updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931, and repealing Decision 2015/521 (OJ 2015 L 206, p. 61), the restrictive measures imposed on the applicant were maintained, the grounds for the applicant's continued listing not being altered.

25 By statement of modification lodged at the Court's Registry on 15 September 2015, in accordance with Article 86(2) to (4) of the Rules of Procedure, the applicant modified the application, so that the application should also seek the annulment of Regulation 2015/1325 and Decision 2015/1334, in so far as those acts concern it. In its observations lodged at the Court's Registry on 8 October 2015, the Council took note of that modification.

26 By means of Council Implementing Regulation (EU) 2015/2425 of 21 December 2015 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2015/1325 (OJ 2015 L 334, p. 1), the restrictive measures imposed on the applicant were maintained, the grounds for the applicant's continued listing not being altered.

27 By statement of modification lodged at the Court's Registry on 18 February 2016, the applicant modified the application, so that the application should also seek the annulment of Regulation 2015/2425, in so far as that act concerns it. In its observations lodged at the Court's Registry on 15 March 2016, the Council took note of that modification.

28 By means of Council Implementing Regulation (EU) 2016/1127 of 12 July 2016 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2015/2425 (OJ 2016 L 188, p. 1), the restrictive measures imposed on the applicant were maintained, the grounds for the applicant's continued listing not being altered.

29 By statement of modification lodged at the Court's Registry on 9 September 2016, the applicant modified the application, so that the application should also seek the annulment of Regulation 2016/1127, in so far as that act concerns it.

30 By means of Council Implementing Regulation (EU) 2017/150 of 27 January 2017 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2016/1127 (OJ 2017 L 23, p. 3), the restrictive measures imposed on the applicant were maintained, the grounds for the applicant's continued listing not being altered.

31 By statement of modification lodged at the Court's Registry on 23 March 2017, the applicant modified the application, so that the application should also seek the annulment of Regulation 2017/150, in so far as that act concerns it. In its observations lodged at the Court's Registry on 17 August 2017, the Council took note of that modification. However, it referred to the judgments of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202); of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583); and of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584) in support of its argument that the application should be dismissed.

32 By means of Council Implementing Regulation (EU) 2017/1420 of 4 August 2017 implementing Article 2(3) of RegulationNo 2580/2001 and repealing Implementing Regulation 2017/150 (OJ 2017 L 204, p. 3), and by means of Council Decision (CFSP) 2017/1426, of the same date, updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision (CFSP) 2017/154 (OJ 2017 L 204, p. 95), the restrictive measures imposed on the applicant were maintained, the grounds for the applicant's continued listing not being altered.

33 By statement of modification lodged at the Court's Registry on 29 September 2017, the applicant modified the application, so that the application should also seek the annulment of Regulation 2017/1420 and of Decision 2017/1426, in so far as those acts concern it. In its observations lodged at the Court's Registry on 27 October 2017, the Council took note of that modification. In addition, with respect to the judgment of the Brussels Court of Appeal produced by the applicant, the Council contends that it

does not call into question the designation of the applicant as a terrorist organisation. First, the judgment concerned acknowledges that the fact that the PKK is not classified as a terrorist organisation is due to specific features of Belgian criminal law. Second, the judgment of the Brussels Court of Appeal emphasised that acts of violence have been committed in the context of the conflict between the applicant and the Turkish authorities since the end of the ceasefire in 2015. Third, in its judgment, the cour d'appel de Bruxelles (Brussels Court of Appeal) held that it was not possible to conclude with certainty that the acts committed by the TAK could be attributed to the PKK on the basis of the documents in the case file, but the judgment referred to a German court decision that came to the opposite conclusion.

34 On a proposal from the Third Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

35 On a proposal from the Judge-Rapporteur, the Court decided to open the oral part of the procedure.

36 At the hearing on 16 April 2018, the parties presented oral argument and replied to oral questions put by the Court. On that occasion, while restating its position on the relevance of international humanitarian law to the interpretation of the concept of a terrorist act, the applicant informed the Court that it had decided to withdraw its first plea in law, that being duly recorded in the minutes of the hearing. Following the hearing, the oral procedure was closed and the case entered the deliberation stage.

Forms of order sought

37 Following the modifications to its forms of order, the applicant claims that the General Court should:

– annul, in so far as they concern it, Implementing Regulations No 125/2014, No 790/2014, 2015/513, 2015/1325, 2015/2425, 2016/1127, 2017/150 and 2017/1420, and Decisions 2015/521, 2015/1334 and 2017/1426, and the statements of reasons accompanying them ('the contested acts');

– order the Council to pay the costs.

38 The Council, supported by the Commission and the United Kingdom, contends that the Court should:

– dismiss the action in its entirety;

– order the applicant to pay the costs.

Substance

39 In support of its claims for annulment of the contested acts, the applicant relies, in essence, on eight pleas in law. The first plea in law, which the applicant withdrew at the hearing, concerns an infringement of the international law of armed conflict. In particular, the applicant claims that Common Position 2001/931 is contrary to international humanitarian law in that it concerns acts which, in the context of an armed conflict that is not of an international character, do not constitute war crimes and are legitimate under the law of armed conflict. The second plea alleges infringement of Article 1(3) of Common Position 2001/931 in so far as the PKK is classified as a terrorist group. The third plea alleges infringement of Article 1(4) of Common Position 2001/931, since the contested acts are not based on a decision of a competent national authority. One reason why the contested acts should be annulled is that they are partly based on decisions of third States. The fourth plea alleges infringement of Article 51 of the Charter of Fundamental Rights of the European Union in that the contested acts are in part based on information obtained through torture or ill-treatment. The fifth plea alleges infringement of Article 1(6) of Common Position 2001/931, in that the Council did not conduct any proper review of the inclusion of the PKK's name on the lists at issue. The sixth plea alleges infringement of the principles of proportionality and subsidiarity. The seventh plea alleges infringement of the obligation to state reasons laid down in Article 296 TFEU. The eighth plea alleges infringement of the rights of the defence and of the right to effective judicial protection.

