Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 13 September 2018[1]

Case C-225/17 P

Islamic Republic of Iran Shipping Lines,
Hafize Darya Shipping Lines (HDSL),
Khazar Sea Shipping Lines Co.,
IRISL Europe GmbH,
IRISL Marine Services and Engineering Co.,
Irano Misr Shipping Co.,
Safiran Payam Darya Shipping Lines,
Shipping Computer Services Co.,
Soroush Sarzamin Asatir Ship Management,
South Way Shipping Agency Co. Ltd,
Valfajr 8th Shipping Line Co.,
v

Council of the European Union

(Appeal — Restrictive measures taken against Iran — Criteria for including in a list of persons and entities subject to asset-freezing — Plea of illegality — Admissibility — The Joint Comprehensive Plan of Action — Effect on interest in bringing appeal proceedings — Legal basis — Legitimate expectations — Legal certainty — *Ne bis in idem* — *Res judicata* — Right to effective judicial remedy — Misuse of powers — Rights of the defence — Proportionality — Fundamental rights — Manifest error of assessment)

1. The Islamic Republic of Iran ('Iran') is engaged in a programme of proliferation-sensitive nuclear activities and of nuclear weapons delivery systems ('nuclear proliferation programme'). The United Nations and the European Union have sought in various ways to respond to the threat that such a programme has posed and continues to pose.

1 Original language: English.

2. By this appeal, the appellants[2] seek the annulment of the judgment of the General Court of 17 February 2017 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*,[3] in so far as that court dismissed as unfounded, first, their actions for annulment challenging, pursuant to Article 263 TFEU, two measures by which their names were included in the lists of persons and entities whose assets were to be subject to freezing in the context of restrictive measures against Iran,[4] and second, the pleas of illegality that those entities had raised, pursuant to Article 277 TFEU, against two measures laying down the general criteria for inclusion of individuals in those lists.[5]

3. The pleas put forward by the appellants raise important institutional and constitutional questions. In particular, what discretion does the Council of the European Union enjoy with regard to restrictive measures applied against persons and entities when it decides, after the measures it had initially adopted unlawfully have been annulled, to adjust the criteria for applying such measures or to make the same entity subject to them? To what extent do the general principles of EU law and the Charter of Fundamental Rights limit that discretion?

International law

Resolutions of the United Nations Security Council

4. Nuclear proliferation is uncontestably one of the most dangerous threats to international peace and security in the 21st century. Since the beginning of this millennium, Iran appears to have sought to develop a nuclear proliferation programme in breach of international obligations, in particular of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons.

5. On 23 December 2006 the United Nations Security Council ('the Security Council') adopted Resolution 1737 (2006), in which it expressed serious concern with regard to the nuclear proliferation programme developed by Iran and sought to apply pressure on that State to 'constrain' the programme and to 'suspend' some of its components with a view to maintaining international peace and security.[6]

6. To that end the Security Council stated in paragraph 12 of that resolution that all States should freeze the funds, other financial assets and economic resources owned or controlled by the persons or entities designated as being engaged in, directly associated with or providing support for Iran's proliferation programme. That asset-freezing should also concern the persons or entities acting on their behalf or at their direction, as well as the entities owned or controlled by them, including through illicit means.

7. On 24 March 2007, the Security Council adopted Resolution 1747 (2007). Paragraph 5 of that resolution stated that 'Iran shall not supply, sell or transfer directly or indirectly from its territory or by its nationals or using its flag vessels or aircraft any arms or related materiel, and that all States shall prohibit the procurement of such items from Iran by their nationals, or using their flag vessels or aircraft, and whether or not originating in the territory of Iran' ('the arms embargo').

2 The appellants are Islamic Republic of Iran Shipping Lines ('IRISL') and 10 other entities ('the 10 companies'). With the exception of IRISL Europe GmbH, which is a German company, they are Iranian companies. They all operate in the shipping sector. Their names appear on the introductory page of this Opinion and I shall not reproduce them here. I shall refer to IRISL and the 10 companies together as the appellants.

3 Judgment of 17 February 2017, T-14/14 and T-87/14, EU:T:2017:102 ('the judgment under appeal').

4 Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 316, p. 46) and Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 316, p. 1). I shall refer to those measures collectively as 'the 2013 relisting'.

5 Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 272, p. 46) and Council Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 272, p. 1). I shall refer to those measures collectively as 'the 2013 criteria').

6 See eighth recital and paragraph 2. For a brief overview of international law applicable in the context of nuclear proliferation, see judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776 ('*Kala Naft*'), paragraph 2 et seq.

8. On 3 March 2008, the Security Council adopted Resolution 1803 (2008). Paragraph 11 called upon all States 'to inspect cargoes to and from Iran, of aircraft and vessels … owned or operated by Iran Air Cargo and [IRISL], provided reasonable grounds exist for believing that the aircraft or vessel is transporting goods prohibited under this resolution or resolution 1737 (2006) or resolution 1747 (2007)'.

9. By Resolution 1929 (2010) of 9 June 2010, the Security Council introduced a series of additional measures with regard to IRISL. In particular, paragraphs 14 to 22 of that resolution extend the asset-freezing measures specified in Resolution 1737 (2006) to 'entities of [IRISL] as specified in Annex III and to any person or entity acting on their behalf or at their direction, and to entities owned or controlled by them, including through illicit means, or determined by the Council or the [United Nations Sanctions] Committee to have assisted them in evading the sanctions of, or in violating the provisions of, [its] resolutions'.[7]

10. None of the appellants was the subject of any asset-freezing measures adopted by the Security Council.

11. On 14 July 2015 representatives of the international community reached an agreement with Iran concerning the long term solution to its nuclear proliferation programme (the Joint Comprehensive Plan of Action, 'JCPOA'). One of the elements of the JCPOA was relief from international sanctions imposed on Iran. On 20 July 2015, the Security Council endorsed the JCPOA by Resolution 2231 (2015).

12. Each of the Nations Security Council Resolutions has been implemented in the European Union by means of secondary legislation.

EU law

13. On 17 June 2010, in order to comply with Resolution 1929 (2010), the European Council adopted the 'Declaration on Iran'.[8] Paragraph 4 invited the Council to adopt measures implementing those contained in that resolution as well as *accompanying measures*, with a view to supporting the resolution of all outstanding concerns regarding Iran's nuclear proliferation programme through negotiation. Those measures were to be focused on several key sectors of Iran's economy, including 'the Iranian *transport sector*, in particular the [IRISL] and its subsidiaries'.[9]

Initial listing of the appellants in 2010

14. By 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), the Council acted on that declaration and adopted additional restrictive measures. Article 20(1)(b) provided for an obligation to freeze assets of entities 'directly associated with, or providing support for, Iran's proliferation [programme]', 'entities that have assisted designated persons or entities in evading or violating the provisions of [Security Council Resolutions] … 1737 (2006), … 1747 (2007), … 1803 (2008) and … 1929 (2010)' and 'entities of … IRISL and entities owned or controlled by them or acting on their behalf', as specified in Annex II. The appellants' names appeared in the list in Annex II.

7 The Security Council also authorised all the States to seize and dispose of items prohibited under its previous resolutions; prohibited provision of bunkering services to Iranian owned or contracted vessels; requested States to communicate any information available on transfers or activity by IRISL that might be undertaken in order to evade its resolutions; and stipulated that States were to require their nationals to exercise vigilance when doing business in particular with IRISL and any related entities.

8 Annex II to the conclusions of the European Council of that date (document number EUCO 3/10).

9 Emphasis added.

15. IRISL's listing in Annex II to Decision 2010/413 was based on the following grounds: 'IRISL has been involved in the shipment of military-related cargo, including proscribed cargo from Iran. Three such incidents involved clear violations that were reported to the Security Council Iran Sanctions Committee. IRISL's connection to proliferation was such that the [Security Council] called on States to conduct inspections of IRISL vessels, provided there are reasonable grounds to believe that the vessel is transporting proscribed goods, in [Security Council Resolutions] 1803 and 1929.' The other appellants were listed because they were companies that were owned or controlled by IRISL or acting on its behalf.

16. On the same day, in order to give effect *erga omnes* to that decision, the Council adopted Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation No 423/2007 (OJ 2010 L 195, p. 25) by which the appellants' names were entered on the list in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1) (the '2010 listings'). The appellants' assets were thus effectively frozen as of 26 July 2010. The grounds for listing indicated by the Council were essentially the same as those stated for the purpose of including the appellants in Annex II to Decision 2010/413.

First proceedings before the General Court

17. By application lodged with the General Court on 8 October 2010, the appellants[10] brought an action seeking the annulment of the decision to list their names in Annex II to Decision 2010/413 and in Annex V to Regulation No 423/2007.

18. By judgment of 16 September 2013, *Islamic Republic of Iran Shipping Lines and Others* v *Council*,[11] the General Court annulled Annex II to Council Decision 2010/413 and related measures in so far as they concerned the applicants in that case for three principal reasons. First, the General Court held that the Council had not stated to the requisite legal standard the reasons for its assertion that IRISL had, by the actions of which it was accused, *assisted a listed person, entity or body in infringing the provisions* of the relevant EU legislation and the Security Council resolutions, as referred to in Article 20(1)(b) of Decision 2010/413. Second, the Council had not established that, by having transported — on three occasions — military material in breach of the prohibition laid down in paragraph 5 of Security Council Resolution 1747 (2007), IRISL had *provided support* for nuclear proliferation within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 7(2) of Regulation No 423/2007. Third, even if the applicants other than IRISL were in fact owned or controlled by IRISL or acted on its behalf, that did not justify the adoption and maintenance of the restrictive measures, since IRISL had not been properly identified as providing support for nuclear proliferation.

19. The General Court maintained the effects of the annulled measures until the expiry of the period for bringing an appeal against its judgment, that is to say until 26 November 2013.

10 They did so together with six other applicants who are not party to the proceedings in the present case and whose names I shall therefore not reproduce here.

11 Judgment in Case T-489/10, EU:T:2013:453 (the '2013 General Court judgment').

Amendment of the listing criteria in 2013

20. By Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413 (OJ 2013 L 272, p. 46), the Council extended the scope *ratione personae* of the asset-freezing measures contained in Article 20(1)(b) of Decision 2010/413 by adding new criteria. Those criteria extended the scope to cover 'persons and entities that have evaded or violated the provisions of [Security Council Resolutions] 1737 (2006), ... 1747 (2007), ... 1803 (2008) and ... 1929 (2010) or of this Decision' and 'persons and entities providing insurance or other essential services to … IRISL, or to entities owned or controlled by [it] or acting on [its] behalf'.

21. In order to give effect to those changes, the Council, by Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation No 267/2012 (OJ 2013 L 272, p. 1),[12] amended Article 23(2)(b) and (e) of that latter act. Following that amendment, that provision provided for the inclusion in Annex IX and for the asset-freezing of persons, entities and bodies who have been identified as:

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

…

(e) being a legal person, entity or body owned or controlled by [IRISL], or a natural *or* legal person, entity or body acting on its behalf, or a natural or legal person, entity or body providing insurance or other essential services to IRISL, or to entities owned or controlled by it or acting on its behalf.'

Relisting of the appellants in 2013

22. By letter of 22 October 2013, the Council informed IRISL that it considered that IRISL had been involved in the shipment of arms-related materiel from Iran, in violation of paragraph 5 of Security Council Resolution 1747 (2007), and that it therefore met the criterion laid down in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(b) of Regulation No 267/2012 relating to persons and entities that have evaded or violated certain Security Council resolutions ('criterion of violation of resolutions'). The Council therefore informed IRISL that it intended again to include IRISL on the lists of persons and entities subject to restrictive measures in Annex II to Decision 2010/413 and Annex IX to Regulation No 267/2012 ('the lists at issue').

