International crime prevention and the European Court of Justice

DIMITRIS N. TRIANTAFYLLOU
Legal Adviser of the European Commission,
Honorary Professor of the University of Würzburg

Introduction

In its judgment of July 18 2013,[1] the ECJ was confronted again with an EU instrument (amendment of a Council Regulation) imposing specific restrictive measures (i.e. freezing of assets) directed against persons associated with international terrorism. The EU Regulations at stake[2] were adopted in implementation[3] of a number of Resolutions of the Security Council of the UNO based on the Charter of the UNO,[4] which provide, i.a., the freezing of assets of persons identified on a list by a committee established by the Security Council (the "*Sanctions Committee*"). The identification is made on proposal of a State to the Sanctions Committee, which is accompanied by a statement including specific information supporting the determination of the threat, breach

---

This article reflects only personal views of the author and not the ones of the institution to which he belongs. The author wishes to thank his colleague M. Konstantinidis for his useful comments.

[1] ECJ, so called "Kadi II", cases C-584/10P, C-593/10P and C-595/10P, ECLI: EU: C: 2013:518.

[2] Commission's Regulation 1190/2008 amending for the 101st time Council's Regulation 881/2002 (OJ 2008, L 322, p. 25).

[3] As decided in CFSP decisions adopted by the Council under the Common Foreign and Security Policy.

[4] Chapter VII, headed 'Action with respect to threats to the peace, breaches of the peace and acts of aggression'.

or act of aggression, the nature of the information and supporting information/documents. The proposing *State* has to identify which parts of the statement can be made public. The Sanctions committee has to make accessible a "narrative summary of reasons for listing". The listing is based on the summary of reasons to be produced by the Sanctions Committee in the light of the material which the State proposing the listing has identified as capable of disclosure. To that procedure an *Ombudsperson* has been added, in order to assist the Sanctions Committee in considering "delisting" requests.[5]

The case concerned the inclusion of the Applicant's name on the list attached to the EU Council Regulation imposing restrictive measures as a consequence of his listing on the Sanctions Committee Consolidated List. The Court confirmed his previous jurisprudence[6] upholding the primacy of the constitutional principles of the EU, the fundamental rights in particular, on any obligations imposed by an international agreement and denying any immunity from jurisdiction for acts implementing international obligations, even though those must be generally observed. Thus, like in its previous jurisprudence, the ECJ ensured the constitutional nature of EU primary law, as most legal orders do, leaning towards a rather "dualistic" approach, which should be approved for an EU that is still seeking its path towards credible political integration.

The Standard of Judicial Review by the Court (Motivation vs Substance)

As a consequence, the jurisprudence had to focus since the beginning on the fundamental rights invoked, in particular on the rights of defence (including the opportunity to know the grounds for the listing decision and the right to be heard) as prerequisite for an effective judi-

[5] This regime is different from a wider regime of sanctions under which the identification of the persons whose assets are frozen is left entirely to the discretion of the States (see references in the Kadi II judgment, paras 14-15).

[6] ECJ, Kadi I, case C-402/05P and C-415/05P, 2008, ECR I-6341.

cial protection.[7] As the Court had in the past concluded that the rights of defence and the right to effective judicial review (let alone the right to respect for property) had been infringed, because the Applicant had not been communicated (nor informed about) the evidence relied on against him, such evidence having not even been adduced before the Court, it reached a similar conclusion for a second time in its more recent judgment. The main reason was that the Applicant had only received the *narrative summary* containing the reasons of his name being listed, on which he could comment, but *no information or evidence* had been submitted to substantiate the allegations made therein. Interestingly enough, the ECJ disavowed the General Court which had considered that most reasons stated in the summary report were insufficiently detailed and specific, by finding that, on the contrary, this time most reasons[8] were sufficiently detailed and specific (thus, there was *no lack of motivation*); nevertheless, the Court upheld the appealed judgment because the reasons put forward in the narrative summary were not substantiated by supporting evidence, so that the annulment of the Regulation listing the name of the Applicant by the General Court[9] should be confirmed (and the appeals dismissed).

By so deciding, the Courts of the European Union confirmed that

[7] See paras 22-25 of the Kadi II case, referring to paras 336-349 of the Kadi I judgment.

