OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 14 January 2010[1]

I – Introduction

1. By order of 30 April 2008 the House of Lords (United Kingdom) referred to the Court of Justice, pursuant to Article 234 EC, a question for a preliminary ruling turning on the interpretation of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan[2] ('Regulation No 881/2002' or 'the regulation').

2. The Court is called upon to give a ruling on the meaning of Article 2(2) of that regulation against the background of proceedings between Ms M, Ms A and Ms MM ('the appellants') and HM Treasury, concerning the applicability of the prohibitions, laid down by that provision, to social security and assistance benefits due to the spouse of a person included in the list drawn up by the Sanctions Committee of the United Nations Security Council in accordance with Resolution 1267 (1999).

II – Legislative context of the reference

A – *The resolutions of the United Nations Security Council*

3. On 16 January 2002 the United Nations Security Council ('the Security Council') adopted Resolution 1390 (2002), laying down the measures that States must take with respect to Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and

1 — Original language: Italian.
2 — OJ 2002 L 139, p. 9.

entities associated with them, as referred to in the list created pursuant to Security Council Resolutions 1267 (1999) and 1333 (2000), and regularly updated by the Sanctions Committee of the Security Council ('the Sanctions Committee') established by Resolution 1267 (1999).

4. In accordance with Paragraph 2(a) of Resolution 1390 (2002), all States are to:

'Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory'.[3]

5. On 20 December 2002, the Security Council adopted Resolution 1452 (2002) authorising specific exceptions for humanitarian purposes to the restrictive measures imposed by Resolution 1390 (2002).

6. Paragraph 1 of Resolution 1452 (2002) provides that the obligation to freeze funds does not apply to, inter alia:

'funds and other financial assets or economic resources that have been determined by the relevant State(s) to be (a) necessary for basic expenses, … after notification by the relevant State(s) … of the intention to authorise, where appropriate, access to such funds, assets or resources …'

B – *The legislation of the European Union and of the European Community*

7. In order to give effect to Security Council Resolution No 1390 (2002), on 27 May 2002 the Council adopted Common Position 2002/402/CFSP concerning restrictive measures against Usama bin Laden, members of the Al-Qaeda organisation and the Taliban and

3 — Footnote not relevant to the English text.

other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP. [4]

8. Article 1 of Common Position 2002/402 states that that common position 'applies to Usama bin Laden, members of the Al-Qaeda organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list drawn up pursuant to' Security Council Resolutions Nos 1267 (1999) and 1333 (2000). Article 3 provides that:

'The European Community, acting within the limits of the powers conferred on it by the Treaty establishing the European Community:

— shall order the freezing of the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in Article 1,

— shall ensure that funds, financial assets or economic resources will not be made available, directly or indirectly, to or for the benefit of the individuals, groups, undertakings and entities referred to in Article 1'.

9. Giving effect to Common Position 2002/402, on 27 May 2002 the Council adopted Regulation No 881/2002 which, as is apparent from the recitals in the preamble thereto, especially the first to fourth recitals, is intended to implement Resolution No 1390 (2002) so far as the territory of the Community is concerned.

10. Article 1 provides that for the purpose of the Regulation the following definitions are to apply:

'1. "[F]unds" means financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts;

4 — OJ 2002 L 139, p. 4.

interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing.

2. "[E]conomic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

...'

11. Article 2 of the regulation provides thus:

'1. All funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I shall be frozen.

2. No funds shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I.

3. No economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I, so as to enable that person, group or entity to obtain funds, goods or services.'

12. Article 8 of the regulation is worded as follows:

'The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with relevant information at their disposal in connection with this Regulation ...'

13. Article 10(1) of the regulation provides that:

'Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.'

14. Annex I to the regulation contains the list of persons, groups or entities referred to in Article 2 thereof.

15. On 27 February 2003 the Council adopted the legislative measures necessary to give effect to the derogations for humanitarian purposes provided for by Security Council Resolution No 1452 (2002), mentioned in paragraph 5 above, that is to say, Common Position 2003/140/CFSP concerning exceptions to the restrictive measures imposed by Common Position 2002/402/CFSP [5] and Regulation (EC) No 561/2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation No 881/2002. [6]

16. Article 1 of Regulation No 561/2003 inserts in Regulation No 881/2002 a new Article 2a, of which subparagraphs 1 and 2 provide as follows:

'1. Article 2 shall not apply to funds or economic resources where:

(a) any of the competent authorities of the Member States, as listed in Annex II, has determined, upon a request made by an interested natural or legal person, that these funds or economic resources are:

(i) necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(ii) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

5 — OJ 2003 L 53, p. 62.
6 — OJ 2003 L 82, p. 1.

(iii) intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or frozen economic resources; or

(iv) necessary for extraordinary expenses; and

(b) such determination has been notified to the Sanctions Committee; and

(c) (i) in the case of a determination under point (a)(i), (ii) or (iii), the Sanctions Committee has not objected to the determination within 48 hours of notification; or

(ii) in the case of a determination under point (a)(iv), the Sanctions Committee has approved the determination.

2. Any person wishing to benefit from the provisions referred to in paragraph 1 shall address its request to the relevant competent authority of the Member State as listed in Annex II.

The competent authority listed in Annex II shall promptly notify both the person that made the request, and any other person, body or entity known to be directly concerned, in writing, whether the request has been granted.

The competent authority shall also inform other Member States whether the request for such an exception has been granted.'

C – *The relevant provisions of national law*

17. In the light of the order for reference and of the observations submitted by the parties to these proceedings, the relevant national legislation may be recapitulated as follows.

18. The United Kingdom implemented Security Council Resolutions Nos 1390 (2002) and 1490 (2002) and gave effect to Regulation No 881/2002 in its own legal system by adopting the Al-Qa'ida and Taliban (United Nations Measures) Order 2002 [7] ('the Order of 2002'). That order was amended by means of adopting the Al-Qa'ida and Taliban (United

7 — SI 2002 No. 111.

