



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

1 March 2016*

(Appeal — Restrictive measures against the Islamic Republic of Iran — List of persons and entities subject to the freezing of funds and economic resources — Implementing Regulation (EU) No 945/2012 — Legal basis — Criterion relating to the material, logistical or financial support for the Government of Iran)

In Case C-440/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 September 2014,

National Iranian Oil Company, established in Tehran (Iran), represented by J.-M. Thouvenin, avocat,
appellant,

the other parties to the proceedings being:

Council of the European Union, represented by M. Bishop and V. Piessevaux, acting as Agents,
defendant at first instance,

European Commission, represented by A. Aresu, D. Gauci and L. Gussetti, acting as Agents, with an address for service in Luxembourg,
intervener at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, D. Šváby, F. Biltgen and C. Lycourgos, Presidents of Chambers, A. Rosas (Rapporteur), E. Juhász, J. Malenovský, M. Safjan, M. Berger and S. Rodin, Judges,

Advocate General: P. Cruz Villalón,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 April 2015,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2015,

gives the following

* Language of the case: French.

Judgment

- 1 By its appeal, the National Iranian Oil Company ('NIOC') asks the Court to set aside the judgment of the General Court of 16 July 2014 in *National Iranian Oil Company v Council* (T-578/12, EU:T:2014:678, 'the judgment under appeal'), by which that court dismissed NIOC's application seeking annulment, first, of Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58, 'the contested decision'), and, second, of Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 282, p. 16, 'the contested regulation'), in so far as those acts relate to NIOC.

Background to the dispute

- 2 The background to the dispute was summarised by the General Court in the judgment under appeal as follows:
 - 3 On 9 June 2010 the United Nations Security Council ("the Security Council") adopted Resolution 1929 (2010) ("Resolution 1929") which aimed to extend the scope of the restrictive measures imposed by Security Council Resolutions 1737 (2006), 1747 (2007) and 1803 (2008) and to introduce additional restrictive measures against the Islamic Republic of Iran.
 - 4 On 17 June 2010, the European Council underlined its deepening concern about Iran's nuclear programme and welcomed the adoption of Resolution 1929. Recalling its declaration of 11 December 2009, 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, through negotiation, 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. Those measures were to focus on the areas of trade, the financial sector, the Iranian transport sector and key sectors in the oil and gas industry, and on additional designations, in particular for the Islamic Revolutionary Guards Corps.
 - 5 On 26 July 2010 the Council adopted Council Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), Annex II to which decision lists the names of the persons and entities — other than those designated by the Security Council or by the Sanctions Committee created by Resolution 1737 (2006), mentioned in Annex I — whose assets are to be frozen. Recital 22 in the preamble to that decision refers to Resolution 1929 and states that that resolution notes the potential connection between the revenues derived by Iran from its energy sector and the funding of its proliferation-sensitive nuclear activities.
 - 6 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 in the preamble to that decision, the restrictions on admission and 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.
 - 7 Article 1(7)(a)(ii) of Decision 2012/35 added the following point to Article 20(1) of Decision 2010/413, providing for the freezing of funds belonging to the following persons and entities:

“(c) 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”.

- 8 Consequently, in the context of the FEU Treaty, the Council adopted, on 23 March 2012, Regulation (EU) No 267/2012 on restrictive measures against Iran and repealing Regulation (EC) No 961/2010 (OJ 2010 L 88, p. 1). In order to implement Article 1(7)(a)(ii) of Decision 2012/35, Article 23(2) of that regulation provides for the freezing of funds of persons, entities and bodies listed in Annex IX thereto, identified as:
- “(d) 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”.
- 9 On 15 October 2012, the Council adopted the contested decision. According to recital 16 of that decision, additional persons and entities were to be included in the list of persons and entities subject to restrictive measures as set out in Annex II to Decision 2010/413, in particular Iranian State-owned entities engaged in the oil and gas sector, since they provide a substantial source of revenue for the Government of Iran.
- 10 Article 1(8)(a) of the contested decision amended Article 20(1)(c) of Decision 2010/413, which consequently provides that restrictive measures are to be imposed on:
- “(c) 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”.
- 11 Article 2 of the contested decision listed the applicant in the table in Annex II to Decision 2010/413 containing the list of “Persons and entities involved in nuclear or ballistic missile activities and persons and entities providing support to the Government of Iran”.
- 12 Consequently, on the same date, the Council adopted the contested regulation. Article 1 of the contested regulation listed the applicant in the table in Annex IX to Regulation No 267/2012 containing the list of “Persons and entities involved in nuclear or ballistic missile activities and persons and entities providing support to the Government of Iran”.
- 13 The applicant was included in the lists in question by the contested decision and the contested regulation (together, “the contested acts”) for the following reasons:
- State-owned and operated entity providing financial resources to the Government of Iran. The Minister [of] Oil is Director of the NIOC Board and the Deputy Minister of Oil is the Managing Director of NIOC.’
- 3 In addition to the background to the dispute, as set out by the General Court, mention should also be made of Articles 45 and 46 of Regulation No 267/2012, which are worded as follows:
- ‘Article 45*
- The Commission shall:
- (a) amend Annex II on the basis of determinations made by either the ... Security Council or the Sanctions Committee or on the basis of information supplied by Member States;
- (b) amend Annexes III, IV, V, VI, VII and X on the basis of information supplied by Member States.

