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SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Fifth Chamber)

18 February 2016 *

(Appeal — Common foreign and security policy — Combating nuclear proliferation — Restrictive measures taken against the Islamic Republic of Iran — Freezing of funds of an Iranian bank — Obligation to state reasons — Procedure for the adoption of the act — Manifest error of assessment)

In Case C-176/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 April 2013,

Council of the European Union, represented by S. Boelaert and M. Bishop, acting as Agents,

appellant,

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by L. Christie and S. Behzadi-Spencer, acting as Agents, and by S. Lee, Barrister,

the other parties to the proceedings being:

Bank Mellat, established in Tehran (Iran), represented by M. Brindle QC, R. Blakeley and V. Zaiwalla, Barristers, and by Z. Burbeza, P. Reddy, S. Zaiwalla and F. Zaiwalla, Solicitors,

applicant at first instance,

European Commission, represented by D. Gauci and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

* Language of the case: English.

THE COURT (Fifth Chamber),

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

Advocate General: E. Sharpston,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2014,

after hearing the Opinion of the Advocate General at the sitting on 26 February 2015,

gives the following

Judgment

1 By its appeal, the Council of the European Union requests the setting aside of the judgment of the General Court of the European Union of 29 January 2013 in *Bank Mellat* v *Council* (T-496/10, EU:T:2013:39) ('the judgment under appeal'), by which the General Court annulled, in so far as they concern Bank Mellat:

– point 4 of Table B in Annex II to 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);

– point 2 of Table B in the Annex to 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);

– point 4 of Table I.B in the Annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81);

– point 4 of Table B in Annex VIII to 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);

– Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71);

- Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11);

- point 4 of Table I.B in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1);

in so far as the name 'Bank Mellat' appears on the lists of persons, entities and bodies to whom the restrictive measures decided upon under those acts (together 'the acts at issue') apply.

Legal context and background to the dispute

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

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

4 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 specified 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, the Islamic Republic of Iran's proliferation-sensitive nuclear activities. The list of those persons and entities was set out in Annex II to Common Position 2007/140.

5 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 Annex IV to that regulation in the case of the persons, entities and bodies designated by the Security Council

or the Sanctions Committee, and in Annex V to that regulation in the case of persons, entities and bodies other than those listed in Annex IV.

6 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/CFSP, have been identified as:

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

7 Noting that the Islamic Republic of Iran was pursuing its nuclear enrichment-related activities and not collaborating with the IAEA, the Security Council adopted Resolution 1803 (2008) on 3 March 2008. In paragraph 10 of that resolution, the Security Council:

'*Calls upon* all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems, as referred to in Resolution 1737 (2006).'

8 By Resolution 1929 (2010) of 9 June 2010, the Security Council adopted stricter measures and in particular decided to freeze the funds of various financial entities. In paragraph 21 of that resolution, the Security Council calls upon States 'to prevent the provision of financial services, including insurance or re-insurance, or the transfer to, through, or from their territory, or to or by their nationals or entities organised under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources if they have information that provides reasonable grounds to believe that such services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are related to such programmes or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation'.

9 Bank Mellat is mentioned at point 6 of Annex I to Resolution 1929 (2010), in the grounds for the listing in that annex of First East Export Bank plc ('FEE'):

'[FEE] is owned or controlled by, or acts on behalf of, Bank Mellat. Over the last seven years, Bank Mellat has facilitated hundreds of millions of dollars in transactions for Iranian nuclear, missile, and defence entities.'

10 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), noted the last report of the IAEA dated 31 May 2010 and announced the introduction of new restrictive measures relating, inter alia, to the financial sector.

11 By Decision 2010/413, adopted on 26 July 2010, the Council implemented that declaration, repealing Common Position 2007/140 and adopting additional restrictive measures as compared therewith. Recitals 17 to 20 of Decision 2010/413, relating to financial activities, recall the decisions of the Security Council in Resolution 1929 (2010) and the Declaration of the European Council of 17 June 2010. Chapter 2 of Decision 2010/413 deals with the financial sector. Article 10(1) of that decision provides that, in order to prevent the provision of financial services, or the transfer to, through, or from the territories of Member States, or to or by nationals of Member States or entities organised under their laws (including branches abroad), or persons or financial institutions in the territories of Member States, of any financial or other assets or resources that could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems, Member States are to exercise enhanced monitoring over all the activities of financial institutions within their jurisdiction with banks domiciled in Iran, branches, subsidiaries or entities controlled by them.

12 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) concerns '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, or persons and entities that have assisted designated persons or entities in evading or violating the provisions of [United Nations Security Council Resolution ('UNSCR')] 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010) or this Decision as well as other senior members and entities of [the Islamic Revolutionary Guards Corps] and [Islamic Republic of Iran Shipping Lines] and entities owned or controlled by them or acting on their behalf, as listed in Annex II'.

13 A number of financial entities or groups of such entities are mentioned in Annex II to Decision 2010/413. Bank Mellat is listed at point 4 of Part I.B of that annex. The following reasons are given:

'Bank Mellat is a State-owned Iranian bank. Bank Mellat engages in a pattern of conduct which supports and facilitates Iran's nuclear and ballistic missile programmes. It has provided banking services to UN and EU listed entities or to entities acting on their behalf or at their direction, or to entities owned or controlled by them. It is the parent bank of [FEE] which is designated under UNSCR 1929 …'

14 By Implementing Regulation No 668/2010, adopted on 26 July 2010 to implement Article 7(2) of Regulation No 423/2007, the name of Bank Mellat, mentioned at point 2 of Part I.B of the annex to that implementing regulation, was added to the list of legal persons, entities and bodies in Table I of Annex V to Regulation No 423/2007.

15 The reasons for Bank Mellat's inclusion on that list are virtually identical to those set out in Decision 2010/413.

16 By letter of 27 July 2010, the Council informed Bank Mellat that its name had been included on the list in Annex II to Decision 2010/413 and on the list in Annex V to Regulation No 423/2007.

