Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 26 February 2015 [1]

Case C-176/13 P

Council of the European Union
v
Bank Mellat
and
Case C-200/13 P
Council of the European Union
v

Bank Saderat Iran

(Appeals — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Persons and entities subject to freezing of funds and economic resources — Statement of reasons for the measures listing the appellants — Procedure for adoption of the measures — Manifest error of assessment)

1. These two related appeals are brought by the Council (of the European Union or 'EU') against judgments of the General Court [2] annulling various Council measures in so far as they included the names of two Iranian banks (Bank Mellat and Bank Saderat Iran; 'the banks') on lists of persons or entities whose funds and economic resources were to be frozen in the context of restrictive measures against Iran with the aim of preventing nuclear proliferation.

2. The Council submits in particular that in those judgments the General Court erred in law by:

— allowing the banks (which the Council considers to be emanations of the Iranian State) to invoke protection and guarantees relating to fundamental rights;

— examining each element in the Council's statement of reasons separately rather than together as a whole;

— considering that the banks should have had access to listing proposals submitted by Member States;

— requiring the Council to check the relevance and validity of the evidence before its initial adoption of a listing decision; and

— failing to take account of resolutions (UNSCRs) of the United Nations Security Council ('the Security Council') and of the fact that certain information came from confidential intelligence sources and reports.

1 — Original language: English.

2 — Judgments in *Bank Mellat* v *Council*, T-496/10, EU:T:2013:39 ('*Bank Mellat*'), and *Bank Saderat Iran* v *Council*, T-494/10, EU:T:2013:59 ('*Bank Saderat Iran*') (also 'the judgments under appeal').

Political and legal background

3. In UNSCR 1737,[3] the Security Council expressed serious concern over Iran's nuclear programme and decided, at paragraph 12, that all States must freeze funds, financial assets and economic resources owned or controlled by persons or entities designated in the annex thereto as being involved in various ways with that programme. Among the entities designated were the Atomic Energy Organisation of Iran ('AEOI'), Mesbah Energy Company ('MEC') and the Defence Industries Organisation ('DIO'). UNSCR 1747[4] further listed Novin Energy Company ('Novin') and a number of entities associated with the Aerospace Industries Organisation ('AIO'), including Sanam Industrial Group ('SIG'). Neither AIO itself nor the banks were designated in that resolution, nor have they been designated in or pursuant to subsequent UNSCRs.

4. The Council of the EU implemented those UNSCRs in particular in Regulation No 423/2007,[5] Article 7 of which required the freezing of all funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annexes IV and V. Those in Annex IV had been designated pursuant to paragraph 12 of UNSCR 1737, while those in Annex V had been identified as:

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

(b) being engaged in, directly associated with, or providing support for, Iran's development of nuclear weapon delivery systems, or

(c) acting on behalf of or at the direction of a person, entity or body referred to under (a) or (b), or

(d) being a legal person, entity or body owned or controlled by a person, entity or body referred to under (a) or (b), including through illicit means.'

5. The banks were not initially listed in Annex V.

6. Article 7(3) prohibited the making available of funds or economic resources, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes IV and V. However, Article 12(2) specified that that prohibition was not to give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe it.

7. Noting that Iran had failed both to cooperate and to comply with International Atomic Energy Authority ('IAEA') requirements and UNSCRs, and had constructed an enrichment facility at Qom, the Security Council adopted UNSCR 1929.[6] At paragraph 21, it called upon all States to 'prevent the provision of financial services', including transfers of assets or resources, if they had 'information providing reasonable grounds to believe that such services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities, … including by freezing any assets or resources on their territories … that are related to such activities … and applying enhanced monitoring to prevent all such transactions …'. Annex I to that resolution listed individuals and entities involved in nuclear or ballistic missile activities, including 'First East Export Bank, PLC[('FEE Bank'), which] 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'.

3 — Resolution 1737 (2006) adopted by the Security Council at its 5612th meeting on 23 December 2006.

4 — Resolution 1747 (2007) adopted by the Security Council at its 5647th meeting on 24 March 2007.

5 — Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), as subsequently amended.

6 — Resolution 1929 (2010) adopted by the Security Council at its 6335th meeting on 9 June 2010.

8. The Council of the EU then adopted Decision 2010/413.[7] Article 20(1)(a) and (b) of that decision required the freezing of all funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annexes I and II. Those in Annex I (Article 20(1)(a)) had been designated pursuant to the applicable UNSCRs, while those in Annex II (Article 20(1)(b)) were

'… 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 UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) [8] and UNSCR 1929 (2010) or this Decision … and entities owned or controlled by them or acting on their behalf, as listed in Annex II'.

9. Article 23(2) of Decision 2010/413 provides: 'The Council, acting by unanimity on a proposal from Member States or from the High Representative of the Union for Foreign Affairs and Security Policy, shall establish the list in Annex II and adopt modifications to it.'

10. The banks are both listed in Annex II.

11. The reasons stated for Bank Mellat are: '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 First East Export Bank which is designated under UNSCR 1929.'

12. For Bank Saderat Iran, the reasons stated are: 'Bank Saderat is an Iranian State-owned bank (94% owned by IRN government). Bank Saderat has provided financial services for entities procuring on behalf of Iran's nuclear and ballistic missile programmes, including entities designated under UNSCR 1737. Bank Saderat handled DIO (sanctioned in UNSCR 1737) and Iran Electronics Industries ['IEI'] payments and letters of credit as recently as March 2009. In 2003 Bank Saderat handled letter[s] of credit on behalf of Iranian nuclear-related [MEC] (subsequently sanctioned in UNS[C]R 1737).'

13. At the same time, Implementing Regulation No 668/2010[9] added the banks to the list in Annex V to Regulation No 423/2007. The reasons given are the same as in Decision 2010/413.

14. On 25 October 2010, the Council revised the restrictive measures in force by adopting Decision 2010/644[10] and Regulation No 961/2010.[11]

15. In the preamble to Decision 2010/644, it stated that it had carried out a complete review of the list of persons and entities set out in Annex II to Decision 2010/413, taking account of observations submitted by those concerned. It had concluded that, with two exceptions, the persons and entities listed should continue to be subject to the specific restrictive measures provided for in Decision 2010/413, and that the entries concerning certain entities should be amended. The banks continued

7 — 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).

8 — Resolution 1803 (2008) adopted by the Security Council at its 5848th meeting on 3 March 2008.

9 — 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).

10 — Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81).

11 — 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).

to be included in the list in the new Annex II to Decision 2010/413, the reasons given being essentially the same as in the previous version, except that Bank Mellat was no longer stated to be a State-owned bank, and Bank Saderat Iran was merely stated to be 'partly owned by the Iranian Government', the previous reference to 94% ownership being deleted.

16. Article 16(1) of Regulation No 961/2010 reiterated the criteria in Article 20(1)(a) of Decision 2010/413 (designation pursuant to UNSCRs) and provided for those concerned to be listed in Annex VII, while Article 16(2)(a) and (b) reiterated the criteria in Article 20(1)(b) of Decision 2010/413 and provided for those concerned to be listed in Annex VIII. Article 32(2) provided the same exemption from liability as Article 12(2) of Regulation No 423/2007. The banks were listed in Annex VIII, the reasons given being identical to those in the new Annex II to Decision 2010/413.

17. On 1 December 2011, the Council adopted Decision 2011/783[12] and Implementing Regulation No 1245/2011,[13] amending respectively Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010. In the preamble to each measure, it stated that it had carried out a complete review of the list set out in the relevant annex, taking account of the observations submitted by those concerned and had concluded that the persons and entities listed should continue to be subject to the specific restrictive measures provided for.

18. On 23 March 2012, the Council adopted Regulation No 267/2012.[14] Again, Article 23(1) requires the freezing of assets of those designated pursuant to UNSCRs, listed in Annex VIII, while Article 23(2) requires the freezing of assets of those listed in Annex IX. The criteria in Article 23(2)(a) and (b) are essentially the same as in Article 16(2)(a) and (b) of Regulation No 961/2010, while further criteria are added in Article 23(2)(c), (d) and (e), of which only (d) appears relevant to entities such as the banks. It covers those identified as: 'being other persons, entities or bodies that provide support, such as material, logistical or financial support, to the Government of Iran, and persons and entities associated with them'. Article 42(2) provides the same exemption from liability as Article 12(2) of Regulation No 423/2007. The banks are again both listed in Annex IX to that regulation. The reasons given are the same as those given in Annex II to Decision 2010/413 as amended by Decision 2010/644.

19. A number of limited derogations from the asset-freezing obligations were also set out in the legislation, in particular in Article 9 of Regulation No 423/2007, Article 20(6) of Decision 2010/413, Article 18 of Regulation No 961/2010 and Article 25 of Regulation No 267/2012. Each of those provisions essentially allows national authorities to authorise the release of frozen assets in order to make a payment due by a listed person, entity or body to another party, when the payment is due under an obligation which was entered into or arose before the date of the listing and which does not contribute to any transaction involving goods or technology related to nuclear development or other prohibited activity.

Brief summary of the procedure at first instance and judgments under appeal

20. On 7 October 2010, the banks brought separate actions, though raising essentially the same issues and arguments, before the General Court, challenging their respective listings, initially, in the annexes to Decision 2010/413 and Implementing Regulation No 668/2010. In the course of the proceedings, as new measures were adopted, they adjusted the scope of the annulment sought to include the annexes

12 — Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71).

13 — Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11).

14 — Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1).

to 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 measures concerned them. Those adjustments were accepted by the General Court, and are not called into question. The Commission intervened in support of the Council in both cases.

21. The General Court examined first the institutions' contention that the banks could not, as emanations of the Iranian State, invoke protection and guarantees relating to fundamental rights.

22. Dismissing that contention, it went on to examine the banks' first plea in law (infringement of the obligation to state reasons, rights of defence and right to effective judicial protection) in five stages: whether the banks could invoke rights of defence; the obligation to state reasons and rights of defence in relation to initial disclosure of the evidence; rights of defence in relation to access to the Council's file; rights of defence in relation to the banks' opportunity to state their point of view and their right to effective judicial protection; and alleged errors vitiating the Council's assessment and review. It upheld that plea to the extent that it concerned Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010 in so far as those acts concerned the banks.

23. It then considered the second plea in law (manifest error of assessment), concluding in each case that such facts as were established by the Council did not justify the imposition of restrictive measures.

24. Following examination of the first two pleas in law, the General Court reached the view that all the contested measures should be annulled in so far as they concerned the banks. It was therefore unnecessary to examine the third plea in law (infringement of the right to property and, in that connection, the principle of proportionality).

25. In the case of Bank Saderat Iran, the General Court also addressed the bank's claim that Regulation No 267/2012 was a decision in the form of a regulation. It decided that Regulation No 267/2012 was a true regulation, so that, pursuant to the second paragraph of Article 60 of the Statute of the Court of Justice ('the Statute'), its annulment was suspended for 2 months and 10 days, during which the Council could remedy the infringements found by adopting new restrictive measures (or, implicitly, lodge an appeal). The effects of Decision 2010/413, as amended by Decision 2010/644 and Decision 2011/783, were consequently maintained as regards the bank until the annulment of Regulation No 267/2012 took effect.

Claims and submissions on appeal

26. The Council, supported by the Commission and the United Kingdom, asks the Court to set aside the judgments under appeal, to dismiss the applications at first instance and to order each bank to pay the costs in its case both at first instance and on appeal. The banks ask the Court to dismiss the appeals and order the Council to pay the costs. Bank Saderat Iran has also lodged a cross-appeal, asking the Court to set aside in part the judgment under appeal in its case, to annul all the contested measures in so far as they apply to the bank and to order the Council to pay the bank's costs in the cross-appeal.