23. By letters dated variously 22 or 30 October 2013, the Council informed each of the 10 companies that, for different reasons, it considered that they also met the criteria laid down in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(e) of Regulation No 267/2012 (the 'IRISL-related criterion'). It thereby informed those 10 companies that it intended again to include their names on the lists at issue.

24. By Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413 (OJ 2013 L 316, p. 46), the appellants' names were again included on the list in Annex II to Decision 2010/413.

12 Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ 2012 L 88, p. 1) replaced Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran (OJ 2010 L 281, p. 1), which itself replaced Regulation No 423/2007.

25. In consequence thereof, by Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation No 267/2012 (OJ 2013 L 316, p. 1), the appellants' names were again included on the list in Annex IX to Regulation No 267/2012.

26. The 2013 relisting of IRISL was based on the following grounds: 'IRISL has been involved in the shipment of arms-related materiel from Iran in violation of paragraph 5 of [Security Council] Resolution 1747 (2007). Three clear violations were reported to the UN Security Council Iran Sanctions Committee in 2009.'

27. The inclusion of the names of the 10 companies on the lists at issue was based on the following grounds:

– Hafize Darya Shipping Co., Safiran Payam Darya Shipping Co. and Hoopad Darya Shipping Agency were listed on the grounds that they were 'acting on behalf of IRISL';

– Khazar Sea Shipping Lines Co., IRISL Europe and Valfajr Shipping Line Co. were listed on the grounds that they were 'owned by IRISL';

– Qeshm Marine Services & Engineering Co. and Marine Information Technology Development Co. were listed on the grounds that they were 'controlled by IRISL';

– Irano Misr Shipping Co. was listed on the grounds that it 'provided essential services to IRISL'; and

– Rahbaran Omid Darya Ship Management Co. was listed on the grounds that it both 'acted on behalf of IRISL' and 'provided essential services to it'.

Second proceedings before the General Court

28. By applications lodged at the General Court Registry on 6 January and 7 February 2014, the appellants brought actions for annulment against the instruments effecting those relistings (Joined Cases T-14/14 and T-87/14). The parties attended a hearing on 12 July 2016.

29. By judgment of 17 February 2017, the General Court dismissed as unfounded the applications for annulment of the 2013 relisting as well as the plea of illegality directed against the 2013 criteria and ordered the appellants to pay the costs. [13]

Measures implementing the JCPOA

30. In the meantime, in order to implement Resolution 2231 (2015) the Council adopted a series of measures ('the measures implementing the JCPOA') on 18 October 2015, the combined effect of which is, in particular, to *suspend* the restrictive measures applying to individuals and entities set out in Annex VI (formerly Annex II) to Decision 2010/413 as amended and, accordingly, to *remove* their

13 The General Court also dismissed as inadmissible the actions for annulment of the 2013 criteria. The appeal does not challenge the judgment under appeal in that respect.

names from the list of persons and entities subject to restrictive measures set out in Annex IX to Regulation 267/2012.[14] Pursuant to Council Decision (CFSP) 2016/37 of 16 January 2016 concerning the date of application of Decision 2015/1863 (OJ 2016 L 11 I, p. 1), those measures took effect as from that same date.

The appeal

31. By their appeal lodged on 27 April 2017, the appellants request the Court of Justice to set aside the judgment under appeal, annul the 2013 relisting pursuant to Article 263(4) TFEU, declare the 2013 criteria inapplicable to their case by virtue of Article 277 TFEU and order the Council to pay the costs.

32. In support of their appeal, the appellants put forward nine grounds of appeal. I shall examine them in turn. Before doing so, I shall deal with one preliminary matter.

Admissibility of the appeal

Objection of inadmissibility raised by the Council

33. The Council argues in essence that, since the restrictive measures at issue have been suspended and since the lists of persons subject to them were repealed by the Council to implement the JCPOA,[15] the appellants have no legal interest in pursuing the appeal. It follows that the appeal is inadmissible.

34. I am not persuaded by those arguments.

35. It is common ground that the JCPOA resulted, at EU level, in a commitment to 'lift all … sanctions'[16] and 'all … economic and financial restrictive measures'[17] and to 'terminate implementation of all … nuclear-related economic and financial sanctions'.[18] The measures adopted by the Council to implement the JCPOA *suspended* the restrictive measures applying to individuals and entities set out in Annex VI (formerly Annex II) to Decision 2010/413/CFSP and *removed* the names of those individuals and entities from the list of persons and entities subject to restrictive measures set out in Annex IX to Regulation (EU) No 267/2012.

36. It is also clear that, should the Council decide at some point in the future to reverse the suspension and re-list the appellants in order to re-impose those (or similar) measures, it will need to amend those acts again accordingly. The appellants will obviously have standing to challenge those acts, as they do and did in this case.

14 See Council Regulation (EU) 2015/1861 of 18 October 2015 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2015 L 274, p. 1), points 105, 125, 128, 129, 142, 155, 239, 251, 264, 265 and 290 in Section II of the Annex to Council Implementing Regulation (EU) 2015/1862 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2015 L 274, p. 161) and Article 1(16) of Council Decision (CFSP) 2015/1863 of 18 October 2015 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2015 L 274, p. 174).

15 See points 11 and 30 above.

16 Recital 9 of Decision 2015/1863.

17 Recitals 5 and 6 of Regulation No 2015/1861.

18 Recital 14 of Decision 2015/1863.

37. The measures implementing the JCPOA become effective as from 16 January 2016 with effect *ex nunc*. Accordingly, they do not remove from the legal order the effects that the 2013 criteria and the 2013 relisting produced between their respective dates of entry into force and 15 January 2016. The suspensive effects of the measures implementing the JCPOA are therefore not equivalent to those of an annulment by this Court or by the General Court, or to any declaration of invalidity applying *ex tunc*.

38. In my recent Opinion in *Gul Ahmed Textile Mills* v *Council*,[19] I examined in detail the question of a continuing interest in bringing proceedings. I argued against imposing excessive requirements on establishing that interest and concluded that the question of interest in bringing proceedings is of constitutional importance and must be placed in the broader context of the fundamental right to effective judicial protection, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.[20] Those conclusions are transposable to the present context.[21]

39. It is settled case-law that even if a disputed act no longer has any effect for the future, an applicant continues to have an interest where the annulment of that act is capable of procuring him an advantage.[22]

40. Unlike in *Bank Mellat* v *Council*,[23] the asset-freezing measures at issue here were capable of affecting not only the legal but also the factual situation of the appellants during the period preceding their suspension or withdrawal. In principle therefore, the annulment sought could bring the appellants a factual or legal benefit.

41. The appellants put forward two grounds to justify their interest. These are the interest in restoring their reputation and in founding an action in damages. I shall analyse each in turn.

42. *First*, the Court has recognised that an applicant seeking the annulment of a regulation imposing restrictive measures might conceivably have at least a non-material interest in bringing the proceedings, on the basis that a potential annulment might alleviate, if not fully undo, the reputational loss suffered.[24]

43. Unlike in *Bank Mellat* v *Council*,[25] the measures at issue here are individual and not sectorial in nature. As such, they can plausibly be thought to make the appellants the subject of opprobrium in as much as they show the *link* that the international community makes between those different factual situations and Iran's nuclear proliferation programme. Furthermore, by freezing part of the appellants' assets, the restrictive measures at issue are likely also to have affected their financial liquidity and thereby their capacity to respect prior contractual engagements.

19 C-100/17 P, EU:C:2018:214, points 25 to 49.

20 OJ 2010 C 83, p. 389 ('the Charter'). See points 42 and 45 of my Opinion.

21 The criteria for assessing the interest *in bringing proceedings* as a condition of admissibility of an action at the time of its introduction should not differ from the test for whether the interest *in pursuing the proceedings* persists. In that respect, I agree with the view expressed by Advocate General Mengozzi in his Opinion in *Bank Mellat* v *Council*, C-430/16 P, EU:C:2018:345, point 28.

22 In such a case, the Court must assess the applicant's interest in bringing proceedings in the light of the specific circumstances, taking account in particular of the consequences of the alleged unlawfulness and of the nature of the damage claimed to have been suffered. See judgment of 23 December 2015, *Parliament* v *Council*, C-595/14, EU:C:2015:847, paragraph 18 and the case-law cited.

23 Following the annulment of *individual* asset-freezing measures in that case, the applicant challenged the measures *generally applicable* to financial institutions. Advocate General Mengozzi observed that both sets of measures applied to the applicants simultaneously and that the former (the individual measures) had further-reaching effects on their situation. He therefore concluded that the applicants had no interest in the annulment of the less severe, general measures whose effects in practice did not alter their position. In its judgment of 6 September 2018 (EU:C:2018:668), the Court agreed with that assessment: see paragraphs 61 and 62.

24 See, by analogy, judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 70 to 72.

25 See judgment of 6 September 2018 in C-430/16 P, EU:C:2018:668, paragraphs 54 to 59.

44. *Second*, it is settled case-law that an applicant may retain an interest in seeking the annulment of an act which adversely affects it in so far as a finding of illegality could serve as the basis for a future action for damages caused to it by the disputed act. [26]

45. Thus, I cannot agree with the Council's argument that because the judgment under appeal dismissed the appellants' applications at first instance, it is impossible for them to show that there was a sufficiently serious breach by the Council of a rule of EU law that is intended to confer rights on individuals. [27]

46. That judgment is not definitive since it is subject to a pending appeal. Until that appeal is resolved by this Court, no conclusion as to the existence of a serious breach of EU law, or the absence thereof, can be extrapolated from the judgment under appeal.

47. Since there is a close legal connection between the 2013 criteria and the 2013 relisting, [28] the analysis that I have just set out holds true with regard to both grounds raised in the present appeal. I can see no good reason why the interest in bringing proceedings against the generally applicable criteria for listing should be assessed differently from the interest in challenging the individual asset-freezing measures.

48. I conclude that the entry into force, on 16 January 2016, of the measures implementing the JCPOA does not undermine the appellants' continued interest either in pursuing the proceedings before the General Court until the date of the judgment under appeal, [29] or in bringing this appeal.

Objection of inadmissibility raised by the Commission

49. The Commission submits that the appeal is inadmissible since to a great extent it repeats the pleas in law and arguments on which the appellants previously relied before the General Court. It thus amounts to a mere request for re-examination of the application.

50. As the Court has repeatedly held, an appeal must state precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or plea concerned is inadmissible. An appeal that does not contain any arguments aimed at specifically identifying the error of law by which the judgment in question is allegedly vitiated does not satisfy that requirement. Thus, a mere abstract statement of the grounds of appeal does not satisfy the requirements set out in Article 58 of the Statute of the Court and in Article 168(1)(d) of its Rules of Procedure. [30]

51. Certain parts of the appeal appear to fail the test laid down in that case-law. However, some of the arguments put forward merit closer examination, since they raise questions of principle that may be validly debated. I therefore do not think that the appeal as such should be declared inadmissible.

26 See judgment of 31 March 1998, *France and Others* v *Commission*, C-68/94 and C-30/95, EU:C:1998:148, paragraph 74.

27 See, to that effect, judgment of 19 April 2012, *Artegodan* v *Commission*, C-221/10 P, EU:C:2012:216, paragraph 80 and the case-law cited. See also the Opinion of Advocate General Mengozzi in *Bank Mellat* v *Council*, C-430/16 P, EU:C:2018:345, point 43.

