JUDGMENT OF THE COURT (Second Chamber)
11 October 2007 *

In Case C-117/06,

REFERENCE for a preliminary ruling under Article 234 EC made by the Kammergericht Berlin (Germany) by decision of 21 February 2006, received at the Court on 1 March 2006, in the proceedings brought by

Gerda Möllendorf,

Christiane Möllendorf-Niehuus,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans (Rapporteur), President of Chamber, L. Bay Larsen, K. Schiemann, P. Kūris and J.-C. Bonichot, Judges,

Advocate General: P. Mengozzi,
Registrar: J. Swedenborg, Administrator,

* Language of the case: German.

having regard to the written procedure and further to the hearing on 8 March 2007,

after considering the observations submitted on behalf of:

— Ms Möllendorf and Ms Möllendorf-Niehuus, by K. Alich, Notar,

— the German Government, by C. Schulze-Bahr and by M. Lumma and A. Dittrich, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato,

— the Commission of the European Communities, by F. Hoffmeister and A. Manville, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2007,

gives the following

Judgment

1 The reference for a preliminary ruling relates to the interpretation of Articles 2(3) and 4(1) 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-Qaida 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), as amended by Council Regulation (EC) No 561/2003 of 27 March 2003 (OJ 2003 L 82, p. 1) ('Regulation No 881/2002').

2 This reference has been made in the course of proceedings brought by Gerda Möllendorf and Christiane Möllendorf-Niehuus ('the sellers') against a decision of the Grundbuchamt (the Land Registry) rejecting their application for registration in the Grundbuch ('the Land Register') of the transfer of the ownership of some immovable property, in implementation of a notarially recorded instrument of sale.

Legal context

The United Nations Security Council Resolutions

3 On 16 January 2002, the United Nations Security Council ('the Security Council') adopted Resolution 1390 (2002), laying down the measures that States must take with respect to Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to Security Council Resolutions 1267 (1999) and 1333 (2000).

4 Paragraph 2(a) of Resolution 1390 (2002) states:

'[The Security Council] [*d]ecides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee" [the Sanctions Committee]:

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

5 On 20 December 2002, the Security Council adopted Resolution 1452 (2002), designed to facilitate the implementation of counter-terrorism obligations. In relation to the freezing of funds and economic resources imposed by Resolutions 1267 (1999), 1333 (2000) and 1390 (2002), paragraph 1 of Resolution 1452 (2002) provides for a certain number of derogations and exceptions which States may apply on humanitarian grounds, subject to the approval of the Sanctions Committee.

6 Paragraph 2 of Resolution 1452 (2002) provides:

'[The Security Council] [*d*]*ecides* that all States may allow for the addition to accounts subject to the provisions of paragraph 4(b) of resolution 1267 (1999) and paragraphs 1 and 2(a) of resolution 1390 (2002) of:

(a) interest or other earnings due on those accounts, or

(b) payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of resolutions 1267 (1999), 1333 (2000), or 1390 (2002),

provided that any such interest, other earnings and payments continue to be subject to those provisions.'

7 On 6 July 2004, the Sanctions Committee added the name 'Aqeel Abdulaziz Al-Aqil' to the consolidated list of natural persons and entities to be made subject to the freezing of funds pursuant to resolutions 1267 (1999) and 1333 (2000).

Legislation of the European Union and the European Community

8 On 27 May 2002, in order to give effect to Resolution 1390 (2002), the Council of the European Union adopted Common Position 2002/402/CFSP concerning restrictive measures against Usama bin Laden, members of the Al-Qaida 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).

9 As is clear in particular from Recital 4 in the preamble thereto, Regulation No 881/2002 was adopted in order to implement, inter alia, Resolution 1390 (2002).

10 Article 1 of Regulation No 881/2002 provides:

'For the purpose of this Regulation, the following definitions shall apply:

...

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

...

4. "freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.'

11 Article 2 of Regulation No 881/2002 states:

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

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

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

12 Under Article 4(1) of Regulation No 881/2002:

'The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 2 or to promote the transactions referred to in Article 3, shall be prohibited.'

13 Article 7(1) of Regulation No 881/2002 empowers the Commission of the European Communities, inter alia, to 'amend or supplement Annex I on the basis of determinations made by either the ... Security Council or the Sanctions Committee'.