40 The Court considers it appropriate to begin by examining the seventh plea in law.

The seventh plea in law: infringement of the obligation to state reasons

41 By its seventh plea in law, the applicant claims, in essence, that the Council was in breach of its obligation to state reasons by not providing the actual and specific reasons why it decided, after review, to maintain the listing of the PKK on the lists at issue. In particular, the applicant claims that the Council has not explained why the national decisions on which it based the maintenance of the PKK's listing on the lists at issue constituted decisions of a competent authority within the meaning of Article 1(4) of Common Position 2001/931; that the Council failed to state the reasons for those decisions; that the Council failed to examine whether the incidents on which the national authorities relied could be categorised as terrorist acts within the meaning of Common Position 2001/931, and failed to state the reasons why those decisions were sufficient ground to maintain the imposition of restrictive measures on the PKK. Further, as regards the FTO designation and the SDGT designation, the Council failed to examine whether there were effective procedural safeguards in the United States.

42 The Council does not accept those arguments and considers that the statement of reasons accompanying the contested acts, read in conjunction with those acts, satisfies its obligation to state reasons. In particular, the reasons that led to the initial inclusion of the applicant on the lists at issue remain valid. As regards the order of the United Kingdom Home Secretary, the Council relies on the judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council* (T-256/07,

EU:T:2008:461), which concerned the same order, and in which the Court held that the Council had fulfilled its obligation to state reasons by referring to that order and to a list of incidents categorised as terrorist acts. As regards the FTO and SDGT designations, the Council contends, inter alia, that the information contained in the statement of reasons was precise enough to enable the applicant to bring proceedings before the competent national authorities and that the evidence provided satisfies its obligation to state reasons as laid down in the judgments of 26 July 2017, *Council* v *LTTE* (C-599/14 P, EU:C:2017:583), and of 26 July 2017, *Council* v *Hamas* (C-79/15 P, EU:C:2017:584).

43 In that regard, it must be recalled that the purpose of the obligation to state reasons for an act that adversely affects a person, as laid down in the second paragraph of Article 296 TFEU and enshrined in Article 41(2)(c) of the Charter of Fundamental Rights, that obligation being a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the act is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Courts of the European Union and, second, to enable the latter to review the lawfulness of that act (see judgments of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 29 and the case-law cited, and of 28 May 2013, *Trabelsi and Others* v *Council*, T-187/11, EU:T:2013:273, paragraph 66 and the case-law cited).

44 The statement of reasons for such an act must therefore, in any event, set out the facts and the legal considerations that have decisive importance in the context of that act (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 30 and the case-law cited).

45 Accordingly, in accordance with settled case-law, 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 Common Position 2001/931 and of Regulation No 2580/2001, but also to the actual and specific reasons why the Council considers, in the exercise of its discretion, that the person concerned must be made the subject of a measure freezing funds (see, to that effect, judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 52; of 16 October 2014, *LTTE* v *Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 162; and of 25 March 2015, *Central Bank of Iran* v *Council*, T-563/12, EU:T:2015:187, paragraph 55).

46 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the disclosure of certain information, the Council is required to inform a person or entity affected by restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. The Council must thus state the matters of fact and law which constitute the legal basis of the measures concerned and the considerations which led it to adopt them (judgment of 9 July 2009, *Melli Bank* v *Council*, T-246/08 and T-332/08, EU:T:2009:266, paragraph 144).

47 Moreover, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. 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 (judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Counci*l, T-228/02, EU:T:2006:384, paragraph 141; see, also, judgment of 16 October 2014, *LTTE* v *Council*, T-208/11 and T-508/11, EU:T:2014:885, paragraph 159 and the case-law cited). It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons is adequate must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a decision adversely affecting a person are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure affecting him (judgment of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 82).

48 The obligation to state reasons thus laid down constitutes an essential principle of EU law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him and a failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the Courts of the European Union (judgment of 7 December 2011, *HTTS* v *Council*, T-562/10, EU:T:2011:716, paragraph 32).

49 Consequently, with respect to decisions to maintain the imposition of restrictive measures on a person or entity, the Courts of the European Union are required to determine, in particular, first, whether the obligation to state reasons laid down in Article 296 TFEU has been complied with and, therefore, whether the reasons relied on are sufficiently detailed and specific, and, second, whether those reasons are substantiated (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 70 and the case-law cited).

50 In that context, it must be made clear that the person or entity concerned may, in the action challenging their continued listing on the list at issue, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources. In the event of challenge, it is for the Council to establish that the facts alleged are well founded and for the Courts of the European Union to determine whether they are made out (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 71 and the case-law cited).

51 It must be borne in mind that Article 1 of Common Position 2001/931 draws a distinction between the initial inclusion of a person or entity on the list at issue, the subject of Article 1(4), and the retention on that list of a person or entity already listed, the subject of Article 1(6) (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 58).

52 Further, according to the case-law, the essential question when reviewing whether to continue to include a person or entity on the list at issue is whether, since the inclusion of that person or that entity on that list or since the previous review, the factual situation has changed in such a way that it is no longer possible to draw the same conclusion in relation to the involvement of that person or entity concerned in terrorist activities (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 46). It follows from that case-law that, in the context of a review pursuant to Article 1(6) of Common Position 2001/931, the Council may maintain the listing of the person or entity concerned on the list at issue if it concludes that there is an ongoing risk of that person or entity being involved in the terrorist activities which justified their initial listing. The continued listing of a person or entity on the list at issue is, therefore, in essence, an extension of the original listing (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 51).

