



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

29 November 2018*

(Appeal — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran — Freezing of funds and economic resources — Annulment of a listing by the General Court — Re-listing — Evidence dating from before the first listing — Facts known before the first listing — *Res judicata* — Scope — Legal certainty — Protection of legitimate expectations — Effective judicial protection — Reasons for the listing relating to logistical support to the Government of Iran — Scope — Activity of transporting crude oil)

In Case C-600/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 November 2016,

National Iranian Tanker Company, established in Tehran (Iran), represented by T. de la Mare QC, M. Lester QC, J. Pobjoy, Barrister, and by R. Chandrasekera, S. Ashley and C. Murphy, Solicitors,

appellant,

the other party to the proceedings being:

Council of the European Union, represented by A. Vitro and M. Bishop, acting as Agents,

defendant at first instance,

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Seventh Chamber, acting as President of the Fourth Chamber, K. Jürimäe, C. Lycourgos, E. Juhász and C. Vajda, Judges,

Advocate General: E. Tanchev,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 24 January 2018,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2018,

gives the following

* Language of the case: English.

Judgment

- 1 By its appeal, National Iranian Tanker Company ('NITC') seeks to have set aside the judgment of the General Court of the European Union of 14 September 2016, *National Iranian Tanker Company v Council* (T-207/15, not published, 'the judgment under appeal', EU:T:2016:471), by which the General Court dismissed its action seeking:
 - annulment of Council Decision (CFSP) 2015/236 of 12 February 2015 amending Council Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2015 L 39, p. 18), and of Council Implementing Regulation (EU) 2015/230 of 12 February 2015 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2015 L 39, p. 3), in so far as those acts concern NITC ('the contested acts'), and
 - in the alternative, a declaration that Article 20(1)(c) of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39) and Article 23(2)(d) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1) do not apply to NITC.

Legal context

United Nations Security Council Resolution 1929 and Resolution 2231 (2015)

- 2 On 9 June 2010, the United Nations Security Council adopted Resolution 1929 (2010) ('Resolution 1929') which widened the scope of the restrictive measures imposed by Security Council Resolutions 1737 (2006), 1747 (2007) and 1803 (2008), and introduced additional restrictive measures against the Islamic Republic of Iran. In that resolution, the United Nations Security Council refers, inter alia, to 'the potential connection between the revenues derived by Iran from its energy sector and the funding of its proliferation-sensitive nuclear' activities.
- 3 On 24 November 2013, the Islamic Republic of Iran, on the one hand, and the Federal Republic of Germany, the People's Republic of China, the United States of America, the Russian Federation, the French Republic and the United Kingdom of Great Britain and Northern Ireland, with the support of the High Representative of the European Union for Foreign Affairs and Security Policy, on the other, concluded, in Geneva (Switzerland), a Joint Plan of Action ('the Joint Plan of Action') which sets out an approach towards reaching a long-term comprehensive solution to the Iranian nuclear issue.
- 4 On 14 July 2015, the Islamic Republic of Iran, on the one hand, and the Federal Republic of Germany, the People's Republic of China, the United States of America, the Russian Federation, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the High Representative of the European Union for Foreign Affairs and Security Policy, on the other, adopted, in Vienna (Austria), the 'Joint Comprehensive Plan of Action' in order to reach a long-term comprehensive solution to the Iranian nuclear issue ('the Joint Comprehensive Plan of Action').
- 5 On 20 July 2015, the United Nations Security Council adopted Resolution 2231 (2015) endorsing the Joint Comprehensive Plan of Action, urging its full implementation in accordance with the timetable established in the plan and providing for actions to take place in accordance with that plan.

EU law

- 6 On 17 June 2010, the European Council invited the Council of the European Union to adopt measures implementing those contained in Resolution 1929 as well as accompanying measures, with a view to supporting the resolution of all outstanding concerns regarding the Islamic Republic of Iran's development of sensitive technologies in support of its nuclear and missile programmes, through negotiation. These were to focus, in particular, on the areas of trade, the financial sector, the Iranian transport sector and key sectors in the oil and gas industry.
- 7 On 26 July 2010, the Council of the European Union adopted Decision 2010/413, Annex II to which lists the names of persons and entities whose assets are to be frozen. Recital 22 of that decision refers to UNSCR 1929 and notes the potential connection mentioned in that resolution between the revenue derived by the Islamic Republic of Iran from its energy sector and the funding of its proliferation-sensitive nuclear activities.
- 8 On 23 January 2012, the Council adopted Decision 2012/35/CFSP amending Decision 2010/413 (OJ 2012 L 19, p. 22). According to recital 13 of that decision, the freezing of funds and economic resources should be applied to additional persons and entities providing support to the Government of Iran allowing it to pursue proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems, in particular persons and entities providing financial, logistical or material support to the Government of Iran.
- 9 That decision inserted Article 3a in Decision 2010/413, which prohibits the import, purchase or transport of Iranian crude oil and petroleum products.
- 10 Decision 2012/35 added a point (c) to Article 20(1) of Decision 2010/413, providing for the freezing of funds belonging to the following persons and entities:

'other persons and entities not covered by Annex I that provide support to the Government of Iran, and persons and entities associated with them, as listed in Annex II.'
- 11 On 23 March 2012, the Council adopted Regulation No 267/2012 implementing, as regards the European Union, the restrictive measures provided for in Decision 2012/35.
- 12 Article 11 of that regulation introduces restrictions similar to those in Article 3a in Decision 2010/413 concerning the import, purchase or transport of Iranian crude oil and petroleum products.
- 13 Article 23(2)(d) of that regulation provides for the freezing of funds and economic resources of the persons, entities and bodies listed in Annex IX which, in accordance with Article 20(1)(c) of Decision 2010/413, have been identified as 'being other persons, entities or bodies that provide support, such as material, logistical or financial support, to the Government of Iran, and persons and entities associated with them'.
- 14 Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413 (OJ 2012 L 282, p. 58), amended the wording of Article 20(1)(c) of Decision 2010/413 as follows:

'other persons and entities not covered by Annex I that provide support to the Government of Iran and entities owned or controlled by them or persons and entities associated with them, as listed in Annex II.'

- 15 By Regulation (EU) No 1263/2012 of 21 December 2012 amending Regulation No 267/2012 (OJ 2012 L 356, p. 34), the Council amended the wording of Article 23(2)(d) of the latter regulation as follows:

‘being other persons, entities or bodies that provide support, such as material, logistical or financial support, to the Government of Iran and entities owned or controlled by them, or persons and entities associated with them.’

- 16 On 20 January 2014, in order to implement the Joint Plan of Action, the Council adopted Decision 2014/21/CFSP amending Decision 2010/413 (OJ 2014 L 15, p. 22). According to recital 3 of Decision 2014/21, as part of the first stage of the Joint Plan of Action, the Islamic Republic of Iran would take voluntary measures, defined in that plan, in return for which, as regards the European Union, a certain number of voluntary measures would be taken, including the suspension of restrictive measures concerning, in particular, the prohibition on the provision of transport for Iranian crude oil. By that decision, the Council, inter alia, suspended, for six months, the prohibition in Article 3a of Decision 2010/413 relating to the transport of Iranian crude oil. The suspension of that prohibition was later extended by a number of successive acts of the Council.
- 17 On the same date, the Council adopted Regulation (EU) No 42/2014 amending Regulation No 267/2012 (OJ 2014 L 15, p. 18, and corrigendum OJ 2014 L 19, p. 7) by which it suspended, for six months, the prohibition in Article 11(1)(c) of Regulation No 267/2012 on the transportation of crude oil or petroleum products if they originate in Iran or are exported from Iran to any other country. The suspension of that prohibition was later extended by a number of successive acts of the Council. That prohibition was finally repealed by Council Regulation (EU) 2015/1861 of 18 October 2015 amending Regulation No 267/2012 (OJ 2015 L 274, p. 1).

Background to the Decision

- 18 NITC is an Iranian company specialised in the transport of crude oil and gas cargoes. It operates one of the largest fleets of double-hulled tankers in the world.
- 19 On 15 October 2012, by Decision 2012/635 and Implementing Regulation (EU) No 945/2012 implementing Regulation No 267/2012 (OJ 2012 L 282, p. 16), the Council included the name of NITC in the lists of persons and entities whose assets are to be frozen, set out respectively in Annex II to Decision 2010/413 and Annex IX to Regulation No 267/2012. The grounds for its inclusion on those lists were identical and were worded as follows:

‘Effectively controlled by the Government of Iran. Provides financial support to the Government of Iran through its shareholders which maintain ties with the Government.’

- 20 By judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), the General Court annulled Decision 2012/635 and Implementing Regulation No 945/2012 in so far as those measures concerned NITC, on the ground that the inclusion of its name on the list of persons and entities whose assets are to be frozen was unwarranted, given that the Council’s claims that the appellant was controlled by, and provided financial support to, the Government of Iran were unsubstantiated. In addition, the General Court maintained the effects of those acts as regards NITC until the expiry of the period for bringing an appeal laid down in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union or, if an appeal had been brought within that period, until the date of the dismissal of that appeal. No appeal was lodged against that judgment.

21 On 12 February 2015, by the contested acts, the Council reinstated NITC's name, first, on the list of persons and entities whose assets are to be frozen in Annex II to Decision 2010/413 and, secondly, on the list in Annex IX to Regulation No 267/2012 ('the lists at issue'), for the following reasons:

'[NITC] provides financial support to the Government of Iran through its shareholders the Iranian State Retirement Fund, the Iranian Social Security Organization and the Oil Industry Employees Retirement and Savings Fund, which are State-controlled entities. Moreover, [NITC] is one of the largest operators of crude oil carriers in the world and one of the main transporters of Iranian crude oil. Accordingly, [NITC] provides logistical support to the Government of Iran through the transport of Iranian oil.'

