ECLI:EU:C:2017:402

JUDGMENT OF THE COURT (Grand Chamber)

30 May 2017 (*)

(Appeal — Action for damages — Common foreign and security policy (CFSP) — Restrictive measures against the Islamic Republic of Iran — List of persons and entities subject to the freezing of funds and economic resources — Material damage — Non-material damage — Error of assessment in respect of the amount of compensation — None — Cross-appeal — Conditions governing the incurring of the European Union's non-contractual liability — Obligation to substantiate the restrictive measures — Sufficiently serious breach)

In Case C-45/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 February 2015,

Safa Nicu Sepahan Co., established in Isfahan (Iran), represented by A. Bahrami, avocat,

appellant,

the other party to the proceedings being:

Council of the European Union, represented by R. Liudvinaviciute-Cordeiro, M. Bishop and I. Gurov, acting as Agents,

defendant at first instance,

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by M. Gray, acting as Agent,

intervener in the appeal,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, M. Ilešič, L. Bay Larsen and T. von Danwitz, Presidents of Chambers, A. Rosas (Rapporteur), J. Malenovský, E. Levits, J.-C. Bonichot, A. Arabadjiev, C.G. Fernlund, C. Vajda, S. Rodin, F. Biltgen and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 May 2016,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2016,

gives the following

Judgment

1 By its appeal, Safa Nicu Sepahan Co. asks the Court to set aside in part the judgment of the General Court of the European Union of 25 November 2014, *Safa Nicu Sepahan* v *Council* (T-384/11, 'the judgment under appeal', EU:T:2014:986), by which the General Court dismissed in part its action for, inter alia, damages by way of compensation for the material and non-material damage it claimed to have suffered as a result of its designation on the list of entities whose funds and economic resources were frozen pursuant to point 19 of Part I.B of Annex I to Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 136, p. 26) and point 61 of Part I.B of Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1) ('the provisions at issue').

2 By its cross-appeal, the Council of the European Union asks the Court to set aside in part the judgment under appeal in so far as the European Union was ordered to pay Safa Nicu Sepahan compensation in respect of the non-material damage sustained by the latter in consequence of the restrictive measures imposed by the provisions at issue.

The background to the dispute

3 The background to the dispute is set out in paragraphs 1 to 13 of the judgment under appeal in the following terms:

'1 This case has been brought in connection with the restrictive measures introduced in order to apply pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems ("nuclear proliferation").

2 The applicant, Safa Nicu Sepahan ..., is an Iranian limited company.

3 By Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP (OJ 2011 L 136, p. 65), the name of an entity identified as “Safa Nicu” was entered on the list of entities involved in nuclear proliferation set out in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

4 Consequently, the name of the entity identified as “Safa Nicu” was entered in the list in Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), by [Implementing Regulation No 503/2011].

5 In the statement of reasons in Decision 2011/299 and Implementing Regulation No 503/2011, the entity identified as “Safa Nicu” was described as a “communications firm that supplied equipment for the Fordow (Qom[, Iran]) facility built without being declared to the [International Atomic Energy Agency (UN) (IAEA)]”.

6 Having been alerted to this by one of its business partners, the applicant, by a letter dated 7 June 2011, requested the Council of the European Union to amend Annex VIII to Regulation No 961/2010, either by correcting and amending the listing of the entity identified as “Safa Nicu”, or by removing it. In this regard, it submitted that either the said listing designated an entity other than itself, or that the Council had made an error in including its name in Annex VIII to Regulation No 961/2010.

7 Having received no reply to its letter of 7 June 2011, the applicant contacted the Council by telephone and then sent it a further communication on 23 June 2011.

8 The listing of the entity identified as “Safa Nicu” in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010 was retained by Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p.71) and by Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 (OJ 2011 L 319, p. 11).

9 In Decision 2011/783 and in Implementing Regulation No 1245/2011, the reference to “Safa Nicu” was replaced by the following: “Safa Nicu a.k.a. ‘Safa Nicu Sepahan’, ‘Safanco Company’, ‘Safa Nicu Afghanistan Company’, ‘Safa Al-Noor Company’ and ‘Safa Nicu Ltd Company’”. Likewise, five addresses in Iran, the United Arab Emirates and Afghanistan were given as identifying information for the entity concerned.

10 By letter of 5 December 2011 the Council informed the applicant that its name would continue to be listed in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010. It stated that the observations submitted by the applicant on 7 June 2011 did not justify the lifting of the restrictive measures. It explained that the listing of the entity identified as “Safa Nicu” did indeed refer to the applicant,

notwithstanding the incomplete details of its name. It also informed the applicant of the amendments mentioned in paragraph 9 above.

11 Following the repeal of Regulation No 961/2010 by [Regulation No 267/2012], the applicant's name was included by the Council in Annex IX to the latter regulation. The statement of reasons relating to the applicant is identical to that in Implementing Regulation No 1245/2011.

12 By letter of 11 December 2012, the Council informed the applicant that its name would continue to be listed in Annex II to Decision 2010/413 and in Annex IX to Regulation No 267/2012. In an annex to the letter, the Council communicated Regulation No 267/2012 to the applicant.

13 By Council Decision 2014/222/CFSP of 16 April 2014 amending Decision 2010/413 (OJ 2014 L 119, p. 65), the applicant's name was removed from the list in Annex II to Decision 2010/413. By Council Implementing Regulation (EU) No 397/2014 of 16 April 2014 implementing Regulation No 267/2012 (OJ 2014 L 119, p. 1), the applicant's name was therefore removed from the list in Annex IX to Regulation No 267/2012.'

The judgment under appeal

4 By application of 22 July 2011, Safa Nicu Sepahan brought an action for annulment and compensation before the General Court.

5 As regards, in the first place, the claim for annulment of the provisions at issue, the General Court stated that the Courts of the European Union must ensure that restrictive measures affecting persons or entities individually are adopted on a sufficiently solid factual basis. In that regard, the General Court emphasised, referring to paragraphs 64 to 66 of the judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian* (C-280/12 P, EU:C:2013:775), that it is the task of the competent EU authority to establish that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded. Consequently, the General Court asked the Council to produce information justifying the adoption and maintenance of the restrictive measures concerning Safa Nicu Sepahan.

6 Since the Council had stated that the only information available to it concerning the adoption and maintenance of those restrictive measures was a listing proposal presented by a Member State, and that the information in that proposal had been reproduced in the statement of reasons in the provisions at issue, the General Court concluded, in paragraph 38 of the judgment under appeal, that the Council had failed to substantiate the allegation that Safa Nicu Sepahan is a communications firm which supplied equipment for the Fordow (Qom) facility. Since that allegation was the only reason for the adoption and maintenance of restrictive measures against Safa Nicu Sepahan, the General Court annulled the provisions at issue.

