



The Court of Justice upholds the acts of the Council maintaining Hamas on the European list of terrorist organisations

The General Court should not have cancelled Hamas' listing on the ground that the Council had failed to authenticate by means of a signature the statements of individual reasons for those acts

By a judgment of 4 September 2019, *Hamas v Council*,¹ the General Court annulled, in an action for annulment under Article 263 TFEU, four acts of the Council of the European Union adopted in 2018² by which Hamas was maintained on the list annexed to Common Position 2001/931/CFSP. Hamas had been listed as an organisation involved in terrorist acts and was, on that basis, subject to measures freezing its funds and economic resources. Although it rejected seven of the eight pleas in law relied on by Hamas to challenge its listing, the General Court annulled the acts at issue in so far as they concerned that organisation because of the Council's failure to authenticate, by means of a signature, the statements of reasons relating to those acts, those statements of reasons having been set out in separate documents. The General Court referred in that regard to the signature requirement imposed in the first subparagraph of Article 297(2) TFEU and in Article 15 of the Council's Rules of Procedure.³

The Court of Justice, sitting as the Grand Chamber, sets aside the judgment of the General Court of 4 September 2019. It finds that the General Court erred in law in ruling that the statements of reasons relating to the retention of Hamas on the lists annexed to the acts at issue should – in the same way as the acts themselves, which contain a general statement of reasons – have been signed by the President and the Secretary-General of the Council. In addition, those statements of reasons were adopted by the Council simultaneously with those acts, to which they were inseparably attached, and their authenticity has not been validly challenged.

Findings of the Court

The Court recalls, in the first place, that it is apparent from the judgment in *Commission v BASF*,⁴ on which the General Court relied in the judgment under appeal, that a handwritten signature on an act, in particular of the President of the institution which adopted it, constitutes a means of

¹ Judgment of 4 September 2019, *Hamas v Council* ([T-308/18](#)).

² Council Decision (CFSP) 2018/475 of 21 March 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2017/1426 (OJ 2018 L 79, p. 26); Council Implementing Regulation (EU) 2018/468 of 21 March 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2017/1420 (OJ 2018 L 79, p. 7); Council Decision (CFSP) 2018/1084 of 30 July 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/475 (OJ 2018 L 194, p. 144); Council Implementing Regulation (EU) 2018/1071 of 30 July 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) 2018/468 (OJ 2018 L 194, p. 23).

³ According to Article 15 of the Council's Rules of Procedure, headed 'Signing of acts': 'The text of the acts adopted by the Council and that of the acts adopted by the European Parliament and the Council in accordance with the ordinary legislative procedure shall be signed by the President in office at the time of their adoption and by the Secretary-General. The Secretary-General may delegate his or her power to sign to Directors-General of the General Secretariat.' (Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ 2009 L 325, p. 35)).

⁴ Judgment of 15 June 1994, *Commission v BASF and Others* ([C-137/92 P](#)).

authenticating the act, which is intended to guarantee legal certainty by ensuring that the text adopted by that institution becomes fixed in the languages which are binding. Such authentication thus ensures, in the event of a dispute, that it is possible to verify that the texts notified or published correspond precisely to the texts as adopted, and with the intention of the author. While the Court of Justice also recalled in the judgment in *Commission v BASF* that the operative part of, and the statement of reasons for, a decision constitute an indivisible whole, it observes that, unlike the decision at issue in that judgment, the acts at issue bear the signature of the President of the institution that adopted them, namely the Council, and of its Secretary-General. In addition, those acts, as published, include a general statement of reasons. The Court also notes that, in the judgment in *Commission v BASF*, the issue raised was not whether the entire statement of reasons for an act must be authenticated by means of a signature where part of that statement of reasons appears in a separate document, but, in particular, the lack of correspondence between the text of a decision as adopted by its author and the text of the same decision as published and notified. In the light of those various points, the Court concludes that its considerations in the judgment in *Commission v BASF* cannot be applied to the present case.

The Court recalls, in the second place, its case-law according to which acts that provide for restrictive measures, such as the acts at issue, have a particular nature, resembling as they do, at the same time, both measures of general application, in so far as they are addressed to a category of addressees determined in a general and abstract manner, and a bundle of individual decisions affecting the persons and entities whose names appear in the lists contained in their annexes. It follows from the rule set out in the first subparagraph of Article 297(2) TFEU that the acts at issue, which are non-legislative acts adopted in the form either of regulations or of decisions which do not specify to whom they are addressed, must be signed by the President of the Council, in so far as they resemble measures of general application within the meaning of that case-law. However, to the extent that the acts at issue resemble a bundle of individual decisions, they are not subject to a requirement that they be signed, but only to the notification obligation under the third subparagraph of Article 297(2) TFEU. The same applies to the statements of reasons that accompanied the acts at issue, as notified to Hamas, which do not fall within the scope of the general character of those acts but rather within that of the facet of those acts that renders them akin to a bundle of individual decisions. Accordingly, the President of the Council is not required to sign, in addition to the act containing a general statement of reasons for the restrictive measures, the statement of individual reasons relating to such an act. It is sufficient that that statement of reasons be duly authenticated by other means.

According to the Court, the interpretation of Article 15 of the Council's Rules of Procedure leads to the same conclusion. Since that article must be read in the light of the relevant Treaty provisions, it cannot be interpreted as imposing on the President and the Secretary-General of the Council a stricter signature requirement than that which arises under the first subparagraph of Article 297(2) TFEU. The Court states that such a formal obligation to sign statements of individual reasons cannot be inferred from the obligation to state reasons provided for in Article 296 TFEU either. The requirements that stem from that obligation must not be confused with those relating to the authentication of an EU act, checking compliance with the latter requirement being a preliminary to any other review of that act. The Court thus rules that the first ground of appeal is well founded and sets aside the judgment of the General Court.

Since the state of the proceedings is, in accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, such that the Court can give final judgment in the matter, the Court notes, in the third place, that the Council produced documents demonstrating that the statements of reasons were adopted simultaneously with the acts at issue signed by the President and the Secretary-General of the Council, to which they were inseparably attached, and that Hamas has not put forward any evidence that could call into question the fact that the text of the statements of reasons that were notified to it and the text adopted by the Council correspond perfectly. Since the authenticity of those statements of reasons has not been validly challenged by Hamas, the Court concludes that the action brought by Hamas must be dismissed in its entirety.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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