Nations Measures) Order 2006 [8] ('the Order of 2006'), which entered into force on 16 November 2006 and, as is made clear by the annexed explanatory note, is intended to give effect to, inter alia, Regulation No 561/2003. [9]

19. Article 7 of the Order of 2002, headed 'Making funds available to Usama bin Laden and associates', is worded as follows:

'Any person who, except under the authority of a licence granted by the Treasury under this article, makes any funds available to or for the benefit of a listed person or any person acting on behalf of a listed person is guilty or an offence under this Order'. [10]

20. By virtue of article 20(1) of the Order of 2002, headed 'Penalties and proceedings', any person offending against article 7 is to be liable to a fine and/or a term of imprisonment not exceeding seven years.

21. Article 8 of the Order of 2006,which – as from 16 November 2006 – has replaced article 7 of the Order of 2002, provides as follows:

'1. A person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a person referred to in article 7(2) unless he does so under the authority of a licence granted under article 11.

2. A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

...'

22. Article 11 of the Order of 2006, headed 'Licences', provides that:

'1. The Treasury may grant a licence to exempt acts specified in the licence from the prohibition in article 7(1) or 8(1).

8 — SI 2006 No. 2952.

9 — According to the observations of the United Kingdom, the parties in the main proceedings are agreed that the new measure in 2006 entails no effects with any bearing on the instant case.

10 — Footnote not relevant to the English text.

2. A licence may be –

(a) general or granted to a category of persons or to a particular person;

(b) subject to conditions;

(c) of indefinite duration or subject to an expiry date.

3. The Treasury may vary or revoke a licence at any time.

4. The Treasury, where they [sic] grant, vary or revoke a licence, must –

(a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person, and

(b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury consider appropriate to publicise the licence, variation or revocation.

5. Any person who, for the purpose of obtaining a licence, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is guilty of an offence.

6. Any person who has done any act under the authority of a licence and who fails to comply with any conditions attaching to that licence is guilty of an offence'.

23. Article 20(3) of the Order of 2006 provides that when a licence granted by the Treasury under article 7 of the Order of 2002 had effect immediately before the coming into force of the Order of 2006, that licence should continue to apply as if it had been granted under article 11 of the Order of 2006.

III – Facts, question referred for a preliminary ruling and procedure

24. The appellants in the main proceedings, residing in the United Kingdom, live with their husbands and children. The appellants' husbands are included as natural persons in the list contained in Annex I to the regulation.

25. It is apparent from the observations of the United Kingdom Government that the husband of one of the appellants is entitled to disability living allowance payable by the authorities in that country, which is at present paid into an account in his wife's name, while the husbands of the two other appellants receive no social security or social assistance benefits. From the procedural documents it is clear that, from the financial point of view, those persons are wholly dependent on their spouses, the appellants, who ensure that their family's essential needs are satisfied.

26. On account of their personal situations, the appellants are entitled to various special non-contributory benefits (income support, disability living allowance, child benefit, housing benefit, council tax benefit), payable by the competent administrative United Kingdom bodies (HM Revenue and Customs and the Secretary of State for Work and Pensions), amounting to several hundred pounds a week.

27. In July 2006 the Treasury, the respondent in the main proceedings, after finding that the sums paid to the appellants could be used to cover the basic expenses of the family to which a person included in the list annexed to the regulation belongs, and considering therefore that those sums could be regarded as 'made available for the benefit' of those persons within the meaning of Article 2(2) of the regulation, and of article 7 of the Order of 2002, decided to make the payment of the benefits to the appellants subject thenceforth to the issuing of a licence of indefinite duration to the paying administrative bodies.

28. That licence is subject to certain detailed rules differing according to circumstances, intended to enable the appellants to draw, from the bank accounts into which the benefits are paid, sufficient sums to meet the essential needs of their families. In particular, the licence fixes limits to the withdrawal of cash, requires a debit card to be used for purchases, and requires the receipts for expenses to be sent to the Treasury every month so as to make it possible to check that those

purchases do not go beyond what is strictly necessary to meet the family's basic expenses. Moreover, the licence warns the appellants that to make cash, financial assets or resources available to their husbands is an offence punishable under national criminal law.

29. Taking the view that those rules ought not to be applied to their circumstances, the appellants brought an action challenging them before the High Court. In their opinion, the payment of social security and assistance benefits to the spouses of persons included in the list in Annex I to the regulation falls outside the ambit of Article 2 of the regulation and, in consequence, is not conditional upon a licence for the purpose of Article 2a.

30. The High Court dismissed the appellants' action, holding that the payment of benefits to the spouses of persons included in the list could be regarded as indirectly making funds available for the benefit of such persons, thus falling within the ambit of the prohibition laid down by Article 2(2) of the regulation. The appellants appealed against that judgment of the High Court. On 6 March 2007 the Court of Appeal dismissed the appeal, upholding in its entirety the reasoning of the court of first instance.

31. The appellants then lodged an appeal with the court of last instance, the House of Lords, whose Appellate Committee on 21 February 2008 presented its report in which it noted how the appeal raised some questions concerning the interpretation of Article 2(2), in particular, whether the expression 'for the benefit of' used in that provision must be understood in a broad sense, that is to say, as including any application of money from which designated persons may derive some benefit, or whether it does not rather refer only to cases in which funds and/or economic resources are expressly made available to such persons, so that they are in a position to choose freely how to use them.

32. In the order for reference the House of Lords accepts that a licence would be required if social security and social assistance benefits were to be paid to the spouses of the appellants, or to permit the latter to make funds and/or economic resources available to their spouses; it observes, however, that the question arising in the instant case is rather whether a licence is necessary in order for

social security and social assistance benefits to be paid to the appellants.

33. According to that court, too broad an interpretation of the expression 'for the benefit of' in Article 2(2) of the regulation conflicts with Article 2(3), which prohibits making economic resources available to a designated person only when to do so would enable that person 'to obtain funds, goods or services'. That condition, which the House of Lords considers to accord with the purposes of Resolution No 1390 (2002), ought to apply also in relation to Article 2(2), having regard also to the fact that paragraph 2(a) of the resolution makes no distinction between funds and economic resources.

34. Moreover, to accept the interpretation of Article 2(2) of the regulation put forward by the Treasury produces a disproportionate result, for it means that anyone paying money to the spouse of a designated person (for example, her employer or even her bank) must obtain a licence under Article 2a of the regulation simply because the two live together and because the designated person might derive some benefit from the expenses laid out by the spouse.

