European Political Subdivision of the Liberation Tigers of Tamil Eelam (LTTE) v Council of the European Union T-160/19

62019TJ0160

General Court of the European Union

S. Gervasoni, President, L. Madise and P. Nihoul (Rapporteur), Judges

24 November 2021

24/11/2021

I. Background to the dispute and events subsequent to the bringing of the present action

A. United Nations Security Council Resolution 1373 (2001)

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. Paragraph 1(c) of that resolution provides, inter alia, that all States are to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled by such persons, and of persons and entities acting on behalf of, or at the direction of such persons and entities.

2. That resolution does not provide a list of persons or entities to whom those measures must be applied.

B. **EU law**

3. On 27 December 2001, noting that action by the European Union was necessary in order to implement Resolution 1373 (2001), the Council of the European Union adopted Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

4. Article 1 of Common Position 2001/931 is worded as follows:

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

...

3. For the purposes of this Common Position, “terrorist act” shall mean one of the following intentional acts, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:

(i) seriously intimidating a population, or

(ii) unduly compelling a Government or an international organisation to perform or abstain from performing any act, or

(iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:

(a) attacks upon a person's life which may cause death;

(b) attacks upon the physical integrity of a person;

(c) kidnapping or hostage taking;

(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;

(e) seizure of aircraft, ships or other means of public or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

(g) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;

(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

(i) threatening to commit any of the acts listed under (a) to (h);

(j) directing a terrorist group;

(k) participating in the activities of a terrorist group, including by supplying information or material resources, or

by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.

For the purposes of this paragraph, “terrorist group” shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist acts. “Structured group” means a group that is not randomly formed for the immediate commission of a terrorist act and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

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

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

...

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

5. Article 2 of Common Position 2001/931 provides for the freezing of the funds and other financial assets or economic resources of persons, groups and entities involved in terrorist acts and included on the list in the annex to that common position.

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

7. On 29 May 2006, the Council adopted Common Position 2006/380/CFSP updating Common Position 2001/931 and repealing Common Position 2006/231/CFSP (OJ 2006 L 144, p. 25), and 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). The Liberation Tigers of Tamil Eelam (LTTE), of which the applicant claims to be the European Political Subdivision, were included in the lists of persons and entities associated with terrorist acts.

8. Those lists have been updated regularly in accordance with Article 1(6) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001. The LTTE have continued to be included on the lists annexed to the measures adopted after those referred to in paragraph 7 above.

C. The contested measures

1. Decision (CFSP) 2019/25

9. On 8 January 2019, the Council maintained the LTTE on the list annexed to Decision (CFSP) 2019/25 amending and updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision (CFSP) 2018/1084 (OJ 2019 L 6, p. 6).

10. On 9 January 2019, the Council sent the statement of reasons for that decision to the legal counsel of the LTTE.

11. In that statement of reasons, the Council indicated that:

– the LTTE movement was a group fighting for a separate Tamil State in the north and east of Sri Lanka;

– designation of the LTTE was based on:

– Decision 1261 of the Secretary of State for the Home Department (United Kingdom) ('the Home Secretary') of 29 March 2001 ('the Home Secretary's decision of 2001'), in which it was concluded that the LTTE constituted an organisation concerned in terrorism and the LTTE were added to the list of proscribed organisations (paragraph 1 of the statement of reasons and points 3 and 4 of Annex A to the statement of reasons). The Council concluded that that decision had to be regarded as coming from a national competent authority within the meaning of Common Position 2001/931. It stated that, according to that decision, the LTTE had committed or participated in acts of terrorism within the meaning of section 3(5)(a) of the UK Terrorism Act 2000 and had prepared for terrorism within the meaning of section 3(5)(b) of that act. It stated that the acts of terrorism concerned included several attacks in January 2000, which had taken place in Colombo, Morawewa and Vavuniya (Sri Lanka) and had resulted in fatalities and injuries, including civilian fatalities and injuries (points 3 and 16 of Annex A to the statement of reasons);

– a judgment of the tribunal de grande instance de Paris (Regional Court, Paris, France) of 23 November 2009, which had declared the Comiteì de Coordination Tamoul – France (Tamil Coordinating Committee, France) (CCTF), as well as certain individual members of that committee, guilty of participating in a criminal association in order to prepare an act of terrorism, of financing a terrorist undertaking, and of extortion by violence, threat or force to obtain a signature, promise, secret, funds, securities or property in connection with a terrorist undertaking (paragraph 1 of the statement of reasons and point 1 of Annex B to the statement of reasons). That judgment had been upheld by a judgment of the cour d'appel de Paris (Court of Appeal, Paris, France) of 22 February 2012, which had been the

subject of an appeal which was dismissed by the Cour de cassation (Court of Cassation, France) on 10 April 2013 (points 3 and 4 of Annex B to the statement of reasons). The Council concluded that the decisions of the French courts were issued by competent authorities (paragraphs 5 and 7 of the statement of reasons). It considered that the acts of terrorism ascribed to the LTTE by the French courts fell within point (i) and subpoints (a), (b) and (c) of point (iii) of the first subparagraph of Article 1(3) of Common Position 2001/931 (point 15 of Annex B to the statement of reasons).

– the Council had not found any factors supporting the removal of the LTTE from the fund-freezing lists and had taken into consideration the information that, despite the military defeat of the LTTE in 2009, their international fundraising and revival capacities remained. This was notably evidenced by a number of incidents that had revealed international connections to LTTE-related individuals (paragraphs 3, 9 and 10 of the statement of reasons);

– in June 2014, the Home Secretary had decided to maintain the proscription on the basis that the group in question was otherwise concerned in terrorism within the meaning of section 3(5)(d) of the UK Terrorism Act 2000, given that it could reasonably be assumed that the group existed and retained a military capability and network coupled with the intent to conduct terrorist attacks in the future if it is perceived to be in the organisation's interest to do so. The Home Secretary concluded that this corresponded to the aim set out in point (ii) of the first subparagraph of Article 1(3) of Common Position 2001/931 and the terrorist acts set out in subpoints (f) and (i) of point (iii) of the first subparagraph of Article 1(3) thereof (points 5 and 17 of Annex A to the statement of reasons).

2. Decision (CFSP) 2019/1341

12. By letter and email of 27 June 2019, the Council informed the LTTE that it intended to maintain the organisation on the fund-freezing lists and that it had received further information concerning the organisation. It attached the amended draft statement of reasons to the letter, together with an article published on 20 June 2019 in the *Daily Mirror*, which it referred to as its basis for amending that draft. The Council also invited the LTTE to submit their comments on those documents by 12 July 2019 at the latest.

13. On 8 August 2019, the Council adopted Decision (CFSP) 2019/1341 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision 2019/25 (OJ 2019 L 209, p. 15), by which it maintained the LTTE on the list at issue.

14. On 9 August 2019, the Council sent the statement of reasons for that decision to the legal counsel of the LTTE.

15. That statement of reasons was essentially the same as the one underlying Decision 2019/25. The Council also referred, in that statement of reasons, to a decision of the Home Secretary of March 2019, maintaining the proscription of the LTTE in the United Kingdom, on the ground that the organisation was otherwise concerned in terrorism within the meaning of section 3(5)(d) of the UK Terrorism Act 2000. According to that statement of reasons, based on evidence including a public source referring, in June 2018, to an arrest by the Sri Lankan police

of individuals transporting explosive devices and LTTE paraphernalia including flags, that decision was appealed before the Proscribed Organisations Appeal Commission (United Kingdom) ('the POAC'). The Council concluded that the decision adopted by the Home Secretary corresponded to the aim set out in point (ii) of the first subparagraph of Article 1(3) of Common Position 2001/931 and the terrorist acts set out in subpoints (f) and (i) of point (iii) of the first subparagraph of Article 1(3) of that common position (points 5 and 18 of Annex A to the statement of reasons).

3. Implementing Regulation (EU) 2020/19

16. On 13 January 2020, the Council maintained the LTTE on the list annexed to Implementing Regulation (EU) 2020/19 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) 2019/1337 (OJ 2020 L 8 I, p. 1).

17. On 15 January 2020, the Council sent the statement of reasons for that regulation, which was identical to that for Decision 2019/1341, to the legal counsel of the LTTE.

4. Implementing Regulation (EU) 2020/1128 and Decision (CFSP) 2020/1132

18. On 30 July 2020, the Council adopted Implementing Regulation (EU) 2020/1128 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation 2020/19 (OJ 2020 L 247, p. 1), and Decision (CFSP) 2020/1132 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931 and repealing Decision (CFSP) 2020/20 (OJ 2020 L 247, p. 18).

19. On 31 July 2020, the Council sent the statement of reasons for those measures, which was identical to that for Implementing Regulation 2020/19, to the legal counsel of the LTTE.

Procedure and forms of order sought

20. By application lodged at the Registry of the General Court on 14 March 2019, the applicant brought the present action for annulment of Decision 2019/25 in so far as it concerned the LTTE.

21. On 5 April 2019, the case was assigned to the First Chamber of the General Court.

22. By document lodged at the Court Registry on 25 June 2019, 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 30 July 2019, the President of the First Chamber of the General Court granted it leave to intervene. The United Kingdom lodged its statement in intervention and the main parties lodged their observations regarding that statement in intervention within the prescribed periods.

23. By separate document lodged at the Court Registry on 7 October 2019, the applicant, on the basis of Article 86

of the Rules of Procedure of the General Court, modified the application to take account of Decision 2019/1341, in so far as it concerned the LTTE.

24. Following a change to the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Fourth Chamber, to which the present case was allocated, in accordance with Article 27(5) of the Rules of Procedure.

25. On 21 October 2019, the Council lodged its observations regarding the statement of modification referred to in paragraph 23 above.

26. By separate document lodged at the Court Registry on 13 March 2020, the applicant, on the basis of Article 86 of the Rules of Procedure, modified its application for a second time in order to take account of Implementing Regulation 2020/19 in so far as it concerned the LTTE.

27. On 14 May 2020, the Council lodged its observations regarding that second statement of modification.

28. On 14 July 2020, on a proposal from the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral part of the procedure.

29. On 17 July 2020, the Court put written questions to the parties, requesting them to answer some of the questions in writing and others at the hearing. The parties complied with the first request within the prescribed period.

30. By separate document lodged at the Court Registry on 29 September 2020, the applicant, on the basis of Article 86 of the Rules of Procedure, modified its application again in order to take account of Implementing Regulation 2020/1128 and Decision 2020/1132 in so far as they concerned the LTTE.

31. On 5 October 2020, the Council lodged its observations regarding that third statement of modification.

32. The parties, with the exception of the United Kingdom, presented oral argument and replied to the questions put by the Court at the hearing on 14 October 2020.

33. By order of 4 May 2021, the Court (Fourth Chamber) decided to reopen the oral procedure.

34. By letter of the same date, the Court invited the parties to submit their observations regarding the conclusions to be drawn, if any, from the judgment of 22 April 2021, *Council v PKK* (*C-46/19* P, EU:C:2021:316), for the handling of the present case. The Council and the applicant replied within the prescribed period.

35. The applicant claims that the Court should:

– annul Decision 2019/25, Decision 2019/1341, Regulation 2020/19, Regulation 2020/1128 and Decision 2020/1132 (together, 'the contested measures'), in so far as they concern the LTTE;

– in the alternative, adopt a lesser measure than maintaining the LTTE on the European Union's list of terrorist organisations;

– order the Council to pay the costs plus interest.

36. The Council, supported by the United Kingdom, contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as manifestly unfounded;

– order the applicant to pay the costs.

II. Law

A. Admissibility

1. Formal conditions for admissibility of the application

37. It should be borne in mind that, under Article 51 of the Rules of Procedure:

'...

3. Where the party represented by the lawyer is a legal person governed by private law, the lawyer must lodge at the Registry an authority to act given by that person.

4. If the documents referred to in paragraphs 2 and 3 are not lodged, the Registrar shall prescribe a reasonable time limit within which the party concerned is to produce them. If the party concerned fails to produce the required documents within the time limit prescribed, the General Court shall decide whether the non-compliance with that procedural requirement renders the application or written pleadings formally inadmissible.'

38. Similar provisions are repeated in Article 78(5) and (6) of the Rules of Procedure.

39. Annexed to the application, the applicant has produced an authority to act signed by Mr Selvaratnam Thavaraj on 5 April 2011.

40. In its defence, the Council contends that the action should be declared inadmissible for two reasons.

41. First, the authority to act given by Mr Thavaraj on 5 April 2011 concerns only the actions that gave rise to the judgment of 16 October 2014, *LTTE* v *Council* (*T-208/11* and *T-508/11*, EU:T:2014:885), and has expired.

42. Second, the Council expresses doubts as to whether Mr Thavaraj represents or has ever represented the LTTE and states that it has been approached by a lawyer other than the applicant's lawyers.

43. As an annex to the reply, the applicant has produced a new authority to act signed by Mr Thavaraj, dated 23 June 2019, a letter of 4 July 2019 from the lawyer who had indeed approached the Council, stating that he no longer represented the LTTE, as well as several documents intended to establish Mr Thavaraj's role within the LTTE, or at least within the applicant organisation.

44. In the rejoinder, the Council contends that the applicant has not produced any document showing, first, that Mr Thavaraj and the applicant itself have been granted authority to act by the LTTE and, second, that Mr Thavaraj has been duly authorised to represent their European Political Subdivision.

45. It follows from that line of argument that the Council puts forward three arguments.

46. In the first place, the authority to act given by Mr Thavaraj on 5 April 2011 concerns only actions brought before the Court in 2011 and has expired.

47. In the second place, it has not been established that Mr Thavaraj and the applicant have been granted authority by the LTTE to bring the present action on their behalf.

48. In the third place, it has not been established that Mr Thavaraj has been duly authorised to represent the European Political Subdivision of the LTTE.

(a) The Council's argument that the authority to act given by Mr Thavaraj on 5 April 2011 has expired

49. As regards the Council's argument that the authority to act given by Mr Thavaraj on 5 April 2011 concerns only the actions brought before the Court in 2011 and has expired, suffice it to note that, in the annex to the reply, the applicant has produced a new authority to act, dated 23 June 2019.

50. Therefore, even if, as the Council claims, the authority to act of 5 April 2011 had expired when the present action was brought, it must be held that it has been replaced by that of 23 June 2019.