22 On 18 October 2015, as part of the implementation of the Joint Comprehensive Plan of Action, the Council adopted, first, Decision (CFSP) 2015/1863 amending Decision 2010/413 (OJ 2015 L 274, p. 174), which suspended, as regards NITC, the restrictive measures laid down in Decision 2010/413 and, secondly, Implementing Regulation (EU) 2015/1862 implementing Regulation No 267/2012 (OJ 2015 L 274, p. 161) which removed its name from the list in Annex IX to the latter regulation.

23 Decision 2015/1863 and Implementing Regulation 2015/1862 have been applicable since 16 January 2016, respectively, by virtue of Council Decision (CFSP) 2016/37 of 16 January 2016 concerning the date of application of Decision 2015/1863 (OJ 2016 L 11 I, p. 1) and information concerning the date of application of Regulation 2015/1861 and Implementing Regulation 2015/1862 (OJ 2016 C 15 I, p. 1).

The procedure before the General Court and the judgment under appeal

24 By application lodged at the Registry of the General Court on 24 April 2015, NITC brought an action for annulment of the contested acts. In the alternative, NITC applied for a declaration, on the basis of Article 277 TFEU, that Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012 do not apply to it.

25 Concurrently with that action, NITC filed an application for interim relief, seeking suspension of the operation of the contested acts. That application was dismissed by order of the President of the General Court of 16 July 2015, *National Iranian Tanker Company v Council* (T-207/15 R, EU:T:2015:535).

26 In support of its action, NITC relied on five pleas in law: (i) infringement of the principles of *res judicata*, legal certainty and protection of legitimate expectations, and of the right to an effective remedy; (ii) an error of assessment; (iii) infringement of the rights of the defence, of the right to sound administration and of the principle of effective judicial protection; (iv) infringement of the rights to property and reputation, and of the freedom to conduct a business. The fifth plea in law, put forward in the alternative, alleged that Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012 were unlawful.

27 The General Court rejected each of those pleas and consequently dismissed the action in its entirety.

Forms of order sought and procedure before the Court of Justice

28 NITC claims that the Court should:

- set aside the judgment under appeal;
- grant the form of order sought before the General Court, and specifically,

- annul the contested acts in so far as they apply to NITC;
- in the alternative, declare that Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012 do not apply to NITC; and
- order the Council to pay the costs of the appeal and of the proceedings before the General Court.

29 The Council contends that the Court should:

- dismiss the appeal lodged by NITC as inadmissible or, failing that, as unfounded;
- in the alternative, if the Court decides to set aside the judgment under appeal and to give final judgment itself, dismiss the action for annulment and the application for a declaration of inapplicability; and
- order NITC to pay the costs of the appeal.

The appeal

Admissibility of the appeal

Arguments of the parties

- 30 The Council submits that the appellant has no interest in the outcome of the present appeal and that the appeal is therefore inadmissible due to the lifting of the restrictive measures taken against it by Decision 2015/1863 and Implementing Regulation 2015/1862, and because the contested acts cause no harm to its reputation.
- 31 NITC maintains that it does indeed have an interest in pursuing the proceedings to set aside the judgment under appeal and the annulment of the contested acts, so as to obtain a declaration that its reinstatement on the lists at issue was unlawful *ab initio*, to bring, if appropriate, an action for damages for the harm caused by its reinstatement on those lists and to restore its reputation.

Findings of the Court

- 32 It is settled case-law that for an appellant to have an interest in bringing proceedings the appeal must be capable, if successful, of procuring an advantage to the party bringing it (judgment of 21 December 2011, *France v People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 43 and case-law cited).
- 33 The Court has held that a person or an entity whose name has been included on the list of persons and entities whose assets are frozen continued to have at least a non-material interest in having that listing annulled in order to have the EU Courts recognise that it should never have been included on such a list, in view of the consequences for its reputation, even after the removal of its name from that list or the freezing of its assets has been suspended (see, to that effect, judgments of 28 May 2013, *Abdulrahim v Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 70 to 72; of 8 September 2016, *Iranian Offshore Engineering & Construction v Council*, C-459/15 P, not published, EU:C:2016:646, paragraph 12; and of 15 June 2017, *Al-Faqih and Others v Commission*, C-19/16 P, EU:C:2017:466, paragraph 36).

34 It follows that the appellant has at least a non-material interest in pursuing the annulment of its re-listing even if, first, the freezing of its assets resulting from that re-listing in Annex II to Decision 2010/413 was suspended and, secondly, its name was withdrawn from the list in Annex IX to Regulation No 267/2012 by virtue of Decision 2015/1863 and Implementing Regulation 2015/1862, respectively.

