ECLI:EU:C:2019:82

JUDGMENT OF THE COURT (Fourth Chamber)

31 January 2019 (*)

(Appeal — Common foreign and security policy — Restrictive measures taken against the Islamic Republic of Iran — Freezing of funds and economic resources — Annulment of a listing by the General Court of the European Union — Amendment of the criteria governing inclusion on a list of persons and entities whose assets are to be frozen — Re-listing — Evidence dating from before the first listing — Facts known before the first listing — Force of res judicata — Scope — Legal certainty — Protection of legitimate expectations — Principle Non bis in idem — Effective judicial protection)

In Case C-225/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 April 2017,

Islamic Republic of Iran Shipping Lines, established in Tehran (Iran),

Hafize Darya Shipping Lines (HDSL), established in Tehran,

Khazar Shipping Lines, established in Anzali Free Zone (Iran),

IRISL Europe GmbH, established in Hamburg (Germany),

Qeshm Marine Services & Engineering Co., formerly IRISL Marine Services and Engineering Co., established in Qeshm (Iran),

Irano Misr Shipping Co., established in Alexandria (Egypt),

Safiran Payam Darya Shipping Lines, established in Tehran,

Marine Information Technology Development Co., formerly Shipping Computer Services Co., established in Tehran,

Rahbaran Omid Darya Ship Management Co., alias Soroush Sarzamin Asatir, established in Tehran,

Hoopad Darya Shipping Agency, formerly South Way Shipping Agency Co. Ltd, established in Tehran,

Valfajr 8th Shipping Line Co., established in Tehran,

represented by M. Lester QC and M. Taher, Solicitor,

appellants,

the other parties to the proceedings being:

Council of the European Union, represented by J. Kneale and M. Bishop, acting as Agents,

defendant at first instance,

supported by:

European Commission, represented by D. Gauci and by T. Scharf, acting as Agents,

intervener at first instance (T-87/14),

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Court, acting as President of the Fourth Chamber, T. von Danwitz (Rapporteur), C. Lycourgos, E. Juhász and C. Vajda, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 13 September 2018,

gives the following

Judgment

1 By their appeal, Islamic Republic of Iran Shipping Lines ('IRISL'), Hafize Darya Shipping Lines (HDSL), Khazar Shipping Lines, IRISL Europe GmbH, Qeshm Marine Services & Engineering Co. (formerly IRISL Marine Services and Engineering Co.), Irano Misr Shipping Co., Safiran Payam Darya Shipping Lines, Marine Information Technology Development Co. (formerly Shipping Computer Services Co.), Rahbaran Omid Darya Ship Management Co. (alias Soroush Sarzamin Asatir), Hoopad Darya Shipping Agency (formerly South Way Shipping Agency Co. Ltd) and Valfajr 8th Shipping Line Co. ask the Court to set aside the judgment of the General Court of the European Union of 17 February 2017, *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-14/14 and T-87/14, 'the judgment under appeal', EU:T:2017:102),by which the General Court dismissed the appellants' claims seeking:

– in Case T-14/14, the annulment of Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 272, p. 46) and of Council Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 272, p. 1), in so far as those acts concern the appellants ('the October 2013 contested acts');

– in Case T-87/14, first, a declaration that Decision 2013/497 and Regulation No 971/2013 are inapplicable and, secondly, the annulment of Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 316, p. 46) and of Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 316, p. 1), in so far as those acts concern the appellants ('the November 2013 contested acts').

Background to the dispute

2 On 23 December 2006, the United Nations Security Council ('the Security Council') adopted Resolution 1737 (2006), prohibiting the Islamic Republic of Iran, under paragraph 7 thereof, from exporting goods and technologies related to its proliferation-sensitive nuclear activities or to the development of nuclear weapons delivery systems.

3 On 24 March 2007, the Security Council adopted Resolution 1747 (2007), paragraph 5 of which prohibits the Islamic Republic of Iran from supplying, selling or transferring arms or related materiel, directly or indirectly, from its territory, or by its nationals or using its flag vessels or aircraft.

4 On 9 June 2010, the Security Council adopted Resolution 1929 (2010), intended to broaden the scope of the restrictive measures established by its previous resolutions and to introduce additional restrictive measures with regard to the Islamic Republic of Iran.

5 On 17 June 2010, the European Council welcomed the adoption of Resolution 1929 (2010) and invited the Council of the European Union to adopt measures implementing those contained in that resolution as well as accompanying measures, with a view to supporting the resolution of all outstanding concerns regarding the Islamic Republic of Iran's development of sensitive technologies in support of its nuclear and missile programmes, through negotiation ('the declaration of 17 June 2010'). Those measures had to focus on the areas of trade, the financial sector, the Iranian transport sector, in particular IRISL and its subsidiaries, and key sectors of the gas and oil industry. It was also envisaged extending the asset freeze mechanism especially to the members of the Islamic Revolutionary Guard Corps.

6 On 26 July 2010, Council Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39, and corrigendum OJ 2010, L 197, p. 19) was adopted, recitals 4, 5, 7 and 8 of which state:

'(4) On 9 June 2010, the [Security Council] adopted [Resolution] 1929 (2010) …

(5) On 17 June 2010, ... the European Council invited the Council to adopt measures implementing those contained in [Resolution] 1929 (2010) as well as accompanying measures ...

...

(7) [Resolution] 1929 (2010) extends the financial and travel restrictions imposed by [Resolution] 1737 (2006) to additional persons and entities, including [Islamic Revolutionary Guards Corps] individuals and entities as well as entities of [IRISL].

(8) In accordance with the [declaration of 17 June 2010], the restrictions on admission and the freezing of funds and economic resources should be applied to further persons and entities, in addition to those designated by the Security Council ...'

7 Article 20(1)(b) of that decision provided for the freezing of the funds and economic resources of 'persons and entities … that are engaged in, directly associated with, or providing support for, Iran's … nuclear activities …, or persons and entities that have assisted designated persons or entities in evading or violating the provisions of [Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010)] or this Decision as well as other senior members and entities of … [the IRISL company] and entities owned or controlled by [it] or acting on [its] behalf, as listed in Annex II'.

8 The appellants' names were listed in Annex II to that decision, on the grounds, for IRISL, in particular that it 'has been involved in the shipment of military-related cargo, including proscribed cargo from Iran. Three such incidents involved clear violations that were reported to the [Security Council] Sanctions Committee' and, for the other appellants, that they were owned or controlled by IRISL or acted on its behalf.

9 Likewise on 26 June 2010, by means of Council Implementing Regulation (EU) No 668/2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), the appellants' names were added, on essentially identical grounds to those set out in the preceding paragraph, to the list in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

10 Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1) provided, in Article 16(2)(d) thereof, for the freezing of the funds and economic resources belonging to the persons, entities or bodies listed in Annex VIII, who have been identified as 'being a legal person, entity or body owned or controlled by [IRISL]'. That listing criterion was essentially reproduced in Article 23(2)(e) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1).