14 Article 9 of Regulation No 881/2002 is worded as follows:

'This Regulation shall apply notwithstanding any rights conferred or obligations imposed by any international agreement signed or any contract entered into or any licence or permit granted before the entry into force of this Regulation.'

15 Annex I to Regulation No 881/2002 contains the '(l)ist of persons, groups and entities referred to in Article 2' thereof.

16 On 27 February 2003, on the view that Community action was necessary to give effect to Resolution 1452 (2002), the Council adopted Common Position 2003/140/CFSP concerning exceptions to the restrictive measures imposed by Common Position 2002/402 (OJ 2003 L 53, p. 62).

17 Recital 4 in the preamble to Regulation No 561/2003 states that, in view of Resolution 1452 (2002), it is necessary to adjust the measures imposed by the Community.

18 Paragraph 4 of Article 2a of Regulation No 881/2002 — an article inserted in that regulation by Regulation No 561/2003 — provides:

'Article 2(2) [of Regulation No 881/2002] shall not apply to the addition to frozen accounts of:

(a) interest or other earnings due on those accounts; or

(b) payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of ... Security Council resolutions implemented successively through Regulation (EC) No 337/2000 ..., Regulation (EC) No 467/2001 ... or this Regulation.

In the same manner as the account to which they are added, such interest, other earnings and payments shall also be frozen.'

19 On 12 July 2004, the Commission adopted Regulation (EC) No 1277/2004 amending for the 37th time Regulation No 881/2002 (OJ 2004 L 241, p. 12).

20 Pursuant to Article 1 of Regulation No 1277/2004 and paragraph 2 of the Annex thereto, Annex I to Regulation No 881/2002 was amended so as to include the entry 'Aqeel Abulaziz Al-Aqil. Date of birth: 29 April 1949' under the heading 'Natural persons'.

21 In accordance with Article 2 thereof, Regulation No 1277/2004 entered into force on the day of its publication in the *Official Journal of the European Union*, that is to say, on 13 July 2004.

The main proceedings and the questions referred for a preliminary ruling

22 By notarially recorded instrument of 19 December 2000, a contract of sale was concluded between the sellers, as members of a partnership constituted under civil law, and Salem-Abdul Ghani El-Rafei, Kamal Rafehi and Ageel A. Al-Ageel ('the buyers'), also acting as members of such a partnership.

23 By that contract, the sellers agreed to sell land and buildings belonging to them in Berlin to the buyers in exchange for payment by the latter of a sale price of DEM 2 375 000.

24 Under the contract of sale, the parties agree that ownership of the immovable property is to be transferred to the buyers and the transfer of ownership registered in the Land Register.

25 Under the same contract, the sale price had to be deposited in a trust account of the attesting notary ('the notary'), and then paid to the sellers when the property transfer was provisionally registered in the Land Register, pending final registration.

26 On 8 March 2001, the transfer of ownership to the buyers was provisionally registered in the Land Register.

27 By decision of 29 October 2003, the Grundbuchamt attached to the Amtsgericht (Local Court) Lichtenberg rejected the application made by the notary on 22 January 2003 for final registration in the Land Register of the transfer of ownership, on the ground that certain documents, production of which had been requested by letter of 28 March 2003, had not been provided in the time allowed.

28 On 9 December 2004, the notary submitted a new application for final registration in the Land Register of the transfer of ownership to the buyers on the basis of the notarially recorded instrument of 19 December 2000.

29 By decision of 21 April 2005, the Grundbuchamt — having ascertained that the name of one of the buyers appeared in the list in Annex I to Regulation No 881/2002 — refused to accept the application for final registration, relying on Articles 2(3) and 4(1) of that regulation.

30 On 3 May 2005, the notary submitted a complaint against that decision to the Grundbuchamt. Acting on its own initiative, the Grundbuchamt referred the complaint, by decision of 11 May 2005, to the Landgericht (Regional Court) Berlin, which dismissed it by order of 27 September 2005.

31 On 7 October 2005, the notary brought an appeal against that decision before the Kammergericht (Higher Regional Court) Berlin.

