Annotated version of the official translation by WSRW and Emmaus Stockholm

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)
10 December 2015[1]

(External relations — Agreement in the form of an Exchange of Letters between the European Union and Morocco — Reciprocal liberalisation of agricultural products, processed agricultural products, fish and fishery products — Application of the agreement to Western Sahara — Front Polisario — Action for annulment — Capacity to bring legal proceedings — Direct and individual concern — Admissibility — Conformity with international law — Obligation to state reasons — Rights of defence)

Case T-512/12

Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario), represented initially by C.-E. Hafiz and G. Devers, and subsequently by G. Devers, lawyers,

applicant,

Council of the European Union, represented by S. Kyriakopoulou, Á. de Elera-San Miguel Hurtado, A. Westerhof Löfflerová and N. Rouam, acting as Agents,

defendant,

supported by

European Commission, represented initially by F. Castillo de la Torre, E. Paasivirta and D. Stefanov, and subsequently by F. Castillo de la Torre and E. Paasivirta, acting as Agents,

intervener,

ACTION for annulment of Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European

[1] Language of the case: French. Footnotes, hypertext links and annexes were added by the annotators.

Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2012 L 241, p. 2),

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias (Rapporteur), President, M. Kancheva and C. Wetter, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written procedure and further to the hearing on 16 June 2015,

gives the following

Judgment

Legal Background

The international status of Western Sahara

1 Western Sahara is a territory in north-west Africa bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south, while its west coast faces the Atlantic. It was colonised by the Kingdom of Spain, following the Berlin (Germany) Conference of 1884 and, from the Second World War, it was a province of Spain. After its independence in 1956, the Kingdom of Morocco demanded the 'liberation' of Western Sahara, considering that that territory belonged to it.[2]

2 On 14 December 1960, the General Assembly of the United Nations Organisation ('the UN') adopted Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples.

3 In 1963, following the transmission of information by the Kingdom of Spain pursuant to Article 73(e) of the Charter of the United Nations, the UN added Western Sahara to its list of non-self-governing territories. It is still on that list.

4 On 20 December 1966, the UN General Assembly adopted Resolution 2229 (XXI) on the Question of Ifni and the Spanish Sahara, reaffirming the 'inalienable right of the

[2] The international boundaries of Western Sahara have been defined by several treaties concluded between the French Republic and the Kingdom of Spain during the colonial period. The southern and eastern boundaries with the Islamic Republic of Mauritania were established by the "Convention pour la délimitation des possessions françaises et espagnoles dans l'Afrique occidentale, sur la côte du Sahara et sur la côte du Golfe de Guinée", signed in Paris on 27 June 1900. The Northern boundary of Western Sahara with the territory of the Kingdom of Morocco was delimited by two conventions, the Paris Convention signed on 3 October 1904, and the Madrid Convention signed on 27 November 1912. Its delimitation has been slightly corrected by the Madrid Convention signed on 19 December 1956. All these international treaties are available in the written Statements and Documents submitted by the Kingdom of Spain, during the pleadings in the Advisory Opinion of 16 October 1975 on Western Sahara.
It is worth noting that, in the aftermath of the Houston Agreements, the Polisario Front and the Kingdom of Morocco concluded, on 29 August 1997, the Lisbon Compromise Agreement on Troop Confinement. Its paragraph 3 reads as follows: "This compromise shall in no way change, alter or otherwise affect the internationally recognized boundaries of Western Sahara, and shall not serve as precedent for any argument that such boundaries have changed or been altered."

peoples … of the Spanish Sahara to self-determination'. It requested the Kingdom of Spain, as the administering power, to 'determine, at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under [UN] auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination'.

5 The applicant, the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) was created on 10 May 1973. According to Article 1 of its constituting document, drawn up at its 13th Congress in December 2011, it is 'a national liberation movement, the fruit of the long resistance of the Sahrawi people against the various forms of foreign occupation'.[3]

6 On 20 August 1974, the Kingdom of Spain informed the UN that it proposed to organise a referendum in Western Sahara under UN auspices.

7 By Resolution 3292 (XXIX) on the Question of the Spanish Sahara, adopted on 13 December 1974, the UN General Assembly decided to request the International Court of Justice for an Advisory Opinion on whether Western Sahara (Rio de Oro and Sakiet El Hamra) was, at the time of its colonisation by the Kingdom of Spain, a territory belonging to no one (*terra nullius*). If the answer to the first question was in the negative, it also requested the International Court of Justice to rule on the issue of the legal ties between Western Sahara and the Kingdom of Morocco and the Mauritanian entity. Furthermore, the UN General Assembly called upon the Kingdom of Spain, which it treated as the administering power, to postpone the referendum that it was planning to organise in Western Sahara until the General Assembly had decided on the policy to be pursued in order to accelerate the decolonisation process in the territory. It also requested the special committee in charge of studying the situation with regard to the implementation of the declaration mentioned in paragraph 2 above 'to keep the situation in the [t]erritory under review, including the sending of a visiting mission to the [t]erritory'.

8 On 16 October 1975, the International Court of Justice handed down the Advisory Opinion requested (Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12). According to that Opinion, at the time of colonisation by the Kingdom of Spain, Western Sahara (Rio de Oro and Sakiet El Hamra) was not a territory belonging to no one (*terra nullius*). The International Court of Justice also observed in its Opinion that Western Sahara had legal ties with the Kingdom of Morocco and the Mauritanian entity, but that the materials and information presented to it did not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus, it stated, in paragraph 162 of its Opinion, that it had not found legal ties of such a nature as might affect the application of UN General

[3] On 21 June 2015, the Polisario Front deposited with the Swiss Federal Council the following unilateral declaration: "In accordance with Article 96.3 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, the Frente POLISARIO, as the authority representing the people of Western Sahara struggling for self-determination, hereby undertakes to apply the 1949 Geneva Conventions of 1949 and Protocol I in the conflict between it and the Kingdom of Morocco." The Swiss Federal Council notified this declaration to the Governments of the States parties to the Geneva Conventions on 26 June 2015.

Assembly Resolution 1514 (XV) of 14 December 1960 on the Granting of Independence to Colonial Countries and Peoples (see paragraph 2 above) as regards the decolonisation of Western Sahara and, in particular, the application of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory.

9 In the autumn of 1975 the situation in Western Sahara deteriorated. In a speech delivered the same day as the publication of the abovementioned Opinion of the International Court of Justice, the King of Morocco, who took the view that 'everyone' had recognised that Western Sahara belonged to Morocco and that 'it only remained for the Moroccans to occupy [their] territory', called for the organisation of a 'peaceful march' towards Western Sahara with the participation of 350 000 persons.[4]

10 The UN Security Council ('the Security Council') called on the parties concerned and the interested parties to show restraint and moderation and expressed its concern with regard to the serious situation in the region with three resolutions on Western Sahara, namely Resolutions 377 (1975) of 22 October 1975, 379 (1975) of 2 November 1975 and 380 (1975) of 6 November 1975. In the last of those resolutions, it deplored the holding of the march announced by the King of Morocco and demanded that the Kingdom of Morocco immediately withdraw all the participants of that march from the territory of Western Sahara.

11 On 14 November 1975, a declaration of principle on Western Sahara (the Madrid Accords) was signed in Madrid (Spain) by the Kingdom of Spain, the Kingdom of Morocco and the Islamic Republic of Mauritania.[5] In that declaration, the Kingdom of Spain reiterated its decision to decolonise Western Sahara. Further, it was agreed that the powers and responsibilities of the Kingdom of Spain, as the administering power in Western Sahara, would be transferred to a temporary tripartite administration.

12 On 26 February 1976, the Kingdom of Spain informed the UN Secretary-General that from that date it was withdrawing its presence from the Territory of Western Sahara and that, henceforward, it considered itself exempt from any responsibility of any international nature in connection with the administration of the territory. In the meantime, an armed conflict between the Kingdom of Morocco, the Islamic Republic of Mauritania and the Front Polisario had begun in Western Sahara.

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[4] In the Green March Speech (6 November 1975), the King of Morocco, Hassan II rejected the European-made notion of sovereignty and referred to "Muslim law." According to his Majesty, the legal ties existing prior to the colonial period between Western Sahara and the Kingdom of Morocco, as recognized by the ICJ, would be sufficient, under "international Muslim law", to justify the recovery of Western Sahara by the Kingdom of Morocco. See *Annuaire de l'Afrique du Nord*, 1975, pp. 980-985.

[5] On the impossibility for the Kingdom of Spain to dispose of Western Sahara, see Separate Opinion of Judge de Castro, *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 145: " Once it is established that the status of Western Sahara is that of a non-self-governing territory, Spain cannot recognize the right of another State to claim the territory, nor can it concede the existence of the titles of sovereignty of any State whatsoever, nor agree to arbitration over the sovereignty, nor make an agreement for partition of the territory, nor decide on its joint exploitation, nor attribute sovereignty over it to itself."
On the impossibility for the Kingdom of Spain to transfer unilaterally its responsibility as the administering power of Western Sahara, see Corell H., "Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council", 12 February 2002, UN Doc S/2002/161.
On the consequences under Spanish law of the unlawfulness of the Madrid Agreement, see Audiencia Nacional, Criminal Chamber, 21 November 2014, case n°40/2014, *Case of the Gdeim Izik camp* (Annex 1).

13 On 14 April 1976, the Kingdom of Morocco and the Islamic Republic of Mauritania signed an agreement relating to their border, according to which they divided up the Territory of Western Sahara between themselves.[6] However, pursuant to a peace agreement concluded in August 1979 between it and the Front Polisario,[7] the Islamic Republic of Mauritania withdrew from the Territory of Western Sahara. Following that withdrawal, Morocco extended its occupation to the territory evacuated by Mauritania.[8]

14 In Resolution 34/37 of 21 November 1979 on the Question of Western Sahara, the UN General Assembly reaffirmed the 'inalienable right of the people of Western Sahara to self-determination and independence' and welcomed the peace agreement between the Islamic Republic of Mauritania and the Front Polisario (paragraph 13 above). It also deeply deplored 'the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory recently evacuated by Mauritania'. It urged the Kingdom of Morocco to join in the peace process and, to that end, it recommended that the Front Polisario, 'the representative of the people of Western Sahara, should participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara'.

15 The armed conflict between the Front Polisario and the Kingdom of Morocco continued. However, on 30 August 1988[9] the two parties accepted, in principle, proposals for settlement put forward, in particular, by the UN Secretary-General. That plan was based on a ceasefire between the warring parties and provided for a transitional period which was to enable the organisation of a referendum on self-determination under UN supervision. By Resolution 690 (1991) of 29 April 1991 on the Situation concerning Western Sahara, the Security Council established under its authority a UN mission for the organisation of a referendum in Western Sahara (Minurso). After the deployment of the Minurso, the ceasefire between the Kingdom of Morocco and the Front Polisario has been observed on the whole, but the referendum has not yet been organised, although attempts to that effect and negotiations between the two parties concerned are continuing.

16 Currently, most of the territory of Western Sahara is controlled by the Kingdom of Morocco, while the Front Polisario controls a smaller, very sparsely populated area in the east of the territory. The territory controlled by the Front Polisario is separated from that controlled by the Kingdom of Morocco by a wall of sand[10] constructed by the latter and guarded by the Moroccan army. A large number of refugees from Western Sahara live in camps administered by the Front Polisario, situated in Algerian territory close to Western Sahara.

The contested decision and its background

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[6] See the "Convention relative au tracé de la frontière d'Etat établie entre la République Islamique de Mauritanie et le Royaume du Maroc", done at Rabat, 14 April 1976, *Annuaire de l'Afrique du Nord*, 1976, pp. 848-849. See also the "Accord de cooperation économique entre la République Islamique de Mauritanie et le Royaume du Maroc pour la mise en valeur du territoire saharien récupéré", done at Rabat, 14 April 1976, *Annuaire de l'Afrique du Nord*, 1976, pp. 849-850.

[7] Available at peacemaker.un.org.