11 The appellants' names were in turn maintained in Annex VIII to Regulation No 961/2010 and in Annex IX to Regulation No 267/2012, on essentially identical grounds as those mentioned in paragraph 8 above.

12 By judgment of 16 September 2013, *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, 'the judgment of 16 September 2013', EU:T:2013:453), the General Court annulled Annex II to Decision 2010/413, the annex to Implementing Regulation No 668/2010, Annex VIII to Regulation No 961/2010 and Annex IX to Regulation No 267/2012 in so far as they concerned the appellants, on the grounds that the Council had not justified to the requisite legal standard its contention that IRISL had assisted listed persons or entities in infringing Security Council resolutions, nor established that, by having transported — on three occasions — military material in breach of the arms embargo, it had provided support for nuclear proliferation.

13 On 10 October 2013, the Council adopted Decision 2013/497. According to recital 2 of that decision, the criteria for designation with regard to the freezing of funds, which cover persons and

entities that have assisted designated persons or entities in evading or violating the provisions of the relevant Security Council resolutions or of Decision 2010/413, should be adjusted in order to include persons and entities that have themselves evaded or violated those provisions.

14 That decision amended the wording of Article 20(1)(b) of Decision 2010/413, as follows:

'persons and entities … that are engaged in, directly associated with, or providing support for, Iran's … nuclear activities …, or persons and entities that have evaded or violated, or assisted designated persons or entities in evading or violating, the provisions of [Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010)] or of this Decision, as well as other members and entities of … IRISL and entities owned or controlled by [it] or persons and entities acting on [its] behalf or persons and entities providing insurance or other essential services to … IRISL, or to entities owned or controlled by [it] or acting on [its] behalf, as listed in Annex II.'

15 On 10 October 2013, the Council also adopted Regulation No 971/2013 in order to ensure the implementation of Decision 2013/497 in the European Union, with that regulation amending the wording of Article 23(2)(b) and (e) of Regulation No 267/2012 as follows:

'... Annex IX shall include the natural and legal persons, entities and bodies who … have been identified as:

...

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

...

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

16 By the November 2013 contested acts, the Council reinstated the appellants' names, first, on the list of persons and entities whose assets are to be frozen set out in Annex II to Decision 2010/413 and, secondly, on the list set out in Annex IX to Regulation No 267/2012 ('the lists at issue').

17 The grounds for including IRISL on those lists were identical and worded as follows:

'IRISL has been involved in the shipment of arms-related materiel from Iran in violation of paragraph 5 of [Security Council] Resolution 1747(2007). Three clear violations were reported to the [Security Council] Iran Sanctions Committee in 2009.'

18 The other appellants were reinstated on those lists, in the cases of HDSL, Safiran Payam Darya Shipping Lines and Hoopad Darya Shipping Agency, on the ground that they '[were] acting on behalf of IRISL', in the cases of Khazar Shipping Lines, IRISL Europe and Valfajr 8th Shipping Line, that they were 'owned by IRISL', in the cases of Qeshm Marine Services & Engineering and Marine Information Technology Development, that they were 'controlled by IRISL', in the case of Irano Misr Shipping, that it 'provide[d] essential services to IRISL' and, in the case of Rahbaran

Omid Darya Ship Management, that it ‘act[ed] on behalf of IRISL and provide[d] essential services to it’.

19 On 18 October 2015, in order to implement the Joint Comprehensive Plan of Action of 14 July 2015 agreed with the Islamic Republic of Iran on the Iranian nuclear issue, the Council adopted, first, Decision (CFSP) 2015/1863, amending Decision 2010/413 concerning restrictive measures against Iran (OJ 2015 L 274, p. 174), which suspended, with regard to the appellants, the application of the restrictive measures provided for by Decision 2013/685, and, secondly, Implementing Regulation (EU) 2015/1862, implementing Regulation No 267/2012 (OJ 2015 L 274, p. 161), which deleted their names from the list set out in Annex IX to that regulation.

The procedure before the General Court and the judgment under appeal

20 By applications lodged at the General Court Registry on 6 January and 7 February 2014, the appellants brought, respectively, in Case T-14/14, an action for annulment of the October 2013 contested acts and, in Case T-87/14, an action, first, for annulment of the November 2013 contested acts and, secondly, for a declaration that the October 2013 contested acts were inapplicable pursuant to Article 277 TFEU. The General Court joined those two cases for the purposes of the oral part of the procedure and of the judgment.

21 In the judgment under appeal, after dismissing the action in Case T-14/14, the General Court ruled on the action in Case T-87/14. In paragraphs 53 to 105 of the judgment under appeal, it first of all rejected all the appellants’ pleas in law in support of the plea of illegality raised against the October 2013 contested acts. Those pleas in law alleged (i) lack of any legal basis; (ii) infringement of the appellants’ legitimate expectations and breach of the principles of legal certainty, *non bis in idem* and *res judicata*; (iii) misuse of power; (iv) infringement of the appellants’ rights of defence; and (v) infringement of the appellants’ fundamental rights, notably their right to property and the right to respect for their reputation.

22 In paragraphs 106 to 211 of the judgment under appeal, the General Court rejected all the appellants’ pleas in law in support of the application for annulment of the November 2013 contested acts. Those pleas in law alleged (i) the lack of any legal basis; (ii) manifest errors of assessment by the Council; (iii) infringement of the rights of the defence; (iv) breach of the principles of protection of legitimate expectations, legal certainty, *res judicata*, *non bis in idem* and non-discrimination; and (v) infringement of their fundamental rights, notably their right to property and the right to respect for their reputation, and breach of the principle of proportionality.

23 Consequently, the General Court dismissed the actions in Cases T-14/14 and T-87/14 in their entirety.

Forms of order sought by the parties before the Court of Justice

24 The appellants claim that the Court should:

– set aside the judgment under appeal;

– grant them the form of order sought in the General Court;

– order the Council to pay the costs of the appeal and at first instance.

25 The Council contends that the Court should:

– dismiss the appeal as inadmissible or, failing that, as unfounded;

– in the alternative, if the Court decides to set aside the judgment under appeal and to give final judgment itself, dismiss the action for annulment and the application for a declaration of inapplicability;

– order the appellants to pay the costs of the appeal.

26 The European Commission contends that the Court should:

– dismiss the appeal as inadmissible or, failing that, as unfounded;

– order the appellants to pay the costs of the proceedings.

The appeal

The admissibility of the appeal

Arguments of the parties

27 The Council contends that the appeal is inadmissible on the ground that the appellants have no interest in its outcome, because Decision 2015/1863 and Implementing Regulation 2015/1862 withdrew the restrictive measures taken with regard to them and there was no damage to their reputation as a result of the Council's decision to reinstate them on the lists at issue by the November 2013 contested acts. In particular, the grounds of that re-listing referred to a public report by the Security Council Sanctions Committee for 2009.

