JUDGMENT OF THE COURT (Grand Chamber)

16 November 2011 *

In Case C-548/09 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 December 2009,

Bank Melli Iran, established in Tehran (Iran), represented by L. Defalque, avocat,

appellant,

the other parties to the proceedings being:

Council of the European Union,

represented by M. Bishop and R. Szostak, acting as Agents,

defendant at first instance,

* Language of the case: French.

French Republic, represented by E. Belliard, G. de Bergues, L. Butel and E. Ranaivoson, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by S. Hathaway, acting as Agent, and D. Beard, Barrister,

European Commission, represented by S. Boelaert and M. Konstantinidis, acting as Agents,

interveners at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A.Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, A. Prechal, Presidents of Chambers, A. Rosas (Rapporteur), R. Silva de Lapuerta, K. Schiemann, E. Juhász, D. Šváby, M. Berger and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 29 March 2011,

after hearing the Opinion of the Advocate General at the sitting on 28 June 2011,

gives the following

Judgment

1 By its appeal, Bank Melli Iran, an Iranian bank owned by the Iranian State, requests the Court of Justice to set aside the judgment of the Court of First Instance of the European Communities (now the General Court) in Case T-390/08 Bank Melli Iran v Council [2009] ECR II-3967 ('the judgment under appeal'), by which that court dismissed its action seeking the annulment of paragraph 4 of Table B in 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 (OJ 2008 L 163, p. 29) ('the contested decision') in so far as it relates to Bank Melli Iran and its branches.

Legal context

Resolutions 1737 (2006) and 1747 (2007) of the United Nations Security Council

2 In order to apply pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems ('nuclear proliferation'), on 23 December 2006 the United Nations Security Council ('the Security Council') adopted Resolution 1737 (2006), the annex to which lists a series

of persons and entities involved in nuclear proliferation whose funds and economic resources ('funds') were to be frozen. The list contained in the annex to Resolution 1737 (2006) has subsequently been updated by several resolutions, in particular by Security Council Resolution 1747 (2007) of 24 March 2007, by which the funds of Bank Sepah, an Iranian bank, and its subsidiary in the United Kingdom, Bank Sepah International plc, were frozen. The appellant has not been the subject of any fund-freezing measures adopted by the Security Council.

Common Position 2007/140/CFSP

3 Resolution 1737 (2006) was given effect, so far as the European Union is concerned, by Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49).

4 Article 5(1) of Common Position 2007/140 states the following:

'All funds … which belong to, are owned, held or controlled, directly or indirectly, by:

(a) persons and entities designated in the Annex to [Resolution] 1737 (2006) as well as those of additional persons and entities designated by the Security Council or by the Committee in accordance with Paragraph 12 of UNSCR 1737 (2006), such persons or entities being listed in Annex I,

(b) persons and entities not covered by Annex I that are engaged in, directly associated with, or providing support for, Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means, as listed in Annex II, shall be frozen.'

5 The appellant is not mentioned in the annexes to Common Position 2007/140.

Regulation (EC) No 423/2007

6 In so far as concerned the powers of the European Community, Resolution 1737 (2006) was given effect by Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), adopted on the basis of Articles 60 EC and 301 EC in relation to Common Position 2007/140, and the content of which is substantially the same as that of Common Position 2007/140 in that the same names of entities and physical persons are listed in the annex to that regulation.

7 Article 5 of Regulation No 423/2007 prohibits certain transactions with persons or entities in Iran or for use in that country.

8 Article 7 of Regulation No 423/2007 provides:

'1. All funds … belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IV shall be frozen. Annex IV shall include the persons, entities and bodies designated by the … Security Council or by the Sanctions Committee in accordance with paragraph 12 of [Security Council Resolution] 1737 (2006).

2. All funds … belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex V shall be frozen. Annex V shall include natural and legal persons, entities and bodies, not covered by Annex IV, who, in accordance with Article 5(1)(b) of Common Position 2007/140 …, have been identified as:

(a) being engaged in, directly associated with, or providing support for, Iran's proliferation-sensitive nuclear activities, or

(b) being engaged in, directly associated with, or providing support for, Iran's development of nuclear weapon delivery systems, or

(c) acting on behalf of or at the direction of a person, entity or body referred to under (a) or (b), or

(d) 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.

3. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes IV and V.

4. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1, 2 and 3 shall be prohibited.'

9 The appellant is not mentioned in the annexes to Regulation No 423/2007.

10 Articles 8 and 9 of Regulation No 423/2007 provide for the possibility to release certain funds to enable the execution of a judicial, administrative or arbitral lien or judgment, or for the payment of a sum which is due. Article 10 of that regulation provides for the possibility of releasing certain funds to meet, under the supervision of the competent authorities, certain expenditure, such as that necessary to subsidise the basic needs of persons whose funds have been frozen or to pay for expenses associated with the provision of legal services.

11 Article 13 of Regulation No 423/2007 requires the persons and entities concerned to provide various items of information to the competent authorities and to cooperate with them.

12 Article 15(2) and (3) of that regulation provides:

'2. The Council, acting by qualified majority, shall establish, review and amend the list of persons, entities and bodies referred to in Article 7(2) and in full accordance with the determinations made by the Council in respect of Annex II to Common Position 2007/140... The list in Annex V shall be reviewed in regular intervals and at least every 12 months.

3. The 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.'

13 Article 16 of Regulation No 423/2007 provides that Member States are to determine the penalties applicable to infringements of the regulation.

Security Council Resolution 1803 (2008)

14 Under paragraph 10 of Security Council Resolution 1803 (2008) of 3 March 2008, the Security Council 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 Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems'.

Common Position 2008/479/CFSP

15 Council Common Position 2008/479/CFSP of 23 June 2008 amending Common Position 2007/140 (OJ 2008 L 163, p. 43), replaced, inter alia, Annex II to Common Position 2007/140. That annex contains Table A, entitled 'Natural persons', and Table B, entitled 'Entities'.

16 Although Resolution 1803 (2008) did not freeze the funds of Melli Bank and Bank Melli Iran, such a freeze is provided for in Common Position 2008/479. Paragraph 5 of Table B in the annex to that common position states the following in the first column, entitled 'Name':

'Bank Melli, Melli Bank Iran and all branches and subsidiaries

(a) Melli Bank plc

(b) Bank Melli Iran Zao.'

17 In a second column, entitled 'Identifying information', an address is given opposite the name of each of the banks concerned.

18 The third column, entitled 'Reasons', states the following:

'Providing or attempting to provide financial support for companies which are involved in or procure goods for Iran's nuclear and missile programmes (AIO, SHIG, SBIG, AEOI, Novin Energy Company, Mesbah Energy Company, Kalaye Electric Company and DIO). 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.'

19 In the fourth column, entitled 'Date of listing', the date is given as '23.6.2008'.

The contested decision

20 On 23 June 2008 the Council also adopted the contested decision. The annex to that decision replaces Annex V to Regulation No 423/2007. It contains Table A, entitled 'Natural persons', and Table B, entitled 'Legal persons, entities and bodies', which both contain the same columns as those in the annex to Common Position 2008/479. The appellant is listed in paragraph 4 of Table B. The information relating to the appellant is identical to that in the annex to the common position. The contested decision was published in the *Official Journal of the European Union* on 24 June 2008.