[8] On the annexation of Western Sahara under Moroccan domestic law, see *Annuaire de l'Afrique du Nord*, 1976, pp. 851-854 and *Annuaire de l'Afrique du Nord*, 1979, pp. 956-957.

[9] Available at peacemaker.un.org.

[10] On the Berm, see http://removethewall.org.

17 The Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2000 L 70, p. 2) ('the Association Agreement with Morocco') was concluded in Brussels on 26 February 1996.

18 Pursuant to Article 1 thereof, it establishes an association between the European Community and the European Coal and Steel Community (designated together in the Association Agreement with Morocco as the 'Community') and their Member States, of the one part, and the Kingdom of Morocco, of the other part. The Association Agreement with Morocco is subdivided into eight titles relating, respectively, to the free movement of goods, the right of establishment and services, '[p]ayments, [c]apital, [c]ompetition and [o]ther [e]conomic [p]rovisions', economic cooperation, social and cultural cooperation, financial cooperation and, lastly, institutional, general and final provisions. The Association Agreement with Morocco also contains seven annexes of which the first six list the goods covered by certain provisions of Articles 10, 11 and 12 thereof (which all appear under the title relating to the free movement of goods), whereas the seventh relates to intellectual, industrial and commercial property. In addition, five protocols relating, respectively, to the arrangements applying to imports into the Community of agricultural products originating in Morocco, the arrangements applying to imports into the Community of fishery products originating in Morocco, the arrangements applying to imports into Morocco of agricultural products originating in the Community, the definition of 'originating products' and methods of administrative cooperation and, finally, mutual assistance in customs matters between the administrative authorities, are annexed to the Association Agreement with Morocco. Protocols 1, 4 and 5 contain their own annexes which, in the case of Protocol 4 relating to the definition of 'originating products', are very voluminous.

19 The Association Agreement with Morocco, the protocols annexed to it and the declarations and exchanges of letters annexed to the final act were approved on behalf of the European Community and the European Coal and Steel Community by Decision 2000/204/EC, ECSC of the Council and of the Commission of 24 January 2000 on the conclusion of the Association Agreement with Morocco (OJ 2000 L 70, p. 1).

20 Pursuant to Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Association Agreement with Morocco (OJ 2012 L 241, p. 2) ('the contested decision'), the Council of the European Union approved on behalf of the European Union the Agreement in the form of an Exchange of Letters between the Union and Kingdom of Morocco concerning reciprocal liberalisation measures, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Association Agreement with Morocco.

21 The text of the agreement approved by the contested decision, which was published in the *Official Journal of the European Union*, deletes Article 10 of the Association Agreement with Morocco, in Title II thereof, relating to the free movement of goods and amends Articles 7, 15, 17 and 18 of the same title and the heading of Chapter II, also under that title. Furthermore, the agreement approved by the contested decision

replaces the text of Protocols 1 to 3 of the Association Agreement with Morocco.

Procedure and forms of order sought

22 By application lodged at the Registry of the General Court on 19 November 2012, the applicant brought the present action. On 2 and 31 January 2013, in response to a request to put the application in order, the applicant filed evidence, inter alia, that the authority granted to its lawyer had been properly conferred on him by a person authorised to act on behalf of the Front Polisario, and its constituting document.

23 On 16 April 2013, after the Council's defence was lodged, the General Court asked the applicant, by way of a measure of organisation of procedure, to answer a number of questions. In that context, it asked the applicant to indicate, with supporting evidence, whether it was a legally constituted authority under the law of an internationally recognised State. In addition, it requested the applicant to submit its observations on the arguments set out in the Council's defence, according to which the action should be dismissed as inadmissible.

24 The applicant answered the questions of the General Court by document lodged at the General Court Registry on 26 September 2013.

25 By order of the President of the Eighth Chamber of the General Court of 6 November 2013, the European Commission was granted leave to intervene in support of the form of order sought by the Council. It lodged its statement in intervention on 17 December 2013. The Council and the applicant submitted their observations on the statement in intervention on 24 January and 20 February 2014 respectively.

26 At the proposal of the Judge-Rapporteur, the General Court (Eighth Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, it asked the Council and the Commission to answer a question. The parties replied within the time prescribed.

27 By document lodged at the Court Registry on 2 June 2015, the applicant sought leave to add three documents to the file that had not previously been submitted, which it regarded as relevant for the resolution of the dispute. By decision of 12 June 2015, the President of the Eighth Chamber of the General Court decided to add that request and the documents annexed to it to the case file.

28 The defendant and the intervener submitted their observations relating to the documents in question at the hearing. In that context, the Council argued that they had been submitted out of time and that, in any event, they did not add any new evidence to the proceedings. For its part, the Commission expressed reservations as to their relevance to the resolution of the dispute.

29 The applicant claims that the General Court should annul the contested decision and 'as a consequence, all the implementing acts'.

30 However, at the hearing, the applicant's representative indicated that the reference to 'all implementing acts' resulted from a clerical error and that the applicant's form of order should be understood as meaning that it requested only the annulment of the contested

decision. Formal notice of that statement was taken in the minutes of the hearing.

31 Furthermore, in its submissions on the Commission's statement in intervention, the applicant sought, in particular, an order that the Council and the Commission pay the costs.

32 The Council claims that the General Court should:
- dismiss the action as inadmissible;
- if the General Court were to declare the action to be admissible, dismiss the action as unfounded;
- order the applicant to pay the costs.

33 The Commission supports the Council's form of order seeking to have the action dismissed as inadmissible or, in the alternative, as unfounded and, in any event, claims that the applicant should be ordered to pay the costs.

Admissibility

The capacity of the Front Polisario to bring proceedings

34 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

35 Article 44(5) of the Rules of Procedure of the General Court of 2 May 1991, which were applicable at the time the application was lodged, provided as follows:

> 'An application made by a legal person governed by private law shall be accompanied by:
>
> (a) the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law;
>
> (b) proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for the purpose.'

36 Additionally, under Article 44(6) of the Rules of Procedure of 2 May 1991, if the application does not comply with the requirements set out in Article 44(3) to (5) thereof, the Registrar is to prescribe a reasonable period within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the documents mentioned in those provisions.

37 In the application, the applicant states that it is 'a subject of international law which has the international legal personality granted to national liberation movements under international law'. It also claims, relying on a number of documents that it attached to the application, that it has been 'recognised as representing the Sahrawi people … by the bodies of the UN, the European Union and the [Kingdom of] Morocco, in

negotiations'. It adds that both the Security Council and its General Assembly have recognised the validity of the peace agreement it concluded with Mauritania in August 1979 (see paragraph 13 above). Finally, it relies on the fact that, in two resolutions, the European Parliament requested it and the Kingdom of Morocco to fully cooperate with the International Committee of the Red Cross and with the UN.

38 The applicant did not attach to its application any documents such as those laid down in Article 44(5) of the Rules of Procedure of 2 May 1991. The Registry set a time limit for the purposes of putting the application in order, following which the applicant produced copies of its constituting document, a mandate to its lawyer drawn up by a person duly authorised by its constituting document, namely by its Secretary-General, and evidence of his election. However, it has not produced any other documents to show that it has a legal personality.

39 In those circumstances, the General Court adopted the measure of organisation of procedure mentioned in paragraph 23 above.

40 In answer to the questions of the General Court, the applicant declared as follows:
'The Front Polisario is not a legally constituted body according to the law of any State, whether internationally recognised or not. In the same way as a foreign State or the European Union itself, the Front Polisario cannot base its legal existence on the internal law of a State.'

41 It also stated that it was 'a subject of public international law' and added:
'There is absolutely no requirement for the Front Polisario to produce evidence of its constitution according to the national law of an internationally recognised State. As the incarnation of the sovereignty of the Sahrawi people, its existence cannot depend on the national legal system of the former colonial power, the Kingdom of Spain, which has failed to fulfil its international duties for 40 years and, even less on the occupying power, Morocco, which imposes its national legal system by an illegal use of armed force …'

42 The Council asserts that the applicant 'has not proved the existence of its legal capacity to bring the present action'. It argues that the applicant appears to equate its status of representative of the people of Western Sahara to the existence of legal personality as of right with regard to international law, which is specific to sovereign States. The Council does not accept that those two concepts may be treated in the same way or that the applicant may be treated in the same way as a State.

43 The Council adds that even if the applicant were recognised as a national liberation movement and that, as a result, it has legal personality, that does not mean automatically that it has a right to bring legal proceedings before the Court of the European Union. According to the Council, the applicant's recognition by the UN as the representative of the people of Western Sahara entitles it, at most, to take part in negotiations concerning the status of Western Sahara which are conducted by the UN and, together with the Kingdom of Morocco, to be its negotiating partner for that purpose. However, that recognition does not confer on it *locus standi* before courts and tribunals outside the UN context which are not charged with resolving the international dispute between it and the Kingdom of Morocco.

44 The Commission states that it does not challenge the ‘capacity as representative of the Sahrawi people enjoyed by the Front Polisario which was recognised by the UN General Assembly’.

45 However, it adds:

> ‘[T]he legal personality of the Front Polisario is questionable. As the representative of the Sahrawi people it should have at least a functional and transitional legal personality.’

46 Having regard to the parties’ arguments, first of all, it should be stated that, in the present case, the issue is not to determine whether the Front Polisario may be classified as a ‘national liberation movement’ or even whether such a classification, assuming it to be correct, is sufficient to confer it with legal personality. The question to be decided by the General Court is whether the Front Polisario may bring an action before it seeking the annulment of the contested decision, pursuant to Article 263, fourth paragraph, TFEU.

47 Next, it is clear from the wording of Article 263, fourth paragraph, TFEU that only natural persons or entities with legal personality may bring an action for annulment under that provision. Thus, in its judgment of 27 November 1984 in *Bensider and Others* v *Commission* (50/84, ECR, EU:C:1984:365, paragraph 9), the Court of Justice of the European Union dismissed as inadmissible an action in so far as it had been brought by a commercial company which, at the time that action was brought, had not yet acquired legal personality.

48 However, in its judgment of 28 October 1982 in *Groupement des Agences de voyages* v *Commission* (135/81, ECR, EU:C:1982:371, paragraph 10), the Court of Justice observed that the concept of ‘legal person’, as it appears in Article 263, fourth paragraph, TFEU, is not necessarily the same as those specific to the various legal systems of the Member States. Thus, in the case which gave rise to that judgment, the Court of Justice declared admissible an action brought by an ‘an ad hoc association of 10 travel agencies grouped together in order to respond jointly to an invitation to tender’ against a Commission decision excluding that association from an invitation to tender. The Court of Justice observed, in that regard, that the Commission had itself acknowledged the admissibility of the offer submitted by the association concerned and had rejected it after a comparative examination of all the tenderers. Consequently, the Court of Justice held that the Commission could not challenge the capacity to institute proceedings of a body that it had allowed to participate in an invitation to tender and to which it had addressed a negative decision after a comparative examination of all the tenderers (judgment in *Groupement des Agences de voyages* v *Commission*, EU:C:1982:371, paragraphs 9 to 12).

49 Similarly, in its judgments of 8 October 1974 in *Union syndicale — Service public européen and Others* v *Council* (175/73, ECR, EU:C:1974:95, paragraphs 9 to 17), and *Syndicat général du personnel des organismes européens* v *Commission* (18/74, ECR, EU:C:1974:96, paragraphs 5 to 13), the Court of Justice listed a certain number of factors, namely, first, the fact that the officials of the European Union enjoy the right of association and, in particular, may be members of trade unions or staff associations, second, the fact that the applicants in those two cases were associations organising a

substantial number of officials and servants of the EU institutions, third, the fact that their constitutional structures were such as to endow them with the necessary independence to act as responsible bodies in legal matters and, fourth, the fact that the Commission officially recognised them as a negotiating bodies, in order to conclude that it was impossible to deny them capacity to institute proceedings before the Courts of the European Union, by bringing an action for annulment in compliance with the conditions of Article 263, fourth paragraph, TFEU.