28 See judgment of 10 June 1986, *Usinor* v *Commission*, 81/85 and 119/85, EU:C:1986:234, paragraph 13.

29 I note that at that time the proceedings before the General Court were ongoing. It is surprising that, whereas the judgment under appeal postdates the entry into force of those measures, the General Court made no mention of those measures or of their effect on the legal situation of the appellants and in particular on the existence of their continuous interest in pursuing proceedings. That, however, in itself does not vitiate the judgment under appeal in relation to the interest of the appellants, since that judgment is necessarily, even if implicitly, based on the premiss that the appellants justified such an interest throughout the proceedings.

30 See judgment of 16 February 2017, *Brandconcern* v *EUIPO and Scooters India*, C-577/14 P, EU:C:2017:122, paragraph 37 and the case-law cited.

Substance of the appeal

52. The appellants put forward two grounds of appeal.

53. The first ground of appeal concerns the appellants' challenge, by virtue of Article 277 TFEU, to the validity of the 2013 criteria.

54. In support of that ground of appeal, the appellants raise five pleas in law. These concern the alleged errors of law of the General Court with regard to, first, the lack of legal basis for the adoption of the 2013 criteria; second, the alleged infringement of the principles of *res judicata*, legal certainty, protection of legitimate expectations and *ne bis in idem* as well as of the appellants' right to an effective remedy; third, misuse of powers; fourth, the alleged breach of the principle of proportionality; and fifth, the alleged disproportionate interference with the appellants' fundamental rights.

55. The second ground of appeal concerns the appellants' direct challenge under Article 263(4) TFEU to the legality of the 2013 relisting, by which their names were added to the lists of entities subject to individual asset-freezing measures.[31]

56. In support of that ground of appeal, the appellants raise four pleas in law. These concern the alleged errors of law of the General Court with regard to, first, manifest errors of assessment in finding that the 2013 listing criteria were fulfilled; second, the alleged infringement of the appellants' rights of the defence in the procedure used to relist them; third, the alleged infringement of the principles of *res judicata*, legal certainty, protection of legitimate expectations and *ne bis in idem* as well as of the appellants' right to an effective remedy; and fourth, the alleged infringement of the appellants' rights of the defence.

57. Three of the four pleas raised by the second ground of appeal thus overlap with pleas raised in the first ground of appeal.

58. However, the acts challenged by the second ground of appeal are of essentially a different legal nature. In particular, their legal basis and thus the nature of the competence exercised by the Council to adopt them is different and the scope of discretion that the Council enjoys when adopting them differs. Accordingly, the standard of judicial review is also different. I shall therefore examine them separately.

First ground of appeal

First plea: no valid legal basis for adopting the 2013 criteria

59. The General Court found, in paragraphs 60 to 77 of the judgment under appeal, that the 2013 criteria were not arbitrary and complied with the principle of proportionality.

60. The appellants submit that the Council had no valid legal basis for adopting the 2013 criteria. They do not challenge the *choice* of legal basis as such. Rather, they argue that the 2013 criteria *exceed the scope* of the legal basis on which they are founded, because those criteria were not appropriate or proportionate to the stated objective of ending Iran's programme of nuclear proliferation.

31 IRISL and Irano Misr Shipping Co. were listed on the basis of the additional criteria, whilst the remaining appellants were listed on the basis of the previously existing criteria. Moreover, Rahbaran Omid Darya Ship Management Co. was also listed on the basis of a newly created criterion.

61. In particular, the appellants argue that, since the General Court found (in paragraph 101 of its judgment) that the 2013 criteria did not require a link between the activities of the person or entity concerned and nuclear proliferation, those criteria cannot be considered appropriate here. Further, they claim that the criterion of a breach of the prohibition on Iran selling arms (paragraph 5 of resolution 1747 (2007)) rather than of the proliferation-related prohibitions (paragraph 7 of resolution 1737 (2006)) is not justified or proportionate. They also submit that there was no legal basis to introduce the criterion of violation of the Security Council resolutions, which served the Council to list IRISL. It follows that the Council cannot argue that the IRISL-related criterion is necessary to counter the risk of circumventing the asset-freezing measures imposed on IRISL.

62. The appellants further criticise the General Court for failing to address various specific arguments that they had raised before it. These are the following: that the Council had no objective reason to amend the listing criteria and that it failed to provide grounds for doing so; that, in particular, the Council had no evidence of a link between the transportation of arms and the proliferation programme and could not validly presume the existence of such a link, especially in the light of the 2013 General Court judgment and of the fact that the Security Council did not impose any restrictive measures on IRISL; and that the Council 're-wrote' the existing criteria only to 'catch' IRISL together with the other appellants.

63. I begin by noting that, when it comes to the measures which laid down the 2013 criteria, Council Decision 2013/497 is based on Article 29 TEU, whilst Council Regulation No 971/2013 is based on Article 215 TFEU. Those provisions of the Treaties give the Council the power to adopt acts of general application containing independent restrictive measures, distinct from the measures specifically recommended by the Security Council. Article 215(1) TFEU provides that the Council 'shall adopt necessary measures' to give effect to decisions adopted on the basis of, in particular, Article 29 TEU. Article 215(2) TFEU empowers the Council to adopt restrictive measures against natural or legal persons and groups or non-State entities. It follows that, as a matter of principle, the Council has indeed a legal basis on which to adopt asset-freezing measures against entities such as the appellants.

64. According to settled case-law, the EU courts must, in their judicial review of restrictive measures, allow the Council a broad discretion in *establishing the general criteria* defining the category of persons that may be made subject to such measures. [32]

65. That does not mean that the Council is allowed to act in an arbitrary manner. The legality of a measure can be affected if the measure is *manifestly inappropriate* having regard to the *objective* which the competent institution is seeking to pursue. [33]

66. Although the judicial review of the assessment of the *appropriateness* of such measures is thus constrained, the courts of the Union must ensure that there is, in principle, a full review of the lawfulness of all acts of the Union from the point of view of fundamental rights. [34]

67. The General Court applied that case-law correctly. [35] Settled case-law of this Court explains that the objective of the regime of the measures against Iran is to *put pressure* on that state and *to oblige it to put an end to* proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems. [36] That objective is in line with the broader objectives of the EU Treaty concerning

32 See, to that effect, *Kala Naft* (paragraph 120), and judgment of 21 April 2015, *Anbouba* v *Council*, C-605/13 P, EU:C:2015:248, paragraph 41.

33 Judgment of 1 March 2016, *National Iranian Oil Company* v *Council*, C-440/14 P, EU:C:2016:128, paragraph 77 ('*National Iranian Oil Company*').

34 See, to that effect, judgment of 16 July 2014, *National Iranian Oil Company* v *Council*, T-578/12, not published, EU:T:2014:678, paragraph 108 and the case-law cited. That judgment was confirmed on appeal in *National Iranian Oil Company*.

35 See paragraph 63 of the judgment under appeal.

36 See *National Iranian Oil Company* (paragraph 53), emphasis added.

the EU's relations with the wider world and the Common Foreign and Security Policy ('the CFSP').[37] That objective must also be viewed in the light of the objectives of the relevant Security Council resolutions which seek to 'constrain' Iran's nuclear proliferation programme and to 'suspend' some of its components with a view to maintaining international peace and security.[38]

68. The historical context must also be taken into account when analysing the legality of criteria for asset-freezing.[39] Restrictive measures against Iran have evolved over time. They are preventative in nature. Their scope could legitimately be (and has been) progressively extended on several occasions[40] to remedy the perceived lack of success of the measures previously adopted.

69. The 2013 criteria state laconically that the criteria for designation of persons and entities 'should be adjusted', without providing any specific reasons for doing so.[41] Nevertheless, it is clear from the context that the purpose was to *extend* those criteria in order to *target additional categories* of persons or entities *in pursuit of the objectives* resulting from the Treaties and from the existing Security Council Resolutions. It follows from the case-law that such an objective is not unlawful in itself.[42] I reject the appellants' bare assertion that the covert objective was to circumvent the 2013 General Court judgment.

70. I shall now examine more closely the legality of, first, the criterion of violation of the Security Council resolutions and, second, the IRISL-related criterion.

71. By way of introduction, I note that both those criteria focus on objective situations or circumstances, rather than on demonstrating an actual link between the persons and entities to be subjected to the asset-freezing measures or their actual conduct and the main purpose of the restrictive measures, in particular discouraging Iran's nuclear proliferation programme. The Court has recognised in principle the lawfulness of such criteria.[43]

The criterion of violation of Security Council resolutions

72. IRISL was listed on the basis of the criterion aimed at 'persons and entities that have evaded or violated the provisions of [Security Council Resolutions] 1737 (2006), ... 1747 (2007), ... 1803 (2008) and ... 1929 (2010).'

73. That criterion was added to the existing criterion concerning persons and entities 'that have *assisted* designated persons or entities in evading or violating' those provisions. Seen from that perspective, the addition seems eminently reasonable. If it is justified to apply restrictive measures to persons who have assisted other persons in an unlawful activity, it is a fortiori justified to apply such measures to persons who have themselves acted unlawfully.

37 Pursuant to Article 3(5) TEU, in those relations the EU should contribute to peace, security and to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. The CFSP should include support for the principles of international law (Article 21(2)(b) TEU), preserving peace, preventing conflicts and strengthening international security, in accordance with the purposes and principles of the United Nations Charter (Article 21(2)(c) TEU).

38 See point 4 et seq. above.

39 See, to that effect, *Kala Naft*, paragraph 75, and order of 1 December 2015, *Georgias and Others* v *Council and Commission*, C-545/14 P, not published, EU:C:2015:791, paragraph 33.

40 Initially, the criterion was that such persons and entities must have been engaged in or be directly associated with nuclear activities in Iran (Article 7(2) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1)). That criterion was extended for the first time in 2010 (Article 16(2) of Regulation No 961/2010 (OJ 2010 L 88, p. 1)). Several other extensions have since followed.

41 See Recital 2 of Council Decision 2013/497 and Recital 2 of Council Regulation No 971/2013.

42 See, by analogy, *National Iranian Oil Company* (paragraph 80).

43 See, judgments of 13 March 2012, *Tay Za* v *Council*, C-376/10 P, EU:C:2012:138, paragraph 55 (individuals in charge of certain businesses associated with the leaders of the third countries concerned); of 22 September 2016, *NIOC and Others* v *Council*, C-595/15 P, not published, EU:C:2016:721, paragraph 89 and 90 ('being owned or controlled' by a person subjected to the restrictive measures); and of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 82 et seq. (entities exercising economic activity in a specific sector).

74. Whilst IRISL was listed on the grounds that it had violated a prohibition relating to the arms embargo, the relevant Security Council resolutions also contain a number of other prohibitions, some of which relate more directly to participation in development of the proliferation programme. In particular, by Resolution 1737 (2006) the Security Council imposed an embargo on the transfer of sensitive technologies. Further, by Resolution 1747 (2007) it imposed an arms embargo on Iran.

75. It is true that no immediate link can be identified between those two resolutions and the nuclear proliferation programme as such. The General Court was thus right to find that the criterion of violation of the Security Council resolutions does not appear to require that such a link exists between the conduct of a given entity and that programme.[44] However, that finding does not in itself render the choice of that criterion inappropriate or arbitrary.

