Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 March 2012*

((Appeal — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran to prevent nuclear proliferation — Freezing the funds of a bank's subsidiary — Principle of proportionality — Ownership or control of the entity))

In Case C-380/09 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 25 September 2009,

Melli Bank plc, established in London (United Kingdom), represented by D. Anderson and D. Wyatt QC and by R. Blakeley, Barrister, instructed by S. Gadhia and T. Din, Solicitors,

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,

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 by S. Lee, 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: L. Hewlett, Principal Administrator,

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

* Language of the case: English.

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

gives the following

Judgment

1 By its appeal, Melli Bank plc ('Melli Bank') asks the Court to set aside the judgment of the Court of First Instance of the European Communities (now 'the General Court') of 9 July 2009 in Joined Cases T-246/08 and T-332/08 *Melli Bank* v *Council* [2009] ECR II-2629 ('the judgment under appeal') dismissing its actions for (i), in Joined Cases T-246/08 and T-332/08, 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 (OJ 2008 L 163, p. 29; 'the contested decision'), in so far as it relates to Melli Bank, and (ii), in Case T-332/08, if necessary, a declaration that Article 7(2)(d) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1) is inapplicable.

2 As the General Court stated in paragraph 1 of the judgment under appeal, the appellant, Melli Bank, is a public limited company registered and having its registered office in the United Kingdom, authorised and regulated by the United Kingdom Financial Services Authority. It began to carry on its banking activities in the United Kingdom on 1 January 2002, following the transformation of the branch of Bank Melli Iran in that Member State. Bank Melli Iran, the parent entity wholly owning Melli Bank, is an Iranian bank controlled by the Iranian State.

Legal context

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

3 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).

4 In paragraph 12 of that resolution, the Security Council:

'[decided] that all States shall freeze the funds, other financial assets and economic resources which are on their territories at the date of adoption of this resolution or at any time thereafter, that are owned or controlled by the persons or entities designated in the Annex, as well as those of additional persons or entities designated by the Security Council or by the Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them, including through illicit means …'

5 The Annex to Resolution 1737 (2006) lists the persons and entities involved in nuclear proliferation whose funds and economic resources ('funds') must be frozen.

6 That list was subsequently updated by several resolutions, in particular Security Council Resolution 1747 (2007) of 24 March 2007, by which the funds of the Iranian Bank Sepah 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

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

8 Article 5(1) of Common Position 2007/140 is worded as follows:

'All funds … which belong to, are owned, held or controlled, directly or indirectly by the following, shall be frozen:

(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'.

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

Regulation No 423/2007

10 In so far as the powers of the European Community were concerned, Resolution 1737 (2006) was given effect by Regulation No 423/2007, adopted on the basis of Articles 60 EC and 301 EC, with reference to Common Position 2007/140, and the content of which is substantially similar to that of the position, since the same names of entities and natural persons appear in the annexes to that regulation.

11 Article 5 of that regulation prohibits certain transactions with persons or entities in, or for use in, Iran.

12 Article 7 of that regulation is worded as follows:

'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 UNSCR 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.'

13 The appellant is not mentioned in Annex V to Regulation No 423/2007.

14 Article 13 of that regulation requires the persons and entities concerned to provide various items of information to the competent authorities and to cooperate with them.

15 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.'

16 Article 16 of the same regulation provides that Member States are to lay down the penalties applicable to infringements of the regulation.

Security Council Resolution 1803 (2008)

17 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 the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems'.

Common Position 2008/479/CFSP

18 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'.

19 Under Common Position 2008/479, Bank Melli Iran and Melli Bank were included among the entities whose funds were frozen. Paragraph 5 of Table B in the annex to that common position states the following in the first column, headed 'Name':

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

(a) Melli Bank plc

(b) Bank Melli Iran Zao'.

20 In a second column, headed 'Identifying information', an address is given alongside the name of each of the banks concerned.

21 The third column, headed 'Reasons', contains the following text:

'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 (2006) and 1747 (2007).'