53 Further, if, in view of the passage of time and in the light of changes in the circumstances of the case, the mere fact that the national decision that served as the basis for the original listing remains in force no longer supports the conclusion that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, the Council is obliged to base the continued listing of that person or that entity on the list on an up-to-date assessment of the situation, and to take into account more recent facts which demonstrate that that risk still exists (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 54).

54 Those principles must guide the Court in examining the sufficiency of the reasons stated for the contested acts.

55 In this case, it must be noted that the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 differs, in terms of structure and content, from that for Regulations 2015/513, 2015/1325, 2015/2425, 2016/1127, 2017/150 and 2017/1420 and from that for Decisions No 2015/521, 2015/1334 and 2017/1426. Given those differences, those two sets of contested acts must be examined separately.

Implementing Regulations No 125/2014 and No 790/2014

56 It must first be noted that Implementing Regulations No 125/2014 and No 790/2014 are accompanied by an identical statement of reasons, structured as follows.

57 First, the Council summarises the history of the activities of the PKK since its formation in 1978. In particular, according to the Council, the PKK has committed many acts of terrorism since 1984 and those attacks have continued, despite the ceasefires declared unilaterally by the PKK since 2009. The Council then lists 69 incidents, occurring between 14 November 2003 and 19 October 2011, which it attributes to the PKK and which it categorises as terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

58 Second, the Council states that the PKK is the subject of the order of the United Kingdom Home Secretary, adopted on 29 March 2001, proscribing the PKK under the Terrorism Act 2000 (United Kingdom), and the Council classifies that order as a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. The Council also states that that order has been regularly reviewed by an administrative commission and that it remains in force.

59 Third, the Council states that the PKK is the subject of an FTO designation, under Section 219 of the Immigration and Nationality Act (United States), and of an SDGT designation, under Executive Order No 13224, by the United States authorities, and classifies those designations as decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/931. The Council also states that those designations may be challenged by legal proceedings in the United States and that they remain in force.

60 Last, the Council states that the PKK was the subject of a number of judgments of the State Security courts of the Republic of Turkey.

61 It is apparent from the foregoing that the Council based its decision to maintain the applicant's name in the lists at issue, first, on the fact that decisions that were classified as decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/93 remained in force, and, second, on the Council's own assessments of a series of incidents attributed to the PKK and categorised as terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

62 It is appropriate, first, to examine the adequacy of the reasons stated in relation to the assessment of the nature of the decisions on which the Council relied, and then to examine whether the Council adequately set out the actual and specific reasons why it considered that the applicant's name should be retained in the lists at issue.

– The existence of decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/931

63 In that regard, in the first place, it is clear that the Council expressly admits in its Defence that neither the list of incidents categorised as terrorist acts nor the judgments of the State Security Courts of the Republic of Turkey constitute decisions of a competent authority within the meaning of Article 1(4) of Common Position 2001/931 (Defence, paragraphs 56 and 119).

64 In the second place, as regards the FTO designation and the SDGT designation, contrary to what is claimed by the applicant, it is apparent from the case-law that the concept of a 'competent authority', within the meaning of Article 1(4) of Common Position 2001/931, is not confined to the authorities of Member States but is capable, in principle, of also including the authorities of third States (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 22).

65 However, it is also apparent from the case-law that the Council must, before acting on the basis of a decision of an authority of

a third State, verify whether that decision was adopted in accordance with the rights of the defence and the right to effective judicial protection (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 24). The Council is, therefore, required to provide, in the statements of reasons relating to those decisions, the particulars from which it may be concluded that it has ascertained that those rights were respected (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 31). It is sufficient, for that purpose, that the Council briefly refer in the statement of reasons relating to a decision to freeze funds to the reasons why it considers the decision of the third State on which it intends to rely to have been adopted in accordance with the rights of the defence and the right to effective judicial protection (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 33).

66 It is however clear that the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 provides not the slightest indication that the Council actually verified that the FTO and SDGT designations had been adopted with due regard for the rights of the defence and the right to effective judicial protection. The Council cannot, as in this case, do no more than state that, as a matter of theory, with no further detail on the conduct of the procedures concerned, the FTO designation is subject to judicial procedures for obtaining legal redress under United States law while the SDGT designation is subject to administrative and judicial procedures for obtaining legal redress under United States law. The statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 is such that it is therefore impossible to ascertain whether the Council fulfilled its obligation of verification in that regard.

67 Further, nor does the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 contain any indication of the reasons why the Council considered that the FTO and SDGT designations constituted decisions of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. The statement of reasons does not explain in what way the FTO and SDGT designations may be considered to be an 'instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act, based on serious and credible evidence, or condemnation for such deeds' within the meaning of Common Position 2001/931. Nor does the statement of reasons contain the slightest indication that the Council actually examined whether the specific facts on which the United States authorities relied fell within the scope of the concept of 'terrorist act', within the meaning of Article 1(3) of Common Position 2001/931. The statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 is such that it is therefore impossible to ascertain whether the Council fulfilled its obligation of verification in that regard.

68 In the third place, as regards the order of the United Kingdom Home Secretary, it is clear that the Council fails to state the reasons why it considered that that order constituted a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931. In particular, the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 contains no description of the reasons underlying the order of the United Kingdom Home Secretary, nor any indication that the Council actually examined whether the specific facts on which the United Kingdom Home Secretary relied fell within the scope of the concept of 'terrorist act', within the meaning of Article 1(3) of Common Position 2001/931. In that regard, the judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council* (T-256/07, EU:T:2008:461), cited by the Council in its Defence, is of no relevance to the present case, since, in that case, the applicant had not challenged the classification of the order of the United Kingdom Home Secretary as a decision of a competent national authority within the meaning of Article 1(4) of Common Position 2001/931.