7 As regards, in the second place, the claim for compensation made by Safa Nicu Sepahan, in paragraph 47 of the judgment under appeal, the General Court recalled the case-law according to which, in order for the European Union to incur non-contractual liability, a number of conditions must be satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct complained of and the damage pleaded.

8 With regard, first of all, to the condition as to the institution's unlawful conduct, the General Court noted, in paragraph 50 of the judgment under appeal, that the case-law requires a sufficiently serious breach of a rule of law intended to confer rights on individuals to be established, and, in paragraph 52 of that judgment, that the decisive test for a finding of such a breach is whether the institution concerned has manifestly and gravely disregarded the limits of its discretion. The General Court held, in paragraphs 57 and 58 of the judgment under appeal, that the relevant provisions of Regulations No 961/2010 and No 267/2012 set forth exhaustively the conditions in which restrictive measures are permitted and that, in so far as those provisions thus ensure that the individual interests of the persons concerned are protected, they are to be considered to be rules of law intended to confer rights on individuals. It would follow from the General Court's finding of invalidity in respect of the provisions at issue in the judgment under appeal that, in adopting those provisions, the Council acted in breach of those regulations.

9 In its subsequent examination of the sufficiently serious nature of that breach, the General Court ruled, in paragraphs 59 to 61 of the judgment under appeal, that, as regards the obligation to substantiate the restrictive measures adopted, the Council did not enjoy any discretion, since that obligation arose from the requirement to observe the fundamental rights of the persons and entities concerned. It also found, in paragraph 62 of that judgment, that the rule imposing that obligation on the Council did not give rise to any difficulties as regards its application or interpretation.

10 Having stated, moreover, in paragraphs 63 to 67 of the judgment under appeal, that the rule in question derived from General Court case-law established before the adoption of the first of the provisions at issue, on 23 May 2011, the General Court concluded, in paragraphs 68 and 69 of its judgment, that an administrative authority, exercising ordinary care and diligence, would have realised, at the time that provision was adopted, that the onus was upon it, in the circumstances of the case, to gather the information or evidence substantiating the restrictive measures concerning Safa Nicu Sepahan in order to be able to establish, in the event of a challenge, that those measures were well founded by producing that information or evidence before the EU judicature. Consequently, the General Court found that there had been a sufficiently serious breach of a rule of law intended to confer rights on individuals.

11 Secondly, and thirdly, the General Court stated that it is for Safa Nicu Sepahan to produce the evidence to establish the fact and the extent of actual and certain damage, and the fact that such damage is a sufficiently direct consequence of the conduct complained of.

12 With regard to Safa Nicu Sepahan's claim for reparation for non-material damage, the General Court found, in paragraph 85 of the judgment under appeal, that the unlawful adoption and maintenance of the restrictive measures concerning Safa Nicu Sepahan caused it non-material damage, conferring on it a right to receive compensation.

13 As regards the amount of the compensation to be awarded in respect of the non-material damage, the General Court, referring to paragraph 72 of the judgment of 28 May 2013, *Abdulrahim* v *Council and Commission* (C-239/12 P, EU:C:2013:331), recognised, in paragraphs 86 and 87 of the judgment under appeal, that annulment of Safa Nicu Sepahan's entry on the list of entities concerned by the restrictive measures at issue was such as to limit the amount of compensation to be awarded, but could not represent full reparation for the damage suffered. Having stated, in paragraphs 88 to 91 of the judgment under appeal, that account had to be taken, in particular, of the gravity of the breach identified, its duration, the Council's conduct and the effects that the allegation of Safa Nicu Sepahan's involvement in Iranian nuclear proliferation had had on third parties, the General Court fixed the amount of that compensation *ex aequo et bono* at EUR 50 000.

14 However, the General Court dismissed the claim by Safa Nicu Sepahan for compensation in respect of the material damage it claimed to have sustained

The forms of order sought

Forms of order sought in the appeal

15 By its appeal, Safa Nicu Sepahan claims that the Court should:

– set aside in part the judgment under appeal in so far as it dismisses the claim for compensation in respect of the material damage sustained;

– set aside in part the judgment under appeal in so far as it limits the amount of compensation for the non-material damage to the sum of EUR 50 000;

– order the Council to pay the sum of EUR 5 662 737.40, together with interest, by way of compensation for the material damage suffered as a result of its designation on the list of persons subject to restrictive measures;

– order the Council to pay the sum of EUR 2 000 000, plus interest, in damages by way of compensation for the non-material damage suffered as a result of its designation on the list of persons subject to restrictive measures;

– order the Council to pay the costs incurred by the appellant before the Court of Justice and the General Court, together with interest;

– in the alternative, order the Council to pay amounts determined *ex aequo et bono*, together with interest, by way of compensation for (1) material damage; and (2) non-material damage, the amount of compensation in respect of the latter to be no less than

the amount already awarded in that respect by the judgment under appeal, and order the Council to pay the costs incurred by the appellant before the Court of Justice and the General Court, together with interest; and

– in the further alternative, refer the case back to the General Court so that the latter may re-examine the quantum of damages and deliver a new judgment in the appellant's favour.

16 In its response, the Council contends that the Court should:

– dismiss the appeal as unfounded;

– substitute the grounds of the judgment under appeal as regards the concept of 'sufficiently serious breach of a rule of law', in accordance with the submissions set out in its response; and

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

Forms of order sought in the cross-appeal

17 By its cross-appeal, the Council claims that the Court should:

– set aside the judgment under appeal in so far as it orders the Council to pay compensation of EUR 50 000 to the appellant in respect of non-material damage sustained by the latter;

– dismiss the appellant's claim for compensation in respect of non-material damage; and

– order the appellant to pay the costs of the cross-appeal and of the proceedings at first instance.

18 In its response to the cross-appeal, Safa Nicu Sepahan asks the Court to declare the cross-appeal unfounded. It also repeats the form of order sought in its appeal, with the exception of that part put forward in the alternative by which it seeks to have the case referred back to the General Court so that the latter may re-examine the quantum of damages and deliver a new judgment in its favour.

19 By decision of the President of the Court of 5 August 2015, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the form of order sought by the Council.

Preliminary observations

20 Under Article 174 of the Rules of Procedure of the Court of Justice, a response is to seek to have the appeal allowed or dismissed, in whole or in part. Furthermore, in accordance with Articles 172 and 176 of those rules, the parties authorised to lodge a response may submit, by a document separate from the response, a cross-appeal which, according to Article 178(1) and the second sentence of Article 178(3) of those rules, must seek to have set aside, in whole or in part, the judgment under appeal on the basis of pleas in law and arguments separate from those relied on in the response. It is apparent from those provisions, read together, that the response may not seek to have the judgment under appeal set aside on the basis of distinct and independent grounds from those raised in the appeal, since such grounds may be raised only as part of a cross-appeal (judgment of 10 November 2016, *DTS Distribuidora de Televisión Digital* v *Commission*, C-449/14 P, EU:C:2016:848, paragraphs 99 to 101).