22 In the fourth column, headed 'Date of listing', the date is given as '23.6.2008'.

The contested decision

23 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 which is set out in the Annex to Common Position 2008/479, except for the date of listing, which is given as 24 June 2008. That decision was published in the *Official Journal of the European Union* on 24 June 2008.

The action before the General Court and the judgment under appeal

24 By application lodged at the Registry of the General Court on 25 June 2008, the appellant brought the action in Case T-246/08, by which it sought annulment of paragraph 4 of Table B in the Annex to the contested decision in so far as it related to the appellant and an order that the Council should pay the costs.

25 By application lodged at the Registry of the General Court on 15 August 2008, the appellant brought the action in Case T-332/08, by which it claimed that the General Court should:

— annul paragraph 4 of Table B in the annex to the contested decision in so far as it relates to the appellant;

— if it should find that Article 7(2)(d) of Regulation No 423/2007 is mandatory in effect, declare that provision inapplicable under Article 241 EC; and

— order the Council to pay the costs.

26 The French Republic, the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities were granted leave to intervene before the General Court in support of the form of order sought by the Council.

27 In support of its claims the appellant put forward several pleas in law. The first plea alleged that Bank Melli Iran was not engaged in the funding of nuclear proliferation. The second plea alleged misinterpretation and misapplication of Article 7(2)(d) of Regulation No 423/2007, in that the Council had some discretion. The third plea, which was submitted in the alternative, alleged that Article 7(2)(d) of Regulation No 423/2007 was unlawful — on the ground that it infringed the principle of proportionality — in that it required the Council to include the appellant in the list in Annex V to that regulation. The fourth plea alleged misinterpretation or misapplication of Article 7(2)(d), in that the

appellant was not an entity 'owned or controlled' by the parent entity within the meaning of that provision. The fifth plea alleged infringement of the principle of non-discrimination. The sixth plea alleged infringement of the obligation to state reasons for the contested decision.

28 The General Court declared the first plea to be inadmissible, on the grounds that in the application it was simply claimed that Bank Melli Iran was not engaged in the funding of nuclear proliferation and that, in so far as that plea was raised subsequently, it was new.

29 The General Court then examined each of the other pleas and rejected them.

Forms of order sought by the parties to the appeal

30 Melli Bank claims that the Court should:

— set aside the judgment under appeal;

— uphold the actions brought in Cases T-246/08 and T-332/08;

— annul paragraph 4 of Table B in the Annex to the contested decision in so far as it relates to the appellant;

— declare Article 7(2)(d) of Regulation No 423/2007 inapplicable, if the Court finds that it is mandatory in effect; and

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

31 The Council, the French Republic, the United Kingdom and the Commission contend that the Court should:

— dismiss the appeal, and

— order the appellant to pay the costs.

Concerning the appeal

32 The appeal is based on four grounds. By its first ground of appeal, which comprises two parts, the appellant claims that the General Court erred in law in holding that Article 7(2)(d) of Regulation No 423/2007 is a mandatory provision, whereas such an interpretation is contrary, according to the first part of that ground of appeal, to the wording of that provision and, according to the second part of that ground of appeal, to the principle of proportionality. By the second ground of appeal, the appellant claims that the General Court erred in law in holding that Article 7(2)(d) is consistent with the principle of proportionality. By the third ground of appeal, the appellant claims that the General Court erred in law in the formulation and application of the test for determining whether the appellant was owned and controlled by the parent entity. By the fourth ground of appeal, the appellant claims that the General Court erred in law in concluding that the Council had fulfilled its obligation to state the reasons for its decision to include the appellant in the list of persons, entities and bodies referred to in Article 7(2) of Regulation No 423/2007.

First part of the first ground of appeal: error of law in the interpretation of Article 7(2)(d) of Regulation No 423/2007

Arguments of the parties

33 The first part of the first ground refers, in essence, to paragraphs 61 to 67 and paragraphs 69 and 70 of the judgment under appeal.

