Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

28 November 2013*

(Appeal — Restrictive measures against the Islamic Republic of Iran with the aim of preventing nuclear proliferation — Measures directed against the Iranian oil and gas industry — Freezing of funds — Obligation to state reasons — Obligation to substantiate the measure)

In Case C-348/12 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 6 July 2012,

Council of the European Union, represented by M. Bishop and R. Liudvinaviciute-Cordeiro, acting as Agents,

appellant,

the other parties to the proceedings being:

Manufacturing Support & Procurement Kala Naft Co., Tehran, established in Tehran (Iran), represented by F. Esclatine and S. Perrotet, avocats,

applicant at first instance,

European Commission, represented by M. Konstantinidis and E. Cujo, acting as Agents,

intervener at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 18 April 2013,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2013,

gives the following

* Language of the case: French.

Judgment

1 By its appeal, the Council of the European Union requests the Court of Justice to set aside the judgment of the General Court of the European Union of 25 April 2012 in Case T-509/10 *Manufacturing Support & Procurement Kala Naft* v *Council* [2012] ECR ('the judgment under appeal'), by which the General Court annulled the following measures in so far as they concern Manufacturing Support & Procurement Kala Naft Co., Tehran ('Kala Naft'):

— 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 corrigendum OJ 2010 L 197, p. 19);

— Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25);

— Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81);

— Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1) (together 'the acts at issue');

and ordered that the effects of Decision 2010/413, as amended by Decision 2010/644, be maintained until the annulment of Regulation No 961/2010 takes effect.

Legal context and background to the dispute

2 The Treaty on the Non-Proliferation of Nuclear Weapons was opened for signature on 1 July 1968 in London, Moscow and Washington. The 28 Member States of the European Union are contracting parties to it, as is the Islamic Republic of Iran.

3 Article II of that Treaty provides inter alia that '[e]ach non-nuclear-weapon State Party to the Treaty undertakes … not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices …'.

4 Article III.1 of that Treaty provides that '[e]ach non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency ["the IAEA"] in accordance with the Statute of the [IAEA] and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices …'.

5 In accordance with Article III B 4 of its Statute, the IAEA submits reports on its activities annually to the General Assembly of the United Nations and, when appropriate, to the United Nations Security Council ('Security Council').

6 Concerned over the many reports of the IAEA Director General and resolutions of the IAEA Board of Governors related to the nuclear programme of the Islamic Republic of Iran, the Security Council adopted Resolution 1737 (2006) on 23 December 2006, paragraph 12 of which, read in conjunction with the Annex, lists a series of persons and entities regarded as being involved in nuclear proliferation, whose funds and economic resources were required to be frozen.

7 In order to implement Resolution 1737 (2006) in the European Union, the Council adopted Common Position 2007/140/CFSP concerning restrictive measures against Iran (OJ 2007 L 61, p. 49) on 27 February 2007.

8 Article 5(1) of Common Position 2007/140 provided for the freezing of all the funds and economic resources of certain categories of persons and entities listed in Article 5(1)(a) and (b). Thus, point (a) of Article 5(1) referred to persons and entities designated in the Annex to Resolution 1737 (2006) as well as additional persons and entities designated by the Security Council or by the Security Council Committee established pursuant to Paragraph 18 of Resolution 1737 (2006). The list of those persons and entities was set out in Annex I to Common Position 2007/140. Point (b) of Article 5(1) referred to persons and entities not covered by Annex I that, inter alia, are engaged in, directly associated with, or providing support for, Iran's proliferation sensitive nuclear activities. The list of those persons and entities was set out in Annex II to Common Position 2007/140.

9 As regards the powers of the European Community, Resolution 1737 (2006) was implemented by Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), which was adopted on the basis of Articles 60 EC and 301 EC and refers to Common Position 2007/140, the content of which is essentially similar, in that the same names of entities and of natural persons are listed in Annexes IV (persons, entities and bodies designated by the Security Council) and V (persons, entities and bodies other than those listed in Annex IV) to that regulation.

10 Article 7(2)(a) of Regulation No 423/2007 was worded as follows:

'All funds and economic resources 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'.

11 Noting that the Islamic Republic of Iran was not complying with the resolutions of the Security Council, that it had constructed a power plant at Qom in breach of its obligations to suspend all nuclear enrichment-related activities and had not disclosed this until September 2009, that it was failing to notify and refusing to cooperate with the IAEA, the Security Council, by Resolution 1929 (2010) of 9 June 2010, adopted stricter measures directed, in particular, against Iranian shipping companies, the sector relating to ballistic missiles capable of delivering nuclear weapons, and the Islamic Revolutionary Guard Corps.

12 Although the Security Council did not adopt a decision concerning the energy sector, the seventeenth recital in the preamble to Resolution 1929 (2010) is worded as follows:

'Recognising that access to diverse, reliable energy is critical for sustainable growth and development, while noting the potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities, and *further noting* that chemical process equipment and materials required for the petrochemical industry have much in common with those required for certain sensitive nuclear fuel cycle activities.'

13 In a declaration annexed to its Conclusions of 17 June 2010, the European Council underlined its deepening concerns about Iran's nuclear programme, welcomed the adoption by the Security Council of Resolution 1929 (2010) and noted the last report of the IAEA, dated 31 May 2010.