76. The General Court was right to find that resolution 1947 (2007) was intended to ensure that the Iranian nuclear programme serves exclusively peaceful purposes and to constrain Iran's development of sensitive technologies in support of its nuclear and missile programmes.[45] Having regard to the preventive nature of the restrictive measures adopted against Iran,[46] the Council could legitimately consider that the proceeds of the trade in arms could directly or indirectly provide Iran with resources or facilities of various nature allowing it to pursue that programme.[47] Knowing that the economic resources might be diverted in order to support proliferation-sensitive nuclear activities in Iran,[48] the Council could also legitimately consider that violation of the arms embargo was capable of supporting or encouraging that programme.

77. It is true that the Resolution 1747 (2007) does not oblige States to freeze the assets of persons or entities violating the arms embargo, but only calls on them to exercise vigilance in that respect. However, it cannot be inferred from that recommendation that there is no need to freeze the assets of those entities,[49] still less that such a freezing measure is manifestly inappropriate to ensure the effectiveness of that embargo.

78. Thus, it was not unreasonable or excessive for the Council to formulate an asset-freezing criterion that presupposes a potential link between the violation of the arms embargo and the proliferation programme, notwithstanding the fact that the individual conduct of the entity caught by such a criterion does not necessarily display an actual direct or indirect connection with that programme.[50] Such a political choice does not appear a priori to be manifestly inappropriate or arbitrary in the light of the relevant Security Council resolutions and the prime importance of preserving international peace and security.

79. Finally, the scope of that criterion is not limited to violations of the arms embargo, but aims at ensuring the respect of all the provisions of the relevant Security Council resolutions. Contrary to the appellants' submissions, a criterion so formulated is consistent with the objectives of the system of restrictive measures against Iran. By contrast, a criterion limited to violations of prohibitions directly related to proliferation, but leaving aside other prohibitions imposed by the relevant Security Council provisions would, in my view, have been less appropriate to uphold those overall objectives.

80. I therefore conclude that the first part of the first ground of appeal concerning the criterion of the violations of Security Council resolutions should be dismissed as unfounded.

44 See judgment of 13 March 2012, *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137 ('*Melli Bank*'), paragraphs 40 and 41.

45 See paragraph 67 of the judgment under appeal.

46 Judgment of 21 December 2011, *Afrasiabi and Others*, C-72/11, EU:C:2011:874, paragraph 44.

47 See *Kala Naft* (paragraph 83) and *National Iranian Oil Company* (paragraph 80).

48 Judgment of 21 December 2011, *Afrasiabi and Others*, C-72/11, EU:C:2011:874, paragraph 47.

49 See, by analogy, *Melli Bank* (paragraph 57).

50 See, by analogy, *National Iranian Oil Company*, paragraph 86. See also orders of 1 December 2015, *Georgias and Others* v *Council and Commission*, C-545/14 P, not published, EU:C:2015:791, paragraph 34; and of 4 April 2017, *Sharif University of Technology* v *Council*, C-385/16 P, not published, EU:C:2017:258, paragraphs 59 to 61.

The IRISL-related criterion

81. The 10 companies were listed on the basis of criteria aiming, in essence, at persons and entities (i) owned or controlled by IRISL, (ii) acting on behalf of IRISL or (iii) providing essential services to IRISL.[51]

82. Like the criterion of violation of the Security Council resolutions, the IRISL-related criterion does not presuppose any link between the individual conduct of the entities to be listed and the nuclear proliferation programme. Indeed, the fact of being owned or controlled by IRISL has nothing to do with the individual conduct of the entities concerned. It is an objective fact beyond their control.

83. However, that in itself does not make that criterion unlawful. It is clear from the case-law that when the assets of a *person or an entity subject to restrictive measures* are frozen, there is a not insignificant danger that that person or entity may then exert pressure on entities that it owns or controls or which belong to it in order to *circumvent* the effect of the measures to which it itself is subject. Consequently, it is necessary and appropriate to freeze the assets of such entities in order to ensure the effectiveness of the measures adopted and to ensure that those measures are not circumvented.[52]

84. That case-law concerned the risk that asset-freezing measures adopted against persons *themselves involved* in supporting the nuclear proliferation programme will be circumvented. In my view, contrary to the appellants' submissions, such a risk obviously also exists in the context of other criteria, including those which do not presuppose any link between the individual conduct of a person listed and the nuclear proliferation programme, such as that at issue here. However, that case-law applies *only* where the restrictive measures at issue apply to persons or entities owned, controlled or otherwise linked to persons *already subject to those measures*.[53]

85. When the 2013 criteria were adopted, IRISL itself *was* subject to asset-freezing measures.[54] It follows that, in principle, the criterion at issue could potentially be justified by the need to prevent those measures being circumvented.

86. However, the acts establishing the 2013 criteria do not contain any statement of reasons to that effect to justify the IRISL-related criterion. Neither does Council Decision 2010/413/CFSP, in which the Council first laid down the IRISL-related criterion in its initial (narrower) form.[55] There can therefore at best be a mere *presumption* that the Council would have justified that criterion by reference to the need to counter circumvention of its earlier measures targeting IRISL itself.

51 See points 20 to 27 above. I note that while the wording of the relevant criterion contained in Council Regulation No 971/2013 is clear and unequivocal, the wording of Council Decision 2013/497 (to which the former measure is supposed to give effect) *is not*. The latter makes the repeated use of the pronouns 'them' and 'their' whose point of reference, and thus also the scope of the criterion, is open to interpretation. I shall not develop this argument further, since no ground of appeal raises this issue.

52 See, to that effect, judgment of 20 February 2013, *Melli Bank* v *Council*, T-492/10, EU:T:2013:80, paragraph 55; that judgment was upheld on appeal by *Melli Bank*.

53 See, *Melli Bank* (paragraphs 39 and 75 to 79); and judgment of 20 February 2013, *Melli Bank* v *Council*, T-492/10, EU:T:2013:80, paragraphs 55 and 56.

54 See points 14 to 19 above. Although the General Court held that the 2010 listing of IRISL was illegal, it maintained that listing in force until 26 November 2013 (see the 2013 General Court judgment, paragraph 82). It follows that at the date of the adoption of the 2013 criteria, the freeze of assets belonging to IRISL was in place and the Council could therefore justify the criterion aimed at countering its circumvention, even if it were for only little more than a month to come.

55 It is true that Recital 7 of that decision provides grounds for the listing criterion, laid down in Article 20(1)(a) of that decision, allowing the Council to freeze assets of *IRISL entities designated* by the Security Council *in Annex III* of Resolution 1929 (2010). However, none of the appellants are named in that annex (see points 9 and 10 above). That recital manifestly cannot form the basis for Article 20(1)(b) of that decision, which sets up a separate, complementary EU regime of restrictive measures concerning *other entities* (including the appellants).

87. The second paragraph of Article 296 TFEU provides, in particular, that legal acts of the European Union are to state the reasons on which they are based. Such a statement of reasons must show clearly and unequivocally the reasoning of the EU institution which adopted the measure in such a way as to enable the Court to exercise its power of review.[56] In accordance with settled case-law, the question whether the statement of reasons for a decision meets the requirements of Article 296 TFEU must be assessed with regard not only to its *wording* but also to its *context*.[57]

88. As I have just indicated, the *wording* contains no reasoning justifying the IRISL related criterion. I have set out the *context* of the 2013 criteria earlier in this Opinion.[58]

89. When establishing the 2013 criteria, the Council must have been aware of the following matters. First, the restrictive measures imposed by the Security Council did not cover IRSIL or any of the 10 companies. Secondly, although the Council had earlier relied on three incidents where IRISL had violated Security Council resolution 1747 (2007), the Council had failed to provide sufficient evidence that IRISL had lent support to the nuclear proliferation programme.[59] Thirdly, the Council had failed to put forward evidence demonstrating that IRISL was in fact an emanation of the Iranian State — that is, an entity which participated in the exercise of governmental powers or which ran a public service under governmental control.[60] It follows that the Council could not rely on the *presumed existence* of links of some kind between IRISL and the Iranian State or its nuclear proliferation programme in order to justify the IRISL-related criterion, especially given that no provision had been made to that effect in the applicable legislation.[61]

90. It would have been open to the Council, when establishing the 2013 criteria, to have taken expressly into account the fact that IRISL was the largest shipping company operating in Iran[62] and that the European Council had invited the Council to impose restrictive measures, among others, 'on the Iranian transport sector, in particular the [IRISL] and its subsidiaries'.[63] That said, no indication of the grounds actually relied upon to justify laying down the IRISL-related criterion is to be found in the relevant acts of the Council. That is a clear violation of the obligation to state reasons laid down in Article 296 TFEU. It also makes it impossible for this Court to exercise its power of judicial review and examine whether the criterion at issue is appropriate and proportionate in light of the objectives it pursues. By failing to find to that effect, the General Court erred in law.

91. The first plea of the first ground of appeal must therefore be upheld and the judgment under appeal should be annulled in that regard. Accordingly, the IRISL-related criterion is invalid. Since the 2013 relisting of the 10 companies was based on precisely that criterion, that listing must also be annulled.

56 See, inter alia, judgments of 18 June 2015, *Estonia* v *Parliament and Council*, C-508/13, EU:C:2015:403, paragraph 60, and of 3 March 2016, *Spain* v *Commission*, C-26/15 P, EU:C:2016:132, paragraphs 30 and 31.

57 See, to this effect, judgments of 14 February 1990 in *Delacre and Others* v *Commission*, C-350/88, EU:C:1990:71, paragraph 16 and the case-law cited, and of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 53 and the case-law cited.

58 See points 4 to 19 above.

59 See the 2013 General Court judgment, paragraph 67.

60 Judgment of 29 January 2013, *Bank Mellat* v *Council*, T-496/10, EU:T:2013:39, paragraph 42. In its analysis, that court took into account the judgment of the European Court of Human Rights *Islamic Republic of Iran Shipping Lines v. Turkey*, ECLI:CE:ECHR:2007:1213JUD004099898, paragraphs 79 and 80.

61 See judgment of 4 June 2014, *Sedghi and Azizi* v *Council*, T-66/12, not published, EU:T:2014:347, paragraph 69.

62 See the 2013 General Court judgment, paragraph 21.

63 See point 13 above.

Second plea: adopting the 2013 criteria allegedly infringed the principles of res judicata, legal certainty, protection of legitimate expectations and ne bis in idem as well as the appellants' right to an effective remedy

92. In paragraphs 79 to 90 of the judgment under appeal, the General Court found that the 2013 criteria comply with the principles of *res judicata*, legal certainty, protection of legitimate expectations and *ne bis in idem* and that they respect the appellants' right to an effective remedy.

First limb – principle of res judicata

93. The appellants argue that the General Court failed to recognise that, by adopting the 2013 criteria, the Council circumvented the 2013 General Court judgment. The General Court allegedly thereby infringed the principle of *res judicata*.

94. The notion of *res judicata* may be understood differently in different national legal contexts. However it is clear that in the context of EU law, the consequence of a judgment's authority as *res judicata* is that it bars an action if the proceedings disposed of by the judgment in question were between the same parties, had the same purpose and the same legal basis.[64] *Res judicata* extends only to those points of fact and law which were *actually* or *necessarily* settled by the judicial decision.[65]

95. However, the appellants' argument appears to raise the broader issue of whether the Council has respected the limits of its discretion in giving effect to that judgment.

96. The position of the EU legislature is likely to be affected by a prior judgment only in very rare and specific instances. That is certainly not the case here.