34 The appellant disputes the analysis of the words 'shall be frozen', appearing in Article 7(2) of Regulation No 423/2007, which the General Court carried out in paragraph 63 of the judgment under appeal and from which it concludes that the Council had no discretion. In the appellant's submission, the use of the words 'who … have been identified', in the second sentence of Article 7(2), qualifies the prior use of 'shall include' and demonstrates that the Council must undertake an exercise of evaluation and identification in order to determine whether the assets of entities owned or controlled should be frozen. Moreover, the General Court's finding in that respect conflicts with paragraphs 64 and 65 of the judgment under appeal, in which the Court holds that the Council must assess whether the conditions for the application of Article 7(2)(d) of Regulation No 423/2007 are met, including in respect of wholly-owned subsidiaries of entities identified as engaged in nuclear proliferation.

35 The appellant submits that Regulation No 423/2007 envisages an individualised approach to the listing of persons, entities and bodies referred to in Article 7(2) of Regulation No 423/2007, and this is what justifies the obligation to give specific reasons for including each entity in the list; that obligation is laid down in Article 15(3) of Regulation No 423/2007 and it requires the Council to state its reasons for considering that a particular entity satisfies the requirements for inclusion in that list.

36 The Council, the French Republic, the United Kingdom and the Commission dispute that interpretation.

Findings of the Court

37 Article 7(2)(d) of Regulation No 423/2007 provides that '[a]ll funds … belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex V shall be frozen' and that '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 being a legal person, entity or body owned or controlled by a person, entity or body referred to under (a) or (b) [being engaged in, directly associated with, or providing support for nuclear proliferation], including through illicit means'.

38 It is settled case-law (see, by analogy, Case 292/82 *Merck* [1983] ECR 3781, paragraph 12, and Case C-480/08 *Teixeira* [2010] ECR I-1107, paragraph 48) that the General Court has taken into consideration, in interpreting Article 7(2)(d) of Regulation No 423/2007, the wording of that provision and the context in which it occurs and also the objects of the rules of which it is part.

39 As the Advocate General stated in point 40 of his Opinion, the General Court did not err in law in holding, on the basis of the wording of Article 7(2)(d) of Regulation No 423/2007, that that provision required 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' by the entity concerned.

40 The General Court was right to hold in paragraphs 64 and 65 of the judgment under appeal that, with regard to the words 'have been identified' appearing in the introductory part of Article 7(2) of Regulation No 423/2007, the classification as an entity 'owned or controlled' must be the subject of a

case-by-case evaluation by the Council, by reference, inter alia, to the degree to which the entities concerned are owned or controlled. The General Court was also right to hold in paragraphs 63 and 69 of that judgment that, with regard to the use of the words 'shall be frozen' in that same provision of Regulation No 423/2007, a fund-freezing measure must be adopted in respect of an entity identified by the Council as being owned or controlled by an entity which is itself identified as being engaged in nuclear proliferation, and the reason for the adoption of that measure need not be that the entity owned or controlled is itself engaged in nuclear proliferation.

41 Those two findings by the General Court are not contradictory, since the first covers the obligation to determine, with a certain amount of discretion, whether the entity concerned is 'owned or controlled', whilst the second relates to the obligation to freeze the funds of such an entity without determining whether it is itself engaged in nuclear proliferation.

42 In those circumstances, it may not be inferred from the fact that the Council has discretion as to whether the entity concerned is owned or controlled that the Council also has discretion to assess whether that entity plays a part in nuclear proliferation in order to decide whether its funds should be frozen.

43 Nor may it be concluded from the obligation to give reasons, laid down in Article 15(3) of Regulation No 423/2007, that such discretion must be acknowledged. The individual and specific reasons that the Council is required to give are those for the inclusion of persons, entities and bodies in the list at issue, namely, as the case may be, involvement in the Islamic Republic of Iran's nuclear activities or, with regard to entities that are owned or controlled, the reasons that led it to consider that the test that it is owned or controlled is met.