35. The House of Lords further considers that the rules imposed by the Treasury for the issue of a licence constitute an 'intrusive' regime. The conditions of the licence are laid down in order, essentially, to prevent the spouse from spending any sum of money, irrespective of her own income, without prior authorisation by the Treasury.

36. Lastly, the national court observes that Article 2a of the regulation refers to payments made to designated persons, whereas the question arising in the main proceedings is that of ascertaining whether the payment of benefits to persons not included in the list calls for prior authorisation, in view of the fact that some of that money will be spent for the benefit of the designated person.

37. On the basis of those considerations, by order of 30 April 2008 the House of Lords stayed proceedings in order to refer the following question to the Court for a preliminary ruling:

'Does Article 2(2) of Council Regulation (EC) No 881/2002 apply to the provision by the State of social security or social assistance benefits to the spouse of a person designated by the Sanctions Committee established

pursuant to United Nations Resolution 1267 (1999) on the ground only that the spouse lives with the designated person and will or may use some of the money to pay for goods and services which the latter will consume or from which he will benefit?'

38. Pursuant to Article 23 of the Statute of the Court of Justice, written observations in these proceedings have been submitted by, in addition to the parties in the main proceedings, the Estonian and United Kingdom Governments and the Commission.

39. At the hearing, held on 11 November 2009, the appellants, the United Kingdom Government and the Commission presented oral arguments.

IV – Observations submitted to the Court

40. According to the appellants in the main proceedings, the Treasury's decision to make the payment of their benefits conditional upon the issuing of a licence, subject to especially restrictive terms, has the effect of treating their situation in the same way as that of designated persons, whereas they are not included in the list and are not even suspected of carrying on terrorist activity.

41. The appellants note that the benefits in question are intended inter alia to provide assistance in kind for their spouses included in the list. By so doing, the appellants do not make funds available to their husbands; it is therefore impossible that the authorities, by paying sums of money to the appellants, should make funds indirectly available to the spouses within the meaning of Article 2(2) of the regulation. Nor can it be maintained that economic resources are in that way made available to designated persons, for Article 2(3) in fact excludes from its ambit economic resources from which designated persons cannot obtain funds, goods or services ('exempt resources'). The appellants take the view that an interpretation of Article 2(2) that extends its scope to funds made available to third parties, simply because those funds could be used to obtain exempt resources, for the benefit of designated persons, is not consistent with that exclusion.

42. In this connection, they add that the interpretation which they propose of

Article 2(3) of the regulation does not conflict with that given by the Court in its judgment in Möllendorf, [11] which defined the scope of the prohibition laid down in that provision in broad terms: the property at issue in that case represented an 'economic resource' for the purposes of Article 2(3) of the regulation, inasmuch as it could be used by the designated person to fund terrorist activities. The restrictions on the appellants obtaining funds are not, however, intended to prevent the funding of those activities.

43. The appellants emphasise, lastly, that the Treasury's interpretation of Article 2 of the regulation prejudices their fundamental rights, especially the right to respect for property and the right to respect for private and family life. As regards the latter, the restrictions imposed by the licensing system are not proportionate to the ends pursued, and the reasons given to justify those restrictions are not relevant or sufficient within the meaning of the case-law of the European Court of Human Rights. [12] Likewise, with regard to the right to property, the appellants maintain that, in these proceedings as in *Kadi*, [13] the question to be asked is whether the restrictions imposed on those rights can be regarded as justified and proportionate.

44. The United Kingdom, on the basis of a literal interpretation of Article 2(2), in particular of the expression 'for the benefit of', taking the ordinary meaning of the words used, maintains that the prohibition laid down by that article extends to any making available of funds from which a designated person may benefit, leaving out of consideration the fact that the funds concerned are used to obtain funds or economic resources for that person; in the circumstances of this case, since the sums paid to the appellants are used by them to meet necessary expenses including, inter alia, the maintenance of their spouses, it is plain that, by paying social security and social assistance benefits to the appellants, the competent authorities make funds available to those spouses within the meaning of the legislation at issue. At the hearing before the Court, that Government further stated that Article 2(2) of the regulation applies to the payment of the benefits in question, because the latter are, *by their very nature* and regardless of the actual use to which they are put, intended to benefit designated persons. They are in fact intended to meet the wants of the family groups to which those persons belong and their amount is determined in relation

11 — Case C-117/06 *Möllendorf and Möllendorf-Miehaus* [2007] ECR I-8361, paragraph 46.

12 — Judgment in *S. and Marper* v. *United Kingdom* of 4 December 2008, applications Nos 30562/04 and 30566/04, § 101.

13 — Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351.

to the number of members of that group, including the designated persons.

45. It argues that that interpretation is, furthermore, consistent with the letter and purpose of Security Council Resolution 1390 (2002), whose prohibitions are formulated in particularly broad terms – as moreover affirmed in the Court's case-law [14] – and designed to deprive the persons included in the list of any economic support.

46. According to the United Kingdom, if anybody were able to assume responsibility for a designated person's basic expenses that would frustrate the derogation provision in Article 2a of the regulation, in which it is stated that not only the designated person but also any 'interested natural or legal person' must obtain a licence in order to use or make available funds for the purpose of providing for the basic expenses of a designated person.

47. Moreover, in the United Kingdom's opinion, the condition laid down in Article 2(3), forbidding making economic resources available to a person included in the list solely in so far as that has the effect of enabling that person 'to obtain funds, goods or services', is not applicable in connection with Article 2(2): funds, of their very nature, possess a greater degree of liquidity compared to economic resources, and are therefore subject, for that very reason, to a more restrictive regime.

48. With reference to the 'excessively severe' consequences flowing for the appellants from the licensing system, the United Kingdom notes, on the one hand, that the prohibitions imposed by the regulation are capable, in themselves, of causing effects harmful to others [15] and, on the other, that such effects in actual fact depend on the detailed rules for licensing imposed on the applicants for the purposes of the domestic legislation.

49. Finally, in response to the appellants' argument that a broad interpretation of Article 2(2) placing within the ambit of the prohibitions laid down therein (i) the salary paid to the spouse of a designated person or to a member of that person's family and also

14 — See *Möllendorf*, cited above, footnote 11, paragraphs 50 to 55, and *Kadi*, cited above, footnote 13, paragraph 169.

15 — See Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 22.

