JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

30 September 2010 *

In Case T-85/09,

Yassin Abdullah Kadi, residing in Jeddah (Saudi Arabia), represented by D. Anderson QC, M. Lester, Barrister, and G. Martin, Solicitor,

applicant,

v

European Commission, represented initially by P. Hetsch, P. Aalto and F. Hoffmeister, and subsequently by P. Hetsch, F. Hoffmeister and E. Paasivirta, acting as Agents,

defendant,

* Language of the case: English.

supported by

Council of the European Union, represented by M. Bishop, E. Finnegan and R. Szostak, acting as Agents,

by

French Republic, represented by G. de Bergues and L. Butel, acting as Agents,

and by

United Kingdom of Great Britain and Northern Ireland, represented by S. Behzadi-Spencer and E. Jenkinson, acting as Agents, assisted by D. Beard, Barrister,

interveners,

APPLICATION for annulment of Commission Regulation (EC) No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and

entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban (OJ 2008 L 322, p. 25), in so far as it concerns the applicant,

THE GENERAL COURT (Seventh Chamber),

composed of N.J. Forwood (Rapporteur), President, E. Moavero Milanesi and J. Schwarcz, Judges,

Registrar: E. Coulon,

having regard to the written procedure and further to the hearing on 17 June 2010,

gives the following

Judgment

Legal context and background to the dispute

1 For a detailed account of the background to the dispute and the applicable legal context, reference is made to paragraphs 3 to 45 of the judgment of the Court of Justice in Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International*

Foundation v *Council and Commission* [2008] ECR I-6351 ('the judgment of the Court of Justice in *Kadi*'), which was delivered on appeal against the judgment of this Court in Case T-315/01 *Kadi* v *Council and Commission* [2005] ECR II-3649 ('the judgment of this Court in *Kadi*'), which was delivered on the application by the applicant, Mr Yassin Abdullah Kadi, for annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9), in so far as that measure concerned the applicant.

2 For the purposes of this judgment, the legal framework and the background to the dispute may be summarised as follows.

The Charter of the United Nations and the EC Treaty

3 The Charter of the United Nations was signed in San Francisco (United States) on 26 June 1945, towards the end of the Second World War. The preamble to that Charter records the determination of the peoples of the United Nations to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. According to Article 1 of that Charter, the purposes of the United Nations are, in particular, to maintain international peace and security and, to that end, to take effective collective measures for the prevention and removal of threats to the peace but also to promote and encourage respect for human rights and fundamental freedoms.

4 Under Article 24(1) of the Charter of the United Nations, the United Nations Security Council ('the Security Council') was given primary responsibility for the maintenance of international peace and security. According to Article 25 of that Charter, the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with that Charter.

5 Chapter VII of the Charter of the United Nations defines the action to be taken with respect to threats to the peace, breaches of the peace and acts of aggression. Article 39, which introduces that chapter, provides that the Security Council is to determine the existence of any such threat and make recommendations, or decide what measures are to be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. According to Article 41 of the Charter of the United Nations, the Security Council may decide which measures, not involving the use of armed force, are to be employed to give effect to its decisions and it may call upon the members of the United Nations to apply such measures.

6 By virtue of Article 48(2) of the Charter of the United Nations, the decisions of the Security Council for the maintenance of international peace and security are to be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

7 Article 103 of the Charter of the United Nations states in the event of conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, the former are to prevail.

8 Under the first paragraph of Article 307 EC (now, after amendment, Article 351 TFEU), '[t]he rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one

or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty'.

9 Under Article 297 EC (now, after amendment, Article 347 TFEU), 'Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by measures which a Member State may be called upon to take … in order to carry out obligations it has accepted for the purpose of maintaining peace and international security'.

Actions of the Security Council against international terrorism

10 Since the late 1990s, and even more since the attacks of 11 September 2001 in New York, Washington and Pennsylvania (United States), the Security Council has employed its powers under Chapter VII of the Charter of the United Nations in order to combat by all means, in accordance with that Charter and international law, threats to international peace and security caused by terrorist acts.

11 Thus, on 15 October 1999, the Security Council, in response to the attacks on the United States Embassies in Nairobi (Kenya) and Dar Es Salaam (Tanzania), adopted Resolution 1267 (1999), paragraph 4(b) of which requires all States, inter alia, to freeze funds and other financial resources of the Taliban of Afghanistan, owing to their support for Usama Bin Laden.

12 At paragraph 6 of that resolution, the Security Council decided to establish a committee of the Security Council ('the Sanctions Committee', also commonly known as 'the 1267 Committee'), consisting of all its members, responsible in particular for ensuring that States implement the measures imposed by paragraph 4 of that resolution.

13 Resolution 1333 (2000) of the Security Council of 19 December 2000 considerably extended and strengthened that system of restrictive measures, initially aimed solely at the Taliban. Thus, paragraph 8(c) provides, in particular, that all States are to freeze, without delay, funds and other financial assets of Usama bin Laden and individuals or entities associated with him, as designated by the Sanctions Committee, and to ensure that no funds or financial resources are made available or used for the benefit of Usama bin Laden or his associates, including the Al-Qaeda organisation.

14 Resolution 1333 (2000) was followed by a series of other Security Council resolutions which amended, strengthened and updated the system of restrictive measures aimed at Usama bin Laden, the Al-Qaeda organisation, the Taliban and the persons, groups, undertakings and entities associated with them. Those resolutions were, in particular, Resolutions 1390 (2002) of 16 January 2002, 1455 (2003) of 17 January 2003, 1526 (2004) of 30 January 2004, 1617 (2005) of 29 July 2005, 1735 (2006) of 22 December 2006, 1822 (2008) of 30 June 2008 and 1904 (2009) of 17 December 2009. Those resolutions, which were all adopted under Chapter VII of the Charter of the United Nations, required, in particular, all Members of the United Nations to freeze the funds and other economic resources of any person or entity associated with Usama bin Laden, Al-Qaeda or the Taliban, as designated by the Sanctions Committee.

15 As well as monitoring the application of those restrictive measures by the States, the Sanctions Committee maintains a recapitulative list ('the Sanctions Committee's list') of the persons and entities whose funds and other economic resources must be frozen under the abovementioned Security Council resolutions. States may request the Sanctions Committee to add names to that list. The Sanctions Committee

also considers requests to remove names from that list and also requests to derogate from the freezing of assets submitted under Resolution 1452 (2002) of the Security Council. The procedures to be followed for those purposes are currently defined in Resolutions 1735 (2006), 1822 (2008) and 1904 (2009) of the Security Council and in the directives governing the conduct of the works of the Sanctions Committee, drawn up by the latter.

16 According to paragraph 5 of Resolution 1735 (2006), when proposing names to the Sanctions Committee for inclusion on its list, States must provide a statement of case, which should provide as much detail as possible on the bases for the listing, including: (i) specific information supporting a determination that the individual or entity meets the criteria referred to; (ii) the nature of the information; and (iii) supporting information or documents that can be provided. According to paragraph 6 of that resolution, at the time of submitting a request for listing, States are requested to identify those parts of the statement of case which may be publicly released for the purposes of notifying the listed individual or entity, and those parts which may be released on request to interested States.

17 In the context of its commitment to ensure that fair and clear procedures exist for placing individuals and entities on the Sanctions Committee's list and for removing them from that list, as well as for granting humanitarian exemptions, the Security Council also adopted, on 19 December 2006, Resolution 1730 (2006), whereby it requested the Secretary-General of the United Nations to establish within the Secretariat (Security Council Subsidiary Organs Branch) a focal point to receive delisting requests and to perform the tasks described in the annex to that resolution ('the focal point'). Those wishing to submit a request for delisting are now able to do so through that focal point, according to the procedure described in Resolution 1730 (2006) and the annex thereto, or through their State of residence or nationality. By

letter (S/2007/178) of 30 March 2007, the Secretary-General of the United Nations informed the President of the Security Council that the focal point for delisting requests had been established.

18 In the preamble to Resolution 1822 (2008), which was the relevant resolution at the date of adoption of the measure contested by the present action, the Security Council reaffirms that terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security, reiterates its condemnation of the Al-Qaeda network, Usama bin Laden, the Taliban and other individuals, groups, undertakings and entities associated with them, stresses that terrorism can be defeated only by a sustained and comprehensive approach involving the active participation and collaboration of all States and international and regional organisations, stresses the need for robust implementation of the restrictive measures referred to in paragraph 1 of that resolution, and also takes note of the challenges to those measures and recognises the efforts made by States and the Sanctions Committee to ensure that fair and clear procedures exist for placing those concerned on the Sanction Committee's list and for removing them from that list, and welcomes the establishment of the focal point. That preamble also reiterates that the measures in question are preventative in nature and are not reliant upon criminal standards set out under national law.

19 Paragraph 1 of Resolution 1822 (2008) provides that the restrictive measures already resulting from the earlier Resolutions 1267 (1999), 1333 (2000) and 1390 (2002) are to be maintained. Paragraph 8 of that resolution reiterates the obligation of all States to implement and enforce the measures set out in paragraph 1 and urges all States to redouble their efforts in that regard. Paragraphs 9 to 18, 19 to 23 and 24 to 26 of that resolution concern, respectively, the procedures for listing on the Sanction Committee's list, for delisting and for review and maintenance of the list.

20 As regards the listing procedure, the Security Council, at paragraph 12 of Resolution 1822 (2008), reaffirms that when proposing names to the Sanctions Committee for inclusion on its list, States must act in accordance with paragraph 5 of Resolution 1735 (2006) and provide a detailed statement of case, and decides, moreover, that, for each listing proposal, States are to identify those parts of the relevant statement of case that may be publicly released, including for use by the Sanctions Committee for development of the summary described at paragraph 13 or for the purpose of notifying or informing the individual or entity whose name is placed on the list. Paragraph 13 of that resolution provides, in particular, first, that when the Sanctions Committee adds a name to its list it is to publish on its website, in coordination with the States which have requested the corresponding listing, a 'summary of reasons for listing' and, second, that the committee is to endeavour to publish on its website, in coordination with the relevant designating States, "summaries of reasons for listing' the names included on the list before the date of adoption of that resolution. Paragraph 17 of that resolution requires that the States concerned take, in accordance with their domestic laws and practices, all possible measures to notify or inform in a timely manner the person or entity concerned that their name has been entered on the Sanctions Committee's list and to include with such notification a copy of the publicly releasable portion of the statement of case, any information on reasons for listing appearing on the Sanctions Committee's website; a description of the effects of designation, as provided in the relevant resolutions; the Sanctions Committee's procedures for considering delisting requests; and the possibilities for exemptions.

21 As regards the delisting procedure, paragraph 19 of Resolution 1822 (2008) states that listed individuals, groups, undertakings or entities are entitled to submit a petition for delisting directly to the focal point. Paragraph 21 of that resolution directs the Sanctions Committee to consider, in accordance with its guidelines, petitions for the removal from its list of the names of members of Al Qaeda or the Taliban or associates of Al Qaeda, Usama bin Laden or the Taliban who no longer meet the criteria established in the relevant resolutions.

22 The preamble to Resolution 1904 (2009) emphasises that sanctions are an important tool under the Charter of the United Nations in the maintenance and restoration of international peace and security, as is the need for robust implementation of the measures referred to in paragraph 1 of that resolution. It is stated there that the Security Council takes note of the legal and other challenges to the measures implemented by Member States under paragraph 1, welcomes improvements to the Sanctions Committee's procedures and expresses its intent to continue efforts to ensure that those procedures are fair and clear.

23 Paragraph 1 of Resolution 1904 (2009) provides that the restrictive measures already provided for in Resolutions 1267 (1999), 1333 (2000) and 1390 (2002) are to be maintained. Paragraphs 8 to 19, 20 to 27 and 28 to 32 of that resolution concern, respectively, the procedures for listing on the Sanctions Committee's list, for delisting and for the review and maintenance of that list.