50 Finally, it should also be recalled that, in its judgment of 18 January 2007 in *PKK and KNK* v *Council* (C-229/05 P, ECR, EU:C:2007:32, paragraphs 109 to 112), the Court of Justice declared admissible an action for annulment brought by an entity subject to restrictive measures in the context of combating terrorism, without examining the question whether that entity had legal personality. Referring to the case-law according to which the European Union is a Union under the rule of law, the Court of Justice observed that, if the EU legislature regarded the entity in question as having an existence sufficient to be the subject of the restrictive measures at issue, consistency and justice required that that entity be recognised as having the capacity to challenge that decision. Any other conclusion would have the result that an organisation could be included in the list concerned without being able to bring an action challenging its inclusion.

51 However, although the case-law cited above shows that the Courts of the European Union may recognise the right to take part in proceedings before them of an entity which does not have legal capacity like that conferred by law on a Member State or a foreign State, or which does not have legal personality under that law, it must be observed that, in its order of 14 November 1963 in *Lassalle* v *Parliament* (15/63, ECR, EU:C:1963:47, p. 50), the Court of Justice observed that the basic aspects of the capacity to bring legal proceedings before the Courts of the European Union include, inter alia, independence and responsibility, even limited, and it dismissed an application for leave to intervene submitted by the Staff Committee of the European Parliament which, it declared, did not satisfy those criteria. That finding is also reflected in the case-law cited in paragraph 49 above, since it explains the finding of the Court of Justice that the constituting document and the internal structure of the unions having brought actions in the cases concerned gave them the independence necessary to act as responsible entities in legal relationships.

52 In the light of that case-law, it must be concluded that, in certain specific cases, an entity which does not have a legal personality under the law of a Member State or of a non-member State may nevertheless be regarded as a ‘legal person’ within the meaning of Article 263, fourth paragraph, TFEU and be allowed to bring an action for annulment on the basis of that provision (see, to that effect, judgments in *Groupement des Agences de voyages* v *Commission*, cited in paragraph 48 above, EU:C:1982:371, paragraphs 9 to 12, and *PKK and KNK* v *Council*, cited in paragraph 50 above, EU:C:2007:32, paragraphs 109 to 112). That is the case, in particular, where by their acts or actions, the European Union and its institutions treat the entity in question as being a distinct person, which may have rights specific to it, or be subject to obligations or restrictions.

53 However, that presupposes that the entity in question has constituting documents and an internal structure giving it the independence necessary to act as a responsible body in legal matters (see, to that effect, order in *Lassalle* v *Parliament*, cited in paragraph 51 above, EU:C:1963:47, p. 50; judgments in *Union syndicale — Service public européen*

and Others v *Council*, cited in paragraph 49 above, EU:C:1974:95, paragraphs 9 to 17, and *Syndicat général du personnel des organismes européens* v *Commission*, cited in paragraph 49 above, EU:C:1974:96, paragraphs 5 to 13).

54 In the present case, it must be held that the conditions mentioned in paragraph 53 above are fulfilled as far as concerns the Front Polisario. It has its own constituting document, of which it produced a copy, and a fixed internal structure, having, inter alia, a secretary-general who gave authority to his representative to bring the present action. To all appearances, that structure enables it to act as a responsible body in legal relations, especially since, as evidenced by the various documents it relies on, it has participated in UN-led negotiations and has even signed a peace agreement with an internationally recognised State, namely the Islamic Republic of Mauritania.

55 As regards the findings mentioned in paragraph 52 above, it is certainly true that the Front Polisario has not been the subject of acts of the European Union or its institutions of a nature similar to those at issue in the cases which gave rise to the judgments in *Groupement des Agences de voyages* v *Commission*, cited in paragraph 48 above (EU:C:1982:371), and *PKK and KNK* v *Council*, cited in paragraph 50 above (EU:C:2007:32). The two resolutions of the Parliament relied on by it (see paragraph 37 above) are of a different nature, since they do not produce, at least with regard to it, binding legal effects.

56 It is nonetheless true that, as is clear from the information summarised in paragraphs 1 to 16 above, Western Sahara is a territory whose international status is currently undetermined. Both the Kingdom of Morocco and the applicant stake claim to it and the UN has worked for many years towards a peaceful resolution of that dispute. As is clear from the pleadings of the Council and the Commission, both the European Union and its Member States refrain from any intervention or support for either side in that dispute and, should the case arise, will accept any solution decided in accordance with international law led by the UN. In that connection, the Commission adds that it supports the UN Secretary-General's efforts to reach a fair, long-lasting and mutually acceptable political solution, which allows self-determination for the people of Western Sahara. It continues by stating that 'in the meantime, Western Sahara remains a non-self-governing territory administered de facto by the Kingdom of Morocco'.

57 First, it must therefore be held that the applicant is one of the parties to a dispute concerning the fate of that non-self-governing territory and, as a party to that dispute, it is mentioned by name in the texts relating to it, including the resolutions of the Parliament mentioned in paragraph 37 above.

58 Second, it must also be stated that, currently, it is impossible for the Front Polisario to be formally constituted as a legal person under the law of Western Sahara, as this law is still non-existent. Although it true, as the Commission observes, that the Kingdom of Morocco administers de facto practically all the territory of Western Sahara, it is a factual situation opposed by the Front Polisario and which is precisely the source of the dispute between it and the Kingdom of Morocco that the UN is trying to resolve. It is certainly possible for the Front Polisario to be constituted as a legal person in accordance with the law of a foreign State, but it cannot be required to do so.

59 Third, lastly, it must be recalled that the Council and the Commission themselves

recognise that the international status and legal position of Western Sahara present the specificities mentioned in paragraph 58 above and take the view that the definitive status of that territory and, therefore, the law applicable to it must be determined in the context of the UN-led peace process. It is precisely the UN which considers the Front Polisario as being an essential participant in that process.

60 Taking account of those very specific circumstances, it must be held that the Front Polisario must be regarded as a 'legal person' within the meaning of Article 263, fourth paragraph, TFEU, and that it may bring an action for annulment before the Courts of the European Union even though it does not have legal personality according to the law of a Member State or a third State. Thus, as set out above, it can only have such a personality in accordance with the law of Western Sahara which, however, at the present time, is not a State recognised by the European Union and its Member States and does not have its own law.

The direct and individual concern to the Front Polisario of the contested decision

61 The applicant asserts that it is individually affected by the contested decision 'by reason of the legal qualities specific to it, because it is the legitimate representative of the Sahrawi people, recognised as such by the UN and the European Union'. It adds that it 'is the sole organisation qualified to represent the people who live' in the territory of Western Sahara.

62 It also states that the contested decision 'directly produces effects on the legal position of the Sahrawi people because it does not leave any discretion to the Member States as to the application' of the agreement it refers to. According to the applicant, the implementation of that agreement does not require the Member States to adopt implementing measures and each Member State, the Kingdom of Morocco and any undertaking may rely on the direct effect of the contested decision.

63 The Council, supported by the Commission, denies that the applicant is directly and individually concerned by the contested decision.

64 As regards direct concern, the Council contends that it is difficult to understand how the contested decision, which concerns the conclusion of an international agreement between the European Union and the Kingdom of Morocco, could directly affect the applicant's legal position. The Council argues that that decision cannot, by its nature, produce legal effects on third parties as it merely approves an international agreement on behalf of the European Union. Its legal effects are produced only with regard to the European Union and its institutions and not with regard to third persons.

65 As regards the individual concern of the applicant, the Council argues that the contested decision seeks to conclude an agreement between the Kingdom of Morocco and the European Union and individually concerns those two subjects alone.

66 It adds that the existence of a dispute between the applicant and the Kingdom of Morocco is not connected to the contested decision, nor is it affected in any way by the agreement concluded pursuant to it.

67 It must be recalled that Article 263, fourth paragraph, TFEU provides for two situations

in which natural or legal persons are accorded standing to institute proceedings against an act which is not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to them. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (judgments of 19 December 2013 in Telefónica v Commission, C-274/12 P, ECR, EU:C:2013:852, paragraph 19, and 27 February 2014 in *Stichting Woonlinie and Others v Commission*, C-133/12 P, ECR, EU:C:2014:105, paragraph 31).

68 According to the case-law, the concept of 'regulatory act' within the meaning of Article 263, fourth paragraph, TFEU must be understood as covering all acts ofgeneral application other than legislative acts (judgment of 3 October 2013 in *Inuit Tapiriit Kantami and Others v Parliament and Council*, C-583/11 P, ECR, EU:C:2013:625, paragraphs 60 and 61).

69 The distinction between a legislative act and a regulatory act, according to the FEU Treaty, is based on the criterion of the procedure, legislative or not, which led to its adoption (order of 6 September 2011 in *Inuit Tapiriit Kantami and Others* v *Parliament and Council, T-18/10, ECR, EU:T:2011:419, paragraph 65).*

70 In that connection, it must be recalled that Article 289(3) TFEU states that legal acts adopted by legislative procedure constitute legislative acts. A distinction is made between the ordinary legislative procedure, as stated in Article 289(1), second sentence, TFEU, which is defined in Article 294 TFEU, and special legislative procedures. In that connection, Article 289(2) TFEU provides that in the specific cases provided for by the Treaties, the adoption, inter alia, of a decision by the Council with the participation of the Parliament constitutes a special legislative procedure.

71 In the present case, as appears from its preamble, the contested decision was adopted following the procedure defined in Article 218(6)(a) TFEU, which provides that the Council, on a proposal by the negotiator, in this case the Commission, is to adopt a decision concluding the agreement after obtaining the consent of the European Parliament. That procedure satisfies the criteria set out in Article 289(2) TFEU and therefore constitutes a special legislative procedure.

72 It follows that the contested decision is a legislative act and, accordingly does not constitute a regulatory act. Therefore it is the first of the two cases considered in paragraph 67 above which is relevant in the present case. Consequently, taking account of the fact that the applicant is not the addressee of the contested decision, it must be shown that that decision directly and individually concerns the applicant in order for the present proceedings to be admissible.

73 In order to examine that issue, it must be determined whether the agreement, the conclusion of which was approved by the contested decision, applies to the territory of Western Sahara, since the applicant may be directly and individually concerned by the contested act by reason of its status as a party involved in the process of deciding the fate of the territory concerned (see paragraph 57 above) and its claim to be the legitimate representative of the Sahrawi people (see paragraph 61 above).

74 In that connection, the Council and the Commission assert that, under Article 94 thereof,

the Association Agreement with Morocco applies to the territory of the Kingdom of Morocco. The Council submits that, as that article does not define the territory of the Kingdom of Morocco, the Association Agreement with Morocco does not prejudge the legal status of Western Sahara and does not lead to any formal recognition of the rights claimed by the Kingdom of Morocco with regard to that territory. No provision of the contested decision, or the agreement approved by it, provides that the scope of the latter also extends to Western Sahara.

75 The Commission recalls, in that connection, the terms of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, approved by Resolution 2625 (XXV) of the UN General Assembly of 24 October 1970, according to which '[t]he territory of a colony or other Non-Self-Governing Territory has, under the [United Nations Charter], a status separate and distinct from the territory of the State administering it' and 'such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the [United Nations] Charter, and particularly its purposes and principles'. According to the Commission, it follows that a non-self-governing territory does not belong to the administering power, but has a separate status with regard to international law. International agreements concluded by the power administering a non-self-governing territory do not apply on that territory, except by express extension. Therefore, the Commission asserts that, in the present case, in the absence of such an extension, the Association Agreement with Morocco applies only to products originating in the Kingdom of Morocco, a State which, under international law, does not include Western Sahara.

76 The Front Polisario replies that the Kingdom of Morocco does not administer Western Sahara under Article 73 of the United Nations Charter, but occupies it militarily. The UN considers that the Kingdom of Spain is still the power administering Western Sahara. The Kingdom of Morocco is an occupying power for the purposes of international humanitarian law.

77 The Front Polisario adds that the Kingdom of Morocco applies to Western Sahara the agreements concluded with the European Union including the Association Agreement with Morocco. It is a well-known fact, known by both the Council and the Commission. The Front Polisario relies on a number of elements in support of that statement.