[8] The Applicant would be a founding trustee and director of a Foundation operating under the umbrella of a named entity which was succeeded by absorption by a famous terrorist organization; he appointed as a financier for Europe a co-fighter of a famous named terrorist that operated in agreement with him; according to a testimony the Foundation in question provided support for terrorist activities in the Balkans; finally the Applicant would be one of the major shareholders in a bank in which his appointee held a position and where some planning activities for further attacks "might" have taken place (see paras 143-149 of the judgment). [Only the allegation that the Applicant had several firms funnelling money to extremists (or employing extremists), with no indication of the identity of the firms concerned was confirmed as insufficiently detailed and specific by the Court (para 141 of the judgment).]

[9] Case T-85/09, Kadi [2010] ECR II-5177.

they must review the assessment made by the institutions concerned of the facts and circumstances relied upon in support of the restrictive measures at issue and determine whether the information and evidence on which that assessment is based is accurate, reliable and consistent, without such review being excluded on the ground that the information and evidence are secret or confidential. Their jurisprudence towards measures instigated by the UN *in that respect* is more demanding than towards the measures of the EU-autonomous regime of listing for assets freezing,[10] for which EU-Courts are content with the assessment made by a Member State of the EU in a national decision,[11] even if the EU measure has still to be sufficiently motivated and the right to be heard at some point[12] to be respected, not least for the sake of the right of efficient judicial review.[13]

The assessment of the proofs is a point though that deserves more thorough examination, because it raises the question of the law of evidence in the field of international (situational) crime prevention, whereto the Regulations at stake belong. The peculiarity of this field renders an analogy with the judicial review in economic matters inappropriate.[14]

The standard and intensity of judicial review as set by the Court(s) were generally dictated by the constitutional guarantees of the rule of law, in particular the fundamental rights, which should also apply to acts implementing international law measures. Without formally disputing the primacy of a Security Council resolution at international level , the Court insisted on ensuring full respect for the fundamental rights (right of defence and of efficient judicial review) in this context.

---

[10] See para. 41 of the "Kadi II" judgment referring to the General Court appealed judgment and to the precedent OMPI, T-228/02 [2006], II-4665 (para. 121 ff.)

[11] On the basis of the "loyal cooperation" between the EU and its Member States (Art. 4(3) TUE).

[12] Without prejudice of the "surprise effect" of the freezing (paras 128-129 of the OMPI judgment.

[13] See para. 151 ff. and para. 165 ff. of the OMPI judgment.

[14] See also Conclusions of the AG Bot in case C-584/10P, para. 66.

These would require not only that the person concerned must be able to *ascertain at least the reasons*(if not to see the supporting evidence) upon which the decision taken in relation to him is based[15] (a), but also to *make known his views* on the grounds advanced against him,[16] according to the contradictory principle (b), views that have then to be examined by the competent EU-authority[17].The fulfilment of this dual obligation must precede the adoption of a decision on maintaining the listing like the one at stake (whereas it may be simultaneous or even posterior to a listing decision[18]), which should in any case be sufficiently *motivated* (see "narrative summary").[19] These obligations amount to a sufficient motivation and, possibly to an "access to documents" (or other evidence), as well as to awarding the possibility of defence (according to the contradictory principle), but remain formal in comparison with the additional requirement of the Court aiming to ensure that the decision is taken on a "sufficiently solid basis", in the sense that "the judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated".[20]

International (UNO) Institutions as Functional Equivalent to Independent judiciary

The jurisprudence of the Court, while following a rather dualistic delineation between international law and EU-constitutional principles, seems to disregard the specific nature of the regulations at stake, in view of their particular origin. In fact, the EU-regulations are only implementing resolutions of the Security Council of the UNO, which

[15] Paras 100, 111 of the Kadi II judgment.

[16] Para. 111 of the Kadi II judgment.

[17] Para. 114 of the judgment.

[18] In order to ensure the efficiency of the measure (otherwise the assets to be frozen may flee) – see para. 113 of Kadi II and para. 336 f. of Kadi I judgments.

[19] Para. 116 of the judgment.

[20] Para. 119 of the Kadi II judgment.

foresee the procedure for the listing (and for the de-listing) of persons posing a threat to peace or of aggression. The statements to be provided by the proposing states have to include specific information as well as "supporting" information or documents, i.e. evidence, while identifying the parts thereof that can be made public. These conditions point at the confidential nature of much of this information and/or evidence, which will mostly originate in national intelligence services.