24 As regards the listing procedure, paragraph 11 of Resolution 1904 (2009) reaffirms that, when proposing names to the Sanctions Committee for inclusion on its list, States are to act in accordance with paragraph 5 of Resolution 1735 (2006) and paragraph 12 of Resolution 1822 (2008) and are to provide a detailed statement of case, and decides that the statement of case is to be releasable, upon request, except for the parts which the Member State deems confidential, and that it may be used to develop the summary of reasons for listing described at paragraph 14.

25 As regards the delisting procedure, the Security Council decides, at paragraph 20 of Resolution 1904 (2009), that, when considering delisting requests, the Sanctions Committee is to be assisted by an 'Office of the Ombudsperson', to be established for an initial period of 18 months from the date of adoption of that resolution, and requests the Secretary-General of the United Nations, in close consultation with the Sanctions Committee, to appoint an eminent individual of high moral character, impartiality

and integrity with high qualifications and experience in relevant fields (law, human rights, counter-terrorism, sanctions, etc.) to be Ombudsperson, whose mandate is outlined in Annex II to that resolution, and further decides that the Ombudsperson is to perform those tasks in an independent and impartial manner and is neither to seek nor to receive instructions from any government. At paragraph 21 to that resolution, the Security Council decides that, after the appointment of the Ombudsperson, the Office of the Ombudsperson is to receive requests from individuals and entities seeking to be removed from the Sanctions Committee's list, in accordance with the procedures outlined in Annex II to that resolution, and that, after the appointment of the Ombudsperson, the focal point mechanism is no longer to receive such requests. Paragraph 22 of that resolution directs the Sanctions Committee to continue, in accordance with its guidelines, to consider delisting requests. At paragraph 25 of that resolution, the Security Council encourages the Sanctions Committee to give due consideration to the opinions of the States which requested the listing and the States of residence, nationality or incorporation when considering delisting requests and calls on members of the Sanctions Committee to make every effort to provide their reasons for objecting to such delisting requests.

26 Annex II to Resolution 1904 (2009) defines the tasks which the Ombudsperson is authorised to carry out, in accordance with paragraph 20 of that resolution, upon receipt of a delisting request. Those tasks are divided into a stage during which information is gathered from the States concerned and a dialogue stage, which may include dialogue with the petitioner. Following those two stages, the Ombudsperson draws up a 'comprehensive report' and presents it to the Sanctions Committee. The Sanctions Committee then considers the delisting request, with the assistance of the Ombudsperson, and after doing so decides whether to approve the delisting request.

27 On 7 June 2010, the spokesperson of the United Nations Secretary-General announced that Kimberly Prost, a Canadian and ad litem judge of the International Criminal Tribunal for the former Yugoslavia, had been appointed as Ombudsperson.

28 The Member States of the European Union, meeting within the Council, considered, in various common positions adopted under the Common Foreign and Security Policy (CFSP), that Community action was necessary in order to implement the abovementioned resolutions of the Security Council, whereupon the Council adopted, in turn, Regulation (EC) No 337/2000 of 14 February 2000 concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2000 L 43, p. 1), and Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation No 337/2000 (OJ 2001 L 67, p. 1), and Regulation No 881/2002.

29 The latter two regulations require, in particular, the freezing of funds and other economic resources of the individuals, groups and entities designated by the Sanctions Committee and identified in Annex I to each of the regulations. The European Commission is authorised to amend or add to Annex I on the basis of the decisions of the Security Council or the Sanctions Committee. The procedure to be implemented for that purpose was revised, following the judgment of the Court of Justice in *Kadi*, by Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation No 881/2002 (OJ 2009 L 346, p. 42).

30 On 17 October 2001, the Sanctions Committee published an addendum to its list, including, in particular, the name of the applicant, identified as being an individual associated with Usama bin Laden.

31 By Commission Regulation (EC) No 2062/2001 of 19 October 2001 amending, for the third time, Regulation No 467/2001 (OJ 2001 L 277, p. 25), the applicant's name was added, together with others, to Annex I to that regulation. The applicant's name was subsequently included in Annex I to Regulation No 881/2002 upon its adoption.

32 In parallel with the sanctions regime described above, which is aimed solely at individuals and entities designated by name by the Sanctions Committee as being linked to Usama bin Laden, the Al-Qaeda organisation and the Taliban, there exists a wider regime of sanctions provided for by Resolution 1373 (2001) of the Security Council of 28 September 2001 adopting strategies to combat, by all means, terrorism and, in particular, the financing of terrorism, which was also adopted in response to the terrorist attacks of 11 September 2001.

33 Paragraph 1(c) of that resolution provides, in particular, that all States are to freeze, without delay, funds and other financial assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of such acts, of entities owned or controlled by such persons and of persons and entities acting on behalf of, or on the direction of, such persons. However, the identification of such persons or entities is left to the entire discretion of the States.

34 The Council considered that Community action was necessary in order to implement that resolution of the Security Council and adopted, first, Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93) and, second, Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

35 Those measures require, in particular, the freezing of the funds and other economic resources of persons, groups and entities involved in terrorism, as identified by the Council itself and set out in an annex, which is regularly revised, on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority, in principle a judicial authority, in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds.

36 According to the judgment of the United Kingdom Supreme Court of 27 January 2010 in *Her Majesty's Treasury (Respondent)* v *Mohammed Jabar Ahmed and Others (Appellants), Her Majesty's Treasury (Respondent)* v *Mohammed al-Ghabra (Appellant)* and *R (on the application of Hani El Sayed Sabaei Youssef) (Respondent)* v *Her Majesty's Treasury (Appellant)* [2010] UKSC 2 (the 'UK Supreme Court judgment in *Ahmed and Others*'), paragraph 22, reports of the Member States of the European Union to the Sanctions Committee indicate that 11 of the 27 Member States have relied on Regulation No 881/2002 alone as compliance with their obligations under Resolution 1333 (2000). The 16 other Member States have additionally adopted legislative measures directly aimed at implementing that resolution in national law, which therefore coexist with Regulation No 881/2002.

The judgments of this Court and of the Court of Justice in Kadi

37 On 18 December 2001 the applicant brought an action before this Court for annulment of Regulations Nos 467/2001 and 2062/2001, in so far as those regulations concerned him, on the grounds, inter alia, that those measures breached his right to be heard and also his right to effective judicial protection and that they constituted a

disproportionate breach of his property rights. The subject-matter of that action was subsequently amended to seek annulment of Regulation No 881/2002, is so far as it concerned the applicant.

38 In its judgment in *Kadi*, delivered on 21 September 2005, this Court dismissed that action. It held, in essence, that it followed from the principles governing the relationship between the international legal order under the United Nations and the Community legal order that Regulation No 881/2002, because it was designed to give effect to a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations affording no latitude in that respect, could not be the subject of judicial review of its internal lawfulness save with regard to its compatibility with the norms of *jus cogens* and therefore enjoyed, subject to that reservation, immunity from jurisdiction (see also Joined Cases C-399/06 P and C-403/06 P *Hassan and Ayadi* v *Council and Commission* [2009] ECR I-11393, 'judgment of the Court of Justice in *Hassan*', paragraph 69).

39 Accordingly, this Court held in *Kadi* that it was solely with regard to *jus cogens*, understood as a public international order binding on all subjects of international law, including the bodies of the United Nations, and from which no derogation is possible, that the lawfulness of Regulation No 881/2002 could be examined, in relation also to the applicant's pleas alleging breach of his fundamental rights (see also the judgment of the Court of Justice in *Hassan*, paragraph 70).

40 In its judgment in *Kadi*, delivered on 3 September 2008, the Court of Justice set aside the judgment of this Court in *Kadi* and annulled Regulation No 881/2002 in so far as it referred to the applicant.

41 Notwithstanding Articles 25 and 103 of the Charter of the United Nations and Articles 297 EC and 307 EC, and although it observed, at paragraph 293 of its judgment in *Kadi*, that observance of the undertakings given in the context of the United Nations was required when the Community gave effect to resolutions adopted by the Security Council under Chapter VII of that Charter, the Court of Justice asserted, at paragraph 316 of that judgment, that review by it of the validity of any Community measure in the light of fundamental rights must be considered to be the expression, in a community based on the rule of law, of a constitutional guarantee stemming from the EC Treaty as an autonomous legal system which was not to be prejudiced by an international agreement — namely, in the case in question, the Charter of the United Nations.

42 The Court of Justice also held, at paragraphs 326 and 327 of its judgment in *Kadi*, that this Court's argument, summarised at paragraphs 38 and 39 above, constituted an error of law. The Court of Justice held, in effect, that the Community judicature must, in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like Regulation No 881/2002, are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations (see also the judgment of the Court of Justice in *Hassan*, paragraph 71).

43 The Court of Justice concluded, at paragraph 328 of its judgment in *Kadi*, that, as the applicant's grounds of appeal were well founded on that point, the judgment of this Court in *Kadi* must be set aside in that respect.

44 At paragraph 348 of its judgment in *Kadi*, the Court of Justice also held that, because the Council neither communicated to the applicant the evidence used against him to justify the restrictive measures which had been imposed on him nor afforded him the right to be informed of that evidence within a reasonable period after they were enacted, the applicant had not been in a position to make his point of view in that

respect known to advantage. The Court concluded at that paragraph that the applicant's rights of defence, in particular the right to be heard, had been infringed.

45 The Court of Justice also held, at paragraph 349 of its judgment in *Kadi*, that given the failure to inform the applicant of the evidence adduced against him and having regard to the relationship, referred to at paragraphs 336 and 337 of that judgment, between the rights of the defence and the right to effective judicial review, the applicant had also been unable to defend his rights with regard to that evidence in satisfactory conditions before the Community judicature, with the result that the Court also found that the applicant's right to effective judicial review had been infringed.

46 Finally, as regards the applicant's complaints relating to the breach of the right to respect for property resulting from the freezing measures imposed under Regulation No 881/2002, the Court of Justice held, at paragraph 366 of its judgment in *Kadi*, that the restrictive measures imposed by that regulation constituted restrictions of the right to property which might, in principle, be justified (see also the judgment of the Court of Justice in *Hassan*, paragraph 91).

47 The Court of Justice concluded, however, at paragraphs 369 and 370 of that judgment, that, in the circumstances of the case, where Regulation No 881/2002, in so far as it concerned the applicant, had been adopted without furnishing any guarantee enabling him to put his case to the competent authorities, in a situation in which the restriction of his property rights had to be regarded as significant, having regard to the general application and actual continuation of the restrictive measures affecting him, the imposition of those measures in his regard constituted an unjustified restriction of his right to property.

48 In application of Article 231 EC, the Court of Justice maintained the effects of Regulation No 881/2002 for a period of not more than three months, in such a way as to allow the Council to remedy the infringements found, whilst taking due account of the considerable impact of the restrictive measures concerned on the applicant's rights and freedoms. The Court of Justice observed, in that regard, that the annulment of that regulation, in so far as it concerned the applicant, with immediate effect would be capable of seriously and irreversibly prejudicing the effectiveness of the restrictive measures imposed by the regulation and which the Community was required to implement, and that it could not be excluded that, on the merits of the case, the imposition of those measures on the applicant might for all that prove to be justified (paragraphs 373 to 376 of the judgment of the Court of Justice in *Kadi*).

The aftermath of the judgments of this Court and of the Court of Justice in Kadi

49 By letter of 8 September 2008, the Permanent Representative of France to the United Nations, acting on behalf of the European Union, requested the Sanctions Committee, as a matter of urgency, to make available on its website, in accordance with paragraph 13 of Resolution 1822 (2008), the summary of reasons for the applicant's inclusion on that committee's list.