14 In paragraph 4 of that declaration, the European Council considered the introduction of new restrictive measures to have become inevitable. In the light of the work undertaken by the Foreign Affairs Council, the European Council invited the Foreign Affairs Council to adopt at its next session measures implementing those contained in Security Council Resolution 1929 (2010) as well as accompanying measures, with a view to supporting the resolution of all outstanding concerns regarding the development by the Islamic Republic of Iran of sensitive technologies in support of its nuclear and missile programmes, through negotiation. Those measures were to focus on the following areas:

'the areas of trade, especially dual use goods and further restrictions on trade insurance; the financial sector, including freeze of additional Iranian banks and restrictions on banking and insurance; the Iranian transport sector, in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; key sectors of the gas and oil industry with prohibition of new investment, technical assistance and transfers of technologies, equipment and services related to these areas, in particular related to refining, liquefaction and LNG technology; and new visa bans and asset freezes especially on the Islamic Revolutionary Guard Corps (IRGC)'.

15 By Decision 2010/413, the Council implemented that declaration, repealing Common Position 2007/140 and adopting additional restrictive measures as compared therewith.

16 Recitals 22, 23 and 27 in the preamble to Decision 2010/413 are worded as follows:

'(22) [Security Council Resolution] 1929 (2010) notes the potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities and further notes that chemical process equipment and materials required for the petrochemical industry have much in common with those required for certain sensitive nuclear fuel cycle activities.

(23) In accordance with the European Council Declaration, Member States should prohibit the sale, supply or transfer to Iran of key equipment and technology as well as related technical and financial assistance, which could be used in key sectors in the oil and natural gas industries. Moreover, Member States should prohibit any new investment in these sectors in Iran.

…

(27) Further action by the Union is needed in order to implement certain measures.'

17 Article 4 of Decision 2010/413 provides as follows:

'1. The sale, supply or transfer of key equipment and technology for the following key sectors of the oil and natural gas industry in Iran, or to Iranian or Iranian-owned enterprises engaged in those sectors outside Iran, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States shall be prohibited whether or not originating in their territories:

(a) refining;

(b) liquefied natural gas;

(c) exploration;

(d) production.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this provision.

2. It shall be prohibited to provide the following to enterprises in Iran that are engaged in the key sectors of the Iranian oil and gas industry referred to in paragraph 1 or to Iranian, or Iranian-owned enterprises engaged in those sectors outside Iran:

(a) technical assistance or training and other services related to key equipment and technology as determined according to paragraph 1;

(b) financing or financial assistance for any sale, supply, transfer or export of key equipment and technology as determined according to paragraph 1 or for the provision of related technical assistance or training.

3. It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in paragraphs 1 and 2.'

18 Article 20(1) of Decision 2010/413 provides for the funds of several categories of persons and entities to be frozen. Point (a) of Article 20(1) refers to persons and entities designated by the Security Council, who are listed in Annex I to the decision. Point (b) of Article 20(1) relates, inter alia, to '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, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology, 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'.

19 Kala Naft is an Iranian company owned by National Iranian Oil Company ('NIOC'); its role is to act as the central purchasing body for the oil, gas and petrochemical divisions of the NIOC group. It is listed at point 24 of Part I B of Annex II to Decision 2010/413. The following reasons are stated:

'Trades equipment for oil and gas sector that can be used for Iran's nuclear programme. Attempted to procure material (very hard-wearing alloy gates) which have no use outside the nuclear industry. Has links to companies involved in Iran's nuclear programme.'

20 By Implementing Regulation No 668/2010, adopted to implement Article 7(2) of Regulation No 423/2007, the name of Kala Naft, mentioned at point 22 of Part I B of the Annex to Implementing Regulation No 668/2010, was added to the list of legal persons, entities and bodies contained in Table I of Annex V to Regulation No 423/2007.

21 The statement of reasons is virtually identical to that set out in Decision 2010/413.

22 Annex II to Decision 2010/413 was reviewed and rewritten by Decision 2010/644.

23 Recitals 2 to 5 in the preamble to Decision 2010/644 are worded as follows:

'(2) The Council has carried out a complete review of the list of persons and entities, as set out in Annex II to Decision 2010/413/CFSP, to which Articles 19(1)(b) and 20(1)(b) of the Decision apply. When doing so, the Council took account of observations submitted by those concerned.

(3) The Council has concluded that, with the exception of two entities, the persons and entities listed in Annex II to Decision 2010/413/CFSP should continue to be subject to the specific restrictive measures provided for therein.

(4) The Council has also concluded that the entries concerning certain entities in the list should be amended.

(5) The list of persons and entities referred to in Articles 19(1)(b) and 20(1)(b) of Decision 2010/413/CFSP should be updated accordingly.'

24 Kala Naft's name was included at point 24 of the list of entities in Table I of Annex II to Decision 2010/413, as amended by Decision 2010/644. The statement of reasons relating to Kala Naft is identical to that set out in Decision 2010/413.

25 Regulation No 423/2007 was repealed by Regulation No 961/2010, which was adopted on the basis of Article 215 TFEU.

26 Recitals 1 to 3 and 7 in the preamble to Regulation No 961/2010 are worded as follows:

'(1) On 26 July 2010, the Council approved Decision 2010/413/CFSP confirming the restrictive measures taken since 2007 and providing for additional restrictive measures against the Islamic Republic of Iran … in order to comply with [United Nations] Security Council Resolution 1929 (2010), as well as for accompanying measures as requested by the European Council in its Declaration of 17 June 2010.

(2) Those restrictive measures comprise, in particular, … restrictions on trade in key equipment and technology for, and restrictions on investment in the Iranian oil and gas industry, …

(3) Decision 2010/413/CFSP also provided for additional categories of persons to be made subject to the freezing of funds and economic resources and for certain other technical amendments to existing measures.

…

(7) In order to ensure the effective implementation of the prohibition on the sale, supply, transfer or export to Iran of certain key equipment or technology which could be used in the key sectors of the oil and natural gas industries, a list of such key equipment and technology should be provided'.