21 In so far as the Council asks the Court, by its response to Safa Nicu Sepahan's appeal, to substitute the grounds of the judgment under appeal in relation to one of the cumulative conditions governing the establishment of the European Union's non-contractual liability, namely that relating to the existence of a 'sufficiently serious breach' of a rule of law intended to confer rights on individuals, the claim does not seek to have the appeal allowed or dismissed but seeks to have set aside the decision of the General Court in point 2 of the operative part of the judgment under appeal, in which the Council is ordered to pay Safa Nicu Sepahan compensation of EUR 50 000 in respect of the non-material damage sustained by the latter, in so far as that decision is based on the finding of such a breach. Accordingly, since it does not satisfy the requirements of Article 174 of the Rules of Procedure, that head of claim is inadmissible.

22 Similarly, in so far as Safa Nicu Sepahan asks the Court, in its response to the Council's cross-appeal, to set aside in part the judgment under appeal and to award it fair compensation for the material and non-material damage sustained, those heads of claim are not limited to the pleas in law relied on in that cross-appeal, contrary to the requirements of Article 179 of the Rules of Procedure, and are, therefore, inadmissible.

23 The Council's cross-appeal must be examined first of all, since it concerns the first of the three conditions governing the establishment of the European Union's non-contractual liability, namely that relating to the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals.

The Council's cross-appeal

24 The cross-appeal is centred on two grounds of appeal.

The first ground of appeal in the cross-appeal, alleging an error of assessment of the conditions governing the establishment of the European Union's non-contractual liability

Arguments of the parties

25 According to the Council, the General Court erred in law by finding, in paragraphs 68 and 69 of the judgment under appeal, that the unlawful conduct in question constituted a 'sufficiently serious breach of a rule of law'.

26 The General Court had held, in paragraphs 59 to 61 of the judgment under appeal, that the Council did not enjoy any discretion with regard to its decision to include Safa Nicu Sepahan on the list of persons subject to the restrictive measures at issue. It came to that conclusion, according to the Council, by relying erroneously on the case-law as it stands at present following the judgments of 28 November 2013, *Council* v *Fulmen and Mahmoudian* (C-280/12 P, EU:C:2013:775), 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), in order to determine the extent of the Council's obligation to establish, in the event of a challenge, that the reasons relied on against the person covered by the restrictive measures are well founded, even though the case-law on that issue was not clearly settled at the time when the Council adopted the provisions at issue.

27 Furthermore, the General Court, according to the Council, erred in finding, in paragraph 62 of the judgment under appeal, that the rule requiring the Council to substantiate the restrictive measures concerned did not relate to a particularly complex situation and that it did not give rise to difficulties as regards its application or interpretation. The General Court had relied incorrectly on its own case-law, cited in paragraphs 64 to 67 of the judgment under appeal. Moreover, account should be taken of the difficulties associated with communication of confidential information underpinning a decision to include a person or an entity on a list relating to restrictive measures.

28 Safa Nicu Sepahan disputes those arguments.

Findings of the Court

29 It should be recalled that the conditions that must be satisfied in order for the European Union to incur non-contractual liability, under the second paragraph of Article 340 TFEU, include the requirement of a sufficiently serious breach of a rule of law that is intended to confer rights on individuals (see, to that effect, judgment of 19 April 2012, *Artegodan* v *Commission*, C-221/10 P, EU:C:2012:216, paragraph 80 and the case-law cited).

30 The Court has made it clear that that test is satisfied where a breach is established which implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion, the factors to be taken into consideration in that connection being, inter alia, the degree of clarity and precision of the rule breached and the measure of discretion left by that rule to the EU authorities (see, to that effect, in particular, judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraphs 55 and 56; of 25 January 2007, *Robins and Others*, C-278/05, EU:C:2007:56, paragraph 70; and of 19 June 2014, *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 102).

31 It also follows from the case-law that a breach of EU law will, in any event, clearly be sufficiently serious if it has persisted despite a judgment finding the breach in question to be established, or despite a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted a breach (judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 57, and of 12 December 2006, *Test Claimants in the FII Group Litigation*, C-446/04, EU:C:2006:774, paragraph 214).

32 It is necessary, in the light of that case-law, to determine whether the General Court erred in law when it held, notably in paragraphs 68 and 69 of the judgment under appeal, that the Council's failure to fulfil the obligation to gather the information or evidence substantiating the restrictive measures concerning Safa Nicu Sepahan in order to be able to establish, in the event of a challenge, that those measures were well founded by producing that information or evidence before the EU judicature, constituted, in the circumstances of the present case, a sufficiently serious breach of a rule of law intended to confer rights on individuals.

33 As is apparent from paragraph 37 of the judgment under appeal, it is common ground that the Council stated before the General Court that the only information available to it concerning the adoption and maintenance of the restrictive measures against Safa Nicu Sepahan was a listing proposal presented by a Member State and that the information in that proposal had been reproduced in the statement of reasons in the provisions at issue. It therefore follows from paragraph 37 of the judgment under appeal that the Council did not have information or evidence to substantiate the reasons for the adoption of restrictive measures against Safa Nicu Sepahan.

34 That said, according to the Council, the case-law on the basis of which it is for the Council, in the event of a challenge, to provide information or evidence substantiating the reasons for the adoption of restrictive measures against natural or legal persons was not clearly settled at the time when the first of the provisions at issue was adopted. Thus, notwithstanding the failure to comply with that obligation, the Council could not be held responsible for a sufficiently serious breach of EU law prior to the delivery of the judgments 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), and of 28 November 2013, *Council* v *Fulmen and Mahmoudian* (C-280/12 P, EU:C:2013:775), by which the Court clarified that case-law.

35 It will be recalled, as the Court has previously pointed out in case-law that predates the adoption of the provisions at issue, that the European Union is based on the rule of law and the acts of its institutions are subject to review by the Court of their compatibility with EU law and, in particular, with the FEU Treaty and the general principles of law (judgment of 29 June 2010, *E and F*, C-550/09, EU:C:2010:382, paragraph 44 and the case-law cited), and natural and legal persons must enjoy effective judicial protection.

36 With regard to respect for the principle of effective judicial protection, the Court held in paragraph 343 of the judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P,

EU:C:2008:461), that restrictive measures adopted in respect of natural or legal persons do not escape all review by the EU judicature, including where it has been claimed that the act laying them down concerns national security and terrorism.

37 As is evident from that case-law, the right to effective judicial protection requires the Council to provide, in the event of a challenge, information or evidence substantiating the reasons for the adoption of restrictive measures against natural or legal persons. It is apparent from paragraph 336 of the judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461) that it must be possible for the judicial review of restrictive measures adopted in respect of natural or legal persons to apply, in particular, to the lawfulness of the grounds on which the decision imposing a set of restrictive measures on a person or on an entity is based.