50 By letter of 21 October 2008, the Chairman of the Sanctions Committee communicated the summary of reasons to France's Permanent Representative to the United Nations and authorised its transmission to the applicant and/or his legal representatives. That summary of reasons is worded as follows:

'The individual Yasin Abdullah Ezzedine Qadi … satisfies the standard for listing by the [Sanctions Committee] because of his actions in "(a) participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in

conjunction with, under the name of, on behalf of, or in support of; (b) supplying, selling, or transferring arms and related material to; (c) recruiting for; or (d) otherwise supporting acts or activities of; Al-Qaeda, Usama bin Laden or the Taliban, or any cell, affiliate, splinter group or derivative thereof" (see United Nations Security Council resolution 1822 (2008), paragraph 2).

Mr Qadi has acknowledged that he is a founding trustee and directed the actions of the Muwafaq Foundation. The Muwafaq Foundation historically operated under the umbrella of Makhtab Al-Khidamat/Al Kifah (QE.M.12.01), an organisation founded by Mr Abdullah Azzam and Mr Usama Muhammed Awad bin Laden (QI.B.8.01), and the predecessor to Al-Qaeda (QE.A.4.01). Following the dissolution of Makhtab Al-Khidamat/Al Kifah in early June 2001 and its absorption into Al-Qaeda, a number of NGOs formerly associated with Makhtab Al-Khidamat/Al Kifah, including the Muwafaq Foundation, also joined with Al-Qaeda.

In 1992, Mr Qadi hired Mr Shafiq Ben Mohamed Ben Mohamed Al-Ayadi (QI.A.25.01) to head the European offices of the Muwafaq Foundation. During the mid-1990s, Mr Al-Ayadi also headed the Muwafaq Foundation branch in Bosnia and Herzegovina. Mr Qadi hired Mr Al-Ayadi on the recommendation of known Al-Qaeda financier Mr Wa'el Hamza Abd Al-Fatah Julaidan (QI.J.79.02), who fought with Mr bin Laden in Afghanistan in the 1980s. At the time of his appointment by Mr Qadi as the Muwafaq Foundation's European director, Mr Al-Ayadi was operating under agreements with Mr bin Laden. Mr Al-Ayadi was one of the principal leaders of the Tunisian Islamic Front, went to Afghanistan in the early 1990s to receive paramilitary training, and then went to Sudan with others to meet Mr bin Laden, with whom they concluded a formal agreement regarding the reception and training of Tunisians. They later met with Mr bin Laden a second time, securing an agreement for bin Laden collaborators in Bosnia and Herzegovina to receive Tunisian mujahidin from Italy.

In 1995, the leader of Al-Gama'at Al-Islamiya, Mr Talad Fuad Kassem, said that the Muwafaq Foundation had provided logistical and financial support for a mujahidin battalion in Bosnia and Herzegovina. In the mid-1990s, the Muwafaq Foundation was involved in providing financial support for terrorist activities of the mujahidin, as well as arms trafficking from Albania to Bosnia and Herzegovina. Some involvement in the financing of these activities was provided by Mr bin Laden.

Mr Qadi was also a major shareholder in the now closed Sarajevo-based Depositna Banka, in which Mr Al-Ayadi also held a position and acted as nominee for Mr Qadi's shares. Planning sessions for an attack against a United States facility in Saudi Arabia may have taken place at this bank.

Mr Qadi further owned several firms in Albania which funnelled money to extremists or employed extremists in positions where they controlled the firm's funds. Mr bin Laden provided the working capital for four or five of Mr Qadi's companies in Albania.'

51 Subsequently, that summary of reasons was also published on the Sanctions Committee's website, in accordance with paragraph 13 of Resolution 1822 (2008).

52 By letter of 22 October 2008, France's Permanent Representative to the European Union transmitted that summary of reasons to the Commission, in order to enable it to comply with the judgment of the Court of Justice in *Kadi*.

53 On 22 October 2008, the Commission sent the applicant a letter informing him that, for the reasons set out in the summary of reasons provided by the Sanctions Committee and attached to that letter, it envisaged adopting a legal act with a view to maintaining his listing in Annex I to Regulation No 881/2002 in accordance with the first indent of Article 7(1) of that regulation. The Commission further informed the applicant that the purpose of its letter was to give him the opportunity to comment on the grounds included in the summary of reasons and to provide any information to the Commission that he might consider relevant before it took its final decision. The deadline set for the applicant for that purpose was 10 November 2008.

54 The summary of reasons attached to that letter ('the summary of reasons') is drafted in identical terms to the summary of reasons communicated by the Sanctions Committee (see paragraph 50 above).

55 By letter of 10 November 2008, the applicant submitted his comments in response to the Commission. In particular, the applicant:

— requested the Commission to disclose the evidence supporting the assertions and allegations made in the summary of reasons and also the relevant documents in the Commission's file;

— requested a further opportunity to make representations on that evidence, once he had received it; and

— attempted to refute, providing evidence in support of his refutation, the allegations made in the summary of reasons, in so far as he was able to respond to general allegations.

56 On 28 November 2008, the Commission adopted Regulation (EC) No 1190/2008 amending for the 101st time Regulation No 881/2002 (OJ 2008 L 322, p. 25; 'the contested regulation').

57 Recitals 3 to 6, 8 and 9 in the preamble to the contested regulation are worded as follows:

'(3) In order to comply with the judgment of the Court of Justice [in *Kadi*], the Commission has communicated the … [summary] of reasons … to Mr Kadi … and given [him] the opportunity to comment on these grounds in order to make [his] point of view known.

(4) The Commission has received comments by Mr Kadi … and [has] examined these comments.

(5) The list of persons, groups and entities to whom the freezing of funds and economic resources should apply, drawn up by [the Sanctions Committee], includes Mr Kadi …

(6) After having carefully considered the comments received from Mr Kadi in a letter dated 10 November 2008, and given the preventive nature of the freezing of funds and economic resources, the Commission considers that the listing of Mr Kadi is justified for reasons of his association with the Al-Qaeda network.

…

(8) In view of this, Mr Kadi … should be added to Annex I.

(9) This Regulation should apply from 30 May 2002, given the preventive nature and objectives of the freezing of funds and economic resources under Regulation … No 881/2002 and the need to protect legitimate interests of the economic operators, who have been relying on the legality of [the regulation annulled by the judgment of the Court of Justice in *Kadi*].'

58 In accordance with Article 1 of the contested regulation and the Annex thereto, Annex I to Regulation No 881/2002 was amended by the addition of the following entry under the heading 'Natural persons':

'Yasin Abdullah Ezzedine Qadi (alias (a) Kadi, Shaykh Yassin Abdullah; (b) Kahdi, Yasin; (c) Yasin Al-Qadi). Date of birth: 23.2.1955. Place of birth: Cairo, Egypt. Nationality: Saudi Arabian. Passport No: (a) B 751550, (b) E 976177 (issued on 6.3.2004, expiring on 11.1.2009). Other information: Jeddah, Saudi Arabia.'

59 The contested regulation, in accordance with Article 2 thereof, entered into force on 3 December 2008 and applied from 30 May 2002.

60 By letter of 8 December 2008, the Commission replied to the applicant's observations of 10 November 2008, stating that it had examined those observations and that it had compared the summary of reasons and the arguments which he had put forward in that regard. The Commission asserted, in particular, that:

— in providing the applicant with the summary of reasons and inviting him to comment on them, it had complied with the judgment of the Court of Justice in *Kadi*;

— the judgment of the Court of Justice in *Kadi* did not require that the Commission disclose the 'further evidence' requested by the applicant;

— as the relevant Security Council resolutions required 'preventative' asset freezing, which was confirmed by 'Special Recommendation III on Terrorist Financing' of the Financial Action Task Force on Money Laundering (FATF), the freezing must be supported, with respect to the requisite evidentiary standard, by 'reasonable grounds, or a reasonable basis, to suspect or believe that the individual or entity designated is a terrorist, one who finances terrorism or a terrorist organisation';

— the Commission was entitled to disregard the evidence which the applicant had put forward in order to refute the allegations made against him, and more particularly that relating to the dropping of the criminal proceedings against him in Switzerland, Turkey and Albania, on the ground that that evidence came within 'the framework of criminal proceedings', which have 'different standards of evidence [from] those applicable to [Sanctions Committee decisions], which are preventative in nature'.

61 The Commission concluded its analysis as follows: '[t]herefore, after having carefully considered the comments received from you in a letter dated 10 November 2008, the Commission considers your listing is justified for reasons of association with the Al-Qaeda network. The narrative summary of reasons is attached to this letter'. The Commission also enclosed the text of the contested regulation, drew the applicant's attention to the possibility of challenging that regulation before this Court and, last, informed the applicant that individuals, groups and entities concerned might submit at any time a request to the Sanctions Committee to have their names removed from the list, and provided details of the relevant contacts and the address of a website where the applicant might obtain further information.

62 The narrative summary of reasons enclosed with the Commission's letter of 8 December 2008 is identical to the summary of reasons.

Procedure

63 It was in those circumstances that, by application lodged at the Court Registry on 26 February 2009, the applicant brought the present action.

64 By a separate document lodged at the Registry on the same date, the applicant requested that the case be dealt with under an expedited procedure, in accordance with Article 76a of the Rules of Procedure of the Court. After the Commission had been heard, that application was granted by decision of the Court (Seventh Chamber) of 20 March 2009.

65 The Commission attached to its defence the letter from the French Presidency of the Council of 22 October 2008 forwarding the communication of the summary of reasons communicated by the Sanctions Committee (see paragraph 52 above). It claimed that this constituted the complete set of documents which it had received from the United Nations and on which the contested regulation is based.

66 By orders of 5 May and 3 July 2009, after the parties had been heard, the President of the Seventh Chamber of the Court granted, first, the Council of the European Union and, second, the French Republic and the United Kingdom of Great Britain and Northern Ireland leave to intervene in support of the form of order sought by the Commission.

67 By a document lodged at the Registry on 18 November 2009, the Commission lodged a document relating to proceedings pending between the applicant and the United States authorities before the United States District Court for the District of Columbia. The applicant and the Council submitted their written observations on that document on 10 December 2009.

68 Upon hearing the report of the Judge-Rapporteur, the Court (Seventh Chamber) decided to open the oral procedure.

69 By letter of 10 June 2010, the applicant submitted a copy of the UK Supreme Court judgment in *Ahmed and Others.*

70 The parties presented oral arguments and gave their answers to the questions put by the Court at the hearing of 17 June 2010. At the hearing, the applicant produced the 'Ninth Report of the Analytical Support and Sanctions Monitoring Team, established pursuant to Resolution 1526 (2004)' in order to assist the Sanctions Committee in the fulfilment of its mandate, as it had been presented to the President of the Security

Council by the Chairman of the Sanctions Committee under cover of a letter dated 11 May 2009 (document S/2009/235, the 'Ninth Report of the Monitoring Team').

Forms of order sought

71 The applicant claims that the Court should:

— adopt a measure of organisation of procedure under Article 64 of its Rules of Procedure, requiring the Commission to disclose 'all of the documents relating to the adoption of the contested regulation';

— annul the contested regulation in so far as it concerns the applicant;

— order the Commission to pay the costs.

72 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

73 The Commission maintains, moreover, that since the applicant's inclusion in Annex I to Regulation No 881/2002 is based solely on the documents annexed to the defence, there is no need for the Court to order their production by way of a measure of organisation of procedure.

74 The Council, the French Republic and the United Kingdom support the first head of the form of order sought by the Commission.

Facts

75 The applicant is a Saudi Arabian national; he is a businessman and financier and was born in 1955. He acknowledges that, until it ceased operations in 1998, he was a trustee of the Muwafaq Foundation, which he describes as a charitable trust founded in Jersey.

76 The applicant's funds have been frozen throughout the European Union since 20 October 2001, initially under Regulation No 2062/2001, which was adopted after the applicant was included on the Sanctions Committee's list on 17 October 2001 (see paragraphs 30 and 31 above), then under Regulation No 881/2002 and, last, under the contested regulation, adopted following the partial annulment of Regulation No 881/2002 by the judgment of the Court of Justice in *Kadi*.