27 Article 8(1) and (2) of Regulation No 961/2010 provides as follows:

'1. It shall be prohibited to sell, supply, transfer or export key equipment or technology listed in Annex VI, directly or indirectly, to any Iranian person, entity or body or for use in, Iran.

2. Annex VI shall include key equipment and technology for the following key sectors of the oil and gas industry in Iran:

(a) exploration of crude oil and natural gas;

(b) production of crude oil and natural gas;

(c) refining;

(d) liquefaction of natural gas.'

28 Article 16 of Regulation No 961/2010 provides inter alia for the funds and economic resources belonging to or controlled by certain persons, entities and bodies to be frozen. Article 16(1) refers to persons, entities or bodies designated by the Security Council and listed in Annex VII to that regulation.

29 Under Article 16(2) of Regulation No 961/2010:

'2. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex VIII shall be frozen. Annex VIII shall include the natural and legal persons, entities and bodies … who, in accordance with Article 20(1)(b) of [Decision 2010/413], have been identified as:

(a) being engaged in, directly associated with, or providing support for Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems by Iran, including through involvement in the procurement of prohibited goods and technology, or being owned or controlled by such a person, entity or body, including through illicit means, or acting on their behalf or at their direction;

…'

30 Kala Naft's name was listed by the Council at point 29 on the list of legal persons, entities and bodies set out in Annex VIII B to Regulation No 961/2010. The reasons for that listing are identical to those set out in Decision 2010/413.

The procedure before the General Court and the judgment under appeal

31 By application lodged at the General Court Registry on 20 October 2010, Kala Naft brought an action for annulment of Decision 2010/413 and Implementing Regulation No 668/2010.

32 In its observations of 6 December 2011, submitted in response to a written question from the General Court, Kala Naft extended its heads of claim to seek annulment also of Decision 2010/644 and of Regulation No 961/2010 in so far as those measures relate to it.

33 Kala Naft put forward nine pleas in law. The first plea alleged that Article 4 as well as Article 28 of Decision 2010/413 were illegal as regards the date on which the decision entered into force. The second plea alleged infringement of the obligation to state reasons. The third plea alleged infringement of its rights of defence and of its right to effective judicial protection. The fourth plea alleged breach of the principle of proportionality. The fifth plea alleged that the Council had no power to adopt the acts at issue. The sixth plea alleged misuse of power. The seventh plea alleged an error of law with regard to the concept of involvement in nuclear proliferation. The eighth plea alleged error of assessment of the facts relating to its activities. The ninth plea, put forward in the alternative, alleged manifest error of assessment and breach of the principle of proportionality.

34 At the hearing before the General Court, the Council and the European Commission contended that the action brought by Kala Naft was inadmissible in so far as it was based on alleged infringement of that company's fundamental rights.

35 In paragraph 39 of the judgment under appeal, the General Court concluded that, under the first paragraph of Article 275 TFEU, it 'does not have jurisdiction to take cognisance of an action seeking to assess the legality of Article 4 of Decision 2010/413 and, thereby, to give a ruling on the second part of the first plea'.

36 It also rejected as inadmissible the line of argument put forward by the Council and the Commission concerning the substance of the case, by which they alleged that it was impossible for Kala Naft to base its action on infringement of fundamental rights.

37 The General Court went on to reject the fifth plea, alleging that the Council had no power to adopt the acts at issue, and the sixth plea, alleging misuse of power. It did, however, uphold the first part of the first plea – contesting the retroactive entry into force of Decision 2010/413 – in so far as it sought annulment of Article 28 of Decision 2010/413, and rejected it as ineffective with regard to the remainder.

38 As regards the statement of reasons for the acts at issue, in paragraph 80 of the judgment under appeal the General Court rejected the second plea as unfounded in so far as it related to the first and second of the Council's stated grounds for entering Kala Naft on the lists in the acts at issue. However, it upheld the second plea so far as the third ground was concerned and, therefore, annulled the acts at issue.

39 In paragraph 97 of the judgment under appeal, the General Court found that the Council had not infringed Kala Naft's rights of defence in relation to the original notification of the evidence against it. In paragraph 101 of the judgment, it considered that the Council had, however, infringed those rights by not replying to the request for access to the file which was made by Kala Naft in good time. In paragraph 105 of the judgment, it ruled that Kala Naft's right to put forward its point of view effectively in that connection had been upheld. Taking into consideration also, in paragraph 107 of the judgment under appeal, the fact that the Council had not replied to Kala Naft's request for access to the information in the file, which was made before the expiry of the time-limit for bringing an action, the General Court considered that that constituted an infringement of Kala Naft's right to effective judicial protection. Consequently, the General Court upheld the third plea and annulled the acts at issue in so far as they concerned Kala Naft.

40 Since the Council had confirmed that its file did not contain evidence or information other than that reproduced in the statements of reasons for the acts at issue, the General Court considered it necessary, for the sake of procedural efficiency and in the interest of the sound administration of justice, to examine the seventh and eighth pleas, alleging, respectively, error of law with regard to the concept of involvement in nuclear proliferation and error of assessment of the facts relating to Kala Naft's activities. It upheld the seventh plea and accordingly annulled the acts at issue so far as the first ground for placing that company on the lists in those acts was concerned. Furthermore, it concluded that the Council had not adduced proof of the allegations relied on in the context of the second ground for listing and therefore upheld the eighth plea and annulled the acts at issue so far as that ground was concerned.

41 The General Court did not examine the fourth and ninth pleas in law.

42 So as to ensure that legal certainty would not be jeopardised, the General Court maintained the effects of Decision 2010/413, as amended by Decision 2010/644, pending the ruling of the Court of Justice on the appeal. Under the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, the appeal has suspensory effect in relation to a decision of the General Court annulling a regulation – in this instance Regulation No 961/2010 – until the decision by which the Court of Justice rules on the appeal.