38 Similarly, in paragraph 57 of the judgment of 29 June 2010, *E and F* (C-550/09, EU:C:2010:382), the Court considered that an adequate review by the courts of the substantive legality of individual restrictive measures must cover, in particular, verification of the facts and of the evidence and information relied upon in order to adopt those measures.

39 Furthermore, although the cases giving rise to those judgments concerned asset-freezing measures adopted in the specific context of the fight against international terrorism, it is clear that the obligation to establish that restrictive measures targeting individual persons and entities are well founded, which is derived from that case-law, applies equally with regard to the adoption of asset-freezing restrictive measures aimed at applying pressure on the Islamic Republic of Iran, such as those covering Safa Nicu Sepahan, given, in particular, the individual nature of those restrictive measures and the considerable impact they are likely to have on the rights and freedoms of the persons and entities subject to them (see, in that regard, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 361 and 375).

40 In those circumstances, it must be held that the obligation on the Council to provide, in the event of a challenge, information or evidence substantiating the reasons for the adoption of restrictive measures against a natural or legal person was already apparent, at the time when the provisions at issue were adopted, from well-established case-law of the Court. Consequently, the General Court was fully entitled to find, notably in paragraphs 68 and 69 of the judgment under appeal, that the breach of that obligation over a period of almost three years constituted a sufficiently serious breach of a rule of law intended to confer rights on individuals, regardless of whether the rights at issue in the present case consist, in the words of paragraph 58 of that judgment, of the right not to have restrictive measures imposed contrary to the substantive conditions for the imposition of such measures, or arise, as referred to in paragraph 60 of that judgment, from the requirements of effective judicial protection.

41 The above finding is not affected by the Council's argument in relation to the difficulties associated with the confidential nature of information or evidence substantiating the reasons for a decision imposing restrictive measures on a natural or legal person. In the present case, the Council did not, at any stage in the proceedings before the General Court, rely on confidential information or evidence that may have been available to it to support the restrictive measures adopted against Safa Nicu Sepahan.

42 The first ground of appeal in the cross-appeal must, therefore, be rejected as unfounded.

The second ground of appeal in the cross-appeal, alleging an error of assessment of the conditions governing compensation for the non-material damage claimed by Safa Nicu Sepahan

Arguments of the parties

43 The Council submits that the General Court erred in law when it held, in paragraphs 86 to 92 of the judgment under appeal, that the annulment of the provisions at issue did not, in the circumstances of the case, represent full reparation for the damage suffered.

44 In so doing, the Council maintains that the General Court departed from the approaches taken in other cases and, in particular, in paragraph 241 of the judgment of 11 July 2007, *Sison* v *Council* (T-47/03, not published, EU:T:2007:207), in which the General Court held that annulment of the listing decision at issue constituted adequate compensation. Moreover, the Court has also ruled, in paragraph 72 of the judgment of 28 May 2013, *Abdulrahim* v *Council and Commission* (C-239/12 P, EU:C:2013:331), that annulment of the listing decision was capable of rehabilitating the person concerned or of constituting a form of reparation for the non-material damage which he had suffered.

45 Consequently, it would be appropriate, in the Council's submission, to set aside the General Court's decision ordering the Council to pay compensation of EUR 50 000 to the appellant in respect of damage sustained by the latter.

46 Safa Nicu Sepahan disputes those arguments.

Findings of the Court

47 It must be noted that, in its reasoning, the General Court correctly relied, in paragraph 86 of the judgment under appeal, on the judgment of 28 May 2013, *Abdulrahim* v *Council and Commission* (C-239/12 P, EU:C:2013:331), in ruling that annulment of the provisions at issue is capable of constituting a form of reparation for the non-material damage suffered by Safa Nicu Sepahan.

48 Although the General Court went on to consider, notably in paragraph 87 of the judgment under appeal, that, in the present case, annulment of Safa Nicu Sepahan's listing was such as to limit the amount of compensation awarded but could not represent full reparation for the non-material damage suffered, that assessment was based on its consideration of the circumstances of the case.

49 In that regard, it must be stated at the outset that, in deciding, on the basis of an assessment of the circumstances of the case, that financial reparation was necessary to ensure full reparation for the non-material damage suffered by Safa Nicu Sepahan, the General Court made an assessment that was not vitiated by an error of law. While the Court of Justice held, in the judgment of 28 May 2013, *Abdulrahim* v *Council and Commission* (C-239/12 P, EU:C:2013:331), that the annulment of unlawful restrictive measures is capable of constituting a form of reparation for non-material damage suffered, it does not follow from this that that form of reparation is necessarily sufficient, in every case, to ensure full reparation for such damage.

50 It should also be borne in mind that, according to well-established case-law, once the General Court has found the existence of damage, it alone has jurisdiction to assess, within the confines of the claim, the means and extent of compensation for the damage (judgments of 1 June 1994, *Commission* v *Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraphs 66 and 81, and of 9 September 1999, *Lucaccioni* v *Commission*, C-257/98 P, EU:C:1999:402, paragraph 34; and order of 14 December 2006, *Meister* v *OHIM*, C-12/05 P, EU:C:2006:779, paragraph 82).

51 However, in order for the Court of Justice to be able to review the judgments of the General Court, those judgments must be sufficiently reasoned and, as regards the assessment of the damage, indicate the criteria taken into account for the purposes of determining the amount decided upon (judgments of 14 May 1998, *Council* v *de Nil and Impens*, C-259/96 P, EU:C:1998:224, paragraphs 32 and 33, and of 9 September 1999, *Lucaccioni* v *Commission*, C-257/98 P, EU:C:1999:402, paragraph 35; and order of 3 September 2013, *Idromacchine and Others* v *Commission*, C-34/12 P, not published, EU:C:2013:552, paragraph 80).

52 In paragraphs 88 to 91 of the judgment under appeal, the General Court ruled that, for the purposes of determining the amount of compensation to be awarded for non-material damage in the case, it was appropriate to take account, in particular, of the gravity of the breach identified, its duration, the Council's conduct, and the effects that the allegation of Safa Nicu Sepahan's involvement in Iranian nuclear proliferation had had on third parties. The General Court found, in essence, that the Council's allegation against Safa Nicu Sepahan was particularly serious, that that allegation had not, however, been substantiated by any relevant information or evidence, and that the Council had not, either on its own initiative or in response to the objections of Safa Nicu Sepahan, checked whether the allegation was well founded in order to limit the harmful consequences which it would entail for that undertaking.

53 In the light of the foregoing considerations, the General Court set out the criteria taken into account in determining the amount of compensation awarded. In those circumstances, the finding in paragraph 92 of the judgment under appeal, to the effect that the non-material damage suffered by Safa Nicu Sepahan amounts, according to a fair evaluation *ex aequo et bono*, to EUR 50 000, cannot be challenged by this Court.

