

OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 22 June 2017 (1)

Case C-423/16 P

HX

v

Council of the European Union

(Appeal — Common foreign and security policy — Restrictive measures against Syria — Restrictive measures against a person listed in an annex to a decision — Extension of the validity of that decision during proceedings before the General Court of the European Union — Service of the extension decision — Acknowledgment of receipt — Proceedings before the General Court — Request to modify the application in the course of the hearing — Article 86 of the Rules of Procedure of the General Court — Bulgarian language version — Separate document — Annulment by the General Court of the original decision placing the person concerned on the list — Expiry of the extension decision — Interest in bringing legal proceedings in relation to the modification of the application)

I. Introduction

1. The restrictive measures adopted by the European Union in the area of the common foreign and security policy call for a certain flexibility because it is often necessary to react swiftly to the evolving political situations and circumstances underlying those measures. That is why there is not just provision in the relevant legal acts for the need for those legal acts to be reviewed on a regular basis, where appropriate upon application by the persons concerned. Frequently, the validity of those acts is also strictly limited in advance, for example to a period of one year, and is then, if necessary, extended by the adoption of further legal acts, often at relatively short notice.

2. In order to afford the persons concerned effective legal protection under these circumstances, in accordance with the second paragraph of Article 275 TFEU, regard must be had in legal proceedings to the specific features of such legal acts. That is why the General Court has, in particular, allowed for the possibility of modifying the application when new legal acts are adopted in the course of legal proceedings, in order, where appropriate, to extend the application for annulment to cover such new legal acts. That option and the detailed rules for its application are now expressly laid down in Article 86 of the Rules of Procedure of the General Court of 4 March 2015. (2) Furthermore, the

Court of Justice has ruled that an applicant's interest in bringing legal proceedings is not automatically exhausted by the expiry of a legal act adopting a restrictive measure in the area of the common foreign and security policy. (3)

3. The appeal in the present case concerns various consequences of those specific procedural matters. In particular, it concerns the question whether the General Court was entitled to refuse as inadmissible a request made at the hearing to modify the application, on the ground that it was not contained in a separate document, although the General Court recorded the request and did not draw the attention of the person concerned to any further requirements; nor, moreover, is the version of the rules of procedure drawn up in the language of the case clear as regards the requirement of a separate document. The other question that arises in this situation relates to the continued existence of an interest in legal proceedings where a legal act adopted in the course of such proceedings, and whose annulment is sought in the request to modify the application, is in turn superseded by a further legal act adopted in the course of the same proceedings.

4. In addition to the technical nature of those questions and the specific case, the clarification of those issues is relevant to the actual conferral of judicial protection and to procedural economy before the Courts of the European Union in the particularly sensitive area of restrictive measures.

II. Legal framework

5. Article 45 of the Rules of Procedure of the General Court, which forms part of Title II of those rules ('Languages'), is entitled 'Determination of the language of a case', and provides as follows:

'1. In direct actions within the meaning of Article 1, the language of a case shall be chosen by the applicant ...'

6. Article 86 of the Rules of Procedure of the General Court bears the title 'Modification of the application' and, in the version applicable to the relevant proceedings before the General Court, (4) reads as follows:

'(1) 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 General Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

(2) The modification of the application must be made by a separate document within the time limit laid down in the sixth paragraph of Article 263 TFEU within which the annulment of the measure justifying the modification of the application may be sought.

(3) The statement of modification shall contain:

- (a) the modified form of order sought;
- (b) where appropriate, the modified pleas in law and arguments;

(c) where appropriate, the evidence produced and offered in connection with the modification of the form of order sought.

(4) The statement of modification must be accompanied by the measure justifying the modification of the application. If that measure is not produced, the Registrar shall prescribe a reasonable time limit within which the applicant is to produce it. If the applicant fails to produce the measure within the time limit prescribed, the General Court shall decide whether the non-compliance with that requirement renders the statement modifying the application inadmissible.

(5) Without prejudice to the decision to be taken by the General Court on the admissibility of the statement modifying the application, the President shall prescribe a time limit within which the defendant may respond to the statement of modification.

...’

III. Background to the appeal proceedings

7. The appellant is a Syrian businessman who was made subject to travel restrictions under restrictive measures imposed on Syria by the European Union. In addition, his funds and economic resources were frozen.