21 A notice for the attention of those persons, entities and bodies that have been included by the Council on the list of persons, entities and bodies to which Article 7(2) of Council Regulation (EC) No 423/2007 applies (Annex V) (OJ 2009 C 145, p. 1) was published in the *Official Journal of the European Union* on 25 June 2009. It is stated therein that, according to Article 15(2) of the regulation, that list is to be reviewed at regular intervals and at least every 12 months. For that purpose, the persons, entities or bodies concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the list in question should be reconsidered. Any such requests should be sent to the Council within one month from the date of publication of that notice.

The action before the General Court and the judgment under appeal

22 By application lodged at the Registry of the General Court on 18 September 2008, the appellant brought an action for the annulment of paragraph 4 of Table B in the annex to the contested decision, and requested the General Court to:

— primarily, annul paragraph 4 of Table B in so far as it concerned the appellant, its subsidiaries and branches;

— in the alternative, declare Articles 7(2) and 15(2) of Regulation No 423/2007 inapplicable to this case;

— in any event, order the Council to pay the costs.

23 The French Republic, the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities (now the European Commission) were granted leave to intervene before the General Court in support of the form of order sought by the Council that the action be dismissed.

24 In support of the form of order it sought, the appellant raised five pleas. The first plea alleged an infringement of essential procedural requirements, of the EC Treaty, of the rules of law relating to its application and of Article 7(2) of Common Position 2007/140, misuse of power and want of a legal basis for the contested decision; the second, infringement of the principle of equal treatment; the third, infringement of the principle of proportionality and of the right to property; the fourth, infringement of the rights of the defence, of the right to effective judicial protection and of Article 15(3) of Regulation No 423/2007; and the fifth, that the Council lacked competence to impose 'criminal sanctions', such as the freezing of funds, under the Treaty.

25 At the outset, and before examining those pleas, the General Court set out, in paragraphs 35 to 37 of the judgment under appeal, the principles applicable to judicial review.

26 The General Court then examined and rejected each of the pleas raised and dismissed the action in its entirety.

Forms of order sought by the parties to the appeal

27 Bank Melli Iran claims that the Court of Justice should:

— set aside the judgment under appeal;

— grant the forms of order sought by it in the proceedings before the General Court;

— order the respondent to pay the costs of the proceedings at first instance and on appeal.

28 The Commission contends that the Court should dismiss the appeal and order the appellant to pay the costs.

29 The French Republic contends that the Court of Justice should:

— dismiss the appeal;

— effect a replacement of grounds in respect of paragraphs 86 to 88 of the judgment under appeal in which the General Court considered that the Council was required to notify individually the persons and entities concerned of the fund-freezing measures adopted on the basis of Regulation No 423/2007;

— order the appellant to pay the costs.

30 The United Kingdom requests the Court of Justice to dismiss the appeal.

31 The Commission contends that the Court of Justice should:

— find that none of the submissions made by the appellant gives cause to set aside the judgment under appeal;

— consequently, dismiss the appeal.

Grounds of appeal and arguments of the parties

32 Bank Melli Iran relies on three principal grounds of appeal and on three other grounds of appeal in the alternative.

33 Principally, it submits, first, that the General Court erred in law by not finding the obligation of individual notification of the contested measure to be an essential procedural requirement and that its reasoning was vitiated by erroneous grounds, second, that the General Court committed an error of law in the interpretation of the legal bases of Regulation No 423/2007 and vitiated its reasoning by erroneous grounds and, third, that the General Court infringed the duty to state the reasons for measures which it adopts, and infringed the rights of the defence and the principle of effective judicial protection.

34 In the alternative, it submits, first, that the General Court infringed Article 7(2) of Regulation No 423/2007 and contradicted itself, second, that it made an error of assessment of law with regard to the appellant's right to property and, third, that the Council made a manifest error of assessment of the facts by including and maintaining the appellant in the list in Annex V to Regulation No 423/2007.

The first principal ground of appeal, alleging an infringement of the obligation of individual notification and erroneous grounds in the judgment under appeal

35 The present ground of appeal concerns paragraphs 86 to 90 of the judgment under appeal, which state the following:

'86 In contrast, the Council's assertion, supported by the interveners, that the obligation to apprise the applicant of the reasons was satisfied by the publication of the contested decision in the Official Journal cannot be accepted. A decision such as the contested decision, which adopts an amended version of Annex V to Regulation No 423/2007, produces its effects *erga omnes*, in that it is addressed to a body of addressees determined in a general and abstract manner, which are required to freeze the funds of the entities designated by name in the list in that annex. Such a decision, however, is not of an exclusively general nature, for the freezing of funds applies to entities designated by name, directly and individually concerned by the individual restrictive measures adopted in respect of them (see, to that effect and by analogy, [Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat International Foundation v Council and Commission [2008] I-6351, paragraphs 241 to 244, and Case T-228/02 Organisation des Modjahedines du peuple d'Iran v Council [2006] ECR II-4665], paragraph 98). Furthermore, the freezing of funds has considerable consequences for the entities concerned, for it may restrict the exercise of their fundamental rights. In the circumstances, given the need … to ensure that those rights, both substantive and procedural, are respected, it must be considered that the Council is bound, in so far as may be possible, to apprise the entities concerned of the fund-freezing measures by making individual notification.

87 The arguments put forward by the Council are not such as to alter that conclusion. First, the fact that individual notification proves impossible in certain cases is without prejudice to the interest of those entities in receiving such notification

and is therefore irrelevant in those cases in which the address of the entity concerned is known. Secondly, the rule that ignorance of the law is no defence cannot be relied on against the applicant, for in its regard the contested decision has the nature of an individual measure. Thirdly, the distinction drawn by the Council in relation to fund-freezing measures adopted in the campaign against terrorism is misplaced, for whether or not the reasons invoked are defamatory can be of relevance only if it should be necessary to determine whether the publication of the statement of reasons in the Official Journal was appropriate. On the other hand, the requirement of individual notification of fund-freezing measures stems from the fact that those measures affect the rights of the entities concerned individually and to a considerable extent. The effects of the fund-freezing measures adopted pursuant to Regulation No 423/2007 and of those adopted as part of the campaign against terrorism being comparable, in both cases the entities affected must be apprised of the measures adopted.

88 In the light of the foregoing, the Council must be considered not to have fulfilled its obligation, stemming from Article 15(3) of Regulation No 423/2007, to apprise the applicant of the grounds of the contested decision, inasmuch as it did not make individual notification, even though it is clear from the actual content of the decision that it knew the address of the applicant's headquarters.

89 However, the annexes to the application for interim measures, lodged by the applicant in Case T-390/08 R, make it clear that by letter of 24 June 2008 the French banking commission informed the applicant's branch in Paris of the adoption of the contested decision and of its publication in the Official Journal that same day. Thus the applicant was informed, timeously and officially, of the adoption of the contested decision, and that it might consult the statement of reasons for that decision in the Official Journal. What is more, it is apparent that it did actually consult the content of that decision, a copy of which is annexed to the application.