77 The applicant maintains that he has never been involved in terrorism and that he has never given any form of financial or other support to terrorism, whether connected with Usama bin Laden or otherwise. He has never been tried for or convicted of any criminal offence relating to terrorism anywhere in the world.

78 The applicant further maintains that he was placed on the Sanctions Committee's list at the request of the United States without any independent scrutiny or assessment by the United Nations of the allegations made against him by the United States. A number of those allegations are manifestly false, such as those claiming that he has a brother or is a member of the Dosari tribe. The United States authorities also relied on allegations made in a number of newspaper articles, notably an article written by the journalist Jack Kelley in *USA Today* dated 29 October 1999 and stating, inter alia, that the Muwafaq Foundation served as a 'front' for Usama bin Laden. Mr Kelley was, however, subsequently forced to resign following an investigation and a correction was published on the *USA Today* website on 13 April 2004 confirming that Mr Kelley had 'fabricated several high-profile stories' and that the article on which the United States authorities had relied included a number of errors.

Law

Preliminary considerations

79 After expressing a number of preliminary observations concerning the appropriate standard of judicial review in the present case, the applicant puts forward five pleas in law in support of the present action. The first alleges lack of sufficient legal basis. The second, which is structured in two parts, alleges breach of the rights of the defence and of the right to effective judicial protection. The third alleges breach of the obligation to state reasons laid down in Article 253 EC. The fourth alleges a manifest error of assessment of the facts. Last, the fifth plea alleges breach of the principle of proportionality.

80 The Court will start by considering the question of the appropriate standard of judicial review in the present case, rightly regarded by all the parties as a preliminary issue, and will then consider in turn the second and fifth pleas, which reproduce the substance of the complaints already examined by the Court of Justice in its judgment in *Kadi*.

81 For the purposes of this assessment, there is no need to adopt the measure of organisation of procedure requested by the applicant. It is not disputed that the Commission has produced, in the annex to the defence, all the documents on the basis of which the contested regulation was adopted and which are liable to be covered by such a measure.

The appropriate standard of judicial review in this case

Arguments of the parties

82 In the first place, the applicant considers it 'appropriate and necessary' that the Court, in the present case, should apply an 'intensive and anxious' standard of judicial review. The applicant refers, in that regard, to the principles set out at paragraphs 281 and 326 of the judgment of the Court of Justice in *Kadi* and at point 45 of Advocate General Poiares Maduro's Opinion in that case. He also refers to the 'full review' defined by this Court in order to assess the legality of Community freezing measures adopted under Regulation No 2580/2001 in its judgments in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, '*OMPI*', paragraphs 154, 155 and 159; Case T-256/07 *People's Mojahedin Organization of Iran* v

Council [2008] ECR II-3019, '*PMOI I*', paragraphs 141 to 143; and Case T-284/08 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3487, '*PMOI II*', paragraphs 74 and 75.

83 In the second place, the applicant submits that particularly compelling evidence is required to justify the asset-freezing measures at issue in the present case, for the following reasons:

— that these draconian measures, unlimited as to time and quantum, constitute a serious interference with his fundamental rights, the consequences of which may be devastating (Opinion of Advocate General Poiares Maduro in *Kadi*, point 47);

— the measure is punitive, as emerges objectively from the interpretative notes of the FATF relied on by the Commission, in the sense that it publicly brands the applicant as a terrorist or a supporter of terrorism;

— the applicant's assets have been frozen since 2001, although, as regards the continuation of the freeze, the Commission must be guided by reference to the criterion of a 'present or future threat' rather than by reference to the criterion of simple 'past conduct' (*PMOI I*, paragraph 110).

84 In the third place, the applicant maintains that the Court must scrutinise the contested regulation with particular care, since it was purportedly adopted in order to remedy the serious breaches of fundamental rights identified by the Court of Justice in its judgment in *Kadi* (in particular paragraphs 334, 358, 369 and 370; see also *PMOI I*, paragraphs 60 to 62).

85 In the submission of the Commission and the governments which have intervened, it is necessary to strike a fair balance between the fundamental right to effective judicial review of an individual whose funds are frozen under a Community measure and the need to combat international terrorism in accordance with the binding decisions taken by the Security Council under Chapter VII of the Charter of the United Nations.

86 In that regard, the Commission proposes that a distinction be drawn between two standards of judicial review, depending on whether the measure at issue involves the exercise of its own power, entailing a discretionary assessment by the Community (*OMPI*, paragraph 107).

87 The first standard of review, characterised as 'restricted', was defined by this Court in its judgments in *OMPI* and *PMOI*, in the context of the implementation of Common Position 2001/931 and Regulation No 2580/2001. It extends to the assessment of the facts and circumstances relied on as justifying the freezing measure at issue and to the verification of the evidence and information on which that assessment is based (*OMPI*, paragraph 154), but the Community judicature cannot substitute its assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Community institutions (*OMPI*, paragraph 159). That standard of review is thus restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate and that there has been no manifest error of assessment of the facts or misuse of power. That restricted review applies, in particular, to the assessment of the factors as to appropriateness on which the freezing measure is based.

88 Contrary to the applicant's contention, that first restricted standard of judicial review cannot be transposed to a case such as this, which concerns a Community act adopted, in accordance with the intention expressed unanimously by the Member States in Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaeda organisation and

the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP (OJ 2002 L 139, p. 4), in order to implement collectively individual sanctions directly decided against individuals and entities designated by name by the Sanctions Committee.

89 The Commission observes, in that regard, that observance of the undertakings given in the context of the United Nations is required when the Community gives effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations (judgment of the Court of Justice in *Kadi*, paragraph 293). It follows that the Community institutions are bound to comply, under the EC Treaty, with the decisions of the Sanctions Committee (judgment of the Court of Justice in *Kadi*, paragraph 296).

90 The Community judicature must none the less verify whether the adoption of a Community implementing measure is compatible with the constitutional principles of the EC Treaty, among which are fundamental rights (judgment of the Court of Justice in *Kadi*, paragraphs 298 to 314). That United Nations context therefore does not justify 'generalised immunity from jurisdiction' within the legal order of the Community, so long as the re-examination procedure before the Sanctions Committee does not offer guarantees of judicial protection (judgment of the Court of Justice in *Kadi*, paragraphs 322 in fine, 326 and 327).

91 In the submission of the Commission and the governments to have intervened, judicial review by the Court of Justice in cases involving Community acts implementing sanctions decided on by the Sanctions Committee has to date been concerned with verifying whether the relevant Community authority had complied with procedural guarantees (judgment of the Court of Justice in *Kadi*, paragraphs 336 and 345 to 353). On the other hand, the Court of Justice has not thus far made a determination as to the standard of judicial review of the grounds on which the Community implementing measure is based. It is thus for this Court to determine for the first time the

appropriate standard of review and in doing so it must pay particular attention to the international context in which the contested regulation was adopted.

92 In that regard, the Commission emphasises the obligation placed on every Member of the United Nations, in accordance with Article 2(5) of the Charter of the United Nations, to give that organisation 'every assistance in any action it takes in accordance with' that Charter. At paragraph 8 of Resolution 1822 (2008), moreover, the Security Council recently reiterated the obligation of all Members to implement the relevant sanctions with respect to the persons on the Sanctions Committee's list.

93 The same applies when, within the European Union, the decisions of the Sanctions Committee are implemented not by each Member State individually but by the adoption of Community measures on the basis of Articles 60 EC and 301 EC. The Commission observes that, in its judgment in *Kadi* (paragraph 294), the Court of Justice held that, in the exercise of that power, the Commission must attach special importance to the fact that, in accordance with Article 24 of the Charter of the United Nations, the adoption by the Security Council of resolutions under Chapter VII of that Charter constitutes the exercise of the primary responsibility with which that international body is invested for the maintenance of peace and security at a global level, a responsibility which, under Chapter VII, 'includes the power to determine what and who poses a threat to international peace and security and to take the measures necessary to maintain or restore them'.

94 The Commission and the intervening governments contend that, in communicating to the applicant the reasons for his listing in Annex I to Regulation No 881/2002, the Community gives him the opportunity to make his views known and to rebut the allegations that he is linked to international terrorism. The comments submitted by the applicant must be carefully examined by the Commission. Where, however, the applicant wishes to challenge the evidence underlying the Sanctions Committee's

summary of reasons, it is not for the Community to substitute *ex post facto* its own assessment of that evidence for the Sanctions Committee's assessment. Nor is the Community capable of making such an *ex post facto* assessment, since the evidence is only communicated by a Member of the United Nations to the Sanctions Committee.

95 At the hearing, the Commission confirmed, first, that it did not have any of the evidence in question. A request for the production of evidence must, in its view, be made to the United Nations States which hold it.

96 In response to a question put by the Court, the Commission, supported by the intervening governments, made clear, first, that the scope which it believes it has to call into question the findings of the Sanctions Committee is particularly narrow and is, in actual fact, limited to a review of wholly manifest errors of fact or assessment, such as an error as to the identity of the person designated. Should it become clear that such an error has been made, the Commission would have to contact the Sanctions Committee in order to have the error corrected.

97 According to the Commission and the intervening governments, acceding to the applicant's request for a specific Community procedure for the communication and evaluation of evidence would 'undermine' the United Nations sanctions system. The Sanctions Committee, which is specialised in the relevant matters and is subject to specific rules on confidentiality and expertise, is specifically made responsible for dealing with highly sensitive evidence. The Commission and the intervening governments further submit that, if each of the 192 Members of the United Nations had to satisfy itself individually as to the available evidence before an implementing measure was taken, the centralised system of United Nations sanctions in the context of the

fight against international terrorism would immediately 'collapse' and it would be impossible to strike a fair balance between respect for fundamental rights and the need to combat international terrorism.

98 As regards the implementation by the Community judicature of the constitutional principle of effective judicial protection following the judgment of the Court of Justice in *Kadi*, the Commission and the intervening governments point out that, while the Community judicature does indeed have the power to review the contested regulation, that power of review depends in itself on the limited role given to the Community, which does not have the task of reviewing the decision of the Sanctions Committee or the evidence maintained exclusively in New York. The Commission and the intervening governments further emphasise that the power to decide that a person is associated with Al-Qaeda and that it is therefore necessary to freeze his assets in order to prevent him from financing or preparing acts of terrorism was vested in the Security Council and that it is difficult to conceive of a more important and more complex policy area, involving assessments concerning the protection of international and internal security.

99 According to the Commission and the interveners, it follows from the foregoing that the Community as a whole cannot substitute its own assessment for that of the Sanctions Committee. The margin of discretion which the Sanctions Committee enjoys must be respected not only by the political institutions of the Community but also by the Community judicature. In the present case, the Court must therefore respect the Commission's decision not to substitute its own assessment for that of the Sanctions Committee, unless the Commission's decision appears to be manifestly erroneous.

100 Otherwise, in the submission of the Commission and the intervening governments, the Court would be able to impose on the Member States of the European Union obligations which would be directly contradictory under the Charter of the United Nations and under Community law. If the Court were to substitute its own assessment for that of the Sanctions Committee and arrive at the conclusion that a person did not satisfy the conditions for inclusion in Annex I to Regulation No 881/2002, the Member States of the European Union would still be required, as Members of the

United Nations, to implement the decision of the Sanctions Committee, while being under an obligation, as members of the European Union, not to implement sanctions. However, according to the Commission, it follows from Article 103 of the Charter of the United Nations that a Member State of the European Union cannot rely on Community law to justify non-implementation of its obligations under the Charter of the United Nations.

101 For all those reasons, the Commission requests the Court to consider, first, whether the applicant was in fact given the right to be heard and, second, whether the Commission's assessment of the applicant's comments appears to be unreasonable or vitiated by a manifest error.