28 The Commission adds that the appeal should be declared inadmissible since the appellants in fact seek to have the case before the General Court re-examined by the Court of Justice. In that regard, it contends that the appellants simply largely repeat the pleas in law and arguments they had raised before the General Court, without limiting themselves to points of law, in particular in the context of their sixth ground of appeal.

29 The appellants claim that the appeal is admissible. They submit, first, that they have a legal interest in bringing proceedings in establishing that the restrictive measures imposed on them were void *ab initio*, in restoring their reputation harmed by the European Union itself, and if necessary in founding an action for damages. They submit, secondly, that the errors of law by the General Court that should lead to the judgment under appeal being set aside are clearly apparent from their appeal.

Findings of the Court

30 As regards, in the first place, the legal interest in bringing proceedings, the Court of Justice has consistently held that for an appellant to have an interest in bringing proceedings the appeal must be capable, if successful, of procuring an advantage to the party bringing it (judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 43 and the case-law cited).

31 The Court has held that a person or an entity whose name has been included on the list of persons and entities whose assets are frozen continued to have at least a non-material interest in having that listing annulled in order to have the EU Courts recognise that it should never have been included on such a list, in view of the consequences for its reputation, even after the removal of its

name from that list or the freezing of its assets has been suspended (judgments of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraph 33 and the case-law cited, and of 29 November 2018, *Bank Tejarat* v *Council*, C-248/17 P, EU:C:2018:967, paragraph 29).

32 It follows that the appellants have at least a non-material interest in seeking to have the judgment under appeal set aside with a view to pursuing the annulment of their reinstatement on the lists at issue even if, first, the freezing of their assets resulting from that reinstatement on the list in Annex II to Decision 2010/413 was suspended and, secondly, their name was withdrawn from the list in Annex IX to Regulation No 267/2012 by virtue of Decision 2015/1863 and Implementing Regulation 2015/1862, respectively. Similarly, the mere fact that such a listing is based on a public report of an international institution, such as the Security Council, does not call in question the interest, at least non-material, of the person or entity concerned in pursuing the annulment of an EU act which could, of itself, harm its reputation, or even aggravate such pre-existing harm.

33 The plea of inadmissibility raised by the Council cannot, therefore, be upheld.

34 In so far as, in the second place, the Commission contends that the appeal is inadmissible on the ground that the appellants seek a mere re-examination of the pleas in law and arguments already relied on before the General Court, it must be borne in mind that, provided that the appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (judgments of 19 January 2017, *Commission* v *Total and Elf Aquitaine*, C-351/15 P, EU:C:2017:27, paragraph 31 and the case-law cited, and of 17 May 2017, *Portugal* v *Commission*, C-337/16 P, EU:C:2017:381, paragraph 20).

35 In the present case, the appeal, taken as a whole, identifies with sufficient precision the paragraphs of the judgment under appeal that are disputed and the grounds on which those paragraphs are, in the appellants' view, vitiated by errors of law and does not simply repeat or reproduce the arguments, as the Commission has suggested, thus enabling the Court of Justice to carry out its review of legality.

36 In those circumstances, the Court must reject the Commission's plea of inadmissibility in so far as it is directed against the appeal in its entirety.

37 That said, that conclusion does not in any way prejudice a consideration of the admissibility of certain grounds of appeal taken individually (judgments of 14 June 2016, *Marchiani* v *Parliament*, C-566/14 P, EU:C:2016:437, paragraph 34, and of 4 May 2017, *RFA International* v *Commission*, C-239/15 P, not published, EU:C:2017:337, paragraph 20).

Substance

38 The appellants rely on nine grounds in support of their appeal.

39 The first five grounds of appeal allege errors of law by the General Court in its examination of the pleas in support of the plea of illegality raised in Case T-87/14 against the October 2013 contested acts by which the Council amended the criteria governing inclusion on the lists of the persons and entities whose assets are to be frozen.

40 The final four grounds of appeal seek to challenge the General Court's examination of the pleas for the annulment of the November 2013 contested acts, invoked in that same case, by which the Council reinstated the appellants on the lists at issue; that reinstatement was on the basis, first, as regards IRISL, of the listing criterion referred to in Article 20(1)(b) of Decision 2010/413, as amended by Decision 2013/497, and in Article 23(2)(b) of Regulation No 267/2012, as amended by Regulation No 971/2013 ('the criterion relating to the infringement of Resolution 1747 (2007)') and, secondly, as regards the other appellants, on the basis of the listing criterion referred to in Article 20(1)(b) of Decision 2010/413, as amended by Decision 2013/497, and in Article 23(2)(e) of Regulation No 267/2012, as amended by Regulation No 971/2013 ('the criterion relating to the link with IRISL').

41 The Court must examine, first, the second and eighth grounds of appeal together with the third parts of the first and sixth grounds of appeal, alleging errors of law concerning the consequences of the judgment of 16 September 2013; secondly, the second part of the first ground of appeal, alleging the failure to respond to the argument that the Council had not provided an objective ground and justification for the amendment, by the October 2013 contested acts, of the criteria governing inclusion on the lists of persons and entities whose assets are to be frozen; thirdly, the fourth and seventh grounds of appeal, alleging an infringement of the rights of the defence; fourthly, the third, fifth and ninth grounds of appeal together with the first part of the first ground of appeal and the second part of the sixth ground of appeal, alleging an infringement of the principle of proportionality and of fundamental rights and an error of law by the General Court in finding that the Council had not committed a misuse of powers; and, lastly, the first part of the sixth ground of appeal, alleging errors of law by the General Court in not finding that the Council had made several manifest errors of assessment.

The second and eighth grounds of appeal and the third parts of the first and sixth grounds of appeal

– *Arguments of the parties*

42 By the second and eighth grounds of appeal, and also the third parts of the first and sixth grounds of appeal, the appellants submit, in essence, that the General Court incorrectly found that, following the judgment of 16 September 2013, which has acquired the force of *res judicata*, the Council could adopt the October 2013 and November 2013 contested acts, without infringing the principle of *res judicata*, the principles of the protection of legitimate expectations, of legal certainty, the principle *non bis in idem* or the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). The only justification for the October 2013 contested acts is to circumvent that judgment.

43 The appellants submit that those principles precluded the Council from re-writing the listing criteria in order to reinstate the appellants on the lists at issue, in the absence of a change in the facts or new evidence and this while the judgment of 16 September 2013 had established the absence of a link between the prohibition on the transfer of arms laid down in paragraph 5 of Resolution 1747 (2007) and nuclear proliferation and rejected the listing criterion relating to entities linked to IRISL. IRISL's re-listing is based on the same allegations relating to the alleged infringements of Resolution 1747 (2007) committed in 2009 as those on which its initial listing, annulled by the judgment of 16 September 2013, was based. The General Court simply asserted that those events were sufficiently recent.