97. To what extent did the 2013 the General Court judgment affect the Council's ability to act under Articles 29 TEU and 215 TFEU?

98. Under Article 266 TFEU the institution whose act has been annulled may be required to take the necessary measures to comply with the judgment annulling that act. In implementing such a judgment, the institution concerned has a wide discretion in its choice of measures, it being understood that such measures must be compatible with the *operative part* of that judgment as well as the *grounds* which led to the judgment and constitute the essential basis for it, in so far as they are necessary to determine the exact meaning of *what is stated* in the operative part.[66]

99. I have observed elsewhere that, whilst the annulment of an illegal act often prompts the institution concerned to adopt a new act, that is not the only possible method of compliance.[67] In particular, where the annulment itself suffices to eliminate the illegality identified by the Court, it may be that the institution concerned is not required to take any further action. That was clearly the situation here.

100. The purpose of the 2013 criteria was, on a natural reading, to adjust the applicable criteria of general application in order to be able to adopt individual measures for the future, with effect *ex nunc*.[68] The appellants are therefore wrong to claim that the 2013 criteria and the 2013 relisting were intended to, or resulted in, including their names in the lists of entities subject to asset-freezing measures with retroactive (*ex tunc*) effect.

64 Judgment of 25 June 2010, *Imperial Chemical Industries* v *Commission*, T-66/01, EU:T:2010:255, paragraphs 196 to 198.

65 Order of 28 November 1996, *Lenz* v *Commission*, C-277/95 P, EU:C:1996:456, paragraph 50.

66 Judgment of 15 March 2018, *Deichmann*, C-256/16, EU:C:2018:187, paragraph 87 (emphasis added).

67 See my Opinion in *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:25, point 70.

68 I shall examine that argument in greater detail as regards the second ground of appeal in points 117 to 128 below.

101. It is settled case-law that an institution whose act is annulled may be required to *refrain from the adoption of an identical measure*.[69] It must ensure that any act intended to replace the annulled act is not affected by *the same irregularities* as those identified in the judgment annulling the original act.[70] It is also under an obligation to ensure that new legislation adopted following the judgment annulling the previous measure contains *no provisions having the same effect* as the provisions held to be illegal.[71]

102. In what respect was the 2013 General Court judgment final? Put another way: what is the scope of the '*res*' that was actually '*judicata*' by the General Court?

103. In that judgment, the General Court held, in particular, that the Council had *failed to establish to the requisite standard* that IRISL, by having transported — on three occasions — military material in breach of the prohibition laid down in paragraph 5 of Security Council Resolution 1747 (2007), had provided support for nuclear proliferation within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 7(2) of Regulation No 423/2007. Accordingly, it annulled Council Decision 2010/413/CFSP to the extent that it included IRISL in the lists of persons subject to asset-freezing measures.[72]

104. The error of law that led to the annulment of the asset-freezing measures at issue in that case was thus a procedural error committed by the Council (as it 'failed to establish to the requisite standard …') rather than a substantive defect. The judgment under appeal states — in my view, correctly — that the 2013 General Court judgment 'did not rule on the validity of the criteria in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) and (b) of Regulation No 267/2012 as applicable at the material time'.[73]

105. I consider that to be so despite the fact that the 2013 General Court judgment annulled the asset-freezing measures imposed on the 10 companies 'since IRISL has not been properly identified as providing support for nuclear proliferation' and although 'the applicants other than IRISL [were] in fact owned or controlled by it or act[ed] on its behalf'[74] and thus, in principle, fell within the scope of application of that criterion.

106. It follows that neither the principle of *res judicata* nor Article 266 TFEU precluded the Council from maintaining the existing criteria. Since the Council enjoys a degree of latitude when defining the external policy of the EU, those principles could not a fortiori prevent it from adjusting those criteria, as the General Court rightly put it, in order more effectively to pursue its objective of putting pressure on Iran to oblige it to end its nuclear proliferation programme.[75]

Second limb — the principle of ne bis in idem

107. In accordance with Article 50 of the Charter, no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law. Therefore, the *ne bis in idem* principle prohibits a duplication both of proceedings and of penalties which are *criminal in nature* for the

69 Judgment of 6 June 2013, *Ayadi* v *Commission*, C-183/12 P, not published, EU:C:2013:369, paragraph 18.

70 Judgment of 14 September 1999, *Commission* v *AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraphs 50 and 56.

71 Judgment of 26 April 1988, *Asteris and Others* v *Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 29. Those consequences of a prior judicial decision identified in this point appear to be specific expressions of the broader principle of the rule of law, rather than the effects of the *res judicata* principle as such.

72 See point 18 above.

73 See paragraph 80 of the judgment under appeal. *Had* the General Court invalidated the criteria, it would of course have been unlawful for the Council to maintain them and, a fortiori, to relist some entities on that basis.

74 See paragraph 77 of the 2013 General Court judgment.

75 See paragraph 82 of the judgment under appeal. I examine the question of whether those principles prevented the Council from relisting some of the appellants on the basis of the *same criteria* and the *same facts* as those forming the basis of the 2010 listing under the third plea of the second ground of appeal (see point 195 et seq. below).

purposes of that article in respect of the same acts and against the same person.[76] As regards the assessment as to whether proceedings and penalties are criminal in nature, three criteria are relevant: (i) the legal classification of the offence under national law, (ii) the intrinsic nature of the offence and (iii) the degree of severity of the penalty that the person concerned is liable to incur.[77]

108. I cannot see how that principle could prevent the Council from applying to some of the appellants the amended criteria for the first time[78] or applying to others the same general criteria for the second time.

109. It is clearly apparent from the terms both of Resolution 1737 (2006) (in particular paragraphs 2 and 12 thereof) and of Council Decision 2010/413 (in particular recital 9 in the preamble thereto) that the restrictive measures adopted against Iran are intended to be *preventive in nature* in that they seek to prevent a risk of proliferation-sensitive nuclear activities in that State.[79]

110. It follows that the restrictive measures at issue are not intended to *penalise* any misconduct in which the persons concerned may have engaged.[80] Inasmuch as the assets of the persons and entities to which the restrictive measures provided for by the 2013 criteria apply have not been confiscated as the proceeds of crime but rather frozen as a preventive measure, those restrictive measures do not constitute criminal sanctions. Nor, likewise, do they imply any accusation of a criminal nature.[81]

111. The Council's decision subjecting a person or entity to asset-freezing measures does not constitute a finding that a criminal offence has in fact been committed but is adopted within the framework and for the purpose of an administrative procedure which has a *precautionary function*, that is, aimed at preventing the persons and entities concerned from committing certain acts considered unlawful in the light of international law. The sole purpose of that procedure is to enable the Council to exercise pressure on Iran in order to prevent or slow down its nuclear proliferation programme in an effective manner.[82]

112. Those measures therefore imply no criminal law aspect. Accordingly, none of the three conditions referred to in point 107 above is fulfilled. It follows that *ne bis in idem* does not apply in the context of restrictive measures adopted by the Council on the basis of the powers conferred on it by Article 29 TEU and 215 TFEU, such as the 2013 criteria at issue in the present case.

113. In particular, therefore, the 2013 General Court judgment annulling the asset-freezing measures previously imposed on the appellants cannot be regarded as a 'final acquittal' for the purpose of Article 50 of the Charter and the appellants must fail in their argument.

76 See, to that effect, judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 34.

77 See, to that effect, judgments of 5 June 2012, *Bonda*, C-489/10, EU:C:2012:319, paragraph 37.

78 In 2013, IRISL was listed on the basis of the new criterion relating to violation of the Security Council resolutions. Irano Misr Shipping Co. and Rahbaran Omid Darya Ship Management Co. were listed on the basis of the new criterion relating to providing essential services to IRISL. In the latter's case, that new criterion was relied on in parallel with the 'old' criterion of acting on behalf of IRISL. The other appellants were listed on the basis of essentially identical criteria in 2010 and 2013.

79 Judgment of 21 December 2011, *Afrasiabi and Others*, C-72/11, EU:C:2011:874, paragraph 44.

80 The Court observed, in particular, that various provisions of the acts providing for asset-freezing measures in the context of Iran's nuclear proliferation programme are worded in general terms and make no reference to *conduct prior to a decision* to freeze funds (see, to that effect, judgment in *Kala Naft*, paragraph 85).

81 Judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 111.

82 Judgment of 14 October 2009, *Bank Melli Iran* v *Council*, T-390/08, EU:T:2009:401, paragraph 68, cited by Advocate General Bot in his Opinion in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:470, point 106.

Third limb — principles of legal certainty and of protection of legitimate expectations

114. The appellants submit in essence that, since the 2013 General Court judgment annulled their prior listings, the principles of legal certainty and of protection of legitimate expectations required the Council to take no further action in their regard.

115. The General Court correctly recalled that, according to settled case-law, the principle of legal certainty requires that EU legislation must be certain and its application foreseeable by those subject to it.[83]

116. The appellants have failed to point to any aspect of the 2013 criteria that lacked precision or clarity. Nor have they identified any passage in the 2013 General Court judgment that could give rise to a legitimate expectation that the Council would be precluded from taking further action, based on lawful criteria and procedure and appropriate evidence, that might result in their being relisted. That argument must therefore be dismissed as manifestly unfounded.

117. The appellants also submit that it was not lawful for the Council to retain criteria referring to past conduct or facts or circumstances existing prior to their adoption or that were even unknown to the Council at that time. They do not specify the principle of law or Treaty provision on which they rely in that respect, but consider that what the Council did gave those criteria 'retrospective' effect.

118. First, restrictive measures are of a preventive nature. Within its broad discretionary powers, the Council acting in its capacity of the EU legislature may establish criteria to apply restrictive measures of various types. Their nature and content will depend on the objectives sought.

119. It is inherent in the nature of the measures intended to counter the risks related to the Iranian nuclear proliferation programme that they constitute a *response*, based on certain general or specific knowledge, to a situation obtaining in that State. Thus, for example, if the Council considers that violations of the provisions of Security Council resolutions procure an advantage for that programme or are likely to do so in the future, it may legitimately set up a criterion referring to such violations. The restrictive measures intended to counter the risk of international terrorism are another illustration of the same phenomenon.[84] They are, by their very nature, based on national decisions concerning the past conduct of persons or groups posing such risk.[85]

120. Second, it follows inevitably that those criteria are *prospective* in nature. They are intended to be applied as appropriate to future conduct or a future situation.

121. The Council may thus choose to establish criteria that refer generically to categories of facts which preceded the adoption of those criteria. The facts pertaining to an individual listing may, however, only come to its knowledge later. Obviously, in formulating its criteria the Council may wish to refer back to the facts or circumstances that prompted the adoption of those criteria, on account of the proven risks that they presented at that time.

83 See paragraph 192 of the judgment under appeal, where the General Court refers to paragraph 77 of judgment of 14 October 2010, *Nuova Agricast and Cofra* v *Commission*, C-67/09 P, EU:C:2010:607.

84 Those measures are imposed on the basis of Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), as amended.

85 See, to that effect, my Opinion in *Council* v *LTTE*, C-599/14 P, EU:C:2016:723, point 77 et seq., and in particular point 79.

122. The appellants' submission leads to the paradoxical conclusion that the Council would be required to grant unconditional immunity to persons and entities that, in the light of the objectives sought by the EU legislature, *were known to present recognised risks* or indeed *presented such risks*, although that was unknown at the time the listing criteria were adopted. That would leave the EU legislature only with the possibility of targeting persons and entities that, in the light of those legitimate objectives, *were not known* to present such risks or even *did not present such risks* when the listing criteria were adopted.