35 The appeal is therefore admissible.

Substance

36 NITC relies on four grounds in support of its appeal.

The first ground of appeal

– Arguments of the parties

37 By its first ground of appeal, NITC claims that the General Court erred in law by holding, in paragraphs 45 to 65 and 68 of the judgment under appeal that the contested acts did not infringe the principles of *res judicata*, legal certainty and protection of legitimate interests, or its right to an effective remedy. Thus the General Court wrongly held that the Council could reinstate NITC on the lists at issue on the basis of factual allegations that were identical to those which it relied on in support of the original listing, which was annulled by a final judgment, and in the absence of any significant change in circumstances or fresh evidence, which could not have been obtained at the time of the first listing. According to NITC, in order to reinstate it on the lists at issue on the basis of the same listing criterion, the Council could not simply reclassify the facts which gave rise to its initial listing.

38 NITC adds, referring to the order of the President of the General Court of 16 July 2015, *National Iranian Tanker Company v Council* (T-207/15 R, EU:T:2015:535), that, even if the principle of *res judicata* did not apply in the strict sense, the principles of legal certainty and of the protection of legitimate expectations, and the right to an effective remedy, within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, required the Council to submit all of its arguments and the evidence at its disposal in the course of the first listing, failing which it would not be able to raise them thereafter. The General Court adopted an overly narrow interpretation of Article 47 of the Charter. The rationale underlying the judgment under appeal would give the Council unrestrained power to reinstate restrictive measures on the basis of reasons that are identical to or are based on the same facts, and which could and should have been relied on at the time of the initial listing. That rationale could give rise to abuses and expose the entity concerned to repeated litigation, which would be contrary to the principle of procedural fairness and to the right to sound administration.

39 NITC states, in particular, that the General Court erred in law, in paragraphs 51 and 52 of the judgment under appeal, in deciding that the Council could rely again on the reason for listing relating to financial support to the Iranian Government, even though the evidence provided, for the most part, pre-dated the original listing and was accessible to the public or came from correspondence exchanged with NITC. With regard to the reason for listing relating to logistical support, NITC argues that the General Court was wrong to find, in paragraph 53 of the judgment under appeal, that that reason had not been subject to the review of the General Court in the proceedings that gave rise to the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608). Although that reason did not appear in the initial listing, it is nevertheless identical to the factual allegation of financial support which was rejected in paragraph 60 of that judgment under another classification.

40 The Council disputes the merits of that ground of appeal. It contends that, at the time of NITC's initial listing, it was not required to invoke all the listing criteria and reasons that could have been relied on. The Council states that, at the time of NITC's initial listing, it had not presented any evidence in support of the reason for listing relating to financial support underlying that listing. With regard to the reason for listing relating to logistical support, it was not relied upon, nor was it submitted to the General Court for consideration.

– *Findings of the Court*

41 In the first ground of appeal, the infringement of the various principles of EU law and fundamental rights relied on by NITC is based, in essence, on the argument that the General Court erred in law in taking the view that an entity which secured an annulment of restrictive measures taken against it could be reinstated on a list of entities whose assets are frozen on the basis of reasons or evidence which could have been put forward at the time of that entity's first listing, even though there was no significant change in the facts and in the absence of any new evidence.

42 First of all, as regards the principle of *res judicata*, it should be recalled that annulment judgments given by the EU Courts have the force of *res judicata* as soon as they become final. This applies not only to the operative part of the judgment annulling a decision, but also to the grounds which are its essential basis and are inseparable from it (see, to that effect, judgment of 15 November 2012, *Al-Aqsa v Council* and *Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 49 and the case-law cited).

43 It is settled case-law that the force of *res judicata* extends only to the matters of fact and law actually or necessarily settled by a judicial decision (judgments of 29 March 2011, *ThyssenKrupp Nirosta v Commission*, C-352/09 P, EU:C:2011:191, paragraph 123, and of 13 September 2017, *Pappalardo and Others v Commission*, C-350/16 P, EU:C:2017:672, paragraph 37).

44 In the present case, it should be pointed out that, in the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), the General Court annulled NITC's initial listing, taking the view, in paragraph 64 of that judgment, that the information to be taken into consideration did not contain any evidence in support of the Council's allegations that NITC is controlled by the Government of Iran and provides it with financial support. Finally, as is apparent from paragraph 61 of that judgment, in order to establish the merits of the reason relating to financial support to the Government of Iran as a result of existing links between NITC's shareholders and that government, the Council provided no information concerning the structure of NITC's capital or its shareholders. With regard to the argument relating to NITC's activities in the transportation of oil, relied on by the Council at the hearing in those proceedings, the General Court only found in paragraphs 58 to 60 of that judgment that that information did not appear in the statement of reasons for NITC's initial listing and did not substantiate the reason relating to financial support to the Government of Iran underlying that listing.

45 It was therefore as a result of the lack of information provided by the Council in support of the factual basis of those acts that the Council's acts were annulled by the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608). It cannot be inferred from such a finding, to which the authority of *res judicata* extends in accordance with the case-law cited in paragraph 43 above, that the Council could not then rely on other evidence intended to attest the existence of financial support to the Government of Iran or to form the basis of another type of support to that government.