(ii) donations given to a charity that provides assistance for a designated person, the United Kingdom states that, differing from the circumstances of this case, in neither of those two hypotheses is there any 'nexus' between making the funds available and the benefit to the designated person.

50. The Estonian Government is of the opinion that the payment of benefits to the spouse of a designated person does not fall within the ambit of Article 2(2) of the regulation and need not, therefore, be licensed. In its view, an interpretation of that provision limiting the receipt of funds due to spouses from third parties not included in the list leads, in point of fact, to treating those spouses as though they were designated persons.

51. Nor is an interpretation that treats as equivalent the payment of funds to a third party, who is connected to a person included in the list by ties of family or of some other kind, and the making available of funds to or for the benefit of that designated person, borne out by the letter or purpose of Resolution 1390 (2002), which provides that only persons included in the list drawn up by the Sanctions Committee may be made subject to the sanctions regime for which it provides.

52. The Estonian Government further observes that the national criminal law is applicable to a third party who has contravened the provisions of the regulation and that, if the third party in question takes part in terrorist activities through the intermediary of a designated person, a proposal must be made that he too should be made subject to the sanctions regime provided for by the regulation.

53. In any case, concludes the Estonian Government, even if it is accepted that the regulation permits the access of third parties to their own funds to be restricted, the licensing rules imposed by the Treasury amount to unwarranted interference in the appellants' private lives, which is not only not justified by the danger potentially posed by the third party's conduct (it is not, in actual fact, realistic to suppose that acts of terrorism can be funded out of a social security benefit, the amount of which scarcely meets a family's essential wants), but is also disproportionate, in that it could be avoided by having recourse to

alternatives less damaging to the appellants' fundamental rights.

54. The Commission maintains that the payment of benefits to the appellants, who use them to give assistance in kind to their husbands, falls within the ambit of the prohibitions laid down in Article 2 of the regulation and, therefore, requires specific authorisation. It reaches that conclusion on the basis of an examination of the wording and purpose of Article 2 of the regulation and of Resolution No 1390 (2000), and of the derogation rules introduced by Article 2a.

55. According to the Commission, the Community legislature intended to give Article 2 of the regulation the broadest purport possible, in order to establish an exhaustive and radical regime of financial sanctions. That is made apparent not only by the wording of that provision, but also by the case-law of the Court, which has, in *Möllendorf*,[16] upheld a broad interpretation of Article 2(3) of the regulation which, the Commission would have it, must in principle apply also to Article 2(2).

56. For the purpose of interpreting the regulation, regard must then be had to resolution No 1390 (2002) which, in pursuing the public-interest objectives of the campaign against terrorism and of the maintenance of international peace and security, is worded in exceptionally broad terms and is designed to stop all economic support of the persons included in the list. The Commission stresses that there is no indication, in either the regulation or the resolution, of any obligation for the Member States to ascertain, before giving effect to the prohibitions laid down therein, that there is no real danger that the funds or economic resources will be diverted to the ends of terrorism; such a condition would entail the risk of evasion of the restrictive measures imposed and of serious difficulties in evaluation and implementation.

57. The establishing, in Article 2a, of a system of derogations on humanitarian grounds – in respect, inter alia, of funds and economic resources 'necessary for basic expenses' – clearly demonstrates that the provision by a spouse of lodging, food and other prime necessities for a person included in the list falls, in principle, within the prohibitions under Article 2 of the regulation; it follows that it may be authorised only on the conditions set out in Article 2a and in accordance with the procedure provided for therein. The Commission acknowledges that the appellants are not included in the list, but recalls that, according to the Court's case-law, restrictive measures

16 — Cited above, footnote 11, paragraphs 50 and 51.

of an economic kind may, of their very nature, have effects prejudicial to others, which may, however, be justified by the importance of the objectives pursued.

58. The Commission argues that it is for the national court to ascertain, with regard to the circumstances of the case, that the specific rules of the national licensing scheme adopted in order to give effect to Article 2a do not represent a disproportionate infringement of the appellants' fundamental rights.

59. Since the amount of the benefits paid to the appellants is carefully calculated ex ante so as to provide the minimum essential for survival, the Commission wonders, lastly, whether it is necessary to ensure, ex post, that those sums are not used for other ends. In its opinion, less intrusive means could be used, such as, for example, providing that the Member States should scrupulously fulfil their obligations to supply information laid down in Article 8 of the regulation. In addition, the Commission notes that a licence does not appear to be necessary, in the United Kingdom, in order to pay the appellants any income from employment whereas, logically, the source of the funds ought not to make any difference to the application of the prohibitions laid down by the regulation.

V – Legal analysis

A – *The question referred for a preliminary ruling*

1. Preliminary observations

60. In this question the House of Lords asks the Court, in essence, whether the ambit of Article 2(2) of Regulation No 881/2002 extends to the payment of social security and social assistance benefits to the spouse of a person included in the list annexed to the regulation, simply by virtue of the fact that the two spouses live together and that the benefits in question are, or may be, used in part in that person's interests.

61. The question referred to the Court consists, therefore, of establishing whether, as the Treasury suggests, by paying benefits to the appellants, who will use the sums received for the purpose, inter alia, of giving assistance in kind to their spouses, the competent authorities of the United Kingdom directly or indirectly make funds available to or for the benefit of a designated person, thus being caught by the prohibitions laid down in Article 2 of the regulation, or whether, as the appellants in the main proceedings maintain and

as the court making the reference appears to believe, the payments in question do not fall within the ambit of that article.

62. Before I turn to the examination of its content, I must first briefly clarify the scope *ratione personae* of that provision and the effects that it may have for persons not included in the list annexed to the regulation.

63. In this regard, it must first of all be noted that, in order to give effect to the measures laid down in the Security Council resolutions, the Community has had recourse to use of the regulation, which is capable of having direct effect, and is moreover uniform, vis-à-vis all persons and entities established in Community territory. By laying down the prohibition of making funds or economic resources directly or indirectly available to designated persons and of making them available for the benefit of such persons, Article 2 is, therefore, binding on anyone who may be in a position to do such things. With regard to the instant case, both the appellants and the bodies paying the benefits in question are, therefore, required to observe that prohibition if the conditions for its application are satisfied.

