Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 28 June 2011 [1]

Case C-380/09 P

Melli Bank plc
v

Council of the European Union

(Appeal — Restrictive measures against Iran aimed at preventing nuclear proliferation — Extension of restrictive measures to entities 'owned or controlled' by persons or entities identified as being engaged in, directly associated with, or providing support to, Iran's nuclear activities — Wholly-owned subsidiary — Council's discretion for inclusion in the lists — Reasons for inclusion — Proportionality — Duty to state reasons)

Table of contents

1 — Original language: French.

1. By the present appeal, Melli Bank plc ('Melli Bank' or 'the appellant') seeks to have set aside the judgment in *Melli Bank* v *Council*[2] ('the judgment under appeal') which the Court of First Instance of the European Communities (now the General Court) adopted in Joined Cases T-246/08 and T-332/08. By that judgment, the General Court dismissed, in Case T-246/08, the appellant's action for annulment of paragraph 4 of Table B of the Annex to Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran ('the decision at issue'),[3] whereby the Council of the European Union ('the Council') included the appellant's name in the list of entities whose assets must be frozen and, in Case T-332/08, in addition to the application for annulment of paragraph 4 of Table B, the application for a declaration that Article 7(2)(d) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran is inapplicable.[4]

I – Background to the case and judgment under appeal

2. It is apparent from paragraph 1 et seq. of the judgment under appeal that the appellant is a public limited company registered in and having its registered office in the United Kingdom. It began trading in 2002, following the transformation of the United Kingdom branch of Bank Melli Iran ('Bank Melli'). The latter, which wholly owns the appellant, is an Iranian bank belonging to the Iranian State. Melli Bank, for its part, is authorised and regulated by the Financial Services Authority (the regulator of the financial services industry in the United Kingdom; 'the FSA').

3. The case before the General Court is connected with the application of the regime of restrictive measures introduced in order to apply pressure on the Islamic Republic of Iran to put an end to proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems ('nuclear proliferation'). That regime has its origin in Resolution 1737 (2006)[5] of the United Nations Security Council ('the Security Council'), the annex whereto listed persons and entities which, according to the Security Council, engaged in nuclear proliferation in Iran and whose funds and economic resources ('funds') must be frozen. The list was updated by Resolution 1747 (2007)[6] of 24 March 2007 of the Security Council. It should be noted that neither Bank Melli nor Melli Bank was included in that list, even after it had been updated.

2 — Joined Cases T-246/08 and T-332/08 [2009] ECR II-2629.

3 — OJ 2008 L 163, p. 29.

4 — OJ 2007 L 103, p. 1.

5 — S/RES/1737 (2006)*.

6 — S/RES/1747 (2007).

4. Resolution 1737 (2006) was given effect, so far as the European Union ('the EU') was concerned, by Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran.[7] Article 5(1)(a) of that Common Position provided that all funds owned, held or controlled, directly or indirectly, by persons and entities designated in the resolution were to be frozen. Article 5(1)(b) of that Common Position extended that measure to persons and entities recognised by the Council as being engaged in, directly associated with, or providing support for, nuclear proliferation.

5. In so far as the powers of the European Community were also concerned, Common Position 2007/140 was followed by the adoption, on the basis of Articles 60 EC and 301 EC, of Regulation No 423/2007. In terms very similar to those of the Common Position, Article 7(1) of that regulation provides that funds belonging to the persons, entities and bodies designated in Resolution 1737 (2006), and also the funds which those persons, entities or bodies own, hold or control, are to be frozen. Article 7(2)(a) and (b) of Regulation No 423/2007 extends that possibility of the freezing of funds to the persons, entities and bodies designated by the Council and recognised, in accordance with Article 5(1)(b) of Common Position 2007/140, as being engaged in, directly associated with, or providing support for, nuclear proliferation. The persons, entities and bodies designated by the Council under Article 7(2) of Regulation No 423/2007 are listed in Annex V to that regulation.

6. Under Article 7(2)(d) of that regulation, Annex V also includes 'natural and legal persons, entities and bodies … who … have been identified as … being a legal person, entity or body owned or controlled by a person, entity or body referred to under (a) or (b), including through illicit means', and whose funds are therefore frozen.

7. Article 15(2) of that regulation provides, moreover, that '[t]he Council, acting by qualified majority, shall establish, review and amend [Annex V] in full accordance with the determinations made by the Council [under Article 5(1)(b)] of Common Position 2007/140 …'. According to the same provision, moreover, the Council must review that list at regular intervals, and at least every 12 months.

8. Article 15(3) of Regulation No 423/2007 provides that '[t]he Council shall state individual and specific reasons for decisions taken pursuant to paragraph 2 and make them known to the persons, entities and bodies concerned'.

9. Some time after the adoption of Regulation No 423/2007, the Security Council adopted Resolution 1803 (2008)[8] of 3 March 2008, whereby it called upon 'all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with [Bank Melli], and their branches and subsidiaries abroad, in order to avoid such activities contributing to [nuclear proliferation]'.[9]

10. On 23 June 2008 the Council adopted Common Position 2008/479/CFSP,[10] which amended Common Position 2007/140. Pursuant to the annex to the new common position, Bank Melli and its subsidiaries were to be included among the entities whose funds were frozen in accordance with Article 5(1)(b) of Common Position 2007/140. The freezing of Bank Melli's and the appellant's funds was maintained by Common Position 2008/652/CFSP,[11] which again amended Common Position 2007/140.

7 — OJ 2007 L 61, p. 49.

8 — S/RES/1803 (2008).

9 — Ibid., paragraph 10.

10 — OJ 2008 L 163, p. 43.

11 — Council Common Position 2008/652/CFSP of 7 August 2008 (OJ 2008 L 213, p. 58).

11. On the same date the Council adopted the decision at issue. According to paragraph 4 of Table B of the annex to that decision, the Council entered Bank Melli and its subsidiaries, including Melli Bank, in the list in Annex V to that regulation.[12] That entry had the consequence that the appellant's funds were frozen.

12. Thus paragraph 4 of Table B of the annex to the decision at issue mentions the appellant's name, its postal address in London and the date of its entry (26 June 2008). The Council drafted in the following terms a single paragraph setting out its reasons for placing Bank Melli and its branches and subsidiaries on the list: Bank Melli was included for '[p]roviding or attempting to provide financial support for companies which are involved in or procure goods for Iran's nuclear and missile programmes … Bank Melli serves as a facilitator for Iran's sensitive activities. It has facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programmes. It has provided a range of financial services on behalf of entities linked to Iran's nuclear and missile industries, including opening letters of credit and maintaining accounts. Many of the above companies have been designated by [Security Council Resolutions] 1737 and 1747'.