– The actual and specific reasons for retaining the applicant's name on the lists at issue

69 In any event, even if the view were taken that the Council had fulfilled its obligation to state reasons as regards the existence of at least one decision of a competent national authority within the meaning of Article 1(4) of Common Position 2001/931, it must be recalled that if, in view of the passage of time and in the light of changes in the circumstances of the case, the mere fact that the national decision that served as the basis for the original listing remains in force no longer supports the conclusion that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, the Council is obliged to base the retention of that person or entity on the list on an up-to-date assessment of the situation, and to take into account more recent facts which demonstrate that that risk still exists (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 54 and the case-law cited).

70 In this case, it is clear that a significant period of time elapsed between the adoption of the decisions which served as the basis for the initial inclusion of the applicant's name in the lists at issue and the adoption of Implementing Regulations No 125/2014 and No 790/2014, and between the initial inclusion of the applicant's name in the lists at issue and the adoption of those acts. The order of the United Kingdom Home Secretary dates from 2001, the FTO designation of the PKK dates from 1997, the SDGT designation of the PKK dates from 2001 and the initial inclusion of the PKK in the lists dates from 2002, whereas Implementing Regulations No 125/2014 and No 790/2014 were adopted in 2014. The fact that such a period of time, more than 10 years, elapsed is in itself a factor which justifies a conclusion that the findings made in the order of the United Kingdom Home Secretary and the FTO and SDGT designations were no longer sufficient for the purposes of determining whether the risk of applicant's involvement in terrorist activities persisted at the time when those acts were adopted.

71 Moreover, as mentioned by the Council in the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014, the applicant has unilaterally declared a number of cease-fires since 2009. In addition, although the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 makes no mention of it, the applicant correctly states that peace negotiations between the PKK and the Turkish Government took place in 2012 and 2013. In particular, on 21 March 2013 Mr Abdullah Öcalan called for the laying down of arms. In a press release dated 21 March 2013, the High Representative of the Union for Foreign Affairs and Security Policy, Mrs Catherine Ashton, and the Commissioner for Enlargement and European Neighbourhood Policy, Mr Štefan Füle, issued a joint statement in which they welcomed Mr Öcalan's calling on the PKK to lay down arms and to withdraw beyond the Turkish borders, encouraged all parties to work unremittingly to bring

peace and prosperity for all the citizens of the Republic of Turkey, and gave full support to the peace process.

72 The Council was therefore obliged to base the retention of the PKK on the lists at issue on more recent material demonstrating that there was still a risk that the applicant was involved in terrorist activities. Consequently, it has to be concluded that the order of the United Kingdom Home Secretary and the FTO and SDGT designations, even if they remained in force, did not constitute, in themselves, a sufficient basis for Implementing Regulations No 125/2014 and No 790/2014, in so far as those acts concern the applicant.

73 Admittedly, in the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014, the Council also relies, first, on the fact that groups associated with the PKK perpetrated terrorist attacks despite the unilateral ceasefires mentioned in paragraph 71 above and, second, on a list of 69 incidents, categorised as terrorist acts and attributed to the PKK, which occurred after the adoption of the order of the United Kingdom Home Secretary and the FTO and SDGT designations. It is not apparent from the file that those incidents were derived from decisions of competent authorities of Member States.

74 In that regard, first, it is clear from the case-law that, although Article 1(6) of Common Position 2001/931 requires the Council to carry out at least once every six months a 'review', to ensure that there continue to be grounds for 'keeping' on that list a person or entity already listed on the basis of a national decision taken by a competent authority, it does not require any new material on which the Council may rely in order to justify the continued listing of the person or entity concerned on the list at issue to have been the subject of a national decision taken by a competent authority after the decision on which the initial listing was based (judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 62).

75 Second, it is also clear from the case-law that the person or entity concerned may, in an action challenging their retention on the list at issue, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources. In the event of challenge, it is for the Council to establish that the facts alleged are well founded and for the Courts of the European Union to determine whether they are made out (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 71 and the case-law cited).

76 In this case, contrary to what is claimed by the applicant, there was therefore nothing to prevent the Council from relying on information that was not derived from decisions of a competent authority, within the meaning of Article 1(4) of Common Position 2001/931, in order to attribute to the applicant responsibility for incidents and to categorise them as terrorist acts in order to justify the retention of the applicant's name on the lists at issue.

77 However, since the applicant disputes, within the present action, that some of those incidents actually occurred, and whether others can be attributed to the PKK or in what circumstances they were committed, the Council is obliged to establish that the facts alleged are well founded and the Court must determine whether they are made out, pursuant to the case-law cited in paragraph 75 above.

78 The brevity of the information contained in the statement of reasons does not allow the Court to exercise its power of judicial review with respect to the incidents that are disputed by the applicant. The Court must concur with the applicant that the statement of reasons for Implementing Regulations No 125/2014 and No 790/2014 contains no indication of the material on which the Council relied in order to conclude that the incidents concerned have been established, are attributable to the applicant, and satisfy all the criteria set out in in Article 1(3) of Common Position 2001/931.

79 As regards the incidents where the applicant does not dispute that they actually occurred or whether they can be attributed to the PKK, it is clear that those incidents preceded the peace negotiations mentioned in paragraph 71 above and are not therefore sufficient to remedy the deficiency in the statement of reasons identified in paragraph 72 above.

– Conclusion

80 In the light of the foregoing, it must be concluded that the Council failed to state sufficient reasons, in the statement of reasons accompanying Implementing Regulations No 125/2014 and No 790/2014, for its finding that there existed one or more decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/931 and also failed to indicate sufficiently the actual and specific reasons for retaining the applicant's name on the lists at issue. Consequently, it must be concluded that Implementing Regulations No 125/2014 and No 790/2014 are vitiated by a failure to state sufficient reasons.