17 By letters of 16 and 24 August and 2 and 9 September 2010, Bank Mellat asked the Council to disclose the information on the basis of which it had adopted the restrictive measures to which Bank Mellat was made subject.

18 In reply to requests for access to Bank Mellat's file, by letter of 13 September 2010 the Council sent it copies of two proposals for the adoption of restrictive measures submitted by Member States. The Council also required Bank Mellat to submit any observations on the adoption of restrictive measures against it by no later than 25 September 2010.

19 Annex II to Decision 2010/413 was reviewed and rewritten by Decision 2010/644, adopted on 25 October 2010. In recital 2 of that decision, the Council states that it took account of observations submitted by those concerned.

20 Bank Mellat's name was included at point 4 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 no longer indicates that it is a State-owned bank but is otherwise identical to that set out in Decision 2010/413.

21 Regulation No 423/2007 was repealed and replaced by Regulation No 961/2010, which was adopted on 25 October 2010. In accordance with Article 16(2) of that regulation:

'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;

(b) being a natural or legal person, entity or body that has assisted a listed person, entity or body to evade or violate the provisions of this Regulation, [Decision 2010/413] or UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010);

...'

22 Bank Mellat's name was listed by the Council at point 4 of 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 virtually identical to those set out in Decision 2010/413 as amended by Decision 2010/644.

23 On 31 May 2011, the Council sent to Bank Mellat, as an annex to the rejoinder lodged in the action for annulment giving rise to the judgment under appeal, a Council document dated 27 May 2011 containing an extract from a third proposal to include Bank Mellat on the list of entities subject to restrictive measures ('the third proposal').

24 On 1 December 2011, having conducted a review, the Council decided, by Decision 2011/783, to maintain Bank Mellat on the list in Decision 2010/413, and, by Implementing Regulation No 1245/2011, to maintain Bank Mellat on the list in Regulation No 961/2010.

25 Referring to the Conclusions of the European Council of 9 December 2011, the Council adopted new measures by Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413 (OJ 2012 L 19, p. 22).

26 On 23 March 2012, it adopted new measures by Regulation No 267/2012, which repeals and replaces Regulation No 961/2010. The freezing of funds and economic resources is provided for in Article 23 of Regulation No 267/2012. Article 23(2) was then worded as follows:

'All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IX shall be frozen. Annex IX shall

include the natural and legal persons, entities and bodies who, in accordance with Article 20(1)(b) and (c) 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;

(b) being a natural or legal person, entity or body that has assisted a listed person, entity or body to evade or violate the provisions of this Regulation, [Decision 2010/413] or UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010);

...

(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;

...'

27 Bank Mellat is listed at point 4 of Table I.B of Annex IX to Regulation No 267/2012. The reasons for that listing are virtually identical to those set out in Decision 2010/413 as amended by Decision 2010/644.

Procedure before the General Court and the judgment under appeal

28 By application lodged at the General Court Registry on 7 October 2010, Bank Mellat brought an action for annulment of Decision 2010/413 and Implementing Regulation No 668/2010. It subsequently extended the form of order sought to include an application for annulment of Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012, in so far as those acts concern it.

29 First of all, the General Court rejected the arguments of both the Council and the Commission that Bank Mellat was not entitled to rely on fundamental rights protection and guarantees.

30 Next, it examined the action brought by Bank Mellat, which put forward three pleas in law. The first plea was a claim of an infringement of the obligation to state reasons, its rights of defence and its right to effective judicial protection. The second plea was a claim of a manifest error of assessment as regards the adoption of restrictive measures against it. The third plea was a claim of an infringement of its right to property and of the principle of proportionality.

31 In the context of the first plea, alleging an infringement of the obligation to state reasons, the rights of the defence and the right to effective judicial protection, the General Court examined each of the reasons relating to Bank Mellat stated in the acts at issue and in the proposals for the adoption of restrictive measures. It held that the Council was in breach of the obligation to state reasons as regards some of the reasons given, owing to their lack of detail. As a result of that lack of detail, Bank Mellat's right to judicial protection had also been infringed with regard to those reasons. That right had also been infringed with regard to Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010 owing to the late notification of the third proposal for the adoption of restrictive measures. Lastly, the General Court held that the assessment of Decision 2010/413 and Implementing Regulation No 668/2010 was defective in so far as there was nothing in the Court file to suggest that the Council had checked the relevance and the validity of the evidence concerning Bank Mellat. Consequently, the General Court upheld the first plea in so far as it concerned Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010.

32 Next, the General Court examined the second plea, alleging a manifest error of assessment as regards the adoption of restrictive measures against Bank Mellat. This examination related to the reasons regarded as being sufficiently detailed and not in breach of the obligation to state reasons. Since none of the reasons relied on by the Council in Bank Mellat's case justified the adoption of restrictive measures against it, the General Court upheld the second plea and annulled the acts at issue in so far as they concerned Bank Mellat, and found that there was no need to examine the third plea, alleging an infringement of the principle of proportionality.

Forms of order sought

33 The Council claims that the Court of Justice should:

- set aside the judgment under appeal;
- give a definitive ruling on the case and dismiss the action brought by Bank Mellat against the acts at issue;
- order Bank Mellat to pay the costs incurred by the Council both at first instance and in this appeal.

34 Bank Mellat contends that the Court should dismiss the appeal and order the Council to pay the costs.

35 The Commission supports in its entirety the form of order sought by the Council in its appeal.

36 The United Kingdom of Great Britain and Northern Ireland claims that the Court should grant the appeal, set aside the judgment under appeal and dismiss the action brought by Bank Mellat against the acts at issue.

The appeal

Objection of inadmissibility in respect of the appeal

Arguments of the parties

37 Bank Mellat claims that the appeal has been brought out of time. It submits that the time limit on account of distance provided for by the Rules of Procedure of the Court of Justice is not applicable; the Council is not distant from the Court since it communicates with it electronically.

38 The Council recalls Article 51 of the Rules of Procedure, according to which the time limit on account of distance is a single fixed period.