Article 46

1. Where the Security Council or the Sanctions Committee lists a natural or legal person, entity or body, the Council shall include such natural or legal person, entity or body in Annex VIII.
 2. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 23(2) and (3), it shall amend Annex IX accordingly.
 3. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraph 1 or 2, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.
 4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.
 5. Where the United Nations decides to delist a natural or legal person, entity or body, or to amend the identifying data of a listed natural or legal person, entity or body, the Council shall amend Annex VIII accordingly.
 6. The list in Annex IX shall be reviewed in regular intervals and at least every 12 months.'
- 4 Annexes II to VII to Regulation No 267/2012 contain lists of goods, technologies, equipment or metals covered by the provisions of that regulation. Annex X of that regulation contains references to Internet sites containing information relating to the competent authorities referred in various provisions of that regulation, and the address for notifications to the Commission.
 - 5 Annex VIII to Regulation No 267/2012 contains the list of persons and entities referred to in Article 23(1) of that regulation, while Annex IX thereto contains the list of persons and entities referred to in Article 23(2) of that regulation.
 - 6 On 27 December 2012, NIOC brought an action for annulment of the contested decision and the contested regulation.

The judgment under appeal

- 7 In support of its action, NIOC put forward six pleas in law. The first plea alleged infringement of Article 296 TFEU, inasmuch as the contested regulation failed to specify the legal base on which it was adopted. The second plea alleged that the contested regulation did not have an appropriate legal basis. The third plea alleged that Article 23(2)(d) of Regulation No 267/2012 and Article 20(2)(c) of Decision 2010/413, as amended by the contested decision, were illegal. The fourth plea alleged errors of law, an error of fact and an error of assessment. The fifth plea alleged infringement of the obligation to state reasons, of the rights of defence, of the principle of sound administration and of the right to effective judicial protection. The sixth plea alleged infringement of the principle of proportionality and of the right to property.
- 8 The General Court rejected each of those pleas and consequently dismissed the action in its entirety.

Forms of order sought by the parties

- 9 NIOC claims that the Court should:
- set aside the judgment under appeal;
 - grant the forms of order sought by it in the proceedings before the General Court; and
 - order the Council to pay the costs of both sets of proceedings.
- 10 The Council contends that the Court should:
- dismiss the appeal as unfounded in its entirety; and
 - order NIOC to pay the costs.
- 11 The Commission contends that the Court should:
- dismiss the appeal; and
 - order NIOC to pay the costs.

The appeal

- 12 NIOC relies on six grounds in support of its appeal.

The first ground of appeal, alleging infringement of the obligation to state the reasons on which the contested regulation is based

Arguments of the parties

- 13 In its first ground, NIOC claims that the General Court erred in law when it rejected the plea alleging failure to state the reasons for the contested regulation, due to the failure to indicate the legal basis thereof. It disputes, in that regard, paragraph 43 of the judgment under appeal in which the General Court held that '[i]n so far as Article 46(2) of Regulation No 267/2012 thus confers power explicitly on the Council to implement Article 23(2) and (3) of that regulation, the citation in the preamble to the contested regulation therefore indicates clearly the legal basis empowering the Council to adopt restrictive measures against a person or entity, such as those taken against the applicant.'
- 14 NIOC claims that, citing paragraph 39 of the judgment in *Commission v Council* (C-370/07, EU:C:2009:590), according to the case-law of the Court, the binding nature of any act intended to have legal effects must be derived from a provision of EU law which prescribes the legal form to be taken by that act and which must be expressly indicated therein as its legal basis. However, the expressions '[w]here the Council decides' and 'it shall amend Annex IX', in Article 46(2) of Regulation No 267/2012, fail to indicate in any way the legal form of the act to be adopted, so that that provision cannot constitute the legal basis of the act amending Annex IX to the Regulation containing the list of natural or legal persons, entities or bodies referred to in Article 23(2) and (3) of that regulation.
- 15 The Council contests NIOC's arguments.

Findings of the Court

- 16 In its first ground, NIOC claims that the General Court, by rejecting the plea alleging failure to state the reasons for the contested regulation, erred in law by finding, in paragraph 43 of the judgment under appeal, that the citation in the preamble to the contested regulation clearly indicates the legal basis on which the latter was adopted, while the provision mentioned as constituting that legal basis does not indicate the legal form of the act to be adopted.
- 17 In that regard, it should first be noted that, as the General Court states in paragraphs 42 and 43 of the judgment under appeal, the citations in the preamble to the contested regulation explicitly mention Article 46(2) of Regulation No 267/2012 as the legal basis empowering the Council to adopt restrictive measures such as those taken against NIOC.
- 18 With regard to the legal form of the act to be adopted, it should be noted that it is not necessarily required when indicating the legal basis of that act. As the Council correctly argued, many of the provisions of the treaties, which are used as legal bases, do not set out the form of the legal acts that may be adopted. Moreover, Article 296 TFEU, which states that '[w]here the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality' provides expressly for situations in which the provisions of the FEU Treaty do not specify the form of the acts which may be adopted.
- 19 It follows from the above that, the citations in the preamble to the contested regulation clearly indicating the legal basis empowering the Council to adopt restrictive measures against a person or entity, namely, Article 46(2) of Regulation No 267/2012, it was not necessary, contrary to what NIOC claims, to indicate, in that provision, the legal nature of the acts that may be adopted by the Council on the basis of that provision in order for the reference to that provision to constitute an adequate statement of the legal basis of the contested regulation. It follows that the General Court did not err in law in that regard.
- 20 Accordingly, the first ground of appeal, which is unfounded, must be rejected.