27. The Council submits that the General Court erred in law in its assessment of (i) the banks' entitlement to protection of fundamental rights, and thus the admissibility of the actions at first instance, (ii) the Council's obligation to state reasons, (iii) the banks' rights of access to the file, (iv) alleged defects in the Council's assessment of the facts and (v) the plea of manifest error of assessment. Of those grounds, the United Kingdom submits observations in support of (ii), (iii) and (v), while the Commission supports (ii) to (v).

28. The banks consider all five grounds unfounded but, in addition, Bank Mellat objects to the admissibility of the appeal as a whole in its case. In its cross-appeal, Bank Saderat Iran submits that the General Court erred in considering that (i) Decision 2010/413 and Implementing Regulation No 668/2010 were based on 'evidence concerning the applicant' and (ii) the second paragraph of Article 60 of the Statute applied to Regulation No 267/2012, leading it to draw unjustified conclusions in both regards.

29. I shall deal with those issues in the order set out in the previous two paragraphs.

Admissibility of the appeal (Case C-176/13 P)

30. The judgment under appeal was notified to the parties on 30 January 2013. Bank Mellat submits that, pursuant to Article 56 of the Statute, any appeal should have been lodged within two months, by 30 March 2013. The appeal was lodged on 9 April 2013 and is thus inadmissible. Article 51 of the Rules of Procedure of the Court of Justice, which extends procedural time-limits on account of distance by a single period of 10 days, is of no avail. The reference to distance in that provision must be meaningful: it seeks to ensure that litigants are not disadvantaged by their distance from the Court [15] or their continued use of non-electronic means of communication. The Council, however, is not distant from the Court in any meaningful sense and uses electronic means of communication. The rule in Article 56 of the Statute must therefore be applied strictly.

31. The Council responds that Article 51 of the Rules of Procedure is clear and precise. It applies equally to all litigants, both in its wording and in the Court's practice. The 1994 *BASF* judgment referred to by the bank was based on a now obsolete decision of the Court which differentiated between litigants according to their place of establishment.

32. I find it unfortunate that the Rules of Procedure should continue to refer to an extension of procedural time-limits 'on account of distance'. That term was appropriate before 2000, when differentiated extensions of between two days and one month were laid down in Annex II to those Rules, for 'all parties save those habitually resident in the Grand Duchy of Luxembourg'. The differentiation had been introduced at an early date, [16] when postal services were such that physical distance from the Court of Justice was a significant factor affecting compliance with time-limits. The replacement of those extensions by 'a single period of 10 days' clearly removed any consideration of distance vis-à-vis the Court as a procedural advantage or disadvantage and sought (in a context of generally available rapid or even instantaneous means of communication largely independent of distance) to create again a level playing field for all, with no reference to a party's place of residence or establishment. That being so, the survival of the words 'on account of distance' must be regarded as a vestige of a bygone epoch, having no function in the modern Rules of Procedure — all the more so in that there is no conceivable way of determining what degree of 'distance' might or might not give rise to an extension of time-limits.

33. That said, the actual text of Article 51 of the Rules of Procedure does provide that procedural time-limits are to be extended by a single period of 10 days. I therefore consider that the appeal was lodged in good time, within the period of two months extended by 10 days laid down by Articles 56 of the Statute and 51 of the Rules of Procedure, read together. Bank Mellat's objection of inadmissibility is thus unfounded.

15 — Judgment in *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraph 40.

16 — In Article 85(2) of the Rules of Procedure of the Court of Justice of the European Coal and Steel Community, of 4 March 1953 (Journal Officiel 1953, No 3, p. 37), the extensions ranged from one day for parties resident in Belgium to two months for those resident outside Europe.

Entitlement to protection of fundamental rights (admissibility of the actions at first instance)

34. In both judgments,[17] the General Court dismissed the arguments of the Council and the Commission to the effect that the banks could not, as emanations of the Iranian State, invoke protection and guarantees relating to fundamental rights. It observed that nothing in the Treaties or the Charter of Fundamental Rights[18] excludes legal persons who are emanations of States from protection of fundamental rights; indeed, the Charter guarantees the rights of 'everyone'. Article 34 of the ECHR,[19] on which the institutions relied, was a procedural provision which precluded the European Court of Human Rights from accepting applications from governmental organisations, so that a State party to the ECHR could not be both applicant and defendant before that court; it was not applicable to the Courts of the EU or to the present cases. The argument that a State cannot itself enjoy fundamental rights within its territory was of no relevance as regards rights to which emanations of a State might be entitled in the territory of other States. Consequently, legal persons which are emanations of non-member countries may invoke protection and guarantees relating to fundamental rights, in so far as those rights are compatible with their status as legal persons. In any event, the General Court found, the institutions had not established that the banks were in fact emanations of the Iranian State, that is, entities which participated in the exercise of governmental powers or which ran a public service under governmental control; their activities were of a commercial nature, and the State's participation was in each case a minority shareholding.

35. The *Council* submits that the General Court erred in law in both of those findings.

36. On the first point, the Council accepts that legal persons can enjoy fundamental rights and that States can enjoy procedural rights; but States cannot enjoy fundamental rights. Article 34 of the ECHR is not a procedural rule confined to that convention. A State must respect the fundamental rights of those under its jurisdiction, but cannot enjoy such rights itself. Nor can a sovereign State come under the jurisdiction of another State within the meaning of the ECHR. The Courts of the EU were not designed for resolving disputes between the EU and non-member countries concerning the latters' property rights. Although there is no express provision similar to Article 34 of the ECHR in the EU Treaties or the Charter, the same principle must apply in EU law, whether the legal persons concerned are Member States, non-member countries or governmental organisations or entities of either.

37. On the second point, the case-law of the European Court of Human Rights shows that the specific factual and legal context must be assessed carefully in order to determine whether an entity is governmental or non-governmental. The United Nations International Law Commission has proposed definitions of 'State' which cover instrumentalities of the State or other entities which perform acts in the exercise of sovereign authority, including State enterprises or other entities performing commercial transactions. The Court of Justice too has ruled[20] on the concept of the State, considering that an aid measure taken by a public undertaking may be imputed to the State by inference from the circumstances and context, including the ties between undertaking and the State; the mere fact that a public undertaking takes the form of a capital company under ordinary law does not preclude an aid measure taken by such a company from being imputable to the State. The General Court also failed to take account of the fact that, although its shareholding is now only 20% in Bank Mellat and 33% in Bank Saderat Iran, the Iranian Government still has predominant influence, since the other shareholdings are widely dispersed.

17 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 35 to 46, and *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 33 to 44.

18 — Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389; hereinafter also 'the Charter').

19 — Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.

20 — Judgment in *France* v *Commission*, C-482/99, EU:C:2002:294 ('*Stardust*'), paragraphs 55 to 57.

38. Finally, the Council states that its objection of inadmissibility at first instance applied to all the grounds invoked by the banks, since their actions sought to obtain annulment of the Council's decisions to order the freezing of their assets, which constituted an (albeit justified) interference in the fundamental right to enjoy property.

39. The *banks* submit, first, that the General Court found as a fact, not open to challenge on appeal, that they were not emanations of the Iranian State.

40. Second, those factual findings were correct in any event. None of the evidence adduced pointed to anything more than a minority State shareholding. In addition, the Council misrepresents the International Law Commission's definitions of a 'State'. That body actually said that entities performing commercial transactions could theoretically be emanations of the State if they performed governmental functions — but the banks perform no such functions. The *Stardust* case is irrelevant, as it has not been established that either bank acted on the instructions of the Iranian State. In the case of Bank Mellat, moreover, the United Kingdom Supreme Court has confirmed that the bank was not subject to government control and was not an emanation of the State. [21]

41. Third, the banks consider that the General Court did not err in law by holding that emanations of non-member countries may invoke protection and guarantees relating to fundamental rights. The Charter guarantees the rights of 'everyone'. Nor must the principle underlying Article 34 of the ECHR apply in EU law. The explanation to Article 47 of the Charter ('Right to an effective remedy and to a fair trial') clearly states that the protection is more extensive in EU law than under the ECHR. The Court of Justice has, moreover, systematically recognised Member States' rights of defence in litigation before it.

42. Finally, even if the General Court had erred both in fact and in law, that would have no impact on the outcome of the judgments under appeal. The Council's position is based on the banks' reliance on property rights at first instance. However, that concerned only the third plea in law in each case, which was not examined by the General Court. The grounds on which the General Court annulled the contested measures all related to infringements of procedural requirements invoked outside the framework of human or fundamental rights, and such requirements are recognised by the Court of Justice as capable of being relied upon by States.

43. I disagree with the Council's argument that States (and their emanations) cannot enjoy fundamental rights.

44. Both Article 34 of the ECHR and the *Stardust* case seem irrelevant. The General Court was correct to point out that Article 34 of the ECHR is a procedural rule with a specific purpose in relation to proceedings before the European Court of Human Rights, not an expression of a general principle applicable also throughout EU law. [22] And whether a grant of aid can be ascribed to a Member State has no bearing on whether the entity granting the aid must be regarded as an emanation of the State for other purposes.

45. Furthermore, as the banks have pointed out, the grounds on which the General Court in fact annulled the contested measures related to procedural requirements which can be relied upon by any party against which restrictive measures are taken, regardless of its status. Whether the banks were or were not emanations of the Iranian State therefore does not affect the validity of the grounds of annulment. [23]

21 — *Bank Mellat (Appellant)* v *Her Majesty's Treasury (Respondent)* (No 1) and (No 2), [2013] UKSC 38, paragraph 66, and [2013] UKSC 39, paragraphs 15, 16 and 32.

22 — See also point 61 of the Opinion of Advocate General Bot in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:470 ('*Kala Naft*').

23 — See, in general, points 57 to 75 of the Opinion of Advocate General Bot in *Kala Naft*, C-348/12 P, EU:C:2013:470.

46. Finally, the Council's argument that the General Court erred in law when it concluded that the institutions had not established that the banks were emanations of the State is ineffective. It is settled case-law that complaints concerning part of the reasoning in a judgment which is superfluous cannot serve as a basis for setting aside that judgment.[24] As is clear from the judgments under appeal,[25] the General Court considered whether the banks were in fact emanations of the Iranian State only for the sake of completeness, after rejecting the Council's argument that the banks could not rely on fundamental rights protection and guarantees.

47. In those circumstances, it is not necessary to address the banks' argument that the Council is challenging a finding of fact by the General Court.

Obligation to state reasons

48. The General Court took the view[26] that both the reasons stated in the contested measures and the three proposals for the adoption of restrictive measures sent to the banks by the Council had to be considered. The restrictive measures were based on the proposals. However, in the case of Bank Mellat, the third proposal and, in the case of Bank Saderat Iran, all three proposals were disclosed after the actions were brought and the claims adapted to cover Decision 2010/644 and Regulation No 961/2010. They could therefore be taken into consideration only to assess the legality of Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012.

49. With regard to Bank Mellat,[27] the General Court identified in all seven reasons for adopting restrictive measures (the first four being stated in the contested measures, the last three in the two proposals notified on 13 September 2010):

(i) according to Decision 2010/413 and Implementing Regulation No 668/2010, the bank was State-owned;

(ii) it engaged in a pattern of conduct supporting and facilitating Iran's nuclear and ballistic missile programmes;

(iii) it had provided banking services to UN and EU listed entities, entities acting on their behalf or at their direction, or entities owned or controlled by them;

(iv) it was the parent bank of FEE Bank, designated under UNSCR 1929;

(v) it provided banking services to AEOI and Novin, both subject to restrictive measures adopted by the Security Council;

(vi) it managed the accounts of AIO officials and an Iranian procurement agent;

(vii) since at least 2003 it had facilitated the movement of millions of dollars for the Iranian nuclear programme.

24 — See, for example, judgment in *Commission* v *Kvaerner Warnow Werft*, C-181/02 P, EU:C:2004:271, paragraph 49.

25 — See introductory words of paragraph 42 of the judgment in *Bank Mellat*, T-496/10, EU:T:2013:39, and paragraph 40 of the judgment in *Bank Saderat Iran*, T-494/10, EU:T:2013:59.