Findings of the Court

39 As the Advocate General noted at points 32 and 33 of her Opinion, while the terminology used to designate the time limits laid down in Article 51 of the Rules of Procedure is a reminder that those time limits were intended to compensate for the time required by the postal services depending on physical distance from the Court, those time limits have been single fixed periods since the amendments to the Rules of Procedure of the Court of Justice of 28 November 2000 (OJ 2000 L 322, p. 1) (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 63).

40 It follows that Article 51 of the Rules of Procedure was applicable in the present case, even though the Council was communicating with the Court electronically. Accordingly, the appeal has been brought within the prescribed time limit, and the objection of inadmissibility must be rejected.

Substance

41 The Council submits that the judgment under appeal is vitiated by a number of errors of law.

Objection of inadmissibility in respect of the pleas alleging infringement of fundamental rights

– The judgment under appeal

42 In paragraph 46 of the judgment under appeal, the General Court rejected the arguments of both the Council and the Commission that Bank Mellat was not entitled to invoke fundamental rights protection and guarantees. It held, in

paragraph 41 of that judgment, that EU law contains no rule preventing legal persons which are emanations of non-Member countries from taking advantage of fundamental rights protection and guarantees, and, in paragraph 42 of that judgment, that further and in any event the Council and the Commission had not put forward any evidence capable of proving that Bank Mellat was in fact an emanation of the Iranian State.

– Arguments of the parties

43 The Council takes issue, first of all, with paragraphs 35 to 41 of the judgment under appeal. It submits that the General Court made an error of law by holding that even if it were established that Bank Mellat is an emanation of the Iranian State, Bank Mellat would be entitled to rely on fundamental rights protections and guarantees before the Courts of the European Union.

44 It relies on Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), which precludes governmental organisations and similar entities from bringing proceedings before the European Court of Human Rights, and on other corresponding provisions, such as Article 44 of the American Convention on Human Rights of 22 November 1969. The *ratio legis* is that a State cannot enjoy fundamental rights. Although neither the EU Treaties nor the Charter of Fundamental Rights of the European Union contains provisions similar to Article 34 of the ECHR, the same principle is, it maintains, applicable.

45 It asserts that the General Court also erred in law when it found that there was no evidence to show that Bank Mellat does actually constitute a governmental organisation. In this regard, the Council refers to:

– the case-law of the European Court of Human Rights, according to which the specific factual and legal context must be carefully assessed in order to determine whether an entity is a governmental organisation or entity or a non-governmental one;

– the work of the United Nations International Law Commission, and in particular the commentaries relating to Article 2(b) of the United Nations Convention on Jurisdictional Immunities of States and their property, adopted on 2 December 2004, according to which the concept of 'agencies or instrumentalities of the State or other entities' may include State enterprises or other entities established by the State performing commercial transactions; and

– the case-law of the Court of Justice on State aid (judgment in *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 55).

46 According to the Council, the General Court was therefore mistaken in considering that, since Bank Mellat carries out commercial activities subject to

ordinary law, these could not qualify as a 'public service' even though they are essential for the operation of a State's economy. Equally, the General Court failed to take proper account of the influence which the Iranian Government exercises over Bank Mellat, when that State has a 20% shareholding in Bank Mellat and the other shareholdings are widely dispersed.

47 Bank Mellat contests the Council's arguments.

– Findings of the Court

48 It must be pointed out that the action brought by Bank Mellat falls within the scope of the second paragraph of Article 275 TFEU (judgment in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 50).

49 Bank Mellat puts forward pleas alleging an infringement of its rights of defence and its right to effective judicial protection. Such rights may be invoked by any natural person or any entity bringing an action before the Courts of the European Union.

50 The same applies to pleas alleging an infringement of essential procedural requirements, such as that alleging an infringement of the obligation to state the reasons for a measure.

51 As regards pleas alleging a manifest error of assessment or a breach of the general principle of proportionality, it must be noted that the question whether a State entity is entitled to invoke them is one that relates to the merits of the case (judgment in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 51).

52 In the light of the above, the Council's plea must be rejected, and there is no need to examine the argument that the General Court erred in holding that it was not established that Bank Mellat was a State entity, since that argument is ineffective.

The obligation to state reasons, the rights of the defence, the right to effective judicial protection and access to the file

– The judgment under appeal

53 In paragraphs 49 to 51 of the judgment under appeal, the General Court recalled the case-law relating to the obligation to state the reasons for an act, provided for by the second paragraph of Article 296 TFEU. In paragraphs 52 to 55 of its judgment, it recalled the case-law relating to the rights of the defence and to the obligation to disclose the evidence adduced against the entity concerned so that it is afforded the opportunity effectively to make known its view on that evidence.

54 In paragraphs 63 and 64 of the judgment under appeal, the General Court held that, in order to assess whether the obligation to state reasons and the obligation to disclose to Bank Mellat the evidence considered to inculpate it have been fulfilled, there must be taken into consideration not only the reasons stated in the acts at issue, but two proposals for the adoption of restrictive measures which the Council sent to Bank Mellat by letter of 13 September 2010, and the third proposal which the Council annexed to its rejoinder, lodged on 31 May 2011. According to the General Court, those proposals were submitted to the delegations of the Member States in the context of the adoption of the restrictive measures affecting Bank Mellat and consequently constitute evidence on which those measures are based.

55 In paragraph 65 of the judgment under appeal, the General Court stated:

'... it is true that the third proposal was disclosed to [Bank Mellat] both after the action was brought and after the adaptation of claims following adoption of Decision 2010/644 and Regulation No 961/2010. Consequently, it cannot validly supplement the reasons stated for Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010. It may, however, be taken into consideration for the assessment of the legality of the later measures, namely Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012.'

56 In paragraphs 66 to 76 of the judgment under appeal, the General Court examined each of the reasons stated in the acts at issue and in the proposals for the adoption of restrictive measures. Paragraphs 66 to 69 are worded as follows:

'66 The [acts at issue] state the following four reasons as regards the applicant:

- according to Decision 2010/413 and Implementing Regulation No 668/2010, the applicant is a State-owned Bank ("the first reason");
- the applicant engages in a pattern of conduct which supports and facilitates Iran's nuclear and ballistic missile programmes ("the second reason");
- the applicant has provided banking services to UN and EU listed entities, to entities acting on their behalf or at their direction, or to entities owned or controlled by them ("the third reason");
- the applicant is the parent bank of [FEE], which is designated under UNSCR 1929 (2010) ("the fourth reason").