51. The fact that that new authority to act bears a date which is later than the date of the application lodged in the present action has no impact on the admissibility of the action. According to case-law, the Rules of Procedure do not state that proof of the authority to act conferred on the lawyer who signs the application must be established before the lodging of that application. On the contrary, since that irregularity may be corrected under Article 51(4)

of the Rules of Procedure, nothing precludes the document attesting to the existence of the authority to act being drawn up on a date subsequent to the lodging of the application (see judgment of 28 September 2016, *European Food*v *EUIPO – Socieitei des produits Nestlei (FITNESS)*, *T-476/15*, EU:T:2016:568, paragraph 19 and the case-law cited).

52. It follows from the foregoing that the present action cannot be regarded as inadmissible on the ground that the applicant has produced, as an annex to its application, an authority to act dated 5 April 2011.

(b) The Council's argument that it has not been established that Mr Thavaraj and the applicant have been granted authority by the LTTE to bring the present action on their behalf

53. As regards the Council's argument that it has not been established that Mr Thavaraj and the applicant have been granted authority by the LTTE to bring the present action on their behalf, it should be noted that, in the authorities to act of 5 April 2011 and 23 June 2019, Mr Thavaraj states that he actually authorised his legal counsel to represent '[his] organisation, the [LTTE]' before the Court.

54. It should be noted, however, that the application was not lodged by the LTTE organisation as a whole, but only by its European Political Subdivision.

55. In those circumstances, the applicant was not required to establish that Mr Thavaraj or the applicant itself had been granted authority by the LTTE.

56. The Council's argument is therefore ineffective.

(c) The Council's argument that it has not been established that Mr Thavarajhas been duly authorised to represent the European Political Subdivision of the LTTE

57. As regards the Council's argument that it has not been established that Mr Thavaraj has been duly authorised to represent the applicant, it should be noted, in the first place, that, according to case-law, the provisions of the Statute of the Court of Justice of the European Union and of the Rules of Procedure were not devised with a view to the commencement of actions by organisations lacking legal personality, such as the LTTE or the applicant. In this exceptional situation, the procedural rules governing the admissibility of an action for annulment must be applied by adapting them, to the extent necessary, to the circumstances of the case. While the applicant is required to give an authority to act, it is a question of avoiding excessive formalism which would amount to the denial of any possibility of applying for annulment even though the entity in question has been the object of restrictive measures (judgment of 18 January 2007, *PKK and KNK*v *Council*, *C-229/05* P, EU:C:2007:32, paragraph 114).

58. That is all the more the case since the restrictive measures laid down by Regulation No 2580/2001 have serious consequences. Not only are all financial transactions and financial services thereby prevented in the case of a

person, group or entity covered by that regulation, but also their reputation and political activity are damaged by the fact that they are classified as terrorists (see, to that effect, judgment of 18 January 2007, *PKK and KNK*v *Council*, *C-229/05* P, EU:C:2007:32, paragraph 110).

59. In the second place, it should be noted that the provision of the Rules of Procedure relating to the obligation to provide an authority to act given by the applicant legal person was amended in 2015, from which the Court inferred that, aside from producing that authority to act, no further proof is required that the authority granted to the applicant's lawyer has been properly conferred on him or her by someone authorised to do so (see, to that effect, judgments of 28 September 2016, *FITNESS*, *T-476/15*, EU:T:2016:568, paragraph 19; of 17 February 2017, *Batmore Capital*v *EUIPO – Univers Poche (POCKETBOOK)*, *T-596/15*, not published, EU:T:2017:103, paragraphs 19 to 22; and of 19 December 2019, *Amigüitos pets & life*v *EUIPO – Socieìteì des produits Nestleì (THE ONLY ONE by alphaspirit wild and perfect)*, *T-40/19*, not published, EU:T:2019:890, paragraph 14). That relaxation of the procedural rules is particularly justified in the case of an organisation which does not have legal personality and which, a fortiori, is classified as a terrorist organisation, for which the disclosure of information relating to the members authorised to bind it and to its internal organisation is not without risk.

60. In the present case, in the rejoinder, the Council contends that the applicant has not produced any document indicating the position currently held by Mr Thavaraj within the European Political Subdivision of the LTTE.

61. However, in an annex to the reply, the applicant has produced, in addition to the affidavits from the signatory of the authority to act explaining how he became a director of the European Political Subdivision, affidavits from the directors of the Swiss and Danish divisions of the European Political Subdivision of the LTTE of 25 and 27 May 2011, stating that they carried out their activities under the command and control of Mr Thavaraj, Regional Coordinating Director of the European Political Subdivision of the LTTE.

62. In addition, in response to a question from the Court, the applicant has provided affidavits from the directors of the United Kingdom, Norwegian, Swiss, Belgian, French, Danish, Italian and German divisions of the European Political Subdivision of the LTTE, issued between 13 August and 17 August 2020.

63. Those affidavits establish to the requisite legal standard the role played by Mr Thavaraj within the European Political Subdivision of the LTTE. Moreover, as they are so recent, they establish that the person concerned continued to play that role after 2011.

64. Consequently, the action, which was brought on behalf of the European Political Subdivision of the LTTE, cannot be declared inadmissible on the ground that Mr Thavaraj has not been duly authorised to represent the applicant.

2. The applicant's interest in bringing proceedings and locus standi

65. According to settled case-law, failures to comply with the conditions governing the admissibility of an action constitute absolute bars to proceedings which the EU judicature may examine of its own motion at any time (see judgment of 11 July 2019, *Gollnisch* v *Parliament*, *T-95/18*, not published, EU:T:2019:507, paragraph 35 and the case-law cited).

66. A lack of interest in bringing proceedings and lack of *locus standi* rank among those absolute bars to proceedings (see, to that effect, judgment of 23 April 2009, *Sahlstedt and Others* v *Commission*, *C-362/06* P, EU:C:2009:243, paragraph 22 and the case-law cited, and order of 22 November 2006, *Sanchez Ferriz* v *Commission*, T-436/04, EU:T:2006:360, paragraph 31 and the case-law cited).

67. In the present case, it is necessary to consider whether, since it is the LTTE organisation, and not its European Political Subdivision, which is included in the lists annexed to the contested measures, the applicant has an interest in bringing legal proceedings and *locus standi* to seek the annulment of those measures in so far as they concern that organisation.

68. In the first place, it is settled case-law that an interest in bringing proceedings presupposes that the action must be capable, if successful, of procuring an advantage for the party bringing it (see judgment of 2 September 2020, *IR* v *Commission*, *T-131/20*, not published, EU:T:2020:381, paragraph 122 and the case-law cited).

69. In the present case, it cannot be disputed that a part of a group or entity included in fund-freezing lists has an interest in seeking annulment of the measures by which that group or entity has been included on those lists.

70. If the group or entity is removed from the lists, the funds of that part of that group or entity will cease to be frozen.

71. In its observations regarding the statements of modification, the Council questions whether the applicant is a part of the LTTE on the ground that, in its pleadings, the applicant presents itself as having autonomous status. At the hearing, it was also stated that the applicant had not provided any document, other than Mr Thavaraj's affidavits, which attests to its links with the LTTE.

72. In that regard, it should be noted that it is true that, in the documents attached to the reply, the applicant describes itself as autonomous. It also states, however, that after their military defeat the LTTE were transformed into a transnational political network and that the European Political Subdivision of the LTTE forms part of that transnational network. Furthermore, at the hearing, the applicant stated that the word 'autonomous' did not mean that it had separated from the LTTE, but merely that it was authorised to represent the LTTE as a whole, after Mr Nediyaran, the former Coordinating Director of the European Political Subdivision of the LTTE and former second in command of the LTTE before their military defeat, had transferred his powers to Mr Thavaraj.

73. Moreover, as is apparent from paragraphs 61 and 62 above, the applicant has produced the affidavits of six persons who are third parties in relation to the signatory of the authority to act, who claim to be leading a branch of the European Political Subdivision of the LTTE and, for the most part, establish a connection with the LTTE as a whole.

74. Lastly, it was to the applicant's lawyers that the Council sent the various notifications relating to the contested measures when it understood that the action had been brought on behalf of the LTTE. On that basis, it acknowledged the connection between their client and the LTTE.

75. In the light, first, of the particularities of the actions brought by organisations classified as terrorist organisations and, second, of the severity of the restrictive measures adopted by the Council against them – as recalled in paragraphs 57 and 58 above respectively – it must be held that those factors are sufficient to establish that the European Political Subdivision is a part of the LTTE and that, therefore, the applicant has an interest in bringing proceedings for the annulment of the contested measures.

76. As regards the applicant's *locus standi*, under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

77. According to settled case-law, being of direct concern requires the contested EU measure to affect directly the legal situation of the individual and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see judgment of 2 May 2006, *Regione Siciliana* v *Commission*, *C-417/04* P, EU:C:2006:282, paragraph 28 and the case-law cited, and order of 21 May 2015, *APRAM* v *Commission*, *T-403/13*, not published, EU:T:2015:317, paragraph 35 and the case-law cited).

78. It is also settled case-law that persons other than those to whom an act is addressed can claim to be individually concerned within the meaning of the fourth paragraph of Article 263 TFEU only if the act affects them by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them individually in the same way as the addressee (see judgment of 13 September 2013, *Anbouba* v *Council*, *T-592/11*, not published, EU:T:2013:427, paragraph 26 and the case-law cited).

79. In that regard, it should be noted that, in the present case, Decisions 2019/25, 2019/1341 and 2020/1132 were notified to the LTTE, and they are therefore the addressees of those decisions.

80. Since the applicant is a subdivision of the LTTE, it must be held that it is also an addressee of those decisions.

81. In any event, those decisions concern the LTTE individually as their name is included on the lists annexed to those decisions. According to settled case-law, those decisions resemble not only measures of general application in that they impose on a category of addressees determined in a general and abstract manner a prohibition on, inter alia, making available funds and economic resources to persons and entities named in the lists contained in their annexes, but also a bundle of individual decisions affecting those persons and entities (see, to that effect, judgment of 23 April 2013, *Gbagbo and Others*v *Council*, *C-478/11* P to *C-482/11* P, EU:C:2013:258, paragraph 56 and the case-law cited).

82. Moreover, as regards the condition relating to direct concern, it is also clear that, since the name of the LTTE appears on the lists annexed to the contested measures, the effect of those measures is that, in accordance with Articles 2 and 3 of Common Position 2001/931 and Articles 2 to 4 of Regulation No 2580/2001, the funds and other financial assets of the LTTE are to be frozen without any implementing measures being required by an authority who has discretion in that regard.

83. Since Decisions 2019/25, 2019/1341 and 2020/1132 are of direct and individual concern to the LTTE and since the latter are directly concerned by Implementing Regulations 2020/19 and 2020/1128, which do not entail implementing measures, the same must apply to the applicant, which is only a part of that organisation.

84. As a regional subdivision of the LTTE organisation, the applicant necessarily suffers the consequences of that organisation being included on the lists, in particular its funds still being frozen. The applicant is not a separate entity from the LTTE organisation, but is merely a part of it and is, consequently, subject to the same measures as those which affect the organisation to which it belongs.

85. It must therefore be held that Decisions 2019/25, 2019/1341 and 2020/1132 are of direct and individual concern to the applicant and that the latter is directly concerned by Implementing Regulations 2020/19 and 2020/1128, which do not entail implementing measures.

86. Accordingly, it must be concluded that the applicant has an interest in bringing proceedings and *locus standi*to seek the annulment of the contested measures in so far as they concern the LTTE.

3. Admissibility of the action in so far as it concerns Implementing Regulations 2020/19 and 2020/1128, and Decision 2020/1132

87. As is apparent from paragraphs 20, 23, 26 and 29 above, the applicant, in the application, sought annulment of Decision 2019/25, then, in three statements of modification lodged under Article 86 of the Rules of Procedure, extended its action, first, to Decision 2019/1341, second, to Implementing Regulation 2020/19, and, third, to Implementing Regulation 2020/1128 and to Decision 2020/1132.

88. The Council submits that the claims relating to Implementing Regulation 2020/19, on the one hand, and Implementing Regulation 2020/1128 and Decision 2020/1132, on the other, are inadmissible because they do not satisfy the conditions laid down in Article 86 of the Rules of Procedure.

89. In that regard, it must be recalled that Article 86(1) of the Rules of Procedure provides that, where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

90. It is apparent from the wording of Article 86(1) of the Rules of Procedure that, in the context of a statement of modification, an applicant is entitled to seek the annulment of a measure replacing or amending another measure only if the annulment of the latter has been requested in the application (see judgment of 25 January 2017, *Almaz-Antey Air and Space Defence* v *Council*, *T-255/15*, not published, EU:T:2017:25, paragraphs 37 to 39 and the case-law cited) or in the statement of modification lodged previously (see, to that effect, judgment of 14 December 2018, *Hamas* v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraphs 141 and 142).

91. In the present case, in the second statement of modification, the applicant seeks the annulment of Implementing Regulation 2020/19. However, contrary to the requirements of the provision referred to above, that regulation does not replace or amend Decision 2019/1341, the annulment of which was sought in the first statement of modification.

92. It must therefore be held that the application for annulment in respect of Regulation 2020/19 is inadmissible.

93. In the third statement of modification, the applicant seeks the annulment of Implementing Regulation 2020/1128 and Decision 2020/1132.

94. According to the case-law, an applicant may amend his or her pleadings in response to supervening events in the course of proceedings only if his or her application for annulment of the act previously contested was itself admissible when that application was lodged (see, to that effect, order of 18 November 2005, *Selmani* v *Council and Commission*, *T-299/04*, not published, EU:T:2005:404, paragraph 70 and the case-law cited).

95. In accordance with that case-law, since the applicant is not entitled to seek the annulment of Implementing Regulation 2020/19, which was the subject of the second statement of modification, it is equally not entitled to seek the annulment of Implementing Regulation 2020/1128, which is the subject of the third statement of modification.

96. Decision 2020/1132 replaces Council Decision (CFSP) 2020/20 of 13 January 2020 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 2019/1341 (OJ 2020 L 8 I, p. 5), which has not been

challenged in the present action. It must therefore be found that, by application of the rule referred to in paragraph 90 above, the action is also inadmissible in so far as it is directed against Decision 2020/1132.

97. In conclusion, the action will be examined only in so far as it concerns Decisions 2019/25 and 2019/1341.

B. Substance

98. The applicant relies on the following six pleas in law.

99. In the first place, the LTTE do not constitute a terrorist organisation for the purposes of Article 1(3) of Common Position 2001/931.

100. In the second place, the Council has not complied with Article 1(4) of Common Position 2001/931 in that, first, it did not rely on 'decisions of competent authorities' and, second, it did not provide 'precise information or material in the relevant file'.