90 In those exceptional circumstances, it must be held that the fact that the Council did not apprise the applicant by individual notification of the statement of reasons for the contested decision did not have the effect of depriving the applicant of an opportunity of knowing, in good time, the reasons for the contested decision or of assessing the validity of the fund-freezing measure adopted in its regard. In consequence, the Council's omission does not justify annulment of the contested decision.'

Arguments of the parties

36 The appellant submits that the General Court committed an error of law by failing to find the obligation of individual notification, laid down in Article 15(3) of Regulation No 423/2007, which if not fulfilled results in the annulment of the measure, to be an essential procedural requirement and that it vitiated its statement of reasons with erroneous grounds.

37 It emphasises that, according to Article 234 EC, individual decisions take effect only upon their notification. It was all the more important to notify the contested decision since the appellant was not heard before the decision was adopted.

38 Citing the judgment in Case C-227/92 P Hoechst v Commission [1999] ECR I-4443, the appellant submits that the notification of a decision is an essential procedural requirement, which if not fulfilled constitutes an absolute ground for nullity of the measure. That nullity cannot be made good by information provided to the addressee of the measure by another person or entity. In the appellant's view, the notification of the contested decision made by the French banking commission could thus not satisfy the conditions for notification specified in Regulation No 423/2007.

39 In addition to the infringement of essential procedural requirements, the appellant accuses the General Court of providing erroneous grounds for its judgment by considering that the information provided to the appellant by the French banking commission made good the nullity and justifying that finding by the fact that the Council did not determine there to be 'exceptional circumstances', even though the failure to notify a measure having adverse effects constitutes an infringement of a rule of European Union law which is of a public policy nature.

40 The French Republic and the Commission dispute the General Court's reasons and suggest that the Court of Justice substitute those grounds for its own. In their view, Article 15(3) of Regulation No 423/2007 does not require individual notification of the contested decision and no obligation to notify can be inferred from primary law. The General Court was thus wrong to require, in paragraph 88 of the judgment under appeal, that the Council provide individual notification.

41 The Council, the French Republic and the Commission note the prescriptive nature of a decision to freeze funds. The Council states that, in spite of its reasoning in relation to the obligation to notify, the General Court did not conclude that the contested measure constituted a decision and not a regulation.

42 The French Republic also contests the comparison made by the General Court, in paragraph 87 of the judgment under appeal, between fund-freezing measures adopted in the campaign against nuclear proliferation, which concern third countries, and those adopted in the campaign against terrorism, which concern individuals and entities on an individual basis. It was never claimed that a measure imposing sanctions on a third country had to be notified to that country individually. The difference in objectives results, moreover, from a difference in legal bases; Regulation No 423/2007 was adopted on the basis of Articles 60 EC and 301 EC, whereas the measures in relation to terrorism were adopted on the basis of Article 308 EC.

43 At the hearing, the Council stated that fund-freezing measures taken against persons linked to terrorism are notified in accordance with the guidelines set out in paragraph 147 of the judgment of the General Court in *Organisation des Modjahedines du people d'Iran* v *Council*, that is to say that, in order to prevent the legitimate expectations of those persons from being jeopardised, only the general grounds for the decision are published in the *Official Journal of the European Union*, whereas the specific and concrete grounds are notified to them.

44 The United Kingdom states that the purpose of notification is to inform the addressee of a decision and to enable him to bring an action. In the present case, as regards the freezing of funds, prior notification would not have been possible given the required surprise effect. Article 254 EC does not state how notification is to be effected. The United Kingdom considers, in that regard, that an opinion published in the *Official Journal of the European Union* at the same time as the decision draws sufficient attention. In any event, the entity concerned would immediately feel the effects of the implementation of the decision. In the present case, the French branch of Bank Melli Iran was informed of the contested decision and the appellant could have brought an action. The United Kingdom, the Council, the French Republic and the Commission point out that the appellant did not suffer any harm as a result of the failure to notify the contested decision.

Findings of the Court

45 The Court of Justice notes, first, that, in spite of its title, the contested decision is of the same nature as a regulation. It contains just one annex, which replaces Annex V to Regulation No 423/2007. The effect of that annex is determined in the second paragraph of Article 19 of that regulation, which provides that the regulation is to be binding in its entirety and directly applicable in all Member States, which corresponds to the effects of a regulation as provided for in Article 249 EC.

46 In principle, therefore, the Treaty does not require such a measure to be notified, but to be published, in accordance with Article 254(1) and (2) EC.

47 Second, as regards Article 15(3) of Regulation No 423/2007 more specifically, it must be borne in mind that the principle of effective judicial protection means that the European Union authority which adopts an act imposing restrictive measures against a person or entity is bound to communicate the grounds on which it is based, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after it has been adopted in order to enable those persons or entities to exercise their right to bring an action (see, to that effect, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 336).

48 It is with a view to ensuring observance of that principle that Article 15(3) of Regulation No 423/2007 requires the Council to state individual and specific reasons for decisions taken pursuant to Article 7(2) of the regulation and make them known to the persons, entities and bodies concerned.

49 As the General Court noted in paragraph 86 of the judgment under appeal, the freezing of funds has considerable consequences for the entities concerned, for it may restrict the exercise of their fundamental rights.

50 Although Regulation No 423/2007 does not state how reasons are 'to be made known' to the persons, entities and bodies concerned, the claim made by the United Kingdom

that publication in the *Official Journal of the European Union* is sufficient cannot be upheld.

51 Indeed, if the communication of individual and specific reasons could be regarded as accomplished through publication in the *Official Journal of the European Union*, it is difficult to imagine why express reference is made to such communication, as in Article 15(3) of Regulation No 423/2007, since that decision must be published in any event, in accordance with Article 254(1) and (2) EC, having regard to its prescriptive nature, as pointed out in paragraph 45 above.

52 It follows that the Council is required to communicate a decision individually to satisfy the obligation imposed on it by that provision.

53 That conclusion is not called into question by Article 254(3) EC, to which the appellant refers, concerning the notification of a decision in the narrow sense; besides, the appellant did not allege an infringement of that provision before the General Court.

54 The same is true of paragraphs 68 to 73 of the judgment in *Hoechst* v *Commission*, to which the appellant refers and which need to be understood in the light of the parties' arguments to which they respond and their context. As is apparent from paragraphs 44 to 53 of the judgment in *Hoechst* v *Commission*, and paragraphs 21 to 24 of the Opinion of Advocate General Cosmos in that case, Hoechst AG relied on the lack of authentification of the contested decision and the fact that the text sent to it was not that adopted on the date indicated. In paragraph 69 of that judgment, the Court of Justice answered that line of argument by referring to paragraphs 48 and 49 of the judgment in Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555,

which relate to irregularities such as that at issue in that case, namely the lack of authentification of the measure. In so far as concerns paragraph 72 of the judgment in *Hoechst* v *Commission*, reference is clearly made to the issue ruled upon in *Commission* v *BASF and Others*, namely, the legal consequences of the lack of authentification of a measure.