The second to fifth grounds of appeal, alleging that the contested regulation lacks any legal basis

Arguments of the parties

- 21 By its second ground, NIOC claims, in essence, that Article 215 TFEU should have been the legal basis of the contested regulation. By its third to fifth grounds, it argues, in the alternative, were it to be found that Article 291(2) TFEU may be used as a basis for the adoption of individual restrictive measures, that the conditions of that provision were not met so as to allow Article 46(2) of Regulation No 267/2012 to constitute the legal basis of the contested regulation.
- 22 By its second ground, NIOC challenges paragraphs 54 and 55 of the judgment under appeal, and also the General Court's conclusion in paragraph 56 thereof, that the Council was not in the present case required to follow the procedure laid down in Article 215(1) TFEU in order to adopt individual fund-freezing measures, but was entitled to provide for powers in order to implement Article 23(2) and (3) of Regulation No 267/2012 pursuant to Article 291(2) TFEU.
- 23 By the first part of the second ground, NIOC cites paragraph 65 of the judgment in *Parliament v Council* (C-130/10, EU:C:2012:472), which states that Article 215(2) TFEU is intended to constitute the legal basis of restrictive measures, and argues that that provision constitutes the only legal basis for the adoption of individual restrictive measures, for it sets out the procedure for adopting acts establishing such measures. According to NIOC, this is the sole legal basis provided for in Title IV of

Part Five of the FEU Treaty relating to restrictive measures. However, Article 291(2) TFEU is found in Part Six of the FEU Treaty, which provides general rules which may not derogate from the special rules in Title IV of Part Five of the FEU Treaty.

- 24 By the second part of the second ground, NIOC cites paragraph 48 of the judgment in *Parliament v Council* (C-130/10, EU:C:2012:472), which states that the procedures provided for in Articles 75 TFEU and 215 TFEU are incompatible, and argues that the same is true for the procedures provided for in Articles 215 TFEU and 291(2) TFEU. As regards the latter provision, it does not specify the procedure for the adoption of acts, so that it could not be used as a substitute for Article 215 TFEU. In any case, if those two provisions of the FEU Treaty were to be considered interchangeable, the result would be two different sets of rules for adopting restrictive measures, giving rise to inequality between the persons concerned by such measures, which would infringe the principle of equality of treatment provided for in Article 20 of the Charter of Fundamental Rights of the European Union.
- 25 By the third part of its second ground, NIOC argues, in the first place, that Article 291(2) TFEU, in so far as it lays down an exception to the principle that the implementing power is invested in the Member States as laid down in Article 291(1) TFEU, should be interpreted restrictively. According to Article 291(2) TFEU, the European Union acts concerned must be needed to establish uniform conditions for implementing legally binding acts, which is not the case here, since Article 215(2) TFEU permits the adoption of implementing measures. In the second place, NIOC disputes the General Court's finding in paragraph 55 of the judgment under appeal, that the procedure laid down in Article 215(1) TFEU may prove inappropriate for the purposes of the adoption of mere implementing measures, whereas Article 291(2) TFEU reflects the will of the drafters of the FEU Treaty to permit a more efficient implementing procedure, which is appropriate to the type of measure to be implemented and each institution's capacity to act. According to NIOC, the General Court's subjective assessments in that regard cannot justify the use of Article 291(2) TFEU.
- 26 By its third ground, NIOC criticises paragraphs 74 to 83 of the judgment under appeal and the General Court's conclusion that the Commission duly justified reliance on that exceptional procedure.
- 27 By the first part of the third ground, NIOC refers to the two cases in Article 291(2) TFEU, 'where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the [EU] Treaty, on the Council'. In the present case, it is not claimed that Regulation No 267/2012 is concerned with Articles 24 TEU and 26 TEU and, moreover, Decision 2012/35 was adopted on the basis of Article 29 TEU. NIOC refers to the second of those cases and the necessity of duly substantiating the existence of a specific case. It disputes, in that regard, that the case-law relating to the statement of reasons, recalled by the General Court in paragraphs 74 to 76 of the judgment under appeal, had to be applied. NIOC argues that the General Court erred in holding that resorting to Article 291(2) TFEU was 'duly justified', which was described as not being expressly stated, in paragraph 77 of that judgment, as expressed 'succinctly, but in a comprehensible manner', in paragraph 80 of that judgment, or as 'sufficiently comprehensible', in paragraph 82 of that judgment.
- 28 By the second part of its third ground, NIOC challenges paragraphs 78 and 79 of the judgment under appeal, in which the General Court interpreted recital 28 and Article 23(2) of Regulation No 267/2012 as providing justification for the restrictive measures as coming under the Council's implementing power pursuant to Article 291(2) TFEU. According to the applicant, those provisions in no way suggest any such justification.
- 29 By its fourth ground, NIOC claims that the General Court erred in law by holding, in paragraph 86 of the judgment under appeal, that Article 46(2) of Regulation No 267/2012 reserves to the Council the power to implement the provisions of Article 23(2) and (3) of that regulation, which suffices to fulfil the obligation to state reasons concerning the statement of the legal basis of that provision, that basis