Forms of order sought

43 The Council claims that the Court of Justice should:

— set aside the judgment under appeal;

— give a final ruling on the dispute and dismiss as inadmissible the action brought by Kala Naft against the acts at issue or, in the alternative, dismiss the action as unfounded;

— order Kala Naft to pay the costs incurred by the Council at first instance and in connection with the appeal.

44 Kala Naft contends that the Court of Justice should:

— dismiss the Council's appeal;

— order the Council to pay the costs.

45 The Commission submits that the Court of Justice should:

— allow the Council's appeal as well founded;

— order Kala Naft to pay the costs.

The appeal

The first plea, alleging error of law as regards the admissibility of the action or of certain pleas put forward by Kala Naft

46 The first plea relates to the admissibility of certain pleas put forward by Kala Naft. It concerns paragraphs 43 to 46 of the judgment under appeal, which state:

'43 At the hearing, the Council and the Commission contended that [Kala Naft] should be regarded as a government organisation and, therefore, as an offshoot of the Iranian State, which could not plead the protection and safeguards connected with fundamental rights. The Council and the Commission therefore consider that the pleas concerning the alleged violation of those rights must be ruled inadmissible.

44 On that point, it must be observed, first, that the Council and the Commission do not dispute the right of [Kala Naft] itself to seek the annulment of the [acts at issue]. The Council and the Commission deny only that it has certain rights upon which it relies in order to obtain annulment.

45 Secondly, the question of whether the applicant has or does not have the right which it pleads in support of a plea of annulment does not concern the admissibility of that plea, but its merits. Consequently, the argument of the Council and the Commission that [Kala Naft] is a government organisation must be dismissed in so far as it aims at a finding that the action is partly inadmissible.

46 Thirdly, the argument was raised for the first time at the hearing, but neither the Council nor the Commission claimed that it was based on matters of law or fact which had come to light in the course of the procedure. Therefore, so far as the substance of the case is concerned, it is a new plea in law within the meaning of the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court, from which it follows that it must be ruled inadmissible.'

Arguments of the parties

47 The Council submits that the General Court erred in law in considering that the question whether Kala Naft was entitled to rely on a plea alleging infringement of fundamental rights concerned not the admissibility of that plea but only its merits. In the Council's opinion, if an entity which is a government organisation for the purposes of Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, does not have the fundamental right to the protection of property or other fundamental rights, it does not have *locus standi* to rely on an alleged infringement of those rights before the General Court.

48 It acknowledges that the institutions did not raise this objection until the oral stage of the procedure, but submits that the conditions of admissibility of an action are among those that constitute an absolute bar to proceeding with a case.

49 The Commission supports the Council's arguments and submits that States are not entitled to fundamental rights, while acknowledging that they may assert procedural rights or rights arising under international law.

Findings of the Court

50 As the Advocate General stated at point 59 of his Opinion, Kala Naft's action fell within the scope of the second paragraph of Article 275 TFEU. The company had *locus standi* to challenge before the Courts of the European Union its inclusion on the list contained in the acts at issue, as that listing was of direct and individual concern to it within the meaning of the fourth paragraph of Article 263 TFEU. Its legal interest in bringing proceedings could not, therefore, be disputed.

51 The General Court correctly considered, therefore, in paragraph 45 of the judgment under appeal, that the argument as to whether Kala Naft was entitled to invoke fundamental rights protections and guarantees did not concern the admissibility of the action or even of a plea, but related to the merits of the case.

52 Since that argument was raised for the first time at the hearing, but neither the Council nor the Commission claimed that it was based on matters of law or fact which had come to light in the course of the procedure, the General Court did not err in law in ruling, in paragraph 46 of the judgment under appeal, that it was a new plea in law within the meaning of the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court, from which it followed that it had to be ruled inadmissible.

53 The first ground of appeal must therefore be rejected.

The second plea, alleging error of law as regards breach of the obligation to state reasons for the acts at issue and the validity of the measure

54 In each of the acts at issue, the imposition of restrictive measures against Kala Naft was justified on three grounds.

55 In paragraph 79 of the judgment under appeal, the General Court rejected the third of those grounds because of a failure to state reasons:

'By contrast, the third ground, which is that [Kala Naft] maintains links with the companies taking part in Iran's nuclear programme, is insufficient in so far as it does not explain what kind of relations it is actually alleged to have with what entities, so that it is unable to verify whether the allegation is well founded and to challenge it with the slightest degree of precision.'

56 In paragraphs 113 to 119 of that judgment, the General Court considered that the first ground, relating to the trading in equipment for the oil and gas sector that can be used for Iran's nuclear programme, was vitiated by an error of law as regards the concept of involvement in nuclear proliferation:

'113 As appears from paragraph 77 above, the first ground put forward by the Council is not based on specific acts of [Kala Naft] involving it in nuclear proliferation. It is based on the finding that [Kala Naft] presents a particular risk of being involved in it by reason of its position as the central purchasing body of the National Iranian Oil Company group.

114 Article 20(1) of Decision 2010/413 provides for freezing of the funds of "persons and entities … providing support" for nuclear proliferation. Likewise, Article 7(2) of Regulation No 423/2007 and Article 16(2)(a) of Regulation No 961/2010 refer, inter alia, to entities identified as "providing support" for nuclear proliferation.

115 The wording used by the legislature implies that the adoption of restrictive measures against an entity on account of the support which it has allegedly given to nuclear proliferation presupposes that it has literally done so previously. By contrast, if it has not actually done so, the mere risk that the entity concerned may provide support for nuclear proliferation in the future is not sufficient.

116 It must therefore be found that the Council erred in law by adopting a contrary interpretation of Article 20(1) of Decision 2010/413, Article 7(2) of Regulation No 423/2007 and Article 16(2)(a) of Regulation No 961/2010.'