32 According to the order for reference, the sellers submit before that court, first, that Articles 2(3) and 4(1) of Regulation No 881/2002 — and, in particular, the phrases 'made ... available to' and 'made available for the benefit of' in Article 2(3) — should be interpreted as referring only to transactions in which there is an economic

imbalance between the consideration given and the consideration received. As it is, in the present case, the sale price agreed by the parties for the immovable property was a substantial sum and, what is more, it had already been paid to the sellers.

33 The second submission of the sellers before the Kammergericht Berlin is that, if the contract of sale were to be annulled, the buyers would have a right, enforceable against the sellers, to repayment of the purchase price for the immovable property: in other words, a sum of money equivalent to the purchase price would be made available to the buyers. That, however, would be contrary to Recital 7 in the preamble to Regulation No 881/2002 and to Article 2(1) thereof.

34 The referring court explains that, under German law, ownership of immovable property cannot be acquired directly as a result of a notarially recorded contract of sale between seller and buyer. If title to the property is effectively to pass to the buyer, it is also necessary for the two parties to conclude, in accordance with Article 925 of the Civil Code (Bürgerliches Gesetzbuch, 'the BGB'), an agreement that ownership is to be transferred and for that transfer to be registered in the Land Register, in accordance with Article 873 of the BGB.

35 The order for reference adds that, under German law, if there is any restriction on the right to dispose of property — as in the case before the referring court because of the supervening obligation to freeze the funds of one of the buyers — and if that restriction comes into being after conclusion of both the notarially recorded contract of sale and the agreement to transfer ownership, but before the application for registration of the transfer in the Land Register, the Grundbuchamt must, as a general rule, take account of that restriction.

36 The Kammergericht Berlin adds that the legal impediment to registration of the transfer of ownership in the Land Register precludes completion of the contract of sale, with the consequence that the sellers are required, under Articles 275 and 323 of the BGB, to repay the sale price to the buyers.

37 The question arises, however, whether such a repayment is compatible with the prohibition laid down in Article 2(2) of Regulation No 881/2002.

38 In a supplementary order of 23 February 2006, the referring court observes that it cannot be inferred from Articles 2(1) to (3) and 4(l) of Regulation No 881/2002 that the seller may be ordered to deposit a sum of money corresponding to the sale price of the property concerned if, at the time when the sale contract was concluded or the sale price was received, the seller had no knowledge of the sanctions affecting the buyer.

39 In the same order, the referring court states that it is also unclear whether, in cases where there is more than one buyer or, as in the main proceedings, where a number of buyers are members of a partnership, the right to repayment of the sale price must be suspended in its entirety or only in proportion to the entitlement of the buyer affected by the restrictive measures.

40 In those circumstances, on the view that the outcome of the proceedings before it is dependent on the interpretation of Regulation No 881/2002, the Kammergericht Berlin decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of Articles 2(3) and 4(1) of Council Regulation (EC) No 881/2002 ... prohibit property from being conveyed in performance of a sale and purchase agreement to a natural person listed in Annex I to that regulation?

(2) If Question 1 is to be answered in the affirmative: does Regulation ... No 881/2002 prohibit the entry in the land register necessary for transferring ownership in the property even when the underlying sale and purchase agreement has been concluded, and the conveyance declared binding, before publication of the restriction on disposal in the *Official Journal of the European Communities*, and the contractual purchase price to be paid by the natural person listed in Annex I to the regulation, as buyer, has already been

(a) deposited in the notarial trust account, or

(b) paid to the seller?'

The questions referred for a preliminary ruling

41 By the two questions, which it is appropriate to examine together, the referring court asks in essence whether, in a situation where both the contract for the sale of immovable property and the agreement on transfer of ownership of that property have been concluded before the date on which the buyer is included in the list in Annex I to Regulation No 881/2002 and where the sale price has also been paid

before that date, Articles 2(3) and 4(1) of that regulation must be interpreted as prohibiting the final registration, in performance of that contract, of the transfer of ownership in the Land Register subsequent to that date.

42 By way of preliminary, it should be pointed out that those questions must be examined solely in the light of Article 2(3) of Regulation No 881/2002.