being Article 291(2) TFEU. NIOC submits that Article 46(2) of Regulation No 267/2012 neither refers to Article 291(2) TFEU, nor mentions the word ‘implementing’. Consequently, that provision of the Regulation refers to a decision of the Council, pursuant to Article 215(2) TFEU.

30 By its fifth ground, NIOC claims that the General Court erred in law, in paragraph 87 of the judgment under appeal, in holding that the Council did not infringe the obligation to state reasons by making no mention of Article 291(2) TFEU in the citations in the preamble to Regulation No 267/2012.

31 The Council disputes NIOC’s arguments.

32 The Commission contends that Article 215 TFEU constitutes the appropriate legal basis.

Findings of the Court

33 It must be recalled that Article 215(2) TFEU provides that ‘[w]here a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities’. Article 215(1) TFEU provides for a procedure whereby the Council acts by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission and informs the European Parliament of its decision.

34 As the General Court noted in paragraph 54 of the judgment under appeal, it is clear from the wording of Article 215 TFEU that that provision does not preclude a regulation adopted on the basis of that provision from conferring implementing powers on the Commission or the Council under the conditions laid down in Article 291(2) TFEU, where uniform conditions for the implementation of certain restrictive measures provided for in that regulation are necessary. In particular, it is not apparent from Article 215(2) TFEU that the individual restrictive measures taken against natural or legal persons and groups or non-State entities must be adopted according to the procedure laid down in Article 215(1) TFEU and cannot be adopted on the basis of Article 291(2) TFEU.

35 Moreover, there is no provision in the FEU Treaty which provides that Part Six thereof, relating to the institutional and financial arrangements, would not be applicable to the restrictive measures. Relying on Article 291(2) TFEU, which provides that ‘where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council’ was thus not precluded, provided that the conditions in that provision were met.

36 With regard to that provision, it should be added that, according to the case-law of the Court, the concept of ‘implementation’ comprises both the drawing-up of implementing rules and the application of rules to specific cases by means of acts of individual application (judgment in *Commission v Council*, 16/88, EU:C:1989:397, paragraph 11).

37 In the light of that guidance, it should be noted that, in the present case, Regulation No 267/2012, Article 46(2) of which served as the basis for the adoption of the contested regulation, was adopted in order to take the action necessary, under the FEU Treaty, as to implement Decision 2012/35 amending Decision 2010/413 concerning restrictive measures against individuals or entities listed in Annexes I and II to that latter decision.

38 Regulation No 267/2012, which constitutes a legally binding act within the meaning of Article 291(2) TFEU, sets out the general criteria governing the inclusion of persons or entities on one of the lists, contained in Annexes VIII and IX of that regulation, of the persons or entities which are to be subject

to restrictive measures, taking into account the amendments made by Decision 2012/35 to the general listing criteria set out in Decision 2010/413, the effect of which was, in particular, to add the criterion relating to the provision of support to the Government of Iran.

- 39 In that context, as a result of NIOC's inclusion, by the contested decision, in the list in Annex II to Decision 2010/413, the contested regulation, in the framework of the FEU Treaty, included that entity in the list in Annex IX of Regulation No 267/2012, given that, as the General Court correctly stated in paragraph 132 of the judgment under appeal, without that paragraph being challenged by NIOC in its appeal, it was already permissible to ground that latter listing on the abovementioned criterion relating to the provision of support to the Government of Iran, regardless of subsequent changes to the general listing criteria contained in Regulation No 267/2012, following the amendment made by the contested decision to the general criteria mentioned in Decision 2010/413.
- 40 In so doing, the contested regulation was, in respect of NIOC, a specific application of the general listing criterion relating to the provision of support to the Government of Iran and was intended to ensure, within the framework of the FEU Treaty, that the imposition on NIOC of the restrictive measures dictated by the situation in Iran was implemented uniformly throughout the European Union.
- 41 Therefore the General Court was fully entitled to consider, at paragraph 56 of the judgment under appeal, that the use of an implementing power based on Article 291(2) TFEU was possible in the present case.
- 42 It follows that the first and third parts of the second ground of appeal are unfounded.
- 43 As regards the other arguments of NIOC, developed as part of the second part of the second ground, it should be noted, first, that paragraph 48 of the judgment in *Parliament v Council* (C-130/10, EU:C:2012:472) is not relevant in the present case, since that judgment concerns the respective scope of Articles 75 TFEU and 215 TFEU, and not, as in the present case, Articles 215 TFEU and 291(2) TFEU.
- 44 Second, as regards the alleged breach of the principle of equal treatment resulting from the difference in the rules governing the adoption of restrictive measures, namely, that a person is designated by a provision based on Article 215(2) TFEU or by the adoption of an implementing regulation, based on Article 291(2) TFEU, it should be noted that, given its significant negative impact on the freedoms and fundamental rights of the person or of the entity concerned (see, to that effect, judgments in *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 358, and *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 132), any inclusion in a list of persons or entities subject to restrictive measures, whether based on Article 215 TFEU or on Article 291(2) TFEU, allows that person or entity access to the Courts of the European Union, in that it is similar, in that respect, to an individual decision, in accordance with the fourth paragraph of Article 263 TFEU (see, to that effect, judgment in *Gbagbo and Others v Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 57), for the purposes of, inter alia, verifying whether that individual decision complies with the general listing criteria laid down in the basic act.
- 45 The difference between the procedure under Article 215 TFEU and that under Article 291(2) TFEU reflects the intention of establishing a distinction, on the basis of objective criteria, between the basic act and an implementing act in the area of restrictive measures. In that context, the requirement laid down in Article 215(1) TFEU relating to a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission is a condition inherent in the procedure provided in that provision, and not a procedural guarantee which would have to be afforded, in general, to any person or entity subject to inclusion in a list relating to restrictive measures, no matter what its basis. Therefore, in the context of the exercise of implementing powers based on

