

of the Court. The Council would take a measure or put forward a view with the exclusive, or at any rate the main purpose, of "achieving an end other than that pleaded or for the purpose of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case" (*PMOI v. Council*, judgment of 23 October 2008, § 151 and case law there cited).

8. Summing-Up

42. (i) The Council Decision of 15 July 2008 was **rightly termed by the Council "decision"**, for it individualizes and implements, with regard to a set of persons, groups and entities, the general provisions of Council Regulation (EC) no 2580/2001 of 27 December 2001.

(ii) Admittedly, the Decision shows some features typical of regulations: while it specifies and names its "passive addressees" (that is the persons, groups or organizations suspected of terrorism, put on the List), it does not specify its "active addressees" (those bodies or entities with regard to which the Decision specifies the obligation deriving from the Regulation to freeze the assets and take the other restrictive measures envisaged in the Regulation). This is what the CFI in practice referred to in *Yusuf v Council and Commission* (judgment of 21 September 2005) and in *OMPI v Council and the UK* (judgment of 12 December 2006).

(iii) A Council regulation may not be distinguished from a decision by virtue of the process leading to its formation (cf. *Binderer v Commission*, 147/83, 29 January 1985), but can only be differentiated from a decision on the strength of its general scope. A decision is an act that directly and individually affects the interests and rights of specific persons, groups or entities. Since Council Decision of 15 July 2008 directly and individually affects the rights and interests of the persons, groups and entities listed in it, its title "decision" used by the Council when it passed it, is not a misnomer, but instead **its appropriate legal label**.

(iv) Even if one were to emphasize that Council Decision of 15 July 2008 shows some features typical of regulations (namely the unspecified reference to a broad range of bodies and entities that are entitled and even obliged to freeze the assets of, and take the other restrictive measures against, the persons, groups and entities enumerated in the List) one could not obliterate or pass over in silence an important fact: the Decision directly and individually affect the rights and interests of the persons, groups and entities listed in the Decision. In other words, one cannot deny that the Decision – at a minimum with regard to the natural and legal person specifically mentioned in the List – produces the effects typical of a decision and can therefore be impugned before the CFI. This fact has been clearly – albeit implicitly – recognized by the CFI when it has accepted to pronounce on the requests for annulment of the previous Council decisions and of that concerning the Council Decision of 15 July 2008.

(v) The annulment of Council Decision of 15 July 2008 by the CFI on 4 December 2008 does not quash the whole Decision but **only that part of the Decision that exclusively concerns PMOI**.

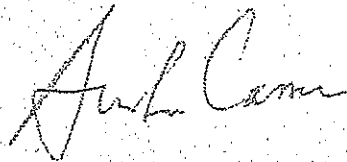
(vi) It follows that, even if one were to consider the Decision as having in part the legal nature of a regulation, such annulment would not fall under the provisions of Article 60(2) of the Court's Statute (which exclusively deals with judgments of the CFI declaring "a regulation to be void"). Hence, **the annulment does not have suspensory effects**.

(vii) The annulment of the Decision, in the limited part concerning PMOI, produces immediate effects *ex tunc*. The Council is therefore duty bound to take all the

consequential measures necessary to bring into effect such cessation of legal effects of its Decision (in the part concerning PMOI).

(viii) Were the Council to rely on its claim that the annulment under discussion does not produce immediate legal effects for the purpose of gaining time so as to pass, under its six month review of the List, a new Decision putting again PMOI on the List, it would manifestly thwart the practical effects of the annulment by the CFI, thereby not only **undermining the credibility of the CFI's role and function, but also blatantly violating the fundamental rights of due process laid down in European law and PMOI's right to judicial protection.**

(ix) In addition, the claim of the Council that the annulment does not produce immediate effects may amount to an **abuse or misuse of power**, in that the Council uses its functions with the exclusive purpose of "achieving an end other than that pleaded or for the purpose of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case."



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Florence, 3 January 2009