101. In the third place, the Council did not carry out a review in accordance with Article 1(6) of Common Position 2001/931.

102. In the fourth place, the contested measures do not observe the principles of proportionality and subsidiarity.

103. In the fifth place, the contested measures do not fulfil the obligation to state reasons laid down in Article 296 TFEU.

104. In the sixth place, the contested measures infringe the principle of observance of the rights of the defence and the right to effective judicial protection.

105. The Court considers it appropriate to start by examining the second and third pleas, and then to move on to the first, fourth, fifth and sixth pleas.

1. Second plea in law, alleging infringement of Article 1(4) of Common Position 2001/931

106. The second plea in law is divided into two parts.

(a) First part of the second plea in law

107. Pursuant to Article 1(4) of Common Position 2001/931, which is set out in paragraph 4 above, in order for a person or an entity to be included on a fund-freezing list, the Council must rely on a decision of a competent authority.

108. In the first part of the second plea, the applicant submits that the Home Secretary's decision of 2001 and the

judgment of the tribunal de grande instance de Paris (Regional Court, Paris) of 23 November 2009, which was upheld by the judgment of the cour d'appel de Paris (Court of Appeal, Paris) of 22 February 2012 and the judgment of the Cour de cassation (Court of Cassation) of 10 April 2013, on which, according to the Council, 'the [designation of the LTTE] is based', do not constitute such decisions.

109. Since maintaining the name of a person or entity on a fund-freezing list is, in essence, an extension of that listing (see, to that effect, judgments of 26 July 2017, *Council v LTTE*, *C-599/14* P, EU:C:2017:583, paragraph 61, and of 26 July 2017, *Council v Hamas*, *C-79/15* P, EU:C:2017:584, paragraph 39), the first part of the second plea in law is effective.

(1) The Home Secretary's decision of 2001

110. The applicant submits that the Home Secretary's decision of 2001 cannot be regarded as a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931 (i) because it constitutes an administrative decision, and not a criminal decision, (ii) because its duration is unlimited, and (iii) by reason of the circumstances in which it was adopted.

111. The Council and the United Kingdom dispute those arguments.

112. As a preliminary point, it must be borne in mind that, on multiple occasions, the Court has held that the Home Secretary's decision of 2001 constituted a decision of a competent authority within the meaning of the provision referred to above (see, to that effect, judgments of 23 October 2008, *People's Mojahedin Organization of Iran v Council*, *T-256/07*, EU:T:2008:461, paragraphs 144 and 145; of 16 October 2014, *LTTE v Council*, *T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 106; of 14 December 2018, *Hamas v Council*, *T-400/10* RENV, EU:T:2018:966, paragraphs 258 to 285; of 6 March 2019, *Hamas v Council*, *T-289/15*, EU:T:2019:138, paragraphs 71 to 96; and of 10 April 2019, *Gamaa Islamya Eìgypte v Council*, *T-643/16*, EU:T:2019:238, paragraphs 108 to 133).

113. In order to respond to the applicant's arguments, it is necessary to examine whether, first, the fact that the Home Secretary is an administrative authority or, second, the fact that the decisions he or she adopts are administrative in nature is compatible with the requirements laid down in Article 1(4) of Common Position 2001/931.

114. In the first place, as regards the Home Secretary as an authority, it should be noted that, according to case-law, even if the second subparagraph of Article 1(4) of Common Position 2001/931 indicates a preference for decisions from judicial authorities, it does not exclude the taking into account of decisions from administrative authorities where (i) those authorities are actually vested, in national law, with the power to adopt restrictive decisions against groups involved in terrorism and (ii) those authorities, although only administrative, may be regarded as 'equivalent' to judicial authorities (judgments of 16 October 2014, *LTTE v Council*, *T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 107; of 14 December 2018, *Hamas v Council*, *T-400/10* RENV, EU:T:2018:966,

paragraph 259; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 72; and of 10 April 2019, *Gamaa Islamya Eigypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 111).

115. Administrative authorities may be regarded as equivalent to judicial authorities if their decisions are open to a judicial review that covers matters both of fact and of law (see, to that effect, judgments of 23 October 2008, *People's Mojahedin Organization of Iran*v *Council*, *T-256/07*, EU:T:2008:461, paragraph 145; of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 260; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 73; and of 10 April 2019, *Gamaa Islamya Eigypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 112).

116. Consequently, the fact that the courts of the relevant State have powers concerning the suppression of terrorism does not preclude the Council from taking account of decisions taken by the national administrative authority entrusted with the adoption of restrictive measures in relation to terrorism (judgments of 16 October 2014, *LTTE*v *Council*, *T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 108; of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 261; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 74; and of 10 April 2019, *Gamaa Islamya Eigypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 113).

117. In the present case, as is apparent from points 13 and 15 of Annex A to the statements of reasons for Decisions 2019/25 and 2019/1341, appeals against decisions of the Home Secretary may be brought before the POAC, which determines, both as regards questions of law and questions of fact, the matter in the light of judicial-review principles, and either party may bring an appeal on a point of law against the decision of the POAC before an appellate court with the permission of the POAC or, if permission is refused, of the appellate court (see, to that effect, judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 262; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 75; and of 10 April 2019, *Gamaa Islamya Eigypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 114).

118. In those circumstances, the Home Secretary's decision of 2001 must be regarded as having been adopted by an administrative authority equivalent to a judicial authority and, thus, by a competent authority within the meaning of Article 1(4) of Common Position 2001/931 (see, to that effect, judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 263; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 76; and of 10 April 2019, *Gamaa Islamya Eigypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 115).

119. In the second place, as regards the decisions adopted by the Home Secretary, it should be noted that, according to case-law, Article 1(4) of Common Position 2001/931 does not require the decision of the competent authority to be taken in the context of criminal proceedings *stricto sensu*, provided that, in the light of the objectives of Common Position 2001/931 in implementing United Nations Security Council Resolution 1373 (2001), the purpose of the national proceedings in question is to combat terrorism in the broad sense through the adoption of measures of a preventive or punitive nature (see, to that effect, judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraphs 269 to 271; of 6 March 2019, *Hamas*v *Council*, *T-289/15*,

EU:T:2019:138, paragraphs 82 to 84; and of 10 April 2019, *Gamaa Islamya Eigypte* v *Council*, *T-643/16*, EU:T:2019:238, paragraphs 119 to 121).

120. In the present case, the Home Secretary's decision of 2001 imposes measures proscribing organisations considered to be terrorist organisations and therefore forms part, as required by the case-law, of national proceedings seeking, primarily, the imposition on the LTTE of measures of a preventive or punitive nature, in connection with the fight against terrorism (see, to that effect, judgments of 16 October 2014, *LTTE* v *Council*, *T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 115; of 14 December 2018, *Hamas* v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraphs 272 and 273; of 6 March 2019, *Hamas* v *Council*, *T-289/15*, EU:T:2019:138, paragraph 84; and of 10 April 2019, *Gamaa Islamya Eigypte* v *Council*, *T-643/16*, EU:T:2019:238, paragraph 121).

121. It follows from the findings above that Decisions 2019/25 and 2019/1341 cannot be annulled on the ground that, in the statements of reasons for those decisions, the Council referred to the Home Secretary's decision of 2001 in order to include the LTTE on the lists annexed to those decisions, the Home Secretary being an administrative authority whose decisions are not of a criminal nature.

122. That position is not undermined by the other arguments put forward by the applicant in the present action.

123. First, the applicant submits that administrative decisions do not constitute the result of a procedure involving several stages, as is the case for judicial proceedings.

124. In that regard, it is not apparent from the wording of Article 1(4) of Common Position 2001/931 that, in order to serve as a basis for a listing, a national decision must take place in several stages.

125. Moreover, the United Kingdom has shown that the procedure resulting in the Home Secretary's proscription decisions did involve several stages.

126. First of all, in order to proscribe an organisation, that authority must conduct a rigorous examination of the evidence on which the reasonable belief that the organisation is involved in terrorism is based. That evidence includes information from public information sources and intelligence services.

127. Next, the Home Secretary's decision is taken after consultation of the entire government, including the intelligence services and police authorities.

128. Lastly, the proscription decision is subject to a check by and the approval of the two chambers of the United Kingdom Parliament in the context of the ratification procedure.

129. The applicant's argument must therefore be rejected.

130. Secondly, the applicant submits that the duration of the Home Secretary's decision of 2001 is unlimited, since the UK Terrorism Act 2000 does not provide for an annual review.

131. In that regard, it should be noted that the fact that the Home Secretary's decision of 2001 is not subject to an annual review obligation does not preclude the Council from relying on that decision in order to include the entity covered by that decision on the fund-freezing lists, since the Council, in accordance with its obligation to review, is required to verify whether, on the date on which it intends to maintain that entity on those lists, that decision, other decisions or subsequent factual evidence still justify that listing.

132. In addition, in points 9 to 15 of Annex A to the statements of reasons for Decisions 2019/25 and 2019/1341, the Council stated that (i) pursuant to section 4 of the UK Terrorism Act 2000, an organisation or person affected by a proscription measure may submit in writing an application to the Home Secretary requesting that he or she review whether it is appropriate to remove it from the list of proscribed organisations, (ii) under section 5 of that act, if the Home Secretary refuses such an application, the applicant may appeal to the POAC, and (iii) it is possible to bring an appeal before a court against that decision.

133. Accordingly, even though the UK Terrorism Act 2000 does not provide for an annual review of the Home Secretary's proscription decisions, those decisions do not have unlimited effect.

134. Thirdly, the applicant states that (i) the Home Secretary enjoys a wide discretion, (ii) the UK Parliament is not informed of any of the classified information on which he or she bases his or her decisions, (iii) in 2001, the Home Secretary had to take a position on the proscription of 21 organisations considered as a whole rather than assessing a proscription for each organisation individually, and (iv) certain members of Parliament had reservations about the inclusion of the LTTE on the list at issue.

135. In that regard, the United Kingdom has provided several items of evidence showing that the Home Secretary does not have unlimited discretion.

136. As is apparent from paragraphs 127 and 128 above, the Home Secretary's decision of 2001 was taken after consultation of the entire government, including the intelligence services and police authorities, and was subject to a check by and the approval of the two chambers of the UK Parliament in the context of the ratification procedure. Moreover, as is apparent from paragraphs 117 and 132 above, it may be contested before the POAC and an appellate court.

137. Furthermore, in the judgment of 16 October 2014, *LTTE* v *Council* (*T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 122), the Court has held previously that it was not apparent from the extract, produced by the applicant in that case, from the debates of the House of Commons (United Kingdom) 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 not

able to examine individually the situation of each of the organisations included in that draft order. In any event, the fact that Members of Parliament expressed reservations did not prevent a proscription measure from being adopted against the LTTE.

138. It follows from the findings above that the classification of the Home Secretary's decision of 2001 as a decision of a competent authority within the meaning of Article 1(4) of Common Position 2001/931 is not called into question by the applicant's arguments.

(2) The judgment of the tribunal de grande instance de Paris (Regional Court, Paris) of 23 November 2009, upheld by the judgment of the cour d'appel de Paris (Court of Appeal, Paris) of 22 February 2012 and the judgment of the Cour de cassation (Court of Cassation) of 10 April 2013

139. The applicant submits that the judgment of the tribunal de grande instance de Paris (Regional Court, Paris) of 23 November 2009, upheld by the judgment of the cour d'appel de Paris (Court of Appeal, Paris) of 22 February 2012 and the judgment of the Cour de cassation (Court of Cassation) of 10 April 2013, does not constitute a decision within the meaning of Article 1(4) of Common Position 2001/931 because (i) the LTTE were not a party to those proceedings and, therefore, were unable to defend themselves before the bodies concerned, and (ii) those decisions related to the CCTF, which is a separate entity from the LTTE with which they have no connection.

140. The Council disputes that line of argument.

141. In that regard, it should be noted that, according to Article 1(4) of Common Position 2001/931, the decision of the competent authority on which the Council relies in order to include a person or an entity on a fund-freezing list must, as a rule, predate that listing.

142. In the present case, it is clear that, for the purpose of including the LTTE on the fund-freezing lists, the Council was not entitled to rely on the judgment of the tribunal de grande instance de Paris (Regional Court, Paris) of 23 November 2009, upheld by the judgment of the cour d'appel de Paris (Court of Appeal, Paris) of 22 February 2012 and the judgment of the Cour de cassation (Court of Cassation) of 10 April 2013, in view of the fact that that decision was adopted after Common Position 2006/380 and Decision 2006/379, by which, as is apparent from paragraph 7 above, the LTTE were included on the fund-freezing lists on 29 May 2006.

143. The judgment of the tribunal de grande instance de Paris (Regional Court, Paris) of 23 November 2009, upheld by the judgment of the cour d'appel de Paris (Court of Appeal, Paris) of 22 February 2012 and the judgment of the Cour de cassation (Court of Cassation) of 10 April 2013, therefore cannot satisfy the conditions laid down in Article 1(4) of Common Position 2001/931, with the result that, in so far as the applicant's line of argument concerns that judgment, it is ineffective.

144. The first part of the second plea in law must therefore be rejected and, for the purposes of examining the

applicant's other pleas and arguments, it must be held that the sole basis for the inclusion of the LTTE on the fund-freezing lists – as extended by Decisions 2019/25 and 2019/1341 – is the Home Secretary's decision of 2001.

(b) Second part of the second plea in law

145. In the second part of the second plea, the applicant submits that the statements of reasons for the contested measures do not provide sufficient information on the acts which justified the Home Secretary's decision of 2001 and that, consequently, it is not possible to ascertain whether those acts can be classified as terrorist acts within the meaning of Article 1(3) of Common Position 2001/931, given that the definition of terrorist acts in the latter provision is narrower than the definition of acts of terrorism in section 1 of the UK Terrorism Act 2000. The Council thus infringed Article 1(4) of Common Position 2001/931 since that provision requires the Council to provide in the statements of reasons for fund-freezing measures 'precise information or material in the relevant file which indicates that a decision has been taken by a competent authority'.

146. The Council disputes that line of argument.

147. That line of argument raises the question whether the reasoning in Decisions 2019/25 and 2019/1341 based on the events underpinning the Home Secretary's decision of 2001 is sufficient to enable the Court to ascertain whether those events constitute terrorist acts within the meaning of Article 1(3) of Common Position 2001/931 and, in particular, whether the Council was required to indicate, in the statements of reasons for those decisions, the evidence and clues relating to those events.