123. Thus, on the appellants' argument the Council would be required (for example) to establish that a given entity has actively supported the nuclear proliferation programme after the relevant criterion was formulated; or to establish that a given entity was created, acquired or began to be effectively controlled by an entity subject to restrictive measures only after that date.

124. In the first example, the Council would be able to 'activate' the relevant criterion only if it could establish that the restrictive measures failed to prevent the risk they were intended to stop from happening. In the second example, the Council would face an evidentiary challenge that, given the systematic refusal of the Iranian authorities to cooperate with the international community, would in most cases prove to be insurmountable in practice.

125. Self-evidently, that would deprive the restrictive measures of their effectiveness and, in practical terms, would render nugatory the competences conferred upon the EU in Articles 29 TEU and 215 TFEU by the authors of the Treaties.

126. No Treaty provision or general principle of EU law implies — let alone requires — that such a draconian limitation be imposed on the competence granted by those provisions to the Council.

127. I have already concluded that restrictive measures do not imply a criminal sanction or have any other criminal law aspect.[86] It follows that the general principle of *nulla poena sine lege* does not apply in this context.[87] The same is true of the principle of non-retroactivity of criminal law.[88]

128. It follows that, although the General Court did not examine the appellants' argument in the light of those two principles, it committed no error of law when it dismissed that argument in paragraphs 88 and 89 of the judgment under appeal.

129. The General Court was also right to recall that the right to rely on the principle of protection of legitimate expectations extends to any person who has been caused by an EU institution to entertain expectations which are justified by precise assurances provided to him. However, if a prudent and alert economic operator could have foreseen the adoption of an EU measure likely to affect his interests, he cannot plead that principle if the measure is adopted.[89]

130. Neither the fact that, in the 2013 General Court judgment, the General Court maintained the effects of the annulled acts until the date of expiry of the period for bringing an appeal, nor the fact that the Council decided not to exercise its right to appeal against that judgment, can be regarded as founding a legitimate expectation that the Council would thereafter refrain from adjusting the general criteria or from again including the appellants' names in the lists of persons subject to asset-freezing measures (whether on the basis of the existing criteria or modified criteria).

86 See points 110 to 112 above.

87 That principle, enshrined in Article 49(1) of the Charter, is a specific expression of the principle of legal certainty in the context of application of criminal sanctions.

88 That principle is a corollary of the principle enshrined in Article 49 of the Charter, that the criminal offences and penalties must be laid down by law.

89 See paragraph 191 of the judgment under appeal citing the judgment of 16 December 2010, *Kahla Thüringen* v *Commission*, C-537/08 P, EU:C:2010:769, paragraph 63.

131. A fortiori that is so given that the General Court expressly stated, in paragraph 64 of that judgment, that it was open to the Council in its role as legislator to extend the situations in which restrictive measures could be adopted.

132. Accordingly, the General Court committed no error of law in the judgment under appeal in rejecting the appellants' legitimate expectations argument.

Fourth limb — right to an effective remedy

133. The appellants submit that the General Court should have found that the Council was prevented from relisting them in the absence of new facts or new objectively justified reasons. The General Court's failure to make such a finding infringed their right to an effective remedy under Article 47 of the Charter.

134. First, that argument was not raised before the General Court and is only raised for the first time in the appeal. It is true that the General Court mentioned that principle in paragraph 172 of the judgment under appeal: however, it did so in reply to the plea in law concerning the infringement of the rights of the defence. The argument that the appellants raise here therefore constitutes a new plea which, in accordance with Article 170(1) of the Rules of Procedure of the Court, is inadmissible at the appeal stage. [90]

135. Second, despite forming part of the plea of illegality, that argument relies on the circumstances relating to the 2013 relisting. I cannot see how those circumstances, coming after the adoption of the 2013 criteria, can affect the legality of those measures. That argument must be thus dismissed as ineffective.

136. Finally, I make the obvious point that the appellants both had an opportunity to challenge their prior listing and even succeeded in doing so. The 2013 General Court judgment annulled the asset-freezing measures imposed by the Council in 2010 as from 27 November 2013, thus eliminating those measures from the EU legal order with retroactive effect. If the appellants had so desired, they could have sought to rely on that annulment as the basis for a claim for damages for the alleged harm suffered.

137. The fact that the Council decided to adjust the listing criteria and then applied the modified criteria to the appellants does not affect their position retroactively. It thus undermines neither the advantage they obtained by that annulment, nor their right to an effective remedy.

138. The appellants remain able to rely effectively on the right to an effective remedy in the future. If they succeed in the present action, they will be re-established in their initial position and be able, if they so desire, to seek compensation for the harm alleged to have been caused by the annulled measures.

139. In this respect, the appellants' argument referring to the allegedly 'illusory' prospects of obtaining satisfactory compensation misses the point. It is settled case-law that an action for damages provides access to justice, but it is not part of the system of judicial review. The fact that it might not be successful, in particular where the annulment of unlawful restrictive measures is itself capable of constituting a form of reparation for non-material damage suffered, [91] does not mean that the individual concerned is denied effective judicial protection. [92]

90 See also, for example, judgment of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraphs 125 and 126.

91 See, to that effect, judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 49.

92 See, for example, judgment in *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraphs 82 to 84.

140. Finally, it seems likely that the real origin of the appellants' discontent resides in the fact that — despite the annulment pronounced by the General Court in the 2013 judgment — they have remained subjected to uninterrupted asset-freezing measures since 2010. That is, however, the consequence of the *combined effect* of the two sets of restrictive measures enacted by the Council (the ones at issue in the case that led to the 2013 General Court judgment and those at issue in the present case) and of the decision of the General Court in the 2013 judgment to maintain, based on the second paragraph of Article 264 TFEU, the effects of the annulled measures. [93]

141. If it were not for that latter decision, the measures thus annulled would have expired on the date of the judgment in that case (16 September 2013). It follows that the fact that the appellants have been subjected to uninterrupted asset-freezing measures is *not* attributable to the 2013 criteria. Importantly, the appellants never sought to challenge the legality of that aspect of the General Court's decision. That seems to me to dispose of the appellants' argument that the Council infringed their right to an effective judicial remedy.

Conclusion concerning the second plea in law

142. In the light of the foregoing, I propose that the second plea in law should be dismissed in part as unfounded and in part as inadmissible.

Third plea: adopting the 2013 criteria allegedly constituted a misuse of powers

143. In paragraphs 91 to 95 of the judgment under appeal, the General Court found that by adopting the 2013 criteria the Council did not misuse its powers.

144. The appellants submit that the Council had no genuine reason to amend the criteria for listing other than to target them personally. In particular, they challenge the finding by the General Court that reinstating the IRISL-related criterion just after the General Court had held in its 2013 General Court judgment that there was no basis to list IRISL was in accordance with the objectives of the CFSP.

145. As the Court has held time and again, a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case. [94]

146. In the present case, it is clear that the objective sought by the Council when adopting the 2013 criteria was to *extend* the pre-existing listing criteria in order to *target additional categories* of persons or entities in pursuit of the broader objective to put pressure on Iran and force it to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems. That objective is fully in line with the broader objectives of the EU Treaty concerning the EU's relations with the wider world and the CFSP. [95]

147. Thus, the fact that the Council adapted generally applicable criteria in order to be able to target a specific group of entities with a view to attain those objectives more effectively is not in itself illicit.

93 See paragraphs 80 to 83 of the 2013 General Court judgment.

94 Judgment of 15 May 2008, *Spain* v *Council*, C-442/04, EU:C:2008:276, paragraph 49 and the case-law cited.

95 See points 67 and 68 above.

148. The appellants have failed to produce any evidence to show that the exclusive or at least predominant objective sought by the Council when adopting the 2013 criteria was not as set out above.

149. Whether the Council gave sufficient grounds for the 2013 criteria and whether they are appropriate to attain the objective sought are separate questions that have no bearing on my conclusions as to the alleged misuse of powers. [96]

150. I conclude that the General Court did not err in law when it considered that the Council did not misuse its powers.

Fourth plea: adopting the 2013 criteria allegedly infringed the appellants' rights of the defence

151. In paragraphs 96 to 99 of the judgment under appeal, the General Court held that the Council did not infringe the appellants' rights of the defence when adopting the 2013 criteria.

152. The appellants argue that since the IRISL-related criterion expressly named IRISL and was thus an *ad hominem* criterion directly concerning the latter, the Council was under an obligation to inform them of its intended amendments. By failing to make a finding to that effect, the General Court committed an error of law.

153. Article 41(2)(a) of the Charter provides that every person has the right to be heard before any individual measure which would affect him or her adversely is taken. Thus, it is plain that that provision only concerns individual measures.

154. The Court has held that the case-law on the right to be heard cannot be transposed to the context of a legislative process leading to the adoption of general laws which involve a choice of economic policy and apply to all operators concerned. [97] However, in case of acts of general application laying down individual asset-freezing measures as part of the CFSP (which are therefore acts of dual nature which, whilst being of general application, are of direct and individual concern to the persons concerned by those measures), [98] the Court has held that the right to be heard of a person concerned by those asset-freezing measures is fully applicable so that he must be afforded the opportunity effectively to make known his views on the evidence adduced against him. [99]

155. It is common ground that the 10 companies are not individually concerned by the IRISL-related criterion. The 2013 criteria are acts of general application, applicable to a category of persons and entities defined in objective and abstract terms, a fact that those appellants do not contest.

156. Although IRISL is expressly named in the measures at issue, I am not persuaded that it can succeed in establishing that it is directly and individually concerned by them, not least because IRISL does not put forward any specific argument to show in what way those measures affect its situation.

96 I examined those questions under the first ground of appeal (see point 72 et seq. above).

97 Judgment of 14 October 1999, *Atlanta* v *European Community*, C-104/97 P, EU:C:1999:498, paragraphs 34 to 38.

98 See judgment of 23 April 2013, *Gbagbo and Others* v *Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 56.

99 See, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 336.

157. Even if it succeeded in doing so, that would not help its case, for its plea of illegality would then have to be dismissed as an inadmissible attempt to circumvent the time limits prescribed by Article 263(6) TFEU. [100]

158. If the General Court omitted to discuss that last possibility, such a defect is not such as to affect the outcome of the case and thus entail the annulment of the judgment under appeal. I therefore suggest that the Court should dismiss the fourth plea in law as inadmissible or in any event, unfounded.

Fifth plea: adopting the 2013 criteria allegedly interfered in a disproportionate manner with the appellants' fundamental rights

159. In paragraphs 100 to 105 of the judgment under appeal, the General Court held that the 2013 criteria did not constitute a disproportionate interference with the appellants' fundamental rights.

160. The appellants appear to argue that, in so far as the 2013 criteria do not presuppose the existence of a link between the persons to be listed and the nuclear proliferation programme, they are disproportionate. Since they caused the appellants serious reputational and business harm, those criteria constituted a disproportionate restriction of their fundamental rights.

161. In the context of restrictive measures, Article 52(1) of the Charter allows limitations on the exercise of the rights enshrined in the Charter, subject to the conditions that the limitation concerned respects the essence of the fundamental right in question and, subject to the principle of proportionality, that it is necessary and genuinely meets objectives of general interest recognised by the EU. [101]

162. In the present case, the appellants have not identified with precision the fundamental rights on which they rely and have not specified the manner in which those rights have allegedly been limited or otherwise infringed.