102 The Council, too, contests the applicant's interpretation of the judgment of the Court of Justice in *Kadi*. The applicant takes certain passages out of context and ascribes to them a meaning which the Court of Justice did not intend them to have. In reality, after finding, at paragraph 351 of that judgment, that it was unable to review the lawfulness of the contested regulation, the Court of Justice did not address the question of the extent or the intensity of its power of judicial review or provide the slightest guidance in that regard.

103 More specifically, the Council claims that the question as to whether the applicant was associated with the Al-Qaeda network or the Taliban entails an assessment by the Sanctions Committee, based on security considerations, concerning the measures that need to be taken in order to fight terrorism on the basis of information and intelligence collected.

104 The Court of Justice has recognised the primacy of the role of the Security Council in that area, at paragraph 294 of its judgment in *Kadi*. In practice, that means that the

Community institutions must not substitute their own assessment of the existence or non-existence of a link between an individual and the Al-Qaeda network or the Taliban for that contained within a binding resolution of the Security Council.

105 The Council also submits that this Court should adopt the same approach in the present case as that adopted when the Community institutions make assessments in relation to complex and broadly-defined objectives. According to the consistent case-law of the Court of Justice, those institutions then benefit from a wide discretion and their choices should be annulled only where they have made a manifest error of assessment or have been guilty of a misuse of power (see, for example, Joined Cases C-248/95 and C-249/95 *SAM Schiffahrt and Stapf* [1997] ECR I-4475, paragraphs 24 and 25, and Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 80).

106 Clearly, the assessments in question here are complex and require an evaluation of the measures necessary to safeguard international and internal security. They require the know-how of the intelligence services and the political acumen which, in the Council's submission, only governments possess.

107 The fact that in the present case the assessment is that of the Sanctions Committee and not that of the Community institutions does not affect the nature of the assessment and does not alter the principle that the Community judicature should refrain from substituting its own assessment for that of the competent political authorities. The Council maintains, in that regard, that this Court cannot and should not examine the merits of the assessment, which, in the Council's submission, are the exclusive responsibility of governments in the context of the fight against terrorism.

108 At the hearing, the Council also maintained that it does not follow from the judgment of the Court of Justice in *Kadi* that judicial review — marginal — of Community measures to freeze funds must extend to the assessment of the evidence as such (as opposed to review — marginal — of the reasons relied on as justifying the freezing of funds). That emerges with particular clarity from certain linguistic versions of the judgment, in particular the English and Swedish versions.

109 The Council also draws attention to the more general consequences of an intensive review by this Court, as advocated by the applicant. Like the Commission and the intervening governments, the Council maintains that such a review could lead to a situation in which Member States would be subject to inconsistent competing obligations, as Members of the United Nations and as Member States of the European Union.

110 In the Council's submission, if all the Members of the United Nations adopted such an approach, the United Nations based system could no longer function. The Council observes that, in its judgment in *Kadi*, the Court of Justice emphasised the primary role of the Security Council in the preservation of international peace and security. The approach suggested by the applicant would undermine the Security Council's ability to perform that function.

111 In conclusion, the Council maintains that the Court should reaffirm the primary role of the Security Council in this area and determine that the Community institutions must not substitute their own assessment of the existence of a link between an individual and the Al-Qaeda network or the Taliban for that contained in a binding resolution of the Security Council under Chapter VII of the Charter of the United Nations.

Findings of the Court

112 It should be made clear at the outset that, in the context of the present proceedings, the General Court is not bound under Article 61 of the Statute of the Court of Justice by the points of law decided by the Court of Justice in its judgment in *Kadi*.

113 The institutions and intervening governments have, moreover, forcefully reiterated in these proceedings the concerns — already expressed by them in the case culminating in the judgment of the Court of Justice in *Kadi* — regarding the risk that the system of sanctions put in place by the United Nations in the context of the fight against international terrorism would be disrupted if judicial review of the kind advocated by the applicant in the light of the judgment of the Court of Justice in *Kadi* were instituted at national or regional level.

114 It is true that, once it is accepted that the Security Council has inherent competence to adopt sanctions targeted at individuals rather than at States or their governments (smart sanctions), such judicial review is liable to encroach on the Security Council's prerogatives, in particular with regard to determining who or what constitutes a threat to international peace or security, to finding that such a threat exists and to determining the measures necessary to put an end to it.

115 More fundamentally, certain doubts may have been voiced in legal circles as to whether the judgment of the Court of Justice in *Kadi* is wholly consistent with, on the one hand, international law and, more particularly, Articles 25 and 103 of the Charter of the United Nations and, on the other hand, the EC and EU Treaties, and more particularly Article 177(3) EC, Articles 297 EC and 307 EC, Article 11(1) EU and Article 19(2) EU (see, also Article 3(5) TEU and Article 21(1) and (2) TEU, as well as declaration No 13 of the Conference of the Representatives of the Governments of the Member States concerning the common foreign and security policy annexed to

the Treaty of Lisbon, which stresses that 'the [EU] and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security council and of its members for the maintenance of international peace and security'.

116 In that regard, it has in particular been asserted that, even though the Court of Justice stated, at paragraph 287 of *Kadi*, that it was not for the Community judicature, under the exclusive jurisdiction provided for by Article 220 EC, to review the legality of a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, the fact remains that a review of the legality of a Community act which merely implements, at Community level, a resolution affording no latitude in that respect necessarily amounts to a review, in the light of the rules and principles of the Community legal order, of the legality of the resolution thereby implemented.

117 It has, moreover, been observed that, at paragraphs 320 to 325 of *Kadi*, the Court of Justice in any event carried out a review of the conformity of the system of sanctions set up by the United Nations with the system of judicial protection of fundamental rights laid down by the EC Treaty and did so in response to the Commission's argument that those fundamental rights were now sufficiently protected in the framework of the system of sanctions, in view in particular of the improvement in the re-examination procedure which afforded the individuals and entities concerned an acceptable opportunity to be heard by the Sanctions Committee. In particular, the Court of Justice held, at paragraphs 322 and 323 of its judgment, that the re-examination procedure 'clearly … [did] not offer the guarantees of judicial protection' and that the individuals or entities concerned 'had no real opportunity of asserting their rights'.

118 Likewise, although the Court of Justice asserted, at paragraph 288 of its judgment in *Kadi*, that any judgment of the Community judicature holding a Community measure intended to give effect to such a resolution to be contrary to a higher rule of law in the Community legal order would not entail any challenge to the primacy of

that resolution in international law, it has been pointed out that the necessary consequence of such a judgment — by virtue of which the Community measure in question is annulled — would be to render that primacy ineffective in the Community legal order.

119 Accordingly, while the Court of Justice normally views relations between Community law and international law in the light of Article 307 EC (see, in that regard, Case C-124/95 *Centro-Com* [1997] ECR I-81, paragraphs 56 to 61, in which the Court held that Article 234 of the EC Treaty (subsequently, after amendment, Article 307 EC) may allow derogations even from primary law — in that instance Article 133 EC), it held in *Kadi* that Article 307 EC does not apply when at issue are 'the principles of liberty, democracy and respect for human rights and fundamental freedoms enshrined in Article 6(1) EU as a foundation of the Union' (paragraph 303) or, in other words, 'the principles that form part of the very foundations of the Community legal order, one of which is the protection of fundamental rights' (paragraph 304). So far as those principles are concerned, the Court of Justice thus seems to have regarded the constitutional framework created by the EC Treaty as a wholly autonomous legal order, not subject to the higher rules of international law — in this case the law deriving from the Charter of the United Nations.

120 Finally, as the Charter of the United Nations is an agreement between States and was, moreover, adopted before the adoption of the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957, the likening by the Court of Justice, at paragraphs 306 to 309 of its judgment in *Kadi*, of that charter to an international agreement concluded between the Community and one or more States or international organisations, within the meaning of Article 300 EC, in support of the conclusion that 'primacy [of the charter] at the level of Community law [does] not, however, extend to primary law' (paragraph 308), has given rise to a number of questions.

121 The General Court acknowledges that those criticisms are not entirely without foundation. However, with regard to their relevance, it takes the view that, in circumstances such as those of the present case — which concerns a measure adopted by the Commission to replace an earlier measure annulled by the Court of Justice in an appeal against the judgment of this Court dismissing an action for annulment of the earlier measure — the appellate principle itself and the hierarchical judicial structure which is its corollary generally advise against the General Court revisiting points of law which have been decided by the Court of Justice. That is *a fortiori* the case when, as here, the Court of Justice was sitting in Grand Chamber formation and clearly intended to deliver a judgment establishing certain principles. Accordingly, if an answer is to be given to the questions raised by the institutions, Member States and interested legal quarters following the judgment of the Court of Justice in *Kadi*, it is for the Court of Justice itself to provide that answer in the context of future cases before it.

122 It should be observed, as an ancillary point, that, although some higher national courts have adopted a rather similar approach to that taken by this Court in its judgment in *Kadi* (see, to that effect, the decision of the Tribunal fédéral de Lausanne (Switzerland) of 14 November 2007 in Case 1A.45/2007 *Youssef Mustapha Nada* v *Secrétariat d'État pour l'Économie* and the judgment of the House of Lords (United Kingdom) in *Al-Jedda* v. *Secretary of State for Defence* [2007] UKHL 58, which is currently the subject of an action pending before the European Court of Human Rights (Case No 227021/08 *Al-Jedda* v *United* Kingdom), others have tended to follow the approach taken by the Court of Justice, holding the Sanctions Committee's system of designation to be incompatible with the fundamental right to effective review before an independent and impartial court (see, to that effect, the judgment of the Federal Court of Canada of 4 June 2009 in *Abdelrazik* v *Canada (Minister of Foreign Affairs)* 2009 FC 580, cited at paragraph 69 of the UK Supreme Court judgment in *Ahmed and Others*).

123 If the intensity and extent of judicial review were limited in the way advocated by the Commission and the intervening governments (see paragraphs 86 to 101 above) and

by the Council (see paragraphs 102 to 111 above), there would be no effective judicial review of the kind required by the Court of Justice in *Kadi* but rather a simulacrum thereof. That would amount, in fact, to following the same approach as that taken by this Court in its own judgment in *Kadi*, which was held by the Court of Justice on appeal to be vitiated by an error of law. The General Court considers that in principle it falls not to it but to the Court of Justice to reverse precedent in that way, if it were to consider this to be justified in light, in particular, of the serious difficulties to which the institutions and intervening governments have referred.

124 It is true, as the Commission and the Council point out, that the Court of Justice recalled in *Kadi* that the Community must respect international law in the exercise of its powers (paragraph 291), that observance of the undertakings given in the context of the United Nations is required in the sphere of the maintenance of international peace and security when the Community gives effect, by means of the adoption of Community measures taken on the basis of Articles 60 EC and 301 EC, to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations (paragraph 293), that in the exercise of that latter power it is necessary for the Community to attach special importance to the fact that, in accordance with Article 24 of the Charter of the United Nations, the adoption by the Security Council of such resolutions constitutes the exercise of the primary responsibility with which that international body is invested for the maintenance of peace and security at the global level, a responsibility which, under Chapter VII, includes the power to determine what and who poses a threat to international peace and security and to take the measures necessary to maintain or restore them (paragraph 294), and that, in drawing up measures implementing a resolution of the Security Council under Chapter VII of the Charter of the United Nations, the Community must take due account of the terms and objectives of the resolution concerned and of the relevant obligations under the Charter of the United Nations relating to such implementation (paragraph 296).