148. In that regard, it should be noted, in the first place, that, under Article 1(4) of Common Position 2001/931, the 'precise information or material in the relevant file' on the basis of which the lists of persons and entities whose funds are to be frozen are to be established must show that a decision has been taken in respect of those persons or entities by a national authority meeting the definition in that provision; that information or material need not, however, relate to the content of those decisions (see, to that effect, judgments of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384, paragraph 126; of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, *T-256/07*, EU:T:2008:461, paragraph 134; and of 4 December 2008, *People's Mojahedin Organization of Iran* v *Council*, *T-284/08*, EU:T:2008:550, paragraph 54).

149. It cannot therefore be inferred from the phrase cited by the applicant that the Council was required to provide further information, in the statements of reasons for Decisions 2019/25 and 2019/1341, regarding the events underpinning the Home Secretary's decision of 2001.

150. In the second place, it should be borne in mind that, on several occasions, the EU judicature has held that the Council was not required to indicate, in the statements of reasons for fund-freezing measures, the evidence and clues of the events underpinning the decisions of competent authorities on the basis of which the person or entity concerned was included on fund-freezing lists (see, to that effect, judgments of 14 December 2018, *Hamas* v

Council, *T-400/10* RENV, EU:T:2018:966, paragraph 308; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 121; and of 10 April 2019, *Gamaa Islamya Eìgypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 148).

151. The reason for this is that, in the light of the general structure of Article 1(4) of Common Position 2001/931, the Council's obligation to verify, before adding the names of persons or entities to fund-freezing lists on the basis of decisions taken by competent authorities, that those decisions are 'based on serious and credible evidence or clues' concerns only decisions to instigate investigations or prosecution, and not condemnation decisions (see, to that effect, judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 305; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 116; and of 10 April 2019, *Gamaa Islamya Eìgypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 141).

152. The distinction thus made between those two types of decision flows from the application of the principle of sincere cooperation between the institutions and the Member States, a principle which encompasses the adoption of restrictive measures in the fight against terrorism and pursuant to which the Council must base the entry of terrorist persons or entities on fund-freezing lists on decisions adopted by the national authorities, without being required, or even able, to call them into question (judgments of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 117, and of 10 April 2019, *Gamaa IslamyaEigypte* v *Council*, *T-643/16*, EU:T:2019:238, paragraph 142).

153. As thus defined, the principle of sincere cooperation applies to national condemnation decisions and, as a result, the Council is not required to verify, before adding the names of persons or entities to fund-freezing lists, that those decisions are based on serious and credible evidence or clues and must defer, in that respect, to the national authority's appraisal (judgments of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 118, and of 10 April 2019, *Gamaa IslamyaEigypte* v *Council*, *T-643/16*, EU:T:2019:238, paragraph 143).

154. By contrast, national decisions relating to the instigation of investigations or prosecution are, by definition, taken at the beginning or in the course of a procedure that has not yet been concluded. To ensure that the fight against terrorism is effective, the Court has held that, although the Council was able to rely on such decisions for the purpose of adopting restrictive measures, even though those decisions were merely preparatory in nature, that reliance was subject to the condition that it verify that those decisions were based on serious and credible evidence or clues so as to ensure that the persons affected by those procedures were protected (judgments of 6 March 2019, *Hamas* v *Council*, *T-289/15*, EU:T:2019:138, paragraph 119, and of 10 April 2019, *Gamaa IslamyaEìgypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 144).

155. According to settled case-law, the Home Secretary's decision of 2001 must be treated as a condemnation decision within the meaning of Article 1(4) of Common Position 2001/931 (see, to that effect, judgments of 10 September 2020, *Hamas*v *Council*, *C-122/19* P, not published, EU:C:2020:690, paragraphs 44 and 45; of 10

September 2020, *Hamas* v *Council*, *C-386/19* P, not published, EU:C:2020:691, paragraph 65; and of 10 April 2019, *Gamaa Islamya Eìgypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 146).

156. The Home Secretary's decision of 2001 is final in the sense that it does not have to be followed by an investigation. Moreover, its purpose is to ban the persons or entities concerned in the United Kingdom, with consequences in criminal law for anyone maintaining any kind of link with them (judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 307; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 120; and of 10 April 2019, *Gamaa Islamya Eìgypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 145).

157. In that regard, the fact that the Home Secretary is an administrative authority has been held to be irrelevant, since, as is apparent from paragraphs 114 to 118 above, the Home Secretary's decision of 2001 must be regarded as having been adopted by an administrative authority equivalent to a judicial authority (see, to that effect, judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 309; of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 122; and of 10 April 2019, *Gamaa Islamya Eìgypte*v *Council*, *T-643/16*, EU:T:2019:238, paragraph 147).

158. It must therefore be held that the Council did not infringe Article 1(4) of Common Position 2001/931 by failing to set out, in the statements of reasons for Decisions 2019/25 and 2019/1341, the evidence and clues on which the Home Secretary's decision of 2001 was based.

159. In the third place, it is necessary to consider whether, although the Council was not required to set out, in the statements of reasons for Decisions 2019/25 and 2019/1341, the evidence and clues establishing the events referred to in paragraph 16 of those statements of reasons, the description of those events given in that paragraph was sufficient to enable the Court to ascertain whether they constituted terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

160. In that regard, it should be noted that, in point 16 of Annex A to the statements of reasons for Decisions 2019/25 and 2019/1341, the Council stated that the acts of terrorism relied on by the Home Secretary to justify the proscription imposed in 2001 included a suicide bomb attack in January 2000 outside the Sri Lankan Prime Minister's office in Colombo (Sri Lanka), a mortar bomb attack on a police passing out parade in Morawewa (Sri Lanka) and a bombing at a post office in Vavuniya (Sri Lanka).

161. That description of the events underpinning the Home Secretary's decision of 2001 is sufficiently detailed for it to be possible to ascertain whether they constitute terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

162. Furthermore, in paragraph 6 of the statements of reasons for Decisions 2019/25 and 2019/1341, the Council

said that it had 'verified that the underlying grounds for the decisions taken by the national competent authorities are covered by the [definition] of “terrorism” ... set out in [Common Position 2001/931]'.

163. Since it is not apparent from the documents before the Court that, during the proceedings before the Council, the LTTE or the applicant contested, in a detailed manner, that the Home Secretary's decision of 2001 concerned terrorist acts within the meaning of Article 1(3) of Common Position 2001/931, the Council was not required to comment in more detail on that issue (see, to that effect, judgment of 10 September 2020, *Hamas*v *Council*, *C-122/19* P, not published, EU:C:2020:690, paragraph 42).

164. The Court's position on the second part of the present plea is confirmed by paragraphs 41, 56 and 57 of the judgment of 22 April 2021, *Council* v *PKK*(*C-46/19* P, EU:C:2021:316), in which the Court of Justice held that the General Court had erred in law in relying, in paragraph 68 of the judgment of 15 November 2018, *PKK*v *Council*(*T-316/14*, EU:T:2018:788), in order to find that the reasoning for the measures contested in that case was inadequate, on the fact that the statements of reasons for those measures did not establish the truth of the events underpinning the statement of reasons for the Home Secretary's decision of 2001 and did not set out the reasons why the Council had concluded that the relevant events fell within the definition of 'terrorist acts' within the meaning of Article 1(3) of Common Position 2001/931.

165. Consequently, Decisions 2019/25 and 2019/1341 cannot be annulled on the ground that the Council infringed Article 1(4) of Common Position 2001/931 because it did not provide, in the statements of reasons for those decisions, sufficient information regarding the events on which the Home Secretary's decision of 2001 was based.

2. Third plea in law, alleging that the Council failed to carry out a review in accordance with Article 1(6) of Common Position 2001/931

166. The applicant submits that the contested measures must be annulled on the ground that the Council did not carry out a review in accordance with Article 1(6) of Common Position 2001/931, set out in paragraph 4 above, in order to maintain the LTTE on the lists annexed to Decisions 2019/25 and 2019/1341.

167. The Council disputes that plea.

(a) Reiteration of the principles from case-law

168. As the Court of Justice has held, in the context of a review pursuant to Article 1(6) of Common Position 2001/931, the Council may maintain 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 (judgments of 26 July 2017, *Council*v *LTTE*, *C-599/14* P, EU:C:2017:583, paragraph 51, and of 26 July 2017, *Council*v *Hamas*, *C-79/15* P, EU:C:2017:584, paragraph 29).

169. In the process of verifying whether the risk of the person or entity concerned being involved in terrorist activities is ongoing, the subsequent fate of the national decision that served as the basis for the original entry of that person or entity on the list at issue must be duly taken into consideration, in particular the repeal or withdrawal of that national decision as a result of new facts or material or any modification of the competent national authority's assessment (judgments of 26 July 2017, *Council v LTTE*, *C-599/14* P, EU:C:2017:583, paragraph 52; of 26 July 2017, *Council* v *Hamas*, *C-79/15* P, EU:C:2017:584, paragraph 30; and of 22 April 2021, *Council v PKK*, *C-46/19* P, EU:C:2021:316, paragraph 50).

170. It is apparent from the judgment of 10 September 2020, *Hamas* v *Council* (*C-386/19* P, not published, EU:C:2020:691, paragraphs 39 and 45), that the matter of whether the risk of the person or entity whose funds have been frozen being involved in terrorist activities is ongoing can be established by reference to the national decision that justified the original listing where that decision has recently been reviewed and, as a result of that review, it was concluded that maintaining the person or organisation at issue on the list was justified due to recent incidents that made it clear that he, she or it was still involved in terrorist activities.

171. Where, 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 its decision to maintain 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 is ongoing (see, to that effect, judgments of 26 July 2017, *Council* v *LTTE*, *C-599/14* P, EU:C:2017:583, paragraph 54, and of 26 July 2017, *Council v Hamas*, *C-79/15* P, EU:C:2017:584, paragraph 32). To that end, the Council may rely on recent material taken not only from national decisions adopted by competent authorities but also from other sources and, accordingly, from its own assessments (see judgment of 22 April 2021, *Council v PKK*, *C-46/19* P, EU:C:2021:316, paragraph 51 and the case-law cited).

172. With regard to those more recent facts, the Court of Justice has held that the General Court had to carry out a twofold review.

173. First, the EU judicature is required to determine whether the obligation to state reasons laid down in Article 296 TFEU has been fulfilled and, therefore, whether the reasons relied on are sufficiently detailed and specific (judgments of 26 July 2017, *Council v LTTE*, *C-599/14* P, EU:C:2017:583, paragraph 70, and of 26 July 2017, *Council v Hamas*, *C-79/15* P, EU:C:2017:584, paragraph 48).

174. Second, the person or entity concerned may, in the action challenging their being maintained on the list at issue, dispute all that material, irrespective of whether it is derived from a national decision adopted by a competent authority or from other sources (judgments of 26 July 2017, *Council v LTTE*, *C-599/14* P, EU:C:2017:583, paragraph 71, and of 26 July 2017, *Council v Hamas*, *C-79/15* P, EU:C:2017:584, paragraph 49).

175. In the event that it is disputed, it is for the Courts of the European Union to determine whether the reasons relied on by the Council are substantiated, which requires those courts to ensure, as part of the review of the substantive legality of those reasons, that the measures maintaining the person or entity on the fund-freezing lists have a sufficiently solid factual basis and to verify the facts alleged in the statement of reasons underpinning those measures (see judgment of 22 April 2021, *Council v PKK*, *C-46/19* P, EU:C:2021:316, paragraph 52 and the case-law cited).

(b) Application to the present case

176. In the present case, a significant period of time passed between the adoption of the decision which served as the basis for initially including the LTTE on the fund-freezing lists and the adoption of Decisions 2019/25 and 2019/1341. The Home Secretary's decision which formed the basis for including the LTTE on the fund-freezing lists entered into force on 29 March 2001, whereas Decisions 2019/25 and 2019/1341 were adopted on 8 January and 8 August 2019 respectively. Such a period of time, namely 18 years, is in itself a factor which justifies the view that the Home Secretary's decision of 2001 was not sufficient to assess whether there was an ongoing risk of the LTTE being involved in terrorist activities at the time when those measures were adopted.

177. Moreover, as is apparent from the judgment of 26 July 2017, *Council v LTTE* (*C-599/14* P, EU:C:2017:583, paragraph 79), the 2009 military defeat of the LTTE represented a significant change in circumstances that was capable of calling in question the ongoing nature of the risk of the LTTE being involved in terrorist activities.

178. Consequently, in order to maintain the LTTE on the lists annexed to Decisions 2019/25 and 2019/1341, the Council relied, in point 17 of Annex A to the statements of reasons for those two decisions, on a decision of the Home Secretary of June 2014 and, in point 18 of Annex A to the statement of reasons for the second decision, on a decision of the Home Secretary of March 2019; decisions by which the proscription of the LTTE in the United Kingdom, which had been adopted in 2001, was maintained.

179. The Council also relied on various incidents referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341.

180. By contrast, the events underpinning the decisions of the French courts referred to in paragraph 139 above, which took place between 2005 and 2008, and therefore before the LTTE's military defeat in 2009, could not justify maintaining the listing in 2019.

181. It is therefore for the Court to verify whether (i) the fact that the Home Secretary's decision of 2001 was maintained by the decisions of June 2014 and March 2019 and (ii) the events referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341 made it possible for the LTTE to be maintained on the

lists annexed to the latter decisions in the light of the rules derived from case-law recalled in paragraphs 168 to 175 above.

182. If it is established that the statement of reasons given in relation to the events referred to by the Council is sufficient and that those reasons are substantiated, the Court will also have to verify whether they justify maintaining the LTTE on the fund-freezing lists.

183. In order to carry out that examination, it is appropriate to draw a distinction between Decision 2019/25 and Decision 2019/1341, and to begin by examining that second decision.

(1) Decision 2019/1341

184. In point 18 of Annex A to the statement of reasons for Decision 2019/1341, the Council stated:

'In March 2019, the Home Secretary concluded on the basis of the available evidence that [the LTTE continue] to be concerned in terrorism. He decided to maintain the proscription on the basis of evidence including open-source reporting, in June 2018, that the Sri Lankan police had arrested individuals in the course of transporting explosive devices and LTTE paraphernalia including flags ...'

185. It is clear that the Home Secretary's decision of March 2019 was adopted shortly before Decision 2019/1341, which was adopted on 8 August 2019.