43 As the Advocate General stated in point 62 of his Opinion, there is nothing in the order for reference to explain why Article 4(1) of Regulation No 881/2002, which concerns the possible circumvention of Article 2 thereof, could be relevant in a situation such as that at issue in the main proceedings.

44 As the Commission has stated without being contradicted, the fact that the buyers have concluded the contract of sale in question as members of a partnership does not entail any risk of circumvention since, if final registration of the transfer of ownership in the Land Register were to be accepted, the names of all of the members — including the name of the person listed in Annex I to Regulation No 881/2002 — would have to be entered in the Register.

45 In the present case, the essential question is whether, in circumstances such as those of the case before the referring court, final registration of transfer of ownership in the Land Register implies that an economic resource is made available, directly or

indirectly, to natural or legal persons, groups or entities designated by the Sanctions Committee and listed in Annex I to Regulation No 881/2002 so as to enable them to obtain funds, goods or services within the meaning of Article 2(3) of that regulation.

46 In that regard, it is important to note, first, that the asset in question in the main proceedings, namely immovable property consisting in buildings and land, is an economic resource for the purposes of Article 2(3) of Regulation No 881/2002 and, accordingly, such an asset is clearly covered by the definition of 'economic resources' in Article 1(2) of that regulation, since it is tangible immoveable property which does not consist of funds, but can be used to obtain funds, goods or services.

47 Next, it is clear from the order for reference that one of the three buyers is a natural person who is included both in the list drawn up by the Sanctions Committee and in the list in Annex I to Regulation No 881/2002.

48 Consequently, there remains only the question whether final registration in the Land Register of the transfer of ownership of the property concerned is an act which must be categorised, for the purposes of Article 2(3) of Regulation No 881/2002, as '[making an economic resource] available, directly or indirectly' to the natural person included in those lists, 'so as to enable [that person] to obtain funds, goods or services'.

49 There is nothing in the wording of Article 2(3) of Regulation No 881/2002 to support the inference, argued for by the sellers, that that provision does not cover the obtaining of economic resources in the particular context of the case before the referring court, namely a transaction in which there is an economic balance between the consideration given and the consideration received.

50 On the contrary, the prohibition laid down in Article 2(3) of Regulation No 881/2002 is framed in particularly broad terms, as evidenced by the use of the words 'directly or indirectly'.

51 In addition, the expression 'made available' has a wide meaning: rather than denoting a specific legal category of act, it encompasses all the acts necessary under the applicable national law if a person is effectively to obtain full power of disposal in relation to the property concerned.

52 The inescapable conclusion is that final registration in the Land Register of the transfer of ownership of property constitutes such an act, since it is common ground that, under German law, it is only after final registration that the buyer has the power not only to mortgage the immovable property, ownership of which has thus been transferred to him, but also and above all to transfer title to that property.

53 Moreover, it is precisely acts of that kind that Article 2(3) of Regulation No 881/2002 seeks to prohibit, since they enable a person on the list in Annex I to that regulation to obtain funds, goods or services.

54 It is relevant to add that, for the purposes of interpreting Regulation No 881/2002, account must also be taken of the wording and purpose of Resolution 1390 (2002) which, according to Recital 4 in the preamble to Regulation No 881/2002, that regulation is designed to implement (see, to that effect, Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraphs 13 and 14, and Case C-371/03 *Aulinger* [2006] ECR I-2207, paragraph 30).

55 Under paragraph 2(a) of Resolution 1390 (2002), States must 'ensure that neither these nor any other funds [belonging to individuals, groups, undertakings or entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000)], financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory'.

56 The broad and unambiguous terms of that provision confirm that Article 2(3) of Regulation No 881/2002 applies to any mode of making available an economic resource and therefore also to any act, such as that at issue in the main proceedings, which flows from the execution of a contract imposing mutual obligations and which has been agreed in exchange for payment of pecuniary consideration.

57 Lastly, it cannot be disputed that application, in the case before the referring court, of the prohibition laid down in Article 2(3) of Regulation No 881/2002, in so far as it affects a person considered to be associated with Usama Bin Laden, the Al-Qaida network or with the Taliban, who participates in the financing of acts of terrorism — that is to say, who may even organise such acts, facilitate them, prepare them, carry them out or support them — falls within the objectives of the sanctions provided for by Resolution 1390 (2002), as is apparent in particular from the third and ninth recitals in the preamble to that resolution and from paragraph 4 thereof, those objectives being to combat and root out international terrorism, inter alia by cutting off international terrorism networks from their financial sources.