26 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 63 to 65, and *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 61 to 63.

27 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 66 to 67.

50. Of those reasons, the General Court found that (i), (iv) and (v) were, but (ii), (iii), (vi) and (vii) were not, sufficiently detailed to meet the requirements of the case-law, namely, to provide sufficient information for the person concerned to determine whether the measure is well founded or vitiated by error and for the Courts to review its lawfulness.

51. In the case of Bank Saderat Iran,[28] five reasons were identified (the first four being stated in the contested measures, the fifth only in the third listing proposal, notified as an annex to the rejoinder):

(i) the bank was owned by the Iranian State (94% or 'partly', according to different measures);

(ii) it had provided financial services to entities procuring on behalf of Iran's nuclear and ballistic missile programmes, including entities subject to UNSCR 1737;

(iii) in March 2009 it was still handling payments and letters of credit of DIO and IEI, both subject to restrictive measures;

(iv) in 2003 it handled letters of credit for MEC, which was linked to the Iranian nuclear programme;

(v) it provided financial services to SIG.

52. The General Court found that (i), (iii), (iv) and (v) were sufficiently detailed. It considered that (ii) was not a general allegation supplemented and illustrated by the following reasons but rather an independent reason and, as such, excessively vague, since it did not identify the entities to which financial services had been supplied.

53. Consequently, with regard to reasons (ii), (iii), (vi) and (vii) concerning Bank Mellat and to reason (ii) in the case of Bank Saderat Iran, the Council was in breach of its obligations to state reasons and to disclose to the banks the material relied upon against them.[29]

54. The *Council* submits that the General Court erred in law by considering each element in the statements of reasons separately instead of taking them together as a whole, and thus wrongly concluded that reasons (ii) and (iii) in the case of Bank Mellat and reason (ii) in the case of Bank Saderat Iran were too vague to satisfy the obligation to state reasons. The reasons are clearly interrelated: in the case of Bank Mellat, reason (iii) (banking services to UN and EU listed entities) specifies more precisely the pattern of conduct mentioned in reason (ii); in the case of Bank Saderat Iran, reasons (iii) and (iv) (handling payments and letters of credit of DIO and IEI, and on behalf of MEC) specify more precisely the conduct mentioned in reason (ii) (financial services to entities procuring on behalf of Iran's nuclear and ballistic missile programmes, including UN designated entities). The reasons taken together thus enabled the banks to determine whether the contested measures were well founded or vitiated by error, and the Courts to review their lawfulness. Even though the listed entities were not identified by name, the banks could have checked the UN and EU lists against their own lists of customers. The same is true of reason (vi) in the case of Bank Mellat (managing accounts of AIO officials and a procurement agent).

28 — See *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 64 to 73.

29 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraph 77, and *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraph 73.

55. The *Commission* agrees that the reasons must be read together, in their context (including the relevant UN lists of entities to which the banks should have avoided providing services). Each reason does not have to fulfil, separately, all the requirements for the obligation to state reasons. If all the reasons together allowed the banks to know that a client was listed and to determine whether the contested measures were well founded, were not vitiated by an error of fact and provided sufficient information to enable the Courts to review the lawfulness of the listing, then the Council could not be in breach of its obligation to state reasons.

56. The *United Kingdom* cites the Court's statement in *Kadi II*: 'Having regard to the preventive nature of the restrictive measures at issue, if, in the course of [their] review of the lawfulness of the contested decision, … the Courts of the European Union consider that, at the very least, one of the reasons mentioned … is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision. …' [30]

57. Both banks consider it essential that reasons should be considered individually and those which are too vague should not be allowed to go forward to the examination of possible errors of assessment.

58. Bank Mellat asserts that in its case reasons (ii), (iii), (vi) and (vii) were correctly found to be excessively vague. Reasons (ii) (pattern of conduct supporting and facilitating Iran's nuclear and ballistic missile programmes) and (iii) (services to listed entities, entities acting on their behalf or at their direction, or entities owned or controlled by them) contain no details. In order to ascertain which clients might have been concerned, the bank would have had to check not only for the names of UN and EU listed entities, but also for 'entities acting on their behalf or at their direction, or to entities owned or controlled by them', which cannot be identified from the lists themselves and could be virtually unlimited in number, over a considerable period of time. Since the Council must have known which entities were referred to, it could and should have identified them. Thus, whether reasons (ii) and (iii) are considered separately or together, they remain excessively vague. As regards reason (vi) (managing accounts of AIO officials and a procurement agent), the Council's only assertion is that the banks' records included customers' employers' identities, but no evidence is adduced. Since the Council does not mention reason (vii), it must be presumed to accept that the reason was excessively vague.

59. Bank Saderat Iran puts forward similar arguments. It adds that, with regard to reasons (iii) (handling payments and letters of credit of DIO and IEI) and (iv) (handling letters of credit for MEC), there was no indication whether the named entities were an exhaustive list or not, and the vagueness was compounded by the fact that UN-listed entities were stated to be 'among' those entities to which reason (ii) (services to entities procuring on behalf of Iran's nuclear and ballistic missile programmes, including entities subject to UNSCR 1737) referred.

60. It seems to me that the position taken by the institutions and the United Kingdom is correct in principle: where reasons are provided sequentially, they should be read together, and consecutive reasons can provide support and explanation for each other. That is particularly true of the reasons provided in the contested measures themselves, which are contained in a single paragraph for each bank. It is also true, however, for reasons provided separately (such as those in the contested measures on the one hand and those in any listing proposals communicated in good time on the other hand), since it is clear that the obligation on the institutions is to provide reasons which, read in context, will provide sufficient information to the parties adversely affected and to the EU Courts. [31] However, as the United Kingdom has correctly pointed out, it is sufficient that one such reason is adequately stated.

30 — Judgment in *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518 ('*Kadi II*'), paragraph 130.

31 — See judgment in *Kala Naft*, C-348/12 P, EU:C:2013:776, paragraphs 70 and 71.

61. I would thus agree that in each case reason (ii), although certainly vague when taken alone, is rendered more explicit by subsequent reasons (reasons (v) and possibly (vi) in the case of Bank Mellat; reasons (iii), (iv) and (v) in the case of Bank Saderat Iran) and should have been assessed in conjunction with them. The General Court therefore erred in law in its approach to the assessment of the obligation to state reasons.

62. Consequently, in the case of Bank Saderat Iran, reason (ii) (services to entities procuring on behalf of Iran's nuclear and ballistic missile programmes, including entities subject to UNSCR 1737) was not excessively vague when read together with reasons (iii), (iv) and (v), which identified four specific entities. Nor, in that context, does the fact that UN-listed entities were stated to be 'among' those entities to which reason (ii) referred give rise to uncertainty. However, while reasons (iii), (iv) and (v) undoubtedly clarify reason (ii), the latter adds nothing to the former and provides no clarification of its own. Therefore, although I take the view that the General Court should have considered that reason (ii) provided a framework for reasons (iii), (iv) and (v), which it found to be adequately stated, that error of approach cannot justify annulment of the judgment under appeal.

63. With regard to Bank Mellat, I would agree with the bank that reason (iii) (services to listed entities, entities acting on their behalf or at their direction, or entities owned or controlled by them) does not add sufficiently to the precision of reason (ii) (pattern of conduct supporting and facilitating Iran's nuclear and ballistic missile programmes). While it need not have been excessively difficult for the bank to ascertain whether its customers included entities actually listed, checking whether they included entities acting on behalf or at the direction of, or owned or controlled by, such listed entities could have proved excessively difficult in practice if the first check had proved negative. Moreover, the Council presumably knew the entities to which it was referring and could have communicated their identities. By not doing so, it failed to provide sufficient information for the bank to exercise effectively its rights of defence and for the General Court to carry out effective judicial review. It is true that in the present cases the banks did decide to challenge their listings, but that cannot negate the fact that a lack of information may make it more difficult for a potential applicant to take that decision or (within such a challenge) to disprove an allegation that is set out in vague terms.

64. However, the General Court found reason (v) (services to AEOI and Novin) to be adequately stated, and Bank Mellat has not contested that finding. In a manner comparable to the situation with Bank Saderat Iran, reasons (ii), (iii) and (v) read together can therefore be considered to satisfy the obligation to state reasons, even though reasons (ii) and (iii) alone cannot, and the latter do not in fact add anything useful to the statement of reasons.

65. As regards reason (vi) (managing accounts of AIO officials and a procurement agent), I agree that, in order for its argument to succeed, the Council would have needed to back up its assertion that the bank's records included customers' employers' identities. Whether such information was included is, moreover, an issue of fact which this Court is not competent to determine on appeal. Finally, as the bank points out, the Council does not appear to challenge the finding that reason (vii) was excessively vague.

66. Thus, even though I accept the Council's submission concerning the need to assess reasons together, I do not consider that it has identified, in that regard, any ground for annulment of the judgments under appeal.

Access to the file

67. Following the initial listing of the banks on 26 July 2010, and prior to its review of those listings on 25 October 2010, the Council notified two listing proposals submitted by Member States to Bank Mellat on 13 September 2010 and to Bank Saderat Iran on 28 October 2010. A third proposal was notified to both banks as an annex to the rejoinders at first instance, lodged in June 2011. However, the banks had to submit their observations on Decision 2010/413 and Implementing Regulation No 668/2010 by 15 September 2010.

68. In the judgments under appeal,[32] the General Court noted that the third proposal in the case of Bank Mellat and all three proposals in the case of Bank Saderat Iran were notified only after the expiry of the period for submitting observations on Decision 2010/413 and Implementing Regulation No 668/2010 and after the adoption of Decision 2010/644 and Regulation No 961/2010. It went on to state that, where the Council intends to rely on information submitted by a Member State in order to adopt restrictive measures, it must ensure, before adopting the measures, that the entity concerned can be notified of the information in time to be able effectively to make known its point of view. In these cases, the banks had not had that opportunity with regard to the proposals notified after 15 September 2010.

69. On appeal, the *Council* submits that the General Court erred in concluding, from the case-law to the effect that a listed entity must be informed of the material adduced against it and afforded the opportunity effectively to make known its view thereon,[33] that listing proposals from Member States should have been communicated to the banks. That case-law dated from a time when no specific reasons were given for designating listed persons and entities. Such reasons are now given; there is thus no justification for requiring listing proposals to be communicated separately when they are included in the statement of reasons, nor need they be communicated separately when they are not included, since the Council cannot be presumed to have relied upon them. The General Court should rather have applied the case-law to the effect that, when sufficiently precise information has been disclosed, enabling the entity concerned effectively to state its point of view on the material adduced against it, respect for the rights of the defence does not mean that the institution must spontaneously grant access to all the documents in its file.[34] In any event, the information in the reasons given was sufficient to enable the banks to express their point of view.

70. The *United Kingdom* cites *Kadi II*:[35] '… respect for the rights of the defence and the right to effective judicial protection requires that the competent Union authority disclose to the individual concerned … at the very least, the summary of reasons provided …, so that that individual is in a position to defend his rights …'. It is the statement of reasons rather than any listing proposal which must be disclosed in accordance with that judgment. A listing proposal would be of value only if it differed from the statement of reasons.

71. The *banks* submit that the Council is wrong in principle. The material in question 'should be notified …, in so far as possible, either concomitantly with or as soon as possible after the adoption of an initial decision to freeze funds'.[36] Neither the fact that the files contained only the listing proposals nor the assertion that those proposals would be of no use to the banks can absolve the Council from the requirement to provide them. It was for the banks, not the Council, to assess what was relevant with a view to presenting observations. Moreover, the listing proposals contained allegations not in the statement of reasons, which should have been disclosed, and they were the only material in the

32 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 78 to 96, and *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 74 to 90.

33 — Judgment in *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384 ('*OMPI*'), paragraph 93.

34 — Judgment in *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 97.