44 In view of the foregoing, the first part of the first ground of appeal is unfounded and must therefore be rejected.

Second part of the first ground and second ground: infringement of the principle of proportionality

Arguments of the parties

45 By the second part of the first ground of appeal, the appellant argues that, by interpreting Article 7(2)(d) of Regulation No 423/2007 as leaving the Council no discretion to determine whether a subsidiary meets the criteria laid down by that provision, the General Court infringed the principle of proportionality. By the second ground of appeal, it submits that, if the Court were to hold that application of Article 7(2)(d) of that regulation is deemed to be mandatory, that provision itself infringes the principle of proportionality and must therefore be declared inapplicable in the present case, in accordance with Article 241 EC, which would deprive the contested decision of a legal basis. That part and that ground relate essentially to paragraphs 75, 76, 99, 102 and 103 of the judgment under appeal, and to paragraphs 107 to 110 thereof.

46 The appellant criticises the General Court's reasoning on the ground that the latter did not take into account the Security Council resolutions when interpreting Article 7(2)(d) of Regulation No 423/2007. It points out the link between those resolutions and that regulation, which is particularly clear from recitals 1, 2, 5 and 6 in the preamble to the regulation and from the recitals in the preamble to Common Position 2007/140. Moreover, even though it was adopted after Regulation No 423/2007, Resolution 1803 (2008) is particularly significant when interpreting Article 7(2)(d) of that regulation. Indeed, the fact that the Security Council adopted no fund-freezing measures against the appellant but, in paragraph 10 of that resolution, recommended that the States 'exercise vigilance' shows that measures less onerous than the freezing of funds could be effective in achieving the aims of the Security Council resolutions.

47 The appellant submits, moreover, that the General Court erred in law in holding, as stated in the last sentence of paragraph 103 of the judgment under appeal, that freezing the funds of entities owned or controlled by an entity identified as being engaged in nuclear proliferation was necessary and appropriate to ensure the effectiveness of the measures taken against the latter and to ensure that those measures will not be circumvented. In the appellant's submission, Articles 5(1), 7(3) and (4), 13 and 16 of Regulation No 423/2007 already provide for effective measures. The General Court was, in the appellant's submission, wrong to dismiss the alternative measures proposed by the appellant as not being capable of preventing possible future transactions incompatible with the restrictive measures enacted. In any event, as regards the ex post alternative measures, it was possible to provide for the inclusion of the subsidiary in the list only after application of such measures. In ruling as it did, the General Court distorted the principle of proportionality and changed the burden of proof by requiring the appellant to demonstrate that alternative measures would be entirely effective.

48 Moreover, in the appellant's submission, the General Court's peremptory dismissal, in paragraph 107 of the judgment under appeal, of its arguments concerning the efficacy of such alternative measures was manifestly inappropriate given the extent of the interference with the appellant's fundamental rights occasioned by the fund-freezing measures.

49 The appellant points out, moreover, that only 2 of Bank Melli Iran's 20 subsidiaries were mentioned in the contested decision. It also provided the General Court with another example, given in paragraph 53 of the judgment under appeal, which showed that the Council had included a parent company in the list at issue without mentioning any of its 6 subsidiaries. It infers from this either that the Council has discretion in applying Article 7(2)(d) of Regulation No 423/2007, as it submits, or that that practice illustrates the disproportionate nature of the inclusion of all the subsidiaries in that list.

50 The appellant concludes from this that the Council has discretion and that the General Court erred in law in interpreting Article 7(2)(d) of Regulation No 423/2007 as meaning that its application is mandatory. At the very least, Article 7(2)(d) of that regulation is ambiguous. It is settled case-law that when a provision of secondary law is open to more than one interpretation, preference should be given to the interpretation that renders that provision consistent with the Treaty. In the present case, the General Court erred in law in failing to interpret Article 7(2)(d) of Regulation No 423/2007 as meaning that the Council had discretion.

51 The Council, the French Republic, the United Kingdom and the Commission contend that the General Court did not err in law in its assessment of the proportionality of the measure at issue.