125 The fact remains that the Court of Justice also stated, in *Kadi*, that the implementation of resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations must be undertaken in accordance with the procedure applicable in that respect in the domestic legal order of each Member of the United Nations (paragraph 298), that it is not a consequence of the principles governing the international legal order under the United Nations that any judicial review of the internal lawfulness of a Community measure such as the contested regulation in the light of fundamental freedoms is excluded by virtue of the fact that that measure is intended to give effect to such a resolution (paragraph 299), that such immunity from jurisdiction for such a measure cannot find a basis in the EC Treaty (paragraph 300), that the review, by the Court of Justice, of the validity of any Community measure in the light of fundamental rights must be considered to be the expression, in a community based on the rule of law, of a constitutional guarantee stemming from the EC Treaty as an autonomous legal system which is not to be prejudiced by an 'international agreement' (paragraph 316), and that accordingly 'the Community judicature must, in accordance with the powers conferred on it by the EC Treaty, ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which … are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations' (paragraph 326).

126 The General Court therefore concludes that, in circumstances such as those of this case, its task is to ensure — as the Court of Justice held at paragraphs 326 and 327 of *Kadi* — 'in principle the full review' of the lawfulness of the contested regulation in the light of fundamental rights, without affording the regulation any immunity from jurisdiction on the ground that it gives effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations.

127 That must remain the case, at the very least, so long as the re-examination procedure operated by the Sanctions Committee clearly fails to offer guarantees of effective judicial protection, as the Court of Justice considered to be the case at paragraph 322

of *Kadi* (see also, to that effect, point 54 of the Opinion of Advocate General Poiares Maduro in that case).

128 The considerations in this respect, set out by the Court of Justice at paragraphs 323 to 325 of *Kadi*, in particular with regard to the focal point, remain fundamentally valid today, even if account is taken of the 'Office of the Ombudsperson', the creation of which was decided in principle by Resolution 1904 (2009) and which has very recently been set up. In essence, the Security Council has still not deemed it appropriate to establish an independent and impartial body responsible for hearing and determining, as regards matters of law and fact, actions against individual decisions taken by the Sanctions Committee. Furthermore, neither the focal point mechanism nor the Office of the Ombusdperson affects the principle that removal of a person from the Sanctions Committee's list requires consensus within the committee. Moreover, the evidence which may be disclosed to the person concerned continues to be a matter entirely at the discretion of the State which proposed that he be included on the Sanctions Committee's list and there is no mechanism to ensure that sufficient information be made available to the person concerned in order to allow him to defend himself effectively (he need not even be informed of the identity of the State which has requested his inclusion on the Sanctions Committee's list). For those reasons at least, the creation of the focal point and the Office of the Ombudsperson cannot be equated with the provision of an effective judicial procedure for review of decisions of the Sanctions Committee (see also, in that regard, the observations made at paragraphs 77, 78, 149, 181, 182 and 239 of the UK Supreme Court judgment in *Ahmed and Others* and the considerations expressed in Point III of the Ninth Report of the Monitoring Committee).

129 In those circumstances, the review carried out by the Community judicature of Community measures to freeze funds can be regarded as effective only if it concerns, indirectly, the substantive assessments of the Sanctions Committee itself and the evidence underlying them (see also, to that effect, the UK Supreme Court judgment in *Ahmed and Others*, paragraph 81).

130 With regard, more specifically, to the extent and intensity of the review which it is for this Court to carry out, the Commission submits that in *Kadi* the Court of Justice did not make a determination on that question (see paragraph 91 above). In the same vein, the Council maintains that the Court of Justice did not consider that question and did not provide the slightest guidance in that regard (see paragraphs 102 and 108 above).

131 That argument is clearly wrong.

132 First, the Court of Justice stated at the end of a lengthy passage of reasoning that the review of legality in question had to be 'in principle the full review' and had to be carried out 'in accordance with the powers conferred on [the Community judicature] by the EC Treaty' (judgment of the Court of Justice in *Kadi*, paragraph 326) and, what is more, expressly rejected the General Court's proposition that the measure at issue had to be afforded 'immunity from jurisdiction' on the ground that it merely gave effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations (judgment of the Court of Justice in *Kadi*, paragraph 327). In so doing, the Court of Justice in fact gave a perfectly clear indication of what the scope and intensity of that review had to be.

133 Second, the Court of Justice concluded, at paragraph 336 of *Kadi*, that it had to be possible to apply that review to the lawfulness of the grounds on which the contested Community measure was founded. It is clear from the case-law cited at paragraph 336 in support of that conclusion (see, in particular, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 462) that the review of the lawfulness of the grounds extends, inter alia, to ascertaining whether the contested act is well founded and whether it is vitiated by any defect.

134 Third, the Court of Justice pointed out, at paragraphs 342 to 344 of *Kadi*, that although overriding considerations relating to safety or the conduct of the international relations of the Community and of its Member States may militate against the communication of certain matters to the persons concerned, that does not mean, with regard to respect for the principle of effective judicial protection, that restrictive measures such as those imposed by the contested regulation escape all review by the Community judicature once it has been claimed that the act laying them down concerns national security and terrorism. In such a case, it is the task of the Community judicature to apply, in the course of the judicial review it carries out, techniques which accommodate, on the one hand, legitimate security concerns about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need to accord the individual a sufficient measure of procedural justice.

135 It is obvious from those passages of the judgment of the Court of Justice in *Kadi* and from the reference made there to the judgment of the European Court of Human Rights in *Chahal* v. *United Kingdom* of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 131, that the Court of Justice intended that its review, 'in principle [a] full review', should extend not only to the apparent merits of the contested measure but also to the evidence and information on which the findings made in the measure are based.

136 The Monitoring Team understood it in that way, since point 19 of its Ninth Report states that in its judgment in *Kadi* the Court of Justice held that the procedures used by the European Union to implement sanctions had infringed the fundamental rights of the persons concerned 'by failing to communicate the evidence justifying the restrictive measures imposed upon them and thus precluding their right to defend themselves against them'.

137 Moreover, the Court of Justice has recently confirmed, in a case concerning implementation of the sanctions laid down by Regulation No 2580/2001, that the possibility of 'an adequate review by the courts' of the substantive legality of a Community freezing measure, 'particularly as regards the verification of the facts and the evidence and information relied upon in support of the measure', is indispensable if a fair balance between the requirements of the fight against international terrorism, on the one hand, and the protection of fundamental liberties and rights, on the other, is to be ensured (Case C-550/09 *E and F* [2010] ECR I-6213, paragraph 57).

138 Fourth, it should be noted that a considerable part of the reasoning elaborated by the Court of Justice in *Kadi* in its consideration of the applicant's pleas alleging infringement of his rights of defence and of the right to effective judicial review, draws on the reasoning of this Court elaborated in its consideration of the equivalent pleas raised by the applicant in *OMPI*. Thus, in particular, paragraphs 336, 340, 342, 343, 344, 345, 346, 348, 349, 351 and 352 of the judgment of the Court of Justice in *Kadi* at the very least reproduce the substance of the corresponding paragraphs 129, 128, 133, 156, 158, 160, 161, 162, 165, 166 and 173 of *OMPI*. The conclusion must therefore be that, by taking on the essential content of the General Court's reasoning in *OMPI*, with regard to the alleged infringements of the rights of the defence and the right to an effective judicial review, the Court of Justice approved and endorsed the standard and intensity of the review as carried out by the General Court in *OMPI*.

139 As regards the extent and intensity of the judicial review appropriate in the present case, it is therefore necessary to apply to this case the principles set out by the General Court in *OMPI* and in its subsequent decisions in the cases referred to at paragraph 82 above concerning the implementation of the measures referred to at paragraphs 32 to 35 above.

140 In that regard, it should be recalled that, at paragraph 153 of *OMPI*, the General Court held that the judicial review of the lawfulness of a Community decision to freeze funds is that provided for in the second paragraph of Article 230 EC, under which the Community judicature has jurisdiction in actions for annulment brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the EC Treaty or of any rule of law relating to its application or misuse of powers.

141 At paragraph 159 of *OMPI*, paragraph 137 of *PMOI I*, paragraph 55 of *PMOI II* and paragraph 97 of the judgment in Case T-341/07 *Sison* v *Council* [2009] ECR II-3625, the General Court recognised that the competent Community institution had broad discretion as to what matters to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 60 EC, 301 EC and 308 EC, consistent with a common position adopted on the basis of the CFSP. This discretion concerns, in particular, the assessment of the considerations of appropriateness on which such decisions are based.

142 However, although the General Court acknowledges that the competent Community institution possesses some latitude in that sphere, that does not mean that the Court is not to review the interpretation made by that institution of the relevant facts (see *PMOI I*, paragraph 138, *PMOI II*, paragraph 55, and *Sison* v *Council*, paragraph 98). The Community judicature must not only establish whether the evidence relied on is factually accurate, reliable and consistent, but must also ascertain whether that evidence contains all the relevant information to be taken into account in order to assess the situation and whether it is capable of substantiating the conclusions drawn from it. However, when conducting such a review, it is not its task to substitute its own assessment of what is appropriate for that of the competent Community institution (see, by analogy, Case C-525/04 P *Spain* v *Lenzing* [2007] ECR I-9947, paragraph 57 and the case-law cited).

143 At paragraph 154 of *OMPI* (see also *PMOI II*, paragraph 74), the General Court also held that the judicial review of the lawfulness of a Community decision to freeze funds extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based, as the Council had expressly recognised in its written pleadings in Case T-306/01 *Yusuf and Al Barakaat International Foundation* v *Council and Commission* [2005] ECR II-3533 (see paragraph 225 of that judgment). The General Court must also ensure that the rights of the defence are observed and that the requirement of a statement of reasons is satisfied and also, where applicable, that any overriding considerations relied on exceptionally by the competent Community institution in order to justify disregarding those rights are well founded.

144 At paragraph 155 of *OMPI* (and see also *PMOI II*, paragraph 75) the General Court stated that, in the current context, that review is all the more essential because it constitutes the only procedural safeguard ensuring that a fair balance is struck between the need to combat international terrorism and the protection of fundamental rights. Since the restrictions imposed by the competent Community institution on the rights of defence of the parties concerned must be offset by a strict judicial review which is independent and impartial (see, to that effect, Case C-341/04 *Eurofood IFSC* [2006] ECR I-3813, paragraph 66), the Community judicature must be able to review the lawfulness and merits of Community measures to freeze funds without its being possible to raise objections that the evidence and information used by the competent Community institution is secret or confidential.

145 In that regard, the General Court further stated, at paragraph 73 of *PMOI II*, that the Council is not entitled to base its decision to freeze funds on information or material in the file communicated by a Member State, if the said Member State is not willing to authorise its communication to the Community judicature whose task is to review the lawfulness of that decision. At paragraph 76 of *PMOI II*, the Court stated that the refusal of the Council and the French authorities to communicate, even to the Court

alone, certain information on which the measure contested in that action was based, had the consequence that the Court was unable to review the lawfulness of the contested decision. At paragraph 78 of *PMOI II*, the Court concluded that, in those circumstances, the applicant's right to effective judicial protection had been infringed.

146 The General Court also noted in that regard, at paragraph 156 of *OMPI*, that, although the European Court of Human Rights recognises that the use of confidential information may be necessary when national security is at stake, that does not mean, in that court's view, that national authorities are free from any review by the national courts simply because they state that the case concerns national security and terrorism (see the judgment of the European Court of Human Rights in *Chahal* v *United Kingdom*, § 131, and case-law cited, and its judgment in *Öcalan* v *Turkey* of 12 March 2003, No 46221/99, not published in the *Reports of Judgments and Decisions*, § 106 and case-law cited).

147 The General Court added, at paragraph 158 of *OMPI*, that it was not necessary for it to rule, in the action before it, on the separate question as to whether the applicant and/or its lawyers could be provided with the evidence and information alleged to be confidential, or whether they had to be provided only to the Court, in accordance with a procedure which remained to be defined so as to safeguard the public interests at issue whilst affording the party concerned a sufficient degree of judicial protection.