A. Decisions and Regulations of the Council

8. On 9 May 2011, the Council adopted, for the period up to 9 May 2012, Council Decision 2011/273/CFSP concerning restrictive measures against Syria, (5) as well as Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria. (6) Regulation (EU) No 442/2011 was subsequently replaced by Regulation (EU) No 36/2012 of 18 January 2012. (7)

9. The provisions of Decision 2011/273 were renewed by Decision 2011/782/CFSP of 1 December 2011 (8) for the period to 1 December 2012, by Decision 2012/739/CFSP of 29 November 2012 (9) for the period to 1 March 2013, and, finally, by Decision 2013/255/CFSP of 31 May 2013 (‘the 2013 Decision’) (10) for the period to 1 June 2014. The validity of the 2013 Decision was subsequently extended until 1 June 2015 by Decision 2014/309/CFSP of 28 May 2014. (11)

10. By Council Implementing Decision 2014/488/CFSP of 22 July 2014 implementing the 2013 Decision concerning restrictive measures against Syria (‘the 2014 Implementing Decision’), (12) Mr HX’s name was placed on the list in Annex I to the 2013 Decision.

11. By Council Implementing Regulation (EU) No 793/2014 of 22 July 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, (13) Mr HX’s name was included in the list in Annex II to Regulation No 36/2012.

12. By Council Decision (CFSP) 2015/837 of 28 May 2015 amending the 2013 Decision concerning restrictive measures against Syria ('the 2015 Decision'), (14) the validity of the 2013 Decision was extended until 1 June 2016.

13. Subsequently, the validity of the 2013 Decision was further extended until 1 June 2017 by Council Decision (CFSP) 2016/850 of 27 May 2016 amending the 2013 Decision concerning restrictive measures against Syria ('the 2016 Decision'). (15) The 2016 Decision was published in the Official Journal on 28 May 2016, entered into force on 29 May 2016 and was served on Mr HX on 30 May 2016. (16) In comparison with the 2014 Implementing Decision, the 2016 Decision contained a more comprehensive statement of reasons for the inclusion of Mr HX in the list in Annex I to the 2013 Decision, which, as compared to the statement of reasons contained in the 2014 Implementing Decision, included additional information.

14. And finally, during the present appeal proceedings, the validity of the 2013 Decision was again further extended, until 1 June 2018, by Council Decision (CFSP) 2017/917 of 29 May 2017 amending the 2013 Decision concerning restrictive measures against Syria, (17) although this did not entail any changes with regard to Mr HX.

B. The judgment of the General Court

15. By application dated 13 October 2014, Mr HX applied to the General Court for annulment of the 2014 Implementing Decision and of Implementing Regulation No 793/2014, in so far as those acts concerned him.

16. In the course of the hearing before the General Court on 8 December 2015, Mr HX requested modification of his application in order, additionally, to seek annulment of the 2015 Decision, in so far as it concerned him. This request was recorded in the minutes of the hearing together with a reference to the fact that Mr HX had indicated that the 2015 Decision had hitherto not been notified to him. It was also noted that the Council had not stated that it was opposed to the modification of the application.

17. In its judgment of 2 June 2016 ('the judgment under appeal'),(18) however, the General Court dismissed as inadmissible the request to modify the application to include the 2015 Decision. The General Court founded its dismissal on Article 86(2) of its rules of procedure, under which the modification must be made by a separate document. This requirement had, in the General Court's view, not been met, since Mr HX had requested the modification of the application only orally at the hearing.

18. In addition, the General Court annulled the 2014 Implementing Decision and Implementing Regulation No 793/2014 in so far as they concerned Mr HX. It stated that its ground for doing so was that the matters advanced by the Council to justify the inclusion of Mr HX in the lists contained in the annexes to those acts did not support the allegation that Mr HX is a supporter or beneficiary of the Syrian regime. Finally, the General Court ordered the Council to bear its own costs and to pay those incurred by Mr HX.

IV. Appeal proceedings and forms of order sought

19. By application dated 1 August 2016, Mr HX lodged an appeal against the judgment under appeal. Mr HX asks the Court of Justice to set aside that judgment in so far as it dismissed as inadmissible his request for modification of the application to include the 2015 Decision. Mr HX further asks the Court of Justice to annul the 2015 Decision in so far as it concerns him, or to refer the case back to the General Court on this point. Finally, Mr HX asks the Court of Justice to order the Council to pay the costs.