13. By applications lodged at the Registry of the General Court on 25 June 2008 and 15 August 2008, the actions were brought in Cases T-246/08 and T-332/08. In Case T-246/08 the appellant claimed that the Court should annul paragraph 4 of Table B of the annex to the decision at issue and order the Council to pay the costs. In Case T-332/08 the appellant claimed that the Court should annul paragraph 4 of Table B of the annex to the decision at issue and, if the Court should find that Article 7(2)(d) of Regulation No 423/2007 was mandatory in effect, declare that provision inapplicable under Article 241 EC. The appellant also claimed that the Council should be ordered to pay the costs. The two cases were joined for the purposes of the oral procedure and the judgment by order of 15 December 2008.

14. In Case T-246/08 the appellant put forward two pleas in law, one alleging breach of the principle of proportionality and the other alleging breach of the principle of non-discrimination. In Case T-332/08 the appellant maintained that the application of Article 7(2) of Regulation No 423/2007 could not be considered mandatory but that, if it were indeed mandatory, it would then be contrary to the principle of proportionality and therefore inapplicable by virtue of Article 241 EC; in addition, the appellant claimed that the Council was in breach of its duty to state reasons.

15. In the judgment under appeal, the General Court rejected all the pleas put forward in both cases and ordered the appellant to pay the costs incurred by the Council, including those relating to the interim measures proceedings.[13]

II – Proceedings before the Court and forms of order sought by the parties

16. On 25 September 2009 Melli Bank lodged an appeal against the judgment under appeal.

17. The appellant claims that the Court should set aside the judgment under appeal; uphold the actions in Cases T-246/08 and T-332/08; annul paragraph 4 of Table B of the annex to the decision at issue; declare Article 7(2)(d) of Regulation No 423/2007 inapplicable if the Court should find that it has mandatory effect and order the Council to pay the costs of the appeal and the proceedings before the General Court.

12 — Bank Melli, the appellant's parent company, brought an action before the General Court for annulment of the decision at issue in so far as it was concerned (Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967). Bank Melli lodged an appeal against the judgment of the General Court, which was registered by the Court Registry as Case C-548/09 P and which is being dealt with separately from the present case. An Opinion is delivered today in Case C-548/09 P *Bank Melli Iran* v *Council*.

13 — The appellant lodged two applications for interim measures before the General Court, one in Case T-246/08 and the other in Case T-332/08, seeking to have the application of paragraph 4 of Table B of the Annex to the decision at issue suspended vis-à-vis the appellant. Those two applications were dismissed by orders of the President of 27 August and 17 September 2008 and costs were reserved.

18. In their respective response and statements in response, the Council, the defendant at first instance, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the European Commission, interveners at first instance in support of the Council, contend that the Court should dismiss the appeal and order Melli Bank to pay the costs.

19. The appellant was given leave to lodge a reply in the present proceedings before the Court. All the other parties, with the exception of the United Kingdom, lodged rejoinders.

20. Apart from the United Kingdom, all the parties presented oral argument at the hearing, which took place before the Court on 29 March 2011.

III – Analysis

21. In the present appeal, the appellant puts forward four pleas in law. The first plea alleges an error of law in the interpretation of Article 7(2)(d) of Regulation No 423/2007. The second plea alleges breach of the principle of proportionality. The third plea alleges an error of law in the formulation and application of the test for determining whether the appellant was indeed owned or controlled by its parent company within the meaning of that article. The fourth plea alleges an error of law in the General Court's assessment of the Council's obligation to state the reasons for the decision to enter the appellant in the list of entities whose funds must be frozen. In the interest of arriving at a better understanding of the general structure of the appeal, I shall begin by examining the third plea.

A – *Third plea, alleging an error of law in the interpretation of the test for determining whether the appellant is 'owned or controlled' within the meaning of Article 7(2)(d) of Regulation No 423/2007*

1. Arguments of the parties

22. By this plea the appellant disputes the General Court's interpretation, at paragraph 119 et seq. of the judgment under appeal, of the test referred to in Article 7(2)(d) of Regulation No 423/2007, on the basis of which the Council decided that the appellant's funds must be frozen. In substance, the appellant maintains that the General Court correctly held that the precise question was whether it was to a considerable degree likely that the appellant might circumvent the effect of the measures adopted against the parent company, but did not apply that test correctly when it attributed undue weight to Bank Melli's ability to appoint the appellant's directors, for the ability to do so does not constitute a decisive factor for determining whether the appellant is owned or controlled by Bank Melli. In so doing, the appellant reiterates a number of factual arguments, already put forward at first instance, the objective of which is to challenge the General Court's rejection of the effectiveness of the alternative measures, mainly *ex post facto*, suggested by the appellant. In failing to apply that test correctly, the General Court made an error of law which has the effect of preventing any analysis on a case-by-case basis, contrary to what it recommended at paragraph 69 of that judgment. In addition, the appellant submits that the General Court's reliance on the Community case-law on the conditions in which the anti-competitive conduct of a subsidiary may be attributed to the parent company is inappropriate because, unlike in the situation of such a parent company and subsidiary, the application to the appellant of a presumption that, because its parent company wholly owns the appellant, it exercises decisive influence over the appellant is contrary to the appellant's rights of defence. That constitutes a breach of those rights because Melli Bank was not given the opportunity of making observations to the Council or of responding to the allegations against it. The view that the subsidiary might circumvent restrictive measures adopted against the parent company is also contrary to the principle of the presumption of innocence enshrined in Article 6 of the European Convention

for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') and Article 48 of the Charter of Fundamental Rights of the European Union. In any event, the appellant concludes that the Council erred in law in failing properly to apply the correct test when it decided to freeze the appellant's funds on the basis of Article 7(2)(d) of Regulation No 423/2007.

23. The Council and the other parties to the proceedings claim that the present plea should be rejected. The Commission submits that the appellant seeks a new factual assessment of the dispute without, however, having established a material inaccuracy or a distortion of the facts in the General Court's analysis. The French Republic and the Commission contend that when the appellant formulated the present plea it did not show any error of law ascribable to the General Court. While the French Republic, the United Kingdom and the Commission essentially support the General Court's approach and maintain that it applied the relevant competition law case-law in a proper fashion, they none the less suggest that, since the test has the characteristics of an alternative — 'controlled *or* owned' — and since it is quite clear that the entity in question is owned by an entity already listed under Article 7(2)(d) of Regulation No 423/2007, there is no need for the Council to carry out a further examination and to prove that the entity is also controlled or to prove that the subsidiary is likely to circumvent the measures aimed at the parent company. However, the parties concerned have not drawn any particular legal consequences for the present appeal from that argument. The Council observes that, according to case-law of the Community judicature, the restrictive measures are not penal in nature and that the argument alleging breach of the appellant's presumption of innocence is therefore ineffective.

2. Assessment

24. The Court is called upon here to define the test that can determine whether an entity may be listed pursuant to Article 7(2)(d) of Regulation No 423/2007.[14] I would observe immediately that, as the General Court held,[15] it is clear from that subparagraph that the reason for entering those entities on the relevant list is not that they participate in or provide support for the Islamic Republic of Iran's policy of nuclear proliferation but solely that those entities are 'owned or controlled' by entities which have themselves, and themselves alone, been identified as being directly engaged in, or providing support for, that policy. In addition, the test is worded in a clearly alternative form. What has to be interpreted in the present case is the test of ownership within the meaning of that subparagraph.