44 The appellants further submit that the possibility of reinstating a person or entity on a list of persons and entities whose assets are to be frozen, after a first listing has been annulled, did not

confer on the Council an unqualified and unrestrained power of reinstatement on the basis of the same facts, characterised differently. Paragraphs 186 to 189 of the judgment under appeal are, therefore, erroneous. Any other interpretation would merely result in a 'never-ending litigation loop' and make the right to an effective remedy meaningless.

45 The Council, supported by the Commission, disputes the appellants' arguments.

– *Findings of the Court*

46 First of all, as correctly noted by the General Court in paragraph 183 of the judgment under appeal, annulment judgments given by the EU Courts have the force of *res judicata* as soon as they become final. This applies not only to the operative part of the judgment annulling a decision, but also to the grounds which are its essential basis and are inseparable from it (judgments of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraph 42, and of 29 November 2018, *Bank Tejarat* v *Council*, C-248/17 P, EU:C:2018:967, paragraph 70).

47 In addition, it is settled case-law that *res judicata* attaches only to matters of fact and law actually or necessarily settled by a judicial decision (judgments of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 123, and of 13 September 2017, *Pappalardo and Others* v *Commission*, C-350/16 P, EU:C:2017:672 paragraph 37), as is apparent from paragraph 184 of the judgment under appeal.

48 In the present case, as the General Court was fully entitled to find in paragraph 185 of the judgment under appeal, in the judgment of 16 September 2013 the General Court annulled IRISL's initial listing after finding, first, in paragraphs 38 and 39 of that judgment, that the statement of reasons for that listing concerning the aid provided to a person or entity designated as having infringed the Security Council's resolutions was insufficient and, secondly, in paragraphs 58 and 66 of that judgment, that the Council had not established that by having transported — on three occasions — military material in breach of the prohibition laid down in paragraph 5 of Resolution 1747 (2007), IRISL had provided support for nuclear proliferation. In so doing, the General Court, did not, however, challenge the correctness of those three incidents nor the related evidence.

49 By contrast, as is also rightly apparent from paragraphs 80, 186 and 187 of the judgment under appeal, the General Court had not ruled, in its judgment of 16 September 2013, either on the validity of the listing criteria underlying IRISL's initial listing, alleging support for nuclear proliferation and the provision of assistance to a designated person or entity in infringing Security Council resolutions or, necessarily, on whether IRISL's listing was justified on the basis of the criterion relating the infringement of Resolution 1747 (2007).

50 As regards the appellants other than IRISL, it also rightly follows from paragraph 188 of the judgment under appeal that, in the judgment of 16 September 2013, the General Court had merely held that the fact that they were owned or controlled by IRISL or that they acted on its behalf did not justify the adoption or maintenance of restrictive measures to which they were subject, IRISL not having itself been legitimately included on the list of persons and entities whose assets are to be frozen, without examining whether the criteria underlying their listing were lawful, nor whether those appellants met those criteria.

51 As the Advocate General observed in point 106 of her Opinion, it is not apparent from the General Court's findings in the judgment of 16 September 2013, referred to in paragraphs 48 to 50 above, which have acquired the force of *res judicata* in accordance with the case-law cited in

paragraphs 46 and 47 above, that the Council could not, in the context of the measures taken in order to comply with the judgment of 16 September 2013, decide to maintain the existing listing criteria, underlying the appellants' initial listing, or adapt them, in its role as legislator, in order to pursue, by adopting the relevant legal means at its disposal, the objective of putting pressure on the Islamic Republic of Iran to oblige it to end its nuclear proliferation programme.

52 In that regard, as the General Court correctly found in paragraph 186 of the judgment under appeal, IRISL's reinstatement on the lists at issue is based on a criterion which differs from those underlying its listing by the decisions annulled by the judgment of 16 September 2013 and, therefore, on a different legal ground (see, to that effect, judgment of 29 November 2018, *Bank Tejarat* v *Council*, C-248/17 P, EU:C:2018:967, paragraph 74).

53 In addition, the Court of Justice has held that illegality affecting acts by which a person or entity was included on a list of persons and entities whose assets are to be frozen, as a result of the lack of information provided by the Council in support of the factual basis of those acts, was not such as to prevent the Council, following a re-examination of the situation of the person or entity concerned, from adopting new restrictive measures on the basis of evidence that is already in existence or available (see, to that effect, judgments of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraphs 45 and 56, and of 29 November 2018, *Bank Tejarat* v *Council*, C-248/17 P, EU:C:2018:967, paragraphs 73 and 82).

54 Contrary to what the appellants submit, IRISL's reinstatement on the lists at issue, based on a criterion separate from those underlying its listing until the judgment of 16 September 2013 was delivered, as is apparent from paragraphs 132 and 186 of the judgment under appeal, itself constituted a new factor as regards the situation of the other appellants.

55 In those circumstances, it must be found that the General Court did not err in law in holding, in paragraphs 90 and 189 of the judgment under appeal, that the force of *res judicata* attaching to the judgment of 16 September 2013 did not preclude the adoption of the October 2013 and November 2013 contested acts.

56 As regards the appellants' argument that, in the judgment of 16 September 2013, the General Court established the absence of a link between the prohibition laid down in paragraph 5 of Resolution 1747 (2007) and nuclear proliferation, this is based upon a misreading of that judgment, since, as is apparent from paragraph 49 of that judgment, the General Court simply interpreted the listing criterion alleging support for nuclear proliferation and applied it in the context of the case before it, finding, in particular, that the prohibitions laid down in paragraph 5 of Resolution 1747 (2007) and paragraph 7 of Resolution 1737 (2006), respectively, are separate and do not necessarily cover the same goods and technology in all circumstances. The General Court went on to hold in fact, in paragraph 52 of that judgment, that the documents produced before it did not contain evidence to suggest that the goods concerned by the three incidents referred to in paragraph 48 above were also covered by the prohibition relating to material linked to nuclear proliferation, laid down in paragraph 7 of Resolution 1737 (2006).

57 As regards the principle of the protection of legitimate expectations, it should be borne in mind, as is apparent from paragraph 191 of the judgment under appeal, that, in accordance with the settled case-law of the Court of Justice, the right to rely on that principle extends to any person whom an institution of the European Union has caused, by giving him precise assurances, to entertain justified expectations. By contrast, a person may not plead breach of that principle unless he has been given those assurances (see, to that effect, judgments of 13 September 2017,

Pappalardo and Others v *Commission*, C-350/16 P, EU:C:2017:672, paragraph 39, and of 21 February 2018, *Kreuzmayr*, C-628/16, EU:C:2018:84, paragraph 46).