78 First, it relies on the common response given by the High Representative of the Union for Foreign Affairs and Security Policy, Vice-President of the Commission, Catherine Ashton, on behalf of the Commission to the written questions from Members of the European Parliament with the references E-001004/11, P-001023/11 and E-002315/11 (OJ 2011 C 286 E, p. 1).

79 Second, it argues that, as a number of documents available on the website of the Commission Directorate-General (DG) 'Health and Food Safety' show, after the conclusion of the Association Agreement with Morocco, the Food and Veterinary Office, which is part of that DG, made a number of visits to Western Sahara to check of compliance by the Moroccan authorities with health standards established by the European Union.

80 Third, it argues that the list of Moroccan exporters approved under the Association Agreement with Morocco, published on the Commission's website, contains, in total, 140 undertakings which are established in Western Sahara.

81 Requested, by measure of organisation of procedure, to submit its observations on the Front Polisario's allegations set out above, the Council stated that it fully supported the UN's efforts to find a stable and permanent solution to the question of Western Sahara and that no EU institution had ever recognised, de facto or *de jure*, Moroccan sovereignty over Western Sahara.

82 Nonetheless, according to the Council, the EU institutions cannot ignore the facts, that is to say, that the Kingdom of Morocco is the power which is de facto administering Western Sahara. Therefore, as regards the territory of Western Sahara, that means that the European Union must address the Moroccan authorities, which are the only authorities which could implement the provisions of the agreement in that territory, with due regards to the interests and rights of the Sahrawi people. That fact does not lead to any recognition de facto or *de jure* of any sovereignty of the Kingdom of Morocco over the territory of Western Sahara.

83 For its part, the Commission stated, in particular, in the same context, that the common response to the written questions submitted by the Members of the European Parliament with references E-1004/11, P-1023/11 and E-2315/11 showed that exports from Western Sahara enjoyed 'de facto' (and not legal) trade preference and recalled the obligations of the Kingdom of Morocco as the 'de facto [administering] power', of a non-self-governing territory. According to the Commission, nothing in that response shows any recognition of the annexation of Western Sahara by the Kingdom of Morocco or Moroccan sovereignty of that territory.

84 As to the documents mentioned in paragraph 79 above, the Commission pointed out that they are reports of a purely technical nature by its Food and Veterinary Office. It adds that such health inspections were necessary for any products to be imported in the European Union whether or not they are covered by an association agreement. Without them, no products could be exported to the European Union from the territory in question, which would not be favourable to the interests of the local populations. The fact that those reports treat the Moroccan authority as 'the competent authority' merely reflects the status of the Kingdom of Morocco as the power de facto administering Western Sahara and does not entail any recognition of its sovereignty.

85 According to the Commission, unless it seeks to exclude all exports from Western Sahara, the Front Polisario cannot seriously claim that, in matters of public health in Western Sahara, the Food and Veterinary Office should have the Front Polisario as the sole negotiating partner. It does not exercise any real power in the territory concerned and is not in a position to ensure that exports comply with the rules on public health.

86 Finally, the Commission essentially confirms the presence on the list of approved exporters mentioned in paragraph 80 above of undertakings established in Western Sahara. However, it stated that 'as a matter of convenience', the list concerned referred to regions as defined by the Kingdom of Morocco, without that being the sign of any acknowledgement of annexation.

87 In addition, at the hearing, both the Council and the Commission indicated, in answer to a question from the General Court, that the agreement referred to by the contested decision was applied *de facto* to the territory of Western Sahara. Formal notice of that statement was taken in the minutes of the hearing.

88 It should be noted that the question asked in paragraph 73 above ultimately requires an interpretation of the agreement, the conclusion of which was approved by the contested decision.

89 It should be recalled, first of all, that an agreement concluded by the Council with a non-Member State in accordance with Articles 217 TFEU and 218 TFEU, constitutes, as far as the European Union is concerned, an act of one of the institutions of the Union, within the meaning of point (b) of the first paragraph of Article 267 TFEU; next, from the moment it enters into force the provisions of such an agreement form an integral part of the legal order of the European Union; and, finally, that, within the framework of that legal order, the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement (see, to that effect, judgment of 25 February 2010 in *Brita*, C-386/08, ECR, EU:C:2010:91, paragraph 39 and the case-law cited).

90 In addition, having been concluded by two subjects of public international law, the agreement referred to by the contested decision is governed by international law and, more specifically, as regards its interpretation, by the international law of treaties (see, to that effect, judgment in *Brita*, cited in paragraph 89 above, EU:C:2010:91, paragraph 39).

91 The international law of treaties was codified essentially in the Vienna Convention of the Law of Treaties of 23 May 1969 (United Nations Treaty Series, Vol. 1155, p. 331) ('the Vienna Convention').

92 The rules laid down in the Vienna Convention apply to an agreement concluded between a State and an international organisation, such as the agreement referred to by the contested decision, in so far as the rules are an expression of general international customary law (see, to that effect, judgment in *Brita*, cited in paragraph 89 above, EU:C:2010:91, paragraph 41). Consequently, the agreement referred to in the contested decision must be interpreted in accordance with those rules.

93 Further, the Court has held that even though the Vienna Convention does not bind either the European Union or all its Member States, a series of provisions in that convention reflect the rules of customary international law which, as such, are binding upon the EU institutions and form part of its legal order (see, judgment in *Brita*, cited in paragraph 89 above, EU:C:2010:91, paragraph 42 and the case-law cited).

94 Pursuant to Article 31 of the Vienna Convention, a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In that regard, at the same time as the context, account must be taken of any relevant rules of international law applicable in the relations between the parties.

95 In the judgment in *Brita*, cited in paragraph 89 above, (EU:C:2010:91, paragraphs 44 to 53), the Court of Justice held that an association agreement between the European

Union and the State of Israel applicable to the 'territory of the State of Israel' had to be interpreted as meaning that it did not apply to products originating in the West Bank, a territory which is situated outside the territory of the State of Israel, as is internationally recognised, but which contains Israeli-occupied settlements, controlled by the State of Israel.

96 However, the Court of Justice reached that conclusion by taking into consideration, first, the general principle of international law of the relative effect of treaties, according to which treaties do not impose any obligations, or confer any rights, on third States (*pacta tertiis nec nocent nec prosunt*), which the Court of Justice held, finds particular expression in Article 34 of the Vienna Convention, under which a treaty does not create either obligations or rights for a third State without its consent (judgment in *Brita*, cited in paragraph 89 above, EU:C:2010:91, paragraph 44), and, second, the fact that the European Union had also concluded an association agreement with the Palestinian Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, the latter being applicable inter alia, according to its terms, to the territory of the West Bank (judgment in *Brita*, cited in paragraph 89 above, EU:C:2010:91, paragraphs 46 and 47).

97 The facts of the present case are different, in so far as, in the present case, the European Union has not concluded an association agreement concerning products originating in Western Sahara, or with the Front Polisario, or with any State or other entity.

98 The agreement, the conclusion of which was approved by the contested decision, must therefore be interpreted in accordance with Article 31 of the Vienna Convention (see paragraph 94 above).

99 In accordance with that article, account must be taken in particular of the context in which an international treaty appears, such as the agreement referred to by the contested decision. All the factors mentioned in paragraphs 77 to 87 above are part of that context and show that the EU institutions were aware that the Moroccan authorities also applied the provisions of the Association Agreement with Morocco to the part of Western Sahara it controlled and did not oppose that application. To the contrary, the Commission cooperated to a certain extent with the Moroccan authorities with a view to that application and recognised the results of its application, by including undertakings established in Western Sahara among those included on the list mentioned in paragraph 74 above.

100 It must also be recalled that there is a divergence between the respective views of the European Union and the Kingdom of Morocco as to the international status of Western Sahara. If the European Union's view is adequately and correctly summarised by the Council and the Commission (see paragraphs 74 and 75 above), it is common ground that the Kingdom of Morocco has a totally different view. In its opinion, Western Sahara is an integral part of its territory.[11]

101 Thus, in Article 94 of the Association Agreement with Morocco, the reference to the territory of the Kingdom of Morocco may have been understood by the Moroccan authorities as including Western Sahara or, at least, the larger part controlled by it.

[11] *Op. cit.* note 8.

Although, as stated, the EU institutions were aware that the Kingdom of Morocco took that view, the Association Agreement with Morocco does not include any interpretation clause and no other provision which would have the result of excluding the territory of Western Sahara from its scope.

102 Account should also be taken of the fact that the agreement referred to by the contested decision was concluded 12 years after the approval of the Association Agreement with Morocco and although the latter agreement had been implemented for the whole of that period. If the EU institutions wished to oppose the application to Western Sahara of the Association Agreement, as amended by the contested decision, they could have insisted on including a clause excluding such application into the text of the agreement approved by that decision. Their failure to do so shows that they accept, at least implicitly, the interpretation of the Association Agreement with Morocco and the agreement approved by the contested decision, according to which those agreements also apply to the part of Western Sahara controlled by the Kingdom of Morocco.

103 In those circumstances, it must be held that the agreement, the conclusion of which was approved by the contested decision, placed in its context as set out above, also applies to the territory of Western Sahara or, more precisely, to the largest part of that territory which is controlled by the Kingdom of Morocco.

104 It is by taking account of that finding that the question as to whether the Front Polisario is directly and individually concerned by the contested decision must be determined.

105 As regards direct concern, it follows from settled case-law that, in order to satisfy the requirement that the decision forming the subject matter of the proceedings must be of 'direct concern' to a natural or legal person, two cumulative criteria must be met, namely, first, the contested measure must directly affect the legal situation of the individual and, second, it must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see judgment of 10 September 2009 in *Commission v Ente per le Ville Vesuviane and Ente per le Ville Vesuviane v Commission*, C-445/07 P and C-455/07 P, ECR, EU:C:2009:529, paragraph 45 and the case-law cited).

106 In that connection, it must be observed that the fact relied on by the Council (see paragraph 63 above) that the contested decision concerns the conclusion of an international agreement between the European Union and the Kingdom of Morocco does not prevent it from producing legal effects with regard to third countries.

107 According to settled case-law, a provision in an agreement concluded by the European Union and its Member States with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, judgment of 8 March 2011 in Lesoochranárske zoskupenie, C-240/09, ECR, EU:C:2011:125, paragraph 44 and the case-law cited).

108 In the present case, it must be stated that the agreement in the form of an exchange of letters concluded pursuant to the contested decision has provisions containing clear and

precise obligations, not subject, in their implementation or in their effects, to the adoption of any subsequent measures. It should be mentioned, by way of example, that Protocol 1 of the Association Agreement with Morocco, relating to the arrangements applicable to the importation into the European Union of agricultural products, processed agricultural products, fish and fishery products originating in the Kingdom of Morocco, contains Article 2, replaced pursuant to the agreement referred to by the contested decision, which provides in paragraph 1 thereof that customs duties applicable on imports into the European Union of agricultural products, processed agricultural products, fish and fishery products originating in Morocco are to be eliminated, except if otherwise provided for in paragraphs 2 and 3 of that article for the agricultural products and in Article 5 of the same Protocol for the processed agricultural products. It should also be mentioned that Protocol 2 of the Association Agreement with Morocco concerning the arrangements applicable to the importation into the Kingdom of Morocco of agricultural products, processed agricultural products, fish and fishery products originating in the European Union contains Article 2, replaced pursuant to the agreement approved by the contested decision, which contains specific tariff provisions applicable to imports into the Kingdom of Morocco of agricultural products, processed agricultural products, fish and fishery products originating in the European Union.

109 Those provisions produce effects on the legal position of the whole territory to which the agreement applies (and, therefore, the territory of Western Sahara controlled by the Kingdom of Morocco), in that they determine the conditions under which agricultural and fishery products may be exported from that territory to the European Union or may be imported from the European Union into the territory in question.

110 Those effects directly concern not only the Kingdom of Morocco, but also the Front Polisario, to the extent that, as is clear from the elements mentioned in paragraphs 1 to 16 above, the definitive international status of that territory has not yet been determined and must be determined in UN-led negotiations between the Kingdom of Morocco and, specifically, the Front Polisario.