25. It follows from the judgment under appeal that the General Court considered that the ownership test should be given a fuller reading. After recalling the consistent case-law of this Court that a provision of European Union law must be interpreted in the light not only of its wording but also of its context and the objectives which it pursues,[16] the General Court considered that, so far as the fact of being owned by an entity whose funds are frozen under Article 7(2)(a) and (b) of the regulation is concerned, formal ownership alone might not suffice. Such an approach seems reasonable to me, in view of the fact that the situations of ownership cannot all be summarised, as in the present case, in ownership by the parent company of the entire capital of its subsidiary. In such a case, there is a presumption that full ownership goes hand in hand with the parent company's ability to influence the decision-taking policy of its subsidiary, whereas, where the parent company owns less than 100% of the capital of its subsidiary, its ability to do so might seem less evident.

26. The General Court thus asserted that 'it remain[ed] to examine whether, because it [was] owned by [Bank Melli], it [was] to a considerable degree likely that the [appellant] [might] be prompted to circumvent the measures adopted against its parent entity'.[17] Rather than a strictly literal interpretation of the provision in question, according to which the mere finding of ownership could

14 — Article cited at point 6 of this Opinion.

15 — See paragraph 69 of the judgment under appeal.

16 — See paragraphs 61 and 120 of the judgment under appeal.

17 — Paragraph 121 of the judgment under appeal.

suffice to provide a ground for entering an entity, the General Court preferred a teleological interpretation, which took into account the objective pursued by the regulation. It was in that specific context that the General Court, while emphasising the particular feature of the sphere in which the restrictive measure affecting the appellant was taken, took inspiration from this Court's case-law on the ascribability of the anti-competitive conduct of a subsidiary to the parent company. As I have recently had occasion to observe in a different context,[18] it follows from that case-law that, in the particular case in which a parent company owns 100% of the capital of its subsidiary which has committed an infringement of the rules of European Union competition law, first, that parent company may exercise decisive influence over the conduct of that subsidiary[19] and, second, there is a rebuttable presumption that the parent company does indeed exercise such influence.[20]

27. The General Court's approach strikes me as prudent, for two reasons. In the first place, its interpretation makes it possible to go beyond an automatic application of the ownership test and seek to examine the impact of ownership on the functioning and decision-taking process of the subsidiary. In the second place, the General Court did not transpose this Court's case-law on competition law but, on the contrary, being aware of the fundamental differences between the two spheres, merely took inspiration from that case-law. According to a finding of the General Court, which was not disputed before that court and has not been contested on appeal, the appellant is wholly owned by Bank Melli — which, as the parties are agreed, is on the list of entities whose assets must be frozen pursuant to Article 7(2)(a) and (b) of Regulation No 423/2007 — and, on that basis, Bank Melli is able to appoint the appellant's directors.[21] In those circumstances, it is correct to take the view that the appellant represents a not insignificant risk, naturally prompted by the fact that it is wholly owned and confirmed by the argument based on the person holding the power to appoint the directors, that it may circumvent measures adopted against the parent company.

28. Continuing in its desire to go beyond a strictly formal approach to the ownership test, the General Court proceeded with its analysis and examined whether the file, and more widely the relationship between the appellant and its parent company, revealed any exceptional circumstances capable of offsetting the influence that Bank Melli exerts on its subsidiary by appointing its directors. In that regard, each of the appellant's arguments was examined before the General Court but none appeared to present the sufficient level of guarantee. Even on the assumption that this Court did have jurisdiction, at the appeal stage, to rule again on those arguments, which to my mind fall within the ambit of a factual assessment rather than that of a legal characterisation of the facts, it should then uphold the General Court's position in so far as it follows from paragraphs 125 to 128 of the judgment under appeal that the appellant either invoked existing elements which were insufficient to preclude all risk of circumvention, or proposed measures whose purely prospective — not to say hypothetical — nature prevents the Court from ruling in full knowledge of the facts on their reliability and effectiveness.

29. In the light of what I have just said, I therefore find it difficult to accept the appellant's argument that the General Court's reasoning favours an automatic application of the ownership test over a case-by-case analysis, for, while it is true that the fact that the appellant is wholly owned tends to suggest that the parent company necessarily exercises what may prove to be decisive influence over it, the General Court specifically looked for the elements that would enable it to conclude that that was so — in the present case, the appointment of the appellant's directors by the parent company and the concomitant existence of a real risk that the measure taken against Bank Melli would be circumvented — at the same time as it analysed the other circumstances capable of qualifying that

18 — See point 10 of my Opinion in Case C-520/09 P *Arkema* v *Commission*, pending before the Court of Justice.

19 — Case 48/69 *ICI* v *Commission* [1972] ECR 619, paragraphs 136 and 137, and Case C-97/08 P *Akzo Nobel and Others* v *Commission* [2009] ECR I-8237, paragraph 60.

20 — See *Akzo Nobel and Others* v *Commission* (paragraph 60) and judgment of 20 January 2011 in Case C-90/09 P *General Química and Others* v *Commission* [2011] ECR I-1, paragraph 39.

21 — See paragraph 124 of the judgment under appeal.

finding and, in the General Court's own words, of offsetting the decisive influence of the parent company. The solution arrived at seems to me to be appropriate both to the particular context in which the restrictive measures were adopted in the present case and to the appellant's particular situation with respect to the nature, extent and intensity of its relationship with its parent company.

30. The test applied by the General Court in the judgment under appeal is not inconsistent with the alternative formulation of Article 7(2)(d) of Regulation No 423/2007, for what falls to be determined by means of that test is the *risk* that influence will be exercised by the parent company over its subsidiary. That concept of influence therefore seems to me to be significantly different from the concept of control.

31. The particular characteristic of the appellant's situation, namely, that its assets are frozen not because it is engaged in, or provides support for, nuclear proliferation in Iran but solely because it is a subsidiary owned by such an entity, requires first of all the Council, and then the Community judicature, to undertake a detailed analysis of its case, as of the cases of all the entities listed pursuant to Article 7(2)(d) of Regulation No 423/2007. None the less, it is conceivable that the Council's decision to freeze the appellant's assets was based on a kind of presumption that a wholly-owned subsidiary of an entity engaged in, or providing support for, nuclear proliferation and active, moreover, in the banking and financial sector presents a real danger of being exposed to pressure on the part of the parent company that may prompt it to circumvent the restrictive measures against the parent company. Such a presumption, it will be recalled, can apply only in cases of whole ownership and, as the General Court observed, is rebuttable. In any event, however, the appellant maintains that, if the presumption does apply, its rights of defence were flouted because it was never put in a position to challenge that presumption, in particular before the decision at issue was adopted.