55 In the present case, the individual and specific reasons for the freezing of funds provided for in Article 15(3) of Regulation No 423/2007 have not been communicated by the Council, but sufficient information was communicated to the appellant's branch by the French banking commission and the appellant was able to bring an action. In the light of those factors, nor did the General Court commit an error of law, in paragraph 90 of the judgment under appeal, in holding that the fact that the Council did not apprise the appellant of the statement of reasons for the contested decision did not have the effect of depriving it of an opportunity of knowing, in good time, the reasons for the contested decision or of assessing the validity of the fund-freezing measure adopted in its regard.

56 Although, as just pointed out, an individual communication is necessary in principle, it is sufficient to note that Article 15(3) of Regulation No 423/2007 does not require communications to take a specific form, and refers only to the obligation to 'make them known'. What matters is that useful effect should have been given to that provision, namely, effective judicial protection of the persons and entities concerned by the restrictive measures adopted pursuant to Article 7(2) of the regulation, which was the case in this instance.

57 It follows from all of the above considerations that the first ground of appeal is unfounded.

The second principal ground of appeal, alleging an error of law in the interpretation of the legal bases of Regulation No 423/2007 and an erroneous statement of reasons for the judgment under appeal

58 This ground of appeal concerns paragraphs 45 to 50 of the judgment under appeal, which read as follows:

'45 It is a special feature of Articles 60 EC and 301 EC that they form a bridge between the actions of the Community involving economic measures under Articles 60 EC and 301 EC and the objectives of the EU Treaty [in the version prior to the Treaty of Lisbon] in the sphere of external relations, including the [common foreign and security policy] (CFSP) (see, to that effect, *Kadi* [*and Al Barakaat International Foundation* v *Council and Commission*,] paragraph 197). Articles 60 EC and 301 EC are provisions expressly envisaging that action by the Community may prove necessary in order to attain one of the objectives specifically assigned to the Union by Article 2 EU, namely the implementation of a common foreign and security policy.

46 That fact is, however, without prejudice to the coexistence of the Union and the Community as integrated but separate legal orders, or to the constitutional architecture of the pillars, as intended by the framers of the Treaties now in force (see, to that effect, *Kadi* [*and Al Barakaat International Foundation* v *Council and Commission*], paragraph 202). Consequently, even though an action by the Community under Articles 60 EC and 301 EC gives effect to one of the objectives of the Union, it is nevertheless undertaken on the basis of the Community pillar. The lawfulness of measures taken in that sphere, such as Regulation No 423/2007 and the measures implementing it, must therefore be assessed in relation to the conditions laid down by the rules of that pillar, including the appropriate voting rule.

47 It follows from the foregoing that, contrary to the applicant's claims, Common Position 2007/140, which forms part of the second pillar of the Union, is not a legal basis for Regulation No 423/2007 or for the measures implementing it, which means that the voting rule applicable to the adoption of that common position and to its amendment is irrelevant. Indeed, the existence of a common position or of a joint action previously adopted in the sphere of the CFSP is simply a condition laid down by Article 301 EC, which also defines the voting rule applicable to the adoption of the measures taken to give it effect.

48 In the present case, it is not disputed that Regulation No 423/2007 and the contested decision were adopted by a qualified majority, in accordance with the rule laid down in Article 301 EC. Nor is it disputed that the adoption of that regulation was preceded by the unanimous adoption of Common Position 2007/140 or that the adoption of the contested decision was preceded by the unanimous adoption of Common Position 2008/479, by which the applicant's name was entered in the list of entities to which the fund-freezing measure applied by virtue of Article 5(1)(b) of Common Position 2007/140. It is accordingly to be concluded that the conditions laid down by Article 301 EC have been complied with.

49 Consequently the applicant's head of claim alleging failure to follow the applicable voting rule must be rejected.

50 With regard to the applicant's other heads of claim, it is to be borne in mind that a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see Case C-210/03 Swedish Match [2004] ECR I-11893, paragraph 75, and Case T-158/99 Thermenhotel Stoiser Franz and Others v Commission [2004] ECR II-1, paragraph 164, and the case-law cited). In this case, the applicant has not adduced

evidence suggesting that the Council, in adopting the contested decision, pursued any end other than that of stopping nuclear proliferation by freezing the funds of entities which it considered were engaged in, directly associated with, or provided support for the activities concerned, in accordance with the procedure laid down for that purpose by the EC Treaty and by Regulation No 423/2007.'

Arguments of the parties

59 The appellant submits that the General Court committed an error of law in interpreting the legal bases of Regulation No 423/2007 and vitiated its judgment with erroneous grounds.

60 The appellant observes that Article 7(2) of Regulation No 423/2007 relates to entities that '[are] engaged in, directly associated with, or providing support' for nuclear proliferation. On the basis of the judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 167, it submits that, since the relevant criterion adopted by Regulation No 423/2007 and the contested decision is not the fact of being controlled by a third country, but participation in certain proliferation-sensitive nuclear activities, those provisions go beyond the scope of Article 60 EC and 301 EC. Consequently, it was essential to base those provisions not only on Articles 60 EC and 301 EC, but also on Article 308 EC, which requires a unanimous vote.

61 The appellant submits that the General Court also erred in law in considering that Common Position 2007/140 did not constitute a legal basis for Regulation No 423/2007 and the contested decision, but merely a 'condition' laid down by Article 301 EC.

In doing so, the General Court made a distinction which is not made in the rules laid down in the Treaty. The appellant argues that the list in Annex V to Regulation No 423/2007 is identical to that in Annex II to Common Position 2007/140, which, pursuant to Article 7(2) of that common position, can be amended only unanimously. Since Regulation No 423/2007 is based on Articles 60 EC and 301 EC and on Common Position 2007/140, Annex V to the regulation should have been amended in accordance with the rule of unanimity. By disregarding that rule in adopting the contested decision, the Council misused its powers.

62 The French Republic considers that the ground of appeal raised by the appellant goes against the very wording of Article 301 EC.

63 The Council, the United Kingdom and the Commission submit that Regulation No 423/2007 is clearly directed at the Islamic Republic of Iran and that, therefore, it was not necessary to use Article 308 EC as a legal basis. In that regard, the judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission* is not relevant since it concerned a different situation. Unlike in the present case, the regulation at issue in that case did not relate to a third country. The Commission adds that, if the appellant now disputes its links with the Islamic Republic of Iran, that constitutes a new ground of appeal which is inadmissible.

64 So far as concerns misuse of powers, the Commission considers that, in paragraph 50 of the judgment under appeal, the General Court responded correctly by referring to the case-law applicable in that area.

Findings of the Court

65 The appellant contests the General Court's reasoning in relation to the legal basis for Regulation No 423/2007, considering that that regulation should have been adopted unanimously either on the basis of Articles 60 EC, 301 EC and 308 EC, or on the basis of Articles 60 EC and 301 EC and Common Position 2007/140. Consequently, the contested decision could not have been adopted by qualified majority, as provided for in Article 15(2) of Regulation No 423/2007 for amendments to the list of persons, entities and bodies referred to in Article 7(2) of that regulation.

66 According to the settled case-law of the Court of Justice, the choice of legal basis for a Community measure must rest on objective factors that are amenable to judicial review, including, in particular, the aim and the content of the measure (see, inter alia, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 182).