20. The Council contends that the Court should dismiss the appeal and order Mr HX to pay the costs.

21. The procedure on the appeal before the Court was conducted in writing.

22. The Council produced new evidence in the annex to its response to the appeal, namely an acknowledgment of receipt signed by a third party confirming service of the 2015 Decision on Mr HX's lawyer. The Court of Justice gave the parties the opportunity of stating their views in writing on this new evidence. Furthermore, the Court of Justice heard the parties' submissions as to whether Mr HX had an interest in bringing legal proceedings, particularly in regard to the 2015 Decision.

V. Assessment

A. The appeal

1. Service of the 2015 Decision on Mr HX

23. In his first ground of appeal, Mr HX claims that his request made at the hearing on 8 December 2015 to modify the form of order sought to include the 2015 Decision of 28 May 2015 was not out of time. Since the 2015 Decision had not been served on him, although the Council knew his address, the period for modification of the form of order sought in relation to that decision had not started to run.

24. In that connection, the Council submits that the 2015 Decision was served on Mr HX's lawyer by registered post. Furthermore, the Council, as mentioned above, annexed to its response to the appeal an acknowledgment of receipt signed by a third party on 8 June 2015. However, Mr HX denies that the person who signed that acknowledgment of receipt, who was not an employee of his lawyer, passed the letter to his lawyer. Mr HX adds that the Council was itself able to establish that the acknowledgement of receipt had not been signed by his lawyer. Moreover, his lawyer's email address was known to the Council. Therefore, in order to be sure, the Council should have sent a further registered letter or electronic communication in order to bring the 2015 Decision to the lawyer's attention.

25. Under those circumstances, it is not possible for the Court of Justice to establish whether the 2015 Decision was properly served on Mr HX. Therefore, the decision of the Court of Justice as to whether the present appeal is well founded cannot be based on the eventuality that the request made to the General Court for modification of the form of order sought was out of time.

26. It is in any event sufficient to state that the present ground of appeal is ineffective. The General Court did not base its dismissal of the request for the form of order sought to be modified to include the 2015 Decision on any failure to observe the time limit for such modification, but on the fact that the request was not made in a separate document.

27. Thus, in the present case, it is immaterial whether or not Mr HX received a copy of the 2015 Decision through the intermediary of his lawyer.

28. Also immaterial is the question as to what extent a request to modify the application in this instance should in any event necessarily have been made within the period provided for in the sixth paragraph of Article 263 TFEU within which annulment of the legal instrument justifying modification of the application can be sought. In that regard, the General Court has held — albeit before the entry into force of its new rules of procedure of 4 March 2015 — that, in the context of pending proceedings, this period is not applicable in certain circumstances. This will be the case, first, where the original act and the measure whose annulment is sought by the request to modify the application have, with regard to the person concerned, the same subject matter, are essentially based on the same grounds and have essentially the same content, and therefore differ only by reason of their respective scopes of application *ratione temporis*, and, secondly, where the request to modify a claim is not based on any new plea, fact or evidence apart from the actual adoption of the act in question repealing and replacing the earlier act. (19)

2. Dismissal by the General Court of the request to modify the application to include the 2015 Decision

29. In his second ground of appeal, Mr HX submits that the General Court erred in refusing his request for his application to be modified to include the 2015 Decision on the basis that there was no separate document. Given that the request was made at the hearing, and a written record of it was included in the minutes of the hearing, the conditions governing the permissibility of the modification of the application for the purposes of the Rules of Procedure of the General Court were satisfied. Thus, the absence of a separate document in this case affects neither the interests of the opposing party nor the work of the General Court, both of which were, moreover, already aware of the 2015 Decision prior to the hearing. In addition, the Council had an opportunity to oppose the request for modification of the application and, as stated in the minutes of the hearing, did not do so.

30. Furthermore, the General Court is said to have paid insufficient heed to the fact that the Bulgarian version of Article 86(2) of its rules of procedure, which is relevant in the present case since the language of the case is Bulgarian, is ambiguous in relation to the requirement that a request to modify the application be contained in a separate document. In contradistinction to the English ('separate document') and French ('acte séparé') versions of the Rules of Procedure of the General Court, the Bulgarian version does not use the word 'document' but the term 'молба' ('molba' — 'application'). The requirement of written form is not automatically inherent in that term, as it could apply to either a written or an oral expression of intent.