163. The only sufficiently precise contention appears to be the one by which the appellants specifically challenge the findings of the General Court to the effect that the criteria at issue are distinct from the criterion relating to the provision of support for the nuclear proliferation programme and hence do not require the Council to establish a link between the activities of the person or entity subject to asset-freezing measures and nuclear proliferation. [102]

164. I have already concluded that, as a matter of principle, it is not manifestly inappropriate for the Council to establish criteria relying on objective circumstances or facts rather than the individual conduct of the persons and entities to be subjected to the asset-freezing measures. [103]

165. If the Court agrees with me that those criteria are appropriate to the objectives sought, nothing in the material before the Court suggests that they are liable to affect the appellants' fundamental rights in a disproportionate manner.

100 See, to that effect, judgment of 16 April 2015, *TMK Europe*, C-143/14, EU:C:2015:236, paragraph 18. It is settled case-law that Article 277 TFEU expresses a general principle conferring upon any party to proceedings the right to challenge incidentally, for the purpose of obtaining the annulment of a decision directed at it, the validity of acts which form the legal basis of such a decision, if that party *was not entitled* under Article 263(4) TFEU to bring a direct action challenging those acts (judgment of 6 March 1979, *Simmenthal* v *Commission*, 92/78, EU:C:1979:53, paragraph 39). Since IRISL lodged its application for annulment with the General Court on 7 February 2014, that is, three months and 26 days after the 2013 criteria were published in the Official Journal, it would have been out of time to have challenged those criteria in that application.

101 See, to that effect, *Kala Naft* (paragraph 69).

102 See paragraphs 101 and 102 of the judgment under appeal.

103 For general considerations in this respect, see point 71 et seq. above. Point 78 above examines that question more specifically in relation to the former criterion, whilst points 82 and 83 above do so in relation to the latter.

166. Precisely because the 2013 criteria do *not* presuppose any personal direct or indirect involvement of the appellants in nuclear proliferation, they are not likely to be personally associated with behaviour posing a risk to international peace and security. As a consequence, any possible mistrust towards the appellants and thus reputational loss is likely to be less than in the case of individuals or entities clearly identified as supporting that programme. Since the Court has already recognised in principle that the reputational harm and the restrictions on the freedom to carry on economic activity and the right to property of such persons and entities occasioned by asset-freezing measures are not disproportionate to the ends sought, the appellants must fail in their argument. [104]

167. For the rest, I am of the view that the appellants' argument does not meet the required threshold of sufficient clarity and justification, as required by the case-law. [105]

168. I therefore suggest that the Court should dismiss the fifth plea in law as inadmissible or in any event unfounded.

Conclusion concerning the first ground of appeal

169. In the light of the foregoing considerations, I suggest that the first ground of appeal should be upheld in so far as it concerns the IRISL-related criterion. By not ruling to that effect, the General Court committed an error of law. The reminder of the first ground of appeal should be dismissed.

170. Consequently, the Court should (i) set aside the judgment of the General Court of 17 February 2017 in Joined Cases T-14/14 and T-87/14 in that regard, (ii) declare the IRISL-related criterion to be invalid and (iii) annul the 2013 relisting in so far as it was based on that criterion.

Second ground of appeal: annulment of 2013 relisting

First plea: manifest errors of assessment in finding that the listing criteria were fulfilled

171. Following a detailed examination (paragraphs 109 to 165 of the judgment under appeal), the General Court held that the Council did not commit a manifest error of assessment when it included the names of the appellants in the lists at issue through the adoption of the 2013 relisting.

172. By their first plea in law, the appellants submit that, through the 2013 relisting, the Council subjected them to asset-freezing measures without having verified whether they were involved in the nuclear proliferation programme or whether they themselves represented a 'current and future thread' in that programme. The appellants deny that they have had any links with that programme and criticise the General Court for having committed several errors in its findings of fact. In that regard, the appellants submit that the General Court failed correctly to assess the probative value of the witness statements that accompanied their application before that court. They add that the relisting of IRISL is unlawful since, in the absence of any new facts, it is based on the same facts as those on which the Council relied upon to list them in 2010. The conduct attributed to IRISL was not sufficiently recent to underpin its listing.

173. I am not convinced by any of those arguments.

104 See, in relation to reputation, judgment of 7 April 2016, *Central Bank of Iran* v *Council*, C-266/15 P, EU:C:2016:208, paragraphs 53 and 54); and in relation to business activity, judgment of 12 May 2016, *Bank of Industry and Mine* v *Council*, C-358/15 P, not published, EU:C:2016:338, paragraphs 55 to 57.

105 See point 50 above.

174. First, the Court has held in the context of a criterion of 'being owned or controlled' that the reason for the adoption of a asset-freezing measure 'need not be that the entity owned or controlled is *itself engaged* in nuclear proliferation' and that, therefore, such a criterion implies that the Council may 'freeze the assets of such an entity *without determining* whether it is itself engaged in nuclear proliferation'. [106]

175. That case-law is readily transposable to other criteria based on objective circumstances, rather than on the individual conduct of the persons or entities subject to restrictive measures. It follows that the General Court committed no error of law.

176. Second, in as much as the appellants allege, in particular, that they have never provided support to the nuclear proliferation programme, they are in fact seeking a reassessment of the facts without claiming that the General Court distorted the evidence before it.

177. The Court has consistently held that the General Court has exclusive jurisdiction to find the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and to assess those facts. Save where that court has distorted the evidence adduced before it, the appraisal of the facts therefore does not constitute a point of law which is subject as such to review by the Court of Justice. [107] That argument must therefore be dismissed as inadmissible.

178. Third, in so far as the appellants do not agree with the findings of the General Court concerning the probative value of the statements of certain witnesses, it is clear from the Court's case-law that an alleged failure to have regard to the rules of evidence is a question of law, which is admissible in an appeal. [108]

179. The General Court had regard to the fact that those statements were made by individuals employed by IRISL who had managerial functions. It held that those persons' evidence had therefore to be assimilated with IRISL's own statements, especially considering that those statements were made at the request of IRISL in connection with its action before that court and addressed for that purpose to the latter.

180. In doing so, the General Court correctly applied the case-law requiring that the probability and the veracity of the account a document contains be verified by taking into account, inter alia, the person from whom the document originates, the circumstances in which it came into being, the person to whom it was addressed and whether, on its face, the evidence submitted appears sound and reliable. [109] The appellants' argument must therefore be dismissed as unfounded.

181. Fourth, as the appellants rightly observe, the grounds underlying the 2013 relisting appear to be, in essence, identical to those on which the Council relied to list the appellants in 2010.

182. That fact is however immaterial. I can think of no provision or principle of EU law that would prevent the Council, as a matter of principle, from relying on the same facts as those it relied upon for the purpose of the initial listing when deciding to maintain the restrictive measures. The Council is not required to adduce new facts for as long as the facts underpinning the initial listing are relevant and sufficient for keeping the party concerned on the list. [110]

106 See *Melli Bank*, paragraphs 40 and 41 (emphasis added).

107 See judgment of 5 March 2015, *Ezz and Others* v *Council*, C-220/14 P, EU:C:2015:147, paragraph 77.

108 See, inter alia, judgment in *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 44 and the case-law cited.

109 See judgment of 26 September 2013, *Centrotherm Systemtechnik* v *OHIM and centrotherm Clean Solutions*, C-610/11 P, EU:C:2013:593, paragraph 39.

110 Depending on the particular circumstances of the case, the Council may sometimes, but not necessarily always, be required to adduce new evidence. See, to that effect, judgment of 26 July 2017, *Council* v *LTTE*, C-599/14 P, EU:C:2017:583, paragraphs 52 to 54.

183. The restrictive measures that the Council applies to address the risk of international terrorism or specific situations in different third countries are generally subject to regular review procedure. If the Council could never continue to rely on the same facts as before in order to maintain a listing, it would be prevented, in a great number of cases, from continuing to list the persons and entities concerned.

184. Whether the 2013 listing was lawful depends on whether the facts relied upon by the Council for the purpose of those listings were established to the requisite standard and whether they satisfied the objective criteria laid down in the 2013 criteria.

185. It was therefore without committing any error of law that the General Court considered that the very definition of the criterion of violation of the Security Council resolutions presupposed that the relisting necessarily had to be based on conduct that predated the date of that relisting.[111] Nor did the General Court err in law when it examined, first, whether IRISL has indeed infringed the Security Council resolutions 1747 (2007)[112] and, second, whether the other appellants were owned or controlled by IRISL, acted on its behalf or provided essential services to it.[113]

186. Fifth, the General Court did not err in law when it held that for the purpose of the 2013 relisting the Council was entitled to rely on events that had taken place four years before, that is in 2009, since they were sufficiently recent.[114]

187. I conclude that the first plea in law should be dismissed.

Second plea: infringement of the appellants' rights of the defence in the procedure used to relist them

188. In paragraphs 166 to 181 of the judgment under appeal, the General Court held that the Council did not infringe the appellants' rights of the defence in the procedure preceding the adoption of the 2013 relisting.

189. In their second plea in law, the appellants argue that the General Court erred in law when it failed to hold that the Council had infringed their right to be heard before it adopted the 2013 relisting. The Council could not have conceivably taken any of their observations into account, since it had decided to re-list IRISL long before it adopted the 2013 criteria and before it had received the latter's observations on the Council's letter informing IRISL of its intention to re-list it. The Council had also adopted the 2013 relisting before it replied to the appellants' observations and before it provided them with the documents justifying those measures.

190. First, the relevant moment for assessing whether the Council respected the appellants' right to be heard is the date of the adoption of the 2013 relisting. The appellants' argument referring to a hypothetical moment when the Council allegedly 'decided' that it would adopt the 2013 criteria and the 2013 relisting is based on unsupported assertions and must be dismissed as such.

191. Second, it follows from the case-law that when adopting an act imposing restrictive measures against a person or entity, the Council is bound to communicate the grounds on which those measures are based, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after it has been adopted in order to enable those persons or entities to exercise

111 See paragraph 117 of the judgment under appeal.

112 See paragraphs 116 to 132 of the judgment under appeal.

113 See paragraphs 135 to 164 of the judgment under appeal.

114 See paragraph 117 of the judgment under appeal. See, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 156.

their right to bring an action.[115] In particular, in the context of the adoption of a decision to maintain the name of a person or an entity on a list of persons or entities subject to restrictive measures, the Council must respect the right of that person or entity to be heard beforehand where that institution is including in that decision new evidence against that person or entity, namely evidence which was not included in the initial listing decision.[116]

192. The General Court ascertained, by analysing the content of the exchange of letters between the Council and the appellants, that the former relied on grounds essentially identical to those communicated to the appellants in relation to their initial listing in 2010 and that the communication satisfied all the requirements resulting from the case-law prior to the adoption of the 2013 relisting.[117]

193. Finally, contrary to the appellants' submissions, the Council is not required to reply prior to the adoption of asset-freezing measures to the interested person's observations on the Council's letter informing that party of its intention to list that party and communicating the proposed grounds for listing to the latter.

194. I conclude that the second plea in law should be dismissed.

Third plea: infringement of the principles of res judicata, legal certainty, protection of legitimate expectations and ne bis in idem as well as the right to an effective remedy

195. In paragraphs 183 to 199 of the judgment under appeal, the General Court held that by adopting the 2013 relisting the Council did not infringe the principles of *res judicata*, legal certainty, protection of legitimate expectations and *ne bis in idem* or the appellants' right to an effective remedy.