58 Contrary to what the appellants maintain, the judgment of 16 September 2013 could not give rise to a legitimate expectation on their part that the Council would not be able, following that judgment, to amend the listing criteria applicable, or, while abiding by that judgment, take a re-listing decision in the future. This is even less so, as is apparent from paragraphs 193 and 194 of the judgment under appeal, since the General Court had stated, in paragraphs 64 and 82 of the judgment of 16 September 2013, that it was open to the Council to amend the applicable legislation, in its role as legislator, so as to extend the situations in which restrictive measures may be adopted and that it had a period of 2 months and 10 days to remedy the infringements established by adopting, if appropriate, new restrictive measures with respect to the appellants. In those circumstances, since the appellants do not adduce, in their appeal, any specific additional argument concerning an alleged infringement by the General Court of the principle of legal certainty, such an infringement cannot be established either.

59 As regards the principle *non bis in idem*, enshrined in Article 50 of the Charter, it suffices to note that restrictive measures are preventive (see, to that effect, judgments of 21 December 2011, *Afrasiabi and Others*, C-72/11, EU:C:2011:874, paragraph 44, and of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 132), so that that principle, which relates to proceedings and penalties concerning an offence in respect of which a person has already been finally acquitted or convicted, cannot be relied upon in order to challenge the validity of such measures.

60 It follows that the General Court did not err in law in finding in paragraphs 90, 196 and 199 of the judgment under appeal that the Council did not infringe the principles of the protection of legitimate expectations, of legal certainty and *non bis in idem*.

61 Lastly, the appellants submit that the General Court infringed their right to an effective remedy enshrined in Article 47 of the Charter, in failing to find that, in the absence of new facts or evidence, the Council could not amend the listing criteria in order to reinstate them on the lists at issue.

62 In that regard, it must be borne in mind that that article secures in EU law the protection afforded by Article 6(1) and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. The first paragraph of Article 47 of the Charter requires everyone whose rights and freedoms guaranteed by EU law are violated to have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. However, the principle of effective judicial protection cannot prevent the Council from reinstating a person or entity on the lists of persons and entities whose assets are to be frozen on the basis of reasons other than those on which the initial listing was based, or for the same reason based on other evidence. The purpose of that principle is to ensure that an act adversely affecting an entity may be challenged before the courts, and not to prevent the adoption of a new act adversely affecting that entity, based on different reasons or evidence (see, to that effect, judgment of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraphs 53 and 54). Accordingly, in the light of the considerations set out in paragraphs 53 and 54 above, that principle did not preclude the October 2013 and November 2013 contested acts from being adopted.

63 In the light of the foregoing, the second and eighth grounds of appeal must be rejected, as must the third parts of the first and sixth grounds of appeal.

The second part of the first ground of appeal

– *Arguments of the parties*

64 By the second part of their first ground of appeal, the appellants submit that, in the judgment under appeal, the General Court failed to examine the objection which they had raised before it, that the Council had not provided an objective ground or justification for the amendment, by the October 2013 contested acts, of the criteria governing inclusion on the lists of persons and entities whose assets are to be frozen.

65 The Council, supported by the Commission, submits that the second part of the first ground of appeal is unfounded.

– *Findings of the Court*

66 In so far as, by the second part of their first ground of appeal, the appellants submit that the General Court failed to respond to their argument that the listing criteria were not reasonably justified, it suffices to note that, in paragraphs 65 to 78 of the judgment under appeal, the General Court stated the reasons for which such criteria had, in in its view, to be considered justified and proportionate. It follows that the General Court did respond to such an argument.

67 In so far as the second part of the first ground of appeal must be understood as complaining that the General Court did not raise of its own motion the absence of a formal statement of reasons for the October 2013 contested acts, by which the Council amended the criteria governing inclusion on the lists of persons and entities whose assets are to be frozen, the following points must be made.

68 According to settled case-law, the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review (see, to that effect, judgments of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 138 and the case-law cited, and of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 50).

69 The statement of reasons must, however, be appropriate to the measure at issue and the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary that the statement of reasons specify all the relevant matters of fact and law, inasmuch as the adequacy or otherwise of the reasons is to be evaluated with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, to that effect, judgments of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraphs 139 and 140, and of 8 September 2016, *Iranian Offshore Engineering & Construction* v *Council*, C-459/15 P, not published, EU:C:2016:646, paragraph 24).

70 First, it must be noted that recital 2 of Decision 2013/497 states that the criteria governing the inclusion on the lists of persons and entities whose assets are to be frozen, which cover persons and entities that have assisted designated persons or entities in evading or violating the provisions of the relevant Security Council resolutions or of Decision 2010/413, should be adjusted in order to

include persons and entities that have themselves evaded or violated those provisions. That reasoning is, in essence, reproduced in recital 2 of Regulation No 971/2013.

71 The justification for the Council's adoption of the criterion relating to the infringement of Resolution 1747 (2007), underlying IRISL's reinstatement on the lists at issue, is, therefore, clearly apparent from the wording of the October 2013 contested acts. In addition, as the General Court correctly found in paragraph 68 of the judgment under appeal, the general rules of the European Union providing for the adoption of restrictive measures must be interpreted in the light of the wording and purpose of the Security Council resolutions they implement (see, to that effect, judgments of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 297, and of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 104).

72 Secondly, it must be noted, first, that Decision 2013/497 refers, in recitals 1 and 3 thereof, to Decision 2010/413 which it amends and which already provided, in Article 20(1)(b) thereof, for the funds of the persons and entities owned, controlled or acting on behalf of IRISL to be frozen.

73 Similarly, Regulation No 971/2013 refers not only to those decisions but also to Regulation No 267/2012 which it amends, Article 23(2)(e) of the latter having also already provided for the funds of such persons and entities to be frozen. Regulation No 267/2012 replaced Regulation No 961/2010, which implemented Decision 2010/413 and provided, in Article 16 thereof, for the funds of the persons and entities held or controlled by IRISL to be frozen.

74 Next, in recitals 4 and 5 thereof, Decision 2010/413 refers to the Security Council's adoption of Resolution 1929 (2010) and to the declaration of 17 June 2010 by which the European Council expressly invited the Council to adopt measures implementing those contained in Resolution 1929 (2010) as well as 'accompanying measures'. Those measures had to focus on the Iranian transport sector, including 'the IRISL company and its subsidiaries'.

75 In addition, recitals 7 and 8 of Decision 2010/413 state that Resolution 1929 (2010) extended the financial and travel restrictions imposed by Resolution 1737 (2006) to IRISL entities and that, in accordance with the declaration of 17 June 2010, the freezing of funds had to be applied to further persons and entities designated by the Security Council, using the same criteria. Regulation No 961/2010 referred likewise to Decision 2010/413, Resolution 1929 (2010) and the declaration of 17 June 2010.