67 The first of the two proposals for adoption of restrictive measures notified on 13 September 2010 partly overlaps the second reason provided in the [acts at issue]. It adds the following reasons:

– the applicant provides banking services to the Atomic Energy Organisation of Iran (“[the] AEOI”) and to Novin Energy Company (“Novin”) which are subject to restrictive measures adopted by the ... Security Council (“the fifth reason”);

– the applicant manages the accounts of officials of the Aerospace Industries Organisation and an Iranian procurement agent (“the sixth reason”).

68 The second proposal notified on 13 September 2010 essentially overlaps the statement of reasons in the [acts at issue]. There is one additional reason: that since at least 2003 the applicant has facilitated the movement of millions of dollars for the Iranian nuclear programme (“the seventh reason”).

69 The third proposal for the adoption of restrictive measures, which is annexed to the rejoinder, contains no additional information as compared with the [acts at issue] and the two proposals notified on 13 September 2010.’

57 In paragraph 77, the General Court held that the Council was in breach of the obligation to state reasons and the obligation to disclose to Bank Mellat the evidence adduced against it as regards the second, third, sixth and seventh reasons, owing to their lack of detail, but that those obligations were fulfilled as regards the other reasons.

58 As regards access to the file, the General Court observed, in paragraph 81 of the judgment under appeal, that it was not apparent from the information in the Court file that the Council relied, when the acts at issue were adopted, on material other than the three proposals for restrictive measures against Bank Mellat submitted by the Member States. It states, however, in paragraph 82 of that judgment, that Bank Mellat was notified of the third proposal only as an annex to the Council’s rejoinder, in other words after the expiry of the period within which it was required by the Council to submit observations following the adoption of Decision 2010/413 and Implementing Regulation No 668/2010, after the lodging of the action and after the adoption of Decision 2010/644 and Regulation No 961/2010.

59 In paragraph 84 of its judgment, the General Court rejected the Council’s argument that it had communicated that proposal as soon as it had obtained the agreement of the Member State which submitted it. The General Court held that, where the Council intends to rely on information submitted by a Member State in order to adopt restrictive measures affecting an entity, it is obliged to ensure, before the adoption of those measures, that the entity concerned can be notified of the information in question in good time so that it is able effectively to make known its point of view. The General Court concluded, in paragraph 85 of that judgment, that the Council did not provide access to that information in its file in good time, and thereby infringed the rights of the defence.

60 Ruling on Bank Mellat's ability effectively to make known its point of view, the General Court held, in paragraph 89 of the judgment under appeal, that Bank Mellat had the opportunity effectively to make known its point of view, except as regards (i) the second, third, sixth and seventh reasons provided by the Council, which were excessively vague, and (ii) the proposal for the adoption of restrictive measures notified as an annex to the Council's rejoinder, since Bank Mellat was not aware of that proposal when it submitted its observations.

61 In paragraph 90 of the judgment under appeal, the General Court held that it was apparent from the Council's letters that the Council had taken Bank Mellat's observations into consideration. It noted in particular, in paragraph 91 of that judgment, that the Council had rectified the reference to Bank Mellat being a State-owned bank, which Bank Mellat had denied was the case.

62 In paragraph 96 of the judgment under appeal, the General Court held that Bank Mellat's right to effective judicial protection had been infringed, in view of the lack of detail in the second, third, sixth and seventh reasons and the late notification of one of the proposals for the adoption of restrictive measures. On the other hand, that right had not been infringed as regards the first, fourth and fifth reasons relied on by the Council.

– Arguments of the parties

63 In the first place, under the heading 'Obligation to state reasons', the Council submits that the General Court made an error of law by considering each reason separately instead of examining them together as a whole. It asserts that those reasons are clearly related to each other. In particular, the third reason specifies more precisely the pattern of conduct mentioned in the second. Further, the General Court was incorrect to consider in paragraph 73 of the judgment under appeal that the second and third reasons 'give no details of the nature of the conduct alleged'. Although that third reason did not identify by name the UN and EU listed entities to which Bank Mellat provided banking services, it would have been possible for Bank Mellat to check those entities against its own lists of customers and to contest that reason if none of its customers had appeared on the UN or EU lists.

64 As regards the sixth reason, which appears in a listing proposal submitted by a Member State which mentioned that Bank Mellat manages the accounts of officials of the Aerospace Industries Organisation and a procurement agent, the Council submits that the General Court was mistaken to consider that this was not sufficiently detailed. Since the details of a bank's customers include the identities of their employers, Bank Mellat could have checked whether any of its customers were employed by that organisation or the procurement agent. That reason therefore satisfied the requirements established by the case-law in that it provided sufficient information to enable a determination to be made as to whether the acts at issue were well founded.

65 The Commission submits that the position of the General Court in paragraph 77 of the judgment under appeal, according to which the action for annulment is well founded with regard to some of the reasons but not others, is not tenable. The Council could not be considered to have infringed the obligation to state reasons and the obligation of disclosure to Bank Mellat for each reason separately.

66 In its statement in intervention, the United Kingdom also challenges the General Court's finding that the second reason is excessively vague, when that reason must be read in conjunction with the reasons that follow it.

67 In the second place, under the heading 'Access to the file', the Council challenges the General Court's decision in paragraph 63 of the judgment under appeal that, 'in order to assess whether the obligation to state reasons and the obligation to disclose to the entity concerned the evidence considered to inculpate it have been fulfilled, there must be taken into consideration not only the reasons stated in the [acts at issue], but the three proposals for the adoption of restrictive measures sent by the Council to the applicant'.