Article 291(2) TFEU, the fact that the adoption of restrictive measures is not contingent on the presentation of such a joint proposal, contrary to what is the case in the procedure laid down in Article 215(1) TFEU, cannot be regarded as a breach of the principle of equal treatment in respect of inclusion in such a list.

- 46 It follows that the second part of the second ground is unfounded. That ground of appeal must, therefore, be rejected in its entirety.
- 47 The Court must now examine, in answer to the third to fifth grounds, whether the adoption of the contested regulation falls within one of the categories of cases for which the Council may reserve to itself a power to implement a legally binding instrument, in accordance with Article 291(2) TFEU.
- 48 As is clear from paragraph 59 of the judgment under appeal, the Council, in order to justify the implementing power which it reserved to itself under Article 46(2) of Regulation No 267/2012, relied exclusively on the fact that the present situation is one of the ‘duly justified specific cases’. It made no mention of the existence of a situation provided for in Articles 24 TEU and 26 TEU.
- 49 As regards the case, provided for in Article 291(2) TFEU, whereby the Council may reserve the implementing power to itself ‘in duly justified specific cases’, it must be recalled that the Court interpreted the third indent of Article 145 of the EEC Treaty — which corresponds to Article 291(2) TFEU — as requiring the Council to state in detail the grounds for the decision to reserve the implementing powers to itself (judgment in *Commission v Council*, 16/88, EU:C:1989:397, paragraph 10).
- 50 The third indent of Article 202 EC, which replaced the third indent of Article 145 of the EC Treaty, was also the subject of interpretation in the judgments in *Commission v Council* (C-257/01, EU:C:2005:25, paragraph 51) and *Parliament v Council* (C-133/06, EU:C:2008:257, paragraph 47), in which the Court stated that the Council must properly explain, by reference to the nature and content of the basic instrument to be implemented or amended, why exception is being made to the rule that, under the system established by that treaty, when measures implementing a basic instrument need to be taken at Community level, it is the Commission which, in the normal course of events, is responsible for exercising that power.
- 51 In the present case, it should be noted that, under Article 45 of Regulation No 267/2012, the Council conferred wide powers on the Commission, in particular, to amend Annexes II to VII to that regulation, containing the lists of goods, technologies, equipment or metals covered by the provisions of that regulation. By contrast, in Article 46 of Regulation No 267/2012, the Council reserved to itself the power to amend Annexes VIII and IX of that regulation, that is to say the lists of natural or legal persons, entities or bodies, as regards Annex VIII of that regulation, following designation by the Security Council and, as regards Annex IX, on account of a restrictive measure taken autonomously by the European Union.
- 52 It is clear from the comparison of those measures that the Council reserved to itself the power to adopt the most sensitive of them, namely, the inclusion, in the regulation adopted on the basis of the FEU Treaty, of the designations decided by the Security Council and the application of the measures under Article 23(2) and (3) of Regulation No 267/2012, in that they have a particularly significant impact on the natural or legal persons, entities or agencies concerned.
- 53 As has already been mentioned in paragraph 44 above, despite their objective, namely, to put pressure on the Islamic Republic of Iran for the latter to put an end to proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems, those designations, resulting in the freezing of funds of persons or entities, have, on the fundamental rights and freedoms of those persons and entities, a substantial negative impact related, first, with regard to persons, to the serious disruption of those persons’ working and family life due to the restrictions of the exercise of their right to property

and, second, with regard to entities, to disturbances that affect their activities, in particular their economic activities (see, to that effect, judgments in *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 358, and *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 132).