76 In the light of those factors, the justification for the Council's adoption of provisions prescribing the freezing of the funds of IRISL's subsidiaries, and more broadly of the persons and entities linked to IRISL in order to ensure the effectiveness of the restrictive measures directed at IRISL and, therefore, to avoid any circumvention by them, by Decision 2010/413 and Regulation No 961/2010, is clearly, comprehensibly and unambiguously apparent from those acts, having regard to their historical context and all the rules governing the restrictive measures adopted against the Islamic Republic of Iran.

77 That context well known to the appellants and that set of rules therefore enabled them to understand the justification for those provisions and the General Court to exercise its review.

78 In those circumstances, it must be concluded that the October 2013 contested acts set out to the requisite legal standard the reasons for maintaining the listing criterion providing for the funds of the entities held or controlled by, or acting on behalf of, IRISL to be frozen and its extension to the entities providing IRISL with insurance services or other essential services.

79 It follows from the foregoing that the General Court did not err in law in not raising of its own motion failure to state reasons for the October 2013 contested acts.

80 The second part of the first ground of appeal must, therefore, be rejected.

The fourth and seventh grounds of appeal

– *Arguments of the parties*

81 By their fourth and seventh grounds of appeal, the appellants submit that the General Court erred in law in finding that their rights of defence had been observed when the October 2013 and November 2013 contested acts were adopted. First, the appellants submit that since the criterion relating to the link with IRISL expressly named that entity, it had to be considered an *ad hominem* criterion, so that the Council was under an obligation to inform them of the amendments it envisaged making and to enable them to submit their observations. Secondly, they submit that the Council had failed to take into account IRISL's observations before deciding whether to re-list it, and reinstated them on the lists at issue before responding to their observations and providing them with the documents justifying that re-listing.

82 The Council, supported by the Commission, disputes the merits of fourth and seventh grounds of appeal.

– *Findings of the Court*

83 In the first place, it must be borne in mind that as regards restrictive measures affecting individuals, respect for the rights of the defence and the right to effective judicial protection requires that the competent Union authority disclose to the individual concerned the evidence against that person available to that authority and which is relied on as the basis of its decision (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 121 and the case-law cited).

84 In the present case, however, the appellants do not deny that the criterion relating to the link with IRISL, stemming from the October 2013 contested acts, constitutes a measure of general application, as the General Court correctly noted in paragraph 97 of the judgment under appeal, since it defines objectively and in the abstract a category of persons and entities, other than IRISL itself, to which restrictive measures are likely to apply, nor that the appellants other than IRISL are not individually referred to by that criterion.

85 In those circumstances, it was not for the Council to communicate the evidence it possessed to the appellants other than IRISL, before adopting the criterion relating to the link with IRISL.

86 As regards IRISL itself, it must be stated that that criterion does not enable individual restrictive measures to be adopted against it, so that the *ad hominem* character which it raises concerning that criterion does not give rise to the obligation on the Council to apply the case-law cited in paragraph 83 above. It must be found that, in any event, the legislation predating the October 2013 contested acts already provided for such an *ad hominem* criterion with regard to it, so that the absence of information on the amendment at issue did not cause it harm and, in particular, did not preclude it from contacting the Council in order to put forward its point of view concerning the individual nature of that criterion, if necessary following the delivery of the judgment of 16 September 2013.

87 In those circumstances, it must be found that the General Court did not err in law in concluding that the appellants' rights of defence were not infringed when those acts were adopted.

88 In the second place, as to whether the General Court erred in law in finding, in paragraphs 173 to 181 of the judgment under appeal, that the Council had not infringed the appellants' rights of defence when reinstating them on the lists at issue, it must be borne in mind that in the case of a subsequent decision to freeze funds by which the name of a person or entity is maintained on a list of persons or entities whose assets are to be frozen, the adoption of such a decision must, in principle, be preceded by notification of the incriminating evidence and by allowing the person or entity concerned an opportunity of being heard (see, to that effect, judgments of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 62, and of 7 April 2016, *Central Bank of Iran* v *Council*, C-266/15 P, EU:C:2016:208, paragraph 32).

89 When sufficiently precise information has been disclosed, enabling the person concerned properly to state his point of view on the evidence adduced against him by the Council, the principle of respect for the rights of the defence does not mean that that institution is obliged spontaneously to grant access to all the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see, to that effect, judgments of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 92, and of 28 July 2016, *Tomana and Others* v *Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraph 66).

90 It must also be stated that, according to the case-law of the Court of Justice, the right to be heard prior to the adoption of acts which maintain restrictive measures against persons or entities already subject to those measures applies where the Council has admitted new evidence against those persons or entities and not where those measures are maintained on the basis of the same grounds as those that justified the adoption of the initial act imposing the restrictive measures in question (see, to that effect, judgments of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 63, and of 28 July 2016, *Tomana and Others* v *Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraph 67).

91 In the present case, as the Advocate General observed in point 190 of her Opinion, the relevant time for assessing whether the Council respected the appellants' right to be heard is the date on which it reinstated them on the lists at issue, namely 26 November 2013. As is apparent from paragraphs 173 to 175 of the judgment under appeal, the Council disclosed to the appellants, by letters dated either 22 or 30 October 2013, the reasons why it intended to re-list them, which were based on the same matters of fact and in essence identical to those in the initial listing decisions adopted in 2010, with the result that they were matters already known to the appellants. In addition, it is apparent from paragraphs 176 to 180 of the judgment under appeal that, by letters dated either 15 or 19 November 2013, the appellants set out their observations on those facts, before the adoption of the November 2013 contested acts, to which the Council replied on 27 November 2013 by disclosing to them the documents on its file.

92 In addition, as the Advocate General observed in point 193 of her Opinion, contrary to the appellants' submissions, the Council is not required to reply, prior to the adoption of restrictive measures envisaged, to the observations submitted by the person or entity concerned. The sending of such a reply, once the interested parties have been heard, relates to the reasoning of the act by which those measures are adopted rather than to the observance of the rights of the defence.

93 In those circumstances, it must be concluded that the General Court did not err in law in finding that the Council had not infringed the appellants' rights of defence when the November 2013 contested acts were adopted.

94 It follows that the fourth and seventh grounds of appeal must be rejected.

The third, fifth and ninth grounds of appeal and the first part of the first ground of appeal and the second part of the sixth ground of appeal

– *Arguments of the parties*

95 By the third, fifth and ninth grounds of appeal, and the first part of their first ground of appeal and the second part of their sixth ground of appeal, the appellants submit that the General Court erred in finding, first, in paragraphs 63, 71, 74 and 76 of the judgment under appeal, that the October 2013 contested acts were justified and proportionate to the objective of combating nuclear proliferation in Iran and, secondly, in paragraphs 93 to 95 of the judgment under appeal, that the adoption of those acts, which, in the appellants' view, did not comply with that objective, following the judgment of 16 September 2013, did not constitute a misuse of powers by the Council. In addition, the General Court erred in law in finding that the October 2013 and November 2013 contested acts were not an unjustified and disproportionate interference with their fundamental rights, notably their right to property and the right to respect for their reputation.