46 It should be pointed out that NITC's reinstatement on the lists at issue by the contested acts is based on two distinct reasons, which are, as is apparent from paragraph 48 of the judgment under appeal, NITC's financial support to the Government of Iran as a result of links between its shareholders and

that government, and NITC's logistical support to that government through the transportation of Iranian oil. As the General Court stated in paragraph 50 of the judgment under appeal, only the reason related to financial support was already included in the statement of reasons for its initial listing which was annulled by the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608). In addition, as is clear from that paragraph and from paragraph 51 of the judgment under appeal, the evidence submitted to the General Court relating to that reason in the action at first instance which gave rise to the judgment under appeal is not the same as the evidence which had been submitted to it in the proceedings relating to its initial listing and which gave rise to the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608).

- 47 NITC, however, claims that, since evidence on which the Council based its decision to reinstate it on the lists at issue was already available at the time of the initial listing, the Council was obliged to use all of the information at its disposal and the legal classifications capable of justifying the imposition of restrictive measures on NITC at the time of the first listing, failing which it would not be able to rely on them thereafter. As it explained at the hearing before the Court of Justice, NITC maintains that, even if the principle of *res judicata* did not strictly apply, such an obligation follows from a combined analysis of that principle and the principle of legal certainty.
- 48 Suffice it to state, nevertheless, that that complaint cannot lead to a finding of an infringement of the principle of *res judicata*, given that, since the information and legal classifications were not taken into account by the decision having the force of *res judicata*, by definition, they cannot constitute matters of law or fact actually or necessarily settled by that decision for the purposes of the case-law cited in paragraph 43 above.
- 49 It should be added that, in its appeal, NITC does not present any specific argument in support of its claim that the principles of *res judicata* and legal certainty, taken together, afford greater protection in the present case than that provided by the principle of *res judicata* alone to a person or entity which secured the annulment of its inclusion on the list of persons and entities whose assets are to be frozen against the adoption of new restrictive measures based on other reasons or evidence.
- 50 With regard to the principle of protection of legitimate expectations, it should be recalled that, in accordance with the settled case-law of the Court, the right to rely on that principle applies to any individual in a situation in which an institution of the European Union, by giving that person precise assurances, has led him to entertain well-founded expectations. However, a person may not plead infringement of that principle unless he has been given those assurances (see, to that effect, judgments of 13 September 2017, *Pappalardo and Others v Commission*, C-350/16 P, EU:C:2017:672, paragraph 39, and of 21 February 2018, *Kreuzmayr*, C-628/16, EU:C:2018:84, paragraph 46).
- 51 A decision to include an entity on a list of persons and entities whose assets are to be frozen does not provide that entity with precise assurances that the Council does not have any reason concerning that entity other than what is in the statement of reasons for that decision or any other evidence capable of justifying the imposition of restrictive measures on it. In addition, as the General Court rightly held in paragraph 59 of the judgment under appeal, the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), could not give rise to a legitimate expectation on the part of NITC that the Council, while abiding by that judgment, would not be able to take a re-listing decision in the future. Moreover, the General Court stated in paragraph 77 of that judgment that the fact that NITC's name was once again included on lists of persons and entities whose assets are to be frozen could not be ruled out, and that the Council had the possibility of re-listing its name on the basis of reasons substantiated to the requisite legal standard.

- 52 It follows from the foregoing that the General Court did not err in law when it held that the Council did not infringe the principle of *res judicata* as it attaches to the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), or the principles of legal certainty and protection of legitimate expectations, by adopting the contested acts on the basis of reasons relating to NITC's financial and logistical support to the Government of Iran, referred to in paragraph 46 above.
- 53 With regard to the right to an effective remedy as laid down in Article 47 of the Charter, which is relied on by NITC, it should be recalled that that article secures in EU law the protection afforded by Article 6(1) and Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 54 and the case-law cited). The first paragraph of Article 47 of the Charter requires everyone whose rights and freedoms guaranteed by EU law are violated to have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.
- 54 The principle of effective judicial protection cannot prevent the Council from reinstating a person or entity on the lists of persons and entities whose assets are to be frozen on the basis of reasons other than those on which the initial listing was based, or for the same reason based on other evidence. The purpose of that principle is to ensure that an act adversely affecting an entity may be challenged before the courts, and not to prevent the adoption of a new act adversely affecting that entity, based on different reasons or evidence.
- 55 As the Court of Justice has already held, where a decision of an EU institution being challenged in court is annulled, it is deemed to have never existed, and that institution, which intends to take a new decision, is entitled to undertake a full review and rely on reasons other than those on which the annulled decision was based (see, by analogy, judgment of 6 March 2003, *Interporc v Commission*, C-41/00 P, EU:C:2003:125, paragraph 31).
- 56 It follows that an unlawful measure, such as the one established by the General Court in the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), at the time NITC was first included on the lists of persons and entities whose assets are to be frozen, does not prevent the Council, following a re-examination of the appellant's situation, from adopting new restrictive measures on the basis of evidence that is already in existence or available.
- 57 Furthermore, it should be pointed out that, in the proceedings giving rise to the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), which has now become final, NITC sought and secured the annulment of the restrictive measures adopted in 2012, which have therefore been expunged from the EU legal order. It follows that NITC may rely on that judgment in support of a claim for damages, as is clear from paragraph 65 of the judgment under appeal. In addition, NITC has the option, which it has exercised, of bringing a new action before the courts of the European Union in order to review the legality of a re-listing decision with a view to being restored to its initial position, if appropriate, and to obtaining compensation.
- 58 In the light of those factors, it must be held that the General Court rightly concluded that the Council did not infringe the principles of *res judicata*, legal certainty and protection of legitimate expectations, or NITC's right to an effective remedy.
- 59 Therefore, the first ground of appeal must be rejected.