- 54 That conferral of implementing power on the Council can also be justified by the fact that it is that institution which adopts decisions taken in the framework of the Common Foreign and Security Policy, by which the names of natural or legal persons, entities or organisations are entered in the list of persons and entities whose funds are to be frozen. Such a decision can be enforced within the EU, in particular by financial institutions established in the EU, only if they are followed by the adoption of a regulation under the FEU treaty.
- 55 Moreover, if the reasons for listing a person are amended in the decision taken in the framework of the Common Foreign and Security Policy, in order to take into account the observations and evidence which may be provided to the Council by that person, that amendment must also appear in the regulation adopted pursuant to the FEU Treaty, failing which maintaining, during the review of the listing, the uncorrected statement of reasons could provide grounds for the legality of that regulation being challenged.
- 56 Therefore, the General Court did not err in judging, in paragraph 69 of the judgment under appeal, that the Council was properly entitled to reserve for itself the power to implement Article 23(2) and (3) of Regulation No 267/2012, in order to ensure the consistency of the procedures for the adoption of fund-freezing measures and of the findings of the competent authority in the context of Decision 2010/413 and Regulation No 267/2012 respectively, both at the time of the initial inclusion of the name of a person or an entity in the lists at issue and at the time of the review by the competent institution of that inclusion, in the light in particular of any observations and evidence that may be provided by the interested party.
- 57 Coordinating the adoption of decisions in the framework of the Common Foreign and Security Policy and of the measures taken on the basis of the FEU Treaty is all the more necessary because restrictive measures against natural or legal persons, entities or bodies must be adopted within a short period, either to comply with a resolution of the Security Council or to ensure as quickly as possible the desired effect by the new autonomous listings decided in the framework of the Common Foreign and Security Policy. In that regard, it should be noted that the decision taken in the framework of the Common Foreign and Security Policy and the contested implementing regulations designating NIOC were adopted on the same day, in accordance with the Council's practice.
- 58 Those requirements of consistency, coordination and speed when adopting the acts required justify listing measures adopted on the basis of the FEU Treaty at the same time as listing measures in the framework of the Common Foreign and Security Policy being regarded as falling within specific cases within the meaning of Article 291(2) TFEU. Thus, as noted by the General Court in paragraph 72 of the judgment under appeal, the Court of Justice has rejected, in the judgment in *Council v Manufacturing Support & Procurement Kala Naft* (C-348/12 P, EU:C:2013:776, paragraph 109), a plea alleging that the Council had no power to adopt measures freezing the funds of Manufacturing Support & Procurement Kala Naft Co., Tehran, such as those provided for by, inter alia, Decision 2010/413, on the basis of Article 29 TEU, an implementing regulation founded on Article 291(2) TFEU; the Court held in essence that that provision of the FEU Treaty gave the Council the power to adopt the measures at issue.
- 59 It follows that the General Court did not err in law in finding, in paragraph 73 of the judgment under appeal, that the Council could reasonably consider that the fund-freezing measures at issue were of a specific nature justifying its reserving to itself the implementing power in Article 46(2) of Regulation No 267/2012.

- 60 As regards the condition relating to the justification for the conferral of the implementing power on the Council, the General Court did not err in law, in paragraphs 74 to 76 of the judgment under appeal, by referring to the case-law concerning the obligation to state reasons under Article 296 TFEU. The Court has ruled that the Council must properly explain, in the light of the nature and content of the basic instrument to be implemented or amended, why exception is being made to the rule that it is the Commission that, in the normal course of events, is responsible for exercising that power (judgments in *Parliament v Council*, C-133/06, EU:C:2008:257, paragraph 47 and *Parliament and Commission v Council*, C-124/13 and C-125/13, EU:C:2015:790, paragraph 53).
- 61 In that regard, it must be stated that the decisions and the regulations concerning restrictive measures regarding the Islamic Republic of Iran constitute a succession of acts frequently amended and regularly replaced in order to improve their clarity and legibility. However, certain provisions are similar in all the decisions and regulations.
- 62 As noted by the Advocate General in paragraphs 83 et seq of his Opinion, the conferral of implementing powers on the Council was already provided for in Article 15(2) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1) and Article 36(2) of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1). Both provisions were grounded on, respectively, recital 6 of Regulation No 423/2007 and recital 15 of Regulation No 961/2010. That latter recital states that '[t]he power to amend the lists in Annexes VII and VIII to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security posed by Iran as manifested by the deepening concern about its nuclear programme underlined by the European Council on 17 June 2010, and to ensure consistency with the process for amending and reviewing Annexes I and II to Decision 2010/413/CFSP.'
- 63 It follows from the foregoing that the conferral of implementing power on the Council was justified in the regulations predating Regulation No 267/2012, by the consistency required between the designations adopted in the framework of the Common Foreign and Security Policy and those adopted on the basis of the FEU Treaty.
- 64 In the present case and having regard to the existence of the clause reserving implementing power to the Council and its justification in the regulations predating Regulation No 267/2012, the existence of that power of the Council could be understood as forming part of the context in which the act at issue was adopted and regarded as duly justified, within the meaning of Article 291(2) TFEU. Accordingly, the first part of the third ground is unfounded.
- 65 That justification reinforcing the General Court's reasoning in paragraphs 78 and 79 of the judgment under appeal, the Court must find the second part of NIOC's third ground to be unfounded, too.
- 66 As regards there being no indication in Article 291(2) TFEU justifying the conferral of implementing power in Article 46(2) of Regulation No 267/2012, it should be recalled that failure to refer to a precise provision of the FEU Treaty need not constitute infringement of essential procedural requirements if the legal basis for a measure may be determined from other parts of the measure (judgment in *Commission v Council*, C-370/07, EU:C:2009:590, paragraph 56). As the General Court correctly held in paragraphs 85 and 86 of the judgment under appeal, even if Article 291(2) TFEU is not mentioned as a legal basis for the conferral of implementing powers set out in Article 46(2) of Regulation No 267/2012, the provisions of that regulation do, however, make it possible to understand that the Council reserved that power to itself in accordance with the conditions set out in Article 291(2) TFEU thereof. It follows that the fourth and fifth grounds are unfounded.
- 67 It follows from all of the foregoing that the second to fifth grounds must be rejected.