196. In support of this plea in law the appellants advance only one argument. They submit that by relying, for the purpose of their 2013 relisting, on the same facts as those that served as the basis of the 2010 listing annulled in the 2013 General Court judgment, the Council acted in breach of those principles.

197. The Council has indeed relied on the same factual basis to list the appellants in 2010 and to relist them in 2013. Furthermore, whilst IRISL, Irano Misr Shipping Co. and Rahbaran Omid Darya Ship Management Co. were listed on the basis of a newly introduced criteria, the other appellants were listed for the second time on the basis of a criterion identical to the one relied on in 2010.[118]

198. I have already concluded earlier in this Opinion that the principle of *ne bis in idem* does not apply in the context of restrictive measures.[119] I have also concluded that the principle of *res judicata* does not preclude the Council from relying on the same criteria in the situation at issue[120] and that it is inherent in the nature of the criteria for application of the asset-freezing measures that they may refer to the past conduct or situation.[121]

115 See, to that effect, judgment of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 47 and the case-law cited.

116 See judgment of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 26. Even though that case-law concerns *maintaining* the restrictive measures rather than an *initial listing*, it is relevant here: by the 2013 relisting, the Council did maintain the formerly existing restrictive measures, even if, with regard to three appellants (IRISL, Irano Misr Shipping Co. and Rahbaran Omid Darya Ship Management Co.) it did so on the basis of a new criterion.

117 See paragraphs 170 to 180 of the judgment under appeal.

118 See footnote 78 above.

119 See point 107 et seq. above.

120 See point 93 et seq. above.

121 See points 117 to 128 above.

199. For the sake of completeness, I shall add that in accordance with principle *tempus regit actum*, the judicial control by the EU courts of the legality of the 2013 relisting consists of verifying whether the facts relied on by the Council justified to the requisite legal standard, as of 26 November 2013, the adoption of the 2013 relisting. [122]

200. The fact that the Council unsuccessfully relied on certain facts for the purpose of the 2010 listings on 26 July 2010 does not in itself preclude it from lawfully relying on those same facts, on 26 November 2013, with a view to relisting the appellants on the basis of the 2013 criteria.

201. It is also inherent in the nature of the measures adopted in the context of the CFSP that they are subject to periodical review and may be applied repeatedly in subsequent periods. That is notably the case where, despite the restrictive measures previously applied, the geopolitical situation *does not evolve* or, sometimes, after a momentary improvement, evolves in the direction contrary to the aims sought.

202. In the former situation, the Council must be allowed to *continue* to apply the necessary measures, even if the situation has not changed, provided that the facts which form the basis for the maintaining the restrictive measures continue to justify their application at the time of their adoption, [123] in particular that the facts are still sufficiently recent. [124] In the latter situation, the Council must be able to *reinstate* the criteria and asset-freezing measures previously repealed or provisionally suspended, regardless of whether the personal situation of the entities has evolved in the meantime.

203. Here, the purpose of the 2013 relisting was to continue to exercise pressure on Iran and indeed to increase that pressure, precisely because the measures applied so far had proved ineffective.

204. If the Council were unable to continue to apply the asset-freezing measures to persons or entities already listed unless the legal or factual situation of those concerned changed substantively in a negative way or unless new evidence came to the knowledge of the Council, that would curtail the latter's powers in an arbitrary and unjustified manner.

205. The 2010 listings were annulled because of formal defects. [125] Against that background, the 2013 General Court judgment read in the light of both the principle of *res judicata* and Article 266 TFEU does not per se constitute an obstacle to relisting. [126] As the General Court there rightly held, the annulment of a measure for formal or procedural defects in no way prejudices the right of the institution that was the author of the measure to adopt a new measure on the basis of the same matters of law and fact as those serving as the basis for the measure annulled, provided that on this occasion it observes the formal and procedural rules whose breach gave rise to the annulment and that the legitimate expectations of the persons concerned are duly protected. [127] A relisting decision adopted for the same reasons as those stated when the entities concerned were first listed may prove sufficient to justify that relisting provided that the evidence adduced by the Council supports those reasons to the requisite legal standard. [128]

122 Concerning the standard of judicial review of the substantive legality in that regard, see judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119.

123 See judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 82.

124 See the case-law cited in footnote 114 above.

125 See my analysis of the effects of the 2013 General Court judgment in points 103 to 106 above. The situation is thus fundamentally different from that analysed by Advocate General Tanchev in his Opinion in *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:227, points 96 to 102.

126 See, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 374.

127 See, to that effect, judgment of 23 October 2008, *People's Mojahedin Organization of Iran* v *Council*, T-256/07, EU:T:2008:461, paragraph 75, not appealed, in which the General Court referred to the findings in paragraph 65 of judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384, by which the General Court had annulled a prior listing of the entity concerned.

128 See judgments of 13 November 2014, *Hamcho and Hamcho International* v *Council*, T-43/12, not published, EU:T:2014:946, paragraph 108, not appealed, and of 26 October 2016, *Hamcho and Hamcho International* v *Council*, T-153/15, EU:T:2016:630, paragraph 66, not appealed.

206. I have concluded earlier in this Opinion that the fact that relisting may lead to reinstating the asset-freezing measures despite the annulment of the measures adopted previously does not affect in itself the appellants' right to an effective judicial remedy. [129]

207. Similarly, nothing precludes the Council from considering, following a full review conducted on that later date, that the same facts meet a criterion different from the one relied upon previously and thus justify applying the asset-freezing measures afresh on that new basis. [130] In that respect, I recall that it is enough that at the very least, one of the reasons relied upon, deemed sufficient in itself to support that decision, is substantiated. [131]

208. I therefore conclude that the General Court did not err in law when it held to that effect in paragraph 189 of the judgment under appeal. The appellants cannot therefore succeed in their argument that the 2013 relisting is unlawful because it was adopted on the basis of the same criteria and/or the same factual and legal circumstances as the 2010 listings.

209. The appellants' other arguments are an abstract statement of the grounds of appeal and thus do not satisfy the requirements of admissibility. [132] I therefore conclude that the third plea in law should be dismissed.

Fourth plea: breach of the principle of proportionality

210. In support of their plea in law concerning the alleged breach of principle of proportionality, the appellants submit that the General Court failed to examine whether their listing was proportionate to the objectives pursued. They argue that their listing is disproportionate, since it is not based on any conduct relating to the nuclear proliferation programme or on any link with the Iranian Government. They also appear to contend, for those reasons, that the General Court was wrong to consider in paragraph 209 of the judgment under appeal that the impact on their reputation and businesses was not disproportionate.

211. I find none of those arguments convincing.

212. The General Court referred rightly to the settled case-law, according to which the principle of proportionality requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary to achieve them. [133]

213. When scrutinising the proportionality of asset-freezing measures, it is important to bear in mind their objective and context in which they are adopted.

214. I have discussed the objectives of the measures here at issue earlier in this Opinion. [134]

129 See points 140 and 141 above.

130 See, by analogy, judgment of 6 March 2003, *Interporc* v *Commission*, C-41/00 P, EU:C:2003:125, paragraph 31. That follows from the fact that the annulled act is eliminated from the legal order and the author of that act is placed in the initial situation with a view to adopting a replacement act.

131 See judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119). See also judgment of 14 March 2017, *Bank Tejarat* v *Council*, T-346/15, not published, EU:T:2017:164, paragraph 38.

132 See point 50 above.

133 See judgment of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122.

134 See points 67 and 68 above.

215. So far as their context is concerned, those measures are part of the EU's response to numerous reports of the International Atomic Energy Agency and the large number of resolutions of the Security Council. They were adopted progressively. Each subsequent measure was justified by reference to the lack of success of the measures adopted previously. It follows from that approach, which is based on the progressive impairment of rights according to the effectiveness of the measures, that the proportionality of those measures is, as a matter of principle, established. [135]

216. I have also discussed earlier in this Opinion the effects of the measures on the appellants' reputation and business activity. [136]

217. Contrary to what the appellants claim, the General Court examined each of those elements extensively. [137]

218. The appellants have advanced no argument capable of establishing that on account of their particular situation or characteristics the asset-freezing measures at issue affected them in a disproportionate manner and that therefore the case-law cited in point 215 above should be distinguished and not applied to them.

219. Finally, I have already concluded earlier in this Opinion that it was lawful for the Council to establish listing criteria that did not require any direct link between the appellants and the nuclear proliferation programme or the Iranian Government. [138] When applying such criteria, the Council was therefore by definition not required to verify whether the person or entity concerned itself contributes to the risks which those criteria seek to address. [139] The General Court cannot therefore be criticised for having limited its review of the legality of the 2013 relisting to the objective test of whether the appellants met the relevant criteria.

220. I conclude that the fourth plea in law should be dismissed.

221. Consequently, the second ground of appeal should be dismissed in its entirety.

Costs

222. It follows from all the foregoing that I consider that the Court should uphold the first ground of appeal with regard to the IRISL-related criterion provided for in the 2013 criteria. Accordingly, the 2013 relisting should be annulled in so far as the 10 companies are concerned.

223. IRISL itself is an unsuccessful party within the meaning of Article 138(1) of the Rules of Procedure of the Court of Justice read in conjunction with 184(1) of those Rules of Procedure and must therefore be ordered to bear its own costs. The other appellants are the successful parties within the meaning of those provisions.

135 See *Kala Naft*, paragraph 126.

136 See point 159 et seq. above.

137 In relation to the *context* of the measures, see paragraphs 63, 66 and 67 of the judgment under appeal; in relation to the *objectives* sought by the measures at hand, see paragraphs 68 to 71 and 74 to 76; concerning the principle of proportionality in general, see paragraphs 72, 73 and 77; and, finally, concerning the allegedly disproportionate impact of the measures at hand on the appellants' property and business, see paragraphs 204 to 210 of the judgment under appeal.

138 See points 174 and 175 above.

139 See, to that effect, by analogy, *Melli Bank* (paragraphs 77 to 80), where the Court underlined that by proceeding to such a *further review* as to 'whether it was to a considerable degree likely that [the entity meeting the test of being owned] might be prompted to circumvent the measures adopted against its parent entity', the General Court erred in law.

224. The Council succeeded in relation to IRISL, but was unsuccessful in relation to the remaining 10 companies. I suggest that, pursuant to Article 138(1) and (3) read in conjunction with Article 184(1) of the Rules of Procedure of the Court of Justice, the Council should be ordered to pay, in addition to the costs of the 10 companies, all its own costs.

225. In accordance with Article 140(1) read in conjunction with Article 184(1) of the Rules of Procedure of the Court of Justice, the Commission, which intervened in support of the Council, should bear its own costs.

Conclusion

226. In the light of all the foregoing considerations, I propose that the Court should:

– uphold the first ground of appeal with regard to the criterion referring to persons and entities (i) owned or controlled by IRISL, (ii) acting on behalf of IRISL, or (iii) providing essential services to IRISL, provided for in Articles 20(1)(b) of Decision 2010/413 and 23(2)(e) of Regulation No 267/2012;

– set aside the judgment of the General Court of 17 February 2017 in Joined Cases T-14/14 and T-87/14 in that regard;

– declare that criterion to be invalid;

– annul Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413/CFSP and Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation No 267/2012 in so far as the appellants other than Islamic Republic of Iran Shipping Lines are concerned;

– dismiss the reminder of the appeal as unfounded;

– order Islamic Republic of Iran Shipping Lines to bear its own costs;

– order the Council to bear its own costs and those of the appellants other than Islamic Republic of Iran Shipping Lines; and

– order the Commission to bear its own costs.