67 The appellant does not dispute the use of Article 60 EC and 301 EC. It merely disputes the fact that Regulation No 423/2007 is based solely on those provisions.

68 According to its title, Regulation No 423/2007 concerns restrictive measures against the Islamic Republic of Iran. It is apparent from the recitals in the preamble thereto and from its provisions taken as a whole that the regulation is intended to prevent or slow down the nuclear policy of that State, in the light of the threat it poses, by means of restrictive economic measures. As noted by the Advocate General in point 75 of his Opinion, it is not nuclear proliferation in general which is being combated, but the risks inherent in the Iranian nuclear proliferation programme.

69 The aim and content of the measure in question clearly being the adoption of economic measures against the Islamic Republic of Iran, it was not necessary to have recourse to Article 308 EC, since Article 301 EC constitutes a sufficient legal basis in that it provides for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries; that action may cover the freezing of funds of entities, such as Bank Melli Iran, which are associated with the regime of the third country concerned.

70 As regards the need, asserted by the appellant, to include Common Position 2007/140 among the legal bases, it is sufficient to note that that need is contradicted by the very wording of Article 301 EC, which provides for the possibility of adopting Community measures when a common position or Community action adopted under the provisions of the EU Treaty, in the version prior to the Treaty of Lisbon, on the CFSP provide for Community action. The wording of that article indicates that the common position or joint action must exist in order for Community measures to be adopted, but not that those measures must be based on that common position or joint action.

71 In any event, a common position cannot constitute the legal basis for a Community measure. Council common positions in the sphere of the CFSP, such as Common Positions 2007/140 and 2008/479, are adopted within the framework of the EU Treaty, in accordance with Article 15 thereof, whereas Council regulations, such as Regulation No 423/2007, are adopted within the framework of the EC Treaty.

72 The Council could, therefore, adopt a Community measure only on the basis of the powers conferred on it by the EC Treaty, in this case Articles 60 EC and 301 EC.

73 The General Court thus rightly held, in paragraph 47 of the judgment under appeal, that the existence of a common position previously adopted in the sphere of the CFSP was simply a condition laid down by Article 301 EC.

74 As regards the complaint alleging misuse of powers, the Court of Justice finds that the appellant has not shown in what way paragraph 50 of the judgment under appeal might be erroneous.

75 It follows from the above that the second principal ground of appeal is unfounded.

The third principal ground of appeal, alleging an infringement of the obligation to state the grounds for a measure, of the rights of the defence and of the principle of effective legal protection

76 This ground of appeal concerns paragraphs 80 to 85 of the judgment under appeal, which state:

'80 The purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for by Article 253 EC and, more particularly in this case, by Article 15(3) of Regulation No 423/2007 is, first, to provide the person concerned with sufficient information to make it possible to determine whether the measure is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Community judicature and, secondly, to enable the latter to review the lawfulness of that measure. The obligation to state reasons therefore constitutes an essential principle of Community law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him, for failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the

proceedings before the Community judicature. Furthermore, observance of the obligation to state reasons is all the more important in the case of an initial decision freezing an entity's funds, because it constitutes the sole safeguard enabling the party concerned to make effective use of the legal remedies available to it to challenge the lawfulness of that decision, given that it has no right to be heard before the decision is adopted (see, to that effect and by analogy, [*Organisation des Modjahedines du people d'Iran* v *Council*], paragraphs 138 to 140, and the case-law cited).

81 Unless, therefore, overriding considerations to do with the security of the Community or of its Member States or with the conduct of their international relations militate against the communication of certain matters (see, by analogy, [*Kadi and Al Barakaat International Foundation* v *Council and Commission*], paragraph 342), the Council is bound, by virtue of Article 15(3) of Regulation No 423/2007, to apprise the entity concerned of the actual specific reasons when it adopts a decision to freeze funds such as the contested decision. It must thus state the facts and points of law on which the legal justification of the measure depend and the considerations which led it to adopt it. So far as may be, those reasons must be communicated, either concomitantly with or as soon as possible after the adoption of the measure at issue (see, to that effect and by analogy, [*Organisation des Modjahedines du people d'Iran* v *Council*], paragraphs 143 to 148, and the case-law cited).

82 The statement of reasons must, however, be appropriate to the measure at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. 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 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. In particular, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him ([see *Organisation des Modjahedines du people d'Iran* v *Council*], paragraph 141, and the case-law cited).

83 As pointed out in paragraph 57 above, in order for Article 7(2)(a) and (b) of Regulation No 423/2007 to be set in motion, the entity concerned must be engaged in or directly associated with or must provide support for nuclear proliferation. In consequence, in addition to indicating the legal basis of the measure adopted, the obligation to state reasons by which the Council is bound relates precisely to that fact. On the other hand, contrary to what the applicant argues, the Council was not required to give reasons for its decision to go beyond the measures laid down by Resolution 1803 (2008), since it has been found in paragraph 65 above that the contested decision did not give effect to that resolution, nor was it required to treat the applicant differently from other Iranian banks.

84 In the instant case, the Council has stated, both in the title of the contested decision and in recital 2 in the preamble to the latter, that the measures taken were based on Article 7(2) of Regulation No 423/2007. It has also explained, in paragraph 4 of Table B in the annex to the contested decision, the specific individual reasons that led it to consider that the applicant provided support for nuclear proliferation. The Council mentioned, first, the kind of support lent by the applicant, namely providing financial services, including opening letters of credit and maintaining accounts, secondly, the activities linked to nuclear proliferation involved by those services, namely the purchase of sensitive materials, and, thirdly, the beneficiaries of the support provided by the applicant, that is to say, the eight entities designated by name.

85 In those circumstances, the Court considers that the statement of reasons for the contested decision with regard to the applicant is sufficient …'

77 The third principal ground of appeal also concerns paragraph 97 of the judgment under appeal, which states:

'The applicant's claim that the Council was required automatically to offer it access to the material in its file must be rejected. When sufficiently precise information has been communicated, enabling the entity concerned to make its point of view on the evidence adduced against it by the Council known to advantage, the principle of respect for the rights of the defence does not mean that the institution is obliged spontaneously to grant access to the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see, to that effect and by analogy, Case T-205/99 *Hyper* v *Commission* [2002] ECR II-3141, paragraphs 63 to 65, and the case-law cited). It would in fact be excessive to require spontaneous communication of the matters in the file, given that when a fund-freezing measure is adopted it is not certain that the entity concerned intends to check, by means of access to the file, the matters of fact supporting the allegations made against it by the Council.'

78 Finally, it is necessary to reproduce paragraphs 102 to 104 of the judgment under appeal:

'102 As regards the fact that the Council did not spontaneously produce the evidence supporting the statement of reasons for the contested decision, paragraphs 97 above and 107 below make it clear that it was not bound to do so, either before or after the present proceedings had been initiated.

103 Likewise, the applicant does not explain how the need to check one by one its relations with the entities designated in the contested decision stopped it seeking access to the Council's file or requesting a hearing. On the contrary, those steps might have facilitated the research to be carried out, thanks to the documents consulted or the information obtained.