Implementing Regulations 2015/513, 2015/1325, 2015/2425, 2016/1127, 2017/150 and 2017/1420, and Decisions 2015/521, 2015/1334 and 2017/1426

81 As a preliminary point, it must be noted that Implementing Regulations 2015/513, 2015/1325, 2015/2425, 2016/1127, 2017/150 and 2017/1420 and Decisions 2015/521, 2015/1334 and 2017/1426 are accompanied by a statement of reasons that is identical, structured as follows.

82 In the statement of reasons, the Council states, first, that it relied on the existence of decisions that it classifies as decisions of a competent authority within the meaning of Article 1(4) of Common Position 2001/931, namely the order of the United Kingdom Home Secretary, as supplemented by the order of 14 July 2006; the FTO designation and the SDGT designation, and the French judicial decisions. In that regard, the Council states that it had examined the factual information on which the decisions were based ('the grounds') and had taken the view that the grounds fell within the scope of the concepts of 'terrorist acts' and 'groups and entities involved in terrorist acts' within the meaning of Article 1(2) and (3) of Common Position 2001/931 (statement of reasons, paragraphs 1 to 7).

83 Next, the Council states that the abovementioned decisions of competent authorities remain in force. Further, the Council states that it had assessed whether there was any information in its possession to support the delisting of the PKK from the lists at issue and declares that it found nothing. The Council also considers that the reasons for the inclusion of the PKK on the lists at issue remain valid (statement of reasons, paragraphs 8 to 10).

84 On the basis of the foregoing, the Council concludes that the PKK should remain on the lists at issue (statement of reasons, paragraph 11).

85 Further, annexed to the statement of reasons is a description of each of the decisions of competent authorities referred to in paragraph 82 above, consisting of a presentation of how the concept of terrorism is defined under national law, a description of the applicable national administrative and judicial procedures, a summary of the procedural history and the aftermath of the national decision concerned, a summary of the conclusions reached by the competent authorities with regard to the applicant, a narration of the acts on which those competent authorities had based their decision and the finding that those acts constituted terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

86 Accordingly, in the first place, as regards Annex A to the statement of reasons, relating to the order of the United Kingdom Home Secretary, the Council states, inter alia, that that order was adopted in 2001 because the then United Kingdom Home Secretary had a reasonable belief that the PKK had committed and participated in terrorist acts within the meaning of Article 1(2) of Common Position 2001/931 (paragraphs 3, 4 and 16). In that regard, the Council states that the terrorist acts concerned consisted of terrorist attacks believed to have been committed by the PKK since 1984 and that the PKK had undertaken in the early 1990s a terrorist campaign aimed at Western interests and investments with a view to bringing increased pressure on the Turkish Government. The Council states that, even though the PKK appeared to have abandoned that campaign between 1995 and 1999, it had continued to threaten Turkish tourist resorts. The Council states that it considers that those acts fall within the scope of the aims set out in Article 1(3)(i) and (ii) of Common Position 2001/931 and the acts of violence set out in Article 1(3)(iii)(a),(c),(d),(f),(g) and (i) of Common Position 2001/931 (paragraph 16).

87 The Council also states that on 3 December 2014 the United Kingdom Home Secretary decided to reject an application for the removal of the proscription of the PKK and to maintain that proscription. In that regard, the Council states that, on the basis of the evidence available, the United Kingdom Home Secretary held a reasonable belief that the PKK continued to be involved in acts of terrorism, since the PKK had committed and participated in terrorist acts within the meaning of Article 1(2) of Common Position 2001/931. The Council accordingly states that the United Kingdom Home Secretary relied on, inter alia, the fact that the PKK carried out three separate attacks in May 2014, in one of which, on 13 May 2014, two soldiers were injured at the construction site of a military outpost in Tunceli (Turkey), and the fact that the PKK attacked in August 2014 a thermal energy plant and kidnapped three Chinese engineers (paragraph 17). The Council also states that in October 2014 the PKK issued a warning that, if the Republic of Turkey did not intervene against ISIL, the fragile peace process in which it was engaged would collapse (paragraph 18).

88 Last, the Council concludes that the matters set out in paragraphs 86 and 87 above correspond to the aims set out in Article 1(3)(i) and (ii) of Common Position 2001/931 and to the terrorist acts set out in Article 1(3)(iii)(a), (c), (d) and (f) to (i) of Common Position 2001/931 (paragraph 19).

89 In the second place, as regards Annex B to the statement of reasons, relating to the French judicial decisions, the Council states, inter alia, that the tribunal de grande instance de Paris (Paris Regional Court), in its judgment of 2 November 2011, convicted the Ahmet Kaya Kurdish Cultural Centre of participating in a criminal association in order to prepare an act of terrorism and of financing a terrorist undertaking. The Council adds, first, that that conviction was upheld on appeal by the cour d'appel de Paris (Paris Court of Appeal), in its judgment of 23 April 2013, and on further appeal by the Cour de cassation (Court of Cassation), in its judgment of 21 May 2014, and, second, that those three courts held in their respective judgments that the Ahmet Kaya Kurdish Cultural Centre was the 'legal front' of the PKK in France (paragraphs 11 to 14, 20 and 21). Moreover, the Council states that the tribunal de grande instance de Paris (Paris Regional Court) and the cour d'appel de Paris (Paris Court of Appeal) held that the PKK could be described as a 'terrorist organisation'. In that regard, the Council states that the cour d'appel de Paris (Paris Court of Appeal) relied on, inter alia, a series of attacks committed in Turkey in 2005 and 2006 and directly attributable to the PKK or to the TAK, which ought to be regarded as the armed wing of the PKK, and a series of arson and petrol-bomb attacks in France and Germany in 2007 (paragraphs 15 to 19). The Council concludes that the terrorist acts attributed to the PKK by the French courts fall within the scope of Article 1(3)(i), Article 1(3)(ii), and Article 1(3)(iii)(a) and (b) of Common Position 2001/931 (paragraph 22).