The second and fourth grounds of appeal

– Arguments of the parties

- 60 By its second ground of appeal, NITC claims that the General Court wrongly concluded that the listing criteria in its case were satisfied. The General Court erred in law in paragraphs 87 to 89 of the judgment under appeal in finding that NITC provided support to the Government of Iran for the purposes of the criterion in Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012 by reason of the logistical support to the Government of Iran as a result of NITC's transportation of Iranian oil and the existing link between the energy sector and Iran's nuclear proliferation activities. The notion of 'logistical support' cannot encompass support provided to third parties. According to the General Court's interpretation, it is sufficient that NITC is active in the Iranian oil sector for it to be found to be providing logistical support to the Government of Iran, even though it did not provide any service to that government. In addition, such an interpretation amounts substantively to an allegation of indirect financial support to the Government of Iran, which was rejected in the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608, paragraph 60).
- 61 In addition, the reference in recital 22 of Decision 2010/413, in paragraph 86 of the judgment under appeal, does not establish a link between NITC's activities, the energy sector and nuclear proliferation and is incorrect in that, following that decision, the European Union agreed to authorise oil transport activities under the Joint Plan of Action implemented by Regulation No 42/2014. Although the Joint Plan of Action made no provision for a suspension of the individual restrictive measures or an amendment of the criteria for inclusion on the lists of persons and entities whose assets are to be frozen, that plan and Regulation No 42/2014 should have guided the interpretation and application of those criteria. It would be contradictory to take the view that the notion of 'logistical support' covers the activity of transporting crude oil which has been authorised by that plan and that regulation, and inconceivable that the European Union could have authorised an activity that is likely to be of sufficient qualitative or quantitative importance as to encourage nuclear proliferation. The threat which NITC represented, in the light of the Joint Plan of Action in relation to the purpose of the restrictive measures, has not been assessed.
- 62 Finally, the interpretation adopted by the General Court is disproportionate in view of the objectives pursued by Decision 2010/413 and Regulation No 267/2012, in that it allows the Council to adopt restrictive measures against any person or entity operating in a sector capable of generating substantial revenue for the Government of Iran. Such a broad reading of the listing criteria would transform those acts into trade sanctions. Such an interpretation is also contrary to the principle of legal certainty, which, in cases where the legislation is ambiguous, requires that the interpretation most favourable to NITC be adopted.
- 63 By its fourth ground of appeal, NITC claims that the General Court erred in law in rejecting its alternative argument that, if the broad interpretation of the listing criterion in Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012 were maintained, that interpretation would make that criterion disproportionate to the objectives pursued by Decision 2010/413 and Regulation No 267/2012, and those provisions are therefore unlawful.
- 64 The Council contests the merits of the second and fourth grounds of appeal. It considers that the General Court did not err in law in holding that the reason relating to logistical support to the Government of Iran was satisfied and argues that, although the Joint Plan of Action provided a certain degree of sanctions relief to the Islamic Republic of Iran, it was still necessary, at that stage, to maintain pressure on that government in order for it to put an end to its nuclear proliferation activities.