32. In that regard, I would point out that it has consistently been held that, when the Council adopts an initial decision to freeze funds, it fulfils its obligation to state reasons if it informs those concerned of its reasons for adopting that decision against them at the same time as it adopts the measure or as soon as possible thereafter.[22] More broadly, this Court has accepted that the rights of the defence, as they must be ensured at the stage of the preliminary procedure, are not absolute and that, where restrictive measures are applied, communication of the reasons before an entity is included in a list 'would be liable to jeopardise the effectiveness of the freezing of funds' and that 'such measures must, by their very nature, take advantage of a surprise effect'.[23] If, by the very general reference to a breach of its rights of defence, the appellant seeks to challenge the absence of a prior hearing, it must be pointed out that such a hearing is not required on the part of the Council in the present circumstances, for reasons to do with the specific nature of the restrictive measures and the need to maintain their effectiveness. For the remainder, it is sufficient to consider the notice published in the *Official Journal of the European Union* the day following the adoption of the decision at issue to find that a re-examination could be requested of the Council by the appellant.[24] Furthermore, the appellant put forward before the General Court a series of arguments seeking to challenge the assertion that because of its links with Bank Melli it was likely to circumvent the restrictive measures against Bank Melli, and the General Court examined those arguments one by one, being of the view that it had sufficient information to do so. For all those reasons, the objection alleging breach of the appellant's rights of defence cannot be upheld.

22 — Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 336. Breach of the obligation to state reasons, strictly speaking, is the subject-matter of a separate plea, in point of fact the fourth plea (see point 55 et seq. of this Opinion).

23 — *Kadi and Al Barakaat International Foundation* v *Council and Commission* (paragraphs 339 and 340).

24 — Notice of 24 June 2008 for the attention of those persons, entities and bodies that have been included by the Council of the list of persons, entities and bodies to which Article 7(2) of Regulation (EC) No 423/2007 applies (Annex V) (OJ 2008 C 159, p. 1).

33. Last, the appellant maintains that the General Court's reasoning fails to observe the presumption of innocence, since it proceeds on the assumption that the appellant will necessarily adopt a stance contrary to the requirements of Regulation No 423/2007. On that point, I shall merely make two observations. First, the General Court always expressed itself with extreme prudence, stating in particular that 'it is to a considerable degree likely that the [appellant] may be prompted to circumvent the measures adopted against its parent entity' [25] and speaking of the 'not inconsiderable danger that [Bank Melli] may be in a position to lead the [appellant] to carry out [prohibited] transactions'. [26] Accordingly, responsibility for circumventing the restrictive measures would be borne more by the parent company than by the appellant, which, rather, is considered not to have the means to resist the pressure exerted on it. Second, this Court has never considered that restrictive measures such as those at issue in the present case constituted criminal sanctions, but has held that they were only temporary precautionary measures [27] to which the presumption of innocence does not apply, as the appellant has not formally been charged. [28]

34. For all the foregoing reasons, the third plea must be rejected as unfounded.

B – *First plea, alleging an error of law in the interpretation of Article 7(2)(d) of Regulation No 423/2007, and second plea, alleging breach of the principle of proportionality*

1. Arguments of the parties

35. By the first part of the first plea, the appellant challenges the General Court's finding that under Article 7(2)(d) of Regulation No 423/2007 the Council is obliged to freeze the funds of all entities owned or controlled by entities identified as being engaged in, or providing support for, nuclear proliferation in Iran. The appellant maintains, in substance, that the General Court contradicted itself by recognising that that provision is mandatory [29] while asserting that the Council has the power to evaluate the facts of the case in order to ascertain which entities are entities 'owned or controlled' within the meaning of that article. [30] The regulation envisages an individualised approach to listing which does not automatically and mandatorily require the freezing of the funds of all entities owned or controlled, as is clear from Article 15(3) of Regulation No 423/2007, which provides that the Council must indicate to the entity referred to under Article 7(2)(d) the reasons for its inclusion in the list of entities whose funds must be frozen. The General Court erred in law in considering that that article has a mandatory effect for the Council when the Council has a discretion to determine whether a subsidiary, even a wholly-owned subsidiary, meets the criteria laid down in that provision. The Council's inconsistent practice, which led it, in particular, to list only two of Bank Melli's 20 subsidiaries, perfectly illustrates the fact that the Council did not automatically list all the entities owned by Bank Melli. The Council therefore does indeed have a discretion to decide to list entities and the application of Article 7(2)(d) of Regulation No 423/2007 is therefore not mandatory, contrary to what the General Court held. The appellant concludes its argument on this point by asserting that the Council erred in law in including the appellant in the list in so far as it wrongly considered that it was required to do so on the basis of a mandatory provision.

25 — Paragraph 121 of the judgment under appeal.

26 — Paragraph 124 of the judgment under appeal.

27 — *Kadi and Al Barakaat International Foundation* v *Council and Commission* (paragraph 358).

28 — Unlike Article 48(1) of the Charter of Fundamental Rights of the European Union, which was not in force when the judgment under appeal was delivered, Article 6(2) of the ECHR provides that the presumption of innocence must be guaranteed to '[e]veryone charged *with a criminal offence*' (emphasis added).

29 — Paragraph 63 of the judgment under appeal.

30 — Paragraphs 64 and 65 of the judgment under appeal.

36. In the second place, the appellant maintains that Article 7(2)(d) of Regulation No 423/2007, being contrary to the principle of proportionality, cannot be interpreted as a mandatory provision (second part of the first plea) or, in the alternative, if the Court should confirm that it is mandatory in nature, that it is contrary to the principle of proportionality (second plea), contrary to what the General Court held. In any event, it is the question of the conformity of that article to the principle of proportionality that is raised here, as the appellant referred, in the context of the second plea, to the arguments developed on the same topic in the first plea. First, and contrary to what the General Court held, the proportionate nature of that article must be assessed against the yardstick of the relevant Security Council resolutions, including Resolution 1803 (2008).[31] By that resolution, the Security Council did not consider that the appellant's funds must be frozen, but merely required the parent company's activities to be monitored, which tends to prove that less restrictive measures than those determined by the Council can be adopted without endangering the objective pursued. Second, Regulation No 423/2007 itself contains provisions for measures other than the freezing of funds,[32] and those alternative measures, although *ex post facto*, could perfectly well have been applied to the appellant, the Council not having proved that they would be less effective vis-à-vis the appellant than the freezing of funds. The appellant observes that it suggested, during the proceedings before the General Court, certain alternative measures which the General Court did not consider it appropriate to accept, taking the view that the appellant had not proved that they would be effective by reference to the legitimate objective pursued, although it was for the Council to prove that they would not be effective.[33] Nor did the General Court attach sufficient importance to the Council's practice of not automatically freezing the funds of entities belonging to entities engaged in, or providing support for, nuclear proliferation; and the appellant observes that not all Bank Melli's subsidiaries were the subject of such a restrictive measure.