35 — Judgment in *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 111.

36 — Judgment in *OMPI*, T-228/02, EU:T:2006:384, paragraph 137.

file, so could not be withheld when access was requested — as it was. A listed entity cannot challenge the Council's assessment without disclosure of the underlying material. In these cases, the statement of reasons did differ from the listing proposals and the banks had no idea of the content of the Council's file until part way through the proceedings.

72. With reference to *Kadi II*, the banks submit, first, that the Court of Justice has consistently held that a designated entity has a right of access to the file [37] and to all material that the Council relied upon when deciding to designate it. The Council does not argue that disclosure was prevented for reasons of confidentiality. In the circumstances of Mr Kadi (who had already been designated by the UN, with the EU designation as a 'follow-on' measure), it may be enough to communicate the UN's summary reasons. Here, by contrast, the EU was acting under its autonomous sanctioning power and should communicate all the material.

73. As I understand this issue, the question raised by the Council is whether the General Court was correct in considering that a failure to communicate Member States' listing proposals to the banks, in order to enable them to present observations on those proposals, was an infringement of their rights of defence.

74. It is not disputed that all the listing proposals were in the final event communicated to the banks, that some of them were not communicated in sufficient time for observations on Decision 2010/413 and Implementing Regulation No 668/2010 to be submitted by 15 September 2010 or that — with one exception — those which were not communicated in sufficient time in fact contained no evidence or information which went beyond the statements of reasons in the contested measures. The exception was the third proposal in the case of Bank Saderat Iran, stating that the bank provided financial services to SIG, a UN and EU designated entity. It is thus only with regard to that item of information that earlier communication could in fact have affected the ability to present observations.

75. None the less, I agree with the banks that they should have been granted access to everything in the file on which the Council relied — at least to the extent that it did not contain confidential information [38] — in good time to enable them to present their observations. It was not possible for them to be certain that their observations were complete unless they had full access to at least the non-confidential elements of the file on which their proposed designation was to be based.

76. Nor was it for the Council to decide which items were or were not relevant for the purposes of the banks' comments. [39] The fact that, apart from the reference to SIG in the third proposal in the case of Bank Saderat Iran, the proposals which were not communicated in good time contained no information not already known to the banks cannot justify withholding them or delaying their communication. The banks could not be aware of that fact until they had seen the proposals.

77. Finally, it is clear from the case-law cited by the Council itself that 'on the request of the party concerned … the Council is required to provide access to all non-confidential official documents concerning the measure at issue', [40] and the Council stated in its pleadings at first instance that the banks had requested further information on the file. The 'principle of originator's consent', to which

37 — Judgments in *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775 ('*Fulmen*'), paragraph 60, and *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 99.

38 — In the present cases, the listing proposals appear to raise no issue of confidentiality that could have justified any reluctance to communicate them. They contain no information beyond the reasons for listing the banks as set out in the judgments under appeal (points 49 and 51 above; see further point 147 et seq. below).

39 — I would not exclude the possibility for the Council to decide to rely only on certain items in the file, having decided that they were sufficient to substantiate the reasons for listing the banks. In that case, however, there would be a breach of the banks' rights of defence if the Council subsequently decided to rely, in the event of a judicial challenge, on other items which had been withheld and on which the banks had therefore not had an opportunity to comment.

40 — Judgment in *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 97.

the Council referred in those pleadings but has not put forward on appeal, cannot in my view confer confidential status, for the purposes of respecting the rights of defence of an entity whose assets are to be frozen, on a document whose sole content concerns the conduct or alleged conduct of the entity in question. Such content cannot be confidential vis-à-vis that entity.

78. I therefore consider that the Council's argument has not identified any error of law in this regard in the judgments under appeal.

Defects in the Council's assessment

79. In the context of their first plea in law at first instance, the banks claimed that the Council did not carry out a genuine assessment of the circumstances of the case, merely adopting the proposals submitted by Member States, a defect affecting both the initial assessment and the regular review of the restrictive measures.

80. Dealing with that argument,[41] the General Court stressed the Council's duty to ensure that the contested measures were justified. When adopting an initial act, it must assess the relevance and validity of information and evidence submitted to it by a Member State in the context of Article 23(2) of Decision 2010/413. When adopting subsequent acts affecting the same entity, it must review the need to maintain the measures in the light of that entity's observations. In the present cases, there was no indication that the Council had checked the relevance and validity of the material submitted before adopting the initial acts listing the banks; indeed, the incorrect statements regarding State ownership indicated that no such checking had taken place. Thus 'the Council did not, when adopting Decision 2010/413 and Implementing Regulation No 668/2010, comply with the obligation to assess the relevance and the validity of the information and evidence against the applicant submitted to it, with the consequence that those measures are tainted by illegality'. However, in the subsequent measures the Council corrected the incorrect statements and reacted to the banks' observations, showing that it had reviewed the circumstances in the light of those observations.

81. The General Court did not, however, specify on which of the grounds of annulment set out in the second paragraph of Article 263 TFEU (lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers) it based its finding that the initial measures were tainted by illegality. At the Court's request, the parties in the appeal proceedings have given their views on that point.

82. The *Council* submits that the General Court erred in law in stating that, when adopting an initial act imposing restrictive measures, it must assess the relevance and validity of information and evidence submitted by Member States. What elements would need to be produced in order to show that such a check took place? Moreover, the evidence of the banks' support for Iran's nuclear proliferation activities came from confidential sources to which the members of the Council as a whole did not have access; they could not have carried out such a check and the finding that they did not do so was therefore irrelevant.

83. As regards the legal basis for annulment, the Council notes that the banks' plea in law was based on grounds falling within 'infringement of an essential procedural requirement'. However, the defect identified by the General Court was not an infringement of the obligation to state reasons or of rights of defence or to effective judicial protection. Those rights cannot apply before an initial decision to freeze funds is taken; it is necessary to preserve the surprise effect essential to the effectiveness of the

41 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 97 to 104, and *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 91 to 98.

measure.[42] Rights of defence and to effective judicial protection can be breached only after such a decision has been taken. In any event, there is no 'essential procedural requirement' for the Council to assess the relevance and validity of information presented to it in support of a proposal to impose restrictive measures.[43]

84. The *banks* submit that the General Court did not find that the files must show that checks had been made, merely that they did not. The Council does not deny that it must assess the relevance and validity of information and evidence submitted to it, nor that it did not carry out any checks; it contends that it could not do so because of its concerns of confidentiality. The General Court relied on the absence of evidence that the Council had conducted any proper check in order to find that it had not done so. If the alleged evidence came from confidential sources to which the Council as a whole did not have access, then clearly it cannot have been checked. The banks were thus listed on the basis of evidence that had not been seen by the decision maker and has not been made available to them or to the Court.

85. As regards the legal basis for annulment, the banks consider that, by failing to assess the relevance and validity of the information and evidence against them, the Council both (i) made a manifest error of assessment and/or infringed their rights of defence (infringement of a rule of law relating to the application of the Treaties) and (ii) failed to carry out a preliminary assessment of the listing proposal (infringement of an essential procedural requirement).

86. Articles 20(1)(b) and 23(2) of Decision 2010/413 make the Council responsible for listing those whose assets are to be frozen. It may not delegate that responsibility to Member States. It and the Member States must act in sincere cooperation and ensure that persons meeting the criteria, and only such persons, are listed in Annex II. A failure in the evaluation process needed to apply those articles amounts to a breach of a rule of law relating to the application of the Treaties.

87. The Council's duty should also be considered in light of *Kadi II* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), in particular the obligation set out at paragraphs 114 and 115 of that judgment: (i) 'to examine, carefully and impartially, whether the alleged reasons [for listing an entity or individual] are well founded', when deciding to maintain a listing following observations by the designated individual; and (ii) to consider whether to request the UN Sanctions Committee and, through it, the UN Member which proposed the listing, to disclose information or evidence, confidential or not, to enable the competent EU authority to discharge its duty of careful and impartial examination. At least some of that material must later be made available to the EU Courts so that in respect of the 'review of the lawfulness of the grounds which are the basis of the decision to list or to maintain the listing of a given person' the Courts may 'ensure that that decision is taken on a sufficiently solid factual basis'. Paragraph 118 of that judgment makes clear that those obligations are 'procedural safeguards'; they must thus be essential procedural requirements under Article 263 TFEU. The defect found by the General Court must be regarded as falling within the same legal ground for annulment as breaches of the obligations referred to by the Court of Justice in *Kadi II*.

88. However, in the banks' submission, *Europäisch-Iranische Handelsbank* v *Council*[44] supports an alternative conclusion that the Council's obligation is to assess the information and evidence presented to it in support of a listing proposal, and that breaches of such an obligation amount to manifest errors of assessment, to be regarded as an infringement of a rule of law relating to the application of the Treaty.

42 — Judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461 ('*Kadi I*'), paragraphs 338 to 341.

43 — Article 3(4) of the Council's Rules of Procedure states: 'Only items in respect of which the documents have been sent to the members of the Council and to the Commission at the latest by the date on which the provisional agenda is sent may be placed on that agenda.' It does not, however, specify that particular documents are required for a particular decision.

44 — Judgment in *Europäisch-Iranische Handelsbank* v *Council*, T-434/11, EU:T:2013:405, paragraphs 166 to 170, to which the Court referred in its question to the parties (see point 81 above).

89. None of the foregoing, however, precludes a conclusion that the Council's failure infringed the banks' rights of defence, covering the duty to provide access to the file and, logically, also to check that the file contained the minimum requisite information and evidence. Infringements of rights of defence are infringements of general principles of law, which are rules of law relating to the application of the Treaties.

90. The *Commission* does not accept that the Court file must provide proof that the Council checked the relevance and validity of the evidence submitted to it before adopting the relevant acts. Nor can an incorrect statement in the file be an indication that no checking took place. Iran's nuclear proliferation activities are by nature clandestine, so the evidence collected must be highly confidential in order to avoid endangering international cooperation and the persons who obtain information. Since the Council's examination of that information must receive an equivalent degree of confidentiality, the General Court is not in a position to state that no checks have been carried out. Moreover, the listing of the banks is objectively credible: they are important Iranian banks with significant international presence, in the effective control of the Iranian Government; they do not deny their business with certain listed entities; and they have been named by the Security Council. In that light, Member States' representatives cannot be held to have simply relied on other Member States' proposals when making their decisions in the Council, as the General Court implies.

91. As regards the legal basis for annulment, the Commission agrees with the Council and adds that in *Europäisch-Iranische Handelsbank* v *Council* (T-434/11, EU:T:2013:405) the General Court considered a comparable argument under the heading of 'manifest error of assessment'. The relevant legal ground was thus 'infringement of the Treaties or of any rule of law relating to their application'. The Council's failure to assess the information submitted to it in these cases did not affect the banks' rights of defence, make judicial review impossible or infringe any institutional rule in the Council's decision-making process.

92. As regards the legal basis for annulment, the *United Kingdom* considers that the ground can only be 'infringement of the Treaties or of any rule of law relating to their application'. The General Court's reasoning concerns the way in which the Council took the decision, not procedural aspects (such as statement of reasons or the right to be heard) arising after it was taken. The contested measures are rules of law relating to the application of the Treaties. In other contexts, where a competent body misapplies the law, makes an error in the assessment of the facts or exceeds the boundaries of its discretion, the decision will be annulled on the basis of an error of assessment. Thus, any error of assessment in imposing restrictive measures on the banks would be an infringement of the rules of law allowing such measures to be imposed.

93. It seems to me necessary first to be clear as to the basis on which the General Court decided that the Council's failure to comply with 'the obligation to assess the relevance and the validity of the information and evidence against the applicant submitted to it' had the consequence that the initial measures were 'tainted by illegality'.