31. Finally, the General Court contravened the principle of adversarial proceedings because it did not give Mr HX any opportunity at the hearing, and thus in due time before closure of the oral procedure, to take cognisance of the different language versions of its rules of procedure and of the 2015 Decision. Nor did the General Court give him a reasonable period, as required under the rules of procedure, to rectify the defects in his request for modification and to submit the requisite documents in that connection, after being apprised at the hearing of the fact that Mr HX wished to modify his application.

32. I am persuaded by that argument.

33. Thus, it is true that it is perfectly in order for modification of the application to be subject to certain formal requirements. However, such formal requirements, as also laid down in Article 86 of the Rules of Procedure of the General Court, do not apply for their own sake. On the contrary, they are intended to ensure the adversarial nature of proceedings and to enable the General Court to have available all the information necessary in order for it to be in a position to assess requests for modification appropriately.

34. This functional objective of the formal requirements for requests to modify applications is borne out by the provisions of the Rules of Procedure of the General Court. Under Article 86(3)(b), for example, modification of the pleas in law and arguments is required only if this appears necessary under the circumstances. Likewise, if the statement of modification is not accompanied by the measure justifying modification of the application, the General Court may, under Article 86(4), prescribe a time limit within which the applicant must remedy that defect; nor, even, will failure to remedy the defect necessarily render the application inadmissible, since the General Court enjoys a margin of discretion in that respect.

35. By contrast, in the present case, the General Court applied Article 86 of its rules of procedure in a highly formalistic manner, which not only runs counter to the spirit and purpose of that provision, but also contravenes the principle of fair proceedings enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. Thus, it would have been perfectly possible to regard the request for modification made at the hearing and recorded in writing in the minutes of the hearing as admissible, particularly since the minutes have probative force as a court document and can therefore be a substitute for the requirement that the request be in writing. In the circumstances, it was, moreover, not necessary for the pleas in law and arguments to be further modified in relation to the content of the 2015 Decision, which merely extended the temporal validity of the 2013 Decision, nor was it necessary for the 2015 Decision to be produced, as the Court and the Council were clearly aware of it.

36. Furthermore, Mr HX submitted at the hearing that he had hitherto known nothing of the 2015 Decision and, as stated above, that assertion was not effectively refuted because the statements of the parties in that respect are contradictory. (20) It therefore remains the case that Mr HX may have learned of the 2015 Decision only at the hearing. Under those circumstances, a modification of the application at the hearing is appropriate and purposive. If, in such a case, the requirement of a separate document is handled in

too formalistic a manner, it becomes impossible in practice to modify the application at the hearing, which in turn diminishes effective legal protection and runs counter to procedural economy.

37. If, nonetheless, the General Court had wished strictly to uphold the requirement that the request for modification of the application be lodged by a separate document, it could have drawn Mr HX's attention to that requirement at the hearing. However, the General Court's method of proceeding was misleading. By recording Mr HX's application in the minutes of the hearing and not drawing his attention to any further requirements, it conveyed the impression to Mr HX that his application had been duly registered and that no further action on his part was necessary.

38. This is all the more problematic since the Bulgarian language version of Article 86(2) of the Rules of Procedure of the General Court does not in fact appear to be entirely unambiguous in relation to the requirement that a request to modify an application must be in writing.

39. In that connection, the Council contends that, even if the Bulgarian language version were ambiguous, one language version of the Rules of Procedure of the General Court cannot prevail over the others, even if it is the version in the relevant language of the case.

40. The Council relies in this regard on the fact that, under settled case-law, the need for a uniform application and interpretation of the provisions of EU law precludes a provision in one of its versions from being viewed in isolation, and requires such provision to be interpreted on the basis of the intention of its author and the aim he seeks to achieve, in the light of the versions established in all the languages of the European Union. (21) One divergent language version alone cannot, in any event, prevail over all the other language versions. In the present case, with the exception of the Bulgarian version, all the language versions of the Rules of Procedure of the General Court used terms from which it is clear that the request to modify an application must be contained in a separate written document.

41. The need for a uniform interpretation of a provision of EU law means that, where there is divergence between the language versions of the provision, the latter must be interpreted by reference to the context and the purpose of the rules of which it forms part. (22) However, that cannot entail the individual being deprived of the right, enshrined both in Article 20(2)(d) and the fourth paragraph of Article 24 TFEU and in Article 45 of the Rules of Procedure of the General Court, to address the Courts of the European Union in his own language.