– Findings of the Court

- 65 By its second and fourth grounds of appeal, which should be examined together, NITC disputes the General Court's interpretation and application, in its case, of the listing criterion in Article 20(1)(c) of Decision 2010/413, as amended by Decision 2012/635, and Article 23(2)(d) of Regulation No 267/2012, as amended by Regulation No 1263/2012.
- 66 In the first place, the appellant cannot succeed in its argument that the reason relating to logistical support to the Government of Iran, which the General Court declared to be well founded in paragraph 92 of the judgment under appeal, corresponds to the reason relating to financial support to that government, which was rejected by the judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608). In that regard, suffice it to state that, in paragraphs 84 to 87 of the judgment under appeal, the General Court justified the merits of the reason relating to NITC's logistical support to the Government of Iran by way of a separate statement of reasons from the one by which it had rejected, in its judgment of 3 July 2014, *National Iranian Tanker Company v Council* (T-565/12, EU:T:2014:608), the information which the Council relied upon in order to find that NITC provided that government with financial support. More particularly, it must be pointed out that, in paragraph 82 of the judgment under appeal, the General Court stated that the Council has not alleged that NITC provides indirect support to the Government of Iran through a third company which pays dividends to that government, but that it is because of the significance of its transport activities in the Iranian oil sector, which is controlled by the Government of Iran, that the appellant is regarded as providing logistical support to that government.
- 67 In the second place, it should be pointed out that the General Court rightly recalled in paragraph 85 of the judgment under appeal that the criterion for support to the Government of Iran in Article 20(1)(c) of Decision 2010/413, as amended by Decision 2012/635, and in Article 23(2)(d) of Regulation No 267/2012, as amended by Regulation No 1263/2012, must be understood as meaning that it targets the relevant person or entity's own activities which, even if they have no actual direct or indirect connection with nuclear proliferation, are nonetheless capable of encouraging it, by providing the Government of Iran with resources or facilities of a material, financial or logistic nature allowing it to pursue proliferation activities (see, to that effect, judgments of 1 March 2016, *National Iranian Oil Company v Council*, C-440/14 P, EU:C:2016:128, paragraphs 80 and 81, and of 7 April 2016, *Central Bank of Iran v Council*, C-266/15 P, EU:C:2016:208, paragraph 44).
- 68 As is apparent from paragraphs 81 and 82 of the judgment of 1 March 2016, *National Iranian Oil Company v Council* (C-440/14 P, EU:C:2016:128), that criterion takes into account the 'potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities', mentioned, in particular, in Resolution 1929 and in recital 22 of Decision 2010/413, in order to affect the funding of Iran's nuclear programme by the Government of Iran. The connection between the energy sector and nuclear proliferation is thus established by the EU legislature itself.
- 69 In addition, it is clear from the case-law of the Court that that criterion, read in the light of the objectives pursued by the Council, is aimed at the forms of support to the Government of Iran which, by their quantitative or qualitative importance, contribute to the pursuit of Iran's nuclear activities (see, to that effect, judgment of 1 March 2016, *National Iranian Oil Company v Council*, C-440/14 P, EU:C:2016:128, paragraph 83, and order of 4 April 2017, *Sharif University of Technology v Council*, C-385/16 P, not published, EU:C:2017:258, paragraph 64).
- 70 With regard to the notion of 'logistical support', the Court has held that the term 'logistical' was not limited to the activities of transporting goods or people but encompassed activities essentially relating to the methods and means of organisation of an operation or process and to the making available of

resources necessary for an activity or process to take place (see, to that effect, judgment of 8 September 2016, *Iranian Offshore Engineering & Construction v Council*, C-459/15 P, not published, EU:C:2016:646, paragraphs 53 and 54).

- 71 In the light of those factors, the General Court was right to hold, in paragraph 87 of the judgment under appeal, that, having regard to the importance of NITC's transport activities in the Iranian oil sector, allowing the Government of Iran to meet specific logistical needs in that sector which it controls and the link between the energy sector and nuclear proliferation activities in Iran, it had to conclude that NITC provided support to the Government of Iran, so that the criterion in Article 20(1)(c) of Decision 2010/413, as amended by Decision 2012/635, and Article 23(2)(d) of Regulation No 267/2012, as amended by Regulation No 1263/2012, was fulfilled.
- 72 The interpretation thus adopted by the General Court, as is apparent from paragraphs 67 to 70 above, forms part of a legal framework which is clearly delimited by the objectives pursued by the rules governing restrictive measures against the Islamic Republic of Iran so that it does not contravene the principle of legal certainty.
- 73 In the third place, it should be borne in mind that the General Court did not err in law in paragraphs 88 and 89 of the judgment under appeal in finding that that conclusion could not be called into question by the suspension, through the Joint Plan of Action, Decision 2014/21 and Regulation No 42/2014, of the ban on transporting oil from Iran to any other country.
- 74 In that regard, the easing of the sanctions against the Islamic Republic of Iran arising from those acts came about in the context of a first step in a process aimed at finding a long-term comprehensive solution to the Iranian nuclear issue, without calling into question the objective pursued by Decision 2010/413 and Regulation No 267/2012 of preventing nuclear proliferation and bringing pressure to bear on the Islamic Republic of Iran to put an end to the activities in question. In addition, although those acts gave rise to the temporary suspension of that ban, extended by a series of successive acts of the Council, so that the activity exercised by NITC was temporarily no longer banned, neither the elements established in the first step of the Joint Plan of Action, nor the acts adopted by the Council for the implementation of that plan made provision for a suspension of the individual restrictive measures or an amendment of the criteria on the basis of which such measures could be adopted, as was rightly pointed out by the General Court in paragraphs 89 and 90 of the judgment under appeal and accepted by NITC.
- 75 In the fourth place, NITC argues that the General Court's interpretation of the listing criterion alleging support to the Government of Iran makes that criterion disproportionate in the light of the objectives pursued by Decision 2010/413 and Regulation No 267/2012 and, thus, unlawful and inapplicable to NITC.
- 76 In that regard, the principle of proportionality requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary to achieve them (judgment of 15 November 2012, *Al-Aqsa v Council and Netherlands v Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122 and the case-law cited).
- 77 The Court has held that the objective of Decision 2010/413 and Regulation No 267/2012, as was pointed out in paragraph 74 above, is to prevent nuclear proliferation and so to bring pressure to bear on the Islamic Republic of Iran to end the activities concerned. That objective, which forms part of a more general framework of endeavours linked to the maintenance of international peace and security, is legitimate (see, to that effect, judgment of 28 November 2013, *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 124 and the case-law cited).