54 Consequently, the second ground of appeal in the cross-appeal must be rejected as unfounded.

55 Having regard to all the foregoing considerations, the cross-appeal must be dismissed.

The appeal brought by Safa Nicu Sepahan

56 In support of its claims, Safa Nicu Sepahan puts forward two grounds of appeal, the first relating to reparation for the material damage it sustained, and the second, to reparation for the non-material damage.

The first ground of appeal, alleging infringement of the second paragraph of Article 340 TFEU, Article 41(3) of the Charter, contradictory reasoning, distortion of the facts and evidence, and infringement of the obligation to state reasons when assessing the material damage

57 The first ground of appeal is in five parts. The Court considers it appropriate to examine the second to fifth parts of this ground of appeal before the first part.

The second part of the first ground of appeal

– Arguments of the parties

58 By the second part of the first ground of appeal, Safa Nicu Sepahan maintains that, despite the General Court's acknowledgement, in paragraphs 99, 102, 104, 145 and 147 of the judgment under appeal, of material damage resulting from the adoption of the restrictive measures at issue in connection with the contract for the refurbishment of the Derbendikhan electrical substation (Iraq), the General Court refused, arbitrarily and contrary to the second paragraph of Article 340 TFEU and to Article 41(3) of the Charter of Fundamental Rights of the European Union ('the Charter'), to order the Council to make good the damage caused. In addition, the General Court distorted the clear sense of the evidence by stating, in paragraph 104 of the judgment under appeal, that the 'fact and extent of the damage' had not been established. Similarly, in paragraph 106 of that judgment, the General Court distorted the clear sense of the evidence put forward by Safa Nicu Sepahan in relation to its profit margin and its profitability ratio in the context of that contract.

59 Safa Nicu Sepahan submits, moreover, that, in paragraphs 99 and 100 of the judgment under appeal, the General Court arbitrarily refused to award it compensation

for the damage resulting from the closure of its bank accounts by the Emirate National Bank of Dubai, even though the General Court found, in paragraphs 145 and 147 of that judgment, that a significant decrease in turnover and profitability of Safa Nicu Sepahan, its dismissal of numerous employees, and other costs borne by that company, had been established. It further argues that the grounds of the judgment under appeal are contradictory and vitiated by a distortion of the evidence in so far as the General Court considered, in paragraph 98 of its judgment, that Safa Nicu Sepahan could have obtained financial services equivalent to those previously provided by the Emirate National Bank of Dubai from another bank, even though the General Court had noted, in paragraph 96 of the judgment, that any bank working together with Safa Nicu Sepahan would be likely to be targeted by the restrictive measures adopted by the European Union.

60 The Council disputes those arguments.

– Findings of the Court

61 It must be noted, first, that any damage for which compensation is sought in an action for non-contractual liability of the European Union under the second paragraph of Article 340 TFEU must be actual and certain (see judgments of 21 May 1976, *Roquette frères* v *Commission*, 26/74, EU:C:1976:69, paragraphs 22 and 23, and of 16 July 2009, *SELEX Sistemi Integrati* v *Commission*, C-481/07 P, not published, EU:C:2009:461, paragraph 36). Secondly, in order for the non-contractual liability of the European Union to be capable of being established, the damage must flow sufficiently directly from the unlawful conduct of the institutions (see, to that effect, judgments of 4 October 1979, *Dumortier and Others* v *Council*, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79, EU:C:1979:223, paragraph 21, and of 12 December 2006, *Test Claimants in the FII Group Litigation*, C-446/04, EU:C:2006:774, paragraph 218).

62 In any event, it is for the party seeking to establish the European Union's non-contractual liability to adduce conclusive proof as to the existence and extent of the damage it alleges (judgments of 16 September 1997, *Blackspur DIY and Others* v *Council and Commission*, C-362/95 P, EU:C:1997:401, paragraph 31, and of 16 July 2009, *SELEX Sistemi Integrati* v *Commission*, C-481/07 P, not published, EU:C:2009:461, paragraph 36 and the case-law cited), and as to the existence of a sufficiently direct causal nexus between the conduct of the institution concerned and the damage alleged (see, to that effect, judgment of 30 January 1992, *Finsider and Others* v *Commission*, C-363/88 and C-364/88, EU:C:1992:44, paragraph 25, and order of 31 March 2011, *Mauerhofer* v *Commission*, C-433/10 P, not published, EU:C:2011:204, paragraph 127).

63 With regard to the complaint that the General Court arbitrarily refused to award Safa Nicu Sepahan compensation for the damage allegedly sustained as a result of the termination of the contract for the refurbishment of the Derbendikhan electrical substation, it must be held that that complaint is based on a misreading of the judgment under appeal. Since the General Court found, in paragraphs 99, 102 and 104 of that judgment, that the allegations concerning the fact and extent of the damage allegedly

suffered were not substantiated by evidence, the General Court was right to reject Safa Nicu Sepahan's claim for compensation, in so far as it related to that head of claim, in paragraph 107 of the judgment under appeal. Similarly, having found, in paragraphs 145 and 147 of that judgment, that Safa Nicu Sepahan had not produced evidence that enabled the fact and any extent of the damage suffered to be ascertained, the General Court cannot be accused of having acted arbitrarily.

64 In addition, as regards the argument concerning the General Court's alleged breach, when assessing the damage claimed, of the principles of proportionality and of 'equitable evaluation', which Safa Nicu Sepahan describes as general principles common to the laws of the Member States, within the meaning of the second paragraph of Article 340 TFEU and of Article 41(3) of the Charter, it must be held that such principles cannot in this instance alter the conclusion that it was for Safa Nicu Sepahan to adduce conclusive proof as to the existence and extent of the damage it alleged.

65 As to the argument that the General Court distorted the clear sense of the evidence in paragraphs 104 and 106 of the judgment under appeal, it will be recalled that merely making reference to such a distortion does not satisfy the requirements laid down by the case-law of the Court under which, in particular, an appellant must indicate precisely the evidence alleged to have been distorted (judgment of 7 September 2016, *Pilkington Group and Others* v *Commission*, C-101/15 P, EU:C:2016:631, paragraph 62 and the case-law cited).

66 First, Safa Nicu Sepahan does not specify in what respect the General Court distorted the clear sense of the evidence by finding, in paragraph 104 of the judgment under appeal, that the fact and extent of the damage had not been established. Secondly, with regard to the complaint that the General Court distorted the clear sense of the evidence by stating in paragraph 106 of the judgment under appeal that Safa Nicu Sepahan had not indicated the usual profitability ratio in the industry in which it operates, although Safa Nicu Sepahan claims to have provided it, stating it to be 20% of the contract price, it should be noted that that argument stems from an inaccurate reading of the judgment under appeal in so far as the General Court's finding in that paragraph was not that Safa Nicu Sepahan had not referred to such a profitability ratio but that it had not produced sufficiently precise information in that regard, or any other information establishing the fact and quantum of the damage allegedly sustained.