64. It must next be observed that, in its judgment in *Bosphorus*, [17] the Court on the one hand declared that the importance of the objectives pursued when a sanctions provision is adopted in order to give effect to binding resolutions of the Security Council [18] may 'justify negative consequences, even of a substantial nature', 'causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions' [19] and, on the other, recalled that it was settled case-law that the fundamental rights pleaded by the applicant in the national proceedings giving rise to that judgment are 'not absolute and their exercise may be subject to restrictions justified by objectives of general interest pursued by the Community'. [20] It must also be noted that, although the Court's later decisions, from *Kadi* [21] onwards, pay markedly greater attention to the protection of fundamental rights, they none the less do not challenge the principle that a regulation providing for the adoption of sanctionary measures – such as those at issue in *Bosphorus* and in these proceedings – may lead to adverse consequences for persons other than those with respect to whom the sanctions it provides for are intended to operate.

17 — Cited above, footnote 15.

18 — In this case, Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 14).

19 — See paragraphs 22 and 23 of the judgment.

20 — See *Bosphorus*, cited above, footnote 15, paragraph 21 and the case-law cited.

21 — Cited above, footnote 13. See, most recently, the judgment of 3 December 2009 in Joined Cases C-399/06 P *Hassan* v *Council and Commission* and C-403/06 P *Ayadi* v *Commision*, ECR I-11393.

65. It follows that, even if they are not among the persons included in the list annexed to the regulation and even if they are cannot be regarded as dangerous, like those designated persons, simply because they are married to and live with persons whose names appear in that list, the appellants in the main proceedings are, none the less, liable to suffer harm as a result of the application of the prohibitions laid down in Article 2 of the regulation.

66. Last, it has to be borne in mind that, as the Court has consistently held, restrictions of fundamental rights that may be justified by objectives of public interest, such as those relating to the campaign against international terrorism, may not, however, constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights so guaranteed. [22]

67. If, therefore, the conclusion is reached that the objective conditions for the application of the prohibitions under Article 2 of the regulation to the benefits in question have been satisfied and that the payment of the latter has to be authorised for the purposes of Article 2a, the conditions for the granting of that authorisation by the competent authorities of the United Kingdom must observe the abovementioned principle of proportionality. In this connection, consideration must be given not only to the appellants' right to protection of their property but also to respect for their private and family life. [23]

68. I shall not, however, deal with the merits of that question, for in these proceedings the Court is not called upon to rule on any breach of that principle.

2. The extent of the prohibition laid down by Article 2(2) of Regulation No 881/2002

69. Moving on to an analysis of the content of Article 2(2) of the regulation, I must clarify the scope of the prohibition that it lays down, in order to establish whether that prohibition is applicable to the circumstances of the case in the main proceedings.

22 — See *Kadi*, cited above, footnote 13, paragraph 354 et seq.

23 — Concerning that last right, see, inter alia, Case C-540/03 *Parliament* v *Council* [2006] ECR I-5769); Case C-60/00 *Carpenter* [2002] ECR I-6279; and Case C-109/01 *Akrich* [2003] ECR I-9607.

70. In this regard it must be noted, first of all, that in the proceedings before the national court the classification of the benefits paid to the appellants as 'funds' is not at issue: in other words, by paying to the appellants sums of money by way of social security and social assistance benefits, the paying bodies make available to them funds within the meaning of Article 1(1) of the regulation, but not economic resources within the meaning of Article 1(2).

71. Having said that, I would observe that, according to what emerges from the written pleadings, the sums in question are paid into bank current accounts held in the appellants' names, or else held by the Treasury in their name and on their behalf. That fact militates against its being possible that, by means of payment of benefits to the appellants, funds might be made *directly* available to the spouses of the latter, who are included in the list in Annexe I to the regulation.

72. Nor does it seem to me that, by paying the benefits at issue to the appellants, when there is nothing even to give grounds for assuming that the appellants will hand over all or part of those sums to their spouses, the paying bodies make funds *indirectly* available to a designated person. In fact, those sums are paid to the appellants, and they could not become available to the spouses unless transferred to them by the appellants. Now, in the proceedings at the various instances before the national courts, including the court making the reference, the fact that the appellants have not done so has never been called in question. What is more, it is hardly worth pointing out that such a transfer would involve failure to observe the prohibition, laid down in Article 2(2) of the regulation, of making funds available to a designated person and would expose the appellants, for want of authorisation pursuant to Article 2a of that regulation, to the sanctions provided for in the national implementing legislation.

73. In point of fact, the need to make payment to the appellants of the benefits concerned subject to the grant of a licence is pleaded by the Treasury not so much because it considers that there is always the possibility, however remote, that the appellants might make those sums available to their spouses, as because of the fact that those sums are used by the appellants to meet the expenses of their families, including their spouses. In the opinion of the Treasury (whose view was upheld by the courts of first instance and of appeal), by paying benefits to the appellants the social security authorities, while not making funds directly or indirectly available to the appellants' spouses, do nevertheless *make funds available for their benefit*, as provided in Article 2(2) of the regulation.

74. The question of interpretation relates, therefore, to the extent of the prohibition, laid down in Article 2(2) of the regulation, of making funds available for the benefit of a designated person. For the purposes of the reply to be given to the national court, it must, therefore, be determined whether, as the respondent in the main proceedings maintains, the prohibition at issue is to be understood in a broad sense, that is to say, as extending to every sum from which a designated person might benefit, or whether it is not rather to be read more restrictively, as proposed by the appellants and by the national court.

75. To that end, I am above all anxious to stress that the contrary interpretative theories advanced by the national court and the parties to the dispute in the main proceedings and set out in these proceedings arise from the English version of the provision in question, which states that '*[n]o funds shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee and listed in Annex I*.

76. In this connection, I would recall that, according to settled case-law, provisions of Community law must be interpreted and applied uniformly in the light of the various language versions;[24] the wording used in one language version cannot serve as the sole basis for the interpretation of the provision concerned, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement of the uniform application of Community law.[25]

77. Now, the literal interpretation of the wording of Article 2(2) is uncertain, because the various language versions are not identical in their formulation.