68 It claims that the General Court erroneously applied the case-law cited in paragraph 54 of the judgment under appeal, which was established in the context of the first cases concerning terrorism, when no reasons were given to justify entries on a list of persons, entities and bodies subject to restrictive measures, and that, in that situation, the terms 'reasons' and 'evidence' were interchangeable. In the present case, the acts contained the reasons, and so there was no justification for communicating the proposals for the adoption of restrictive measures, which did not in any event provide any added value.

69 As to material which was not included in the Council's statement of reasons, this should not have to be communicated separately either, since it cannot necessarily be assumed that the Council relied on it as reasons or as evidence. According to the Council, the General Court should have applied the case-law which it cited in paragraph 55 of the judgment under appeal, according to which, when sufficiently precise information has been communicated, it is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (judgment in *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 97).

70 Referring to paragraph 111 of the judgment in *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), the United Kingdom submits that, as regards the lists of entities subject to restrictive measures, it is only the statement of the listing reasons provided by the Council that must be disclosed, not the listing proposals in respect of the entities concerned.

71 Bank Mellat endorses the General Court's arguments. It contends that, even considered together, the second and third reasons are not sufficiently precise, since the allegedly more specific third reason was rightly found to be 'excessively

vague'. As regards the sixth reason, Bank Mellat contends that the Council produced no evidence to support the assertion that the bank's customer records include the identities of customers' employers. As to the seventh reason, the Council does not defend it in the appeal.

72 Bank Mellat claims that the Council was obliged to provide the listing proposals at the same time or shortly after Bank Mellat was listed, since this was the only evidence held on the file. As regards the Council's assertion that obtaining those listing proposals would have been of no use to Bank Mellat, Bank Mellat responds that it is not for the Council to assess what elements of the file might be of value to an applicant. It would be contrary to the rights of the defence to permit the Council to choose which elements of the file to withhold.

73 Bank Mellat challenges the argument that the case-law arising from the judgment in *Bank Melli Iran* v *Council* (T-390/08, EU:T:2009:401) should have been applied in the present case, in so far as it did not have sufficiently precise information to enable it effectively to state its point of view on the evidence adduced against it. It states that both the General Court and the Council proceeded on the basis that the listing proposals constituted the evidence, when that was not the case.

– Findings of the Court

74 According to a consistent body of case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act (see judgment in *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 49 and the case-law cited).

75 The statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment in *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 53 and the case-law cited). The reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand

the scope of the measure concerning him (judgment in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 71).

76 As regards restrictive measures, without going so far as to require a detailed response to the comments made by the person concerned, the obligation to state reasons laid down in Article 296 TFEU entails in all circumstances, not least when the reasons stated for the EU measure represent reasons stated by an international body, that that statement of reasons identifies the individual, specific and concrete reasons why the competent authorities consider that the person concerned must be subject to restrictive measures. The Courts of the European Union must, therefore, in particular determine whether the reasons relied on are sufficiently detailed and specific (see, to that effect, judgment in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 116 and 118).

77 In the present case, the General Court did not err in law in its assessment of the second and third reasons, since the Council did not submit to the General Court that those reasons had to be read in conjunction with each other.

78 In any event, even if, as the Council maintains, that third reason should have been construed as clarifying the conduct alleged in the second reason, reading those reasons in conjunction with each other would not enable Bank Mellat to establish specifically which banking services it provided to which 'UN and EU listed' entities or entities 'acting on their behalf or at their direction, or ... owned or controlled by them'. In those circumstances, the General Court cannot be criticised for having concluded, in paragraph 73 of the judgment under appeal, that the second and third listing reasons are too vague.

79 The General Court was also right to describe, in paragraph 76 of the judgment under appeal, the sixth reason as not being sufficiently detailed because it does not identify the persons whose accounts were managed by Bank Mellat.

80 Contrary to what the Council maintains in its appeal, it was not for Bank Mellat, in the context of the procedure for the adoption of fund-freezing measures, to compare, for the purposes of its defence, its own lists of customers against the names of entities included on the UN and EU lists, or to check whether one of its customers was an employee of the Aerospace Industries Organisation.

81 That would be contrary to the case-law cited in paragraph 76 of the present judgment, which requires that the statement of reasons identify the individual, specific and concrete reasons why the competent authorities consider that the person concerned must be subject to restrictive measures.

82 Lastly, as regards access to the file, the General Court rightly found, in paragraphs 84, 85 and 105 of the judgment under appeal, that the Council was obliged to ensure, before adopting restrictive measures, that the evidence adduced against Bank Mellat could be notified to it in good time so that it would be able

effectively to make known its point of view, and that the late notification of the third proposal, annexed to the Council's rejoinder, infringed Bank Mellat's rights of defence and its right to effective judicial protection and, therefore, affected the lawfulness of Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010, in so far as those measures concerned Bank Mellat.

Defects in the Council's assessment

– The judgment under appeal

83 In the context, again, of the plea alleging infringement of the obligation to state reasons, the rights of the defence and the right to effective judicial protection, the General Court summarises one of Bank Mellat's arguments as follows:

> '97 The applicant claims that the Council did not carry out a genuine assessment of the circumstances of the case, but did no more than adopt the proposals submitted by Member States. That defect affects both the assessment prior to the adoption of the restrictive measures against [it] and the regular review of those measures.'

84 The General Court ruled as follows:

> '101 In the present case, there is nothing in the Court file to suggest that the Council checked the relevance and the validity of the evidence concerning the applicant submitted to it before the adoption of Decision 2010/413 and Implementing Regulation No 668/2010. On the contrary, the incorrect statement, in those acts, that the applicant was a State-owned bank, the inaccuracy of which is not denied by the Council, is an indication that no such checking took place.
>
> 102 Further, it is clear from paragraphs 90 to 92 above that, when adopting the subsequent [acts at issue], the Council reviewed the circumstances of the case in the light of the applicant's observations, since it removed the statement that the applicant was a State-owned bank and expressed its view on the applicant's arguments relating to financial services supplied to entities involved in nuclear proliferation.
>
> ...
>
> 104 In those circumstances, the Court must uphold the applicant's arguments relating to the defects affecting the assessment carried out by the Council in relation to Decision 2010/413 and Implementing Regulation No 668/2010, but must reject those arguments for the remainder.'