104 Having regard to the foregoing, it must be concluded that, the applicant having omitted to make such a request to the Council, the latter was not obliged to grant it access to the file or to conduct a hearing, which means that the claim alleging breach of the rights of the defence must be rejected.'

Arguments of the parties

79 The appellant challenges, first, the General Court's conclusion, in paragraphs 84 and 85 of the judgment under appeal, that it held sufficiently precise information in relation to the grounds for freezing its funds, second, the conclusion, in paragraph 97 of the judgment under appeal, that the Council was not required to grant it access to the documents in the file, third, the conclusion, in paragraphs 102 and 104 of the judgment under appeal, that, the appellant having omitted to make such a request to the Council, the latter was not obliged to grant it access to the file whether before or after the bringing of an action and, fourth, the conclusion, in paragraph 106 of the judgment under appeal, that it was in a position fully to carry out its review.

80 The appellant submits that, according to the case-law of the Court of Justice, the person concerned must receive, as of the administrative procedure, all the information necessary to defend his interests. It adds, citing Case C-49/88 *Al-Jubail Fertilizer* v *Council* [1991] ECR I-3187, paragraphs 17 and 18), that that person must be enabled

to make known his views on the truth and relevance of the facts and circumstances alleged and the evidence held against him. In accordance with Case C-51/92 P *Hercules Chemicals* v *Commission* [1999] ECR I-4235, paragraphs 76 and 78, the infringement of that right cannot be remedied by the mere fact that access was made possible at a later stage, during an action in which annulment of the contested decision is sought. *A fortiori*, on the basis of that case-law, the rights of the defence and the right to effective legal protection are not respected where access was never granted to the file, even during the annulment proceedings.

81 In the appellant's view, the contested paragraphs of the judgment under appeal contradict the case-law of the General Court itself, in particular Case T-284/08 People's Mojahedin Organization of Iran v Council [2008] ECR II-3487, paragraphs 74 and 75), and the case-law of the European Court of Human Rights, namely *Saadi* v *Italy* of 28 February 2008 (§ 138 and § 139), and *A and Others* v *United Kingdom* of 19 February 2009 (§ 126).

82 The French Republic and the United Kingdom submit that paragraph 4 of Table B in the annex to the contested decision contained clear and sufficient information in relation to the appellant. It was thus not necessary, in their view, to grant the appellant access to the material in the file, as stated by the General Court in paragraph 97 of the judgment under appeal.

83 The French Republic states that the judgment in *People's Mojahedin Organization of Iran* v *Council* is not relevant, since it concerns the procedure applicable to sanctions in relation to terrorism, whereas the contested decision concerns sanctions against a third country. As for the case-law in relation to competition cases, the Council and the United Kingdom claim that that case-law also is irrelevant in the present case. Moreover, the United Kingdom and the Commission consider that the case-law of the European Court of Human Rights does not support the appellant's reasoning.

84 The Council and the Commission submit, as regards the furnishing of evidence during the judicial proceedings, that the appellant does not take account of paragraphs 30, 31 and 107 of the judgment under appeal, from which it transpires that 'the application contains no plea challenging the Council's finding that the [appellant] has provided financial support for nuclear proliferation, even though that finding forms the basis of the contested decision so far as it concerns the [appellant] and, in consequence, could have been raised as soon as the action was brought, if necessary with the clarification that additional evidence would be produced as soon as it was available' (paragraph 30), with the result that the General Court was able to conclude, in paragraph 107 of the judgment under appeal, that it was not necessary for the Council to produce evidence in support of the grounds set out in the decision at issue.

85 When questioned on that point at the hearing, the appellant stated that a ground of appeal disputing financial support for nuclear proliferation was implicitly included in the action before the General Court and that it intended to develop that ground of appeal after receiving the file of evidence on which the Council relied in adopting the contested decision.

Findings of the Court

86 In so far as concerns the part of the present ground of appeal alleging an infringement of the duty to state reasons, the Court notes at the outset that, in the absence of notification, by the Council, of the individual and specific grounds for a contested decision in accordance with Article 15(3) of Regulation No 423/2007, it is the grounds set out in that decision, as published and notified to the appellant by the French banking commission, that need to be taken into consideration.

87 The General Court did not err in law in holding, in paragraphs 84 and 85 of the judgment under appeal, that the grounds for the contested decision were sufficient in the light of the case-law relating to the duty to state reasons. The General Court stated, inter alia, that the contested decision indicated the legal basis on which it had been adopted and the individual and specific reasons which had led the Council to consider that the appellant was providing support to Iran for nuclear proliferation. A reading of the grounds set out in the contested decision confirms that such information was sufficient to enable the appellant to understand the claims made against it and to assess the merits of the decision.

88 The issue of the grounds for the contested decision is different, however, from that of the evidence of the conduct of which the appellant is accused, namely, the facts set out in the contested decision and the treatment of those facts as constituting engagement in, or support for, the proliferation-sensitive nuclear activities of the Islamic Republic of Iran or the development by that State of nuclear weapon delivery systems, within the meaning of Article 7(2)(a) and (b) of Regulation No 423/2007.

89 As submitted by the United Kingdom and the Commission, the case-law of the European Court of Human Rights referred to by the appellant is not relevant. The judgments cited, namely *Saadi* v *Italy* and *A and Others* v *United Kingdom*, relate to Article 3 of the European Convention on Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), on the absolute prohibition of torture, degrading treatment or punishment. However, the right to property, which the freezing of funds goes against, does not enjoy such absolute protection either under the ECHR or European Union law (on the absolute nature of the prohibition of torture, see Case C-112/00 Schmidberger [2003] ECR I-5659, paragraph 80); as a result the case-law referred to is not transposable to it.

90 Regulation No 423/2007 does not provide for an administrative procedure prior to decisions to freeze funds either for initial decisions, as a result of the expected surprise effect, or for re-examination decisions. Only the notice in the *Official Journal of the European Union* described in paragraph 21 above is relevant to the interests of the persons, entities and bodies included in a list in that it authorises them to request a reexamination of the decision by which they were included in that list, by attaching supporting documents to their application.

91 In the present case, having regard to the fact that there was no organised administrative procedure, the case-law of the European Union referred to by the appellant is not relevant. *Al-Jubail Fertilizer* v *Council* was delivered in the context of dumping proceedings, to which Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidised imports from countries not members of the European Economic Community (OJ 1984 L 201, p. 1) was applicable, and the judgment in *Hercules Chemicals* v *Commission* was delivered in a competition case in which Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87) was applicable, and also as Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47).

92 In any event, in paragraph 97 of the judgment under appeal, the General Court stated that it is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue. However, the appellant does not explain in what way the General Court committed an error of law in making that finding. Moreover, it is apparent from the findings of the General Court in paragraphs 103 and 104 of the judgment under appeal, not contested by the appellant in its appeal, that the latter did not request the Council to grant it access to its file.