78. The United Kingdom maintains that the broad interpretation it favours, according to which assistance in kind provided in kind to a designated person falls within the ambit of the regulation, can find a basis in the distinction, drawn in Article 2(2), between '*made available to*' and '*made available for the*

24 — Case 19/67 *van der Vecht* [1967] ECR 345; Case C-29/69 *Stauder* [1969] ECR 419, paragraphs 3 and 4; Case 9/79 *Koschiniske* [1979] ECR 2717, paragraph 6; Case 283/81 *CILFIT* [1982] ECR 3415, paragraph 18; Case C-372/88 *Cricket St Thomas* [1988] ECR I-1345, paragraph 19; and Case C-187/07 *Endendijk* [2008] ECR I-2115, paragraph 22.

25 — See Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16, and Endendijk, cited above, paragraph 23.

benefit of.[26] According to that government, if the expression '*for the benefit of*' is not to be rendered meaningless, it cannot be understood otherwise than as applying to situations in which, as in the present case, funds are not '*made available to*' designated persons, but in which the latter may none the less derive benefit from them by means of assistance in kind.

79. That interpretation might also hold good for all the language versions (e.g. Dutch, Swedish, Finnish and Hungarian) which, as in the English, make use of the one verb 'make available', laying down the prohibition of making funds available 'to' designated persons or 'for [their] benefit'. In practically all those language versions, however, it is, moreover, plain that the adverbs 'directly or indirectly' refer both to making available 'to' and to making available 'for the benefit of' designated persons; the provision would seem, therefore, to prohibit making funds available 'to' such persons (directly or indirectly) or 'for [their] benefit' (directly or indirectly).

80. Payment of benefits to the appellants by the competent bodies would therefore be regarded as making funds *indirectly* available *for the benefit of* the appellants' spouses.

81. The approach followed by the United Kingdom would seem to be borne out by analysis of the Romance language versions of Article 2(2) of the regulation, which use a different term to render the expression '*made available for the benefit of*, prohibiting not making funds available to such persons but rather *using* funds *for their benefit*.[27] Thus, the ambit of the prohibition contemplated by the provision would appear to reach beyond merely making funds *available* to a person included in the list to cover even every way of *using* those funds, from which that person might derive benefit. However, in all the language versions referred to, while the adverbs 'directly or indirectly' clearly refer to the prohibiting of 'making funds available' to designated persons, the same cannot be said of the prohibiting of 'using funds for the benefit of' such persons. On the basis of those versions, it would seem, therefore, that the prohibition cannot extend to the payment of the benefits at issue, for the latter cannot be regarded as an 'indirect use' of funds for the benefit of designated persons.

26 — Emphasis added.

27 — In French, '*utilisé au bénéfice*'; in Spanish, '*utilizar en beneficio*'; in Portuguese, '*utilizados em benefício*'; in Rumanian, '*utilizat în beneficiul*'.

82. Literal interpretation of Article 2(2) is made even more difficult by the fact that some of the other language versions of the regulation, while also choosing to use a specific term to render the expression 'made available for the benefit of', prefer to the verb 'use' one that is capable of leading to a different interpretation. That is the case in, for example, Italian, which prohibits 'stanziare' funds for the benefit of designated persons. That word, in its sense of 'allocating a sum for a particular purpose', would mean, here, that the situation prohibited by the provision occurs on the mere payment of benefits to the appellants (who will use them for the benefit of their husbands), regardless of whether the adverbs 'directly or indirectly' refer, as well as to the verb 'make available to', to the verb 'make available for the benefit of'. For its part, the German version of the provision under consideration seeks to forbid, in general terms, funds from 'benefiting "("zugute kommen') a designated person and does not make it possible to assert, or yet to deny, that the adverbs 'directly or indirectly' refer to that verb, so leaving the door open to an interpretation setting outwith the ambit of Article 2(2) those cases in which, as in the instant case, the funds concerned indirectly 'benefit' the designated person.

83. On account of the considerable divergences just described between the language versions of the regulation, which give rise to many possible interpretations, I am of the opinion that a literal construction of Article 2 tells us nothing conclusive for the purpose of determining the exact extent of the prohibitions that it lays down and that it is therefore necessary to consider that provision in the light of its context and of the objects of the rules of which it is part. [28]

84. In particular, since the regulation was adopted in order to give effect to a resolution of the Security Council, account must also be taken of the wording and aims of that resolution. [29]

85. As provided for in Article 2(a) of Resolution No 1390 (2002), 'funds, financial assets or economic resources' may not be 'made available, directly or indirectly, for [the] benefit' of persons included in the list

28 — See, to that effect, Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case 292/82, *Merck* [1983] ECR 3781, paragraph 12; Case 100/84 *Commission* v *United Kingdom* [1985] ECR 1169, paragraph 17; *Cricket St Thomas*, cited above, footnote 24, paragraphs 18-19; Case C-100/90 *Commission* v *Denmark* [1991] ECR I-5089, paragraph 8; Case C-83/94 *Leifer and Others* [1995] ECR I-3231, paragraph 22; and *Endendijk*, cited above, footnote 24, paragraph 23.

29 — See *Bosphorus*, cited above, footnote 15, paragraphs 13-14; *Möllendorf*, cited above, footnote 11, paragraph 68; and *Kadi*, cited above, footnote 13, paragraph 297.

mentioned in point 3 above. [30] The prohibition thus laid down in particularly broad terms, must therefore be understood to preclude any making available of funds, assets or economic resources to persons entered in the list mentioned in point 3 above, so as to prevent them from deriving any benefit from it. [31]

86. Having regard to the objectives of combating international terrorism pursued by the resolution in question, that prohibition must, however, be understood to operate to stop the use of funds and economic resources *for terrorist purposes* by persons included in that list. That interpretation, as well as being borne out by the French version of paragraph 2(a) of the resolution – according to which the prohibition of making funds available 'for the benefit of' designated persons is designed to stop the latter being able to use such funds '*pour les fins qu'ils poursuivent*' – is confirmed by Security Council Resolution No 1822 (2008) of 30 June 2008 which, after recalling in paragraph 1(a) the prohibitions laid down by paragraph 2(a) of Resolution No 1390 (2002), states that the prohibitions concerned apply 'to financial and economic resources of every kind … *used for the support of Al-Qaida, Usama bin Laden, and the Taliban*'. [32]

87. From an interpretation of Article 2(2) of the regulation that takes due account of the purposes of Resolution No 1390 (2002) it is clear, therefore, that, in addition to the wording used in the various language versions, that provision is intended to govern the various methods by which persons included in the list manage to obtain funds, in order to give the widest possible scope to that prohibition which prevents such persons from gaining, directly or indirectly, the power to dispose of the funds concerned, and so to prevent the latter from being diverted to terrorist ends. Furthermore, the Court has ruled to that effect in *Kadi*, [33] in which it finds that 'the essential purpose and object of [Regulation No 881/2002] is to combat international terrorism, in particular to cut it off from its financial resources by freezing the economic funds and resources of persons or entities suspected of involvement in activities linked to terrorism'.