Although it is understandable that the judicial review of such cases aims at ensuring that the allegations against the persons concerned are well founded, this task of the Judiciary appears more legitimate when it is directed against the national Executive. It is primarily against the arbitrariness of national police or other administrative authorities that full judicial review of restrictive measures has been conceived in our liberal democracies. However, the situation varies when an international organization committed to the principles of the rule of law is the origin of the measure, since in that case the multinational structure of such an organization, which is reflected in the competent committee, entails necessarily some "checks and balances" test : one single national administration cannot impose its views, since representatives of different states and of the organization itself have to agree on the cogency of the reasoning, the validity of the evidence and, finally, the adequacy of the measure. Those circumstances limit the possibility of (political) arbitrariness to a great extent and ensures its impartiality and objectivity. This is in particular so in an organization which is not merely regional, but universal, like the ONU, with responsibilities for the maintenance of peace and security at global level[21] and which is not even dominated by one or two (super-)powers; the multinational nature thereof should inspire confidence, which is essential for combatting international terrorism.

The members composing the competent Sanction Committee (which reflect the composition of the UN Security Council) should also inspire confidence, in the sense that they specialize on international se-

[21] Para. 294 of Kadi I (C-402/05 P).

curity matters and are supposed to possess (or at least acquire) the necessary expertise. The impartiality of the procedure establishing the list of persons concerned by the restrictive measures has been even enhanced by the establishment (following the first "Kadi" judgment) of an Ombudsperson with specific moral and professional qualifications to deal with the de-listing requests for names maintained on the list.[22]

In the international nature of the institution issuing the restrictive measure at first place one could see a functional equivalent to the independence of national justice, in the sense that the competent committee, multinational by definition, which has to examine the information and the evidence provided in the submitted statement, is not receiving instructions from a certain centre of power, let alone the possible recourse to the impartial Ombudsperson, who will engage in dialogue with any person contesting his listing and will require a strong justification for keeping a name on a list.

This is what the (General) Court failed to see when it stated that the Sanctions Committee "clearly" fails to offer guarantees of effective judicial protection, by merely transposing the internal judicial logic to the international decision making level with its own procedural safeguards. In the same vein, the Advocate General had taken the view that the listing and delisting procedures within the Sanctions Committee provide sufficient guarantees for the EU institutions to be able to presume that its decisions are justified.[23] Recognizing the ONU procedure for listing and delisting as being functionally equivalent to a fact finding judicial process could justify some limitation of the scope of the judicial review exercised thereon by the European Courts (see below).

[22] Like the one at stake.

[23] Conclusions of AG Bot in C-584/10P, paras 83-88, according to whom "the more the procedure within the UN is transparent and based on information which is sufficient in terms of quantity and reliability, the less regional and national implementing institutions will be tempted to challenge the assessments made by the Sanctions Committee" (para. 88).

Preventive Measures and" Fumus Foci"

It is also true that the restrictive measures at hand (freezing of assets), however restrictive they may be for the persons concerned, do not have a punitive character; they just aim at preventing those persons from using their money to finance terrorist activities. Neither the Sanctions Committee nor the EU institutions are punishing any person by depriving him from his liberty or his property (even if the freezing of assets is a burden affecting the exercise of the right of property). This means that the certainty to be achieved as for the justification for the measure does not need to be as strong as in the case of conviction for a criminal offence. The intimate or strong "conviction" of the judge is needed in the criminal procedure, not for the adoption of a mere precautionary measure. For such a measure, which is of somehow "interim" nature (hence the "freezing", not the "confiscation" or "expropriation" of assets) a kind of "*fumus*", i.e. of *prima facie* conviction should suffice.

Nevertheless, the Court did not apply the standard applied to the interim measures, which is fulfilled by the so called "fumus boni iuris" (prima facie test), but required a full review of the measure, as if a final sanction had been imposed to the Applicant. By focussing directly on the effectiveness of judicial protection before itself (only), it disregarded the precautionary nature of the contested measure. This is quite surprising, if one takes into account the jurisprudence on the precautionary principle in other fields,[24] in which the Court has recognised a wide margin of appreciation on behalf of the institutions, which have to manage risks on the basis of dubious prognostics.