186. It is also clear from point 18 of Annex A to the statement of reasons for Decision 2019/1341 that the events on which the Home Secretary relied in March 2019 in order to maintain the ban on the LTTE in the United Kingdom occurred in 2018 and, therefore, that they also occurred shortly before the date of adoption of Decision 2019/1341 (see, to that effect, judgment of 10 September 2020, *Hamas*v *Council*, *C-386/19* P, not published, EU:C:2020:691, paragraph 45).

187. By referring to the Home Secretary's decision of March 2019 in point 18 of Annex A to the statement of reasons for Decision 2019/1341, the Council thus established that there was an ongoing risk of that organisation being involved in terrorist activities, in accordance with the case-law referred to in paragraph 170 above, without having to rely on other recent events.

188. Consequently, subject to the response to be given to the first plea below, Decision 2019/1341 cannot be annulled on the ground that, by adopting it, the Council infringed Article 1(6) of Common Position 2001/931.

(2) Decision 2019/25

189. In point 17 of Annex A to the statement of reasons for Decision 2019/25, the Council stated that, in June 2014, the Home Secretary had 'decided to maintain the proscription on the basis that the group was otherwise concerned

in terrorism as it possessed weapons and retained the intent to use serious violence to achieve its aim of an independent Tamil State and thus continued to represent a terrorist threat'.

190. Since no dates were provided for the events on which the Home Secretary relied, in June 2014, for the purpose of maintaining the proscription in the United Kingdom, it is not possible for the Court to verify whether they were sufficiently close to the date of adoption of Decision 2019/25, namely 8 January 2019 (judgment of 10 September 2020, *Hamas* v *Council*, *C-386/19* P, not published, EU:C:2020:691, paragraph 45).

191. It must therefore be held that the reference to the Home Secretary's decision of June 2014, set out in point 17 of Annex A to the statement of reasons for Decision 2019/25, was inadequate for the purpose of establishing that there was an ongoing risk of the LTTE being involved in terrorist activities, with the result that it is necessary to examine the incidents referred to in paragraph 9 of that statement of reasons in order to verify whether they satisfy that condition.

192. Those incidents are the following:

– 'the dismantling in Malaysia in May 2014 of [an] LTTE-related cell that led to the seizure of propaganda materials and an amount of foreign currency. Considering the material in question, Malaysian law enforcement authorities have investigated and confirmed the attempt to revive the LTTE activities' ('the first incident');

– 'the dismantling in Sri Lanka in 2014 of a cell led by Kajeepan Selvanayagam (alias Gobi, a former member of [the LTTE] intelligence wing) with the recovery of stashed arms. Police officers were shot at during the operation and one of them injured. Gobi was later killed during a subsequent confrontation with the army. 26 suspects were arrested and so far 4 have been convicted' ('the second incident');

– 'the foiled conspiracy in January 2017 to assassinate M.A. Sumandiran, Member of the Parliament. Explosives and other peripheries were recovered from some of the suspects who are so far indicted before the High Court of Colombo. The linkage with [the LTTE] can be established by the fact that the same suspects are also prosecuted for disseminating propaganda material in support of the LTTE' ('the third incident').

(i) The statement of reasons given in relation to the incidents referred to in paragraph 9 of the statement of reasons for Decision 2019/25

193. In accordance with the case-law cited in paragraph 173 above, it is necessary to verify whether paragraph 9 of the statement of reasons for Decision 2019/25 fulfils the obligation to state reasons with regard to the events referred to in that paragraph.

194. According to the settled case-law of the Court of Justice, the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the

measure in such a way as to enable the persons concerned to ascertain the reasons for the measure for the purpose of assessing whether it is well founded and to enable the court having jurisdiction to exercise its power of review (see judgment of 22 April 2021, *Council v PKK*, *C-46/19* P, EU:C:2021:316, paragraph 47 and the case-law cited).

195. The statement of reasons thus required 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. In particular, it is not necessary for the reasoning to go into all the relevant facts and points of law or to provide a detailed answer to the considerations set out by the person concerned when consulted prior to the adoption of that same measure, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. Consequently, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him or her to understand the scope of the measure concerning him or her (see judgment of 22 April 2021, *Council v PKK*, *C-46/19* P, EU:C:2021:316, paragraph 48 and the case-law cited).

196. In the present case, the time and location of the incidents referred to in paragraph 9 of the statement of reasons for Decision 2019/1341 were identified by the Council. Moreover, they were described with a certain amount of detail as to the circumstances surrounding them.

197. Such information was sufficiently detailed and specific to enable the LTTE to ascertain the reasons why the Council concluded that there was an ongoing risk of their being involved in terrorist activities and to challenge them before the EU judicature.

198. That is all the more true since, as regards those incidents, Decision 2019/25 was adopted in a known context, given that, by letter of 6 February 2018, the Council had sent the LTTE a number of articles relating to those incidents.

199. It must therefore be held that, as regards the incidents referred to in paragraph 9 of its statement of reasons, Decision 2019/25 fulfils the obligation to state reasons.

(ii) Whether the incidents referred to in paragraph 9 of the statement of reasons for Decision 2019/25 are made out

200. In accordance with the case-law cited in paragraph 175 above, it is necessary to verify whether the events referred to in paragraph 9 of the statement of reasons for Decision 2019/25 are made out, since this is disputed by the applicant.

– The first incident

201. In order to establish that the first incident occurred, the Council submitted three articles: an article published on 1 June 2014 in *The Sunday Leader*, an article which appeared on 5 July 2014 in the Malaysian newspaper *The Star*, and a BBC article of 26 May 2014.

202. In the first place, the applicant claims that the article published on 1 June 2014 in *The Sunday Leader*is not a reliable source because, at the time that article was written, an ally of the President of Sri Lanka had a 72% shareholding in that newspaper. The same is true of the article which appeared on 5 July 2014 in the newspaper *The Star*. That newspaper is Malaysian. Malaysia is not objective towards the LTTE, since it has strong historical and economic ties with Sri Lanka and the Malaysian Government is afraid of the active Tamil population in Malaysia. In addition, that article reports a different arrest from the one referred to in the other articles.

203. In that regard, in order to establish that the first incident occurred, the Council refers not only to the articles published in *The Sunday Leader*and *The Star*, but also to a BBC article, the credibility of which is not called into question by the applicant.

204. It cannot therefore be held that the Council could not rely on the first incident on the ground that the evidence produced by the Council came from sources lacking credibility.

205. The applicant's first argument must therefore be rejected.

206. In the second place, the applicant submits that the first incident occurred too long ago to justify maintaining the LTTE on the lists annexed to the contested measures.

207. In that regard, it should be noted that the first incident occurred in May 2014, whereas Decision 2019/25 was adopted on 8 January 2019.

208. The Court has held previously that incidents which have occurred less than five years before the adoption of contested measures cannot, as a rule, be considered to have occurred too long ago to justify maintaining a person or entity on a fund-freezing list under Article 1(6) of Common Position 2001/931 (see, to that effect, judgments of 14 December 2018, *Hamas*v *Council*, *T-400/10* RENV, EU:T:2018:966, paragraph 337, and of 6 March 2019, *Hamas*v *Council*, *T-289/15*, EU:T:2019:138, paragraph 156).

209. The applicant's second argument must therefore be rejected.

210. In the third place, the applicant submits that the first incident does not concern members of the LTTE, but members of the Global Tamil Forum (GTF). In March 2014, that organisation was included on the lists of terrorist

organisations of Sri Lanka, but not on those of the United Kingdom and the European Union, and it cannot be regarded as being part of the LTTE.

211. In that regard, it should be noted that, on several occasions, the articles submitted by the Council concern former members of the LTTE who are attempting to revive the movement. It therefore appears that that organisation is indeed concerned by those articles.

212. It is thus necessary to reject the applicant's third argument.

213. In the fourth place, the applicant argues that the articles submitted by the Council concern only arrests and not convictions and that the Council did not provide any information on the outcome of those arrests. It also maintains that the seizure of propaganda material and foreign currency referred to in those articles, particularly in the BBC article, is insufficient to prove terrorist acts, since those items are equally necessary for democratic, peaceful activism in favour of Tamil rights and for the transformation of the LTTE into a transnational political network. Lastly, it is not possible to know, on the basis of the articles submitted by the Council, whether the Malaysian authorities made those arrests based on sufficient credible clues or whether they took place in conditions which respected human rights. In that regard, it highlights the fact that the article published by the BBC states that Malaysia intended to expel arrested persons, even though they were registered as United Nations (UN) refugees.

214. At the hearing, in response to a written question from the Court, the Council stated that, following the investigation carried out in that case, the file in respect of two of the three persons arrested in May 2014 had been closed, but that proceedings had been brought against the third person before the District Court, Vavuniya, in the context of the Sri Lankan Prevention of Terrorism Act, and that those proceedings were still pending.

215. In that regard, it should be recalled, first of all, that, in order to maintain persons or entities on fund-freezing lists, the Council is not required to prove that those persons or entities have been convicted of terrorist attacks, or even that those persons or entities have committed terrorist acts after they have been included on the fund-freezing lists, but must rely on evidence which shows that there is an ongoing risk of those persons or entities being involved in terrorist activities.

216. The purpose of Common Position 2001/931 and Regulation No 2580/2001 is the implementation of Resolution 1373 (2001), adopted following the terrorist attacks carried out in the United States on 11 September 2001, and they mainly concern the prevention of terrorist acts by means of the adoption of measures for the freezing of funds in order to hinder acts preparatory to such acts, such as the financing of persons or entities liable to carry out terrorist acts (judgment of 14 March 2017, *A and Others*, *C-158/14*, EU:C:2017:202, paragraph 83).

217. In the present case, the material seized at the time of the arrests reported by the articles submitted by the Council, namely propaganda materials and foreign currency, shows that the LTTE were still active to a certain extent and that they had the means to pursue that activity. When combined with other information showing that the

purpose of that activity is not strictly peaceful, that fact could be used in order to demonstrate that there was an ongoing risk of that organisation being involved in terrorist activities.

218. Lastly, the fact that the persons concerned were threatened with expulsion by the Malaysian authorities does not call into question the fact that the arrests and seizures, which justify the Council's assessment, took place.

219. The applicant's fourth argument must therefore be rejected.

– The second incident

220. In order to prove that the second incident took place, the Council submitted an article published on 11 April 2014 on the blog of the journalist Mr D.B.S. Jeyaraj, as well as an article published by the BBC on the same date.

221. The applicant submits that the second incident could not be taken into account by the Council in order to establish that there was an ongoing risk of the LTTE being involved in terrorist activities, because the first article emanates from a journalist whose objectivity was called into question in an article published in the *Colombo Telegraph*of 16 April 2014, which was submitted by the applicant, and because the BBC article casts doubt on the fact that the persons killed in that incident were involved in regrouping the LTTE.

222. It is true that the objectivity of the journalist who wrote the article of 11 April 2014 as regards the conflict between the Tamils and the Sri Lankan State was severely called in question in the article in the *Colombo Telegraph*, which was submitted by the applicant. Furthermore, as the applicant observes, the BBC article expresses significant reservations as to whether the incident actually occurred. The article begins with 'It says ...'. It continues with 'The reported incident, if true, is the first substantial ...'. Other sentences are preceded by 'The authorities say ...' and 'The military says ...'. In those circumstances, it cannot be claimed that the BBC article confirmed the article published on 11 April 2014 on the blog of Mr D.B.S Jeyaraj.

223. Moreover, it should be noted that, despite the applicant's criticisms, the Council did not provide any evidence to establish that the journalist in question was objective or that the 26 arrests referred to in relation to that incident had led to convictions.

224. In those circumstances, without it being necessary to examine the applicant's other arguments relating thereto, it must be held that the second incident is not sufficiently substantiated and that it could not therefore be taken into account by the Council in order to justify the claim that there is an ongoing risk of the LTTE being involved in terrorist activities for the purposes of Article 1(3) of Common Position 2001/931.

– The third incident

225. In order to prove that the third incident took place, the Council submitted an article published on 10 February

2017 by Mr D.B.S. Jeyaraj on his blog. It is clear from that article that it was also published in the *Daily Mirror* of 4 February 2017.

226. The applicant criticises, in the first place, the source of the information for the same reasons as those set out in paragraph 221 above.

227. In that regard, it should be noted that the attempted assassination of a Sri Lankan Member of Parliament, which lies at the heart of the third incident, is not only alluded to in the article submitted by the Council, but also in two articles which the applicant itself submitted, namely an article published in *DNA* on 7 February 2017 and an article published in *The Sunday Observer* on 29 July 2018.

228. As regards the first of those two articles, the applicant claims, first, that it refers to the comments of a minister, identified as Mr Wigneswaran, according to whom the attempted assassination was a ploy used by the Sri Lankan Government in order to enable military troops to remain in the north of the country and, second, that it is apparent from those articles that the four persons arrested in the context of the attempted assassination were prosecuted neither for terrorist acts nor for attempted assassination, but only for possession of narcotics.

229. As regards the applicant's first argument, it should be noted, as the Council does, that, in the same article, the minister who stated that the attempted assassination was a ploy used by the Sri Lankan Government in order to enable military troops to remain in the north of the country is described as 'the hardline Tamil chief minister' and that it is stated there that the intended victim of the attack, Mr Sumandiran, who is a Tamil Member of Parliament, considers the information in that statement to be false, although he also stated that he has not been able to verify whether there really was a plot to assassinate him.

230. As regards the second argument put forward by the applicant, it should be noted that this is invalidated by the article published in *The Sunday Observer* of 29 July 2018, from which it is apparent that, on that date, the persons arrested in connection with the third incident were awaiting a judgment by the High Court of Colombo under the Sri Lankan Prevention of Terrorism Act.

231. In those circumstances, it must be held that it has been established to the requisite standard that the third event actually occurred, with the result that the Council was able to take it into account in its assessment as to whether there was an ongoing risk of the LTTE being involved in terrorist attacks.

232. In the second place, the applicant submits that the third incident occurred too long ago to justify maintaining the listing.

233. That criticism is unfounded. As it occurred in January 2017, the third incident is sufficiently recent to justify the Council maintaining the LTTE on the list annexed to Decision 2019/25, which was adopted on 8 January 2019.

234. In the third place, the applicant claims that the Sri Lankan Prevention of Terrorism Act has been challenged before the UN by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as has the Sri Lankan method for dealing with alleged terrorists.