37. The Council, the French Republic, the United Kingdom and the Commission contend that the General Court's interpretation of Article 7(2)(d) of Regulation No 423/2007 is correct. It follows both from the wording of that provision and from the general structure of Article 7(2) that the funds of entities identified as being 'owned or controlled' must be frozen. The Council's discretion is therefore exercised when it checks that the criteria for the application of subparagraph (d) have been met. The General Court also mentioned, by way of guidance, a number of relevant criteria that could be taken into consideration by the Council in that context. The Council's inconsistent practice cannot undermine that interpretation, as the Council may not be in a position to identify all the entities owned or controlled by an undertaking designated as being engaged in or providing support for nuclear proliferation. In any event, the Commission observes that an approach by the Council that may be contrary to Regulation No 423/2007 cannot give rise to any legitimate expectation on the appellant's part. The French Republic adds that as the freezing of assets applies automatically to entities owned or controlled, there is no need to mention them by name in the annex. Furthermore, those parties to the proceedings maintain that the General Court correctly applied the principle of proportionality and was right to hold, first, that Resolution 1803 (2008) is not a criterion against which the proportionate nature of the decision at issue must be assessed and, second, that the freezing of the funds of entities owned by entities recognised as being engaged in, or providing support for, nuclear proliferation is proportionate to the legitimate aim pursued. They unanimously conclude that the first and second pleas must be rejected and the Council goes so far as to contend that the appellant seeks, in an inappropriate manner in the context of an appeal, a fresh assessment of the facts.

31 — See point 9 of this Opinion.

32 — The appellant cites, in that regard, Articles 5, 7(3) and (4), 13 and 16 of Regulation No 423/2007.

33 — The alternative measures suggested by the appellant are presented at paragraph 87 of the judgment under appeal and rejected at paragraph 107 of that judgment.

2. Assessment

a) First part of the first plea

38. It should be borne in mind at the outset that Article 7(2)(d) of Regulation No 423/2007 states that 'Annex V shall include natural and legal persons, entities and bodies not covered by Annex IV, who … have been identified as … being a legal person, entity or body owned or controlled by a person, entity or body [being engaged in, directly associated with, or providing support for, … nuclear proliferation], including through illicit means'.

39. I would observe that the General Court's interpretation of the provision in question was influenced by the case-law of this Court, which has held that it is necessary to consider not only the wording of the provision concerned but also the context in which it occurs and the objects of the rules of which it is part. [34]

40. It follows from the very wording of that article that two elements must be distinguished. The freezing of funds is indeed mandatory, as Article 7(2) provides at the outset when it uses the expression 'shall be frozen', but only after the Council has identified the entities as being 'owned or controlled', such identification thus paving the way for an assessment by the Council of the individual situation of each of the entities capable of being referred to under subparagraph (d) of Article 7(2). I must therefore support the General Court's assertion that subparagraph (d) 'requires the Council to freeze the funds of an entity "owned or controlled" by an entity identified as engaged in nuclear proliferation as provided for in Article 7(2)(a) or (b) of that regulation, the Council assessing case by case whether the entities concerned are entities "owned or controlled"'. [35]

41. The argument whereby the appellant contests the interpretation of Article 7(2)(d) of Regulation No 423/2007 is somewhat confused and appears to me to be based essentially on an incomplete or incorrect reading of the judgment under appeal. The appellant contends, in particular, that when asserting, at paragraph 63, that 'extension of the fund-freezing measure to entities owned or controlled is obligatory', the General Court established that that provision is mandatory. As I have just shown, however, paragraph 63 is merely a stage in the reasoning of the General Court, which determines the definitive interpretation of that article at paragraph 67, to which I have just referred and which establishes that a case-by-case assessment must be made by the Council.

42. In the appellant's submission, since the General Court also mentioned relevant criteria that could be considered by the Council when it evaluates whether an entity is 'owned or controlled', [36] that means that it did not consider that the fact that a subsidiary is owned or controlled by an entity deemed to provide support for nuclear proliferation was sufficient for it to be automatically included in Annex V. In fact, first, the relevant passage of the judgment under appeal refers to the criteria that can be taken into consideration for the purpose of assessing whether an entity is 'owned or controlled', a concept which is much wider than the concept of subsidiary; and, second, the reference to those assessment criteria is in no way inconsistent with the initial assertion that the freezing of funds is mandatory but only vis-à-vis entities that have been identified as being 'owned or controlled', in other words, that meet the criteria for the application of Article 7(2)(d) of Regulation No 423/2007. Those

34 — See paragraph 61 of the judgment under appeal.

35 — Paragraph 67 of the judgment under appeal.

36 — These include the degree of operational independence of the entity in question or the effect of the supervision carried out by a public authority (see paragraph 69 of the judgment under appeal).

criteria, given by way of guidance by the General Court, and to which I am tempted to add the sector in which the entity in question is active,[37] are those that can guide the Council when it identifies the entity as being 'owned or controlled' within the meaning of Article 7(2)(d) of Regulation No 423/2007 and are perfectly compatible with the idea of a case-by-case assessment of individual situations.

43. The extension of the fund-freezing measure to the entities referred to in that article is therefore mandatory only in so far as the Council considers that the entity in question is 'owned or controlled' within the meaning of that provision. Such an interpretation, moreover, is consistent with the discretion which the Council traditionally enjoys in such matters. To my mind, the confusion on the appellant's part is caused by its purely literal reading of that article. The appellant relies on the Council's inconsistent practice to show that not all the entities owned by Bank Melli are listed and that that therefore means that the Council is not required to freeze the funds of all the entities that satisfy the conditions laid down in Article 7(2)(d) of Regulation No 423/2007.

44. That argument cannot be accepted.

45. First, the Council must, in the words of that article, freeze the funds of entities 'owned or controlled', provided that they have been identified as such. The Council's obligation to extend the fund-freezing measures to those entities 'owned or controlled' is intrinsically linked with its ability to identify them. The Council also observed at the hearing that in 2010 restrictive measures were extended to almost 15 new entities 'owned or controlled' by Bank Melli.[38]

46. Second, the ownership or control test cannot, as I have shown above, be interpreted as a strict, formal criterion. The reference in the wording of Article 7(2)(d) of Regulation No 423/2007 to the concept of identification strikes me as all the more relevant because we are dealing here with what is traditionally presented as a system of 'smart sanctions' which in principle must be applied only to those persons and entities that strictly justify its application. In other words, the only funds that must mandatorily be frozen are the funds of entities identified by the Council as being 'owned or controlled' within the meaning of Article 7(2)(d) of that regulation. In line with what I suggested when analysing the third plea, whether or not an entity is 'owned or controlled' must be interpreted in the light of the objective pursued by Regulation No 423/2007. The ownership or control to which that article refers must therefore be envisaged autonomously by comparison with the ordinary or everyday meaning of those two concepts. Entities may be regarded as being 'owned or controlled' within the meaning of Regulation No 423/2007 when they are naturally intended to provide support for the nuclear proliferation carried out by the Iranian State because they are wholly (100%) owned by a parent company, but cannot be so regarded if the parent company's share of the capital, although still a majority shareholding, suggests that the influence exerted is much weaker. It is therefore on the basis of such reasoning that it is possible to understand and accept the General Court's assertion that 'the Council may legitimately … not apply Article 7(2)(d) [of Regulation No 423/2007] to entities which, in its opinion, do not fulfil the conditions for the application of that provision, despite the fact that they are subsidiaries of entities identified as engaged in nuclear proliferation'.[39]

47. The interpretation provided by the General Court, to the effect that the Council is required to freeze the funds of entities which it has identified as being owned or controlled within the meaning of Article 7(2)(d) of Regulation No 423/2007, is not contradictory in the way which the appellant contends. The General Court's analysis on this point is wholly without any error of law. The first part of the first plea must therefore be rejected as unfounded.