Findings of the Court

52 According to settled case-law, the principle of proportionality is one of the general principles of European Union law and requires that measures implemented through provisions of European Union law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 122; Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 68; and Case C-58/08 *Vodafone and Others* [2010] ECR I-4999, paragraph 51).

53 The appellant does not challenge the legitimacy of the aim pursued, namely, to combat nuclear proliferation in Iran in the interest of the preservation of international peace and security, but rather whether it is appropriate and necessary to freeze the funds of entities that are owned or controlled. It criticises the General Court, in the first place, for not taking sufficient account of the Security Council resolutions when interpreting Article 7(2) of Regulation No 423/2007.

54 In that regard, it is important to note that Security Council resolutions, on the one hand, and Council common positions and regulations, on the other hand, originate from distinct legal orders. 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 (Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraphs 100 and 102).

55 In paragraph 103 of *Bank Melli Iran* v *Council*, the Court held 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. Similarly, account must be taken of the wording and purpose of a Security Council resolution when interpreting the regulation which seeks to implement that resolution (*Bank Melli Iran* v *Council*, paragraph 104 and the case-law cited).

56 The General Court did take Resolution 1737 (2006) into account, since it held in paragraph 6 of the judgment under appeal that that resolution was given effect by Regulation No 423/2007, the content of which is substantially the same as that of Common Position 2007/140. In that regard, the appellant does not explain how the General Court could have reached a different conclusion as regards the need to freeze the funds of entities that are owned or controlled. It should be noted that paragraph 12 of Resolution 1737 (2006) provides expressly that the funds of entities that are owned or controlled by persons or entities engaged in the nuclear activities of the Islamic Republic of Iran are to be frozen.

57 As for Resolution 1803 (2008), it 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 (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 107). It cannot be inferred from that recommendation that there is no need to freeze the funds of entities owned or controlled by Bank Melli Iran.

58 In those circumstances, the General Court did not err in law in holding, in paragraph 103 of the judgment under appeal, that where the funds of an entity identified as being engaged in nuclear proliferation are frozen there is a not insignificant danger that that entity may exert pressure on the entities it owns or controls in order to circumvent the effect of the measures applying to it and that the freezing of the funds of those entities is necessary and appropriate in order to ensure the effectiveness of the measures adopted and to ensure that those measures are not circumvented.

59 As regards, secondly, the alternative measures referred to by the appellant, it should be noted from the outset that in paragraph 109 of the judgment under appeal the General Court excluded examination of the measures both of prior authorisation and supervision by an independent agent and of total prohibition of transactions with the Islamic Republic of Iran, mentioned for the first time at the hearing, on the grounds that it was contrary to Articles 48(2) and 76a(3) of the Rules of Procedure of the General Court for them to have been referred to during the proceedings. In paragraph 107 of the judgment under appeal, the General Court held that it had not been established that the supervision and control measures existing at the time the contested decision was adopted were adequate in relation to the danger described in paragraph 103 of that judgment, thus finding there was a lack of evidence which does not fall to be reviewed by the Court of Justice in an appeal. As for the ex post measures referred to in paragraph 108 of that judgment, the General Court assessed their efficacy in findings of fact which, similarly, it is not for the Court of Justice to review in the context of an appeal.

60 In the light of those factors, the General Court's conclusion, in paragraph 110 of the judgment under appeal, that the alternative measures suggested by the applicant were not apt to attain the objective pursued, cannot be called into question.

61 Similarly, as the Advocate General stated in point 53 of his Opinion and for the reasons given by the General Court in paragraphs 111 and 112 of the judgment under appeal, that Court was able to conclude, without erring in law, that given the prime importance of the preservation of international peace and security, the restrictions on the freedom to carry on economic activity and the right to property of a bank occasioned by the fund-freezing measures were not disproportionate to the ends sought.