94. In my view, that basis can only be breach of an essential procedural requirement or infringement of a rule of law relating to the application of the Treaties (namely, in these cases, the obligation to assess the facts correctly). By dealing with the issue under the general heading of 'infringement of the obligation to state reasons, the applicant's rights of defence and its right to effective judicial protection', the General Court appears to have considered it to relate to breach of an essential procedural requirement.

95. However, there appears to be no precedent for considering that prior assessment of the relevance and validity of information or evidence before a first listing, eminently desirable though it undoubtedly is in principle whenever circumstances permit, constitutes an 'essential procedural requirement' for taking a decision. If that were so, any failure to assess *all* the available material

supporting a reason for adopting a measure might lead to automatic invalidation of that measure. It therefore seems preferable to approach this on the basis that such an omission seems likely to increase significantly the risk of an error of assessment which could then constitute an infringement of a rule of law relating to the application of the Treaties.

96. Another approach would be to consider that the Council's failure to scrutinise fully the listing proposals submitted to it infringed the banks' rights of defence. It is settled law that observance of the right to be heard is, in all proceedings liable to culminate in a measure adversely affecting a person, a fundamental principle of EU law which must be guaranteed even in the absence of any specific rules, and which requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views,[45] and that right is an essential procedural requirement.[46] If the Council itself did not assess the evidence supporting the listing proposals, the banks could clearly not have been placed in a position to make their views known on that evidence.

97. However, failure to assess the relevance and validity of evidence before taking an initial decision cannot logically affect the rights of defence of the person concerned by the decision unless that person had (as was not the case here) a right to be heard before the initial decision was taken.[47] What information or evidence could or should have been disclosed to the banks at a later stage and/or seen by the General Court is a quite separate question. As the Council points out, the initial decisions required a surprise effect.[48] At the point when the banks were able to challenge those decisions, they could raise any such failures of assessment. Their rights of defence were thus unaffected by any internal shortcomings in the earlier decision-making process.

98. Consequently, it seems to me that the General Court's procedural criticism of the failure to assess the relevance and validity of the information and evidence supporting the listing proposals could not constitute a self-standing ground for annulment of the two measures concerned. That does not imply that the criticism was not justified, but it would seem preferable to consider that the lack of any indication that the Council assessed the relevance or validity of the information or evidence in its possession was a factor which could have been taken into account when examining the substantive quality of the Council's assessment.

99. I therefore consider that the Council is justified in its argument on appeal to the extent that the General Court erred in regarding a failure to assess the relevance and validity of the information and evidence supporting the listing proposals as tainting the initial measures by illegality. However, that conclusion as such does not mean that the judgments under appeal can be set aside on that ground alone. Issues of lack of (or failure to assess) evidence arise also under the next ground of appeal.

45 — See, for example, judgment in *Commission* v *Lisrestal and Others*, C-32/95 P, EU:C:1996:402, paragraph 21 and case-law cited.

46 — See, for example, judgment in *Commission* v *Italy*, 31/69, EU:C:1970:10, paragraph 13. However, there may be exceptions — see, for example, judgment in *Parliament* v *Reynolds*, C-111/02 P, EU:C:2004:265, paragraphs 57 to 60, where secondment of an EU official to a temporary post held at the discretion of a political group could be terminated without necessarily giving the official a hearing when the group had lost confidence in the official concerned.

47 — While I note the observations of Lord Sumption in *Bank Mellat* v *Her Majesty's Treasury* (No 2), cited in footnote 21, at paragraph 32 et seq., they were made in a different procedural framework. For my part, I am not prepared to rule out the possibility that, in very exceptional circumstances, a surprise effect might not be essential. (An example might be where the suspected person is already lawfully being detained in circumstances in which he is in no position to transfer funds in advance of listing.) Clearly, however, surprise will usually be required to guarantee effectiveness.

48 — See point 83 and footnote 42 above; see also judgment in *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 90.

Manifest error of assessment by the Council

100. At first instance, the banks claimed that the reasons relied on by the Council did not satisfy the conditions laid down by Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012 and were not substantiated by evidence. Consequently, the Council made a manifest error of assessment by adopting restrictive measures on the basis of those reasons.

101. In both judgments,[49] the General Court recalled its case-law[50] to the effect that judicial review of a measure imposing restrictive measures extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence and information for review by the Courts. The General Court examined in that light whether those reasons which were not excessively vague were well founded.

102. *With regard to Bank Mellat*,[51] the General Court found that reason (i) (State ownership, relied on solely in Decision 2010/413 and Implementing Regulation No 668/2010) was mistaken and could not justify the restrictive measures in those acts.

103. As regards reason (iv) (parentage of FEE Bank, designated by the Security Council), UNSCR 1929 justified FEE Bank's designation only by Bank Mellat's alleged involvement in nuclear proliferation, in terms corresponding, essentially, to reason (vii) (facilitating the movement of millions of dollars for the Iranian nuclear programme since 2003). It was based on mere allegation, was not distinct from the reasons concerning Bank Mellat itself and could not justify restrictive measures against it.

104. As regards reason (v) (services to AEOI and Novin), there was no evidence or information that Bank Mellat had supplied services to AEOI. It admitted supplying services to Novin but explained that it ceased to do so once restrictive measures were taken against Novin. Did such services provide support to nuclear proliferation within the meaning of Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012? The question was whether the bank acted to end the supply of services as soon as it knew or might reasonably have suspected that Novin was involved in nuclear proliferation. The Council had not submitted detailed and specific evidence or information to suggest that the bank knew of Novin's involvement before UN restrictive measures were adopted. For the subsequent period, the institutions accepted that, on the bank's immediate instructions, no further services were supplied to Novin, apart from outstanding payments unrelated to nuclear proliferation. Pointing out that Article 20(6) of Decision 2010/413, Article 9 of Regulation No 423/2007, Article 18 of Regulation No 961/2010 and Article 25 of Regulation No 267/2012 permit, in essence, the unfreezing of funds in order to make payments due under obligations entered into by the entities concerned prior to their being listed, provided that there is no link to nuclear proliferation, the General Court considered that the circumstances did not justify restrictive measures against the bank. Since the restrictive measures were not justified by reasons (i), (iv) or (v), the General Court upheld Bank Mellat's second plea in law.

105. With regard to Bank Saderat Iran,[52] the General Court found that reason (i) (94% State ownership in Decision 2010/413 and Implementing Regulation No 668/2010, partial State ownership in subsequent measures) was mistaken as regards the 94% holding and insufficient, as regards the partial ownership, to imply that the bank was providing support to nuclear proliferation. It therefore did not justify the restrictive measures.

49 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 109 to 112, and *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 103 to 106.

50 — Judgment in *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraphs 37 and 107.

51 — See *Bank Mellat*, T-496/10, EU:T:2013:39, paragraphs 113 to 139.

52 — See *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 106 to 117.

106. As regards reason (iv) (handling letters of credit for MEC in 2003), the Council had not established that services were provided to MEC, or that the bank was aware of the involvement of that company, which in 2003 was not yet subject to restrictive measures, in nuclear proliferation. That reason therefore did not justify restrictive measures.

107. The same was true of reason (v) (services to SIG), in so far as Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012 were concerned. The Council had produced nothing to show that the bank had provided financial services to SIG after the adoption of restrictive measures against it or had been previously aware of the group's involvement in nuclear proliferation.

108. As regards reason (iii) (services to DIO and IEI), the bank accepted that DIO and IEI were engaged in nuclear proliferation and that it had in the past handled their letters of credit, but not that those services justified the adoption of restrictive measures — they were ordinary banking services relating to export letters of credit issued by third party banks, unrelated to nuclear proliferation. The General Court therefore asked the Council for information on the letters of credit, but the Council failed to produce any. The General Court did not accept the argument that the bank had also failed to produce any material. It was for the Council to produce the evidence and information on which it relied. The fact that it was impossible to determine whether the bank's arguments were well founded should not prejudice it. Since the reason was the Council's failure to meet its obligation to submit relevant evidence and information, the second plea in law was upheld.

109. On appeal, the *Council* submits that the General Court erred in law in upholding the banks' claims.

110. First, it submits that Advocate General Bot's doubts in *Kadi II*[53] as to whether the case-law on the thoroughness of judicial review of complex economic assessments should be applied in terrorist cases, and whether intelligence analyses and sources should be subject to the EU Courts, should apply in connection with Iran's clandestine nuclear activities. When the supporting evidence and information for a listing proposal come from confidential sources, the Council may legitimately protect those sources by proceeding on the basis of the statement of reasons proposed by the Member State concerned, provided that they are objectively plausible. That was the case with regard to important Iranian banks with an international presence, under the effective control of the Iranian Government, consistent with the principle of mutual trust between Member States and between the latter and the institutions of the Union, and the principle of sincere cooperation in Article 4(3) TEU.

111. The Council then cites the case-law of the European Court of Human Rights: 'entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused … In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest.'[54] That statement concerned criminal charges and should apply *a fortiori* to restrictive measures which are merely precautionary measures. If confidential evidence were disclosed, individuals' lives or safety could be endangered, and the methods used jeopardised. Where information is supplied in confidence by a third country, international cooperation must be maintained.

112. The Council further considers that the General Court did not attach sufficient weight to the UNSCRs when assessing justification. In *Kadi I*, the Court of Justice stressed that 'it is necessary for the [EU] to attach special importance to the fact that, in accordance with Article 24 of the Charter of the United Nations, the adoption by the Security Council of resolutions under Chapter VII of the

53 — Opinion in *Commission* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:176 ('*Kadi II*'), point 66.

54 — Eur. Court H. R., *Jasper v. the United Kingdom* [GC], no. 27052/95, § 52, 16 February 2000.

Charter constitutes the exercise of the primary responsibility with which that international body is invested for the maintenance of peace and security at the global level …'.[55] As Advocate General Bot observed in *Kadi II*, with regard to the fight against terrorism, there is a need for 'confidence and collaboration … rather than mistrust' between the EU and the United Nations, which share the same values concerning respect for fundamental rights.[56] Those observations are in line with Articles 3(5) and 21(1) and (2)(c) TEU and Declaration No 13 of 13 December 2007.

113. The Council then makes specific submissions with regard to each of the judgments under appeal.

114. In the case of Bank Mellat, first, the General Court wrongly considered that reason (iv) (parent company of FEE Bank, designated in UNSCR 1929) had to be distinct from the other reasons concerning Bank Mellat. More fundamentally, by dismissing the Security Council's statement concerning Bank Mellat's facilitation of transactions for Iranian nuclear, missile and defence entities as a mere allegation, the General Court ignored the case-law on the relationship between EU law and UNSCRs, as well as the provisions of the EU Treaties. It should have found the Security Council's clear statement to provide sufficient justification for the EU's restrictive measures against Bank Mellat.

115. With regard to the finding to the effect that reason (v) (banking services for Novin) did not justify the contested measures since the bank had terminated its relationship on becoming aware of Novin's designation, the Council submits that the provision of services to Novin while it was engaged in developing Iran's nuclear proliferation activities shows that the bank is likely to provide such services in future to others engaged in the same activities. A precautionary asset freeze was therefore justified, regardless of whether the bank might actually know that such entities were involved in, or that the services provided would be used in connection with, those activities. The services to Novin constituted support for Iran's nuclear proliferation activities within the meaning of Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012, which the General Court interpreted in an excessively narrow way. It thereby also substituted its own assessment for the Council's with regard to the facts justifying the imposition of the asset freeze, contrary to its own case-law.[57]

116. In the case of Bank Saderat Iran, the Council submits that the General Court wrongly failed to take account of UNSCR 1803, which called upon States 'to exercise vigilance over the activities of financial institutions in their territories … in particular with … Bank Saderat, and [its] 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)'. There must have been good reason to consider that the bank was contributing to Iran's nuclear proliferation activities, but the General Court failed to acknowledge that fact.