The sixth ground of appeal, alleging that the legal criterion of the provision of support to the Government of Iran was illegal

Arguments of the parties

- 68 By its sixth ground, NIOC challenges paragraph 109 et seq of the judgment under appeal. In those paragraphs, the General Court rejected the plea of illegality of the legal criterion based on the provision of support to the Government of Iran, as set out in Article 20(1)(c) of Decision 2010/413, as amended by the contested decision, and in Article 23(2)(d) of Regulation No 267/2012 ('the criterion at issue'), and on which NIOC's inclusion in the lists in question is based. NIOC argues that that criterion, in that it covers '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', is contrary to the values of freedom and of the rule of law, enshrined in Article 2 TEU, with which the decisions adopted in the framework of the Common Foreign and Security Policy must be compatible, in accordance with Articles 21 TEU and 23 TEU. The criterion at issue confers on the Council an exceptional and unconditional power, making it possible to penalise persons and entities providing support, including financial, to the Government of Iran, even when they are not involved in the nuclear programme in question. These may accordingly include any Iranian taxpayer or civil servant, or even a lawyer entitled to practise in a Member State of the European Union, defending certain Iranian public entities before the General Court.
- 69 This ground is divided into two parts.
- 70 By the first part of this ground, NIOC claims that the General Court erred in law in holding, in paragraph 115 of the judgment under appeal, that the discretion conferred on the Council by the criterion at issue is neither arbitrary nor discretionary and, in paragraph 123 of that judgment, that 'the criterion at issue limits the Council's discretion, by establishing objective criteria, and guarantees the degree of foreseeability required by EU law'.
- 71 NIOC claims that the General Court erred in its interpretation of the criterion at issue by holding, in paragraph 119 of the judgment under appeal, that 'the criterion is not ... aimed at any form of support to the Government of Iran, but covers forms of support which, by their quantitative or qualitative significance, contribute to the pursuit of Iran's nuclear activities'. According to NIOC, Regulation No 267/2012 does not make any reference to 'quantitative or qualitative significance' and the General Court 'rewrote' that regulation, before holding that criterion to be compatible with the requirements of being foreseeable, clear and unambiguous.
- 72 NIOC also argues that, in paragraphs 118 and 120 of the judgment under appeal, the General Court 'disregarded' the term 'such as', when the clear meaning of that term is that the list of the types of support mentioned in the text, namely financial, logistical or material support, is purely illustrative.
- 73 NIOC concludes that the General Court erred in its interpretation of the contested criterion and that this criterion does not meet the requirements of foreseeability, sufficient clarity and precision required by EU law, since it makes it impossible to identify the persons who may be made the subject of a restrictive measure.
- 74 By the second part of the sixth ground of appeal, NIOC contends that by 'rewriting' the criterion at issue, the General Court infringed the rights of the defence, since NIOC was unable to challenge the restrictive measures imposed on it as being inconsistent with that 'rewritten' criterion, which was unknown both to NIOC and the Council.

- 75 By the third part of that ground, NIOC contends that paragraphs 119 and 140 of the judgment under appeal are vitiated by contradiction. In paragraph 119 thereof, the General Court finds that the criterion at issue refers to ‘forms of support which, by their qualitative or quantitative significance, contribute to the pursuit of Iran’s nuclear activities’ while, in paragraph 140, that criterion covers ‘any support which, although having no direct or indirect connection with the development of nuclear proliferation, is nonetheless capable, by its quantitative or qualitative significance, of encouraging such development, by providing the Iranian Government with resources or facilities of a material, financial or logistic nature which allow it to pursue nuclear proliferation activities’. According to the applicant, an unsupported link, even indirect, with the development of nuclear proliferation cannot at the same time promote such development. The inconsistency claimed to exist between paragraph 119 and paragraph 140 of the judgment under appeal constitutes a failure to state reasons in that judgment.
- 76 The Council, supported by the Commission, disputes the NIOC’s arguments.