37 — At paragraph 69 of the judgment under appeal, the General Court excludes the nature of the activity in question from the relevant criteria. Although I do not believe that the nature of the activity must be an exclusive criterion, I am none the less convinced that the entity's activity is a relevant criterion, as is manifestly borne out by the appellant's situation, and as the Council confirmed at the hearing.

38 — See paragraph 3 of Table B of Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 (OJ 2010 L 195, p. 25), which lists 15 entities considered to be 'held or controlled' by Bank Melli.

39 — Paragraph 73 of the judgment under appeal.

b) Second part of the first plea and second plea

48. The appellant contests, in the first place, the General Court's rejection of the relevance of Resolution 1803 (2008), in which the Security Council merely required States to exercise vigilance with respect to Bank Melli and its branches and subsidiaries.[40] The decision to freeze Bank Melli's funds and those of its subsidiaries was therefore adopted on the basis of a provision that was disproportionate to the requirements of the Security Council.

49. As for the normative context in which the decision at issue was adopted, I would refer to point 106 et seq. of the Opinion which I am delivering today in Case C-548/09 P *Bank Melli Iran* v *Council*. I shall merely make two observations. First, the power conferred on the Council by Article 7(2) has its origin in Common Position 2007/140, which gave effect, in the EU legal order, to Resolution 1737 (2006); the implementation of that resolution is based, however, solely on the EU's desire to take action to help to attain the objectives pursued by the United Nations and not hinder the fulfilment of the international obligations of its Member States, but not on the existence of a positive, direct obligation on the part of the EU to implement the resolutions of the Security Council, since the EU is not a party to the Charter of the United Nations. It clearly follows from that Common Position, moreover, that the EU wished to go beyond the requirements of that resolution by making provision for the Council to have an autonomous power to identify and list the relevant entities.[41] Second, and consequently, a clear distinction must be drawn between Article 7(1) of Regulation No 423/2007, which gives the Council an autonomous power to freeze the funds of the persons, entities and bodies identified by the Security Council, and Article 7(2) of that regulation, which empowers the Council to decide to freeze the funds of persons, entities and bodies which it has itself identified as being engaged in, directly associated with, or providing support for, Iran's nuclear proliferation and the entities which they own or control. It is therefore correct to assert, as the General Court did at paragraph 99 of the judgment under appeal, that the proportionate nature of the inclusion of entities which the Council undertook on the basis of Article 7(2) of Regulation No 423/2007 cannot be assessed against the yardstick of Resolution 1803 (2007), which that article was never intended to implement, but, on the contrary, and as I shall demonstrate below, in the light of the objective pursued by Regulation No 423/2007.

50. As regards the assertion that the General Court erred in law in its assessment of the proportionate nature of Article 7(2)(d) of Regulation No 423/2007, it must be borne in mind that, in the words of the consistent case-law to which the General Court refers at paragraph 100 of the judgment under appeal, the principle of proportionality, which is one of the general principles of EU law, requires the acts of the institutions not to go beyond the limits of what is appropriate and necessary in order to achieve the legitimate objectives pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.[42]

51. In line with that case-law, I note that the appellant has not challenged the legitimacy of the aim pursued, namely, to combat nuclear proliferation in Iran in the interest of the preservation of international peace and security.[43] On the other hand, the appellant challenges the assessment that the freezing of its funds is a necessary and appropriate measure for achieving that aim when it has proposed alternative measures and supervisory measures. The appellant maintains, in particular, that the measures of cooperation with the FSA, the proposal for prior approval of transactions or the implementation of a policy of total prohibition of transactions with Iran were inappropriately rejected

40 — See paragraph 10 of Resolution 1803 (2008), cited at point 9 of this Opinion.

41 — See recital 10 to, and Article 5(1) of, Common Position 2007/140.

42 — In an extensive body of case-law, see Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 15; Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 13; Case C-339/92 *ADM Ölmühlen* [1993] ECR I-6473, paragraph 15; and Case C-558/07 *S.P.C.M. and Others* [2009] ECR I-5783, paragraph 41 and the case-law cited.

43 — See paragraph 75 of the appeal.

by the General Court. What the appellant fails to state is that the main reason for the rejection of those measures was not their effectiveness but their admissibility. It is apparent from paragraph 109 of the judgment under appeal that those measures were invoked only at the hearing without any justification being offered for their late submission. As the appellant has not disputed in its appeal the finding that the measures in question were submitted out of time, the Court is not in my view required to rule on the assessment, which appears to be quite subsidiary, that the General Court, in spite of everything, made as to the practicability or effectiveness of those measures. I note, nevertheless, in that regard that to require the appellant, as the General Court did, to demonstrate the practicability of the alternative measures which the appellant itself suggests is not to place an unreasonable burden on the appellant but, on the contrary, is part of the ordinary testing and verification of the merits of the arguments put forward by any party to a dispute. Nor, therefore, can the appellant contend that it was for the Council to prove that the hypothetical alternative measures which it invoked, and more particularly the system of prior approval and supervision by an independent agent, were impracticable, when the General Court itself expressed the view that the proposed total prohibition of transactions with Iran would not be effective. [44]

52. For the remainder, the General Court's assessment of the necessity and appropriateness of a fund-freezing measure taken against an entity 'owned or controlled' by an entity engaged in, or providing support for, nuclear proliferation is clearly correct. Article 7(2)(d) of Regulation No 423/2007 refers specifically to a category of persons, entities or bodies which, because they are owned or controlled by an entity referred to in Article 7(2)(a) or (b), have a particularly close link with that entity. The General Court's finding that there is a 'not insignificant danger that [the entity identified as being engaged in nuclear proliferation] may exert pressure on the entities it owns or controls' seems to me to demonstrate a perfect grasp of the *ratio legis* of subparagraph (d) of Article 7(2). It is that danger that the effectiveness of the entire system may be jeopardised by being circumvented that justifies the emphasis placed on the preventive measures and, consequently, the measures which the General Court characterised as *ex post*, although necessarily less restrictive, do not offer sufficient guarantees to be regarded as equally effective. It is therefore that danger that justifies the particular treatment given to the entities referred to in Article 7(2)(d) of Regulation No 423/2007. The fund-freezing measures taken against them therefore do not appear to be manifestly inappropriate. [45]

53. As regards the disproportionate nature, it is indeed true to state that the fund-freezing measure was adopted against the appellant because the latter is, according to the Council, wholly owned by an entity which provides support for nuclear proliferation and that the measure concerned has significant consequences for the appellant. [46] This Court has none the less already accepted, as the General Court observed at paragraph 111 of the judgment under appeal, that 'the importance of the aims pursued by a Community act [such as a regulation adopting restrictive measures] is such as to justify negative consequences, even of a substantial nature, for some operators, including those who are in no way responsible for the situation which led to the adoption of the measures in question, but who find themselves affected, particularly as regards their property rights'. [47] In the light of the fundamental and legitimate objective referred to above and the need to preserve, to that end, the effectiveness of the restrictive measures determined on the basis of Article 7(2)(a) and (b) of Regulation No 423/2007, it must be considered that the assessment of the disproportionate nature of the effects of the freezing of funds on the appellant was therefore carried out through a proper application of the relevant principles

44 — See paragraph 109 of the judgment under appeal.

