

With a judgement of November 23rd 2021, the Court of Justice of the European Union, sitting as the Grand Chamber, set aside the judgement of the General Court of September 4th 2019 (T-308/18), declaring that it erred in law in ruling that the statements of reasons relating to the retention of Hamas on the lists annexed to the acts of the Council of the European Union adopted in 2018 should have been signed by the President and the Secretary-General of the Council. 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.

In the first place, the Court found that the judgement in *Commission v BASF* (C-137/92 P, 15th June 1994), on which the General Court relied in the judgement under appeal, cannot be applied to the present case. Therein, it is stated that a handwritten signature on an act, in particular of the President of the institution which adopted it, constitutes a means of 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 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. Hence, the Court noted that, in the judgement in *Commission v BASF*, the issue raised concerned 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. Therefore, it was not assessed 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. A relevant profile in the case in question.

Then, the Court recalled 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. According to art. 297(2) TFEU, 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 art. 297(2) TFEU. The same applies to the statements of reasons that accompanied the acts at issue, as notified to Hamas: they 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.

Moreover, according to the Court, the interpretation of art. 15 of the Council's Rules of Procedure lead to the same conclusion. Such an article must be read in the light of the relevant Treaty provisions and 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 297(2) TFEU. Such a formal obligation to sign statements of individual reasons cannot be inferred from the obligation to state reasons provided for in art. 296 TFEU either. It is necessary that the requirements that stem from that obligation are 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, declaring the first ground of appeal well founded, set aside the judgment of the General Court and dismissed the action brought by Hamas in its entirety because it did not put forward any evidence that could call into question the perfect correspondence between the text of the statements of reasons that were notified to it and that adopted by the Council which, on the other hand, produced documents proving that the statements of reasons were adopted simultaneously with the acts at issue.

## Riferimenti Normativi:

- art. 296 TFUE
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