148 Those considerations, well established in the case-law resulting from *OMPI*, should be supplemented by certain considerations based on the nature and effects of fund-freezing measures such as those at issue here, viewed from a temporal perspective.

149 Such measures are particularly draconian for those who are subject to them. All the applicant's funds and other assets have been indefinitely frozen for nearly 10 years now and he cannot gain access to them without first obtaining an exemption from the Sanctions Committee. At paragraph 358 of its judgment in *Kadi*, the Court of Justice had already noted that the measure freezing his funds entailed a restriction of the exercise of the applicant's right to property that had to be classified as considerable, having regard to the general application of the measure and the fact that it had been applied to him since 20 October 2001. In *Ahmed and Others* (paragraphs 60 and 192), the UK Supreme Court took the view that it was no exaggeration to say that persons designated in this way are effectively 'prisoners' of the State: their freedom of movement is severely restricted without access to their funds and the effect of the freeze on both them and their families can be devastating.

150 It might even be asked whether — given that now nearly 10 years have passed since the applicant's funds were originally frozen — it is not now time to call into question the finding of this Court, at paragraph 248 of its judgment in *Kadi*, and reiterated in substance by the Court of Justice at paragraph 358 of its own judgment in *Kadi*, according to which the freezing of funds is a temporary precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof. The same is true of the statement of the Security Council, repeated on a number of occasions, in particular in Resolution 1822 (2008), that the measures in question 'are preventative in nature and are not reliant upon criminal standards set out under national law'. In the scale of a human life, 10 years in fact represent a substantial period of time and the question of the classification of the measures in question as preventative or punitive, protective or confiscatory, civil or criminal seems now to be an open one (see also, in that connection, the Ninth Report of the Monitoring Team, paragraph 34). That is also the opinion of the United Nations High Commissioner for Human Rights who, in a report to the General Assembly of the United Nations of 2 September 2009, entitled

'Report... on the protection of human rights and fundamental freedoms while countering terrorism' (document A/HRC/12/22, point 42), makes the following statement:

"Because individual listings are currently open-ended in duration, they may result in a temporary freeze of assets becoming permanent which, in turn, may amount to criminal punishment due to the severity of the sanction. This threatens to go well beyond the purpose of the United Nations to combat the terrorist threat posed by an individual case. In addition, there is no uniformity in relation to evidentiary standards and procedures. This poses serious human rights issues, as all punitive decisions should be either judicial or subject to judicial review."

151 Although a discussion of this question is outside the scope of these proceedings as it is defined by the pleas set out in the application, the General Court considers that, once there is acceptance of the premiss, laid down by the judgment of the Court of Justice in *Kadi*, that freezing measures such as those at issue in this instance enjoy no immunity from jurisdiction merely because they are intended to give effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations, the principle of a full and rigorous judicial review of such measures is all the more justified given that such measures have a marked and long-lasting effect on the fundamental rights of the persons concerned.

152 With the benefit and in the light of the above observations, it is appropriate now to examine the second and fifth pleas.

Second plea: infringement of the rights of the defence and of the right to effective judicial protection

Arguments of the parties

153 Referring, in particular, to the judgment of the Court of Justice in *Kadi* (paragraphs 336, 337, 346 and 352), to the Opinion of Advocate General Poiares Maduro in that case (point 52) and to the judgments in *OMPI* (paragraphs 138 and 144), *PMOI I* (paragraphs 131 and 176) and *PMOI II* (paragraphs 56 and 73), the applicant emphasises the fundamental nature of the right to be heard by the administrative authorities and the right to effective judicial protection in the context of the adoption of a fund-freezing measure. He observes that those rights were not respected by the Community authorities in the cases in question (see judgment of the Court of Justice in *Kadi*, paragraphs 334, 345, 346 and 348 to 352; Opinion of Advocate General Poiares Maduro in that case, point 55; and judgments in *OMPI*, paragraphs 165 and 173, *PMOI I*, paragraphs 177 to 186, and *PMOI II*, paragraphs 41 and 44).

154 The applicant further submits that the importance of the obligation for the Community institutions to communicate the facts, evidence and material on which a decision to freeze assets is based is underlined by the nature of judicial review in that context. He maintains that the Court must be placed in a position in which it can conduct a full and effective review of the material accuracy of the facts, evidence and information forming the basis of the decision to include the person concerned in Annex I to Regulation No 881/2002, in order to decide whether there are reasonable grounds and sufficient evidence for that decision and whether or not there is an error of assessment.

155 The applicant submits that, in adopting the contested regulation, the Commission has again committed a serious breach of the obligations clearly set out in the judgment of the Court of Justice in *Kadi* and the judgments in *OMPI*, *PMOI I* and *PMOI II*.

156 First, in spite of the judgment of the Court of Justice in *Kadi* (paragraph 352), neither Regulation No 881/2002 nor the contested regulation provides for any procedure for communicating to the applicant the evidence on which the decision to freeze his assets was based or for enabling him to comment on that evidence.

157 Second, the mere fact of sending the applicant the summary of reasons cannot reasonably be regarded as satisfying the requirements of a fair hearing and effective judicial protection. That summary contains a number of general, unsubstantiated, vague and unparticularised allegations against the applicant. No evidence to support those serious allegations is enclosed. In those circumstances, it is impossible for the applicant to rebut the allegations against him and effectively to make known his views in response. In particular:

— the summary of reasons states that the applicant 'satisfies' the 'standard for listing' on the United Nations list, but does not state which aspects of that standard (see, in that regard, paragraph 2 of Resolution 1822 (2008)) the applicant is supposed to satisfy. Accordingly, the applicant does not know whether he is supposed to have participated in, planned or otherwise supported the activities of Al-Qaeda, the Taliban or some other group;

— according to the summary of reasons, the applicant was a major shareholder in a bank in which 'planning sessions for an attack against a United States facility in Saudi Arabia may have taken place'. There is no indication as to the attack in

question, the facility, the date, whether the meetings did in fact take place, the alleged connection with Al-Qaeda or the alleged involvement of the applicant;

— according to the summary of reasons, the applicant appointed Mr Ayadi to a position in the Muwafaq Foundation and Mr Ayadi was 'operating under agreements' with Usama bin Laden. The nature of those alleged agreements is not specified, nor are the reasons why an alleged connection with Mr Ayadi justifies the continuing freeze of the applicant's assets. It appears that Mr Ayadi and the applicant are each listed in Annex I to Regulation No 881/2002 on the ground of their association with the other. In the applicant's submission, listing one person in that annex on the sole ground of his association with the other person amounts to purely circular reasoning;

— according to the summary of reasons, the applicant 'owned several firms in Albania which funnelled money to extremists or employed extremists in positions where they controlled the firm's funds'. No information about the firms, the money, the time, the extremists or the applicant's alleged involvement is given. The applicant emphasises that, following an extensive investigation into his activities in Albania, the criminal investigation against him in that country was abandoned owing to the lack of evidence against him;

— the summary of reasons merely re-states and reasserts, in virtually identical terms, some of the reasons advanced by the Office of Foreign Asset Control of the United States Treasury Department for freezing the applicant's assets in the United States.

158 It is essential that the applicant be shown the inculpatory evidence used against him by the Commission, in such a way that he will have a fair opportunity to respond and to clear his name. The applicant observes that on each occasion on which he was given a meaningful opportunity to make known his views and to challenge the evidence he has done so successfully. Thus, the criminal investigations against him in Switzerland were abandoned in December 2007 following a thorough investigation lasting more than six years. Similar investigations in Turkey and Albania were terminated after investigations showed that there were no grounds on which to bring proceedings against the applicant.

159 The applicant further contends that the exculpatory evidence relied on is of fundamental importance and that the Commission could not disregard it but was itself required to examine all the evidence and to take a reasoned decision as to whether, in view of that material, there was compelling evidence to support the continuation of the freeze of his funds. In addition, the applicant maintains that the Commission cannot disregard evidence on the ground that material that was used in criminal proceedings might be based on a 'different standard of evidence'. In the applicant's submission, the standard of evidence in criminal matters is entirely appropriate to measures involving the freezing of funds, such as the measure at issue in the present case.

160 Nor does the summary of reasons provide a guarantee of effective judicial protection, since it does not contain sufficient information to enable a court to determine whether the decision to maintain the freeze of the applicant's assets is lawful and based on irrefutable evidence of the alleged present or future threat which he represents, whether it is based on a manifest error of assessment or whether the facts are materially accurate.

161 Third, the applicant maintains that the Commission has misconstrued and misapplied the judgment of the Court of Justice in *Kadi* in considering, in its letter of 8 December 2008, that the criteria to be applied to a decision to freeze assets are those set out in an interpretative note to 'Special Recommendation III on Terrorist Financing'

issued by the FATF, namely that there are 'reasonable grounds, or a reasonable basis, to suspect or believe that the individual or entity is a terrorist, one who finances terrorism or a terrorist organisation'.

162 In the applicant's submission, the Court of Justice has held that the Community institutions cannot impose an asset freeze simply because they consider (and even less because the United Nations considers) that there are 'reasonable grounds' or a 'reasonable basis' to suspect or believe something without providing the person concerned with evidence to support that suspicion or belief. The Community institutions cannot therefore merely reuse a summary of allegations made by the United Nations, in a recycled version of allegations made by the United States, but must themselves present the 'serious and credible evidence', 'precise information or material' and 'actual and specific reasons' that justify the maintenance of the freeze of funds. They must also give the person concerned 'full knowledge of the relevant facts', the facts and circumstances justifying the freeze of his assets, the evidence and information on which it is based, and sufficient information to determine whether there has been a material error of fact. That was not done in the present case, even after the applicant expressly requested access to the facts and evidence underlying the allegations set out in the summary of reasons.

163 Fourth, the Commission errs in purporting to justify its approach by reference to the 'preventative nature' of asset-freezing measures, which in its view justifies its refusal to disclose to the applicant the evidence underlying its decision to maintain the freeze of his assets. According to the judgment of the Court of Justice in *Kadi*, the relevant context is not the 'preventative' nature of such a measure but rather its intrusive and serious nature and also the serious interference with the applicant's fundamental rights, which requires a greater, rather than a lesser, degree of procedural protection. Point 2 of the interpretative notes to 'Special Recommendation III on Terrorist

Financing' recognises that the objectives of the recommended asset freezing measures are not only preventative but also punitive.

164 Fifth, the only circumstances envisaged by the Court of Justice in which the institutions might be entitled to withhold evidence relating to measures of that nature are 'overriding considerations to do with safety or the conduct of the international relations of the Community and of its Member States', which 'may militate against communication of certain matters to the persons concerned and, therefore, against their being heard on those matters' (judgment of the Court of Justice in *Kadi*, paragraphs 342 to 344).

165 Those circumstances are not present in this case. In particular, the Commission has put forward no credible reason why disclosure of the letter from the French Presidency of the Council or of any other evidence against the applicant would be prejudicial to the international relations of the European Union.

166 The Commission responds that, in accordance with his right to be heard, the applicant was given the opportunity to present his arguments during the process of the adoption of the contested regulation. The summary of reasons communicated by the Sanctions Committee to the French Presidency of the Council, which then forwarded it to the Commission, was sent to the applicant and his lawyers on the following day and the applicant was also given the opportunity to express his views and submit comments on the substance of that summary. The applicant replied by letter of 10 November 2008. After carefully examining his observations, the Commission took the decision to include him in Annex I to Regulation No 881/2002. That regulation, together with a letter, was sent by post to the applicant and his lawyers.

167 Having effectively been heard during the administrative procedure, moreover, the applicant is also fully able to challenge the reasoning in the contested regulation in the context of the present action, in accordance with his right to effective judicial protection.

168 As regards respect for the rights of the defence, the Council, too, maintains that in the course of the process for the adoption of the contested regulation the Commission corrected the procedural shortcomings identified by the Court of Justice in its judgment in *Kadi* by communicating to the applicant all the evidence used against him, namely the summary of reasons alone, and giving him the opportunity to make known his views and taking due notice of them.