111 For the same reason, the Front Polisario must be regarded as being individually concerned by the contested decision.

112 It must be recalled in that regard that, according to settled case-law, natural or legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgments of 15 July 1963 in *Plaumann* v *Commission*, 25/62, ECR, EU:C:1963:17, p. 107, and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 68 above, EU:C:2013:625, paragraph 72).

113 The circumstances mentioned in paragraph 110 above do indeed constitute a factual situation which distinguishes the Front Polisario from all other persons and confers on it a particular attribute. The Front Polisario is the only other participant in the UN-led negotiations between it and the Kingdom of Morocco with a view to determining the definitive international status of Western Sahara.

114 Therefore, it must be held that since the Front Polisario is directly and individually concerned by the contested decision there is, from that point of view, no doubt as to the admissibility of the action, contrary to the Council and Commission's arguments.

Substance

115 In support of its application, the Front Polisario puts forward 11 pleas in law, alleging:

- first, failure to state adequate reasons in the contested decision;
- second, failure to comply with the 'principle of consultation';
- third, infringement of fundamental rights;
- fourth, 'breach of the principle of consistency of the policy of the European Union, by failing to observe the principle of … sovereignty';
- fifth, 'breach of the fundamental values of the European Union … and the principles governing its external action';
- sixth, 'failure to achieve the objective of sustainable development';
- seventh, 'incompatibility' of the contested decision 'with the principles and objectives of the European Union's external action in the area of development cooperation';
- eighth, breach of the principle of protection of legitimate expectations;
- ninth, 'incompatibility' of the contested decision 'with several agreements concluded by the European Union';
- 10th, the 'incompatibility' of the contested decision with 'general international law';
- and, finally, 11th, the 'law of international liability in EU law'.

116 As a preliminary point, it is clear from the arguments put forward by the Front Polisario in support of all of its pleas that its action seeks the annulment of the contested decision in so far as it approves the application to Western Sahara of the agreement to which it refers. As appears from the finding set out above, concerning the fact that the Front Polisario is directly and individually concerned by the contested decision, it is precisely the fact that that agreement also applies to Western Sahara that the Front Polisario is directly and individually concerned by the contested decision.

117 It must also be stated that the Front Polisario relies on several pleas, among which the first two concern the external legality of the contested decision, while the others concern its internal legality. In substance the applicant relies on the unlawfulness of the contested decision on the ground that it infringes European Union and international law. In reality, all the pleas in law in the application concern the question as to whether there is an absolute prohibition against concluding an international agreement on behalf of the European Union which may be applied to a territory in fact controlled by a non-member State, without the sovereignty of that State over that territory being recognised by the European Union and its Member States or, more generally, by all other States ('the disputed territory') and, where relevant, the existence of discretion of the EU institutions in that regard, the limits of that discretion and the conditions for its exercise.

118 Having made those observations, first of all, the first two pleas must be examined which, as the applicant itself points out, concern the external legality of the contested decision.

First plea in law

119 The Front Polisario claims that the contested decision contains an insufficient statement of reasons. In recital 1 in the preamble thereto, that decision mentions only 'gradual implementation of greater liberalisation of reciprocal trade' and in recital 2, the 'Action Plan of the European Neighbourhood Policy including a specific provision having the objective of the further liberalisation of trade' adopted in July 2005 by the EU-Morocco Association Council. The Euro-Mediterranean policy is not limited to liberalisation of trade but encompasses other values fundamental to the EU.

120 The applicant adds that the Council did not conduct an impact assessment prior to the conclusion of the agreement. It argues that although such an assessment is optional, it becomes obligatory in the circumstances of the present case. Therefore, it is apparent that the Council has no concern for Western Sahara or for 'international legality'.

121 According to settled law, the statement of reasons required by Article 296 TFEU must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which adopted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the European Union judicature to exercise its powers of review. However, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 7 September 2006 in Commission v Spain, C-310/04, ECR, EU:C:2006:521, paragraph 57 and the case-law cited).

122 Furthermore, in the case of a measure intended to have general application, as in the present case, the statement of reasons may be limited to indicating, first, the general situation which led to its adoption and, second, the general objectives which it is intended to achieve (judgments of 22 November 2001 in *Netherlands v Council*, C-301/97, ECR, EU:C:2001:621, paragraph 189, and *Spain v Council*, cited in paragraph 121 above, EU:C:2006:521 paragraph 59).

123 Having regard to that case-law, it must be concluded that the contested decision is supported by reasons to the requisite legal standard. First, it mentions the situation as a whole which led to its adoption, namely the existence of the Association Agreement with Morocco which provides, in Article 16 thereof, for the gradual implementation of greater liberalisation of reciprocal trade in agricultural products, processed agricultural products, fish and fishery products (recital 1 of the contested decision), and the Action Plan of the European Neighbourhood Policy, adopted by the EU-Morocco Association Council in July 2005, which contains a specific provision having the objective of the further liberalisation of trade in agricultural products, processed agricultural products, fish and fishery products (recital 2 of the contested decision). Second, it sets out the general objectives that it intends to achieve, namely, greater liberalisation of reciprocal trade in agricultural products, processed agricultural products, fish and fishery products between the EU and the Kingdom of Morocco.

124 As regards the Front Polisario's arguments that the Council has no concern for Western Sahara, that it failed to conduct an impact assessment prior to the conclusion of the agreement referred to by the contested decision and, that if the Council had considered

the question of the applicability to the territory of Western Sahara of the agreement referred to by the contested decision, it would not have concluded that agreement, it must be stated that they have no relation to the supposed breach of the duty to state reasons.

125 In reality, by those arguments, the Front Polisario criticises the Council for failing to examine the relevant evidence in the case before adopting the contested decision. To be able to analyse those arguments, it must be determined, first of all, whether and, if necessary, under what conditions, the Council could approve the conclusion of an agreement with the Kingdom of Morocco which also applies to the territory of Western Sahara.

126 Accordingly, those arguments are examined in paragraph 223 et seq., with the applicant's other arguments relating to the implementation and compliance by the EU institutions of their discretion.

127 Subject to the examination of those arguments, the first plea must be dismissed.

The second plea in law

128 The Front Polisario claims that the contested decision is 'void for infringement of an essential procedural requirement', as the Council did not consult it before concluding the agreement referred to by that decision, even though it is the only 'legitimate representative of the Sahrawi people'.

129 The Front Polisario takes the view that the Council's obligation to consult it derives from Article 41 of the Charter of Fundamental Rights of the European Union. In that context, it relies on Article 220(1) TFEU which provides as follows:

> 'The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.
>
> The Union shall also maintain such relations as are appropriate with other international organisations.'

130 Finally, the Front Polisario relies on an 'obligation of consultation of international origin' which, in its opinion, the Council has with respect to it.

131 The Council and the Commission challenge the applicant's arguments claiming, in particular, that the adversarial principle does not apply to procedures of a legislative nature.

132 It should be recalled that although Article 41(1) of the Charter of Fundamental Rights provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union, Article 41(2)(a) thereof provides that that right includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken. Thus, the wording of that provision only concerns individual measures.

133 Furthermore, the General Court has held on many occasions that the case-law on the right to be heard cannot be transposed to the context of a legislative process leading to the adoption of general laws which involve a choice of economic policy and apply to all operators concerned (judgments of 11 December 1996 in *Atlanta and Others v EC*, T-521/93, ECR, EU:T:1996:184, paragraph 70; 11 September 2002 *Alpharma v Council*, T-70/99, ECR, EU:T:2002:210, paragraph 388; and 11 July 2007 *Sison v Council, T-47/03*, EU:T:2007:207, paragraph 144).

134 The fact that the person concerned is directly and individually concerned by the legislative measure or measure of general application at issue does not alter that finding (see judgment in *Alpharma* v *Council*, cited in paragraph 133 above, EU:T:2002:210, paragraph 388 and the case-law cited).

135 It is true that, in the case of acts of general application laying down restrictive measures as part of the common foreign and security policy against natural persons or entities, it has been held that the safeguarding of the right to a fair hearing was, in principle, fully applicable and that the person concerned had the right to be afforded the opportunity effectively to make known his view on the evidence adduced against it (see, to that effect, judgment of 12 December 2006 in *Organisation des Modjahedines du peuple d'Iran v Council*, T-228/02, ECR, EU:T:2006:384, paragraphs 91 to 108, and *Sison v Council*, cited in paragraph 133 above, EU:T:2007:207, paragraphs 139 to 155).

136 However, that finding is justified by the fact that such acts may impose restrictive economic and financial measures on the persons and entities specifically concerned by them (judgments in *Organisation des Modjahedines du peuple d'Iran* v *Council*, cited in paragraph 135 above, EU:T:2006:384, paragraph 98, and *Sison* v *Council*, cited in paragraph 133 above, EU:T:2007:207, paragraph 146). Therefore, that case-law cannot be applied to the present case.

137 It follows that, since the contested decision was adopted as a result of a special legislative procedure to approve the conclusion of an agreement of general scope and application, the Council was not obliged to consult the Front Polisario before its adoption, contrary to the latter's arguments.

138 Furthermore, no obligation to consult the Front Polisario before the adoption of the contested decision derives from international law. In that connection, it must be observed that the applicant has not provided any details as to the origin and scope of the 'obligation of consultation originating from international law' which it relies on and to which it makes a vague reference in its pleadings.

139 Accordingly, the second plea in law must be rejected as unfounded.

The other grounds

140 The Front Polisario's 3rd to 11th pleas all concern the internal legality of the contested decision. Thus, as already noted in paragraph 117 above, the Front Polisario argues essentially that, since it approved the conclusion of an agreement with the Kingdom of Morocco which is also applicable in the part of Western Sahara controlled by the latter, despite the absence of international recognition of Moroccan claims over that territory,

the Council has vitiated the contested decision with illegality. That illegality results from the infringement of EU law, with respect to the grounds put forward in the 3rd to 8th pleas, and international law, with respect to the grounds put forward in the 9th to 11th pleas.

141 Therefore, it must be determined whether and, if appropriate, under what conditions the EU may conclude an agreement with a third State such as that approved by the contested decision which is also applicable to a disputed territory.

The existence of an absolute prohibition on the conclusion of an agreement capable of being applied to a disputed territory

142 First of all, it must be determined whether the pleas and arguments relied on by the Front Polisario support the conclusion that, in any event, the Council is prohibited from approving the conclusion of an agreement with a third State which may be applied to a disputed territory.

The third ground of appeal

143 In its third plea, the applicant refers to the provisions and case-law relating to observance of fundamental rights by the European Union to support its argument that, by deciding 'to implement an agreement which flouts the right to self-determination of the Sahrawi people and which has the immediate effect of encouraging the policy of annexation conducted by Morocco, the occupying power, the Council breaches the principle of freedom, security and justice, and turns its back on the respect for the fundamental rights and legal systems of the Member States'.

144 According to the Front Polisario 'there is an attack on freedom, as the freedom of a people is ignored and, worse, is opposed by that decision, which encourages economic domination and has the effect of altering the population structures, which renders even more complex the prospect of a referendum on self-determination'. The Front Polisario also pleads 'interference with security and legal certainty', referring to alleged infringements of 'the individual rights' of the 'Sahrawi people' by 'an annexationist regime', and the absence of value of certificates of origin to be issued by the Moroccan authorities for the export of products originating in Western Sahara. Finally, it relies on an 'attack on freedom, whether as regards the collective freedom of the Sahrawi people … or by the failure to respect property, the freedom of movement, freedom of expression, rights of defence and the principle of dignity'.

145 It is true, as the Front Polisario states, that Article 6 TEU provides that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights, while under Article 67 TFEU, the Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

146 However, no absolute prohibition derives, either from those provisions or from those of the Charter of Fundamental Rights, which precludes the EU from concluding an agreement with a third State on trade in agricultural products, processed agricultural products, fish and fishery products which may also be applied to a territory controlled by that third State, even though its sovereignty over that territory has not been

internationally recognised.