57 In paragraphs 120 to 125 of the judgment under appeal, the General Court found that, with regard to the second of the grounds for listing, the Council had erred in its assessment of the facts relating to the activities of Kala Naft:

'120 … examination of the present plea is limited to the second ground put forward by the Council, alleging that [Kala Naft] attempted to procure very hard-wearing alloy gates which have no use outside the nuclear industry.

121 On that point, [Kala Naft] claims that, contrary to the Council's declaration in the statements of reasons for the [acts at issue], the gates which it procures are not used exclusively by the nuclear industry, but also in the gas, oil and petrochemical sectors.

122 The Council, supported by the Commission, disputes the merits of [Kala Naft]'s arguments. It claims that [Kala Naft] has not shown that it never attempted to procure gates used only in the nuclear industry.

123 It has consistently been held that the judicial review of the lawfulness of a measure whereby restrictive measures are imposed on an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence for review by the Courts of the European Union (see, to that effect, [Case T-390/08] *Bank Melli Iran* v *Council* [[2009] ECR II-3967], paragraphs 37 and 107).

124 In the present case, the Council has produced no information or evidence concerning the second ground, going beyond the reasons stated for the [acts at issue]. As the Council itself admits, in essence, it has relied on mere unsubstantiated allegations that [Kala Naft] had attempted to procure very hard-wearing alloy gates which have no use outside the nuclear industry.'

Arguments of the parties

58 The Council submits, first, that the General Court erred in law by examining separately the three grounds stated in the acts at issue. It submits in particular that the first ground, relating to the trading in equipment for the oil and gas sectors, is relevant in conjunction with the third, relating to the links maintained with companies involved in Iran's nuclear programme.

59 The Council submits, secondly, that the General Court erred in law by failing to take due account, in its examination of the second and third grounds for listing, of the fact that those grounds were based on information that came from confidential sources.

60 Kala Naft contends, first, that the Council itself considered each element of the statement of reasons set out in the acts at issue to be sufficient by itself to justify its decisions. It submits that the General Court did not err in law in rejecting the third ground, and that, moreover, the Council's plea had to be regarded as new and therefore inadmissible.

61 Endorsing the reasoning adopted by the General Court in paragraphs 114 and 115 of the judgment under appeal Kala Naft contends, secondly, that the first ground, which is inherently flawed, could not have the effect of validating the third ground.

62 Thirdly, Kala Naft contends that even if the two grounds are read together, the third ground remains obscure, as it is impossible to understand to which companies and to which links the Council is referring.

63 As regards the evidence, Kala Naft claims that the Council invoked the confidentiality of the evidence only at the hearing. It is therefore a new plea which, under Article 48(2) of the Rules of Procedure of the General Court, that court may not examine.

Findings of the Court

64 By this plea, the Council submits, in essence, that the General Court erred in law by considering that the grounds stated in the acts at issue were insufficient and, moreover, by ruling that the Council was not justified in adopting the acts at issue in so far as they concern Kala Naft, since none of the three grounds stated in those acts could justify the adoption of the measure in question with regard to Kala Naft.

65 It must be noted that the Courts of the European Union must, in accordance with the powers conferred on them by the Treaties, ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the European Union legal order. That obligation is expressly laid down by the second paragraph of Article 275 TFEU (see Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *Commission and Others* v *Kadi* [2013] ECR, '*Kadi II*', paragraph 97).

66 Those fundamental rights include, inter alia, respect for the rights of the defence and the right to effective judicial protection (see *Kadi II*, paragraph 98).

67 The first of those rights, which is affirmed in Article 41(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), includes the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (see *Kadi II*, paragraph 99).

68 The second of those fundamental rights, which is affirmed in Article 47 of the Charter, requires that the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining disclosure of those

reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question (see Case C-300/11 *ZZ* [2013] ECR, paragraph 53 and the case-law cited, and also *Kadi II*, paragraph 100).

69 Article 52(1) of the Charter nevertheless allows limitations on the exercise of the rights enshrined in the Charter, subject to the conditions that the limitation concerned respects the essence of the fundamental right in question and, subject to the principle of proportionality, that it is necessary and genuinely meets objectives of general interest recognised by the European Union (see *ZZ*, paragraph 51, and *Kadi II*, paragraph 101).

70 Further, the question whether there is an infringement of the rights of the defence and of the right to effective judicial protection must be examined in relation to the specific circumstances of each particular case (see, to that effect, Case C-110/10 P *Solvay* v *Commission* [2011] ECR I-10439, paragraph 63), including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (see *Kadi II*, paragraph 102; see also, to that effect, in relation to compliance with the duty to state reasons, Joined Cases C-539/10 P and C-550/10 P *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* [2012] ECR, paragraphs 139 and 140, and Case C-417/11 P *Council* v *Bamba* [2012] ECR, paragraph 53).

71 In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (*Council* v *Bamba*, paragraph 54).

72 With regard to the review of the lawfulness of a decision adopting restrictive measures, the Court has held that, having regard to their preventive nature, if the Courts of the European Union consider that, at the very least, one of the reasons mentioned is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision (see *Kadi II*, paragraph 130).

73 Furthermore, the effectiveness of the judicial review guaranteed by Article 47 of the Charter also requires that the Courts of the European Union are to ensure that the decision, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the allegations factored in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (see *Kadi II*, paragraph 119).

74 In the present case, in order to assess the lawfulness of the General Court's review of the statement of reasons for and validity of the acts at issue, it is necessary to examine, first of all, the way in which the General Court identified and interpreted the general rules of the relevant legislation, before examining specifically the way in which it reviewed the statement of reasons and the validity of the acts at issue.