88. It therefore seems to me incorrect to argue, as the Treasury does, that the object of the resolution (and of the regulation) is to deprive persons included in the list in Annex I to the regulation of any form of economic support. The prohibitions laid down in those measures are indeed set out in broad terms, but they are applicable only in so far as they are intended to stop those persons using their own funds and economic resources for the

30 — In English, '*made available … for such person's benefit*'; in Spanish, '*pongan … a disposición de esas personas*'; in French, '*rendus disponibles … pour les fins qu'ils poursuivent*'.

31 — See *Möllendorf*, cited above, footnote 11, paragraph 56.

32 — Paragraph 4 of the resolution; emphasis added.

33 — Cited above, footnote 13, paragraph 169.

purposes of terror, or obtaining funds or economic resources from third parties, directly or indirectly, to be used in the pursuit of such purposes.

89. I am, therefore, inclined to share the doubts expressed by the court making the reference as to whether it is in fact possible to give the expression 'made available ... for the benefit of' in Article 2(2) of the regulation an interpretation extending its ambit to the payment *to third parties* of funds capable of being used to meet the basic expenses of a designated person. In point of fact, it is hard to see how the grant of benefits intended to meet the wants of a family group, and in fact used to that end under rules that allow the designated person to derive from them only a benefit in kind, may carry the risk that those funds might be appropriated to terrorist activity. It is indeed all the harder in the particular circumstances of the case, in which the appellants receive a modest sum, carefully calculated ex ante so as to provide only what is strictly necessary in order for the family to survive.

90. For the reasons set out above I am not persuaded by the argument presented by the United Kingdom at the hearing, [34] which to my mind is vitiated by excessive formalism. It is indeed true, as that government maintains, that the benefits in question, being granted for the family group of a person included in Annex I to the regulation and being calculated on the basis of the needs of all the members of that group, are, of their very *nature* and regardless of their actual use, intended to benefit such a person. Nevertheless, it is also true that the *function* of those benefits is, *regardless of the use to be made of those sums*, to provide the family group to which they are given with only the means necessary to sustain its members and that their amount is commensurate with that function. In other words, the benefit that those payments are intended to give to those entitled to them, and which is in fact enjoyed by the spouses of the appellants in the main proceedings, does not go beyond the provision of the means of subsistence for them and their families. So, to make the payment of those benefits to a member of a designated person's family group fall within the ambit of Article 2(2) of the regulation in circumstances in which, as in the present case, it is possible to be certain that the sums concerned will not be made available to the designated person, appears unjustified in the light of the objective pursued by the regulation and by the resolutions to which the regulation is intended to give effect, which is to combat international terrorism by cutting it off from its financial resources. That conclusion is, moreover, in keeping with the obligation to protect the appellants' right to respect for their family life.

34 — See paragraph 44 above.

91. To what has been expounded so far I would add that the broad interpretation of the expression 'for [their] benefit' used in Article 2(2) of the regulation, proposed by the United Kingdom and by the Commission – in whose view a licence is required whenever social security or social assistance benefits are paid to the spouse of a designated person, inasmuch as those funds are or may be used to give assistance in kind to a designated person – carries the risk of extending the ambit of the regulation to all but unlimited dimensions, that is to say, logically expanding it to cover, in addition to almost any payment of sums of money to the spouse of a designated person (e.g. salary or a donation), all cases in which such a person indirectly benefits from the existence of more or less direct links to a third party, not included in the list, with whom he lives (a spouse, but also other members of the family), or connected to him by special ties of relationship or friendship, or yet again by economic relations.

92. On the basis of the foregoing considerations, it seems to me, therefore, impossible to regard the payment of social security and social assistance benefits to the appellants by authorities in the United Kingdom as making 'funds' available for the benefit of designated person for the purposes of Article 2(2) of the regulation.

93. Nor, to my mind, is it possible to regard the goods and services provided in kind by the appellants for their husbands as *economic resources* within the meaning of Article 1(2) of the regulation and to consider therefore that those authorities, by paying funds to the appellants, may indirectly make economic resources available to a designated person, or available for his benefit, so being caught by the prohibitions laid down in Article 2(3) of the regulation.

94. For the purposes of the regulation, in fact, economic resources are 'assets of every kind, movable or immovable, which are not funds but can be used to obtain funds, goods or services' (Article 1(2)). In accordance with that definition, Article 2(3) of the regulation, in laying down the prohibition of making economic resources available to a designated person or available for his benefit, states that it is a condition of the applicability of that prohibition that the making funds available should enable the designated person 'to obtain funds, goods or services'.

95. In the light of the purpose of the prohibitions laid down by the regulation, which, as I had occasion to note not long ago, is to

combat international terrorism by controlling the various sources of its funding, the *ratio* of that condition is plain: if it is impossible to derive funds, goods or services from 'assets of every kind, movable or immovable', there is nothing that the designated person can divert to the ends of terrorism and, therefore, such assets do not constitute economic resources for the purposes of the regulation. [35]

96. It is true that the ambit of the provision under examination was interpreted by the Court in *Möllendorf* in an especially broad sense, [36] as noted in some of the observations lodged in these proceedings; none the less, on that occasion, the property forming the subject-matter of the national proceedings could be considered to be 'clearly covered by the definition of "economic resources" in Article 1(2)' of that regulation, since it was tangible immovable property which could be used to obtain funds, goods or services. In the instant case, however, the issue is whether it is in fact possible to treat the goods or services of prime necessity provided for their spouses by the appellants as economic resources within the meaning of the regulation.