147 The question as to the conditions under which such an agreement may be concluded without infringing the European Union's obligation to recognise fundamental rights is examined, with the applicant's other arguments relating to the implementation and compliance by the EU institutions with their discretion, in paragraph 223 et seq. below.

148 Subject to that examination, the third plea must be rejected, in so far as it criticises the Council for infringement of an alleged absolute prohibition on concluding an agreement such as that at issue in the main proceedings.

The fourth plea

149 By its fourth plea, the Front Polisario claims that the contested decision should be annulled because it is contrary to the principle of consistency between EU policies laid down in Article 7 TFEU, which states '[t]he Union shall ensure consistency between its policies and activities, taking all of its objectives into account'. It argues that the contested decision 'supports the de facto sovereignty of the [Kingdom of] Morocco over the territory of Western Sahara' and 'provides political and financial support to the '[Kingdom of] Morocco, which violates UN law and the principle of sovereignty', even though no European State has recognised the sovereignty of the Kingdom of Morocco over Western Sahara and although the EU has been granted observer status at the UN.

150 Therefore, the Front Polisario takes the view that the 'principle of consistency' prohibits the European Union from adopting measures which have the direct effect of violating the right to self-determination, even though the Member States respect that right, by refusing to recognise the sovereignty of the Kingdom of Morocco over Western Sahara.

151 Finally, the Front Polisario claims that 'another inconsistency is clear'. It maintains that the European Union 'cannot sanction certain violations of rights, as it has done for example with regard to Syria while supporting others, especially in relation to peremptory norms'.

152 In its reply, the Front Polisario relies on a 'third inconsistency by the EU'. It submits that the Commission's Humanitarian Aid Department grants substantial amounts of aid to Sahrawi refugees settled in camps (see paragraph 16 above) while at the same time, the Council, with the adoption of the contested decision, 'helps to strengthen the grip of [the Kingdom of] Morocco over Western Sahara and, in short, to create Sahrawi refugees'.

153 It must be stated that Article 7 TEU cannot be used to support the arguments of the Front Polisario. The various policies of the European Union derive from different provisions of the founding treaties and acts adopted pursuant to those provisions. The supposed 'inconsistency' of an act with the policy of the European Union in a given area necessarily implies that the act concerned is contrary to a provision, a rule or a principle which governs that policy. That fact alone, if it were established, would be sufficient to lead to the annulment of the act concerned, without it being necessary to rely on Article 7 TEU.

154 In the present case, in order to rely on a breach of the principle of consistency, the Front Polisario starts from the premise that the approval by the contested decision of the agreement at issue between the European Union and the Kingdom of Morocco 'supports' the 'sovereignty' of the latter over Western Sahara. That premise is, however, incorrect: since no clause having such an effect appears in the agreement concerned and the mere fact that the European Union allows the application of the terms of the agreement by the Kingdom of Morocco to agricultural or fishery products exported to the European Union from the part of the territory of Western Sahara it controls, or to products which are imported into that territory does not amount to recognition of Moroccan sovereignty over that territory.

155 As regards the argument that the European Union infringes 'UN law' or peremptory norms, it has no relevance to the alleged infringement of Article 7 TFEU. It simply reiterates the arguments put forward in support of the 10th plea which is examined below.

156 The argument based on the adoption by the European Union of restrictive measures with regard to the situation in other countries is also insufficient to establish a supposed 'inconsistency' in European Union policy. It should be recalled, as follows, in particular, from the case-law on restrictive measures adopted with regard to the situation in Syria, the Council has discretion in that matter (see, to that effect, judgment of 13 September 2013 in *Makhlouf v Council*, T-383/11, ECR, EU:T:2013:431, paragraph 63). Therefore, it cannot be criticised for inconsistency onthe ground that it adopted restrictive measures with regard to the situation in one country and not in another.

157 Finally, as regards the 'third inconsistency' mentioned by the Front Polisario in its reply, it must be held that the fact that the European Union provides support to Sahrawi refugees in camps at the same time as it concludes agreements with the Kingdom of Morocco such as those approved by the contested decision, far from constituting an inconsistency in its policy show, to the contrary, that it does not wish to take sides in the dispute between the applicant and the Kingdom of Morocco, while supporting the efforts of the UN towards a just and lasting resolution of that dispute by negotiation.

158 The fourth plea should therefore be dismissed.

The fifth plea

159 In support of its fifth plea, the Front Polisario relies on Article 2 TEU, Article 3(5) TEU, Article 21 TEU and Article 205 TFEU. It claims that the contested decision is contrary to the European Union's fundamental values which govern its external action. It argues that, by approving the conclusion of the agreement referred to by the contested decision, the Council 'disregards the UN resolutions and the agreement between [the Kingdom of] Morocco and the Front Polisario for the organisation of the referendum on self-determination, encouraging the policy of unlawful annexation by [the Kingdom of] Morocco'. It takes the view that 'it was sufficient to suspend the agreement', since the Council '[was] perfectly aware that the economic development of [the Kingdom of] Morocco on the territory of Western Sahara [sought] to change the social structures and to subvert the very idea of the referendum'.

160 Article 2 TEU provides:

> ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

161 Article 3(5) TEU states as follows:

> ‘In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.’

162 Article 21 TEU, in Title V, Chapter 1 of the EU Treaty thus states:

> ‘1. The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
>
> The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.
>
> 2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:
>
> (a) safeguard its values, fundamental interests, security, independence and integrity;
>
> (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
>
> (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
>
> (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
>
> (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

…

3. …

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.'

163 Finally, Article 205 TFEU, which appears in Part Five of the TFEU, entitled 'General Provisions on the Union's External Action', provides that '[t]he Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the [EU] Treaty'.

164 According to the case-law, the EU institutions enjoy a wide discretion in the field of external economic relations which covers the agreement referred to by the contested decision (see, to that effect, judgment of 6 July 1995 in *Odigitria v Council* and Commission, T-572/93, ECR, EU:T:1995:131, paragraph 38).

165 Consequently, it cannot be accepted that it follows from the 'values' on which the European Union is based', or the provisions relied on by the Front Polisario in the present plea, that the conclusion by the Council of an agreement with a third State which may be applied in a disputed territory is, in all cases, prohibited.

166 For the rest, the question of the exercise by the Council of the wide discretion accorded to it by the case-law cited in paragraph 164 above, and the relevant evidence which must be taken into consideration in that context, will be examined below (see paragraph 223 et seq.).

167 Subject to that examination, the fifth plea must be rejected.

The sixth plea in law

168 By the sixth plea, the applicant argues that the contested decision is contrary to the objective of sustainable development 'since it enables the occupying power to intensify the exploitation of the natural resources of an independent people'.[12] In that regard, it refers to Article 11 TFEU, according to which '[e]nvironmental protection requirements must be integrated into the definition and implementation of the Union

[12] On the restraints on the occupying power to exploit the natural resources of the occupied territory, see US Department of State, 1 October 1976, *Memorandum of Law on Israel's Right to Develop New Oil Fields in Sinai and the Gulf of Suez*, 16 International Legal Materials (1977), pp. 733-753. As an occupying power, Morocco must act, toward natural resources, as an "administrator and usufructuary" (article 55 of the 1907 Hague Regulations). Therefore, it only has the right to continue, at the rate existing prior to the beginning of its occupation, to exploit natural resources of the occupied territory, within the limits of what is required for the army of occupation and the needs of the local population. In any case, it cannot to use the natural resources of occupied territory for the general benefit of its home economy, or to grant new concessions over natural resources of the occupied territory.

policies and activities, in particular with a view to promoting sustainable development'. It also relies on several documents of the UN and the Food and Agriculture Organisation of the United Nations (FAO).

169 The applicant adds that the Kingdom of Morocco 'conducts a policy of annexation, managing the affairs of Western Sahara through its Ministry of the Interior and refusing … to give any account of its administration to the UN'. The Front Polisario infers from that that the contested decision 'not only … deprives the Sahrawi people of its right to development, but it encourages a policy of economic spoliation, intended chiefly to destroy Sahrawi society'.

170 In its reply, the Front Polisario adds that 'large companies controlled by Morocco are exploiting the resources [of Western Sahara] with the express intention of robbing the Sahrawi people in order to strengthen the Moroccan economy and to consolidate the annexation by Morocco'.

171 At this stage, it suffices to observe that it does not follow from the allegations of the Front Polisario set out above, or the provisions it relies on, that the Council is subject to an absolute prohibition on concluding an agreement with a third State which may be applied on a disputed territory.

172 Therefore, in so far as that must be understood as claiming the breach of such a prohibition, it must be rejected. For the remainder, Front Polisario's arguments must be examined in the analysis of the question concerning the exercise by the Council of its discretion (see paragraph 223 et seq. below).

The seventh plea in law

173 According to the title adopted by the applicant, the seventh plea is based on the 'incompatibility of the [contested] decision with the principles and objectives of the external action of the Union in the field of development cooperation'. The applicant refers to Article 208(2) TFEU, which states that '[t]he Union and the Member States shall comply with the commitments and objectives they have approved in the context of the United Nations and other competent international organisations'. It also relies on Article 220 TFEU (see paragraph 129 above).

174 Specifically, the Front Polisario observes that 'the wording of Article [208(2) TFEU], which uses the word "approved", provides the basis for enforceability against the European Union of the commitments and objectives set out in [UN] resolutions, including the Millennium Declaration and the resolutions which it assisted in drafting'.

175 It must be stated that from the applicant's argument, as set out in paragraph 174 above, it is impossible to understand what it criticises the Council for and on what ground the contested decision is contrary 'to the principles and objectives of the European Union's external action' or UN documents including the Millennium Declaration. Therefore, the present plea in law must be rejected as inadmissible.

The eighth plea in law

176 The eighth plea in law alleges a breach of the principle of the protection of legitimate

expectations. After recalling the relevant case-law, the Front Polisario claims that it had legitimate grounds for believing that the European Union and its institutions respected international law.

177 As the applicant itself states, it is settled case-law that the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it is clear that the European Union authorities have given him precise assurances, thereby causing him to entertain justified expectations. Regardless of the form in which it is communicated, information that is precise, unconditional and consistent which comes from an authorised and reliable source constitutes such assurance. However, a person may not plead breach of the principle unless he has been given precise assurances by the administration (see judgment of 19 November 2009 in Denka International v Commission, T-334/07, ECR, EU:T:2009:453, paragraph 148 and the case-law cited).

178 In the present case, it must be stated that the applicant does not mention any specific assurance given to it by the administration of the European Union as to its conduct in the matter, so that the present plea, based on breach of the principle of the protection of legitimate expectations, cannot be accepted. The argument, in substance, that the contested decision infringes international law must be examined in the context of the analysis of the 11th plea, which specifically alleges the infringement of international law.

Preliminary considerations relating to the impact of international law

179 Since the Front Polisario relies both on the infringement of several international agreements concluded by the European Union (9th plea) and the infringement of 'general international law' (10th plea), the findings which follow are relevant for the determination of the lawfulness of a European Union act in the light of international law.

180 As is clear from Article 3(5) TEU, the European Union is to contribute to the strict observance and the development of international law. Consequently, when it adopts an act, it is bound to observe international law in its entirety, including customary international law, which is binding upon the institutions of the European Union (see judgment of 21 December 2011 in *Air Transport Association of America and Others*, C-366/10, ECR, EU:C:2011:864, paragraph 101 and the case-law cited).

181 Furthermore, in conformity with the principles of international law, EU institutions which have power to negotiate and conclude an international agreement are free to agree with the third States concerned what effect the provisions of the agreement are to have in the internal legal order of the contracting parties. Only if that question has not been settled by the agreement does it fall to be decided by the competent Courts of the European Union, in the same manner as any question of interpretation relating to the application of the agreement in the European Union (see judgment in *Air Transport Association of America and Others*, cited in paragraph 180 above, EU:C:2011:864, paragraph 49 and the case-law cited).

182 It must also be recalled that, by virtue of Article 216(2) TFEU, where international agreements are concluded by the European Union they are binding on its institutions,

and consequently they prevail over acts of the European Union. It follows that the validity of an act of the European Union may be affected by the fact that it is incompatible with such rules of international law (see judgment in *Air Transport Association of America and Others*, cited in paragraph 180 above, EU:C:2011:864, paragraphs 50 and 51 and the case-law cited).