42. As already stated, a request to modify an application which has been noted in the minutes meets the objectives of the requirement for a separate document. Even if one were to insist on a separate document, a litigant cannot be expected to master several procedural languages of the European Union and, without any specific indication, to interpret provisions on the procedural requirements before the Courts of the European Union in the light of the versions of those provisions established in all or several

languages of the Union. On the contrary, the whole language regime of the EU judicature is specifically aimed at effectively guaranteeing the right of every litigant to address the Courts of the European Union in his own language. Therefore, the Courts of the European Union must, in particular where there is divergence between the version established in the language of the case and the other language versions of their rules of procedure, use every possible means to ensure the fairness of the proceedings and effective legal protection, and inform the person concerned of his mistake and afford him the opportunity of exercising his rights effectively.

43. That is, a fortiori, the case where the General Court, which has adopted its rules of procedure in all the procedural languages, has to assume responsibility for obscurities in the various language versions of those rules of procedure that come to light in the course of different proceedings and different language configurations. Thus, the General Court must ensure, by means of an appropriate interpretation and application of its rules of procedure in the light of the principle of fairness of proceedings, that such obscurities do not mean that a person is denied effective legal protection.

44. All in all, it must therefore be stated that the second ground of appeal is well founded. The General Court erred in law by dismissing as inadmissible Mr HX's request to modify his application solely on the ground of the absence of a separate document, and by not giving Mr HX the opportunity of supplementing his oral request in the manner deemed necessary by the General Court. Thus, the judgment under appeal should be set aside to the extent that it dismissed as inadmissible the request to modify the application to include the 2015 Decision.

B. The request at first instance to modify the application

45. Under the first paragraph of Article 61 of its Statute, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

46. That is the case here.

47. It must be stated that the request to modify the form of order sought in the application to include the 2015 Decision required no substantive examination because Mr HX's interest in bringing legal proceedings in regard to that decision had been exhausted in the course of the proceedings before the General Court.

48. The admissibility of the application for annulment brought before the General Court is a matter pertaining to public policy which must be examined by the Court of Justice of its own motion if it is called upon to determine an appeal. (23) That must also apply to the settlement of a legal dispute in the course of proceedings before the General Court. Moreover, in the present case, the Court of Justice can rely on Mr HX's lack of interest in bringing legal proceedings in relation to the 2015 Decision, since it has heard submissions by the parties on this matter, which was not discussed in the proceedings at first instance. (24)

49. As the Court of Justice has held in its settled case-law, both an applicant's legal interest in bringing proceedings and the purpose of the action must exist not merely when the action is brought, but must continue to subsist until delivery of final judgment, failing which there will be no need to adjudicate. This presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it. (25)

50. In the present case, the 2015 Decision which Mr HX, by his request to modify the application, seeks to have annulled, ceased to be valid even before delivery of the judgment under appeal on 2 June 2016. First, the validity of that decision, the purpose of which was to extend the 2013 Decision by a further year, was in any event limited to the period up to 1 June 2016. (26) Secondly, the 2013 Decision was further extended by the 2016 Decision, effective as at 29 May 2016, by another year until 1 June 2017, with the result that the 2015 Decision ceased to have effect even before its expiry. (27)

51. In the most varied of circumstances, the Court of Justice has already acknowledged that an applicant's interest in bringing proceedings does not necessarily disappear because the act challenged by him has ceased to have effect in the course of proceedings. (28)

52. That is in particular due to the fact that the repeal of a legal act of an EU institution by a subsequent legal act, or the expiry of validity of an act, does not entail recognition of the unlawfulness of such act and has effect only *ex nunc*. Conversely, a legal act annulled by an annulment decision is retroactively removed from the legal order and deemed never to have existed.

53. This applies, in particular, to legal acts whose object is to impose restrictive measures on persons in the context of the common foreign and security policy of the European Union. In that connection, the Court of Justice has made clear that a person on whom such measures have been imposed following that person's inclusion in a list may continue to have an interest in a finding that the legal act placing him on the list is unlawful, even after that legal act has lost its validity. Such a finding may constitute recognition that the person should never have been placed on the list, or that this should not have occurred in the procedure conducted by the EU institutions. Admittedly, that cannot make good material damage or an adverse effect on professional and family life but is conducive to a person's rehabilitation or may constitute a form of reparation for the non-material damage sustained by that person. (29)

54. In the present case, Mr HX claims in that connection that the fact that the 2015 Decision had ceased to be valid cannot remove the effects produced by that legal act during the period of its validity. Not only his *inclusion* in the list of persons on whom restrictive measures were imposed under the 2013 Decision by the 2014 Implementing Decision, but also his *retention* on that list by the 2015 Decision had affected his right to private and family life and damaged his good reputation and aroused mistrust in those around him. Thus, he had been branded a person harmful to the peaceful Syrian civilian population. Annulment of the 2015 Decision could therefore restore his good reputation and that of his family, and constitute a form of reparation for the non-material damage sustained by him.