117. Furthermore, reason (iii) (handling letters of credit for DIO and IEI, when both had already been designated by the UN and the EU) was itself sufficient to justify the restrictive measures. Letters of credit for goods exported by DIO and IEI could be indirectly relevant to Iran's nuclear proliferation activities. It is therefore wrong to consider that handling export letters of credit for designated entities could not justify applying the asset freeze provisions against the bank. Again, the General Court adopted an excessively narrow interpretation and substituted its own assessment for that of the Council. In any event, since the Council indicated the date of the bank's handling of the letters of credit (March 2009) and the listed entities concerned (DIO and IEI), and since those facts were not denied, the bank, not the Council, should have been required to supply further information.

55 — Judgment in *Kadi I*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 294.

56 — Opinion in *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:176, point 85.

57 — See judgment in *People's Mojahedin Organization of Iran* v *Council*, T-256/07, EU:T:2008:461, paragraph 138 and case-law cited.

118. The *Commission* stresses that the banks' activities must be seen globally. Listings were considered at Security Council level, and the Council must consider such guidance. The General Court could not merely look at the Council's evidence on specific transactions and disregard the fact that the banks' activities were internationally considered suspect in relation to Iranian nuclear proliferation. The restrictive measures were decided in response to Iran's continuing nuclear programme in the absence of cooperation with the IAEA. The assets of a number of Iranian banks have been frozen on the ground that Iran will use banking facilities to pay for imported materials and technology. An Iranian importer is likely to turn to an international Iranian bank for letters of credit. Cutting such a bank off from a major market serves the international community's goal. The General Court overlooked the Council's political discretion in determining the seriousness of the threat and choosing the means of preventing it.

119. With regard to Bank Mellat, the Commission submits that the past provision of services to Novin clearly shows that the bank can provide services to importers involved in nuclear development and proliferation. The Council must be able to prevent future provision of such services without having to prove a direct link between specific services or transactions and nuclear proliferation. In balancing listed entities' rights against the EU's security interests the Council must have some discretion in determining whether the provision of financial services assists listed entities in the proliferation of nuclear activities.

120. With regard to Bank Saderat Iran, the Commission notes that the bank admits providing services to at least DIO and IEI, both engaged in nuclear proliferation; the criterion in Article 23(2)(a) of Regulation No 267/2012 ('providing support for Iran's proliferation-sensitive nuclear activities') is thus fulfilled. There is no need to prove that specific services or transactions were directly linked to such activities; the funds and assets of entities known to be engaged in nuclear proliferation are unlikely to be compartmentalised so as to distinguish between nuclear-related and other activities. As the General Court itself stated in *Bank Mellat*,[58] a foreign financial institution should end any relationship with a client as soon as it reasonably suspects that client to be engaged in, directly associated with or providing support to nuclear proliferation.

121. The *United Kingdom* agrees with both institutions and submits that the General Court erred in failing to take a similar approach to that in *Bank Melli Iran*.[59] The payments in each case (scholarships and expenses of a nuclear research and development body, which justified listing in *Bank Melli Iran*, and handling letters of credit for defence and electrical industry bodies in this case) were made after designation of the relevant entities. The United Kingdom also notes that the need to balance security concerns against ensuring that decisions taken by EU institutions are appropriate and well founded were raised in *Fulmen*.[60]

122. The *banks* note that the Council contends not that the allegations were substantiated by evidence, but that it does not need to provide any substantiation or evidence. They also note that the insufficiency of reason (i) in both cases (State control) is not contested. Next, the Council is not entitled to argue that the General Court failed to take proper account of the confidential sources of the underlying evidence, since it had made no reference to confidentiality at first instance. The argument that the principles of trust and cooperation between institutions and Member States allows the Council to rely on a single Member State informing it that evidence exists is contrary to the rule of law. The banks each make six further points in this respect.

58 — T-496/10, EU:T:2013:39, paragraph 125.

59 — Judgment in *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraphs 143 to 149.

60 — Judgment in *Fulmen*, C-280/12 P, EU:C:2013:775.

123. First, the Council's duty to adduce evidence follows from the right to effective judicial protection. Adequate judicial review of the substantive legality of a listing decision extends to assessment of the accuracy of the facts, evidence and information on which it is based, not merely of abstract probability. [61]

124. Second, putting the burden of proof on the sanctioned entity requires it to prove a negative, a significant and inappropriate departure from the Court's case-law.

125. Third, the principle of sincere cooperation requires Member States to be candid with the Council and the Council to be open and candid in judicial proceedings.

126. Fourth, the Council's position amounts to trusting a single Member State to assess whether there is valid and reliable evidence of conduct that meets a criterion for designation. That makes a mockery of the requirement that the Council must act unanimously when imposing restrictive measures [62] and of the obvious need for a decision maker to act on the basis of evidence that he can see and appraise. Delegation of that function to a single Member State is an abdication of responsibility, is manifestly unlawful and is not permitted (still less required) by the principle of sincere cooperation.

127. Fifth, the need to protect confidential information might justify not communicating evidence to parties or their lawyers. It cannot justify withholding evidence relied upon by the Council from the Court seised of an application for annulment. The Council goes far beyond the European Court of Human Rights in *Jasper*. [63] It is irrelevant that the Rules of Procedure do not provide explicitly for the EU Courts to take account of evidence which has not been communicated to the parties or lawyers; the rules must be construed in light of the primary law obligation of confidentiality which binds all EU institutions including the Court of Justice. [64] The Court may thus provide for confidential evidence to be seen by it but not by the parties or their lawyers.

128. Sixth, the Council cannot simply assert that security concerns exist; it must give sufficient detail for the Court to assess that they exist and justify a limitation on procedural rights. In a national context, where security considerations are relied upon to justify incomplete disclosure, it is for the competent authority to show that security would otherwise be compromised; there is no presumption that the reasons invoked exist and are valid. [65] The same must apply by analogy to the Council.

129. In response to the United Kingdom, the banks distinguish the circumstances of *Bank Melli Iran* (T-35/10 and T-7/11, EU:T:2013:397) from those of their own cases. In that case the General Court found as facts that the applicant made payments on behalf of AEOI and that, since highly-qualified personnel are of paramount importance for nuclear research and development, the payment of even relatively small scholarship funds intended to ensure education in that field constitutes support for those activities. Here no comparable findings of fact were possible, because the Council produced no details. As regards the reference to *Fulmen* (C-280/12 P, EU:C:2013:775), the banks consider that paragraphs 57 to 83 of the judgment in that case vindicate their position, in particular paragraph 78: '… since the competent European Union authority refused to produce evidence to the Courts of the European Union, it is for those Courts … to base their decision solely on the material which has been disclosed to them'.

61 — Judgments in *E and F*, C-550/09, EU:C:2010:382, paragraph 57; *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137, paragraph 46; *OMPI*, T-228/02, EU:T:2006:384, paragraph 159; *Fulmen* v *Council*, T-439/10 and T-440/10, EU:T:2012:142, paragraphs 96 and 97; and *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 142.

62 — Article 31(1) TEU.

63 — Cited in footnote 54.

64 — Judgment in *Adams* v *Commission*, 145/83, EU:C:1985:448, paragraph 28.

65 — Judgment in *ZZ*, C-300/11, EU:C:2013:363, paragraph 61.

130. With regard to reason (iv) (parentage of FEE Bank, designated in UNSCR 1929) in its case, *Bank Mellat* submits that the requirement that the EU Courts should pay due regard to the United Nations cannot absolve them from reviewing the lawfulness of EU acts. The Court of Justice must ensure full review, in the light of fundamental rights under EU law, of any EU measure designed to give effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations. [66] Moreover, the Security Council decided not to designate Bank Mellat. The Council was not implementing UN sanctions, and full review of the facts underlying the listing is necessary. The relevance of the Security Council's statements must be assessed in that context. Nor is there any evidence that the Council relied on those statements. Reason (iv) is simply that Bank Mellat is the parent of FEE Bank which is itself designated; no reference is made to the Security Council's vague statement about Bank Mellat.

131. With regard to the first part of reason (v) (services to AEOI), the bank rejects the assertion that the principle of sincere cooperation entitles the Council to rely without verification on undisclosed evidence provided by a single Member State. Under Article 4(3) TEU the institutions must cooperate with national bodies only to assist them in carrying out tasks which flow from the Treaties. [67] If that provision could be relied on to circumvent rights of defence or the right to full judicial review, the institutions would in effect assist a Member State to renege on its Treaty obligations. The principle of sincere cooperation requires Member States to cooperate with the institutions to support EU activities and to ensure compliance with fundamental rights, not to hinder their proper functioning. There is a primary duty on Member States to support the objectives of the Union and, at most, a secondary duty on the institutions to lend support to national policies which do not conflict with EU policies. The Council's reliance on unsubstantiated information from a single Member State to adopt EU-wide sanctions is contrary to the right to full review of EU legislation for compliance with all fundamental rights guaranteed under EU law. In such circumstances the principle would effectively undermine the primacy of EU over national law.

132. As regards the second part of reason (v) (services to Novin), first, the Council may not challenge the General Court's assessment of the facts or ask this Court to substitute its own assessment. Second, 'the mere risk that the entity concerned may provide support for nuclear proliferation in the future is not sufficient'. [68] Third, there is no such risk and no basis for alleging it. The General Court found that the bank did not provide support to any proliferation sensitive activities. It would be irrational to conclude that the bank was likely to provide banking services in the future that would constitute such support; rather, as the bank had not previously supported Iranian nuclear proliferation, there was no reason to suppose that it would do so in the future.

133. Bank Saderat Iran states, with regard to reasons (iv) (handling letters of credit in 2003 on behalf of MEC) and (v) (financial services for SIG), that it had denied the allegations and that the Council had produced no evidence to substantiate them. The General Court was therefore right to find a manifest error of assessment.

134. With regard to reason (iii) (handling letters of credit on behalf of DIO and IEI), the bank acknowledged its involvement in export letters of credit *in favour of* DIO and IEI (issued and paid by international banks which have not been designated), but not that it handled letters of credit *of* DIO and *of* IEI or was involved after their designation. The Council provided no evidence that these were not ordinary banking services unrelated to nuclear proliferation. The General Court therefore rightly held that the Council was required to provide details, since it relied on specific letters of credit

66 — Judgment in *Kadi I*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 283 to 285, 299, 303, 304, 306 to 308 and 326.

67 — See also judgment in *X BV*, C-429/07, EU:C:2009:359, paragraph 21.

68 — Judgment in *Manufacturing Support & Procurement Kala Naft* v *Council*, T-509/10, EU:T:2012:201, paragraph 115.

allegedly handled by the bank, and the bank should not be prejudiced by the fact that it was impossible to determine whether the arguments were well founded. The General Court found as a fact that the Council had failed to establish that 'handling' export letters of credit can constitute support for Iran's nuclear activities within the meaning of the contested measures.

135. It cannot be for an entity subjected to restrictive measures to disprove the basis for their imposition but only for the Council to prove its allegations. Admittedly, a Member State has to refute allegations in infringement proceedings, but Member States must cooperate sincerely to ensure that EU law is applied. Entities subject to restrictive measures are under no such duty. However, the bank did volunteer information on its banking services to DIO and IEI; the Council did not reciprocate, contrary to its duty of sincere cooperation with the General Court.

136. Finally, the General Court's judgment cannot be set aside on the ground of failure to acknowledge the Security Council's statement, which is not linked to any reason given for designating the bank; nor can that statement constitute such a reason because it is not mentioned in the statement of reasons or any listing proposal and does not meet the criteria for listing. Nor does the Council explain how the General Court's analysis could have been affected by 'acknowledging' that statement, which provides no evidence of anything alleged by the Council. It is pure speculation to say that the Security Council must have had good reason to consider that the banks were contributing to Iran's nuclear activities. Whether there was any contribution is a question of fact, which the Council must prove by evidence. It is equally speculative to assert that the Security Council did not designate the bank because of divergent political and economic interests. The proper inference is that there was no evidence to justify designation.