235. In that regard, it is apparent from the article published in *The Sunday Observer* of 29 July 2018, submitted by the applicant, that the facts referred to by the Council in paragraph 9 of the statement of reasons for Decision 2019/25 were established, as regards the persons concerned, at the time of their arrest. According to that article, the arrest took place under the 'normal law', and not under the Sri Lankan Prevention of Terrorism Act. The facts referred to by the Council are not therefore linked to the application of that act, with the result that the argument must be rejected.

236. It follows from the foregoing that the first and third incidents could be taken into account in order to assess whether there was an ongoing risk of the LTTE being involved in terrorist activities, in accordance with Article 1(6) of Common Position 2001/931.

(iii) Whether the first and third incidents justified maintaining the LTTE on the list annexed to that decision

237. Although the discovery of propaganda materials and foreign currency in the context of the first incident may be interpreted as evidence of merely political activity intended to protect the rights of the Tamils, it becomes more worrying when it is combined with an attempted assassination such as the one reported in the context of the third incident.

238. In view of the events underpinning the Home Secretary's decision of 2001, on which the Council relied in order to include the LTTE on the list annexed to Decision 2019/25, and of the absence of a statement by that organisation that it had renounced terrorism, it must be held that the Council was entitled, on the basis of the first and third incidents, to conclude that there was an ongoing risk of the LTTE being involved in terrorist acts, with the result that there was justification for maintaining them on the list annexed to that decision.

239. As regards the events underpinning the Home Secretary's decision of 2001, the Council referred, in point 16 of Annex A to the statement of reasons for Decision 2019/25, to a suicide bomb attack in January 2000 outside the Sri Lankan Prime Minister's office in Colombo, a mortar bomb attack on a police passing out parade in Morawewa and a bombing at a post office in Vavuniya, all of which caused deaths and injuries, including civilian deaths and injuries.

240. The matter of whether those events actually took place and who is answerable for them cannot be called into question before the Council or the Court, as the applicant is trying to do in its pleadings.

241. According to case-law, on those two points, the Council must defer as much as possible to the decision of the

competent authority, whether that authority be a judicial authority (see, to that effect, judgments of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran v Council*, T-228/02, EU:T:2006:384, paragraphs 121 and 124, and of 4 December 2008, *People's Mojahedin Organization of Iran v Council*, *T-284/08*, EU:T:2008:550, paragraphs 53 and 54) or an administrative authority such as the Home Secretary (see, to that effect, judgment of 23 October 2008, *People's Mojahedin Organization of Iran v Council*, *T-256/07*, EU:T:2008:461, paragraphs 134 and 147), since the Home Secretary's decision of 2001 must be regarded as having been adopted by an administrative authority equivalent to a judicial authority (see paragraphs 115, 117 and 118 above) and must be treated in the same way as a condemnation decision within the meaning of Article 1(4) of Common Position 2001/931 (paragraphs 150 to 158 above).

242. An obligation on the Council to verify the events underpinning such a decision, which formed the basis for the initial inclusion of the LTTE on the fund-freezing lists, would undoubtedly undermine the two-tier system characteristic of that common position, since the Council's assessment of the accuracy of those events could conflict with the Home Secretary's assessment and findings in 2001. Such a conflict would be all the more inappropriate because the Council does not necessarily have at its disposal all the facts and evidence that appear in the file of that authority.

243. As regards any statements made by the applicant to the effect that it has renounced terrorism, it should be noted, as the Council does, that, in paragraph 39 of the application, the applicant states that it 'focuses on political activism to promote and enhance recognition [of] the grave situation of Tamils in Sri Lanka and the need for a stable political solution in which the rights of the Tamils are respected and a peaceful enjoyment of their right to self-determination is assured'. Moreover, Mr Thavaraj attached to the authority to act which he signed in favour of the applicant's lawyers on 23 June 2019 an affidavit worded as follows: 'we renounce the use of terrorism as well as of those means we do not consider to be terrorist but part of the armed struggle'.

244. Those statements do not permit the inference that the Council was incorrect to conclude that there was an ongoing risk of the LTTE being involved in terrorist acts. The applicant does not claim that those statements were in any way publicised outside the context of the present proceedings. Furthermore, Mr Thavaraj's affidavit does not make it possible to determine whether it is binding on the applicant or the LTTE. Lastly, since they were submitted only in the course of the proceedings before the Court, it must be held that the Council was not aware of them when it adopted Decision 2019/25, with the result that it cannot be criticised for not having taken them into account in that decision.

245. In the light of all those findings, it must be held that the first and third incidents justify the Council's assessment that there was an ongoing risk of the LTTE being involved in terrorist acts on the date of adoption of that decision.

246. Consequently, subject to the response to be given to the first plea below, Decisions 2019/25 and 2019/1341 cannot be annulled on the ground that the Council infringed Article 1(6) of Common Position 2001/931.

3. First plea in law, alleging that the LTTE could not be classified as a 'terrorist organisation' for the purposes of Article 1(3) of Common Position 2001/931

247. The first plea in law comprises three parts.

(a) First part of the first plea in law

248. In the first part of the first plea, the applicant submits that the contested measures must be annulled on the ground that, since 2009, the LTTE no longer constitute a 'structured group' 'acting in concert' within the meaning of the final subparagraph of Article 1(3) of Common Position 2001/931.

249. The applicant does not deny that, before their military defeat in 2009, the LTTE constituted a structured organisation, but it maintains that, after that defeat, they transformed into a transnational network composed of various divisions which share the same goal of respect for Tamil rights and the peaceful enjoyment of the right to self-determination and which act independently due to a lack of general oversight and organisation.

250. In particular, it alleges that the incidents referred to by the Council in paragraph 9 of the statements of reasons for the contested measures do not show that, since 2009, they constitute a sufficiently structured group acting in concert.

251. The Council, supported by the United Kingdom, contends that the applicant's line of argument must be rejected.

252. In that regard, it should be noted, in the first place, that classification as a 'terrorist group' within the meaning of the second subparagraph of Article 1(3) of Common Position 2001/931, which is defined as 'a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist acts', does not constitute a general condition for application of that common position.

253. As stated in Article 1(2) of Common Position 2001/931, that position is to apply to natural persons as well as to groups and entities; however, the groups and entities are not distinguished in the list that is annexed to that position or in the lists annexed to Decisions 2019/25 and 2019/1341, which set out, under the first paragraph, '[natural] persons' and, under the second paragraph, 'groups and entities'. The definition of a 'terrorist group' provided in the second subparagraph of Article 1(3) of Common Position 2001/931 seeks only to clarify two specific terrorist aims, namely 'directing a terrorist group' (subpoint (j) of point (iii) of the first subparagraph of Article 1(3) of Common Position 2001/931) and 'participating in the activities of a terrorist group' (subpoint (k) of point (iii) of the first subparagraph of Article 1(3) of Common Position 2001/931); the field of application of that common position is wider than merely those two aims, which were not referred to again by the Council in Decisions 2019/25 and 2019/1341 in respect of the LTTE.

254. It follows that, in so far as the LTTE, in accordance with the requirements of Common Position 2001/931, were included on the lists at issue as 'groups and entities', it is irrelevant that, as the applicant maintains, the LTTE do not constitute a 'terrorist group'.

255. For the sake of completeness, the applicant's interpretation is clearly based on an incomplete reading of the final subparagraph of Article 1(3) of Common Position 2001/931. It follows in particular from that definition that, in order to fall within Common Position 2001/931, it is sufficient that the structured group is composed of more than two persons, and that it does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

256. As the United Kingdom observes, the description which the applicant provides in paragraph 46 of the application regarding the LTTE falls within that definition of 'structured group'. That description refers to 'a transnational network' and 'divisions', which involves groups of several persons and a certain organisation of those groups.

257. Moreover, as the United Kingdom also observes, the position defended by the applicant in the present plea runs counter to the line of argument set out in paragraph 41 of the application, in which it relies, in order to establish the admissibility of its action, on the appointment of Mr Thavaraj as the 'Coordinating Director of the International Secretariat of the LTTE' and on his status as the person 'responsible for the activities and functioning of the European Political Subdivision of the LTTE'.

258. The first part of the first plea in law must therefore be rejected.

(b) Second part of the first plea in law

259. In the second part of the first plea, the applicant submits that the LTTE cannot be held liable for acts falling within the exhaustive list of intentional acts set out in the first subparagraph of Article 1(3) of Common Position 2001/931 which, 'given [their] nature or [their] context, may seriously damage a country ..., as defined as [offences] under national law'.

260. In order to prove this, the applicant reviews the events underpinning the Home Secretary's decision of 2001, the Home Secretary's decisions of June 2014 and March 2019, and the decisions of the French courts referred to in paragraph 139 above, as well as the incidents referred to in paragraph 9 of the statement of reasons for the contested measures. It calls into question each of those events on the grounds, inter alia, that they do not correspond to the definition in Article 1(3) of Common Position 2001/931, and also because the statement of reasons relating to them is inadequate, either because responsibility for those events has not been claimed, because they have been denied by the LTTE, or because they have not been proven.

261. The Council disputes that line of argument.

(1) The events on which the Home Secretary's decision of 2001 is based

262. As regards the events on which the Home Secretary's decision of 2001 is based, referred to in point 16 of Annex A to the statements of reasons for Decisions 2019/25 and 2019/1341 and set out in paragraph 239 above, the applicant submits that it does not have any information concerning the mortar attack and that it is not aware that the suicide attack or the bombing have been claimed by the LTTE. In any event, the targets of those attacks were military personnel and therefore those attacks fall into the category of armed conflict.

263. That argument relates to the third part of the present plea; that part will be examined below and that argument will be dealt with there.

264. As for the other arguments, they seek to call into question whether the events on which the Home Secretary's decision of 2001 is based actually occurred.

265. As is already apparent from paragraphs 240 to 242 above, the Court cannot call into question whether or not those events actually occurred.

266. It follows that the applicant's arguments relating to the events on which the Home Secretary's decision of 2001 is based must be rejected.

(2) The events underpinning the Home Secretary's decisions of June 2014 and March 2019

(i) The events underpinning the Home Secretary's decision of June 2014

267. The applicant claims that the reasoning set out in point 17 of Annex A to the statements of reasons for Decisions 2019/25 and 2019/1341, set out in paragraph 189 above, is too vague and that the intention to use violence does not imply a threat within the meaning of subpoint (i) of point (iii) of the first subparagraph of Article 1(3) of Common Position 2001/931.

268. In that regard, it should be recalled that, as regards Decision 2019/1341, the Court has held in paragraphs 184 to 187 above that the Home Secretary's decision of March 2019 was sufficient to justify maintaining the LTTE on the lists.

269. As regards Decision 2019/25, the Court has held, in paragraphs 190 and 191 above, that, since the events on which the Home Secretary had relied in June 2014 in order to maintain the proscription in the United Kingdom were not dated, that decision could not in itself justify maintaining the LTTE on the lists and that the Council had to rely

on more recent facts to establish that there was a risk of the LTTE being involved in terrorist acts, which it did in paragraph 9 of the statement of reasons for Decision 2019/25.

270. It follows that the fact that the statement of reasons given in relation to the events underpinning the Home Secretary's decision of June 2014 is incorrect or that those events cannot be classified as terrorist acts within the meaning of Article 1(3) of Common Position 2001/931 cannot, in any event, lead to the annulment of Decisions 2019/25 and 2019/1341.

271. The applicant's arguments relating to the events underpinning the Home Secretary's decision of June 2014 must therefore be rejected as ineffective.

(ii) The events underpinning the Home Secretary's decision of March 2019

272. The applicant submits that the statement of reasons given in relation to the events referred to in point 18 of Annex A to the statement of reasons for Decision 2019/1341, set out in paragraph 184 above, is inadequate and that those events do not constitute terrorist acts within the meaning of Article 1(3) of Common Position 2001/931, since the definition of terrorist act given by that provision is narrower than the definition of act of terrorism in the UK Terrorism Act 2000.

273. On the question of the reasoning, it should be recalled that, according to the Court of Justice's case-law, the Council may, in order to maintain a person or entity on a fund-freezing list, rely solely on the decision by which the competent authority maintained the decision on which the listing was based if that national decision to maintain that earlier decision is recent and is based on recent events (see paragraphs 170 and 185 to 187 above).

274. In the present case, the references to the Home Secretary's decision of March 2019 in point 18 of Annex A to the statement of reasons for Decision 2019/1341 are sufficiently precise to enable, first, the interested parties to challenge that decision on the ground that those conditions were not satisfied and, second, the Court to exercise its power of review.

275. It must therefore be held that Decision 2019/1341 contains a sufficient statement of reasons as regards the Home Secretary's decision of March 2019.

276. As regards the applicant's argument that the events underpinning the Home Secretary's decision of March 2019 do not constitute terrorist acts within the meaning of Article 1(3) of Common Position 2001/931, it must be borne in mind that, according to Article 1(6) thereof, as interpreted by the Court of Justice, in order to maintain the LTTE on the fund-freezing lists, the Council need not establish that that organisation committed terrorist acts within the meaning of Article 1(3) of that common position, but rather that there was an ongoing risk of it being involved in such acts (paragraph 168 above).

277. It follows that Decision 2019/1341 cannot be annulled on the ground that the statement of reasons given in relation to the events underpinning the Home Secretary's decision of March 2019 is inadequate or that those events do not constitute terrorist acts within the meaning of Article 1(3) of Common Position 2001/931.

(3) The events on which the decisions of the French courts are based

278. It is apparent from points 13 and 14 of Annex B to the statements of reasons for Decisions 2019/25 and 2019/1341 that the decisions of the French courts referred to in paragraph 139 above make reference to acts committed between 2005 and 2008.

279. The applicant calls into question those events on the grounds that they have not been established, that they have been denied by the LTTE and that, as they occurred in the context of an armed conflict, they were not carried out in pursuance of a terrorist aim.

280. In that regard, it should be recalled that, as is apparent from the response given to the second part of the second plea, the decisions of the French courts, as they were delivered after the initial listing of the LTTE, could not be used as a basis for that initial listing (paragraphs 141 and 142 above).

281. As regards the initial listing of the LTTE, the applicant's arguments are therefore ineffective.

282. The same is true in so far as it concerns their being maintained on those lists.

283. The events referred to in the decisions of the French courts, which occurred between 2005 and 2008 and, therefore, predated the military defeat of the LTTE in 2009, cannot justify the claim that there was an ongoing risk of that organisation being involved in terrorist acts after that date and cannot, therefore, justify maintaining the LTTE on the lists annexed to Decisions 2019/25 and 2019/1341 (paragraph 180 above).