(Full) Judicial Review or Appeal for Legal Grounds

If for the institutional (organizational) and procedural reasons mentioned above one admits the improved UNO procedure for listing and

[24] Environmental or health protection (see ECJ C-127/07, Arcelor ECR 2008, I-9895; *Ministero del' Ambiente v. Fipa*, C-534/13, ECLI: C:015:140), T-817/14, Zoofachhandel, judgment of March 17 2016, paras 51, 65.

delisting of persons as being the functional equivalent of a judicial process based on facts (trial), then the judicial review thereof could arguably be limited to a more legal exercise focussing on more legal issues. One will reach the same conclusion if one admits the preventive nature of the disputed measure, since an appeal against an order for interim measures can be attacked only on legal grounds and will have few chances of success, because appeals relating to the existence of a "prima facie" case cannot form the grounds for setting aside the order under appeal.[25]

This would mean that the European Courts, when reviewing EU-Regulations implementing UN-Resolutions on restrictive measures, should exercise a judicial control comparable to the one triggered by appeals for legal grounds. A second examination and assessment of the pieces of evidence by them would then be in most cases precluded (see below). In the same vein, although on a different reasoning, Advocate General Bot had suggested a limited reviewability of those Regulations, proposing a normal review for the "external lawfulness" of the regulation and a limited review of their "internal law fulness". By following the classical concepts of French administrative law ("légalité interne" and "légalité externe") he suggested that compliance with essential procedural requirements (like the respect of the rights of defence, contradictory procedure and motivation) should be controlled , but self-restraint should be shown with regard to the more political decision on (de)listing; as a consequence, the EU institutions should not be required to obtain from the Sanctions Committee all the information or evidence which it has available in order to transmit it to the person concerned for comments and to the European courts, so that the latter can review the merits of the statement of reasons themselves.[26]According to the Advocate General, since the Sanctions Committee has al-

[25] D. Sinaniotis, *The Interim Protection of Individuals before the European and National Courts* (NL) Kluwer 2006, p. 47 f.; ECJ C-268/96 P(R) , SCK, ECR 1996, I-4971, paras 30-31; 7/01 P (R), Nederlandse Fed. Vereiniging voor de Groothandel ECR 2001, I-2559, para. 50.

[26] Paras 95-106 of his Conclusions in C-584/10P.

ready evaluated the information and the evidence provided to it, the European Courts could only scrutinize its assessment (or the legal classification of the facts) in cases of manifest, blatant error.[27]

Still, the Advocate General's opinion is based on a categorization made for convenience in the French administrative law, although the administrative courts normally control both the external and the internal lawfulness of the acts brought to their scrutiny. As such, the distinction does not justify the limitation of scope of the judicial review.

In addition, the "political" nature of an act is not good enough to exclude it from judicial scrutiny according to the ECJ jurisprudence, which does not recognize any "acts of state" (cf. *actes de gouvernement*).[28] Of course, the Treaty excludes the Common Foreign and Security Policy form ECJ's jurisdiction, but the decisions on restrictive measures are not excluded the refrom (s. Art. 275 TFEU). Thus, one should try another **justification** for a limited judicial review. This is why we propose the one of the review by a Court of appeals on only legal grounds. Such a limited review presupposes that the fact finding is at first place correct. This is the assumption made in the present article for the level of the Sanctions Committee of the UNO, flanked by an impartial Ombudsperson, in particular, which receives, evaluates and filters the statements made by its member states (see above about the "functional equivalent"), in combination with the precautionary nature of the measure at stake (see above).

On that basis, one could try indeed to transpose the appeal ("cassation" or "Revision") doctrine to the case at hand. In order to draw conclusions, it appears useful to remind some concepts of the criminal procedure and in particular of the law of evidence. This is of central importance for cases like the one discussed.

---

[27] Paras 107-109 of his Conclusions in C-584/10P.

[28] Despite the suggestion made by the AG Bot in his conclusions in case C-584/10P (para. 78, 80), talking about complex assessments concerning the protection of international security.