90 In the third place, as regards Annex C to the statement of reasons, relating to the FTO and SDGT designations, the Council states, inter alia, that the FTO designation was adopted on 8 October 1997 and that the SDGT designation was adopted on 31 October 2001 (paragraphs 3 and 4).

91 The Council then states that the FTO designations are regularly reviewed every five years by the United States Secretary of State, if the designation has not in the meantime been the subject of a revocation request. The entity concerned may also itself request, every two years, that its designation be revoked by submitting evidence to show that the circumstances on which its FTO designation were based have significantly changed. The United States Secretary of State and the United States Congress may also at their own instance revoke an FTO designation. In addition, the entity concerned may seek judicial review of its FTO designation before the Circuit Court of Appeals for the District of Columbia. As regards the SDGT designations, the Council states that these are not subject to regular review, but that they can be challenged before the federal courts (paragraphs 8 to 11). Further, the Council states that the applicant's FTO and SDGT designations have not been challenged before the United States courts and are not the subject of any ongoing judicial procedure (paragraphs 11 and 12). In the light of

the review processes and the description of the legal remedies available, the Council considers that the relevant United States legislation ensures the protection of the rights of the defence and of the right to effective judicial protection (paragraph 13).

92 The Council also states that the United States authorities have relied on, inter alia, the fact that attacks have been carried out by the PKK as the basis for adoption of the FTO and SDGT designations. In that regard, the Council states that the 2013 Administrative Record on terrorism (of the United States Department of State) set out the specific reasons why the designation of the PKK as an FTO was adopted and maintained, namely an attack on a Turkish military convoy on 22 August 2012, when five soldiers were killed and seven others wounded; the kidnapping of three Turkish politicians in the summer of 2012; a bomb attack on 4 November 2012, carried out near a wedding celebration, when two children were killed, 26 people were injured, and a number of commercial buildings were damaged, and the fighting of 18 November 2012, when five soldiers were killed and one injured. The Council concludes that those incidents correspond to the aims set out in Article 1(3)(i), (ii) or (iii) of Common Position 2001/931 and to the terrorist acts set out in Article 1(3)(iii)(a) to (c) and (f) of Common Position 2001/931 (paragraphs 14 to 17).

93 It follows from the foregoing that the Council decided to maintain the listing of the applicant on the lists at issue on the basis of, first, the fact that decisions classified as decisions of competent authorities within the meaning of Article 1(4) of Common Position 2001/931 remained in force, and, second, the Council's own assessment that there was nothing to support the delisting of the PKK from the lists at issue and that the grounds justifying the inclusion of the PKK in the lists at issue were still relevant.

94 The Court considers that it should, first, examine whether the statement of reasons, in relation to the actual and specific reasons why the Council considered that the applicant's name should remain on the lists at issue, is sufficient.

95 In that regard, it must, first, be recalled that, if, in view of the passage of time and in the light of changes in the circumstances of the case, the mere fact that the national decision that served as the basis for the original listing remains in force no longer supports the conclusion that there is an ongoing risk of the person or entity concerned being involved in terrorist activities, the Council is obliged to base the retention of that person or entity on the list on an up-to-date assessment of the situation, and to take into account more recent facts which demonstrate that that risk still exists (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 54 and the case-law cited).

96 In this case, it is clear that a significant period of time elapsed between the adoption of the decisions which served as the basis for the initial inclusion of the applicant's name in the lists at issue and the adoption of the contested acts specified in paragraph 81 above, and between the initial inclusion of the applicant's name in the lists at issue and the adoption of the contested acts. The order of the United Kingdom Home Secretary dates from 2001. The FTO designation of the PKK dates from 1997 and the SDGT designation of the PKK dates from 2001. Last, the initial inclusion of the PKK on the lists at issue dates from 2002. However, the contested acts specified in paragraph 81 above were adopted between 26 March 2015 and 4 August 2017.

97 The fact that such a period of time, more than 10 years, elapsed is in itself a factor which justifies a conclusion that the findings made in the order of the United Kingdom Home Secretary and in the FTO and SDGT designations were no longer sufficient for the purposes of determining whether the risk of the applicant's involvement in terrorist activities persisted at the time when the contested acts were adopted. The Council was therefore obliged to base the retention of the PKK on the lists at issue on more recent material, demonstrating that the risk of the PKK's involvement in terrorist activities persisted. Consequently, it has to be concluded that the order of the United Kingdom Home Secretary and the FTO and SDGT designations, even if they remained in force, did not constitute, in themselves, a sufficient basis for the contested acts specified in paragraph 81 above, in so far as those acts concern the applicant.

98 Admittedly, in the statement of reasons for the contested acts specified in paragraph 81 above, it must be noted that the Council mentions other factors that are more recent. Thus, the Council mentions the adoption of the French judicial decisions. The Council also refers to a number of incidents attributed to the PKK on which the competent authorities relied in order to adopt or maintain the order of the United Kingdom Home Secretary, the FTO and SDGT designations and the French judicial decisions. The Council categorises those incidents as terrorist acts. Further, the Council also states that it had found nothing to support the delisting of the applicant from the lists at issue.

99 However, it is clear that the Council failed to state the reasons why it considered that that material made it possible to conclude, to the requisite legal standard, that the risk of the applicant's involvement in terrorist activities persisted.

100 In the first place, as regards the French judicial decisions, it is clear that, although they were adopted between 2 November 2011 and 21 May 2014, those decisions are based on facts that are much older, occurring, to take the most recent, almost 8 to 10 years before the adoption of the contested acts specified in paragraph 81 above. The fact that such a period of time elapsed is in itself a factor which justifies a conclusion that the findings made in the French judicial decisions were no longer sufficient for the purposes of determining whether the risk of the applicant's involvement in terrorist activities persisted at the time when those contested acts were adopted.