284. Those decisions cannot therefore be annulled on the grounds that the events on which the decisions of the French courts are based have not been established, that they have been denied by the LTTE or that, as they occurred in the context of an armed conflict, they were not carried out in pursuance of a terrorist aim.

(4) The events referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341

285. The applicant calls into question the events referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341 for various reasons which have been examined in the context of the third plea.

286. It is therefore appropriate to refer back to how the Court disposed of that plea.

287. In the light of all the findings above, the second part of the first plea in law must be rejected.

(c) Third part of the first plea in law

288. In the third part of the first plea, the applicant submits that, in any event, the acts attributed to the LTTE did not pursue a terrorist aim because they occurred in the context of an armed conflict governed by international humanitarian law.

289. In that regard, the applicant states that, until 2009, the fundamental rights of the Tamils were denied by the Sri Lankan Government and that that people suffered serious discrimination. The LTTE participated in a legitimate armed conflict with the aim of ensuring the right of the Tamil people to self-determination. That right to self-determination is part of *jus cogens*, was enshrined in Article 1(2) of the Charter of the United Nations and has been recognised by the International Court of Justice and by the European Union, in particular by the Court of Justice of the European Union and by the Member States, including the Netherlands.

290. The applicant argues that humanitarian law, which is therefore applicable, does not preclude recourse to force in such circumstances. In particular, it does not prohibit the taking of human lives in the course of war, which includes not only those of active combatants, but also those of civilians.

291. The applicant also claims in that regard that neither the events set out in the decisions of the French courts referred to in paragraph 139 above nor those on which the Home Secretary's decisions are based or those referred to in paragraph 9 of the statements of reasons for the contested measures have as their aim 'seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country' within the meaning of point (iii) of the first subparagraph of Article 1(3) of Common Position 2001/931, or 'unduly compelling a Government ... to perform or abstain from performing any act' within the meaning of point (ii) of that provision; their aim was to improve the structures of the Sri Lankan State and to ensure that they align with the democratic and legal principles adhered to by, inter alia, the European Union. Nor was the aim of those events '[to intimidate seriously] the population' within the meaning of point (i) of that provision, since, in the event of civilian deaths or feelings of fear within the population, it is necessary to establish, in respect of each of the acts, the nexus with the armed conflict and the military necessity of that act. Where the lives of civilians (who did not participate in the conflict) are lost, it should be established whether they were wilfully made the object of the acts of violence, whether their deaths could have been prevented, and whether spreading terror was the primary purpose of the acts in question.

292. Lastly, the applicant seeks to demonstrate that none of the incidents that occurred after 2009, referred to in paragraph 9 of the statements of reasons for the contested measures, serves a terrorist aim.

293. The Council, supported by the United Kingdom, disputes those arguments.

294. In that regard, according to settled case-law, the existence of an armed conflict within the meaning of

international humanitarian law does not exclude the application of provisions of EU law relating to the prevention of terrorism to any acts of terrorism committed in that context, such as Common Position 2001/931 and Regulation No 2580/2001 (judgment of 16 October 2014, *LTTE* v *Council*, *T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 57; see also, to that effect, judgment of 14 March 2017, *A and Others*, *C-158/14*, EU:C:2017:202, paragraphs 95 to 98).

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

296. It is notably in order to implement, at EU level, UN Security Council Resolution 1373 (2001) (see paragraph 1 above), which 'reaffirm[s] the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts' and '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 of that common position) and then, in accordance with that common position, Regulation No 2580/2001 (see recitals 3, 5 and 6 of that regulation) (judgment of 16 October 2014, *LTTE* v *Council*, *T-208/11* and *T-508/11*, EU:T:2014:885, paragraph 59).

297. In that regard, it cannot be denied that classifying as terrorist acts the actions of a movement aimed at exercising the right to self-determination would cause that right to be infringed.

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

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

300. In fact, a distinction must be drawn between, on the one hand, the objectives which a people or the inhabitants of a territory seek to attain and, on the other, the conduct in which they engage in order to attain them (judgment of 4 September 2019, *Hamas* v *Council*, *T-308/18*, under appeal, EU:T:2019:557, paragraph 219). The 'aims' referred to in points (i) to (iii) of the first subparagraph of Article 1(3) of Common Position 2001/931 do not correspond to such objectives, which may be described as ultimate or underlying objectives. They refer, as is apparent from the terms used, namely 'intimidation', 'compulsion', 'destabilisation' or 'destruction', to the very nature of the acts carried

out, which leads to the conclusion that the first subparagraph of Article 1(3) of Common Position 2001/931 refers only to 'acts' and not to 'aims'.

301. Consequently, the third part of the first plea in law must be rejected, as must, accordingly, that plea in its entirety.

4. Fourth plea in law, alleging infringement of the principles of proportionality and subsidiarity

302. The applicant submits that, in view of the change in circumstances that has occurred since the LTTE were listed, namely the military defeat of that organisation in 2009, the contested measures infringe the principles of proportionality and subsidiarity on the ground that, as a result of those measures, it is deprived, in Europe, of its freedom of assembly and its freedom of expression, which prevents it from operating lawfully as a political entity and silences Tamils who wish to speak out against repression and in favour of the self-determination of their people.

303. The applicant also claims that, in 2006, the Member States of the European Union were in disagreement as to the listing of the LTTE and that, although it has been more than 10 years since that organisation changed tactics, there is no prospect that the restrictive measures taken against it will be lifted.

304. In the alternative, should it be decided that sanctions against the LTTE remain justified, the applicant submits that less severe measures should be imposed.

305. That line of argument is disputed by the Council.

306. In that regard, it must be pointed out, in the first place, that the applicant's arguments, set out in the application, do not explain how Decisions 2019/25 and 2019/1341 infringe the principle of subsidiarity.

307. In accordance with Article 76(d) of the Rules of Procedure, the fourth plea in law must therefore be rejected in so far as it is based on that principle.

308. According to that provision, as interpreted in case-law, the application must specify the nature of the grounds on which it is based, which means that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure (see judgment of 13 June 2019, *Strabag Belgium* v *Parliament*, *T-299/18*, not published, EU:T:2019:411, paragraph 127 and the case-law cited).

309. In the second place, as regards the argument that, in 2006, some Member States did not agree to include the LTTE on the fund-freezing lists, it must be observed that the applicant does not dispute that the contested measures were adopted in compliance with the majority rules laid down by the Treaties.

310. The argument cannot therefore lead to the annulment of Decisions 2019/25 and 2019/1341 and must be rejected.

311. In the third place, as regards the principle of proportionality, it should be recalled that fundamental rights, including the right to property, freedom of expression or the right of assembly, do not enjoy absolute protection under EU law. The exercise of those rights may be restricted, provided, first, that those restrictions are duly justified by objectives of public interest pursued by the European Union and, second, that they do not constitute, in relation to those objectives, a disproportionate or intolerable interference, impairing the very substance of those rights (see, to that effect, judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, *C-539/10* P and *C-550/10* P, EU:C:2012:711, paragraph 121 and the case-law cited).

312. As regards the first condition, it should be recalled that the freezing of the funds, financial assets and other economic resources of the persons and entities identified in accordance with the rules laid down in Regulation No 2580/2001 and Common Position 2001/931 as being involved in the financing of terrorism pursue an objective of public interest since it forms part of the fight against terrorist acts posing a threat to international peace and security (see, to that effect, judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, *C-539/10* P and *C-550/10* P, EU:C:2012:711, paragraph 123 and the case-law cited).

313. As regards the second condition, it should be noted that the measures freezing funds and, in particular, maintaining the LTTE on the lists annexed to Decisions 2019/25 and 2019/1341 do not appear to be disproportionate or intolerable or to impair the substance of all or some of the fundamental rights.

314. Indeed, that type of measure is necessary, in a democratic society, to combat terrorism (see, to that effect, judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, *T-256/07*, EU:T:2008:461, paragraph 129 and the case-law cited).

315. Moreover, the measures freezing funds are not absolute, in view of the fact that Articles 5 and 6 of Regulation No 2580/2001 provide for the possibility, first, to authorise the use of frozen funds to meet essential needs or to satisfy certain commitments and, second, to grant specific authorisation, in certain circumstances, to unfreeze funds, other financial assets or other economic resources (see judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, *C-539/10* P and *C-550/10* P, EU:C:2012:711, paragraph 127 and the case-law cited).

316. Furthermore, contrary to what the applicant claims, the freezing of the LTTE's funds is not a permanent measure, since, pursuant to Article 1(6) of Common Position 2001/931, the names of persons and entities on fund-freezing lists are periodically reviewed in order to ensure that the names of those who no longer meet the criteria for inclusion are removed (judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, *C-539/10* P and *C-550/10* P, EU:C:2012:711, paragraph 129).

317. As regards the applicant's argument in the alternative that the measures adopted by the Council against the LTTE should at least be less severe, it should be noted that it refers to 'smart sanctions, targeting both the LTTE and the Sri Lankan Government', but does not explain the form such measures should take.

318. The Court is therefore not in a position to assess whether those measures would make it possible to attain the objective pursued by the fund-freezing measures, namely combating the financing of terrorism, as effectively as those fund-freezing measures.

319. It must therefore be held that Decisions 2019/25 and 2019/1341 do not infringe the principle of proportionality, with the result that the fourth plea in law must be rejected.

5. Fifth plea in law, alleging failure to fulfil the obligation to state reasons

320. The applicant claims that the contested measures must be annulled on the ground that, for various reasons which are contested by the Council and the United Kingdom, they fail to fulfil the obligation to state reasons laid down in Article 296 TFEU.

321. In the first place, the applicant submits that, in the statements of reasons for the contested measures, the Council did not establish to the requisite legal standard that the LTTE constituted a terrorist organisation for the purposes of Article 1(3) of Common Position 2001/931.

322. In that regard, it should be borne in mind that the duty to state reasons established by Article 296 TFEU is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect. It follows that objections and arguments intended to establish that a measure is not well founded are irrelevant in the context of a plea in law alleging an inadequate statement of reasons or a lack of such a statement (see judgment of 18 June 2015, *Ipatau Council*, *C-535/14* P, EU:C:2015:407, paragraph 37 and the case-law cited; judgment of 30 June 2016, *Al Matri Council*, *T-545/13*, not published, EU:T:2016:376, paragraph 143).

323. In the present case, the question whether the Council established to the requisite legal standard that the LTTE constituted a terrorist organisation for the purposes of Article 1(3) of Common Position 2001/931 is a substantive issue which has been examined in the context of the first plea, and it is therefore appropriate to refer back to how the Court disposed of that plea.

324. In any event, it is not apparent from the documents before the Court that, during the proceedings before the

Council, the applicant contested, in a detailed manner, the assertion that the LTTE constituted a terrorist organisation, with the result that the Council cannot be criticised for failing to explain its position in further detail (see, to that effect, judgment of 10 September 2020, *Hamas*v *Council*, *C-122/19* P, not published, EU:C:2020:690, paragraph 42).

325. The applicant's first argument must therefore be rejected.

326. In the second place, the applicant complains that the Council did not specify, in the statements of reasons for the contested measures, the reasons why it considered the decisions of the French courts referred to in paragraph 139 above to be 'decisions taken by competent authorities' within the meaning of Article 1(4) of Common Position 2001/931.

327. In that regard, it must first of all be borne in mind that, since they were adopted after the LTTE had initially been included on the fund-freezing lists, those decisions of the French courts could not serve as a basis for that listing. Accordingly, they did not have to constitute 'decisions taken by competent authorities' within the meaning of Article 1(4) of Common Position 2001/931 (paragraphs 141 to 143 above).

328. Consequently, Decisions 2019/25 and 2019/1341 cannot be annulled on the ground that the Council did not indicate, in the statements of reasons for those decisions, the reasons why the decisions of the French courts constituted decisions taken by competent authorities within the meaning of Article 1(4) of Common Position 2001/931.

329. As regards the Home Secretary's decision of 2001, it should be noted that Article 1(4) of Common Position 2001/931 requires the Council to communicate, in the statement of reasons for fund-freezing measures, the precise information or material in the relevant file which indicates that a decision has been taken by a competent authority within the meaning of that provision, but not to explain how the national decision on which it relies constitutes such a decision.

330. It is only if the classification of that national decision as a decision taken by a competent authority within the meaning of Article 1(4) of Common Position 2001/931 is challenged in a detailed manner by the person or entity concerned during the administrative procedure before the Council that the latter must explain further its reasons for the measures adopted on that point.

331. In the present case, it is not apparent from the file before the Court that the applicant or the LTTE claimed before the Council that the Home Secretary's decision of 2001 did not constitute a decision taken by a competent authority within the meaning of Article 1(4) of Common Position 2001/931.

332. In any event, it should be noted that, in paragraph 4 of the statements of reasons for Decisions 2019/25 and 2019/1341, the Council referred to the judgment of 16 October 2014, *LTTE*v *Council*(*T-208/11* and *T-508/11*,

EU:T:2014:885), in which the Court responded to the plea calling into question the classification of that decision in the light of that provision. It is true that, in paragraph 4 of those statements of reasons, the Council mentions the UK Treasury and not the Home Secretary. The applicant could, however, easily understand that those statements contained a clerical error and that the Council's actual intention was to refer to the Home Secretary, who had been mentioned in paragraph 1 of those statements of reasons and whose decisions are also at issue in that judgment.

333. The Council cannot therefore be criticised for not having set out, in the statements of reasons for Decisions 2019/25 and 2019/1341, the reasons why it considered the Home Secretary's decision of 2001 and the decisions of the French courts to be decisions taken by competent authorities within the meaning of Article 1(4) of Common Position 2001/931.

334. The applicant's second argument must therefore be rejected.

335. In the third place, the applicant complains that the Council did not refer to the actual and specific reasons on which the Home Secretary's decision of June 2014 was based, by which that authority maintained its proscription.

336. In that regard, it is sufficient to recall that, as is apparent from the response given to the third plea in law, the events referred to in paragraph 9 of the statement of reasons for that decision (paragraphs 189 to 192 and 193 to 246 above) and the Home Secretary's decision of March 2019 (paragraphs 184 to 187 above) provide sufficient justification for maintaining the LTTE on the lists annexed to Decisions 2019/25 and 2019/1341 respectively.

337. In those circumstances, it is irrelevant that the Council did not set out precisely the events underpinning the Home Secretary's decision of June 2014, with the result that the argument is ineffective.