Ethical Proof and Means of Evidence

It is a rather common feature in criminal procedure that judges build their conviction ("*conviction in time*", "*freie Beweiswürdigung*") freely, following their conscience. Evidence has first to be collected according to its relevance for the case (which also implies some assessment); the raising of proofs has to comply with some procedural requirements such as the principle of contradiction, of publicity, of the immediateness in relation to the trial body, which have to be fulfilled. Then comes the critical stage of the assessment of the evidence, which is free and implies discretion on the part of the trier of fact. Common places, impressions and intuition play a role in that respect. In relation thereto there should not be any limitation as to the types of evidence admitted. Testimony, exhibits, documentary and other demonstrative material are typical sources of evidence, whereas mere hearsay raises more questions as to its reliability. Nevertheless, the interrogation of the persons concerned cannot be excluded.[29]

More importantly, the indications are also considered to be an important type thereof. They serve as "*indirect*" (or circumstantial) evidence, which implies the existence of the main fact in question, although not proving it itself. They are exhibits or facts related to the main fact. The existence of the main fact is deduced from the indirect or circumstantial evidence through a process of a probable reasoning. It goes without saying that the indirect (circumstantial) evidence is a very important category of evidence, since very often the firm conviction is shaped only on the basis of such (indirect) evidence. Actually, in some sense all evidence is circumstantial, because one or more inferences are always necessary to prove a fact on the basis of one or more piece(s) of evidence.[30]

Interestingly, the case discussed in this article also confirms that the preventive measures (albeit not a criminal conviction) in question were

[29] See for a comparative overview, *Chr. Dedes*, Beweisverfahren und Beweisrecht, Berlin, D & H,1992 p. 20 f., 44 f.

[30] *Ibid*., p. 70 f.

based on indirect evidence: The Applicant would be a founding trustee and director of a Foundation operating under the umbrella of a named entity which was succeeded through absorption by a famous terrorist organization; he would have appointed as a financier for Europe a co-fighter of a famous named terrorist that operated in agreement with him; according to a testimony the Foundation in question would have provided support for terrorist activities in the Balkans; finally the Applicant would be one of the major shareholders in a bank in which his appointee held a position and where some planning activities for further attacks "might" would have taken place. On the top of that, the Applicant would have several firms funnelling money to extremists (or employing extremists) concerned.[31]

Nothing proved that the Applicant himself had financed a terrorist attack or that he was planning to finance such an attack. Nevertheless, one could infer from the different links and relations he had with dangerous persons and organizations that his assets may be used to finance terrorist activities. This is why the Sanctions Committee of the ONU must have considered that he posed a threat to international security and decided, on the basis of circumstantial (indirect) evidence, the freeze of his assets and maintained his name on the list.

In our view, not only is the indirect evidence paramount for combatting international terrorism and, in particular, for preventing the financing of its activities, but a global assessment of the different information and evidence is also needed, in order to come to a useful conclusion. The free (discretionary) assessment of proofs has to refer not only to every piece of evidence taken separately, but also to the whole bunch of evidence that has been collected in the same connexion. This is how the trial body builds its intimate conviction in the criminal procedure; thus, this should also be the case when a preventive measure against somebody is taken, all the more so since the preventive measures only taken to avert a threatened action, and a mere threat, which has not materialized, can only derive from more remote sources, which

[31] Paras 141-149 of the C-584/10P (Kadi II judgment).

should be seen in combination.

The Limited Reviewability of Proofs

The next question is the scope of the judicial review of the evidence and its assessment. According to the general principles of the Appeal procedure, the factual findings of the trial persons cannot be put into question.[32] An appeal based on erroneous fact finding is in principle inadmissible. The appellate court will rely heavily on the discretion of the trial body's ultimate finding. On the other hand, the appellate judge should be entitled to control the indirect findings, namely the validity of the conclusions drawn through treatment of the proofs or through logical reasoning. For that purpose he can control not only whether the motivation of the trial decision is sufficient, but also whether the conviction of the trial person has been built correctly, in particular whether it does not rely on erroneous inferences (deductions or inductions).[33]

From that perspective, one could agree with the EU Courts which criticized one ground taken in isolation against the Applicant referring to his ownership of several firms funnelling money to extremists, since the firms in question were not named.[34] This was considered by both the General Court and the ECJ as a lack of motivation.

Nevertheless, it should not be forgotten that what should matter is the overall assessment of all relevant information and evidence. However, once the reasoning of the General Court set aside (no insufficient motivation of the measure), the ECJ went on destroying one by one the grounds invoked for the restrictive measure. Indeed, what was critical in the end was that for all the other reasons put forward in the summary against the Applicant (see above), the ECJ considered them sufficiently detailed and specific, thus formally valid, but not substantiated, because "no information or evidence has been produced" to substanti-

[32] Cf. Art. 256 (1) TFEU (except for cases of "denaturation" of proofs – see ECJ, Greece/Commission, C-547/12P, judgment of 7 November 2013).