58 Moreover, as the German Government rightly states, if the argument put forward by the sellers were to be accepted, it would be necessary to determine on the facts of each case whether there is a true economic balance between the consideration given under a contract and the consideration received, with the attendant risk that the prohibition might be circumvented, and presenting the Member States with difficult problems of implementation.

59 As the German Government further submits, even if there were such an economic balance in the case before the referring court, the possibility remains that the asset obtained by the person on the list in Annex I to Regulation No 881/2002 may offer better prospects for value enhancement: that asset may, for example, be easier to convert, or it may even be possible, as observed by the Advocate General in point 72 of his Opinion, by a subsequent act of disposal of the property, to obtain sums of money greater than those expended for its acquisition.

60 The conclusion from the foregoing must be that a transaction such as final registration of transfer of ownership of immovable property in the Land Register is prohibited under Article 2(3) of Regulation No 881/2002 if, in consequence of that transaction, were it to be allowed, an economic resource is made available to a person listed in Annex I to that regulation, which would enable the latter to obtain funds, goods or services.

61 That conclusion cannot be affected, first, by the fact that, in the case before the referring court, a number of steps in the property transaction which are necessary, under the relevant German law, to transfer the ownership of immovable property — in particular, conclusion both of the contract of sale and of the agreement on transfer of ownership, and in addition payment of the sale price — had already been accomplished before that prohibition became applicable to one of the buyers following his inclusion on the list.

62 Article 9 of Regulation No 881/2002 must be understood as meaning that the measures laid down in that regulation, including the freezing of economic resources,

preclude also the completion of acts which implement contracts concluded before the entry into force of that regulation, such as final registration of transfer of ownership in the Land Register.

63 As the Advocate General stated in point 78 of his Opinion, the application in that way of those measures, with immediate effect, is moreover consistent with the objective pursued by Regulation No 881/2002 — namely, immediately to prevent persons associated with Usama bin Laden, the Al-Qaida network or the Taliban from having at their disposal any financial or economic resources, in order to impede the financing of terrorist activities — which could not be achieved as effectively if those persons were allowed to complete transactions concluded before their inclusion in the list in Annex I to that regulation.

64 Further confirmation that the provisions of Regulation No 881/2002 are to apply immediately is to be found in the fact that the Community legislation allows no exception under which it would be possible, after the date on which the regulation entered into force, to carry out an act in implementation of a contract concluded before that date, such as (as in the case before the referring court) final registration of the transfer of ownership in the Land Register, an act which, as has already been stated, entails making available the property concerned within the meaning of Article 2(3) of the regulation.

65 In that connection, it should be noted that Article 2a(4)(b) of Regulation No 881/2002, which reproduces verbatim the content of paragraph 2 of Resolution 1452 (2002), provides for an exception to the prohibition laid down in Article 2(2) of that regulation, as regards the addition to frozen accounts of payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of the Security Council resolutions

implemented, inter alia, by Regulation No 881/2002, requiring such payments also to be frozen, in the same manner as the account to which they are added.

66 However, no such exception is provided for in the Community legislation as regards the prohibition laid down in Article 2(3) of Regulation No 881/2002 concerning the making available of economic resources such as those at issue in the main proceedings. Nor is any such exception to be found in the relevant Security Council Resolutions.

67 Next, the conclusion reached as to the applicability of the prohibition laid down in Article 2(3) of Regulation No 881/2002 in circumstances such as those of the case before the referring court cannot be called in question, either, by the difficulties which would be caused, according to the referring court, by the fact that it would not be possible to proceed with final registration of the transfer of ownership of the immovable property concerned in the Land Register.

68 As the referring court stated, it follows from the relevant national law that, since the lack of such registration precludes completion of the contract of sale, the sellers are under an obligation to repay to the buyers the sale price paid by the latter for the immovable property. There then arises the question whether such repayment is compatible with the prohibition provided for in Article 2(2) of Regulation No 881/2002.