137. In the light of all those arguments, it seems to me that there are two sets of issues to be considered.

138. First, what did the Council have to do in order to be able legitimately to impose restrictive measures on the banks? In particular: was it necessary (as the General Court, in substance, considered) to establish specific instances of conduct which, in one way or another within the meaning of the criteria set out in Regulation No 423/2007, Decision 2010/413, Regulation No 961/2010 or Regulation No 267/2012, as the case may be, supported Iran's proliferation-sensitive nuclear activities? Or was it sufficient (as the Council now in essence submits) that the banks should be objectively in a position to provide such support in future through transactions of kinds inherent in their business and that, having regard to the overall context (including statements in UNSCRs and past conduct, which need not be proved to have constituted intentional or knowing support or to have had any direct link to Iran's nuclear proliferation activities), it is likely that they would do so?

139. A second set of issues concerns the availability of evidence substantiating the reasons given for imposing restrictive measures. It is inconceivable that such measures could be justified without any evidence whatever, but it must be considered to what extent the evidence, particularly if it may be confidential in nature, must be made available to those subject to the measures, to the General Court and indeed to the Council itself in order to satisfy the requirements both of correct assessment of the facts and of adequate judicial review of that assessment.

140. With regard to both sets of issues, it seems to me that the Council has failed to establish any error of law which would justify setting aside the judgments under appeal.

141. First, the criteria for including persons, entities or bodies in the lists of those whose assets and resources are to be frozen are those which the Council has imposed upon itself. They are clear and specific. They are factual in nature and are capable of proof by factual evidence. They relate to the actual, ascertainable conduct (or status) of the parties concerned, not to the abstract possibility of particular types of future conduct.

142. In particular, the criteria laid down [69] do not include the mere fact of being stated to have facilitated transactions (as was the case for Bank Mellat in UNSCR 1929) or recommended for vigilance (as was the case for Bank Saderat — possibly not the same entity as Bank Saderat Iran — in UNSCR 1803) in a UNSCR, when there has been no actual designation, in or pursuant to a UNSCR, for assets and resources to be frozen. Nor do they include the mere fact of being in a position to, or being likely to, engage in conduct of the kinds set out, but only — and explicitly — the fact of (being identified as) engaging in such conduct. Finally, the criteria in the EU legislation for inclusion in a list of those whose assets and financial resources are to be frozen do not include mere suspicion, or even reasonable grounds to believe, that the more specific criteria are met. That last position might admittedly appear to diverge somewhat from paragraph 21 of UNSCR 1929, which includes freezing of assets and resources as one course of action to take when a State has 'information that provides reasonable grounds to believe that such … assets or resources could contribute to Iran's proliferation-sensitive nuclear activities…'.[70] However, there is still a requirement of underlying information. Moreover, another course of action provided for in the same paragraph in such circumstances is enhanced monitoring of financial transactions, and it was that option which was taken up by the Council.[71]

143. Furthermore, the reasons provided by the Council for listing the banks are themselves factual in nature and capable of proof by factual evidence, and relate to the objectively ascertainable conduct or status of the banks. However, not all the reasons correspond specifically to the criteria for listing laid down by the Council itself. In the case of Bank Mellat, being the parent company of the UNSCR-designated FEE Bank does formally not fall within any of those criteria.[72]

144. I have already taken the view that the reasons given should be assessed as a whole, to the extent that they may, read cumulatively, provide mutual explanation and support. I therefore consider that the General Court should not have disregarded the possible relevance of, for example, partial State ownership of Bank Saderat Iran[73] or Bank Mellat's ownership of FEE Bank for the assessment of the other, more specific, reasons, to the extent that such elements were based on adequate evidence or were undisputed.

145. However, I do not consider that the General Court can be criticised for not having drawn conclusions vis-à-vis Bank Mellat from any unsubstantiated speculation that it was merely political disagreement within the Security Council which gave rise to the designation of FEE Bank but not of Bank Mellat. It is only if there had been any actual evidence of the reasons for the (admittedly, at first sight, surprising) differentiation that the General Court would have been required to take such reasons into consideration.

146. Nor can the General Court be criticised for not concluding, from the fact that the banks had provided services to certain entities involved in nuclear development but only subsequently designated, that they were likely in future to provide services to other such entities, and that such a likelihood, if it were to exist, could justify restrictive measures. On the one hand, it seems to me that (particularly since the banks denied any prior knowledge of nuclear involvement on the part of their

69 — See point 4 et seq. above.

70 — See point 7 above.

71 — See, for example: Article 11(1) of Regulation No 423/2007; recital 21 in the preamble to, and Article 10(1)(d) of, Decision 2010/413; Articles 5(3), 12(2) and 23(1)(d) of Regulation No 961/2010; and Articles 3(5), 5(3), 18(2) and 32(1)(d) of Regulation No 267/2012.

72 — If FEE Bank had been the parent company and Bank Mellat the subsidiary, the latter would then have been 'owned or controlled by' a designated entity (see also judgment in *Melli Bank* v *Council*, T-246/08 and T-332/08, EU:T:2009:266, paragraph 103). It is perhaps surprising that the listing criteria do not also include 'owning or controlling' a designated entity, since it is clear that a parent company is likely to exert considerable influence over the conduct of a subsidiary, as has consistently been recognised in particular in the field of competition law (see, for example, judgment in *Akzo Nobel and Others* v *Commission*, C-97/08 P, EU:C:2009:536, paragraph 54 et seq.).

73 — The situation with regard to Bank Mellat is different, in that the Council relied, in Decision 2010/413 and Implementing Regulation No 668/2010, on the erroneous assertion that the bank was State-owned, and made no reference to any degree of State ownership in the subsequent measures.

clients) such a circumstance does not justify considering them more likely than any other bank to provide such services in future; on the other hand, it is in any event not the likelihood of providing financial services to designated entities, but the actual provision of such services, which constitutes the criterion for inclusion in the list of those whose assets and resources are to be frozen.

147. I turn therefore to the second broad issue, concerning the availability of evidence, with particular regard to its possibly confidential nature, a matter on which I cannot accept the Council's submissions.

148. As I have pointed out, all the criteria for listing, and all the reasons given by the Council for listing the banks, are factual elements capable of proof. Some of those reasons (such as engaging in a pattern of conduct facilitating nuclear programmes, or providing services to unspecified entities) might be more difficult to prove, while others (partial State ownership, or providing services to named entities) might be easier; however, they are all, in principle, capable of being established by evidence.

149. In that regard, not only must the reasons for listing, when read together, be sufficient to establish that at least one criterion for listing is met, but there must necessarily be evidence of the factual basis for such reasons as are relevant to that criterion or those criteria.[74]

150. How, when and to whom must that evidence be available?

151. First of all, it is of course desirable that evidence should be available to the Council at the time when that body takes its decision. In that regard I have considered that a failure to examine the evidence before taking the initial listing decision, which must normally have a surprise effect,[75] could not as such infringe the banks' rights of defence.[76] Moreover, for restrictive measures of the kind in issue here, it may sometimes (although not always) be necessary to take an initial decision rapidly on the basis of information provided by a Member State, which cannot materially be verified by the Council as a body in the time available.

152. However, such considerations cannot absolve the Council from its duty of careful and impartial examination when re-examining that initial decision with a view to confirmation.[77] Adequate evidence must therefore be available to the Council at that time. Consequently, reliance at the latter stage, by the Council as a whole, on evidence which has been assessed by only one Member State (or, in the present cases, at most, three Member States, since there were three listing proposals) and was not made available to the Council, cannot constitute adequate assessment. As a matter of principle, the Council cannot content itself with rubber-stamping what it has been told by its constituent Member States. The individual Member States sit in the Council, but the institution itself is a separate body and must discharge its own responsibilities. If that did not happen in the present cases, there is, in my view, ample justification for annulling the contested measures on the ground of manifest error of assessment, in so far as they were based on reasons themselves based on evidence which had not been assessed by the Council.

153. The General Court did not, however, base its findings of manifest error of assessment on the specific ground that the Council itself had not assessed any evidence but, rather, on the fact that, regardless of whether the Council as such possessed or had assessed any substantiating evidence, none was made available to the General Court at the litigation stage. The Council now submits that it was

74 — Judgment in *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119.

75 — See footnote 47 above.

76 — Point 97 above.

77 — Judgment in *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 114 and 115. See also point 72 et seq. of my Opinion in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:482.

unable to produce such evidence for reasons of confidentiality linked to the need to protect intelligence sources, and that the General Court should have accepted that situation and considered that the assertions contained in the listing proposals submitted by Member States constituted sufficient evidence, provided that they were plausible.

154. That position is in my view untenable, first and foremost, because the Council did not place any reliance at first instance on the confidentiality of the evidence or information underlying the reasons on which it based the listing decisions, even though the banks had in their pleadings mentioned the possible existence of confidential information.[78] The General Court therefore cannot be criticised for basing its conclusions as regards the pleas of manifest error of assessment on what was placed before it. It was fully entitled to evaluate the Council's assessment on the basis of such evidence as was available and such facts as were agreed between the parties.[79]

155. Furthermore, and in any event, I find it difficult to accept without further explanation the Council's blanket assertion that disclosure of evidence might endanger those who provided the information or the means by which it was obtained, or that failure to respect the confidentiality of information supplied by a third country might undermine international cooperation. Essentially, the only evidence on which the Council might have been relying — other than that of State ownership or, in the case of Bank Mellat, parentage of FEE Bank, with regard to which there appear to be no issues of confidentiality — concerned transactions actually or allegedly carried out by the banks on specific dates for specific clients. The Council has given no indication whatever as to the impossibility of presenting such evidence without revealing sources or methods, or why a third country whose services had obtained the evidence might not wish it to be revealed. Moreover, the evidence itself (as opposed to the way in which it was obtained) concerns matters within the knowledge of the banks, against which the Council can therefore not rely on any claim of confidentiality. Nor may it rely on any such claim vis-à-vis the General Court.[80]

156. To sum up, with regard to the Council's assessment of the facts underlying the reasons given for listing Bank Mellat: first, the Council has not taken issue with the General Court's dismissal of reason (vii) (facilitation of movements of millions of dollars for the Iranian nuclear programme); second, it provided no evidence that the bank had supplied services to AEOI, to AIO officials or to an Iranian procurement agent (reason (v) in part and reason (vi)); third, it neither asserted nor established that any new services[81] had been supplied to Novin after Novin's designation by the Security Council or the bank became aware of Novin's involvement in nuclear development (remainder of reason (v)) and the fact that services had previously been provided was not, and did not substantiate, a criterion for listing; fourth, without substantiation of reasons (v) and (vi), there was no other substantiation of reasons (ii) and (iii) (engaging in a pattern of conduct supporting and facilitating Iran's nuclear and ballistic missile programmes, and providing services to UN and EU listed entities, respectively); fifth, being the parent company of FEE Bank (reason (iv)) was not a reason which met a criterion for listing; finally, State ownership (reason (i)) did not on its own meet any criterion for listing, was only partial (and the extent of ownership has not been shown to confer any 'predominant influence' on the State) and was in any event relied on only in Decision 2010/413 and Implementing Regulation No 668/2010.

78 — Here, I note that the right to disclosure is not absolute (see, for example, Eur. Court H. R., *Jasper*, cited in point 111 and footnote 54 above; see also the judgment of the Eur. Court H. R., *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 205 et seq., ECHR 2009, and case-law cited there).

79 — See, for example, judgments in *Fulmen*, C-280/12 P, EU:C:2013:775, paragraphs 78 and 79, and *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 123 and 127.

80 — Judgment in *Kadi II*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 125.

81 — The Council does not appear to challenge the General Court's findings concerning payments of amounts due under instruments issued *before* the adoption of restrictive measures against Novin.

157. I therefore conclude that the Council has not identified any error in law on the part of the General Court which would justify setting aside the judgment under appeal in the case of Bank Mellat.