75 In that regard, there is nothing in the judgment under appeal to indicate that the General Court took into account the changes in European Union legislation after Security Council Resolution 1929 (2010).

76 Thus, its interpretation of that legislation led it – as is evident from paragraphs 113 and 114 of that judgment – to seek a direct link between Kala Naft and nuclear proliferation, although it is clear from Decision 2010/413 and Regulation No 961/2010 that the oil and gas industry in Iran may be subjected

to restrictive measures, particularly where it is involved in the procurement of prohibited goods and technology, the link between those goods and technology and nuclear proliferation being established by the European Union legislature in the general rules of the relevant provisions.

77 Article 8(1) of Regulation No 961/2010 lays down a prohibition on selling, supplying, transferring or exporting key equipment or technology listed in Annex VI, directly or indirectly, to any Iranian person, entity or body or for use in Iran. According to Article 8(2) of that regulation, Annex VI lists key equipment and technology for key sectors of the oil and gas industry in Iran. It is apparent from those provisions that the concept of 'procurement of prohibited goods and technology', within the meaning of Article 16(2) of that regulation, extends to the procurement of key equipment and technology for key sectors of the oil and gas industry in Iran.

78 It is also apparent that neither the extract from Article 16(2) cited in paragraph 11 of the judgment under appeal nor the reference to that article in paragraph 114 of the judgment under appeal mentions that part of the provision under which those engaged in, directly associated with, or providing support for the nuclear activities of the Islamic Republic of Iran, 'including through involvement in the procurement of prohibited goods and technology' are to be subject to the restrictive measures.

79 As regards Implementing Regulation No 668/2010, it must be noted that it implemented Article 7(2) of Regulation No 423/2007 which, unlike Article 16(2) of Regulation No 961/2010, did not explicitly refer to the procurement of prohibited goods and technology.

80 However, Article 7(2)(a) of Regulation No 423/2007 covers engagement in, direct association with, or the provision of support for, Iran's proliferation-sensitive nuclear activities. It must be noted that 'support' implies a lesser degree of connection to Iran's nuclear activities than 'engagement' or 'direct association', and that it is capable of covering the procurement of or trade in goods and technology linked to the gas and oil industry.

81 That interpretation is supported by the adoption – after the adoption of Regulation No 423/2007 – of Security Council Resolution 1929 (2010), of the European Council Declaration of 17 June 2010 and of Decision 2010/413, which mention the revenues derived from the energy sector and the risk attached to material intended for the oil and gas industry.

82 Indeed, Security Council Resolution 1929 (2010), to which recital 22 in the preamble to Decision 2010/413 refers, notes the potential connection between the Islamic Republic of Iran's revenues derived from its energy sector and the funding of its proliferation-sensitive nuclear activities, and mentions that chemical process equipment and materials required for the petrochemical industry have much in common with those required for certain sensitive nuclear fuel cycle activities. Furthermore, in its declaration of 17 June 2010, the European Council states that the new measures to be adopted must focus, inter alia, on key sectors of the gas and oil industry with prohibition of new investment, technical assistance and transfers of technologies, equipment and services related to those areas.

83 In the light of that Security Council resolution (Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraph 104 and case-law cited), the European Council Declaration and Decision 2010/413, which mention the revenues derived from the energy sector and the risk attached to material intended for the oil and gas industry, Article 7(2) of Regulation No 423/2007 had to be interpreted, for the purposes of the assessment of the lawfulness of the restrictive measure adopted by Implementing Regulation No 668/2010, as meaning that trading in key equipment and technology for the gas and oil industry was capable of being regarded as support for the nuclear activities of the Islamic Republic of Iran.

84 The General Court erred in law in ruling, in paragraphs 113 to 115 of the judgment under appeal, that the adoption of restrictive measures against an entity presupposes that that entity has actually previously acted reprehensibly, the mere risk that the entity concerned may do so in the future being insufficient.

85 The various provisions of the acts at issue providing for funds to be frozen are worded in general terms ('being engaged in, directly associated with, or providing support for …') and make no reference to conduct prior to a decision to freeze funds. It follows from this that even where those provisions relate to a specific entity, the reference to a general objective as disclosed by the statutes of that entity may be sufficient to justify the adoption of restrictive measures.

86 Next, it is appropriate to examine in the light of the information and evidence which have been disclosed whether the reasons set out in the acts at issue are sufficiently detailed and specific and, where appropriate, whether the accuracy of the facts relating to the reason concerned has been established (see *Kadi II*, paragraph 136).

87 As regards the first ground of the acts at issue, according to which Kala Naft trades equipment for the oil and gas sectors that can be used for Iran's nuclear programme, the General Court correctly considered that that was sufficiently detailed and specific to enable Kala Naft to verify whether the acts at issue were well founded, to defend itself before the General Court, and to enable the General Court to review the legality of those acts.

88 As regards the validity of the measure and, more specifically, the accuracy of the facts alleged in the first ground, it must be noted that, in accordance with Article 7(2)(a) of Regulation No 423/2007, Article 20(1)(b) of Decision 2010/413 and Article 16(2)(a) of Regulation No 961/2010, interpreted in the light of Security Council Resolution 1929 (2010) and the European Council Declaration of 17 June 2010, the Council was entitled to consider that the measures could be adopted against Kala Naft inasmuch as it was trading in equipment for the oil and gas sectors that could be used for Iran's nuclear programme.

89 It is sufficient to note that Kala Naft is the central purchasing body of the Iranian national oil company, NIOC. This is included in the statutes of that company and is not disputed by it. Kala Naft itself states, in paragraph 27 of its application to the General Court, that its exclusively oil, gas and petrochemical-related functions are clearly apparent from its working methods.