101 Moreover, the applicant was not a party in the judicial proceedings that led to the judgments of the tribunal de grande instance de Paris (Paris Regional Court), the cour d'appel de Paris (Paris Court of Appeal) and the Cour de cassation française (French Court of Cassation). Admittedly, the Council states in paragraphs 13, 14 and 21 of Annex B to the statement of reasons that the Ahmet Kaya Kurdish Cultural Centre constituted, according to those judicial decisions, the 'legal front' of the PKK in France. However, such a formulation is ambiguous, particularly in light of the fact that the Ahmet Kaya Kurdish Cultural Centre was convicted on the charge of financing a terrorist undertaking with respect to its role in supporting the PKK. By concluding that

the Ahmet Kaya Kurdish Cultural Centre 'knowingly provided, through its bodies or representatives, in this case through the de facto leaders identified above, acting on its behalf, effective logistical and financial support for a designated terrorist organisation' the Cour de cassation française (French Court of Cassation) indirectly confirms that the Ahmet Kaya Kurdish Cultural Centre and the PKK have to be regarded as two distinct entities. Consequently, the Council has failed to state to the required legal standard the reasons why it considered that those French judicial decisions constituted decisions of a competent authority 'in respect of the persons, groups and entities concerned' within the meaning of Article 1(4) of Common Position 2001/931.

102 Accordingly, it must be concluded that the French judicial decisions, even if they remain in force, do not constitute, in themselves, a sufficient basis for the contested acts specified in paragraph 81 above, in so far as they concern the applicant, and are not therefore sufficient to remedy the deficiency in the statement of reasons identified in paragraph 97 above.

103 In the second place, as regards the incidents on which the United Kingdom Home Secretary relied in his decision, on 3 December 2014, to reject the request to end the proscription of the PKK, it is clear that, in its statement of modification of 26 May 2015, the applicant expressly disputes the attribution of responsibility for those incidents to the PKK and the adequacy of the information submitted in support of the conclusion that those incidents correspond to the aims set out in Article 1(3)(i) to (iii) of Common Position 2001/931 and to the acts of violence set out in Article 1(3)(iii)(a) to (k) of Common Position 2001/931.

104 In that regard, it is clear from the case-law that the person or entity concerned may, in the action challenging their continued listing on the list at issue, dispute all the material relied on by the Council to demonstrate that the risk of their involvement in terrorist activities is ongoing, irrespective of whether that material is derived from a national decision adopted by a competent authority or from other sources. In the event of challenge, it is for the Council to establish that the facts alleged are well founded and for the Courts of the European Union to determine whether they are made out (see judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraph 71 and the case-law cited).

105 In this case, it is clear that the statement of reasons for the contested acts specified in paragraph 81 above provides not the slightest indication that the Council actually considered and attempted to establish whether the alleged facts were well founded. The Council has also, in the course of these proceedings, failed to produce anything to establish that those facts are well founded. In the light of the case-law cited above in paragraph 104, the Council cannot, as in this case, do no more than repeat the grounds for a decision of a competent authority while not itself considering whether those grounds are well founded. The statement of reasons for the contested acts specified in paragraph 81 above is such that it is impossible to know whether the Council fulfilled its obligation of verification in that regard and that the Court cannot exercise its power of review as to whether the facts alleged are made out.

106 Consequently, it must be concluded that the fact that the order of the United Kingdom Home Secretary was confirmed, in December 2014, on the basis of incidents alleged to have been committed by the PKK in May and August 2014, does not suffice to remedy the failure to state reasons identified in paragraph 97 above.

107 In the third place, as regards the incidents on which the United States authorities relied as the basis for adoption or continuation of the FTO and SDGT designations, it is clear that, in its statement of modification of 26 May 2015, the applicant expressly disputes the adequacy of the information submitted in support of the conclusion that those incidents correspond to the aims set out in Article 1(3)(i) to (iii) of Common Position 2001/931 and to the acts of violence set out in Article 1(3)(iii)(a) to (k) of Common Position 2001/931.

108 It again has to be stated that the statement of reasons for the contested acts specified in paragraph 81 above provides not the slightest indication that the Council actually considered and attempted to establish whether the alleged facts were well founded. The Council has also, in the course of these proceedings, failed to produce anything to establish that those facts are well founded. On the contrary, the Council is incapable of detailing with any certainty the actual and specific reasons on which the FTO and SDGT designations are based. In particular, as regards the annual reports on terrorism of the United States Department of State, the Council expressly states in its rejoinder, 'while these reports *may* indeed reflect information on which the [United States] has based [an] FTO designation or decision to maintain a designation', they 'do not necessarily do so' (rejoinder, paragraph 115).

109 In the light of the case-law cited in paragraph 104 above, the Council cannot, as in this case, do no more than repeat the grounds for a decision of a competent authority while not itself considering whether those grounds are well founded. That applies a fortiori when the decision in question was not taken by a competent authority of a Member State. The statement of reasons for the contested acts specified in paragraph 81 above is such that it is impossible to know whether the Council fulfilled its obligation of verification in that regard and that the Court cannot exercise its power of review as to whether the facts alleged are made out.

110 In the fourth place, as regards there being nothing to support the delisting of the applicant from the lists at issue, it has to be said that the applicant submitted to the Council some information which, in its opinion, could support the delisting of the PKK from the lists at issue, notably in its letter of 6 March 2015 in response to the Council's letter informing the applicant of its intention to maintain the applicant's listing in the lists at issue.

111 According to the case-law, when comments are made by the person concerned on the statement of reasons, the competent European Union authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 114).