169 The Council maintains, therefore, that the revised procedures also enable the Court to carry out its duty of review, so that the right to an effective judicial remedy has been respected as well.

170 The Council further maintains that the additional procedural guarantees put in place by the Commission following the judgment of the Court of Justice in *Kadi* correspond to those put in place by the Council following the judgment in *OMPI*. Those guarantees were endorsed by this Court in *PMOI I*. The Council sees no differences of fact or of law that could lead the Court to a different conclusion in the present case.

Findings of the Court

171 In the context of a judicial review which is 'in principle the full review' of the lawfulness of the contested regulation in the light of the fundamental rights (judgment of the Court of Justice in *Kadi*, paragraph 326) and in the absence of any 'immunity from jurisdiction' for that regulation (*Kadi*, paragraph 327), the arguments and explanations advanced by the Commission and the Council — particularly in their preliminary observations on the appropriate standard of judicial review in the present case — quite clearly reveal that the applicant's rights of defence have been 'observed' only in the most formal and superficial sense, as the Commission in actual fact considered itself strictly bound by the Sanctions Committee's findings and therefore at no time envisaged calling those findings into question in the light of the applicant's observations.

172 By the same token, the Commission, notwithstanding its statements at recitals 4 to 6 in the preamble to the contested regulation, failed to take due account of the applicant's comments and as a result he was not in a position to make his point of view known to advantage.

173 Furthermore, the procedure followed by the Commission, in response to the applicant's request, did not grant him even the most minimal access to the evidence against him. In actual fact, the applicant was refused such access despite his express request, whilst no balance was struck between his interests, on the one hand, and the need to protect the confidential nature of the information in question, on the other (see, in that regard, the judgment of the Court of Justice in *Kadi*, paragraphs 342 to 344).

174 In those circumstances, the few pieces of information and the imprecise allegations in the summary of reasons appear clearly insufficient to enable the applicant to launch an effective challenge to the allegations against him so far as his alleged participation in terrorist activities is concerned.

175 That is the case, taking as a particularly telling but in no way unique example, of the allegation, not otherwise substantiated and thus irrefutable, that the applicant was a shareholder in a Bosnian bank in which planning sessions against a United States facility in Saudi Arabia 'may have' taken place.

176 That conclusion is consistent with that of the European Court of Human Rights in its judgment of 19 February 2009 in *A. and Others* v *United Kingdom* (not yet published in the *Reports of Judgments and Decisions*). In that judgment the European Court of Human Rights recalled that, where a person is deprived of his liberty because there are reasonable grounds for suspecting that he has committed an offence, the guarantee of procedural fairness under Article 5 § 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) requires that he be given an opportunity effectively to challenge the allegations made against him, which as a general rule requires that all the evidence against him be disclosed. The European Court of Human Rights also drew attention to the limitations which may be placed on the right to disclosure of all material evidence where an important public interest militates in favour of secrecy, for example in order to protect vulnerable witnesses or sources, provided that the detainee still has the possibility effectively to challenge the allegations against him. The European Court of Human Rights then went on to carry out a case-by-case assessment of whether the material and evidence disclosed to the applicants before it were adequate for the exercise of the rights of the defence and concluded that there had been an infringement of Article 5 § 4 of the ECHR in the cases in which the disclosed (open) material had consisted purely in general assertions and the national court had based its decision solely or to a decisive degree on undisclosed (closed) material. Thus, in a case in which the open material against certain applicants included detailed allegations about, for example, the purchase of specific telecommunications equipment, possession of specific documents linked to named terrorist suspects and meetings with such suspects at specific places and times, the European Court of Human Rights held that the allegations in question were sufficiently detailed to permit the applicants to challenge them effectively. By contrast, in a case in which the principal allegation against certain applicants was that they had been involved in fund-raising for terrorist groups linked to Al-Qaeda and in which the open material relating to the applicants showed that large sums of money had moved through a bank account and that money had been raised through fraud but in which the material which allegedly showed the link between the money raised and terrorism had not been disclosed to the applicants, the European Court of Human Rights held that the latter had not been in a position to mount an effective challenge to the allegations against them. Likewise, in a case in which the open

allegations against certain applicants, principally that they were suspected members of extremist Islamist groups linked to Al-Qaeda, were of a general nature and in which the evidence relied on against them was largely to be found in closed material, the European Court of Human Rights held that the applicants had not been in a position effectively to challenge the allegations against them.

177 Applying criteria identical to those used by the European Court of Human Rights to the facts of the present case, it is clear that the applicant was not in a position to mount an effective challenge to any of the allegations against him, given that all that was disclosed to him was the summary of reasons. The General Court expressly acknowledges, in this connection, that all the applicant's observations and arguments summarised at paragraph 157 above are well founded.

178 It is also telling that the Commission made no real effort to refute the exculpatory evidence advanced by the applicant in the few cases in which the allegations against him were sufficiently precise to permit him to know what was being raised against him.

179 It follows that the contested regulation was adopted in breach of the applicant's rights of defence.

180 Moreover, the fact that the applicant had an opportunity to be heard by the Sanctions Committee in the re-examination procedure with a view to him being removed from its list clearly does not remedy that breach of his rights of defence (see, to that effect, the judgment of the Court of Justice in *Kadi*, paragraphs 319 to 325, and the Opinion of Advocate General Poiares Maduro in that case, point 51).

181 Furthermore, given the lack of any proper access to the information and evidence used against him and having regard to the relationship, already noted by the Court of Justice, between the rights of the defence and the right to effective judicial review, the applicant has also been unable to defend his rights with regard to that evidence in satisfactory conditions before the Community judicature, with the result that it must be held that his right to effective judicial review has also been infringed (see, to that effect, the judgment of the Court of Justice in *Kadi*, paragraph 349).

182 It must also be stated that that infringement has not been remedied in the course of this action. Indeed, given that, according to the fundamental position adopted by the Commission and supported by the Council and the intervening governments, no information or evidence of that kind may be the subject of investigation by the Community judicature, those institutions have adduced no evidence to that end (see, to that effect, the judgment of the Court of Justice in *Kadi*, paragraph 350). What is more, although the Commission has taken formal note, in the present action, of the guidance given in the judgment of the Court of Justice in *Kadi*, it must be found that it has produced no information concerning the evidence against the applicant.

183 The General Court cannot, therefore, do other than find that it is not able to undertake a review of the lawfulness of the contested regulation, with the result that it must be held that, for that reason too, the applicant's fundamental right to effective judicial review has not, in the circumstances, been observed (see, to that effect, the judgment of the Court of Justice in *Kadi*, paragraph 351).

184 Consequently, it must be held that the contested regulation was adopted without any real guarantee being given as to the disclosure of the evidence used against the applicant or as to his actually being properly heard in that regard, and it must therefore be concluded that the regulation was adopted according to a procedure in which the rights of the defence were not observed, which has had the further consequence that the principle of effective judicial protection has been infringed (see, to that effect, the judgment of the Court of Justice in *Kadi*, paragraph 352).

185 Finally, as regards the Council's argument that the additional procedural safeguards put in place by the Commission in response to the judgment of the Court of Justice in *Kadi* correspond to those put in place by the Council in response to the judgment in *OMPI*, which were endorsed by this Court in *PMOI I*, it disregards the marked procedural differences between the two Community regimes used for the freezing of funds.

186 The Community fund-freezing regime at issue in the cases culminating in the *OMPI* and *PMOI I* judgments is characterised by a two-tier procedure, one national, the other Community (*OMPI*, paragraph 117). Under that regime, the rights of the defence are in the first place effectively safeguarded as part of the national procedure, in which the party concerned must be placed in a position in which he can effectively make known his view on the evidence against him (*OMPI*, paragraph 119), subject to review by the national courts, or, as the case may be, the European Court of Human Rights (*OMPI*, paragraph 121). It is precisely those safeguards of the rights of the defence which exist at national level, subject to effective judicial review, which relieve the Community institutions of any obligation to provide fresh safeguards at Community level in relation to the same subject-matter (see, to that effect, *OMPI*, paragraphs 121 to 125).

187 In contrast to that first regime, the Community fund-freezing regime at issue in this instance — although it too has a two-tier procedure, one at United Nations level,

the other at Community level — is characterised by an absence of any safeguards of the rights of the defence, which may be the subject of effective judicial review, at the level of the procedure before the Sanctions Committee (see paragraphs 127 and 128 above). It follows, contrary to what was held in the *OMPI* case, that the Community institutions are required to ensure that such safeguards are put in place and implemented at Community level (see also, to that effect, the Opinion of Advocate General Poiares Maduro in *Kadi*, point 54).

188 It follows from all the foregoing considerations that the second plea is well founded as regards both the first part alleging infringement of the rights of the defence and the second part alleging infringement of the principle of effective judicial protection (see, to that effect, the judgment of the Court of Justice in *Kadi*, paragraph 353).

Fifth plea: infringement of the principle of proportionality

Arguments of the parties

189 The applicant, referring to the judgment of the Court of Justice in *Kadi* (paragraphs 283, 284, 355, 358, 360, 362, 369 and 370), maintains that the interference with his property rights resulting from the contested regulation is even more serious than that resulting from Regulation No 881/2002, at issue in that case, on account of its duration.

190 He claims that, in those circumstances, the restriction imposed by the contested regulation is unjustified because the regulation was adopted without any of the guarantees which the Court of Justice considered to be fundamental requirements of Community law and it is based not on compelling evidence but on mere assertions.

191 The Commission refers, in particular, to paragraphs 355, 366, 369 and 370 of the judgment of the Court of Justice in *Kadi* and claims that the circumstances of the present case are different from the circumstances of that case. First, in the correspondence between it and the applicant, the Commission reminded the applicant of the possibility that individuals on the Sanctions Committee's list could address themselves directly to the United Nations focal point in New York, and provided him with the address of the department to be contacted and the website from which further information could be obtained. Second, the Commission gave the applicant the opportunity to put his case to the authorities of the European Union. The Commission maintains that it thus correctly applied the procedures required by the Court of Justice.

Findings of the Court

192 It is apparent from the examination of the second plea that the contested regulation was adopted without furnishing any real safeguard enabling the applicant to put his case to the competent authorities, in a situation in which the restriction of his property rights must be regarded as significant, having regard to the general application and duration of the freezing measures to which he is subject (see, to that effect, judgments of the Court of Justice in *Hassan*, paragraph 92, and *Kadi*, paragraph 369).

193 It must therefore be held that, in the circumstances of the case, the imposition on the applicant of the restrictive measures laid down by Regulation No 881/2002, as a result

of his inclusion on the list in Annex I thereto pursuant to the amendment made by the contested regulation, constitutes an unjustified restriction of his right to property (see, to that effect, the judgments of the Court of Justice in *Hassan*, paragraph 93, and *Kadi*, paragraph 370).

194 The applicant's claim that the infringement by the contested regulation of his fundamental right to respect for property entails a breach of the principle of proportionality is therefore well founded (see, to that effect, the judgment of the Court of Justice in *Hassan*, paragraph 94).

195 It follows from all the foregoing that the contested regulation, so far as it concerns the applicant, must be annulled, without the need for the Court to consider his other pleas in law.

Costs

196 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, as applied for by the applicant.

197 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States and institutions intervening in the proceedings are to bear their own costs. The Council, the French Republic and the United Kingdom must therefore be ordered to bear their own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Annuls Commission Regulation (EC) No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, in so far as it concerns Mr Yassin Abdullah Kadi;**

2. **Orders the European Commission, in addition to bearing its own costs, to pay those incurred by Mr Kadi;**

3. **Orders the Council of the European Union, the French Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Forwood Moavero Milanesi Schwarcz

Delivered in open court in Luxembourg on 30 September 2010.

[Signatures]

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