62 The appellant relies, thirdly, on the fact that it was not the Council's practice to freeze the funds of all entities owned or controlled by an entity identified as being engaged in nuclear proliferation. The General Court did not however err in law in holding:

— in paragraph 73 of the judgment under appeal, that the Council could legitimately not apply Article 7(2)(d) of Regulation No 423/2007 to entities which, in its opinion, did not fulfil the conditions for the application of that provision;

— in paragraph 74 of that judgment, that it was impossible to identify, in every case, all the entities owned or controlled by an entity identified as engaged in nuclear proliferation and,

— in paragraph 75 of that judgment, any divergent practice on the part of the Council, assuming it to be unlawful, cannot give rise to any legitimate expectations on the part of the entities concerned, or the right to rely, to their own benefit, on an unlawful act committed in favour of another.

63 Nor did the General Court err in law in paragraph 76 of the judgment under appeal in holding that the case-law concerning the interpretation of the Community provisions relied on by the appellant and recalled in paragraph 50 above was not relevant, since there was no doubt as to the interpretation of Article 7(2)(d) of Regulation No 423/2007.

64 It is clear from those considerations that the General Court did not infringe the principle of proportionality either in its interpretation of Article 7(2)(d) of Regulation No 423/2007 or in its review of the application of that provision to the appellant. Consequently, the second part of the first ground of appeal and the second ground of appeal are unfounded and must be rejected.

Third ground: error of law in the conclusion that the appellant is owned or controlled by its parent company

Arguments of the parties

65 The appellant criticises paragraphs 119 to 129 of the judgment under appeal. It points out that the test to be applied is that set out in paragraph 121 of that judgment, the question being whether 'because it is owned by [Bank Melli Iran], it is to a considerable degree likely that the [appellant] may be prompted to circumvent the measures adopted against its parent entity'.

66 The appellant submits that the General Court erred in law, however, in holding, in paragraph 123 of the judgment under appeal, that only extraordinary circumstances were capable of justifying non-application of Article 7(2)(d) of Regulation No 423/2007 to a subsidiary which is wholly owned by an entity regarded as being engaged in nuclear proliferation.

67 The appellant also alleges that the General Court erred in law by inappropriately taking into account precedents in the field of competition law. The appellant points out that the presumption used in competition law is rebuttable. Furthermore, although under competition law the companies in question are entitled to make submissions to the Commission, that was not so in the present case, where the appellant was included in the list at issue without having an opportunity to contest the Council's conclusion.

68 The appellant also submits that the General Court erred in law in applying to the appellant the test laid down in paragraph 121 of the judgment under appeal. In particular, it erred by placing undue weight on the parent entity's ability to appoint the directors of Melli Bank. The appellant notes, in that regard, the numerous elements relied on in paragraph 17 of the application lodged before the General Court and the restraints on the appellant's trading, and concludes from this that it was not necessary to adopt a measure such as the freezing of its funds.

69 In the appellant's submission, by working on the assumption that the appellant will engage in unlawful conduct, the contested decision and the judgment under appeal infringe the principle of the presumption of innocence, the freezing of funds being comparable to a criminal penalty.

70 The Commission points out, in connection with this ground of appeal also, that the appellant does not demonstrate how the General Court's reasoning is vitiated by an error of law. Moreover, the appellant challenges the General Court's assessment of facts and evidence.

71 The French Republic, the United Kingdom and the Commission challenge the test adopted by the General Court in the first sentence of paragraph 121 of the judgment under appeal. In their submission, Article 7(2)(d) of Regulation No 423/2007 contains an alternative test, so that if it is established that the appellant is wholly owned by Bank Melli Iran it is no longer necessary to demonstrate the existence of control of the appellant. The Commission contends that the various elements relied on by the General Court to establish the existence of such control must rather be regarded as 'elements which demonstrate the *ratio legis*' of Article 7(2)(d) of Regulation No 423/2007.

72 The United Kingdom notes, however, that even if the test adopted by the General Court were accepted, the appellant has not demonstrated that the General Court erred in law in its reasoning.

73 With regard to the General Court's use of criteria based on competition law, the Council, the French Republic, the United Kingdom and the Commission argue that the General Court was merely guided by those criteria.