112 Without going so far as to require a detailed response to the comments made by the individual concerned, the obligation to state reasons laid down in Article 296 TFEU entails in all circumstances that the institution concerned must identify the individual, specific and concrete reasons why it is considered that the individual concerned must be subject to restrictive measures (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 116).

113 It is, however, clear that the statement of reasons for the contested acts specified in paragraph 81 above provides not the slightest indication that the Council actually considered the information submitted by the applicant. Admittedly, the statement of reasons for the contested acts contains an assertion that the Council examined whether there was anything in its possession to support the delisting of the PKK from the lists at issue and found nothing (paragraph 9). While such a generic formulation may perhaps suffice in the absence of any comments being made by the persons, groups or entities affected by the fund freezing measures, that does not apply when, as in this case, the applicant submits information which, in its opinion, is such as to justify the removal of its name from the lists at issue, irrespective of whether or not that information is well founded. In such circumstances, it is the duty of the Council to respond to that information, however succinctly, in the statement of reasons.

114 That failure to state reasons cannot be remedied by the indication, in the Council's letter of 27 March 2015, cited in paragraph 19 above, that the fact that there are Kurdish groups among those fighting ISIL did not affect the Council's assessment that the PKK satisfied the designation criteria laid down by Common Position 2001/931. It is clear that, first, that letter post-dates the adoption of Regulation 2015/513 and Decision 2015/521 and, second, the Council does not specify the actual material that led it to conclude that the risk of the applicant's involvement in terrorist activities persisted.

115 In the light of the foregoing, it must be concluded that the Council failed to state to the requisite standard, in the statement of reasons accompanying the contested acts specified in paragraph 81 above, the actual and specific reasons for maintaining the listing of the applicant on the lists at issue. Consequently, it must be concluded that Implementing Regulations 2015/513, 2015/1325, 2015/2425, 2016/1127, 2017/150 and 2017/1420 and Decisions 2015/521, 2015/1334 and 2017/1426 are vitiated by a failure to state sufficient reasons.

Conclusion

116 In those circumstances, it must be held that the Council is in breach of the obligation to state reasons laid down in Article 296 TFEU. It follows that the seventh plea in law must be upheld and that finding justifies, in itself, the annulment of the contested acts in so far as they concern the applicant (see, to that effect, judgment of 7 December 2011, *HTTS* v *Council*, T-562/10, EU:T:2011:716, paragraph 40).

117 In the light of all the foregoing, the contested acts must be annulled, there being no need to examine the other arguments and pleas in law relied on in support of the present action. As regards the applicant's claim that the Court should declare Regulation No 2580/2001 not to be applicable to it, that claim must be rejected after the withdrawal of the first plea in law on which that claim was based.

The temporal effects of annulment of the contested acts

118 It must be noted that the contested acts were amended by Council Implementing Regulation (EU) 2018/468 of 21 March 2018 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2017/1420 (OJ 2018 L 79, p. 7) and by Council Decision (CFSP) 2018/475, of the same date, updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931, and repealing Decision 2017/1426 (OJ 2018 L 79, p. 26), which replaced the lists at issue as from 23 March 2018 and extended the application of the restrictive measures, with respect to the applicant.

119 Therefore, as at today's date, the applicant is subject to a further restrictive measure. It follows that the annulment of the contested acts, in so far as they concern the applicant, does not entail the removal of the applicant's name from the lists at issue.

120 Consequently, it is not necessary to maintain the effects of the contested acts, in so far as they concern the applicant.

Costs

121 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, as applied for by the applicant.

122 In addition, under Article 138(1) of the Rules of Procedure, the Member States and institutions which intervened in the proceedings are to bear their own costs. It follows that the Commission and the United Kingdom must bear their own costs.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. **Annuls Council Implementing Regulation (EU) No 125/2014 of 10 February 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 Regulation (EU) No 714/2013, in so far as it concerns**

the Kurdistan Workers' Party (PKK).

2. Annuls Council Implementing Regulation (EU) 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 Regulation No 125/2014, in so far as it concerns the PKK.

3. Annuls Council Implementing Regulation (EU) 2015/513 of 26 March 2015 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 No 790/2014, in so far as it concerns the PKK.

4. Annuls Council Decision (CFSP) 2015/521 of 26 March 2015, updating and amending the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2014/483/CFSP, in so far as it concerns the PKK.

5. Annuls Council Implementing Regulation (EU) 2015/1325 of 31 July 2015 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 2015/513, in so far as it concerns the PKK.

6. Annuls Council Decision (CFSP) 2015/1334 of 31 July 2015, updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 on the application of specific measures to combat terrorism and repealing Decision 2015/521, in so far as it concerns the PKK.

7. Annuls Council Implementing Regulation (EU) 2015/2425 of 21 December 2015 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 2015/1325, in so far as it concerns the PKK.

8. Annuls Council Implementing Regulation (EU) 2016/1127 of 12 July 2016 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 2015/2425, in so far as it concerns the PKK.

9. Annuls Council Implementing Regulation (EU) 2017/150 of 27 January 2017 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 No 2016/1127, in so far as it concerns the PKK.

10. Annuls Council Implementing Regulation (EU) 2017/1420 of 4 August 2017 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 2017/150, in so far as it concerns the PKK.

11. Annuls Council Decision (CFSP) 2017/1426 of 4 August 2017 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision (CFSP) 2017/154, in so far as it concerns the applicant.

12. For the remainder, dismisses the request that Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism be declared to be inapplicable to the PKK.

13. Orders the Council of the European Union to bear its own costs and to pay those incurred by the PKK.

14. Orders the European Commission and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

Frimodt Nielsen	Kreuschitz	Forrester
Półtorak		Perillo

Delivered in open court in Luxembourg on 15 November 2018.

E. Coulon	S. Gervasoni

Registrar President

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* Language of the case: English.