183 However, first of all, the Court of Justice also held that the European Union was to be bound by those rules (see judgment in *Air Transport Association of America and Others*, cited in paragraph 180 above, EU:C:2011:864, paragraph 52 and the case-law cited).

184 Next, it held that a Court of the European Union can examine the validity of an act of EU law in the light of an international treaty only where the nature and the broad logic of the latter do not preclude this (see judgment in *Air Transport Association of America and Others*, cited in paragraph 180 above, EU:C:2011:864, paragraph 53 and the case-law cited).

185 Finally, where the nature and the broad logic of the treaty in question permit the validity of the act of EU law to be reviewed in the light of the provisions of that treaty, it is also necessary that the provisions of that treaty which are relied upon for the purpose of examining the validity of the act of EU law appear, as regards their content, to be unconditional and sufficiently precise. Such a condition if fulfilled where the provision relied upon contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see judgment in *Air Transport Association of America and Others*, cited in paragraph 180 above, EU:C:2011:864, paragraphs 54 and 55 and the case-law cited).

186 Account must be taken of the foregoing in the examination below of pleas 9 to 11.

The ninth plea in law

187 By the ninth plea, the applicant claims that the contested decision must be annulled ‘because it is incompatible with several international agreements binding upon the European Union’.

188 First, the applicant relies on the Association Agreement with Morocco and, in particular, its preamble, which refers to observance of the principles of the UN Charter, and Article 2 thereof, according to which respect for the democratic principles and fundamental human rights are to inspire domestic and external policies of the European Union and of Morocco and are to constitute an essential element of that agreement.

189 According to the applicant, the contested decision is contrary to those principles since it ‘infringes the right to self-determination and the rights which derive from that, in particular, sovereignty over natural resources and the primacy of the interests of the inhabitants of Western Sahara’. The applicant adds that ‘[the Kingdom of] Morocco violates the right to self-determination which is the condition *sine qua non* of the respect for human rights and political and economic freedom’ and refers again to the ‘annexationist policy of [the Kingdom of] Morocco which ‘seeks to prevent the organisation of a referendum on self-determination’.

190 Second, the applicant relies on the UN Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982 ('the Montego Bay Convention'), which entered into force on 16 November 1994 and was approved on behalf of the European Union by Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ 1998 L 179, p. 1). It claims that, in accordance with the provisions of the Montego Bay Convention, the people of Western Sahara have sovereign rights over the waters adjacent to the coast of Western Sahara. As the 'occupying power', the Kingdom of Morocco should exercise the rights of the people of Western Sahara observing the principle of the primacy of their interests. However, it systematically disregards those rules and uses control of the sea in order to maintain its presence in Western Sahara. By the contested decision, the Council infringes 'those provisions' as, by 'further liberalising trade in fishery products with Morocco, [it] supports Morocco, which wrongfully exercises rights over that part of the sea'. The applicant adds that the Kingdom of Morocco 'exploits those waters in its own exclusive interest, for quick profits and in order to create an economic context which makes it more difficult to hold a referendum on self-determination'.

191 Third, the applicant relies on the infringement of the 'basic criterion', which it claims results from the Montego Bay Convention, of the Association Agreement with Morocco and Protocol 4 of the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco, approved on behalf of the Community by Council Regulation (EC) No 764/2006 of 22 May 2006 (OJ 2006 L 141, p. 1) and of the Agreement in the form of an exchange of letters concerning the provisional application of the Agreement on cooperation in the sea fisheries sector between the European Community and the Kingdom of Morocco initialled in Brussels on 13 November 1995, approved on behalf of the Community by Council Decision 95/540/EC of 7 December 1995 (OJ 1995 L 306, p. 1).

192 According to the applicant, 'in order to determine the scope of the various agreements which bind [the Union] and its Member States and the [Kingdom of] Morocco, the [Montego Bay] Convention constitutes the relevant reference and it unequivocally defines that scope as being the territory of [the Kingdom of] Morocco'.

193 Regardless of whether the various agreements and conventions mentioned by the applicant may, in the light of the case-law cited in paragraphs 184 and 185 above, be taken into consideration for the purposes of the examination of the validity of an act of the European Union, it must be stated that, with the exception of the Montego Bay Convention, the other agreements relied on by the applicant are agreements concluded between the European Union and the Kingdom of Morocco, namely the same parties which concluded the agreement approved by the contested decision. One of those agreements is the Association Agreement with Morocco that the agreement referred to by the contested decision specifically aims to amend.

194 In those circumstances, even assuming that certain clauses of the agreement, the conclusion of which was approved by the contested decision, conflict with the clauses of earlier agreements concluded between the European Union and the Kingdom of Morocco and relied on by the applicant, that does not constitute any illegality, since the European Union and the Kingdom of Morocco are free at any moment to alter

agreements concluded between them by a new agreement, such as that concerned by the contested decision.

195 As regards the Montego Bay Convention, it must be recalled that, as the Court of Justice held, the nature and the broad logic of that convention prevent the Courts of the European Union from being able to assess the validity of an EU measure in the light of that convention (judgment of 3 June 2008 in *Intertanko and Others*, C-308/06, ECR, EU:C:2008:312, paragraph 65).

196 However, the applicant relies on that convention in order to allege, in substance, that the fishery products originating from the waters adjacent to the coast of Western Sahara are natural resources belonging to it.

197 In that connection, it has already been observed that the agreement, the conclusion of which was approved by the contested decision, also applies to Western Sahara and to the products originating from that territory and its natural resources, whatever those resources and regardless of whether or not they must be determined in accordance with the Montego Bay Convention.

198 However, nothing in the arguments put forward by the applicant in the present plea establish that the conclusion by the Council of an agreement with a non-member State concerning a disputed territory is prohibited in all cases.

199 Therefore, in so far as the present plea in law must be understood as claiming the infringement of such an absolute prohibition, it must be rejected. If the applicant's arguments, or some of them, must be understood as claiming a manifest error of assessment by the Council, it is sufficient to recall that the question of the exercise by the Council of its discretion in that area is examined in paragraph 223 et seq. below.

The tenth plea in law

200 By its 10th plea in law, the Front Polisario claims that the contested decision should be annulled because it is contrary to the right to self-determination, a peremptory norm of international law, and the rights which derive from it. It alleges that the contested decision supports the Kingdom of Morocco in its policy of occupation and 'economic colonisation' of Western Sahara.

201 The Front Polisario also asserts that the contested decision creates obligations to which it has not consented, contrary to the relative effect of treaties. It adds that the European Union is required to respect 'international humanitarian law' which, it claims, fall within the provisions of the regulation annexed to the Convention on Laws and Customs of War on Land signed at The Hague on 18 October 1907, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War signed at Geneva on 12 August 1949 and the Rome Statute of the International Criminal Court, signed at Rome on 17 July 1998. It asserts that, by adopting the contested decision, the Council 'allows the Kingdom of Morocco to consolidate its policy of colonisation of Western Sahara, from the economic perspective'.

202 First of all, it must be held that nothing in the contested decision or in the agreement the conclusion of which was approved by it, involves the recognition by the European

Union of Moroccan claims over Western Sahara. The mere fact that the agreement at issue also applies to products exported from or imported into, the part of Western Sahara controlled by the Kingdom of Morocco does not amount to such recognition.

203 Regarding the argument based on the relative effect of treaties, contrary to the Front Polisario's claims, the agreement concerned by the contested decision, although it is of direct and individual concern to the applicant, does not involve any commitment on its part since that measure applies only to the part of Western Sahara under Moroccan control and for as long as that control continues. Should the case arise, if, after the planned referendum on self-determination, the Front Polisario were to extend its control over the whole of the territory of Western Sahara, it is clear that it would not be bound by the provisions of the agreement at issue which was concluded between the Kingdom of Morocco and the European Union.

204 As regards the argument based on the infringement of humanitarian law, it must be held that the applicant's arguments are very brief and do not explain how and in what ways the conclusion of the agreement referred to by the contested decision infringes that law.

205 In general, nothing in the arguments or evidence put forward by the applicant proves the existence of a rule of customary international law which prohibits the conclusion of an international treaty which may be applied on a disputed territory.

206 The question was referred to the International Court of Justice, but it did not rule on that issue in its judgment in the case on East Timor (*Portugal* v *Australia*, ICJ Reports 1995, p. 90) on the ground that to adjudicate on that dispute it would have to rule upon the lawfulness of Republic of Indonesia's conduct in the absence of that State's consent (judgment in *Portugal* v *Australia*, paragraph 35).

207 The applicant has also produced a letter dated 29 January 2002, addressed to the President of the Security Council by the Under-Secretary-General for Legal Affairs and UN Legal Counsel, in response to a request from the members of the Security Council for his opinion on the lawfulness of the decisions taken by the Moroccan authorities concerning the offer and signature of contracts for the prospection of mineral resources in Western Sahara made with foreign companies.

208 In that letter, the UN Legal Counsel reviewed the rules of international law, the case-law of the International Court of Justice, and the practice of the States as regards that matter. In particular he made the following observations in paragraph 24 of his letter:

'The recent State practice, though limited, is illustrative of an *opinio juris* on the part of both … Powers [administering a territory] and third States: where resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives, they are considered compatible with the [United Nations] Charter obligations of the administering Power and in conformity with the General Assembly resolutions and the principle of "permanent sovereignty over natural resources" enshrined therein.'

209 On that basis he gave the following answer to the question referred to him:

'While the specific contracts which are the subject of the Security Council's request are

not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories' (paragraph 25 of his letter).

210 It follows that the UN Legal Counsel did not consider that the conclusion of an international agreement which may be applied to a disputed territory was, in all cases, prohibited by international law.

211 Consequently, in so far as the present plea must be understood as claiming the infringement by the Council of a rule of 'general international law' from which there derives an absolute prohibition on concluding international agreements which may be applied on a disputed territory, it must be rejected. In so far as the arguments put forward by the applicant in the context of the present plea concern the exercise by the Council of its discretion, they will be examined in paragraph 223 et seq. below.

The eleventh plea in law

212 In its 11th and final plea in law, the applicant relies on various provisions of draft articles on the responsibility of international organisations for internationally wrongful acts, as adopted in 2011 by the International Law Commission of the UN, in order to argue that by adopting the contested decision the Council renders the European Union liable under international law for an internationally wrongful act.

213 However, that plea in law does not introduce anything new with regard to the applicant's other arguments. It must be recalled that the present action is an action for annulment and not an action for damages. The issue is not whether the European Union has incurred non-contractual liability by adopting the contested decision, which presupposes that that decision is vitiated with illegality. The issue is whether in fact the contested decision is vitiated with illegality. On that point the applicant does not put forward any new argument, but merely repeats the allegations which are, in essence, that, by concluding the agreement approved by the contested decision on behalf of the European Union, the Council has infringed international law.

214 Therefore, that plea must be dismissed.

Findings on the existence of an absolute prohibition on the conclusion of international agreements applicable on a disputed territory

215 It follows from all of the foregoing considerations that nothing in the applicant's pleas and arguments supports the finding that, under EU law or international law, the conclusion of an agreement with a third State which may be applied on a disputed territory is absolutely prohibited.

216 The case-law of the General Court also confirms that finding.

217 The General Court has had to rule on the issue of the lawfulness of an international agreement concluded between the European Union and a third State which was also likely to be applied on a disputed territory in the case which gave rise to the judgment in *Odigitria* v *Council and Commission*, cited in paragraph 164 above (EU:T:1995:131).