338. The applicant's third argument must therefore be rejected.

339. In the fourth place, the applicant submits, in the context of the second and fifth pleas in law, that the Council should have specified how its rights of defence and its right to effective judicial protection had been safeguarded in the judicial proceedings which led to the decisions of the French courts referred to in paragraph 139 above, even though it was not a party to that case.

340. In that regard, it should be noted that, since it is apparent from the responses given to the first part of the second plea in law (paragraphs 141 to 143 and 327 above) and to the second plea in law (paragraph 180 above) that the decisions of the French courts could not serve as a basis either for the initial inclusion of the LTTE on the fund-freezing lists or for maintaining them on the lists at issue, that argument is ineffective and must be rejected.

341. In the fifth place, the applicant complains that the Council did not mention the actual and specific reasons why, following an appropriate examination, it had decided to maintain the LTTE on the lists annexed to the contested measures. In that regard, the reference to the incidents referred to in paragraph 9 of the statements of reasons for

those measures and the reference to the fact that the LTTE retain international fundraising and revival capacities are not sufficient to support the conclusion that they 'still [have] the intent to commit terrorist attacks'.

342. Since that argument, which goes to the substance of the action, has already been examined in the context of the third plea, it is appropriate to refer back to how the Court disposed of that plea and to reject the argument.

343. Consequently, the applicant's fifth argument must be rejected, as must, therefore, the fifth plea in law.

6. Sixth plea in law, alleging infringement of the principle of respect for the rights of the defence and of the right to effective judicial protection

344. The sixth plea in law comprises three parts.

(a) First part of the sixth plea in law

345. In the first part of the sixth plea, the applicant claims that the contested measures infringe the principle of respect for the rights of the defence because the three incidents referred to in paragraph 9 of the statements of reasons for those measures do not justify maintaining the LTTE's listing.

346. The Council disputes that line of argument.

347. In view of the fact that it concerns compliance with Article 1(6) of Common Position 2001/931, which has been examined in the context of the third plea, it is appropriate to refer back to how the Court disposed of that plea.

348. The first part of the sixth plea in law must therefore be rejected.

(b) Second part of the sixth plea in law

349. In the second part of the sixth plea, the applicant submits that the contested measures infringe the right to effective judicial protection for three reasons.

350. In the first place, the applicant submits that, since they were not submitted for assessment by a competent national authority, the three incidents referred to in paragraph 9 of the statements of reasons for the contested measures and the evidence relating to those incidents should have been the subject of a notification by the Council.

351. That line of argument is disputed by the Council.

352. In that regard, it should be noted that, according to case-law, a distinction must be drawn between, on the one hand, the inclusion of a person or entity on a fund-freezing list and, on the other, maintaining that listing, in order to determine the obligations resulting from the principle of observance of the rights of the defence.

353. When the Council includes a person or entity for the first time on a list referred to in Article 2(3) of Regulation No 2580/2001, it is not required to notify them beforehand of the grounds on which it intends to rely. That rule is explained by the fact that, in order to be effective, such a measure must be able to take advantage of the element of surprise (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, *C-27/09* P, EU:C:2011:853, paragraph 61).

354. Thus, in the context of an initial listing, it is sufficient, in principle, to communicate to the person or entity concerned the reasons explaining the measure at the same time as, or immediately after, the adoption of that measure, allowing that person or entity to be heard at that time (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, *C-27/09* P, EU:C:2011:853, paragraph 61).

355. The situation is different in the case of measures maintaining a person or entity on fund-freezing lists, since, in that case, the element of surprise is no longer necessary.

356. In accordance with the case-law, the obligations in respect of such decisions differ according to whether or not the statement of reasons contains new evidence.

357. Where there is new evidence, the adoption of the measure must be preceded by a notification, sent to the person or entity concerned, detailing the evidence adduced against it, which enables that person or entity to be heard in relation to that evidence (see, to that effect, judgments of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, *C-27/09* P, EU:C:2011:853, paragraph 63, and of 28 July 2016, *Tomana and Others* v *Council and Commission*, *C-330/15* P, not published, EU:C:2016:601, paragraph 67).

358. By contrast, the obligation to issue a prior notification does not apply where there is no such evidence (see, to that effect, judgments of 13 September 2013, *Makhlouf* v *Council*, *T-383/11*, EU:T:2013:431, paragraphs 43 and 44, and of 18 September 2017, *Uganda Commercial Impex* v *Council*, *T-107/15* and *T-347/15*, not published, EU:T:2017:628, paragraph 97).

359. In the present case, in order to apply that case-law, it is necessary to distinguish the statement of reasons for Decision 2019/25 from the statement of reasons for Decision 2019/1341.

360. As regards the statement of reasons for Decision 2019/25, as the Council stated at the hearing, it is apparent from the letter of 9 January 2019 by which the Council communicated that statement of reasons to the LTTE that it was identical to the statement of reasons for the earlier measures by which the LTTE had been maintained on the fund-freezing lists. The Council cannot therefore be criticised for having failed to communicate to the LTTE the draft statement of reasons for that decision prior to its adoption.

361. After the adoption of Decision 2019/25, the Council, by letter of 9 January 2019, notified the statement of reasons to the persons who had presented themselves as their lawyers (paragraph 10 above).

362. As regards Decision 2019/25, it cannot therefore be concluded that the LTTE's rights of defence were infringed on the ground that the statement of reasons for that decision was not notified to them by the Council.

363. As regards the statement of reasons for Decision 2019/1341, it follows from paragraph 15 above that it contained amendments as compared with the statement of reasons for Decision 2019/25.

364. In accordance with the case-law referred to in paragraph 357 above, that statement therefore had to be notified to the LTTE, in draft form, before Decision 2019/1341 could be adopted, which the Council did by letter of 27 June 2019 (paragraph 12 above).

365. Moreover, after adopting Decision 2019/1341, the Council, by letter of 9 August 2019, notified the applicant of the final version of the statement of reasons for that decision (paragraph 14 above).

366. Consequently, it cannot be held that the Council infringed the principle of observance of the rights of the defence on the ground that no notification was provided in respect of the statements of reasons for Decisions 2019/25 and 2019/1341.

367. As regards the notification of the evidence relating to the three incidents referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341, it should be recalled that, according to case-law, when, as in the present case, sufficiently precise information has been notified, enabling the entity concerned properly to state its point of view regarding the evidence adduced against it by the Council, the principle of observance of the rights of the defence does not mean that that institution is obliged spontaneously to grant access to the documents in its file. It is only at the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see, to that effect, judgments of 16 November 2011, *Bank Melli Iran* v *Council*, *C-548/09* P, EU:C:2011:735, paragraph 92; of 15 November 2012, *Council* v *Bamba*, *C-417/11* P, EU:C:2012:718, paragraph 87; and of 28 July 2016, *Tomana and Others* v *Council and Commission*, *C-330/15* P, not published, EU:C:2016:601, paragraph 66).

368. In the present case, the applicant has not established that such a request was submitted to the Council.

369. In any event, it must be observed that, by letter of 6 February 2018, that is to say, before the adoption of Decision 2019/25, the Council notified the LTTE of (i) the article published on 1 June 2014 by *The Sunday Leader*, which relates to the first incident, (ii) the article published on 11 April 2014 on Mr D.B.S. Jeyaraj's blog and the article published on the same date by the BBC, which relate to the second incident, and (iii) the article published on

Mr D.B.S. Jeyaraj's blog on 10 February 2017, which relates to the third incident. Following that letter, the LTTE submitted their observations by letter of 21 February 2018, to which the Council replied by letter of 22 March 2018.

370. Similarly, by letter of 27 June 2019, and therefore prior to the adoption of Decision 2019/1341, the Council communicated the article published in *The Daily Mirror* of 20 June 2018 concerning the arrest in June 2018 of persons transporting explosive devices and LTTE paraphernalia, which, according to point 18 of Annex A to the statement of reasons for that decision, justified maintaining the Home Secretary's decision of 2001 in March 2019.

371. In those circumstances, the LTTE's right to effective judicial protection cannot be regarded as having been infringed on the ground that the LTTE were not notified of the incidents which led to them being maintained on the lists annexed to Decisions 2019/25 and 2019/1341 and the evidence relating to those incidents.

372. In the second place, the applicant submits that the LTTE should have been given a hearing before the Council prior to the adoption of the contested measures and that no such hearing took place.

373. The Council disputes that argument.

374. In that regard, it is sufficient to state that neither the legislation in question, namely Common Position 2001/931 and Regulation No 2580/2001, nor the general principle of observance of the rights of the defence gives the persons concerned the right to a hearing before the Council (see, to that effect, judgment of 23 October 2008, *People's Mojahedin Organization of Iran v Council*, *T-256/07*, EU:T:2008:461, paragraph 93 and the case-law cited).

375. Decisions 2019/25 and 2019/1341 cannot therefore be annulled on the ground that the LTTE did not receive a hearing before the Council prior to the adoption of those decisions.

376. In the third place, the applicant complains that the Council did not indicate the source of the information concerning the incidents referred to in paragraph 9 of the statements of reasons for the contested measures.

377. The Council disputes that argument.

378. In that regard, the Court has held previously that the Council is not required to indicate, in the statements of reasons for contested measures, the source of the evidence relied on in order to retain a person or an entity on a fund-freezing list (judgment of 4 September 2019, *Hamas v Council*, *T-308/18*, under appeal, EU:T:2019:557, paragraph 150).

379. The fact that that source is not indicated in the statements of reasons for the contested measures does not prevent the person or entity maintained on the fund-freezing lists from understanding the reasons why that listing has been maintained.

380. That is particularly the case given that, as is apparent from the case-law referred to in paragraph 367 above,

the persons or entities included on the fund-freezing lists may request access to documents held by the Council and since, in the present case, the Council sent to the LTTE, on 6 February 2018, documents relating to the three incidents referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341 (paragraph 369 above) and, on 27 June 2019, documents relating to the incident which, according to point 18 of Annex A to the statement of reasons for the second of those decisions, provided the justification for maintaining the Home Secretary's decision of 2001 in March 2019 (paragraph 370 above).

381. It must therefore be held that the right to effective judicial protection cannot be regarded as having been infringed on the ground that the Council did not indicate, in the statements of reasons for Decisions 2019/25 and 2019/1341, the source of the evidence relied on in order to maintain the LTTE on the lists annexed to those decisions.

(c) Third part of the sixth plea in law

382. In the third part of the sixth plea, the applicant submits that the principles of observance of the rights of the defence and of the right to effective judicial protection have been infringed since the statements of reasons for the contested measures do not contain sufficient reasons to enable it to challenge effectively the assertion that the LTTE '[are] or will be involved in terrorist activities' and therefore '[present] a terrorist threat'.

383. That line of argument is disputed by the Council.

384. In that regard, it must be recalled that, as is apparent from the examination of the second and third pleas in law, the inclusion of the LTTE on the fund-freezing lists, which was extended by Decisions 2019/25 and 2019/1341, is based on the Home Secretary's decision of 2001, whereas the justification for maintaining them on those lists was provided, with regard to the first of those decisions, by the three incidents referred to in paragraph 9 of the statement of reasons for that decision and, with regard to the second of those decisions, by the Home Secretary's decision of March 2019.

385. It is also apparent from the Court's examination of the second, third and fifth pleas in law that Decisions 2019/25 and 2019/1341 are sufficiently reasoned on those points and from the Court's examination of the present plea that the Council duly carried out the notifications required by the principle of the right to effective judicial protection.

386. In those circumstances, it cannot be concluded that the principles of observance of the rights of the defence and of the right to effective judicial protection have been infringed on the ground that the statements of reasons for Decisions 2019/25 and 2019/1341 do not contain sufficient reasons to allow the assertion that the LTTE '[are] or will be involved in terrorist activities' and therefore '[present] a terrorist threat' to be challenged effectively.

387. Consequently, the third part of the sixth plea in law must be rejected, as must, accordingly, the sixth plea in law.

III. **Costs**

388. 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.

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

390. 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.

391. Consequently, the United Kingdom must bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders the European Political Subdivision of the Liberation Tigers of Tamil Eelam (LTTE) to bear its own costs and to pay those incurred by the Council of the European Union;

3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

Gervasoni Madise Nihoul

Delivered in open court in Luxembourg on 24 November 2021.

E. Coulon M. van der Woude

Registrar President

Table of contents

3. Admissibility of the action in so far as it concerns Implementing Regulations 2020/19 and 2020/1128, and Decision 2020/1132

B. Substance

1. Second plea in law, alleging infringement of Article 1(4) of Common Position 2001/931

(a) First part of the second plea in law

(1) The Home Secretary's decision of 2001

(2) The judgment of the tribunal de grande instance de Paris (Regional Court, Paris) of 23 November 2009, upheld by the judgment of the cour d'appel de Paris (Court of Appeal, Paris) of 22 February 2012 and the judgment of the Cour de cassation (Court of Cassation) of 10 April 2013

(b) Second part of the second plea in law

2. Third plea in law, alleging that the Council failed to carry out a review in accordance with Article 1(6) of Common Position 2001/931

(a) Reiteration of the principles from case-law

(b) Application to the present case

(1) Decision 2019/1341

(2) Decision 2019/25

(i) The statement of reasons given in relation to the incidents referred to in paragraph 9 of the statement of reasons for Decision 2019/25

(ii) Whether the incidents referred to in paragraph 9 of the statement of reasons for Decision 2019/25 are made out

– The first incident

– The second incident

– The third incident

(iii) Whether the first and third incidents justified maintaining the LTTE on the list annexed to that decision

3. First plea in law, alleging that the LTTE could not be classified as a 'terrorist organisation' for the purposes of Article 1(3) of Common Position 2001/931

(a) First part of the first plea in law

(b) Second part of the first plea in law

(1) The events on which the Home Secretary's decision of 2001 is based

(2) The events underpinning the Home Secretary's decisions of June 2014 and March 2019

(i) The events underpinning the Home Secretary's decision of June 2014

(ii) The events underpinning the Home Secretary's decision of March 2019

(3) The events on which the decisions of the French courts are based

(4) The events referred to in paragraph 9 of the statements of reasons for Decisions 2019/25 and 2019/1341

(c) Third part of the first plea in law

4. Fourth plea in law, alleging infringement of the principles of proportionality and subsidiarity

5. Fifth plea in law, alleging failure to fulfil the obligation to state reasons

6. Sixth plea in law, alleging infringement of the principle of respect for the rights of the defence and of the right to effective judicial protection

(a) First part of the sixth plea in law

(b) Second part of the sixth plea in law

(c) Third part of the sixth plea in law

III. Costs