93 It follows from the above that the third principal ground of appeal is unfounded.

The first alternative ground of appeal, alleging an infringement of Article 7(2) of Regulation No 423/2007 and a contradiction in the grounds which vitiate the judgment under appeal

94 This ground of appeal concerns, in particular, paragraphs 51, 52, 64 and 65 of the judgment under appeal, which state:

'51 Lastly, in so far as the applicant maintains that Articles 7(2) and 15(2) of Regulation No 423/2007 cannot constitute a valid legal basis for the contested decision because they allow the Council to adopt fund-freezing measures going beyond the measures adopted by the Security Council, it has to be pointed out that nothing in Article 60 EC or 301 EC permits the inference that the powers conferred on the Community by those provisions are limited to the implementing of measures decided by the Security Council. The Council was, therefore, competent to adopt not only Article 7(1) of Regulation No 423/2007, which gives effect to Resolution 1737 (2006) by ordering the freezing of the funds of the entities designated by it, but also Article 7(2) of that regulation, which permits the adoption of fund-freezing measures applying to other entities which, in the Council's opinion, are directly associated with or provide support for nuclear proliferation.

52 In this context, it is, admittedly, true that recital 6 in the preamble to Regulation No 423/2007 requires the Council to exercise the power conferred on it by Article 7(2) of the regulation "in view of the objectives of [Resolution] 1737 (2006)". The obligation to pursue the objectives of Resolution 1737 (2006) does not, however, in any way imply that Article 7(2) of Regulation No 423/2007 is to be implemented only in respect of entities referred to in restrictive measures adopted by the Security Council pursuant to that resolution. The lack of any measures taken by the Security Council or a specific position taken by the latter may, at the very most, be taken into consideration, with other relevant matters, in connection

with the determination whether or not the conditions laid down by Article 7(2) of Regulation No 423/2007 have been satisfied.

…

64 The first point to be noted here is that paragraphs 51 and 52 above make it clear that Article 7(2) of Regulation No 423/2007 confers on the Council autonomous power, the exercise of which is independent of the Security Council's adoption of restrictive measures applying to the entities concerned. The object of Article 7(2) of the regulation and of the contested decision, adopted pursuant to that regulation, is not that of giving effect to resolutions of the Security Council, but only to ensure that the ends pursued by one of the resolutions in question, namely Resolution 1737 (2006), are attained by means of adopting autonomous restrictive measures.

65 So, contrary to what the applicant maintains, neither Article 7(2) of Regulation No 423/2007 nor the contested decision gives effect to Resolution 1803 (2008), which means that the content and objectives of that resolution are not a yardstick against which the compatibility of the contested decision with the principle of proportionality must be assessed.'

Arguments of the parties

95 The appellant submits that the General Court disregarded the limits of the Council's power of assessment on the basis of Article 7(2) of Regulation No 423/2007 by rejecting the relevance of the Security Council resolutions in that assessment. It thus committed an error of law and an error of assessment of the facts by rejecting the

pleas alleging an infringement of the principle of proportionality and of the right to property since its reasoning was vitiated by contradictory grounds.

96 According to the appellant, the relationship between Regulation No 423/2007 and the Security Council resolutions cannot be denied; the purpose of that regulation was to implement those resolutions. Resolution 1803 (2008) merely required Member States to exercise 'vigilance' as regards Bank Melli Iran.

97 Moreover, the General Court's reasoning is vitiated by contradictory grounds. In paragraph 52 of the judgment under appeal, the General Court noted the relevance of Security Council resolutions whereas, in paragraphs 64 and 65 of the judgment under appeal, it described the Council's power as autonomous.

98 The Council, the French Republic, the United Kingdom and the Commission stress the autonomous nature of the measures adopted by the Council. The French Republic states that, in Resolution 1803 (2008) the Security Council left it to the States to make an assessment. In any event, the fact that the Security Council recommended vigilance does not mean that fund-freezing is a disproportionate measure. The Commission points out that Council pursued the objective of Resolution 1737 (2006).

99 Those Member States and institutions also refer to the derogations provided for in Regulation No 423/2007, in particular Article 9 thereof, and conclude that the principle of proportionality was not infringed.

Findings of the Court

100 It is important to note at the outset that Security Council resolutions and Council common positions and regulations originate from distinct legal orders.

101 Security Council resolutions, such as Resolutions 1737 (2006) and 1803 (2008), were adopted within the framework of the United Nations, to which neither the European Union nor the European Community is a party. Council common positions in the sphere of the CFSP, such as Common Positions 2007/140 and 2008/479, were adopted under Title V of the EU Treaty, in the version prior to the Treaty of Lisbon, in accordance with Article 15 thereof. As for the Council regulations, such as Regulation No 423/2007, they were adopted in the framework of the EC Treaty, which constitutes the Community pillar of the European Union.

102 Measures within the framework of the United Nations and the European Union are adopted by organs with autonomous powers, granted to them by their basic charters, that is to say the treaties that created them.

103 In *Kadi and Al Barakaat International Foundation* v *Council and Commission*, the Court of Justice ruled on the relationship which exists between a Security Council resolution and a European Community regulation. It held, in paragraph 296 of that judgment, in particular, that, in drawing up Community measures aimed at giving effect to a Security Council resolution envisaged in a common position, the Community is to take due account of the terms and objectives of the resolution concerned.

104 The Court of Justice has similarly repeatedly held that account must be taken of the wording and purpose of a Security Council resolution when interpreting the regulation which seeks to implement that resolution (Case C-84/95 Bosphorus [1996] ECR I-3953, paragraph 14; Case C-177/95 Ebony Maritime and Loten Navigation [1997] ECR I-1111, paragraph 20; Case C-117/06 Möllendorf and Mölendorf-Niehuus [2007] ECR I-8361, paragraph 54; Kadi and Al Barakaat International foundation v Council and Commission, paragraph 297; Case C-340/08 M and Others [2010] ECR I-3913, paragraph 45; and the judgment in Case C-550/09 E and F [2010] ECR I-6213, paragraph 72).

105 The Court of Justice has also held, however, that, without the primacy of a Security Council resolution at the international level thereby being called into question, the requirement that the Community institutions should pay due regard to the institutions of the United Nations could not result in their abstaining from reviewing the lawfulness of Community measures in the light of the fundamental rights forming an integral part of the general principles of Community law (see, to that effect, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraphs 288 and 326).

106 The above provides sufficient support for the General Court's conclusion, in paragraph 64 of the judgment under appeal, that the power granted to the Council under Article 7(2) of Regulation No 423/2007 is an autonomous power. In that regard, an obligation to 'take due account' of the wording and purpose of the resolution concerned in no way runs counter to the finding that the Council legislates autonomously within the limits of its own legal order. Therefore, contrary to what the appellant claims, the General Court did not contradict itself in referring, in paragraph 52 of the judgment under appeal, to the relevance of Security Council resolutions, while describing the Council's power as being autonomous, in paragraphs 64 and 65 of that judgment.

107 The General Court considered, in paragraph 65 of the judgment under appeal, that the content and objectives of Resolution 1803 (2008) were not a yardstick against which the compatibility of the contested decision with the principle of proportionality must be assessed. That statement must be understood in the light of the wording of Resolution 1803 (2008), which does not impose precise measures on the States, but

requests them to exercise vigilance over the activities of financial institutions in their territories, in particular Bank Melli Iran, in order to avoid such activities contributing to proliferation-sensitive nuclear activities.