96 The appellants submit, first, that the criterion relating to the infringement of Resolution 1747 (2007) is not appropriate and proportionate to the objective of combating nuclear proliferation in Iran, in the absence of a link between the shipment of arms prohibited by paragraph 5 of that resolution, the activities of the entity concerned and nuclear proliferation. The same applies to the criterion relating to the link with IRISL, since the inclusion of a subsidiary on a list of entities whose assets are to be frozen is justified only when the parent company has engaged in nuclear proliferation.

97 The appellants submit, next, that the General Court's reasoning is contradictory. While confirming that those criteria are lawful without explaining how they are appropriate and proportionate to that objective, the General Court incorrectly found, in paragraphs 101 and 102 of the judgment under appeal, that those criteria neither implied the existence of a link between the appellants and nuclear proliferation nor required the Council to establish such a link. In so doing, the General Court adopted an overly broad interpretation of the same criteria.

98 The appellants add that the General Court also failed to analyse how their reinstatement on the lists at issue would enable that objective to be met and pressure brought to bear on the Islamic Republic of Iran, whereas IRISL, contrary to what was suggested in the judgment under appeal, is neither owned nor controlled by the Iranian Government. They state, lastly, that in expressly naming IRISL again, the criterion relating to the link with IRISL represented to the world that IRISL supports nuclear proliferation, with serious reputational and business consequences for it.

99 The Council, supported by the Commission, disputes the appellants' arguments.

– *Findings of the Court*

100 In the context of the third, fifth and ninth grounds, and the first part of the first ground and second part of the sixth ground, the appellants submit, in essence, in the first place, that the General Court erred in finding that the interference with their fundamental right to property and the right to

respect for their reputation to which the October 2013 and November 2013 acts were likely to give rise was proportionate and that the formulation of the criterion relating to the infringement of Resolution 1747 (2007) and of the criterion relating to the link with IRISL also complied with the principle of proportionality, on the basis of the same arguments.

101 First of all, it must be pointed out that, in accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by it must be provided for by law, respect their essence and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

102 Accordingly, as the General Court was fully entitled to point out, in paragraphs 204 and 205 of the judgment under appeal, the right to property enshrined in Article 17 of the Charter is not absolute. In addition, the principle of proportionality requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary to achieve them (judgments of 15 November 2012, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C-539/10 P and C-550/10 P, EU:C:2012:711, paragraph 122 and the case-law cited, and of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraph 76).

103 With regard to judicial review of compliance with the principle of proportionality, the Court of Justice has held that the EU legislature must be allowed a broad discretion, as the General Court correctly stated in paragraph 62 of the judgment under appeal, in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. It concluded from this that the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited).

104 As regards the Council's objective in adopting the October 2013 and November 2013 contested acts, which amended Decision 2010/413 and Regulation No 267/2012, the Court has held that the objective of that decision and that regulation is to prevent nuclear proliferation and to bring pressure to bear on the Islamic Republic of Iran to end the activities concerned. That objective, which forms part of a more general framework of endeavours linked to the maintenance of international peace and security, is legitimate (judgment of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraph 77 and the case-law cited).

105 Next, as regards the appropriateness of the October 2013 and November 2013 contested acts to achieve that objective, it must be noted, as regards the criterion relating to the infringement of Resolution 1747 (2007), that, as the Council contends, it is apparent from that resolution that the Security Council considered that the prohibition on the transfer of arms from Iran laid down in paragraph 5 thereof met the objective of ensuring that the Iranian nuclear programme serves exclusively peaceful purposes and constraining the Islamic Republic of Iran's development of sensitive technologies in support of its nuclear and missile programme.

106 As the Advocate General observed in points 76 and 77 of her Opinion, the proceeds of the trade in arms can directly or indirectly provide the Iranian Government with resources or facilities of various nature allowing it to pursue nuclear proliferation activities and may be diverted for that purpose.

107 In those circumstances, the criterion relating to the infringement of Resolution 1747 (2007) enables the conduct of persons and entities likely to encourage nuclear proliferation activities in Iran to be targeted, even though those persons and entities have no direct or indirect link with nuclear proliferation and are not involved in those activities, as the General Court correctly noted in paragraphs 101 and 102 of the judgment under appeal, so that that criterion appears appropriate to achieve the objective mentioned in paragraph 104 above.

108 As regards whether that criterion was necessary, contrary to what the appellants submit, the fact that it enables fund freezing measures to be adopted in the absence of a link between the persons or entities concerned and nuclear proliferation cannot lead to the conclusion that those measures go beyond the limits of what is necessary to achieve that objective, as the Court has held that a listing criterion, such as that for support to the Iranian Government, which enables the relevant person or entity's own activities which, even if having no actual direct or indirect connection with nuclear proliferation, are nonetheless capable of encouraging it, to be targeted, did not appear to go beyond the limits of what is necessary to achieve that objective (see, to that effect, judgment of 29 November 2018, *National Iranian Tanker Company* v *Council*, C-600/16 P, EU:C:2018:966, paragraph 78). It should also be stated that the large number of Security Council resolutions, as well as the various EU measures progressively adopted, reflect the need to broaden the range of the restrictive measures intended to achieve that same objective.

109 As regards the scope of the criterion relating to the link with IRISL, it must be found that it forms part of a legal framework clearly delimited by the objectives pursued by the rules governing the restrictive measures against the Islamic Republic of Iran.

110 In that regard, the Court has held that where the funds of an entity providing support to the Iranian Government are frozen, there is a not insignificant danger that that entity may exert pressure on the entities it owns or controls in order to circumvent the effect of the measures applying to it, so that the freezing of the funds of those entities is necessary and appropriate in order to ensure the effectiveness of the measures adopted and to ensure that those measures are not circumvented (see, to that effect, judgment of 22 September 2016, *NIOC and Others* v *Council*, C-595/15 P, not published, EU:C:2016:721, paragraph 89 and the case-law cited).

111 That criterion thus objectively establishes a limited category of persons and entities which, because of their connections with IRISL, could facilitate the restrictive measures directed at the latter being circumvented and, consequently, undermine the objective referred to in paragraph 104 above of preventing nuclear proliferation and exerting pressure on the Islamic Republic of Iran, regardless of any involvement of those persons and entities in the nuclear proliferation activities and does not, therefore, appear to manifestly go beyond the limits of what is necessary to achieve that objective.