74 Those institutions and Member States recall the case-law of the Court according to which the freezing of funds is a temporary precautionary measure and not a penalty.

Findings of the Court

75 Article 7(2)(d) of Regulation No 423/2007 provides for the freezing of the funds of entities identified as owned or controlled by entities which are themselves identified as engaged in, directly associated with or providing support for nuclear proliferation as referred to in Article 7(2)(a) or (b) of that regulation. That provision must be interpreted in the light of paragraph 12 of Resolution 1737 (2006), which provides for the freezing of the funds of entities that are owned or controlled by persons or entities designated as being engaged in, directly associated with or providing support for nuclear proliferation.

76 Article 7(2)(d) of Regulation No 423/2007 provides for two alternative tests, namely, ownership and control. It is apparent from the contested decision and from the Council's observations at the hearing before the General Court, as set out by the latter in paragraph 120 of the judgment under appeal, that the appellant's funds were frozen because it was an entity 'owned' by Bank Melli Iran. The General Court was therefore correct in deciding to limit its review to determining whether Melli Bank was owned by Bank Melli Iran.

77 The appellant does not deny that it is wholly owned by Bank Melli Iran. It considers, however, that the General Court did not determine to the requisite legal standard whether, because the appellant was owned by Bank Melli Iran, it was to a considerable degree likely that it might be prompted to circumvent the measures adopted against its parent entity; a reference to the first sentence of paragraph 121 of the judgment under appeal.

78 In that regard, it must be held that, despite the clear wording of Article 7(2)(d) of Regulation No 423/2007, interpreted in the light of paragraph 12 of Resolution 1737 (2006), and whilst it is not denied by the appellant that it was wholly owned by Bank Melli Iran, the General Court considered it necessary to carry out further review.

79 In so doing, it failed to apply European Union law correctly. Where an entity is wholly owned by an entity regarded as being engaged in nuclear proliferation, the ownership test contained in Article 7(2)(d) of Regulation No 423/2007 is satisfied.

80 That error of law does not mean, however, that the judgment under appeal must be set aside, since in any event the General Court rejected the appellant's plea.

81 Contrary to what the appellant contends, the measure adopted in relation to the appellant as a consequence of its being wholly owned by Bank Melli Iran does not affect the presumption of innocence. The adoption of fund-freezing measures under Article 7(2)(d) of Regulation No 423/2007 is specifically not directed against the autonomous behaviour of an entity such as the appellant and therefore does not require that entity to have behaved in a manner contrary to the provisions of that regulation.

82 Consequently the third ground of appeal is unfounded.

Fourth ground of appeal: defective statement of reasons

Arguments of the parties

83 The appellant challenges the General Court's reasoning in paragraphs 143 to 151 of the judgment under appeal. It points out that the statement of reasons for an act having adverse effects must be communicated to the person concerned at the same time as the act and notes that, in the present case, the contested decision contained no 'individual and specific reason', as required by Article 15(3) of Regulation No 423/2007. In the reply, it states that it ought to have been notified of that decision.

84 First, in the appellant's submission, it was not sufficient for the Council to state in the contested decision that that decision had been taken pursuant to Article 7(2)(d) of Regulation No 423/2007, as that provision covers several situations in which the Council could have included the appellant in the list at issue.

85 Secondly, no reason was given why the Council had considered it to a considerable degree likely that the appellant might be prompted to circumvent the effects of inclusion of its parent entity in that list.

86 The appellant submits, thirdly, that the General Court's assertion that the Council had by implication considered that the appellant was owned by its parent entity for the purposes of Article 7(2)(d) of Regulation No 423/2007, and that it was therefore included in the list on that basis, is a hasty conclusion that in no way follows from the wording of the contested decision.

87 Fourthly, the appellant submits that the fact that it is possible to bring an action against the contested decision does not alter the fact that the Council failed to comply with the obligation to state the reasons for that decision.