67 As regards the complaint that the General Court arbitrarily rejected the claim for compensation for damage arising from the closure of the bank accounts of Safa Nicu Sepahan, it must be noted that, while the General Court inferred, in paragraph 96 of its judgment, from a letter produced by Safa Nicu Sepahan that the closure of those bank accounts by the Emirate National Bank of Dubai may have occurred as a result of the adoption of the restrictive measures at issue, it nevertheless found, in paragraphs 97 to 100 of its judgment, that Safa Nicu Sepahan had not established that it had suffered damage as a result of that closure, noting in particular, in paragraph 97, that the Emirate National Bank of Dubai had not frozen the funds deposited in those accounts but had returned them to Safa Nicu Sepahan. Similarly, in paragraphs 145 and 147 of the

judgment under appeal, the General Court concluded that there was no causal link between the damage allegedly suffered and the decrease in turnover and profitability of Safa Nicu Sepahan, finding, on the one hand, that Safa Nicu Sepahan had not provided proof of the causes of those developments and, on the other hand, that, even if a causal link could be inferred from the very existence of the restrictive measures concerned, Safa Nicu Sepahan had not produced evidence that enabled the extent of the damage to be ascertained. Thus, the General Court did not fail to fulfil its duty to state reasons in rejecting that claim for compensation.

68 Next, as regards the argument alleging contradictory reasoning and distortion of the clear sense of the evidence in paragraphs 96 and 98 of the judgment under appeal, it must be stated that that argument is not in any event capable of overturning the General Court's finding in paragraph 97 of that judgment, which in itself is sufficient for the General Court to have rejected Safa Nicu Sepahan's claim for compensation in relation to the damage it allegedly sustained because of the closure of its bank accounts by the Emirate National Bank of Dubai.

69 Consequently, the second part of the first ground of appeal must be rejected.

The third part of the first ground of appeal

– Arguments of the parties

70 By the third part of the first ground of appeal, Safa Nicu Sepahan submits, first, that the General Court infringed the second paragraph of Article 340 TFEU and Article 41(3) of the Charter because it refused to award Safa Nicu Sepahan compensation for the damage allegedly suffered as a result of the termination of its business relationship with Siemens AG, one of its major suppliers, despite having acknowledged, in paragraphs 109 and 110 of the judgment under appeal, that that termination was the direct result of the adoption of the restrictive measures at issue. Again in paragraph 110, the General Court also found, in contradiction thereto, that a refusal to supply products does not, in itself, constitute damage. In addition, as regards the decrease in turnover of Safa Nicu Sepahan because of the adoption of restrictive measures against it, the General Court, it is claimed, distorted the clear sense of the evidence and its own findings of fact in paragraphs 145 and 147 of the judgment under appeal in rejecting the claim for compensation.

71 Secondly, Safa Nicu Sepahan complains that the General Court distorted the facts and the evidence when it found, in paragraphs 115 and 116 of the judgment under appeal, that the determining cause of the termination of Safa Nicu Sepahan's contractual relationship with Mobarakeh Steel Company was not the adoption of the restrictive measures concerning Safa Nicu Sepahan but the delay in the performance of the contract concerned. The General Court had concluded, in paragraph 113 of the judgment under appeal, that there was a causal link between the termination of that contractual relationship and the adoption of those restrictive measures. In addition, by finding, in paragraphs 133, 136 to 139, 145 and 147 of the judgment under appeal, that Safa Nicu

Sepahan had failed to establish that the alleged damage was the result of the termination of business relations by its European suppliers, the General Court required proof that was impossible to provide and distorted the aim of the restrictive measures, which is to inflict maximum economic and financial harm on the targeted entity.

72 The Council disputes those arguments.

– Findings of the Court

73 As regards the complaint that the General Court, arbitrarily and contrary to the second paragraph of Article 340 TFEU and Article 41(3) of the Charter, rejected Safa Nicu Sepahan's claim for compensation in relation to damage allegedly sustained as a result of the termination of its business relationship with Siemens, it should be noted that, while the General Court referred, in paragraphs 109, 110, 145 and 147 of the judgment under appeal, to the negative effects that restrictive measures may have on a company's business relationship with its suppliers and on its turnover, it did not find, in those paragraphs, that the termination of such a relationship amounted, in itself, to damage that can be made good. On the contrary, in paragraph 110 of that judgment, the General Court ruled, correctly and for reasons that are not contradictory, that actual and certain material damage is capable of arising only from the impact of the termination of business relations with a company's suppliers on that company's financial results, not from the termination itself.

74 As regards the argument put forward by Safa Nicu Sepahan that the General Court's finding that there was no material damage represents a distortion of the facts showing a decline in the financial results of that undertaking, to which reference is made in paragraphs 145 and 147 of the judgment under appeal, it should be borne in mind that, as is apparent from paragraph 65 of the present judgment, merely making reference to such a distortion does not satisfy the requirements laid down by the case-law of the Court under which, in particular, an appellant must indicate precisely the evidence alleged to have been distorted. Moreover, such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 6 April 2006, *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraph 54 and the case-law cited).

75 Yet Safa Nicu Sepahan merely refers in that regard to eight annexes to the pleadings it lodged with the General Court, without in any way specifying of what the alleged distortion consists. In those circumstances, and in view of the fact that, save where the clear sense of the facts and evidence has been distorted, which has not been established in this case, the assessment of those facts and that evidence does not constitute a point of law which is subject to review by the Court of Justice in appeal proceedings (see, to that effect, in particular, judgments of 3 September 2009, *Moser Baer India* v *Council*, C-535/06 P, EU:C:2009:498, paragraph 32 and the case-law cited; of 7 April 2016, *Akhras* v *Council*, C-193/15 P, EU:C:2016:219, paragraph 67 and the case-law cited; and of 8 September 2016, *Iranian Offshore Engineering & Construction* v

Council, C-459/15 P, not published, EU:C:2016:646, paragraph 44), that argument must be rejected as inadmissible.

76 As regards the argument alleging that the General Court distorted the facts because it found, in paragraphs 115 and 116 of the judgment under appeal, that the main factor that led to the termination by Mobarakeh Steel Company of the contract concerned was the delay in the performance of that contract, and not the adoption of the restrictive measures concerning Safa Nicu Sepahan, it should be recalled, as is, in essence, apparent from paragraph 74 of the present judgment, that there is distortion where, without recourse to new evidence, the assessment of the existing evidence appears to be clearly incorrect. That is the case, in particular, where the inferences drawn by the General Court from certain documents are not consistent with the meaning and implications of those documents read as a whole (judgment of 18 July 2007, *Industrias Químicas del Vallés* v *Commission*, C-326/05 P, EU:C:2007:443, paragraphs 60 and 63).