55. These arguments are correct in relation to the 2014 Implementing Decision by which Mr HX was included in the list in Annex I to the 2013 Decision and which contained a relevant statement of reasons. Thus, the General Court, in its judgment under appeal of 2 June 2016, was right to make a determination in relation to the lawfulness of the 2014 Implementing Decision even though, in relation to Mr HX, that decision had in the meantime been replaced by the 2016 Decision, which contained a new statement of reasons. (30)

56. Yet Mr HX's arguments do not avail him in regard to the continued existence of his interest in bringing legal proceedings in relation to annulment of the 2015 Decision after the cessation of its validity. In relation to Mr HX, the 2015 Decision merely extended to 1 June 2016 the effect of the 2013 Decision, as amended by the 2014 Implementing Decision. Thus, the annulment of the 2015 Decision following the cessation of its validity could not have conferred on Mr HX any advantage beyond that which he was already able to obtain by annulment of the 2014 Implementing Decision.

57. With the annulment of that implementing decision, the General Court acknowledged that the matters submitted by the Council vis-à-vis Mr HX could not support the assertion that he was a supporter and beneficiary of the Syrian regime. This acknowledgment also applies to the period of validity of the 2015 Decision, because that decision added nothing further to the statement of reasons for Mr HX's inclusion in the list. Thus, the annulment of the 2014 Implementing Decision rehabilitates Mr HX in respect both of the period of original validity of the 2013 Decision, as amended by the 2014 Implementing Decision, and of the period of validity of the 2013 Decision, extended by the 2015 Decision. That constitutes reparation for the non-material damage incurred by Mr HX as a result of the legal acts concerned.

58. It is not apparent what further advantage could have accrued to Mr HX from the annulment of the 2015 Decision after that decision had ceased to be valid, and Mr HX makes no further submissions in that regard.

59. Accordingly, Mr HX's interest in bringing legal proceedings in relation to the annulment of the 2015 Decision no longer subsists and there is thus no need to adjudicate on his request to modify the application in the course of the proceedings before the General Court.

VI. Costs

60. Article 138(3) of the Rules of Procedure of the Court of Justice, applicable to proceedings on appeal under Article 184(1) of those rules, provides that, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

61. First of all, in relation to the costs of the proceedings at first instance, it must be borne in mind that the judgment under appeal should be set aside only in so far as it dismissed as inadmissible the request to modify the application to include the 2015 Decision. The first instance judgment thus continues to subsist to the extent to which it annulled the 2014 Implementing Decision.

62. In addition, while, in the present case, Mr HX was unsuccessful in seeking annulment of the 2015 Decision, his arguments in that connection are well founded inasmuch as he correctly described as erroneous in law the grounds relied on by the General Court in refusing his request to modify the application. Conversely, the Council's arguments in that connection were unsuccessful.

63. Therefore, there is no reason to set aside the General Court's decision on costs, which was to the effect that the Council should be ordered to pay all the costs of the proceedings at first instance.

64. So far as the costs of the appeal are concerned, it must first be borne in mind that Mr HX's second ground of appeal is well founded, but that he is thereby pursuing his application for annulment of the 2015 Decision notwithstanding the fact that his interest in such annulment ceased to subsist in the course of the proceedings before the General Court. Moreover, even before lodging the present appeal on 1 August 2016, Mr HX brought an action, by a document of 27 July 2016, against the 2016 Decision (31) which replaces the 2015 Decision and which added new elements to the statement of reasons on which the 2014 Implementing Decision was based. (32)

65. However, it should also be borne in mind that the Council's arguments in the appeal are not accepted. Moreover, by virtue of its manifest failure to take steps to ascertain whether the 2015 Decision had in fact been properly served on Mr HX, despite the fact that the acknowledgement of receipt of the registered letter was signed not by his lawyer but by a third party, (33) the Council may well have prevented Mr HX from submitting a request for modification of his application long before the hearing before the General Court.