69 In that regard, it must be stated that, even if such a difficulty were to arise as a result of the implications under national law of the application of Article 2(3) of Regulation No 881/2002, it cannot on any view have any effect on the answer to be given to the

question whether, under Community law, the prohibition laid down in that provision applies in a case such as that before the referring court.

70 In any event, the repayment of the sale price, as provided for under national law, certainly seems to be permitted under Article 2a(4)(b) of Regulation No 881/2002. That provision in fact provides for an exception to the prohibition laid down in Article 2(2) of that regulation, provided that the conditions for the application of that exception are met, one such condition being the freezing of the funds repaid.

71 Furthermore, as regards the question whether, in cases where there is more than one buyer and, in particular, where the buyers are all members of a partnership, repayment of the sale price for the property concerned must be suspended in its entirety or only in proportion to the entitlement of the buyer affected by the restrictive measures, it must be held that this also is a question which relates to the implementation, in the light of the national law, of the prohibition laid down in Article 2(3) of Regulation No 881/2002.

72 However, as has already been stated in paragraph 69 of this judgment, such a question, which concerns the implications of rules of national law relating to the consequences entailed by application of the prohibition, cannot affect the interpretation which must be given by the Court to Article 2(3) of Regulation No 881/2002.

73 On that point, it is appropriate to point out that, in accordance with Article 8 of Regulation No 881/2002, the Commission and the Member States are to inform each other, inter alia, of any problems relating to the implementation of the regulation.

74 Lastly, the sellers and the notary submitted at the hearing that the application, in the proceedings before the referring court, of the prohibition laid down in Article 2(3) of Regulation No 881/2002 is incompatible with the fundamental right of disposal enjoyed by the owners of property.

75 In that regard, it should be stated that there is no question in this case of an alleged disproportionate infringement of the right to property of a person listed in Annex I to Regulation No 881/2002 as a result of the restrictive measures provided for in that regulation in respect of such a person.

76 The alleged infringement of the right to property concerns indirect effects, on the property rights of persons other than those so listed, brought about by the obligation to repay which may arise, in accordance with the applicable national law, as a result of the fact that, pursuant to Article 2(3) of Regulation No 881/2002 it is not possible to proceed with final registration of the transfer of ownership of the immovable property in the Land Register.

77 Consequently, the question whether, in view of the special features of the case before the referring court, such an obligation to make repayment is a disproportionate infringement of the right to property cannot have any effect on the question whether Article 2(3) of Regulation No 881/2002 applies to a situation such as that in the case before the referring court. That question is therefore a matter of national law and cannot be examined in the context of the present reference for a preliminary ruling.

78 However, as regards the application of Regulation No 881/2002, it should also be pointed out that, in accordance with settled case-law, the requirements flowing from the protection of fundamental rights within the Community legal order are also

binding on Member States when they implement Community rules, and that consequently they are bound, as far as possible, to apply the rules in accordance with those requirements (see, inter alia, Joined Cases C-20/00 and C-64/00, *Booker Aquaculture and Hydro Seafood* [2003] ECR I-7411, paragraph 88 and case-law cited there).

79 Accordingly, it is for the referring court to determine whether, in view of the special features of the case before it, repayment of the sums received by the sellers would constitute a disproportionate infringement of their right to property and, if that is the case, to apply the national legislation in question, so far as is possible, in such a way that the requirements flowing from Community law are not infringed.

80 In the light of the foregoing, the answer to the questions referred must be that in a situation where both the contract for the sale of immovable property and the agreement on transfer of ownership of that property have been concluded before the date on which the buyer is included in the list in Annex I to Regulation No 881/2002 and where the sale price has also been paid before that date, Article 2(3) of that regulation must be interpreted as prohibiting the final registration, in performance of that contract, of the transfer of ownership in the Land Register subsequent to that date.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

In a situation where both the contract for the sale of immovable property and the agreement on transfer of ownership of that property have been concluded before the date on which the buyer is included in the list in Annex I to 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-Qaida 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, as amended by Council Regulation (EC) No 561/2003 of 27 March 2003, and where the sale price has also been paid before that date, Article 2(3) of that regulation, as amended by Regulation No 561/2003, must be interpreted as prohibiting the final registration, in performance of that contract, of the transfer of ownership in the Land Register subsequent to that date.

[Signatures]