77 It must be noted in that regard that the letter of 3 September 2011 from Mobarakeh Steel Company, annexed to the reply which Safa Nicu Sepahan submitted to the General Court, shows that the termination of the contract concerned was motivated, at least partly, by Safa Nicu Sepahan's delay in performing the contract as against the date by which the contract was required to be performed, which was stated in that letter and which, as the General Court correctly noted in paragraph 114 of the judgment under appeal, was more than six months before the restrictive measures were adopted in respect of Safa Nicu Sepahan. In those circumstances, when the General Court ruled, in paragraph 116 of the judgment under appeal, that the adoption of the restrictive measures concerning Safa Nicu Sepahan was not the determining and direct cause of the termination of that contract, without finding that delay in itself to have constituted such a cause, the General Court's assessment of that evidence could not be considered manifestly erroneous.

78 As regards, moreover, the argument put forward by Safa Nicu Sepahan that the General Court had, in paragraphs 133, 136 to 139, 145 and 147 of the judgment under appeal, required proof which it was impossible to provide in order to establish the damage sustained as a result of the adoption of the restrictive measures at issue, it must be held that it is apparent from those paragraphs that the General Court rejected as insufficient the evidence produced by Safa Nicu Sepahan, notably because it did not enable orders actually placed with European suppliers of Safa Nicu Sepahan, the volume of equipment purchased by Safa Nicu Sepahan from those suppliers, the causes of the decrease in that company's turnover and, more generally, actual harmful consequences, to be identified.

79 It should be noted in that regard that the existence of actual and certain damage cannot be considered in the abstract by the EU judicature but must be assessed in relation to the specific facts characterising each particular case in point (judgment of 15 June 2000, *Dorsch Consult* v *Council and Commission*, C-237/98 P, EU:C:2000:321, paragraph 25).

80 The requirement relating to the provision of evidence, such as that referred to by the General Court in paragraphs 133, 136 to 139, 145 and 147 of the judgment under appeal, is essential if the Court is to be able to rule on the fact and extent of alleged damage. Having found that Safa Nicu Sepahan had not provided such evidence, the General Court correctly ruled that the evidence provided by that company was insufficient to establish the fact and extent of the damage alleged.

81 The third part of this ground of appeal must therefore be rejected.

The fourth part of the first ground of appeal

– Arguments of the parties

82 By the fourth part of the first ground of appeal, Safa Nicu Sepahan submits, first, that the General Court infringed the second paragraph of Article 340 TFEU and Article 41(3) of the Charter because the General Court refused to award it compensation for the damage it claimed to have sustained as a result of the discontinuance of the business relations necessary for the modernisation of the electrical equipment at the Euphrates Dam in Syria. Secondly, Safa Nicu Sepahan complains that the General Court infringed its obligation to state reasons in that it failed, in paragraph 120 of the judgment under appeal, to set out the reasons for its rejection of Safa Nicu Sepahan's argument that the delay in carrying out the project to modernise the electrical equipment at the dam was attributable to the adoption of the restrictive measures to which Safa Nicu Sepahan was subject.

83 The Council disputes those arguments.

– Findings of the Court

84 As regards the argument that the General Court infringed the second paragraph of Article 340 TFEU and Article 41(3) of the Charter by holding, in paragraph 122 of the judgment under appeal, that Safa Nicu Sepahan had not produced any evidence to establish its profit margin in the context of the project for the modernisation of the electrical equipment at the Euphrates Dam, it must be noted that that argument is designed, in essence, to lead to a reassessment of the evidence adduced at first instance. Since, in accordance with the case-law referred to in paragraph 75 of the present judgment, save where the clear sense of the evidence is distorted, the assessment of the value to be attached to such evidence does not constitute a point of law which is subject, as such, to review by the Court in appeal proceedings, that argument must be rejected as inadmissible.

85 With regard to the complaint that the General Court failed to give reasons, in paragraph 120 of the judgment under appeal, for its rejection of Safa Nicu Sepahan's argument that the letters relating to that project did establish that it was plausible that the reason for the delay in carrying out the project was the adoption of the restrictive measures at issue, it must be noted that the obligation to state reasons established by

Article 296 TFEU is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, the latter will affect the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect. It follows that objections and arguments intended to establish that a measure is not well founded are irrelevant in the context of a ground of appeal alleging an inadequate statement of reasons or a lack of such a statement (judgment of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 37 and the case-law cited).

86 In the present case, the General Court stated, in paragraph 121 of the judgment under appeal, that it was true that Safa Nicu Sepahan had presented a list of machines and components for the project in question, but that it had not put forward any material that established that delivery of those products was unable to take place because of the adoption of the restrictive measures at issue. In paragraph 122 of its judgment, the General Court found that Safa Nicu Sepahan had not produced any evidence proving the loss allegedly sustained because a portion of the contract in question had to be subcontracted. Having identified, in paragraphs 123 and 124 of its judgment, other matters not included in the documents before the Court and thus precluding the fact and extent of the alleged damage from being established, the General Court, in paragraph 125 of its judgment, rejected Safa Nicu Sepahan's claim for compensation in so far as it concerned the electrical equipment project at the Euphrates Dam.

87 In those circumstances, the General Court did not fail to fulfil its obligation to state reasons under Article 296 TFEU.

88 The fourth part must therefore be rejected.

The fifth part of the first ground of appeal

– Arguments of the parties

89 By the fifth part of the first ground of appeal, Safa Nicu Sepahan submits, first, that the General Court infringed the second paragraph of Article 340 TFEU and Article 41(3) of the Charter by refusing to award it compensation for the damage allegedly sustained as a result of the discontinuance of the business relations necessary for the performance of its contractual obligations in respect of projects for the construction of electrical substations in Kunduz (Afghanistan) and Baghlan (Afghanistan). Secondly, Safa Nicu Sepahan claims that the General Court distorted the facts and evidence when it found, in paragraph 130 of the judgment under appeal, that Safa Nicu Sepahan had failed to establish that Siemens' cancellation of order number P06000/CO/3060 had made it impossible for Safa Nicu Sepahan to perform its contractual obligations in connection with those projects, although the Court had noted, in paragraphs 109 and 147 of that judgment, that Safa Nicu Sepahan could not complete those projects without recourse to subcontractors.

90 The Council disputes those arguments.

– Findings of the Court

91 As regards the argument alleging infringement of the second paragraph of Article 340 TFEU and Article 41(3) of the Charter, it must be noted that Safa Nicu Sepahan does not identify with the requisite precision the contested elements of the judgment under appeal.

92 So far as concerns the complaint that the General Court distorted the facts when it found, in paragraph 130 of the judgment under appeal, that Safa Nicu Sepahan could have performed the contract for the construction of electrical substations in Kunduz and Baghlan without using subcontractors, it must be noted that that argument is based on a misreading of the judgment under appeal. The General Court did not suggest, in paragraph 130, that Safa Nicu Sepahan would in any event have been in a position to complete those projects without using subcontractors. It is, however, evident from that paragraph that the General Court found that Safa Nicu Sepahan had failed to establish that the contract could not be performed using a supplier other than Siemens. In those circumstances, the General Court cannot be criticised for any distortion.