66. Thus, it would appear to be appropriate in the present case to decide, in relation to the costs of the appeal, that Mr HX should bear one third of his own costs and that the Council should bear its own costs and pay two thirds of those incurred by Mr HX.

VII. Conclusion

67. On the basis of the above considerations, I propose that the Court should:

- (1) set aside the judgment of the General Court of 2 June 2016, *HX v Council* (T-723/14, EU:T:2016:332), in so far as it dismissed as inadmissible Mr HX's request to modify the application;
- (2) declare that there is no need to adjudicate on the request to modify the application at first instance to seek annulment of Council Decision (CFSP) 2015/837 of 28 May 2015 amending Decision 2013/255/CFSP concerning restrictive measures against Syria;

- (3) order Mr HX to bear one third of his own costs in the appeal proceedings; and
- (4) order the Council of the European Union to bear its own costs in the appeal proceedings, and to pay two thirds of those incurred by Mr HX in the appeal proceedings.
-

1 Original language: German.

2 OJ 2015 L 105, p. 1.

3 See judgment of 28 May 2013, *Abdulrahim v Council and Commission* (Case C-239/12 P, EU:C:2013:331, paragraphs 67 to 85, in particular paragraph 72).

4 Under Article 1(7) of the Amendments to the Rules of Procedure of the General Court of 13 July 2016 (OJ 2016 L 217, p. 73), which came into force on 1 September 2016, paragraphs 3 to 6 of Article 86 were renumbered paragraphs 4 to 7, and a new paragraph 3 was inserted, which relates to disputes between the European Union and its servants pursuant to Article 270 TFEU. That amendment has no effect on these proceedings.

5 OJ 2011 L 121, p. 11.

6 OJ 2011 L 121, p. 1.

7 OJ 2012 L 16, p. 1.

8 OJ 2011 L 319, p. 56.

9 OJ 2012 L 330, p. 21.

10 OJ 2013 L 147, p. 14.

11 OJ 2014 L 160, p. 37.

12 OJ 2014 L 217, p. 49.

13 OJ 2014 L 217, p. 10.

14 OJ 2015 L 132, p. 82.

15 OJ 2016 L 141, p. 125.

16 See the application of Mr HX in the case pending before the General Court: Case T-408/16, *HX v Council*, lodged on 27 July 2016, in which Mr HX applies, in particular, for annulment of the 2016 Decision.

17 OJ 2017 L 139, p. 62.

18 Judgment of the General Court of 2 June 2016, *HX v Council* (T-723/14, EU:T:2016:332).

19 See judgment of the General Court of 9 September 2010, *Al-Aqsa v Council* (T-348/07, EU:T:2010:373, paragraph 34); that judgment was set aside on appeal although it is true that the finding cited here was not called into question.

20 See points 24 and 25 above.

21 See, to that effect, judgments of 12 November 1969, *Stauder* (29/69, EU:C:1969:57, paragraph 3); of 17 July 1997, *Ferriere Nord v Commission* (C-219/95 P, EU:C:1997:375, paragraph 15); and of 15 October 2015, *Grupo Itevelesa and Others* (C-168/14, EU:C:2015:685, paragraph 42).

22 See, for example, judgment of 23 November 2016, *Bayer CropScience and Stichting De Bijenstichting* (C-442/14, EU:C:2016:890, paragraph 84).

23 See order of 15 February 2012, *Internationaler Hilfsfonds v Commission* (C-208/11 P, EU:C:2012:76, paragraph 34 and the case-law cited).

24 See point 22 above.

25 See judgments of 19 October 1995, *Rendo and Others v Commission* (C-19/93 P, EU:C:1995:339, paragraph 13); of 7 June 2007, *Wunenburger v Commission* (C-362/05 P, EU:C:2007:322, paragraph 42); and of 28 May 2013, *Abdulrahim v Council and Commission* (C-239/12 P, EU:C:2013:331, paragraph 61).

26 See point 12 above.

27 See point 13 above.

28 See judgment of 28 May 2013, *Abdulrahim v Council and Commission* (C-239/12 P, EU:C:2013:331, paragraph 62 et seq. and the case-law cited).

29 *Ibid.* (paragraph 68 et seq.).

30 See point 13 above.

31 See footnote 16 above.

32 See points 12, 13 and 50 above.

33 See point 24 above.