97. It is clear to me that, by ensuring payment of the rent charged for residential occupation of real property, or the sums payable for the consumption of domestic utilities, the appellants do not provide their spouses with economic resources, for those are benefits that cannot be used by the spouses to obtain funds, goods or services. [37] Next, so far as concerns the purchase by the appellants of goods for personal use by their spouses which could possibly be put to economic use by the latter, I think that, in view of the modest sum allowed by way of benefits in the instant case, which is hardly enough to satisfy a family's essential wants, it is not realistic to suppose that those goods might be sold by the designated person in order to obtain funds, goods or services to be used for the funding of terrorist activities.

98. Therefore, by using the sums received in order to buy goods or services of prime necessity, which will be of use to their spouses too, the appellants do not make economic resources available to those spouses or for their benefit within the meaning of the regulation, for from that assistance in kind it is impossible to obtain funds, goods or services that may be used to pursue terrorist activity.

35 — In this connection, I note that the exclusion from the *genus* 'economic resources' of assets from which it is not possible to obtain funds, goods or services does indeed appear in the regulation, but it does not in Resolution No 1390 (2002), which draws no such distinction and, moreover, unlike the regulation, does not give any definition of the term 'economic resources'.

36 — Cited above, footnote 11, paragraph 46.

37 — In this respect, see also 'EU Best Practices for the effective implementation of restrictive measures' (Doc. 8666/08 of 21 April 2008), paragraphs 45, 48 and 51.

In consequence, by paying to the appellants sums of money by way of social security and social assistance benefits, which may then be used by the appellants to meet the essential needs of their spouses too, the competent authorities do not make economic resources indirectly available to or for the benefit of those spouses for the purposes of Article 2(3) of the regulation.

99. Having regard to all the foregoing considerations, I am, therefore, of the view that, by paying the appellants sums of money by way of social security and social assistance benefits, the competent authorities do not infringe the prohibitions laid down in the regulation.

100. Against that conclusion it cannot, to my mind, be maintained that an interpretation of Article 2 of the regulation that sets the payment of the benefits in question outwith the ambit of that provision renders superfluous the provision in Article 2a of specific derogation rules.

101. In that regard, I would point out, first of all, that when Article 2a(1)(a) provides that derogations from the prohibitions under Article 2 may be allowed 'upon a request made by an interested natural or legal person', it would seem to be drafted in broad terms, that seek to cover, among the persons who are required to obtain authorisation, not only the designated person, who wishes to gain access to his own frozen funds, but also any third party who may wish to make available to a designated person, directly or indirectly, funds and/or economic resources, or to make them available for the benefit of that person. [38]

102. Having said that, there can be no doubt that the authorisation rules under Article 2a of the regulation are intended to prevent its being possible for unfrozen or authorised funds or resources to be appropriated to purposes of terror. In keeping with that objective, it is only transfers enabling a designated person to have funds and/or economic resources *available* and to decide to use them to meet the expenses mentioned in that provision that must, to my mind, be regarded as subject to those rules. The danger of misappropriation of funds or resources exists, in fact, when such funds are made available, *directly or indirectly*, to the designated person, but not in situations

38 — See also the guidelines for requests for derogations set out in the 2008 EU Best Practices for the effective implementation of restrictive measures, according to which '[a] person or entity wishing to make funds or economic resources available to a designated person or entity must request authorisation' (paragraph 59).

in which a third party assumes direct responsibility for the expenses concerned.

103. In the instant case *it is a third party* to whom the sums received as benefits are available, and who has the right to decide to use them to cover domestic expenses. In addition, it would be well to bear in mind that, as is apparent from the documents in the main proceedings, it is not disputed that there has been no transfer of the sums in question by the appellants to their spouses.

104. Nor, lastly, do I find persuasive the line of argument upheld in the judgments at first instance and on appeal and made its own by the United Kingdom in its written observations, to the effect that an interpretation of Article 2(2) of the regulation that authorises a third party to take responsibility for the basic expenses of a person included in the list in Annex I to the regulation relieves that person of the burden of providing for those expenses himself and allows him to assign to terrorist ends the assets of which he manages to gain possession by other means.

105. As a matter of fact, I wonder how a person included in that list could obtain any such other assets, given that his funds and/or economic resources have been frozen pursuant to Article 1 of the regulation, and having regard to the limits set by Article 2 thereof to the obtaining of funds and/or economic resources by third parties, in the absence of specific authorisation in accordance with Article 2a. The fact that a third party takes responsibility for that person's basic expenses, therefore produces the sole effect that that person is relieved of the need to obtain authorisation to gain access to his own funds and/or economic resources – always supposing that he has any – to be used to meet those expenses, but it does not automatically put him in a position to use his own assets, which remain frozen, or to receive funds and/or economic resources from third parties, to be allocated to funding terrorist activities. It is not, of course, inconceivable that acts may be committed that evade the prohibitions laid down by the regulation, but that could happen even if a third party did not take responsibility for the expenses in question.

106. In addition, to make such assumption of responsibility subject to the authorisation rules under Article 2a of the regulation would not in any event answer the concerns expressed by the United Kingdom. The purpose of that article is precisely to enable persons included in the list in Annex I to the regulation to obtain the means necessary for their maintenance. Therefore, with or without authorisation, the third party's actions would

relieve the designated person of the need to meet his basic expenses himself, leaving him free to assign to terrorist ends any resources obtained in breach of the prohibitions under the regulation. Furthermore, application of the authorisation procedure under Article 2a of the regulation would not even preclude, or make less likely, the possibility of such a breach, for the provision is intended solely to minimise the risk of misappropriation of the unfrozen funds and/or resources.

107. As pointed out several times above, that risk is not present in the circumstances of this case, either in the abstract, in view of the nature of the benefits concerned, which are designed to supply only what is needed to cover the essential wants of the family group to which they are granted, or in concrete form, it being undisputed in the main proceedings that the appellants do not make the sums received available to their husbands, but merely supply the latter with assistance in kind.

VI – Conclusion

108. In the light of the considerations set out above, I propose that the Court should answer the question referred by the House of Lords to the effect that Article 2(2) of Council Regulation (EC) No 881 of 27 May 2002 does not apply to the provision by the state of social security and social assistance benefits, such as those at issue in the main proceedings, to the spouse of a person included in the list in Annex I to that regulation, on the ground only that the spouse lives with that person and will or may use some of the money to pay for goods or services which the person included in that list will use or from which he will benefit.