93 The fifth part of the first ground of appeal must therefore be rejected.

The first part of the first ground of appeal

– Arguments of the parties

94 By the first part of the first ground of appeal, Safa Nicu Sepahan claims that the General Court breached the general principles common to the laws of the Member States, within the meaning of the second paragraph of Article 340 TFEU and Article 41(3) of the Charter, defining the system of non-contractual liability of the European Union, in so far as, despite the evidence put forward, the General Court rejected the claim for compensation for material damage, whilst having acknowledged the existence of material damage, notably in paragraphs 109, 145 and 147 of the judgment under appeal.

– Findings of the Court

95 It must be noted that the first part of the first ground of appeal relates to the reasoning of the judgment under appeal, criticised under the other parts of this ground of appeal in relation to the various heads of damage allegedly sustained by Safa Nicu Sepahan, without any additional material having been provided in support of this ground of appeal.

96 Since the other parts of the first ground of appeal have not been upheld, the first part must also be rejected.

The alternative claim put forward by Safa Nicu Sepahan in relation to the first ground of appeal

– Arguments of the parties

97 In the alternative, Safa Nicu Sepahan maintains that the General Court should have awarded it compensation in an amount to be determined by the Court, in accordance with the principles of proportionality and 'equitable evaluation', general principles common to the laws of the Member States, within the meaning of the second paragraph of Article 340 TFEU and Article 41(3) of the Charter.

98 The Council disputes that argument.

– Findings of the Court

99 As is apparent from the foregoing, the General Court correctly held that the conditions for the European Union to incur non-contractual liability in respect of the material damage claimed by Safa Nicu Sepahan were not satisfied, and therefore the General Court was also fully entitled not to award compensation, as applied for by Safa Nicu Sepahan, in that respect.

100 In the light of all the above considerations, the first ground of appeal must be rejected.

The second ground of appeal, alleging infringement of the obligation to state reasons and breach of the principle of proportionality in the context of compensation for non-material damage

Arguments of the parties

101 By its second ground of appeal, Safa Nicu Sepahan complains that the General Court awarded it compensation of only a negligible amount of EUR 50 000 in respect of the damage suffered, even though, in paragraphs 83, 86, 88 and 89 of the judgment under appeal, it was held that the breach committed was particularly serious and the effects lasted for almost three years. The General Court failed to give reasons for setting that amount. Moreover, the grounds of the judgment under appeal breach the principle of proportionality. Safa Nicu Sepahan states in particular that the General Court did not take into account the fact that many employees had had to be dismissed, causing damage to its reputation, or the fact that the effects of the restrictive measures were continuing to harm the company. Safa Nicu Sepahan is still mentioned, for example, on the website 'Iran Watch'.

102 The Council disputes those arguments.

Findings of the Court

103 As regards the alleged breach of the principle of proportionality, it should be noted that, as is apparent from the case-law cited in paragraphs 50 and 51 of the present judgment, once the General Court has found the existence of damage, it alone has jurisdiction to assess, within the confines of the claim, the means and extent of compensation for the damage. However, according to the same case-law, in order for the Court of Justice to be able to review the judgments of the General Court, those judgments must be sufficiently reasoned and, as regards the assessment of the damage, indicate the criteria taken into account for the purposes of determining the amount decided upon.

104 With regard to the alleged infringement of the obligation to state reasons, it must be noted that, in paragraph 88 of the judgment under appeal, the General Court established that, in the circumstances of the case, the allegation that Safa Nicu Sepahan was involved in Iranian nuclear proliferation had affected the way in which third parties, located for the most part outside the European Union, behaved towards that company. It found that there was non-material damage that could not be wholly offset by a subsequent finding that the provisions at issue were unlawful.

105 The General Court also underlined the particular seriousness of the allegation levelled by the Council at Safa Nicu Sepahan. It thus observed, in paragraphs 83 and 89 respectively of the judgment under appeal, that the allegation that Safa Nicu Sepahan was involved in Iranian nuclear proliferation arose from an official statement of the position of an EU institution, which was published in the *Official Journal of the European Union* and entailed binding legal consequences, and that it associated that company with an activity representing, in the Council's view, a threat to international peace and security.

106 The General Court also held, in paragraph 87 of the judgment under appeal, that the annulment of the provisions at issue was such as to limit the amount of compensation awarded but could not represent full reparation for the damage suffered. It stated in paragraphs 90 and 91 of its judgment that the allegation at issue had not been substantiated by any evidence, that the restrictive measures had been maintained for almost three years and that it did not appear that the Council had checked, during that period, whether that allegation was well founded in order to limit the harmful consequences which would result for the entity concerned.

107 In those circumstances, it must be held that the General Court gave adequate reasons for its decision, indicating the criteria applied in order to determine the amount of compensation.

108 As regards, lastly, the argument of Safa Nicu Sepahan that the restrictive measures at issue continue to produce harmful effects in its case, given that the allegation they contain still appears on websites such as 'Iran Watch', it must be noted that Safa Nicu Sepahan did not put that argument forward at first instance.

109 It has consistently been held by this Court that a plea raised for the first time in an appeal before this Court must be rejected as inadmissible. In an appeal, the Court's jurisdiction is confined to examining the assessment by the General Court of the pleas

argued before it. To allow a party to put forward in that context a plea in law which it has not raised before the General Court would mean allowing that party to bring before the Court of Justice, whose jurisdiction in appeals is limited, a wider case than that heard by the General Court (see, to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 165 and the case-law cited).

110 Therefore, this argument must be rejected as inadmissible.

111 In those circumstances, the second ground of appeal must be rejected as in part unfounded and in part inadmissible.

112 Consequently, the appeal must be dismissed.

Costs

113 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs. Under Article 138(1) of those rules, which is applicable 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. Article 138(3) of those rules states that where each party succeeds on some and fails on other heads, the parties are to bear their own costs.

114 In the present case, since Safa Nicu Sepahan and the Council have each been unsuccessful, they must be ordered to bear their own costs.

115 Article 140(1) of the Rules of Procedure, which is applicable to the procedure on appeal by virtue of Article 184(1) thereof, provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.

116 Consequently, the United Kingdom must bear its own costs.

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

1. **Dismisses the appeals brought by Safa Nicu Sepahan Co. and the Council of the European Union;**

2. **Orders Safa Nicu Sepahan Co. and the Council of the European Union to bear their own costs;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Lenaerts	Tizzano	Ilešič
Bay Larsen	von Danwitz	Rosas
Malenovský	Levits	Bonichot
Arabadjiev	Fernlund	Vajda
Rodin	Biltgen	Jürimäe

Delivered in open court in Luxembourg on 30 May 2017.

A. Calot Escobar	K. Lenaerts
Registrar	President

* Language of the case: English.