45 — As to the fact that only the manifestly inappropriate nature of a measure can affect its legality, see Case C-380/03 *Germany* v *Parliament and Council* [2006] ECR I-11573, paragraph 145 and the case-law cited, and also *S.P.C.M. and Others*, paragraph 42.

46 — See, by analogy, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 358.

47 — Ibid. (paragraph 361 and the case-law cited).

defined by this Court and that the General Court was correct to conclude that Article 7(2)(d) of Regulation No 423/2007, which enabled the fund-freezing measures to be extended to the entities owned or controlled by Bank Melli and therefore to the appellant, does not breach the principle of proportionality.

54. Thus, the second part of the first plea and the second plea must be rejected as unfounded.

C – *Fourth plea, alleging an error of assessment with respect to the obligation to state the reasons for the decision at issue*

1. Arguments of the parties

55. The appellant relies on both Article 15(3) of Regulation No 423/2007 [48] and the applicable case-law and takes issue with the General Court for having considered that the Council had fulfilled its obligation to state reasons for the decision at issue when the decision refers only to Article 7(2) of that regulation without specifying the particular limb on the basis of which the appellant was listed in the annex. Furthermore, that annex contains specific and individual reasons only with respect to Bank Melli, but not with respect to Melli Bank; nor did the Council state in the decision at issue its reasons for believing that there was a considerable degree of likelihood that Melli Bank would circumvent the measures decided against its parent company. The General Court wrongly, because it acted hastily, asserted that the Council implicitly considered that the appellant was owned within the meaning of Article 7(2)(d) and it was therefore on that basis that the appellant had been placed on the list of entities whose funds must be frozen. As the subsidiaries of Bank Melli were not all placed on that list, the appellant was entitled to doubt that it was included in the list solely on account of its capacity as a subsidiary. Nor can the General Court assert that the Council relied on a rebuttable presumption without contradicting the requirement laid down in the regulation to give specific and individual reasons for listing an entity. The fact that the action for annulment was based primarily on pleas alleging that the appellant was not controlled by Bank Melli does not affect the assessment of the Council's obligation to state reasons for the decision at issue. Last, the appellant observes in the appeal that it has engaged in correspondence with the Council and requested communication of its file, and submits that the Council's refusal to communicate the file proves that there were never any detailed reasons for listing the appellant. Contrary to the conclusion reached by the General Court decision, the Council's obligation to state reasons for listing the appellant and to provide individual and specific reasons for doing so has not been fulfilled.

56. The Council and the other parties to the proceedings contend that this plea must be rejected, as the wording of the decision at issue mentions Article 7(2) of Regulation No 423/2007 and paragraph 4 of Table B refers to the subsidiaries and branches of Bank Melli. As the appellant was wholly owned by Bank Melli, it could not fail to be aware that it was listed in its capacity as an entity owned or controlled by Bank Melli. The Council is not required to state, in the decision at issue, all the matters which justified its decision. The appellant, moreover, understood those reasons since it was able to bring an action for annulment before the General Court and, in that context, defended a position consisting essentially in disputing its legal and operational links with Bank Melli. The statement of reasons is therefore sufficient and the General Court carried out a legally irreproachable assessment in applying the essential principles laid down in the relevant Community case-law.

57. The Commission is the only party to the proceedings to have taken the view, in the first exchange of pleadings, that the appellant also sought to challenge the Council's failure to notify it individually of the decision at issue. The Commission contends, primarily, that this is a new plea which the Court should deem inadmissible. In the alternative, the Commission disputes the existence of an obligation

48 — Article cited at point 8 of this Opinion.

on the Council to notify the decision individually to the appellant. In the reply, the appellant maintains that the question of notification is one of the aspects which it developed in connection with the statement of reasons for the decision and that therefore, just as a similar plea was examined by the General Court in *Bank Melli Iran* v *Council*,[49] it must be examined by the Court, which should find that there has been a breach of the obligation to state reasons in the present case. That assertion is disputed by the Council and the French Republic in their rejoinders.

2. Assessment

58. The appellant disputes, in the first place, the General Court's assessment of the statement of reasons provided by the Council in support of the decision at issue and contends that it does not contain the reasons that led the Council to adopt the measure in question.

59. As the General Court observed,[50] the obligation to state reasons is a requirement laid down in primary law[51] and reiterated in Article 15(3) of Regulation No 423/2007.[52] In order to determine whether the obligation to state the reasons for a decision adopted by an EU institution has been fulfilled, it is necessary to ascertain that the statement of reasons permitted the entity to which it refers to know the reasons for the measure taken and the competent judicial authority to exercise its power of review. It is not however necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure is sufficient 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.[53] I note that those basic principles were reasserted by the General Court at paragraphs 143 and 145 of the judgment under appeal.

60. The General Court also observed that the obligation to state reasons is an essential principle of Community law which may be derogated from only for overriding reasons[54] and that the Council is required to advise the entity concerned of the 'actual specific reasons' when it adopts a fund-freezing decision.[55] Also noting the particular context in which the decision at issue was adopted, the General Court transposed, by analogy, the reasoning employed by this Court when dealing with restrictive measures adopted in the context of the fight against terrorism, observing that the obligation to state reasons was all the more important because the entities first concerned by a fund-freezing measure had no right to be heard before the decision was adopted.[56] It also follows from that case-law that the Council fulfils its obligation to state reasons if it informs the entity concerned of the reasons which prompted it to adopt a fund-freezing decision against it when the measure is adopted or as soon as possible thereafter.[57]

61. In response to the argument put forward before the Court by the French Republic that there is no need for the entities owned or controlled to be mentioned in the list of persons, entities and bodies whose funds must be frozen, I would point out that, on the contrary, it is clear from Article 7(2)(d) of Regulation No 423/2007 that '[a]nnex V shall include natural and legal persons, entities and bodies … who … have been identified as being … owned or controlled'. In other words, Regulation No 423/2007 does indeed provide for the formal listing of the entities referred to in Article 7(2)(d) in that annex. The General Court's assessment on that point[58] is therefore correct.