90 In addition, in challenging the second ground for the acts at issue, Kala Naft itself states, in paragraphs 63, 64 and 118 of its application to the General Court, that it is regularly involved in the procurement of alloy gates for NIOC or its subsidiaries. In any event, on the basis of that role within the NIOC group, which necessarily entails the purchasing of a very large quantity of goods used by NIOC's undertakings, the Council was entitled to find that Kala Naft was, in the context of its business, involved in the procurement of prohibited goods and technology within the meaning of Articles 4 and 20(1)(b) of Decision 2010/413 and of Articles 8(1) and (2) and 16(2)(a) of Regulation No 961/2010 and, in particular, of equipment for the oil and gas sectors that can be used for Iran's nuclear programme, as referred to in the statement of reasons for the acts at issue.

91 In those circumstances, it must be held that the facts alleged in the first ground have been established to the requisite legal standard, and that that first ground in itself justified the listings in the acts at issue. In view of what is recalled in paragraph 72 of this judgment, it is not necessary to verify whether the second and third grounds of the acts at issue were sufficiently detailed and specific, or to check whether those grounds were substantiated and could in themselves constitute a sufficient basis for the acts at issue.

92 Even if the evidence substantiating the first ground for those listings was apparent from the pleadings exchanged during the proceedings before the Courts of the European Union and not from a comprehensive and clear statement of reasons substantiated by relevant information, that does not affect the lawfulness of those acts, since the statement of reasons was such that Kala Naft was able to understand it and the relevant information, such as the statutes of that company, was known to Kala Naft.

93 In the light of the errors of law made by the General Court, the judgment under appeal must be set aside.

The action before the General Court

94 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, if the latter quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

95 Following the setting aside of the judgment under appeal, it is for the court seised to rule afresh on the action for annulment brought by Kala Naft.

96 In the present case, the conditions are met for the Court of Justice itself to give judgment in the matter. The arguments which the parties set out before the General Court are contained in the pleadings exchanged during the written procedure before that court. Furthermore, in the part of their pleadings relating to the proposition of a successful appeal, the parties have had the opportunity, before this Court, to put their case again in respect of those arguments, and on any response that may have been given by the General Court.

The first plea

97 Kala Naft submits that Decision 2010/413 is illegal in so far as Article 28 provided that that decision would enter into force on the date of adoption, which preceded the date of publication in the *Official Journal of the European Union*. It claims, in particular, that Article 4 of Decision 2010/413 provides for prohibitory measures the scope of which is not specified with sufficient precision. Through the combination of Articles 4 and 28, Decision 2010/413 lays down a prohibition that gives rise to criminal sanctions under the law of the Member States, but which does not enable those to whom the decision is addressed to gauge the scope of the prohibition.

98 None of the parties commented on that plea before this Court.

99 For the same reasons as those set out in paragraphs 36 to 38 of the judgment of the General Court, it must be concluded that, under the first paragraph of Article 275 TFEU, the Court of Justice does not have jurisdiction to take cognisance of an action seeking to assess the lawfulness of Article 4 of Decision 2010/413.

100 Since the challenge to the lawfulness of Article 28 is linked to that of Article 4, it is not necessary to respond to Kala Naft's plea.

The second plea, alleging infringement of the obligation to state reasons

101 Kala Naft submits that the Council did not state to the requisite legal standard the reasons for the acts at issue, so that Kala Naft is not in a position to ascertain the matters alleged against it and to verify or refute the merits of the reasons given in its case.

102 For the same reasons as those stated in paragraphs 72 and 87 of the present judgment, this plea must be rejected.

The third plea, alleging infringement of Kala Naft's rights of defence and of its right to effective judicial protection

103 Kala Naft submits by its third plea that, by adopting Decision 2010/413 and Implementing Regulation No 668/2010, the Council infringed Kala Naft's rights of defence, which also entails an infringement of its right to effective judicial protection.

104 For the same reasons as those set out in paragraphs 94 to 104 of the judgment of the General Court, it must be held that the right of Kala Naft to put forward its point of view effectively in that connection was upheld.

105 As regards the evidence proving the matters alleged against Kala Naft, it is sufficient to note that Kala Naft's function as central purchasing body of the NIOC group is evident both from its statutes and from the brochures which it produces. The Council was not, therefore, required to prove Kala Naft's activities by means of other evidence.

106 With regard to proof of the attempt to procure material which has no use outside the nuclear industry, it must be held that any infringement of Kala Naft's rights of defence would have no bearing on the outcome of the dispute, given that the first ground for listing Kala Naft in the acts at issue itself justified Kala Naft's listing, as has been established in paragraph 91 of the present judgment.

The fifth plea, alleging that the Council had no power to adopt the acts at issue

107 Kala Naft submits that the Council had no power to adopt the acts at issue. It claims that the legal basis of those acts is the European Council Declaration of 17 June 2010, but that that declaration merely provides for the Council to implement Security Council Resolution 1929 (2010) and adopt accompanying measures, and does not provide for the freezing of independent funds. Furthermore, Resolution 1929 (2010) does not contain measures relating to the Iranian oil and gas industry or to Kala Naft. It concludes that the Council had no power to adopt restrictive measures against it on the basis of the European Council Declaration of 17 June 2010.

108 It must be noted in that regard that although they must be taken into consideration in the interpretation of the acts at issue, neither Security Council Resolution 1929 (2010) nor the European Council Declaration of 17 June 2010 can constitute the legal basis of those acts.

109 It must be noted that Decisions 2010/413 and 2010/644 are founded on Article 29 TEU, that Implementing Regulation No 668/2010 is founded on Article 291(2) TFEU and Regulation No 423/2007, and that Regulation No 961/2010 is founded on Article 215 TFEU. Those provisions of the Treaties gave the Council the power to adopt the acts at issue, containing independent restrictive measures, distinct from the measures specifically recommended by the Security Council.