85 In paragraph 106 of the judgment under appeal, the General Court concluded that, when adopting Decision 2010/413 and Implementing Regulation No 668/2010,

the Council did not comply with the obligation to assess the relevance and the validity of the information and evidence against Bank Mellat submitted to it, with the consequence that those measures were tainted by illegality.

– Arguments of the parties

86 In the Council's submission, the General Court erred in law by requiring, in paragraphs 100 and 101 of the judgment under appeal, that the file contain elements that would demonstrate that the Council checked the evidence submitted to it. It argues that it is not possible to determine what elements would need to be produced in order to show that such a check by the members of the Council took place, and, moreover, that certain evidence came from confidential sources to which the members of the Council as a whole do not have access.

87 Bank Mellat contends that the legal principle that the Council must assess the relevance and the validity of the information and evidence submitted to it is not contested. It submits that the General Court was entitled to rely on the absence of any evidence that the Council had conducted a proper check in support of its finding that the Council had not done so. It notes, moreover, that the Council admits that it did not undertake any check of the claims made in the proposals submitted to it regarding Bank Mellat's designation as an entity subject to restrictive measures precisely because it did not have access to the underlying evidence, which was considered confidential.

– Findings of the Court

88 It is evident from the judgment under appeal that Bank Mellat was entered on the list of entities subject to restrictive measures by the adoption of Decision 2010/413 and Implementing Regulation No 668/2010 solely on the basis of the listing proposals submitted by Member States. However, the General Court does not show how that factor can constitute one of the grounds for annulment referred to in Article 263 TFEU.

89 As the Advocate General noted at point 95 of her Opinion, it does not appear that checking the relevance and validity of the material concerning Bank Mellat that was submitted to the Council prior to the adoption of Decision 2010/413 and Implementing Regulation No 668/2010 can constitute an essential procedural requirement for the adoption of those acts the non-compliance with which could result in those acts being unlawful. The General Court did not establish that such a requirement is laid down by the FEU Treaty or secondary law.

90 Nor did the General Court establish in what respect that element could contribute to an infringement of the obligation to state reasons, Bank Mellat's rights of defence or its right to effective judicial protection, on which Bank Mellat relies in its first plea, or indeed any other rule of law.

91 Since none of the grounds for annulment referred to in Article 263 TFEU has been shown by the General Court to affect the validity of Decision 2010/413 and Implementing Regulation No 668/2010 on the basis of the failure to check the relevance and validity of the material concerning Bank Mellat, it must be held that the General Court made an error of law when it ruled, in paragraphs 100 and 101 of the judgment under appeal that, when adopting an initial act establishing restrictive measures against entities allegedly involved in nuclear proliferation, the Council must assess the relevance and the validity of the information and evidence submitted to it by a Member State or by the High Representative of the Union for Foreign Affairs and Security Policy. Consequently, the General Court made the same error of law by concluding, in paragraph 106 of the judgment under appeal, that, when adopting Decision 2010/413 and Implementing Regulation No 668/2010, the Council did not comply with the obligation to assess the relevance and the validity of the information and evidence against Bank Mellat submitted to it, with the consequence that those measures were tainted by illegality.

Manifest error of assessment

– The judgment under appeal

92 In paragraph 112 of the judgment under appeal, the General Court considered that, taking into consideration the fact that the second, third, sixth and seventh reasons relied on by the Council against Bank Mellat did not constitute an adequate statement of reasons, it needed to be concerned only with determining whether the first, fourth and fifth reasons relied on were well founded.

93 In paragraph 113 of that judgment, it held that the first reason, that Bank Mellat is State-owned, is based on a mistaken factual premiss and cannot therefore justify the restrictive measures imposed on Bank Mellat by Decision 2010/413 and Implementing Regulation No 668/2010.

94 As regards the fourth reason, relating to FEE, Bank Mellat's subsidiary, the General Court held in paragraph 117 of its judgment that that reason is not only based on mere allegations but also does not constitute an autonomous reason distinct from those directly concerning Bank Mellat.

95 So far as concerns the fifth reason, the General Court held, in paragraph 118 of the judgment under appeal, that the Council had not produced any evidence or information establishing that Bank Mellat had supplied services to the AEOI. As regards the services supplied to Novin, the General Court held, in paragraph 128 of its judgment, that Bank Mellat's claim that it was not informed of Novin's involvement in nuclear proliferation before Novin became the subject of restrictive measures adopted by the Security Council had to be accepted.

96 Furthermore, in paragraph 131 of the judgment under appeal, the General Court held that Bank Mellat had demonstrated that it acted without delay to bring to an

end the supply of financial services to Novin after learning of Novin's involvement in nuclear proliferation. The General Court held, in paragraph 137 of that judgment, that neither the services supplied by Bank Mellat to Novin before the adoption of restrictive measures against Novin nor the arrangements for the termination of Bank Mellat's commercial relationship with Novin constitute support for nuclear proliferation within the meaning of Decision 2010/413 and Regulations No 423/2007, No 961/2010 and No 267/2012.

97 Having regard to these matters, the General Court concluded, in paragraph 139 of the judgment under appeal, that since none of the first, fourth or fifth reasons relied on by the Council against Bank Mellat justified the adoption of the restrictive measures against it, the second plea in law had to be upheld.

– Arguments of the parties

98 As regards the fourth reason, relating to the fact that FEE, Bank Mellat's wholly owned subsidiary, is covered by Security Council Resolution 1929 (2010), the Council notes that FEE was designated as an entity subject to restrictive measures notably because, 'over the last seven years, Bank Mellat [had] facilitated hundreds of millions of dollars in transactions for Iranian nuclear, missile and defence entities'. According to the Council, the General Court was mistaken in ruling, in paragraph 117 of the judgment under appeal, that that reason was based only on mere allegations and did not constitute an autonomous reason distinct from the other reasons directly concerning Bank Mellat. It recalls the special importance to be attached to Security Council resolutions under Chapter VII of the Charter of the United Nations, as well as the provisions of the Treaties.