49 — Judgment of the General Court in *Bank Melli Iran* v *Council*, paragraphs 86 to 88.
50 — See paragraph 143 of the judgment under appeal.
51 — Article 253 EC.
52 — See point 8 of this Opinion.
53 — See, inter alia, Case C-266/05 P *Sison* v *Council* [2007] ECR I-1233, paragraph 80.
54 — See paragraphs 143 and 144 of the judgment under appeal.
55 — See paragraph 144 of the judgment under appeal.
56 — See paragraph 143 of the judgment under appeal.
57 — See paragraph 144 of the judgment under appeal.
58 — See paragraph 146 of the judgment under appeal.

62. Next, it was in application of the principles referred to above that the General Court reached the conclusion that the statement of reasons for the decision at issue, although 'exceptionally concise', was sufficient.[59] Its assessment was guided by whether the decision had enabled the appellant to understand the reasons why its funds had been frozen. In that regard, a number of elements argue in favour of the General Court's detailed analysis.

63. It is true that, in the decision at issue, the Council drafted a single paragraph setting out its reasons for including Bank Melli and its subsidiaries and branches in the list and that the reasons stated in the column headed 'Reasons' concern in the first place Bank Melli and not the appellant. Nevertheless, if, as I believe, the obligation to state reasons must be assessed by reference to whether the person concerned understood the reasons for its inclusion and was in a position to assess — and where necessary to challenge — the merits of those reasons, the fact remains that the wording of the decision refers to Article 7(2) of Regulation No 423/2007. In addition, under the entry 'Name' in paragraph 4 of Table B of the annex to the decision at issue is the following: 'Bank Melli, Melli Bank Iran and *all branches and subsidiaries*'.[60] The appellant's argument that it had to 'divine' the subparagraph of Article 7(2) on which the fund-freezing decision was based cannot be accepted, since the applicant could scarcely fail to be aware that it was wholly owned by Bank Melli. As Article 7(2)(d) of Regulation No 423/2007 states that the funds of entities identified as being 'owned or controlled' are to be frozen, the reference to the subsidiaries and branches in paragraph 4 of Table B of the annex, in addition to the specific reference to the appellant and its postal address, to my mind constitutes sufficient indication of the reasons for its inclusion in the list. To draw that conclusion is, however, without prejudice to the possibility that the appellant might, after the adoption of the decision, request further information from the Council about its reasons for considering that the appellant presented a not insignificant danger of being subjected to pressure by its parent company that might lead it to circumvent the restrictive measures adopted against the parent company, to the extent that the Council was able to communicate them to the appellant. I shall add, last, that the fact that the appellant is wholly owned by its parent company is not irrelevant to the Court's assessment of the sufficiency of the statement of reasons. In other words, if the concise nature of the statement of reasons must not constitute, in this case, an obstacle to its sufficiency, the Council should in all probability make a greater effort in cases where ownership or control is less obvious.

64. Furthermore, in the appeal the appellant mentions correspondence with the Council relating to the communication of its file. That submission has no impact on the examination of the present plea. Indeed, if this plea should be admissible (and I am not convinced that it is),[61] it does not concern, in any event, the question of the sufficiency of the statement of reasons in the decision itself but, rather, the separate question of access to the file, which was not raised before the General Court.

65. In those circumstances, the General Court did not err in law in taking the view that, however concise it might be with respect to the appellant, the statement of reasons for the decision at issue is none the less adequate in the light of the context and sufficient to allow the appellant to understand it and assess the reasons that led the Council to adopt that decision against it and to allow the General Court to exercise its power of review.

59 — See paragraph 148 of the judgment under appeal.

60 — Emphasis added.

61 — I would point out that, according to consistent case-law, 'to allow a party to put forward for the first time before the Court of Justice a plea and arguments which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to review of the findings of law on the pleas argued before the General Court' (judgment of 21 September 2010 in Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden* v *API and Commission* ECR I-8533, paragraph 126 and the case-law cited).

66. As to whether the decision at issue ought to have been notified to the appellant, I must confess to having serious doubts as to the admissibility of what the appellant presented in its reply as an expansion of the present plea. None of the pleas raised before the General Court sought to challenge the Council's failure to notify the decision at issue individually. Consequently, and notably unlike the situation in *Bank Melli Iran* v *Council*,[62] to which the appellant refers, the General Court did not undertake any assessment of this plea in the judgment under appeal precisely because it had not been put forward. Accordingly, even on the assumption that the appellant did intend, at the stage of the appeal, to address that question, its arguments are not in any event directed against the judgment under appeal.

67. What we have is therefore clearly a new plea, raised by the appellant at the stage of the reply in response to the Commission's interpretation of paragraph 16 of the appeal, in which the Commission believes it sees a challenge to the way in which the decision had been brought to the appellant's notice and on which the Commission expressed its views at length in its statement in response.

68. I do not read that paragraph in the same way. In the original version, paragraph 116 does admittedly state that the case-law of the General Court 'makes it clear that a person must be *notified* of the reasons for a decision against him at the time at which the decision is made'.[63] But in any event, in the remainder of the appeal, the appellant never set out any argument seeking to demonstrate that the Council was under an obligation to notify the decision individually. It would be manifestly exaggerated to consider that the mere use of the word 'notified' in the initial pleading amounts to setting out a plea relating to the obligation to notify the decision at issue individually. The appellant could not set out such a plea in any event since, as I have emphasised above, it did not raise it in the proceedings before the General Court. The discussion between the parties to the proceedings in the reply and the rejoinder, and then at the hearing, should not therefore mislead the Court as to the admissibility of the arguments connected with notification, which constitute a new plea alleging breach by the Council of the obligation to notify, which as such is inadmissible, the Court's jurisdiction being limited to assessing the legal solution given to the pleas discussed before the General Court.[64]

69. The fourth plea must therefore be rejected as unfounded in part and inadmissible in part.

IV – Costs

70. Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. According to Article 69(2) of those Rules, which applies to the appeal procedure pursuant to Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Council has applied for costs and the appellant should, in my view, be unsuccessful, it should be ordered to pay the costs of the appeal. As the French Republic, the United Kingdom and the Commission have taken part in the proceedings before the Court on the basis of Article 115 of the Rules of Procedure, they must bear their own costs, pursuant to Article 69(4) of the Rules of Procedure.

62 — Cited in footnote 12.

63 — Emphasis added.

64 — See, in an extensive body of case-law, *Sison* v *Council*, paragraph 95 and the case-law cited, and *Sweden* v *API and Commission*, paragraph 126 and the case-law cited. Should the Court decide otherwise, I would refer to point 32 et seq. of the Opinion which I am delivering today in Case C-548/09 P *Bank Melli Iran* v *Council*, where I have suggested that the Court should consider that the Council is under an obligation to notify the decision at issue individually, while accepting that a breach of that obligation cannot be penalised with respect to legality but, on the contrary, should be penalised only with respect to the validity of that decision.

V – Conclusion

71. Having regard to the foregoing considerations, I propose that the Court should:

(1) dismiss the appeal;

(2) order Melli Bank Plc to pay the costs incurred by the Council of the European Union.