110 It follows from this that the plea is unfounded.

The sixth plea, alleging misuse of power

111 Kala Naft submits that the Council misused its power by adopting restrictive measures in relation to Kala Naft without having proof of its involvement in nuclear proliferation and without taking account of its procedural rights. According to Kala Naft, this means that the Council in fact attempted to misuse the restrictive measures system connected with nuclear proliferation in order to target the Iranian oil, gas and petrochemical industry.

112 It is sufficient in that regard to note that, as has been pointed out in paragraphs 76 to 83 of the present judgment, the acts at issue related to the Iranian oil, gas and petrochemical industry owing to the risk that that industry presented with regard to nuclear proliferation, both by virtue of the revenue generated and through the use of equipment and materials which have much in common with those used for certain sensitive nuclear fuel cycle activities.

113 The plea is therefore unfounded.

The seventh plea, alleging error of law with regard to the concept of involvement in nuclear proliferation

114 Kala Naft claims that the Council erred in law in relying on the first ground for its listing in the acts at issue, alleging that Kala Naft trades in equipment for the oil and gas sectors that can be used for Iran's nuclear programme. It claims that that circumstance alone does not justify the adoption of restrictive measures.

115 As is evident from paragraphs 87 to 90 of the present judgment, Kala Naft's activity in the oil and gas sectors, attested to by the company's own statutes, was sufficient to justify the adoption of the restrictive measures.

116 The seventh plea is therefore unfounded.

The eighth plea, alleging error of assessment of the facts relating to Kala Naft's activities

117 Kala Naft denies carrying out the activity of trading in equipment that is linked to the nuclear programme. It claims that its role as NIOC's central purchasing body is not a trading activity.

118 It must be held that the term 'trades' describes to the requisite legal standard the activity of Kala Naft that justifies its listing and enables the company to understand the reason for it.

The fourth and ninth pleas, alleging breach of the principle of proportionality

119 Kala Naft challenges the public interest objective that could justify restrictions on the exercise of the right to property and on the freedom to pursue an economic activity, since neither the Security Council nor the European Council prescribed the adoption of measures relating to the oil and gas sector. Furthermore, even if there were such an objective, there was a failure to ensure that the means employed were reasonably proportionate to the aim pursued.

120 In so far as Kala Naft challenges the proportionality of the general rules on the basis of which it was decided to enter it on the lists, it must be noted that, with regard to judicial review of compliance with the principle of proportionality, the Court has held that the European Union legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. It concluded from this that the

legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see Case C-266/05 P *Sison* v *Council* [2007] ECR I-1233, paragraph 33).

121 It must also be noted that the fundamental rights mentioned by Kala Naft are not absolute, and that their exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union (see *Bank Melli Iran* v *Council*, paragraph 113).

122 Such is the case for the right to property and the freedom to pursue an economic activity. Consequently, restrictions may be imposed on the exercise of the freedom to pursue a trade or profession, as on the exercise of the right to property, provided that the restrictions in fact correspond to objectives of public interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see *Bank Melli Iran* v *Council*, paragraph 114).

123 With regard more specifically to the freedom to pursue an economic activity, the Court has held in particular that, in the light of the wording of Article 16 of the Charter, which differs from the wording of the other fundamental freedoms laid down in Title II thereof, yet is similar to that of certain provisions of Title IV of the Charter, that freedom may be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest (see Case C-283/11 *Sky Österreich* [2013] ECR, paragraph 46).

124 In that regard, it must be noted that the objective of the various acts at issue 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 forms part of a more general framework of endeavours linked to the maintenance of international peace and security and is, therefore, legitimate (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 115).

125 Furthermore, contrary to what is claimed by Kala Naft, the Security Council had raised the risks connected with the petrochemical industry in the seventeenth recital in the preamble to Resolution 1929 (2010), and the European Council had, in its declaration of 17 June 2010, invited the Foreign Affairs Council to adopt measures in the sectors of the gas and oil industry.

126 As regards the proportionality of the measures, it is important to bear in mind the numerous reports of the IAEA, the large number of resolutions of the Security Council, and the various measures taken by the European Union. The restrictive measures adopted both by the Security Council and by the European Union are progressive and justified by the lack of success of the measures adopted previously. It follows from that approach, which is based on the progressive impairment of rights according to the effectiveness of the measures, that the proportionality of those measures is established.

127 It follows from this that the pleas are unfounded.

128 Since all the pleas have been rejected, the action must be dismissed.

Costs

129 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs. Article 138 of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1), provides in paragraph 1 that the unsuccessful party is to be ordered to pay the costs if

they have been applied for in the successful party's pleadings. Article 140(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1), provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.

130 Since the appeal brought by the Council has been allowed and the action brought by Kala Naft against the acts at issue has been dismissed, it is appropriate, in accordance with the form of order sought by the Council, to order Kala Naft to bear its own costs and to pay those incurred by the Council both at first instance and in the present appeal.

131 The Commission, as intervener, shall bear its own costs.

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

1. **Sets aside the judgment of the General Court of the European Union of 25 April 2012 in Case T-509/10 *Manufacturing Support & Procurement Kala Naft* v *Council;***

2. **Dismisses the action for annulment brought by Manufacturing Support & Procurement Kala Naft Co., Tehran;**

3. **Orders Manufacturing Support & Procurement Kala Naft Co., Tehran to bear its own costs and to pay those incurred by the Council of the European Union in relation both to the proceedings at first instance and to the appeal proceedings;**

4. **Orders the European Commission to bear its own costs both of the proceedings at first instance and of the appeal proceedings.**

[Signatures]