108 Such wording in no way prevents States from adopting concrete fund-freezing measures as against Bank Melli Iran.

109 It results from the above that the first ground of appeal in the alternative is unfounded.

The second ground of appeal in the alternative, alleging an error of assessment of the appellant's right to property

110 This second ground of appeal concerns more specifically paragraphs 70 and 71 of the judgment under appeal, which state:

'70 Fourthly, so far as concerns the disadvantages caused to the applicant and the restriction of its fundamental rights, including the right to property and the right to carry on economic activity, it may be observed that, according to settled case-law, those rights form an integral part of the general principles of law whose observance is ensured by the Community judicature. Respect for fundamental rights is thus a condition of the lawfulness of Community acts (see *Kadi* [*and Al Barakaat International Foundation* v *Council and Commission*], paragraph 284, and the case-law cited). Nevertheless, the case-law also makes it clear that fundamental rights are not absolute, and that their exercise may be subject to restrictions

justified by objectives of public interest pursued by the Community. Any economic or financial restrictive measure has, *ex hypothesi*, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm, in particular to the entities carrying on the activities that the restrictive measures in question are designed to stop. The importance of the aims pursued by the legislation at issue is such as to justify negative consequences, even of a substantial nature, for some operators (see, to that effect, [*Bosphorus*, paragraphs 21 to 23, and *Kadi and Al Barakaat International Foundation* v *Council and Commission*], paragraphs 355 and 361).

71 In the instant case, the applicant's freedom to carry on economic activity and its right to property are restricted to a considerable degree, on account of the adoption of the contested decision, for it may not, in particular, dispose of its funds situated within the territory of the Community or held by Community nationals, except by virtue of special authorisation, and its branches, domiciled in that territory, may not conclude new transactions with their customers. However, given the primary importance of maintaining international peace and security, the disadvantages caused are not inordinate in relation to the ends sought, especially because, first, those restrictions concern only part of the applicant's assets and, secondly, Articles 9 and 10 of Regulation No 423/2007 provide for certain exceptions allowing the entities affected by fund-freezing measures to meet essential expenditure.'

Arguments of the parties

111 The appellant submits that, in accordance with the case-law of the European Court of Human Rights, in particular *Saadi* v *Italy* (§ 138 and § 139) and *A and Others* v

United Kingdom (§ 126), the protection of the fundamental rights guaranteed by the EDHR may not be weighed against the fight against terrorism and protection from terrorism. The same reasoning applies, on the same grounds, to measures to be taken for the maintenance of international peace and security. The justification given for the restrictive measures taken, namely, the maintenance of international peace and security, is not valid reasoning for the protection of human rights which the Court of Justice ensures in the Community legal order.

112 The Council, the French Republic, the United Kingdom and the Commission submit that the right to property is not an absolute right. They point out that the judgment under appeal is in line with the case-law of the Court of Justice (*Bosphorus,* and *Kadi and Al Barakaat International Foundation* v *Council and Commission*) and the case-law of the European Court of Human Rights (*Hava Yolları Turizm ve Ticaret Anonim Şirketi (Bosphorus Airways)* v *Ireland,* 30 June 2005, Reports of Judgments and Decisions, 2005-VI, § 155). They also state that the case-law of the European Court of Human Rights cited by the appellant is not relevant since it does not concern the right to property.

Findings of the Court

113 Without its being necessary to take a position on whether the appellant, as an entity which is held, in its entirety, by the Iranian State, was able to rely on the protection of the right to property as a fundamental right, it is sufficient to note that the General Court found, in paragraph 70 of the judgment under appeal, that the fundamental rights at issue in the present case are not absolute, and that their exercise may be subject to restrictions justified by objectives of public interest pursued by the Community.

114 Such is the case for the right to property and the freedom to pursue a trade or profession (see, inter alia, Case 4/73 Nold v Commission [1974] ECR 491, paragraph 14; Joined Cases C-20/00 and C-64/00 Booker Aquaculture and Hydro Seafood [2003] ECR I-7411, paragraphs 67 and 68; *Swedish Match*, paragraph 72; and *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 355). Consequently, restrictions may be imposed on the exercise of the freedom to pursue a trade or profession, as on the exercise of the right to property, provided that the restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (*Swedish Match*, paragraph 72).

115 In that regard, the ground relied on by the General Court in paragraph 71 of the judgment under appeal, in relation to the primary importance of maintaining international peace and security, is sufficient to identify the objective of general interest pursued. That argument must be read in the light of the various measures adopted alongside the contested decision.

116 As stated in paragraph 89 above, the case-law of the European Court of Human Rights cited by the appellant is not relevant.

117 Moreover, the General Court stated, first, that the restrictions concern only part of the appellant's assets and, second, that Articles 9 and 10 of Regulation No 423/2007 provide for certain exceptions enabling the entities concerned by the fund-freezing measures to meet essential expenditure. Such a consideration provides an implicit, yet sufficient, verification of the proportionate nature of those measures.

118 The second ground of appeal raised in the alternative must therefore be rejected.

The third ground of appeal raised in the alternative, alleging a manifest error of assessment resulting from the inclusion and maintenance of the appellant's name in the list in Annex V to Regulation No 423/2007

Arguments of the parties

119 The appellant refers to Council Regulation (EC) No 1100/2009 of 17 November 2009 implementing Article 7(2) of Regulation No 423/2007 and repealing Decision 2008/475 (OJ 2009 L 303, p. 31). That regulation constitutes a new element enabling the appellant to submit new grounds of appeal. It is clear from a letter of the Council of 18 November 2009 that that regulation is based both on the reasons that initially caused it to include the appellant in the list in Annex V to Regulation No 423/2007 and on new factors described in a letter of the Council of 1 October 2009. If the Court of Justice were to consider that, in spite of its filing of an application for annulment of the contested decision, the appellant had not already challenged, even implicitly, the correctness of the Council's allegation that it was engaged in nuclear proliferation, it would now be entitled to do so.

120 The appellant submits that the Council committed a manifest error of assessment of the facts by including and maintaining it in the list in Annex V to Regulation No 423/2007 and refers, in that regard, to all the documents which it lodged to challenge Regulation No 1100/2009.

121 The Council, the French Republic, the United Kingdom and the Commission consider that the present ground of appeal is inadmissible since it would enable the appellant to bring before the Court of Justice a case of wider ambit than that which came before the General Court.

Findings of the Court

122 Although Regulation No 1100/2009 would constitute a new element enabling the appellant to formulate a new ground of appeal, it is sufficient to note that such a ground of appeal would relate to the merits of the case and not to the appeal proceedings. In these proceedings, the jurisdiction of the Court of Justice is confined to review of the findings of law on the pleas argued before the General Court or which the General Court would have been required to raise of its own motion.

123 Consequently, the present ground of appeal is inadmissible.

124 Since none of the grounds of appeal raised by the appellant has been upheld, the appeal must be dismissed.

Costs

125 Under Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is unfounded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings pursuant to Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied

for in the successful partys pleadings. Since the appellant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Council, the French Republic, the United Kingdom and the Commission.

On those grounds, the Court (Grand Chamber) hereby:

1. Dismisses the appeal.

2. Orders Bank Melli Iran to pay the costs.

[Signatures]