- 78 The General Court's interpretation of the listing criterion relating to 'support for the Government of Iran' in the present case, in accordance with the case-law cited in paragraphs 67 to 69 above, covers activities that are capable of encouraging nuclear proliferation by providing the Government of Iran with resources or facilities of a material, financial or logistical nature which allow it to pursue nuclear proliferation, without any activity amounting to such support, but only activities which, by their quantitative or qualitative importance, contribute to the pursuit of nuclear proliferation activities. In those circumstances, it does not appear that that criterion, as interpreted by the General Court in the present case, is inappropriate and goes beyond the limits of what is necessary to achieve that objective.
- 79 It follows that the second and fourth grounds of appeal must be rejected.

The third ground of appeal

– Arguments of the parties

- 80 By its third ground of appeal, NITC claims that the General Court erred in law in holding, in paragraphs 123 to 138 of the judgment under appeal, that the interference which its reinstatement on the lists at issue caused to its rights to property and reputation, and the freedom to conduct a business was proportionate. First, the General Court should have found that that reinstatement was manifestly disproportionate in the light of the infringements of the principles and fundamental rights relied on before that court in the first plea in law. Secondly, the General Court undermined NITC's fundamental rights in not according sufficient importance to the Joint Plan of Action. In that regard, NITC claims that the fact that it was 'targeted' by the Council is both disproportionate and discriminatory. The General Court's reasoning, in paragraph 135 of the judgment under appeal, that the restrictive measures taken against NITC were justified because of the importance of its oil transportation activities, whilst acknowledging that those activities were authorised, is contradictory. In so far as the link with nuclear proliferation is, according to paragraphs 86 and 87 of the judgment under appeal, said to be the revenue ultimately earned by the Government of Iran from the selling of Iranian oil, the fact that that petrol may be transported by NITC or by another company or companies makes no difference.
- 81 The Council disputes the merits of the third ground of appeal. It contends that the General Court took full account of the principle of proportionality in holding that the reinstatement of NITC on the lists at issue was justified because of the importance of its transport activities in the Iranian oil sector and in taking the view that the oil transport activities of other entities was not on a comparable scale.

– Findings of the Court

- 82 Article 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and must respect their essence, and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
- 83 With regard to the right to property and the freedom to pursue an economic activity laid down in Articles 16 and 17 of the Charter, which are relied upon by NITC, the Court has held that those fundamental rights are not unfettered prerogatives. Consequently, the exercise of those rights may be restricted, provided that those restrictions correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights thus guaranteed (see, to that effect, judgment of 28 November 2013, *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraphs 121 and 122 and the case-law cited).

- 84 Although the contested acts contain restrictions to NITC's fundamental rights, those restrictions nevertheless address a legitimate objective pursued by EU law, as is apparent from the examination of the second and fourth grounds of appeal, that is to say, combating nuclear proliferation which is part of the more general framework of maintaining international peace and security, the paramount importance of which was highlighted by the General Court in paragraph 132 of the judgment under appeal.
- 85 In addition, in paragraph 132, the General Court pointed out that those restrictions concerned only a part of NITC's assets and that Decision 2010/413 and Regulation No 267/2012 made provision for certain exceptions. Those acts provide for possibilities to release funds enabling NITC to meet certain expenses, in particular those considered essential, or to honour specific commercial contracts. As regards the harm to its reputation, the General Court noted that the Council did not allege that NITC itself was involved in nuclear proliferation. It concluded from this that NITC was not personally associated with behaviour posing a risk to international peace and security and that the degree of mistrust towards it was therefore lower.
- 86 In the light of those factors, the restrictions to NITC's right to property and its freedom to conduct a business do not appear to be disproportionate to the ends sought. The same conclusion must be reached as regards the damage to its reputation (see, to that effect, judgment of 7 April 2016, *Central Bank of Iran v Council*, C-266/15 P, EU:C:2016:208, paragraph 53).
- 87 Finally, the General Court did not err in law in considering that that conclusion could not be called into question by the adoption of the Joint Plan of Action and that NITC's situation could not be compared to that of other entities conducting the same activities of transporting oil as its own. In that regard, it is sufficient to refer to the considerations set out in paragraphs 65 to 79 above.
- 88 The third ground of appeal is therefore rejected, and the appeal is thus dismissed in its entirety.

Costs

- 89 Under Article 184(2) 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 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 90 Since the Council has applied for costs and NITC has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Council.

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

- 1. Dismisses the appeal;**
- 2. Orders National Iranian Tanker Company to bear its own costs and to pay those incurred by the Council of the European Union.**

von Danwitz

Jürimäe

Lycourgos

Juhász

Vajda

Delivered in open court in Luxembourg on 29 November 2018.

A. Calot Escobar
Registrar

K. Lenaerts
President