[33] Chr. Dedes, see above, p. 102 f.

[34] Case C-584/10P (Kadi II-) judgment, para. 141.

ate the respective allegations.[35]The ECJ did not contest the inference by the institutions of the threat posed by the Applicant, which could justify the measure attacked, but required the production of some piece of evidence supporting and substantiating the allegations made against the Applicant. The ECJ upheld the judgment of the General Court because no evidence on the threat was presented to them. The same conclusion was reached in relation to some evidence material going back to 1992 that had become obsolete to the eyes of the EJC,[36] although, here too, one should look at the overall bunch of information or evidence.

On this point the ECJ even somehow contradicts itself, since on one hand it ruled that the non- accessibility of the information or evidence in possession of the Sanctions Committee on the part of the person concerned and (subsequently) of the European Courts makes impossible to rely on the respective reasons but, on the other hand, admits that the Commission was not in possession of that information and evidence and could not be blamed for failing to disclose it to the Applicant and to the Courts, so that no infringement of the rights of defence or to effective judicial protection could be based on that non-disclosure.[37]

What actually mattered in the end , was that no information or evidence was produced to the *Courts* themselves. Therefore, the ECJ insisted on a full judicial review of the attacked measure, including a reassessment of the factual evidence itself, which was in the possession of the Sanction Committee only. As a result, it has put pressure on the institutions to request such evidence from the Sanction Committee or rather from the states that have requested the listing on the basis of intelligence reports, with dubious results. The Court even suggested that new procedural techniques should be invented to accommodate legitimate security considerations about the confidential nature and the

[35] Para. 153, 159, 162 of judgment C-584/10P (Kadi II)..

[36] Para. 156 of the judgment. *A contrario*, more recent evidence would have sufficed.

[37] Paras 137, 138 and 139 of the judgment in C-548/10P (Kadi II).

sources of the information taken and the need to guarantee the procedural rights of the persons concerned.[38]

By doing so, the ECJ did not recognize the fact finding exercise at the level of the Sanctions Committee (and the Ombudsperson) as trial body and insisted on having the relevant evidence (at least for one ground![39]) adduced to the European Courts (General Court in particular). In order to confirm the judgment of the General Court, after setting aside its motivation about insufficient grounds, the Court actually substituted the General Court in casu by considering the different reasons as "non- substantiated", which is not the proper role of an appellate court.

Conclusion

After all what has been mentioned, one can wonder whether it was a right decision to require from the European institutions (Commission and the General Court) an examination of the evidence and information held by the UNO sanctions committee in order to find whether the measure was lawful and justified. If the competent UNO Sanctions committee, with its additional safeguards, can be seen as the functional equivalent of a trial court, then it would be more appropriate for the EU Judicature to refrain from requiring pieces of (even if only indirect) evidence from the European institutions that implement the UNO precautionary decisions. In such cases, the judicial review by the EU Judicature should resemble more the one on appeal for legal grounds. This point of view would offer a new line of argument for limiting the scope of the judicial review of the preventive measures implementing ONU-resolutions.

---

[38] Hence the new Art. 105 of the Rules of Procedure of the General Court and its para. 5 ff, which allow the Court, for the sake of the security of the EU, to exceptionally rely on evidence not communicated to the main party. This may not be satisfactory, either, from a perfect "rule of law" perspective, but is the counterpart for the requirements set by the Court at first place.

[39] See para. 119 of the Kadi II judgment, which constitutes, in the logic of the Court an important alleviation of the burden of the proof.

From a more political point of view, the balance struck by the European Courts in their recent jurisprudence in favour of the fundamental right of effective judicial protection in particular does not necessarily take sufficiently into account the paramount need to jointly combat and prevent at international level the financing of international terrorism as asymmetrically threatening as it appeared since the Paris attacks of 2015[40]. One can only hope that the Court will revisit its jurisprudence on this issue, even if that would imply a redefinition of the respective roles of the ECJ and the General Court.[41]

[40] See the new Action Plan to strengthen the fight against terrorist financing.

[41] See above the rather theoretical possibility of appealing an order about interim measures.