88 Fifthly, the appellant points out that it engaged in correspondence with the Council in order to attempt to ascertain the reasons for its inclusion in the list at issue and for the freezing of its funds, but that the Council refused to send its file to the appellant.

89 The Council, the French Republic and the Commission dispute the admissibility of the plea that the contested decision was not notified.

90 The Commission points out that the appellant does not dispute the principle stated by the General Court in paragraph 146 of the judgment under appeal that, in addition to indicating the legal basis of the measure adopted, the obligation to state reasons incumbent on the Council related to the circumstance that the entity concerned was owned or controlled by an entity identified as being engaged in nuclear proliferation as provided for in Article 7(2)(a) or (b) of Regulation No 423/2007.

91 In that regard, the Council, the French Republic, the United Kingdom and the Commission submit that the General Court did not err in law, in paragraph 147 et seq. of the judgment under appeal, when it held that sufficient reasons were given for the contested decision. In particular, the mention of Melli Bank in paragraph 4 of Table B in the Annex to that decision allowed the appellant to ascertain that the funds were frozen because it was a subsidiary of Bank Melli Iran.

Findings of the Court

92 It is necessary to reject from the outset the plea that the contested decision was not notified. As the Advocate General pointed out in point 66 of his Opinion, that plea was not raised before the General Court. In an appeal the jurisdiction of the Court of Justice is in principle confined to review of the findings of law on the pleas argued at first instance (judgment of 15 September 2011 in Case C-544/09 P *Germany* v *Commission*, paragraph 63).

93 With regard to the obligation to provide a statement of reasons, the appellant does not challenge the principle that that obligation must be assessed by reference to the circumstances of each case, which the General Court recalled in paragraphs 143 to 145 of the judgment under appeal. It does however contend that the General Court erred in law in holding that the statement of reasons for the contested decision was sufficient and satisfied the obligation laid down in Article 15(3) of Regulation No 423/2007 to give individual and specific reasons for that decision.

94 In paragraph 147 of the judgment under appeal, the General Court held that the Council had indicated, both in the title of the contested decision and in recital 2 in the preamble thereto, the legal basis on which the decision had been adopted, namely, Article 7(2) of Regulation No 423/2007, and, in paragraph 4 of Table B in the Annex to that decision, the fact that Bank Melli Iran engaged in nuclear proliferation and the fact that the appellant was among the branches and subsidiaries of that company.

95 Contrary to what the appellant contends, the fact that the General Court held that it was not necessary to state that the contested decision, in so far as it related to the appellant, had been adopted in accordance with Article 7(2)(d) of that regulation, does not mean that the judgment under appeal was vitiated by an error of law, since the branches and subsidiaries of Bank Melli Iran are mentioned in that judgment.

96 The General Court did not therefore err in law in holding, in paragraph 148 of the judgment under appeal, that the mention of the appellant as being a subsidiary of Bank Melli Iran, a fact which is necessarily known to the appellant and one which has never been challenged, was sufficient having regard to the case-law relating to the obligation to state reasons which it had cited.

97 As regards the fact that it was possible to bring an action, the appellant's argument results from a misreading of the judgment under appeal. In paragraph 151 of that judgment, the General Court did not merely point out that the appellant had been able to bring an action, it gave details of the subject-matter of the application in Case T-246/08 in support of its finding that the statement of reasons was sufficient, noting in that regard that, when it brought its action, the appellant was aware of the link between the freezing of its funds and the engagement in nuclear proliferation laid to the charge of its parent entity, Bank Melli Iran.

98 With regard to the argument concerning the failure to send the Council's file, this is not relevant for the purposes of examining the ground alleging infringement of the obligation to state reasons for the contested decision, since the General Court held, without erring in law, that the statement of reasons for that decision was sufficient in the light of the relevant case-law.

99 It follows that the fourth ground must be rejected.

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

Costs

101 Under Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 69(2) of those rules, which apply to the procedure on appeal by virtue of Article 118 of those rules, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's 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 Melli Bank plc to pay the costs.

[Signatures]