218 That judgment concerned an action for damages brought by a company which owned a fishing vessel flying the Greek flag which had been boarded by the authorities of Guinea-Bissau on the ground that it was fishing without a licence in that State's maritime area. In fact, the vessel concerned had a fishing licence issued by the Senegalese authorities, but it was fishing in waters claimed to belong to the respective maritime areas of both the Republic of Senegal and the Republic of Guinea-Bissau. The European Economic Community, as it was at the time, had concluded fishing agreements with both of those non-member States concerning the whole of their maritime areas in both cases. The applicant in that case sought compensation from the Community, for the harm it claimed to have suffered on account of the boarding of its vessel and, in that context, relied on the alleged unlawfulness of the failure to exclude from the scope of the fishing agreements concluded between the Community and each of the two non-member States concerned the area which was the subject of the dispute between them (judgment in *Odigitria* v *Council and Commission*, cited in paragraph 164 above, EU:T:1995:131, paragraphs 1 to 13 and 25).

219 The General Court held that that omission did not constitute an illegality. In substance, it concluded that in the exercise of their wide discretion in the fields of external economic relations and the common agricultural policy (including fishing) the EU institutions could, without committing a manifest error of assessment, decided that it was not necessary to exclude the zone in question from the fishing agreements concluded with the two States mentioned above, despite the dispute between them as regards the waters claimed to be part of their maritime areas (see, to that effect, judgment in *Odigitria* v *Council and Commission*, cited in paragraph 164 above, EU:T:1995:131, paragraph 38).

220 Thus, by contrary inference from the judgment in question, the conclusion of an agreement between the European Union and a non-member State which may be applied on a dispute territory is not, in all cases, contrary to EU law or international law with which the European Union must comply.

221 If that were the case, the General Court could not have referred, in paragraph 38 of the judgment in *Odigitria* v *Council and Commission*, cited in paragraph 164 above (EU:T:1995131), to the discretion of the EU institutions with regard to the question whether or not it was appropriate to include the area subject to the dispute between the Republic of Senegal and the Republic of Guinea-Bissau in the scope of the fishing agreements concluded with those two States. If such inclusion were, in all cases, contrary to EU law or international law that the EU institutions are bound to observe, it is clear that they would not have any discretion as regards that matter.

222 It must also be recalled that there is also nothing in the findings in the letter of the UN Legal Counsel, mentioned in paragraphs 207 to 210 above, to support an absolute prohibition on concluding an agreement concerning a disputed territory. The UN Legal Counsel stated essentially that, only where the exploitation of the natural resources of Western Sahara were to proceed 'in disregard of the interests and wishes of the people' of that territory, that it 'would be in violation of the principles of international law'.

The discretion of the EU institutions and the factors they must take into account

223 In light of all of the foregoing considerations, and as is clear from the case-law set out in paragraph 164 above, it must be concluded that the EU institutions enjoy a wide discretion as regards whether it is appropriate to conclude an agreement with a non-member State which will be applied on a disputed territory.

224 To allow them such discretion appears even more justified, as is clear moreover from the UN Legal Counsel's letter mentioned above, because the rules and principles of the international law applicable in the area are complex and imprecise. It follows that judicial review must necessarily be limited to the question whether the competent EU institution, in this case the Council, by approving the conclusion of an agreement such as that approved by the contested decision, made manifest errors of assessment (see, to that effect, judgment of 16 June 1998 in *Racke*, C-162/96, ECR, EU:C:1998:293, paragraph 52).

225 That being the case, in particular where EU institution enjoys a wide discretion, in order to verify whether it has committed a manifest error of assessment, the Courts of the European Union must verify whether it has examined carefully and impartially all the relevant facts of the individual case, facts which support the conclusions reached (judgments of 21 November 1991 in *Technische Universität München*, C-269/90, ECR, EU:C:1991:438, paragraph 14, and 22 December 2010 *Gowan comércio Internacional e Servios*, C-77/09, ECR, EU:C:2010:803, paragraph 57).

226 As stated in paragraph 125 above, in substance, the Front Polisario criticises the Council specifically for failing to examine the relevant facts of the case before the adoption of the contested decision, especially as regards the possible application of the agreement, the conclusion of which was approved by the contested decision, to Western Sahara and to the goods exported from that territory.

227 In that connection, although it is true, as stated in paragraph 146 above, that it does not follow from the Charter of Fundamental Rights, relied on by the applicant in its third plea, that the European Union is subject to an absolute prohibition on concluding an agreement which may be applicable on disputed territory, the fact remains that the protection of fundamental rights of the population of such a territory is of particular importance and is, therefore, a question that the Council must examine before the approval of such an agreement.

228 In particular, as regards an agreement to facilitate, inter alia, the export to the European Union of various products originating in the territory concerned, the Council must examine, carefully and impartially, all the relevant facts in order to ensure that the production of goods for export is not conducted to the detriment of the population of the territory concerned, or entails infringements of fundamental rights, including, in particular, the rights to human dignity, to life and to the integrity of the person (Articles 1 to 3 of the Charter of Fundamental Rights), the prohibition of slavery and forced labour (Article 5 of the Charter of Fundamental Rights), the freedom to choose an occupation and right to engage in work (Article 15 of the Charter of Fundamental Rights), the freedom to conduct a business (Article 16 of the Charter of Fundamental Rights), the right to property (Article 17 of the Charter of Fundamental Rights), the right to fair and just working conditions and the prohibition of child labour and protection of young people at work (Articles 31 and 32 of the Charter of Fundamental Rights).

229 The findings of the UN Legal Counsel as to the obligations deriving from international law, as summarised in paragraphs 208 and 209 above, lead to the same conclusion.

230 In that connection, the Council argues that 'the fact of having concluded an agreement with a non-member State does not and cannot make the European Union liable for any actions committed by that county, whether or not they correspond to infringements of fundamental rights'.

231 That argument is correct, but it ignores the fact that, if the European Union allows the export to its Member States of products originating in that other country which have been produced or obtained in conditions which do not respect the fundamental rights of the population of the territory from which they originate, it may indirectly encourage such infringements or profit from them.

232 That consideration is all the more important in the case of a territory like Western Sahara which is in fact administered by a non-member State, in this case the Kingdom of Morocco, although it is not included in the recognised international frontiers of that non-member State.

233 Account must also be taken of the fact that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of that territory, and it is common ground that it does not transmit to the UN information relating to that territory, such as those provided for by Article 73(e) of the UN Charter.

234 That article provides as follows:

> 'Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:
>
> …
>
> (e) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII [relating to the International Trusteeship System] and XIII [relating to the Trusteeship Council] apply.'

235 The failure by the Kingdom of Morocco to transmit the information provided for by Article 73(e) of the UN Charter with regard to Western Sahara is, at the very least, likely to give rise to doubt as to whether the Kingdom of Morocco recognises the principle of the primacy of the interests of the inhabitants of that territory and the obligation to promote to the utmost their wellbeing, as laid down in that article. Further, it is clear from the file and, in particular, the text produced by the applicant, a speech given by the King of Morocco on 6 November 2004, that the Kingdom of Morocco

considers Western Sahara to be part of its territory.

236 The Council contends that none of the provisions of the contested decision or the agreement approved by it 'lead to the conclusion that the exploitation of the resources of Western Sahara is conducted to the detriment of that territory or prevent the [Kingdom of] Morocco from guaranteeing that the exploitation of natural resources is carried out for the benefit of Western Sahara and in their interest'.

237 It is true that the Front Polisario has not criticised the Council for having included terms in the contested decision which could lead to the exploitation of the resources of Western Sahara to the detriment of its inhabitants.

238 However, as pointed out in paragraph 231 above, the export to the European Union of products originating, in particular, from Western Sahara is facilitated by the agreement at issue. In fact, that is one of the objectives of that agreement. Accordingly, if it were the case that the Kingdom of Morocco was exploiting the resources of Western Sahara to the detriment of its inhabitants, that exploitation could be indirectly encouraged by the conclusion of the agreement approved by the contested decision.

239 As regards the argument that the Kingdom of Morocco is not prevented by the terms of the agreement from guaranteeing that the exploitation of the natural resources of Western Sahara is to be carried out for the benefit of its inhabitants, it suffices to note that neither does the agreement guarantee an exploitation of the natural resources of Western Sahara that is beneficial to its inhabitants. It is entirely neutral in that regard, merely facilitating the export to the European Union of products from Western Sahara, whether or not they originate from exploitation beneficial to its inhabitants.

240 In reality, the Council's argument shows that, as far as it is concerned, it is solely for the Kingdom of Morocco to ensure that the exploitation of the natural resources is beneficial to the inhabitants of the part of Western Sahara it controls.

241 Given the fact, inter alia, that the sovereignty of the Kingdom of Morocco over Western Sahara is not recognised by the European Union or its Member States, or more generally by the UN, and the absence of any international mandate capable of justifying Moroccan presence on that territory, the Council, in the examination of all the relevant facts of the present case, with a view to exercising its wide discretion as to whether or not to conclude an agreement with the Kingdom of Morocco which may also apply to Western Sahara, should have satisfied itself that there was no evidence of an exploitation of the natural resources of the territory of Western Sahara under Moroccan control likely to be to the detriment of its inhabitants and to infringe their fundamental rights. The Council cannot merely conclude that it is for the Kingdom of Morocco to ensure that no exploitation of that nature takes place.

242 In that regard, it must be observed that the Front Polisario treats the exploitation of natural resources of Western Sahara under Moroccan control as 'economic spoliation with the aim of altering the structure of Sahrawi society'. It adds that it has informed the UN of its protests concerning the draft agreement approved by the contested decision. Its arguments submitted in the context of the fifth and sixth pleas (see paragraphs 159, 169 and 170 above) are also to the same effect.

243 The Front Polisario also attached to the file a detailed report from its council which contains, inter alia, allegations that, in essence, agricultural holdings in Western Sahara would be controlled by foreign non-native persons and undertakings, exclusively oriented toward export and based on the extraction of water from non-renewable underground reservoirs. In that report reference is made to a report published by a non-governmental organisation which confirms those allegations.

244 It does not follows either from the Council's arguments or from the evidence that it attached to the file that it carried out an examination such as that mentioned in paragraph 241 above. As regards the Front Polisario's allegations, set out in paragraphs 242 and 243 above, the Council has not made any specific comment and has not denied them, which suggests that it did not consider whether the exploitation of the natural resources of the part of Western Sahara under Moroccan control was for the benefit of the population of that territory.

245 However, it appears from the evidence relied on by the Front Polisario that those allegations received some publicity and were, in particular, brought to the notice of the UN. Therefore, they could not be ignored by the Council and merited an examination by it as to their likelihood.

246 The Council's arguments, summarised in paragraphs 230 and 236 above, show, to the contrary, that it regards the issue of whether or not the exploitation of the resources of Western Sahara is carried out to the detriment of the local population only concerns the Moroccan authorities. For the reasons set out in paragraphs 227 to 233 above, that argument cannot be accepted.

247 It follows that the Council failed to fulfil its obligation to examine all the elements of the case before the adoption of the contested decision. Accordingly the action must be upheld and the contested decision must be annulled in so far as it approves the application of the agreement referred to by it to Western Sahara.

248 In the light of that finding, it is unnecessary to rule on the admissibility of the documents mentioned in paragraph 27 above, the consideration of which is unnecessary in the present case.

Costs

249 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In addition, Article 138(1) of the Rules of Procedure states that the institutions which intervened in the proceedings are to bear their own costs.

250 In the present case, the Council and the Commission have been unsuccessful. Although it is true that the Front Polisario sought an order that they pay the costs only in its submissions on the Commission's statement in intervention (see paragraph 31 above), it must be observed that, according to case-law, it is open to the parties to apply for costs after the application has been lodged, and even at the hearing, if they have not previously done so (see judgment of 14 December 2006 in *Mast-Jägermeister v OHIM — Licorera Zacapaneca (VENADO with frame and Others)*, T-81/03, T-82/03 and T-103/03, ECR, EU:T:2006:397, paragraph 116 and the case-law cited).

251 Accordingly, the Council and the Commission are each ordered to bear their own costs and to pay those incurred by the Front Polisario.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Declares that Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part is annulled in so far as it approves the application of that agreement to Western Sahara;

2. Orders the Council of the European Union and the European Commission to each bear their own costs and to pay those incurred by the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario).

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 10 December 2015.

Annex 1

Audiencia Nacional, Criminal Chamber, 21 November 2014, case n°40/2014, *Case of the Gdeim Izik camp*