112 It must be added that, in the light of the considerations set out in paragraphs 106 to 111 above, the appellants' argument that the General Court's reasoning was contradictory in finding that the criterion relating to the infringement of Resolution 1747 (2007) and the criterion relating to the link with IRISL, while justified and proportionate to the objective in question, did not require a link to be established between the person or entity concerned and nuclear proliferation, must be rejected. In reaching such findings, the General Court's interpretation of those criteria was not overly broad and its reasoning is not contradictory.

113 As regards the alleged harm to the appellants' reputation moreover, the General Court also did not err in law in stating, in paragraph 209 of the judgment under appeal, that the Council did not claim that the appellants were themselves involved in nuclear proliferation, so that they were not

personally associated with behaviour posing a risk to international peace and security and that the harm to their reputation was necessarily less than if their re-listing had been based on such a ground. As regards the criterion relating to the link with IRISL, that criterion also does not imply that IRISL is itself involved in nuclear proliferation. Consequently, the harm in question does not appear to manifestly go beyond what is necessary having regard to the paramount importance of the objective referred to in paragraph 104 above and of the need for a clear and precise definition, in the general criteria governing the inclusion of persons or entities on the lists of the persons or entities whose assets are to be frozen, of those persons and entities, that is to say in the present case of the links with IRISL which as such, once established, give grounds for such an inclusion.

114 It follows that the General Court did not err in law, in paragraphs 71, 73, 75 to 77, 103 and 208 of the judgment under appeal, in finding, in essence, first, that the criterion relating to the infringement of Resolution 1747 (2007) and the criterion relating to the link with IRISL had to be regarded as complying with the principle of proportionality and in holding, secondly, that the restrictions on the right of property and the harm to the appellants' reputation were not manifestly disproportionate to the aims sought.

115 In the second place, the appellants have not adduced evidence capable of proving that the Council misused its powers in adopting the October 2013 contested acts. According to the Court's case-law, a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 135), as was correctly pointed out by the General Court in paragraph 92 of the judgment under appeal.

116 As is apparent from paragraphs 46 to 63 and 101 to 114 of the present judgment, the General Court correctly concluded, in paragraphs 93 to 95 of the judgment under appeal, that the judgment of 16 September 2013 did not preclude the adoption of those acts, which accord with the legitimate objective of preventing nuclear proliferation and of thereby applying pressure on the Islamic Republic of Iran to end nuclear proliferation activities, so that the General Court was fully entitled to reject the plea in law alleging such misuse of powers.

117 It follows that the third, fifth and ninth grounds of appeal, and the first part of the first ground of appeal and the second part of the sixth ground of appeal, must be rejected.

The first part of the sixth ground of appeal

– *Arguments of the parties*

118 In the context of the first part of their sixth ground of appeal, the appellants submit, first, that the General Court erred in failing to find that the Council had committed manifest errors of assessment when IRISL was reinstated on the lists at issue. The General Court's reasoning, in paragraphs 117 and 131 of the judgment under appeal, based on the finding of actual infringements of Resolution 1747 (2007) in 2009, is factually incorrect. The report by the Security Council Sanctions Committee for 2009 on which the Council relied cannot establish that IRISL infringed that resolution. The General Court also afforded insufficient weight, in paragraphs 120 and 124 of the judgment under appeal, to the evidence and in particular to the witness statements produced by the appellants to show that IRISL was not involved in the infringement of Resolution 1747 (2007).

119 The appellants submit, secondly, that, in paragraphs 136 to 165 of the judgment under appeal, the General Court failed to hold that the Council had erred in the assessment of the facts in finding that the re-listing of the appellants other than IRISL was justified on the basis of the criterion relating to the link with IRISL. Consequently, as regards Khazar Shipping Lines, IRISL Europe and Valfajr 8th Shipping Line, the General Court simply stated that their re-listing was justified because they were held by IRISL whereas the Council had not examined the level to which they were held and the likelihood of whether they could be subject to pressure to circumvent restrictions on IRISL and, as regards Qeshm Marine Services & Engineering and Marine Information Technology Development, that they were subsidiaries of IRISL. In addition, the General Court incorrectly held that HDSL and Safiran Payam Darya Shipping Lines acted on behalf of IRISL by having taken beneficial ownership of some of its vessels. As regards Irano Misr Shipping, the Council failed to state what services it provides, nor in what respect they are essential.

120 The Council and the Commission contend that the first part of the sixth ground of appeal is inadmissible and, in any event, unfounded.

– *Findings of the Court*

121 According to the Court of Justice's settled case-law, the General Court has exclusive jurisdiction to find and appraise the relevant facts and, in principle, to examine the evidence it accepts in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced to it. Save where the clear sense of the evidence has been distorted, that assessment does not, therefore, constitute a point of law which is subject as such to review by the Court of Justice (judgment of 7 April 2016, *Akhras* v *Council*, C-193/15 P, EU:C:2016:219, paragraph 67 and the case-law cited).

122 In the present case, in so far as the appellants submit that IRISL's re-listing, on the basis of the criterion relating to the infringement of Resolution 1747 (2007), was not justified in the light of the Security Council Sanctions Committee report for 2009 relied on by the Council and the witness statements the appellants have produced, it must be held that the appellants in fact request the Court of Justice to carry out a new assessment of the facts and evidence submitted to the General Court and of the value which should be attributed to them, without alleging a distortion of the facts and evidence, which is inadmissible at the stage of the appeal. On the same grounds, their arguments concerning the findings of fact by the General Court, set out in paragraphs 136 to 165 of the judgment under appeal, as to IRISL's ownership of Khazar Shipping Lines, IRISL Europe and Valfajr 8th Shipping Line, its control of Qeshm Marine Services & Engineering and Marine Information Technology Development, the fact that HDSL and Safiran Payam Darya Shipping Lines acted on behalf of IRISL and the fact that Irano Misr Shipping provided essential services to IRISL, are inadmissible.

123 It follows that the first part of the sixth ground of appeal must be rejected.

124 Since all the grounds of appeal have been rejected, the appeal must be dismissed in its entirety.

Costs

125 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs.

126 Under Article 138(1) of those rules of procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

127 Since the Council has applied for costs and the appellants have been unsuccessful, the latter must be ordered to bear their own costs and pay those incurred by the Council.

128 In accordance with Article 140(1) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the Commission is to bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Islamic Republic of Iran Shipping Lines, Hafize Darya Shipping Lines (HDSL), Khazar Shipping Lines, IRISL Europe GmbH, Qeshm Marine Services & Engineering Co., Irano Misr Shipping Co., Safiran Payam Darya Shipping Lines, Marine Information Technology Development Co., Rahbaran Omid Darya Ship Management Co., Hoopad Darya Shipping Agency and Valfajr 8th Shipping Line Co. to bear their own costs and to pay those incurred by the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

Lenaerts von Danwitz Lycourgos

Juhász Vajda

Delivered in open court in Luxembourg on 31 January 2019.

A. Calot Escobar K. Lenaerts

Registrar President

* Language of the case: English.