Findings of the Court

- 77 As a preliminary point, it must be recalled that, as the Court has held, the 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 (judgments in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 33, and *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120).
- 78 According to the Court’s case-law, a regulation providing for restrictive measures must be interpreted in the light not only of the decision adopted in the framework of the Common Foreign and Security Policy referred to in Article 215(2) TFEU, but also of the historical context in which the provisions were adopted by the European Union, that regulation being one such provision (see, to that effect, judgment in *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 75, and order in *Georgias and Others v Council and Commission*, C-545/14 P, EU:C:2015:791, point 33). The same applies to a decision adopted in the area of the common foreign and security policy, which must be interpreted taking into account the context in which it is adopted.
- 79 Thus, the General Court was correct in stating, at paragraph 118 of the judgment under appeal, that the criterion at issue forms part of a legal framework clearly delimited by the objectives pursued by the rules governing the restrictive measures against the Islamic Republic of Iran and, in particular, that recital 13 of Decision 2012/35, inserted, for the first time, that criterion into Article 20(1) of Decision 2010/413, states expressly that the freezing of funds has to be applied to 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’. Similarly, the General Court is correct in stating that Article 23(2)(d) of Regulation No 267/2012 states also that that support may be ‘material, logistical or financial’.
- 80 The General Court concluded from this, in paragraphs 119 and 120 of the judgment under appeal, that the objective of the amendment of the criterion at issue had been to expand the designation criterion, in order to target the relevant person or entity’s own activity which, even if it has no actual direct or indirect connection with nuclear proliferation, is nonetheless capable of encouraging it, by providing the Iranian Government with resources or facilities of a material, financial or logistic nature which allow it to pursue proliferation activities.

- 81 That interpretation is supported by the changes in the legislation, examined in the light of the Council's documents. It should, in that regard, be recalled that, in the seventeenth recital in the preamble to Resolution 1929, the Security Council noted the 'potential connection between Iran's revenues derived from its energy sector and the funding of Iran's proliferation-sensitive nuclear activities', that connection being mentioned in paragraph 5 of the judgment under appeal. The European Council, in order to take account of that aspect, in the declaration annexed to its Conclusions of 17 June 2010, invited the 'Foreign Affairs' Council to adopt at its next session measures implementing those contained in Resolution 1929, with the invitation leading to the adoption of measures aimed at, inter alia, the oil industry in both Decision 2010/413 and Regulation No 961/2010.
- 82 Since those measures proved inadequate to stop or to slow down the nuclear programme implemented by the Islamic Republic of Iran, the European Council decided, in its conclusions of 9 December 2011, to extend the scope of restrictive measures taken by the European Union, as stated in recital 6 of Decision 2012/35. In point 3 of its conclusions on Iran of 23 January 2012, the Council of the European Union stressed that the restrictive measures adopted that day were aimed at affecting the funding of Iran's nuclear programme by the Iranian regime and not aimed at the Iranian people.
- 83 It is this objective which the General Court took into account when it considered, in paragraph 119 of the judgment under appeal, that the criterion at issue 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. In doing so, the General Court in no way 'rewrote' that criterion, but interpreted it in the light of the objectives pursued by the Council, as reflected in the evolution of the international and Union legislation relating to the Islamic Republic of Iran.
- 84 It must be held, moreover, that, contrary to what NIOC contends, the General Court did not distort the criterion at issue by omitting the term 'such as' in the wording of that criterion, in paragraphs 118 and 120 of the judgment under appeal. As the Council has pointed out, the General Court used, in paragraph 118 of that judgment, the expression 'in particular', in recital 13 of Decision 2012/35, which is the equivalent of 'such as'. Similarly, in the last sentence of paragraph 118, the Court noted that the support in question 'may' be material, logistical or financial, which means that other forms of support can be covered by the criterion at issue.
- 85 Similarly, contrary to what NIOC claims in the third part of the sixth ground of appeal, the General Court did not give contradictory reasons for its judgment when it explained, in paragraph 119 of the judgment under appeal, that the criterion at issue refers to the 'forms of support which, by their quantitative or qualitative significance, contribute to the pursuit of Iran's nuclear activities', whereas it stated, in paragraph 140 of the judgment under appeal, that that criterion is aimed 'at any support which, although having no direct or indirect connection with the development of nuclear proliferation, is nonetheless capable, by its quantitative or qualitative significance, of encouraging such development, by providing the Iranian Government with resources or facilities of a material, financial or logistic nature which allow it to pursue nuclear proliferation activities.'
- 86 In paragraph 119 of the judgment under appeal, the General Court went on to interpret the criterion introduced by Decision 2012/35 and Regulation No 267/2012. In paragraph 140 of that judgment, by contrast, it explained how the introduction of the criterion at issue established a connection between the provision of support to the Government of Iran and the pursuit of nuclear proliferation activities. In that regard, paragraph 140 of that judgment is not vitiated by a lack of clarity that would prevent it being easily understood, given the context in which it is made.
- 87 It follows from all the foregoing that NIOC has failed to demonstrate, by its sixth ground, that the General Court erred in law in its interpretation of the criterion at issue in response to the third plea made before it, alleging that Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012 were illegal. The sixth ground of appeal, which is therefore unfounded, must be rejected.

88 Since all the grounds of appeal have been rejected, the appeal must be dismissed.

Costs

89 In accordance with 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 the costs.

90 Under Article 138(1) of those Rules, applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

91 Since the Council has applied for costs and NIOC has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Council.

92 In accordance with Article 140(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the Commission is to bear its own costs.

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

- 1. Dismisses the appeal;**
- 2. Orders National Iranian Oil Company to bear its own costs and to pay the costs of the Council of the European Union;**
- 3. Orders the European Commission to bear its own costs.**

[Signatures]