99 The Council submits, moreover, that the General Court failed to take proper account of the clandestine nature of the activities, and so the evidence comes from confidential sources and cannot be disclosed in every case. It also refers to the principle of mutual trust between Member States and the institutions, and the principle of sincere cooperation. The Council also submits that, according to the case-law of the European Court of Human Rights, there is no absolute right to the disclosure of evidence. It argues that if that principle applies to criminal charges, there is even more reason for it to apply to the restrictive measures concerned, which are precautionary measures.

100 That argument would apply equally to the banking services provided to the AEOI.

101 With regard to Bank Mellat's admission that it provided banking services to Novin, which was designated by Security Council Resolution 1747 (2007), the Council maintains that the General Court made an error of law in substituting its own assessment for that of the Council when it ruled that the fact that Bank Mellat had provided banking services to Novin in the past did not justify the acts at issue because Bank Mellat had gradually run down, then terminated altogether, its relationship with Novin after it became aware that Novin had been designated by

the Security Council. According to the Council, the provision of banking services before Novin's designation, in other words during the period when Novin was found to be involved in developing Iran's proliferation-sensitive activities, shows that Bank Mellat is likely to provide such services in the future to other entities engaged in the same activities. The Council was thus justified in imposing an asset freeze on Bank Mellat as a precautionary measure. Whether or not Bank Mellat is aware of the involvement of those entities in those activities, or whether or not the banking services are used in connection with those activities, is not a decisive factor in this regard.

102 The Council adds that the General Court adopted an excessively narrow interpretation of the concept of support for Iran's proliferation-sensitive nuclear activities within the meaning of Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012, and that, in so doing, it substituted its own assessment for that of the Council with regard to the facts justifying the imposition of an asset freeze as a precautionary measure, contrary to its own case-law (judgment in *People's Mojahedin Organization of Iran* v *Council*, T-256/07, EU:T:2008:461, paragraph 138).

103 The Commission submits that the activities of Bank Mellat must be seen in a more global perspective and cannot be examined as individual transactions taken out of context. It notes that the listing of Bank Mellat was considered by the Security Council. It refers, in that regard, to the importance of Security Council resolutions under the Charter of the United Nations.

104 The Commission also recalls that the restrictive measures are part of the response to Iran's nuclear programme which is conducted with no cooperation with the IAEA. The rationale behind the listing of banks is that Iran needs to use banking facilities in order to import uranium, technology and other materials. According to the Commission, excluding a bank such as Bank Mellat from one of the principal financial markets in which such business may be transacted is rationally connected to the international community's goal of preventing the development and proliferation of nuclear weapons. Bank Mellat's provision of banking services to Novin before the latter's designation by the Security Council is a clear indication that Bank Mellat is in a position to provide such services.

105 According to the Commission, the Council cannot be obliged to prove that the services or transactions specifically at issue were 'directly' linked to nuclear proliferation, as the General Court suggests in paragraphs 135 and 137 of the judgment under appeal. The balancing act between protecting the fundamental rights of listed persons and the need to protect the European Union's evident security interests requires the Council to have a certain margin of appreciation in determining whether an entity, through its business of providing financial services, is assisting listed entities that are subject to restrictive measures to engage in proliferation-sensitive activities, even when the relevant transactions themselves are not as direct as the General Court seems to call for. It submits that

the Court's review must be limited to determining whether the Council made a manifest error of assessment or misused its power. According to the Commission, it can hardly be said that the Council misused its power when it listed a bank that is partly owned by the Iranian State and in respect of which even the Security Council has noted concern.

106 The United Kingdom supports the Council and the Commission in their analysis concerning the provision of banking services to Novin.

107 Bank Mellat contests the arguments put forward by the Council, the Commission and the United Kingdom.

– Findings of the Court

108 The Council's arguments relate only to the General Court's assessment as to whether the fourth and fifth reasons are well founded.

109 Regarding the material used to justify Bank Mellat's listing and the evidence that that listing was well founded, it must be borne in mind that the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires, in particular, that the Courts of the European Union ensure that the decision, which affects that person or entity concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations 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, to that effect, judgments in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119; *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 64; *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 73; *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 45; *Anbouba* v *Council*, C-630/13 P, EU:C:2015:247, paragraph 46; and *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 42).

110 To that end, it is for the Courts of the European Union, in order to carry out that examination, to request the competent EU authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination (see judgments in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 120, and *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 65).

111 If the competent EU authority finds itself unable to comply with the request by the Courts of the European Union, it is then the duty of those Courts to base their decision solely on the material which has been disclosed to them (see judgments in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P,

EU:C:2013:518, paragraph 123, and *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 68).

112 With regard to the fourth reason, concerning the fact that FEE, a wholly owned subsidiary of Bank Mellat, is covered by Resolution 1929 (2010), the General Court found, in paragraph 117 of the judgment under appeal, that it was based on mere allegations. The Council did not produce any evidence that would have enabled the General Court to determine whether that reason was well founded. In such a situation, it is impossible for the Courts of the European Union — which are called upon to review whether the grounds for listing are well founded in fact, taking into consideration any observations and exculpatory evidence produced by the person concerned and the response of the competent EU authority to those observations — to find that those reasons are well founded, and consequently those reasons cannot be relied on as the basis for the contested listing decision (see, to that effect, judgment in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 137).

113 In so far as the Council criticises the General Court for having held, in paragraph 117 of the judgment under appeal, that the fourth reason did not constitute an autonomous reason distinct from the other reasons, that complaint must be held to be wholly unsubstantiated.

114 Furthermore, justifying the freezing of Bank Mellat's funds on the basis that FEE's funds were frozen, when FEE was designated in the United Nations resolution because of Bank Mellat's activities, is a circular argument, and so the freezing of Bank Mellat's funds cannot be justified by FEE's designation in that resolution. Lastly, contrary to what is maintained by the Council, the only reference to Bank Mellat in that resolution, according to which it 'has facilitated hundreds of millions of dollars in transactions for Iranian nuclear, missile, and defence entities', cannot, in accordance with the case-law cited in paragraphs 109 and 112 of the present judgment, constitute sufficient justification for its designation by the European Union.