158. With regard to the Council's assessment of the facts underlying the reasons given for listing Bank Saderat Iran: first, the Council failed to provide evidence or detailed information concerning the services allegedly provided by the bank to DIO, IEI, MEC or SIG (reasons (iii), (iv) and (v)); second, without substantiation of those reasons, there was no other substantiation of reason (ii) (providing services to entities procuring on behalf of Iran's nuclear and ballistic missile programmes, including entities subject to UNSCR 1737); finally, State ownership (reason (i)) did not on its own meet any criterion for listing and was inaccurately stated to amount to 94% in Decision 2010/413 and Implementing Regulation No 668/2010 (and the extent of ownership has not been shown to confer any 'predominant influence' on the State).

159. I therefore conclude that the Council has not identified any error in law on the part of the General Court which would justify setting aside the judgment under appeal in the case of Bank Saderat Iran.

160. I would accordingly dismiss in their entirety the Council's allegations of errors of law on the part of the General Court in its analysis of the banks' pleas of manifest error of assessment.

Evidence concerning Bank Saderat Iran (cross-appeal by Bank Saderat Iran)

161. At paragraph 95 of the judgment under appeal, the General Court stated: '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'. At paragraph 96, it went on to consider that it was thus clear that, 'when adopting the subsequent contested measures, the Council reviewed the circumstances of the case in the light of the applicant's observations, since it corrected the statement about the Iranian State's holding in the applicant's share capital and expressed its view on the applicant's arguments concerning its activities in relation to the letters of credit'.

162. In its cross-appeal, *Bank Saderat Iran* submits that the General Court erred in law by holding that the information on which the Council based Decision 2010/413 and Implementing Regulation No 668/2010 contained 'evidence concerning the applicant', which was capable of assessment. Consequently, it further erred in finding that the failure to assess that evidence did not vitiate the subsequent measures. At first instance, the bank had stressed that the Council's assessment had been based not on evidence but simply on listing proposals, so that there could be no assessment of any evidence concerning it. The General Court however based paragraph 95 of the judgment under appeal on the erroneous premiss that there was evidence to be assessed. No evidence was in fact presented to the Council, which acknowledges in its appeal that it saw none, as any evidence that may have existed was confidential. Both the initial and the subsequent measures should therefore have been annulled on this ground alone.

163. The *Council* accepts that, if there had been no information or evidence at all concerning the bank's designation, it could not have carried out an assessment. However, some evidence and information was available, and the Council was able to assess it. The question whether the information and evidence was sufficient or sufficiently substantiated to justify the bank's listing is distinct from the question whether the Council could carry out an initial assessment and whether a subsequent review took place. Consequently, even if the wrong conclusion was drawn from the information and evidence available, that does not mean that no initial assessment or subsequent review could be carried out. The General Court made no error of law by finding that the Council reviewed the circumstances of the bank's listing before adopting the subsequent measures against it.

164. It seems to me, first, that this part of Bank Saderat Iran's cross-appeal is inadmissible in that, contrary to Article 178(1) of the Court's Rules of Procedure, it does not seek to have set aside, in whole or in part, the decision of the General Court, that is to say, the operative part of the judgment under appeal. What the bank explicitly requests the Court to do is to set aside that judgment 'to the extent of the erroneous grounds … identified'. An appeal formulated in that manner is inadmissible. [82]

165. Point 1 of the operative part of the judgment under appeal annulled all the measures (both initial and subsequent) whose annulment was sought by the bank, in so far as they concerned it. The bank does not seek to have that annulment set aside in any way, nor could its argument, if successful, have that effect. All the bank seeks in this part of its cross-appeal [83] is recognition that the measures could have been annulled solely on the ground that the Council saw no evidence.

166. In any event, I consider that the bank is focusing on a terminological detail here — and possibly on an unfortunate translation. The French version of the judgment under appeal (which, as is known, is the version in which the judgment was drafted and deliberated upon) uses the more general word 'éléments' ('material') where the English uses 'evidence'. Whatever the Council may or may not have done, it is clear that material was submitted to it before the adoption of Decision 2010/413 and Implementing Regulation No 668/2010. The relevance and validity of that material should have been assessed at that stage. The General Court found that it was not. It does not seem relevant to distinguish between evidence and (as yet) uncorroborated statements in that context. The General Court's conclusion was simply that the Council had not fulfilled its duty to check the relevance and validity of what was submitted to it. By accepting that the Council had taken account of the bank's subsequent observations when reviewing the case, the General Court was in no way taking as its premiss that the previous material constituted evidence, in the strict sense, concerning the applicant.

167. I would therefore dismiss this ground of the cross-appeal.

Article 60 of the Statute (cross-appeal by Bank Saderat Iran)

168. In Article 288 TFEU, a *regulation* is defined as having general application and as being binding in its entirety and directly applicable in all Member States, whereas a *decision which specifies those to whom it is addressed* is binding only on them. The first paragraph of Article 60 of the Statute provides that an appeal is not to have suspensory effect. However, under the second paragraph, decisions of the General Court declaring a *regulation* to be void are to take effect only as from the date of expiry of the period for lodging an appeal or, if an appeal is lodged within that period, as from the date of its dismissal.

169. During the procedure at first instance, Bank Saderat Iran drew attention to the order in *Akhras* v *Council*, in an appeal against an order dismissing an application for suspension of the operation of acts, including regulations, imposing restrictive measures on persons and entities related to the regime in Syria. In that order, the President of the Court of Justice stated that '[e]ven if, as maintained by the appellant with *arguments which do not appear to be unfounded*, the second paragraph of Article 60 of the Statute … is not applicable in the case of regulations such as those contested in the main proceedings by the appellant, it remains the case that the grant of interim measures in the present case was refused not because of the effects of that provision … but … because the condition relating to urgency was not satisfied'. [84]

82 — See, for example, judgment in *Al-Aqsa* v *Council and Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 43 to 47 and case-law cited.

83 — Point 2 of the operative part of the judgment under appeal is challenged in the second part of the cross-appeal (see point 168 et seq. below). It is true that point 3 of the operative part '[d]ismisses the action as to the remainder' but, on the one hand, I can find no 'remainder' to be dismissed after points 1 and 2 and, on the other hand, Bank Saderat Iran makes no reference to point 3 of the operative part.

84 — Order in *Akhras* v *Council*, C-110/12 P(R), EU:C:2012:507, paragraph 29, emphasis added.

170. The General Court considered [85] that 'the President of the Court of Justice did not closely examine the applicability of the second paragraph of Article 60 of the Statute to the regulations imposing restrictive measures, since he did no more than state that, while the arguments submitted on that point by the applicant … did not appear to be "unfounded", they were none the less ineffective'. [86] It therefore decided, in particular, that Regulation No 267/2012 was a true regulation to which the second paragraph of Article 60 of the Statute applied, so that the Council could, within the time-limit fixed for lodging an appeal, remedy the infringements found by adopting, if appropriate, new restrictive measures with respect to the bank (or, implicitly, lodge an appeal having suspensive effect as regards the annulment). Consequently, in order not to jeopardise legal certainty, the effects of Decision 2010/413 (which, as amended, imposed on the bank measures identical to those in Regulation No 267/2012) were also maintained until the annulment of Regulation No 267/2012 took effect.

171. In its cross-appeal, *Bank Saderat Iran* submits that, properly analysed, all the contested regulations are not true regulations but decisions in the form of regulations, being addressed to and concerning a limited number of specific entities. The annulment of the bank's listing should therefore have been given immediate effect. It draws an analogy with an article of an anti-dumping regulation imposing duties on the products of named producers or a regulation allocating import licences on the basis of individual applications, both of which have been treated by the Court of Justice as collections of individual decisions. [87] The decisional nature of listings of the kind in issue is underlined by the duty of individual notification in Article 15(3) of Regulation No 423/2007, and was accepted by Advocate General Mengozzi in *Bank Melli Iran*. [88] Article 60 of the Statute maintains a regulation applying throughout the EU in force pending the outcome of any appeal in order to mitigate the effect of invalidating general rules which might on appeal turn out to be valid. The same concern does not apply to a regulation addressed to an individual and comprising what is in substance a decision, which falls within the general principle in the first paragraph of Article 60 of the Statute.

172. The *Council* rejects the bank's analogy with regulations imposing anti-dumping duties or allocating import licences. The judgments cited by the bank concerned the question of 'direct and individual concern' as conferring standing to challenge an act. In *Kadi I* [89] and *Bank Melli Iran* [90] the Court considered that the lists in the annexes to regulations imposing restrictive measures were of general application, binding in their entirety and directly applicable in all Member States, as with any regulation. The same should apply here. Moreover, the contested measures affect not only the persons and entities designated but also many others doing business with them. In addition, Regulation No 267/2012 requires Member States to lay down appropriate penalties for infringements, and it is imperative to avoid any legal uncertainty pending the outcome of an appeal. Finally, if the second paragraph of Article 60 of the Statute did not apply, and regulations on the freezing of funds were annulled by the General Court with immediate effect, successful applicants would be able to dispose of their assets so as to avoid the effects of any subsequent asset freeze. An appeal against such annulment, even if successful, would be deprived of any practical effect.

173. The *Commission* stresses that the obligations laid down in the contested measures are addressed not to the persons or entities listed but to those who hold funds or economic resources belonging to or controlled by such persons or entities, or who might be in a position to make funds or economic resources available to them.

174. I consider that this part of the cross-appeal must be dismissed also.

85 — See *Bank Saderat Iran*, T-494/10, EU:T:2013:59, paragraphs 122 to 126.

86 — Paragraph 122 of the judgment under appeal.

87 — Judgments in *NTN Toyo Bearing and Others* v *Council*, 113/77, EU:C:1979:91, paragraph 11, and *International Fruit Company and Others* v *Commission*, 41/70 to 44/70, EU:C:1971:53, paragraph 21.

88 — Opinion in *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:426, point 41.

89 — Judgment in *Kadi I*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 241.

90 — Judgment in *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 45.

175. First, it is immediately clear from the definitions of 'regulation' and 'decision' in Article 288 TFEU that Regulation No 267/2012 falls within the former and not the latter. It is thus to be regarded as a true regulation within the meaning of both that provision and Article 60 of the Statute.

176. Second, the Court has in any event already explicitly dealt with this matter in its judgment in *Kadi I* (C-402/05 P and C-415/05 P, EU:C:2008:461), at paragraph 241 et seq., finding that a closely analogous regulation was indeed a true regulation for the purposes of the Treaty definition. The reasons on which the Court based that finding — to which Bank Saderat Iran does not even refer in its cross-appeal — are essentially the same as those now put forward by the institutions.

177. By contrast, the bank's references to the case-law on anti-dumping regulations and the Opinion of Advocate General Mengozzi in *Bank Melli Iran* (C-548/09 P, EU:C:2011:426) are beside the point. The two judgments which it cites concern standing to challenge an act of direct and individual concern to the applicant, and it is in that regard also that Advocate General Mengozzi considered that Regulation No 423/2007 was a hybrid measure — a measure of general application, which none the less needed to be notified to the individuals affected. The requirement of individual notification to those whose funds or assets are to be frozen does not affect the general application of such a regulation vis-à-vis all those who may be in possession of such funds or assets or the need to maintain legal certainty pending the outcome of an appeal.

178. I therefore consider that the General Court made no error in law in considering Regulation No 267/2012 to be a true regulation, falling within the scope of the general rule in the first paragraph of Article 60 of the Statute.

Conclusion

179. In the light of all the above considerations, I am of the opinion that the Court should dismiss both the appeals and Bank Saderat Iran's cross-appeal as unfounded. In accordance with Articles 138, 140 and 184 of the Rules of Procedure, read together,

— the Council should bear its own costs and those of the banks in relation to the main appeals;

— Bank Saderat Iran should bear its own costs and those of the Council in relation to the cross-appeal; and

— the United Kingdom and the Commission should bear their own costs in relation to both the appeals and the cross-appeal.