115 In its appeal, the Council claimed that the evidence concerning Bank Mellat's support for Iran's nuclear activities comes from confidential sources which, if disclosed, would enable those who provided the information to be identified, endangering their lives and their safety. In addition, the evidence may have been supplied by a third country which refuses to authorise its disclosure. In such cases, the Council argues that confidentiality must be respected, if international cooperation is not to be undermined.

116 As regards the confidentiality of the evidence, it must be noted that that argument has been relied on for the first time at the stage of the appeal. As it is, in accordance with settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea and arguments which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose

jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to review of the findings of law on the pleas argued before the General Court (judgment in *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 126 and the case-law cited).

117 Accordingly, the argument relating to the confidentiality of the evidence is inadmissible.

118 Having regard to those points, the General Court did not err in law when it concluded, in paragraph 117 of the judgment under appeal, that the fourth reason could not justify the adoption of restrictive measures against Bank Mellat.

119 As regards the fifth reason, in so far as it relates to the financial services supplied to the AEOI, the General Court found, in paragraph 118 of the judgment under appeal, that the Council had not produced any evidence or information to establish that such services were supplied. In that respect, the Council also, however, relied in its appeal on the clandestine nature of the activities, preventing the communication of evidence from confidential sources, on the principles of mutual trust and of sincere cooperation between Member States and the institutions, and on the non-existence of an absolute right to the disclosure of evidence.

120 Since that argument has been relied on for the first time at the stage of the appeal, it must, in accordance with the case-law cited in paragraph 116 of the present judgment, be declared inadmissible.

121 The General Court did not, therefore, make an error of law with regard to the burden of proof and the taking of evidence when it concluded, in paragraph 118 of the judgment under appeal, that the allegations concerning the AEOI did not justify the adoption of restrictive measures against Bank Mellat.

122 In so far as the fifth reason relates to the financial services supplied to Novin, the General Court made a number of findings and assessments of fact which it is not for the Court of Justice to review. Thus, in paragraph 126 of the judgment under appeal, it noted that the services supplied to Novin were supplied in Iran. In paragraph 128, it considered that it was necessary to accept Bank Mellat's claim not to have been aware of Novin's involvement in nuclear proliferation before Novin became the subject of restrictive measures adopted by the Security Council, the Council having failed to submit detailed and specific evidence or information in that regard. In paragraph 129, the General Court described how Bank Mellat closed Novin's accounts after restrictive measures were adopted against Novin. After examining the relevant legislation, the General Court found, in paragraphs 134 and 135 of the judgment under appeal, that the last financial transactions which Bank Mellat carried out for Novin were authorised, and that

the Council and Commission were not even claiming that the payments at issue were linked to nuclear proliferation.

123 Having regard to the foregoing, the General Court concluded, in paragraph 137 of the judgment under appeal, that neither the services supplied by Bank Mellat to Novin before the adoption of restrictive measures against Novin nor the arrangements for the termination of Bank Mellat's commercial relationship with Novin constitute support for nuclear proliferation within the meaning of Decision 2010/413 and Regulations No 423/2007, No 961/2010 and No 267/2012.

124 That conclusion is contested by the Council, the Commission and the United Kingdom on the ground that it matters little whether Bank Mellat was aware of Novin's involvement in nuclear activities or not, although the General Court's findings and assessments of fact are not disputed. The Commission submits, inter alia, that the listing as entities subject to restrictive measures of banks providing financial services connected with international commerce is linked to the international community's goal of preventing the development and proliferation of nuclear weapons.

125 The acts at issue concern the adoption of fund-freezing measures against Bank Mellat on the ground that, by its conduct, it provides support to Iran's proliferation-sensitive nuclear activities. Given that, despite the fact that Bank Mellat had challenged the validity of the fifth reason, the Council had not submitted any specific evidence or information that might establish that the services which Bank Mellat supplied to Novin constituted such support, the General Court did not err in law when it concluded, in paragraph 138 of the judgment under appeal, that the circumstances referred to in paragraph 137 of that judgment do not justify the adoption of restrictive measures against Bank Mellat.

126 It follows from this that the Council's arguments concerning the General Court's assessment as to whether the fourth and fifth reasons are well founded must be rejected.

Conclusions to be drawn from the examination of the appeal

127 It is apparent from the examination of the appeal that the General Court made an error of law vitiating its reasoning by concluding, in paragraph 106 of the judgment under appeal, that, when adopting Decision 2010/413 and Implementing Regulation No 668/2010, the Council did not comply with the obligation to assess the relevance and the validity of the information and evidence against Bank Mellat that was submitted to it. It is necessary, however, to determine whether the operative part of that judgment can be maintained on the basis of grounds of that judgment that are not vitiated by errors of law.

128 It is apparent from the judgment under appeal that the General Court annulled the acts at issue on the basis of a combination of several reasons.

129 Thus, while the General Court wrongly found, in paragraph 106 of the judgment under appeal, that the defect in the Council's decision justified the annulment of Decision 2010/413 and Implementing Regulation No 668/2010 as regards Bank Mellat, in paragraphs 105 and 107 of the judgment under appeal it annulled those acts because of other defects in respect of which the Court of Justice has found no error of law. It follows that the defect identified in paragraph 106 of the judgment under appeal does not affect the operative part of that judgment.

130 It follows from all these considerations that the appeal must be dismissed.

Costs

131 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

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

133 Since Bank Mellat has applied for costs and the Council has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by Bank Mellat in both sets of proceedings.

134 Article 140(1) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.

135 The United Kingdom and the Commission are to bear their own costs in both sets of proceedings.

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

1. **Dismisses the appeal;**

2. **Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Bank Mellat in both sets of proceedings;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs in both sets of proceedings.**

von Danwitz Šváby Rosas

Juhász Vajda

Delivered in open court in Luxembourg on 18 February 2016.

[Signatures]