

Grounds of appeal and main arguments

In support of its appeal, the Commission puts forward the following three grounds.

According to the first and second grounds of appeal, the judgment under appeal wrongly rejects the Commission's submission that the action is inadmissible. In the context of the first ground of appeal, the Commission argues that the General Court erred in law in taking the view that the letters of 24 June and 8 July 2011 from the Commission's accountant produced binding legal effects. The accountant's letters, it submits, are in fact mere requests for payment in implementation of the Methacrylates decision and pave the way for the potential enforcement of that decision following the judgment of the General Court in Case T-217/06 ⁽¹⁾, which reduced the amount of the fine imposed on Arkema, whereas the judgment delivered on the same day in Case T-206/06 ⁽²⁾ (subsequently upheld by the order of the Court of Justice in Case C-421/11 P ⁽³⁾) upheld the fines imposed on the present respondents. The accountant's letters are not yet an enforcement measure and therefore do not set out a 'final position' of the Commission. Moreover, the accountant's letters do not produce binding legal effects distinct from those of the Methacrylates decision, which decision is no longer amenable to challenge following the exhaustion of the respondents' remedies. The second ground of appeal alleges that the judgment under appeal fails to respect the principles of *lis pendens* and *res judicata*, resulting from the order of the Court of Justice in Case C-421/11 P.

Lastly, the third ground of appeal, which concerns contradictory reasoning, is presented in the alternative, should the Court reject the first and second grounds. The General Court, it is submitted, incorrectly found in paragraph 113 that the rights of the Commission in relation to both Arkema and the defendants which were jointly and severally liable for payment had been fully satisfied, even though the General Court had correctly noted in paragraph 9 that Arkema regretted not being able to authorise the Commission to withhold a sum of any amount in the event that its action before the EU Courts was successful. That contradictory reasoning, the Commission argues, affects the reasoning of the General Court on the merits of the case and constitutes a sufficient ground for setting aside the judgment under appeal.

⁽¹⁾ ECLI:EU:T:2011:251.

⁽²⁾ ECLI:EU:T:2011:250.

⁽³⁾ ECLI:EU:C:2012:60.

Appeal brought on 13 July 2015 by Bank of Industry and Mine against the judgment of the General Court (First Chamber) of 29 April 2015 in Case T-10/13 *Bank of Industry and Mine v Council*

(Case C-358/15 P)

(2015/C 294/57)

Language of the case: French

Parties

Appellant: Bank of Industry and Mine (represented by: E. Rosenfeld and S. Perrotet, avocats)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court (First Chamber) of the European Union in Case T-10/13, notified to the appellant on 5 May 2015, in which the General Court dismissed the action for annulment brought by Bank of Industry and Mine in that case and ordered it to pay all of the costs;
- grant the form of order sought by the appellant at first instance;
- order the respondent to pay the costs of the two sets of proceedings.

Grounds of appeal and main arguments

The appellant relies on seven grounds in support of its appeal.

By its first ground of appeal, the appellant claims that the General Court erred in law in finding, in paragraph 99 of its judgment, that Decision 2012/635⁽¹⁾ had been taken by the Council pursuant to Article 29 TEU and by drawing the conclusion, in paragraph 101, that that decision did not have to be subject to the requirements laid down in Article 215(2) TFEU. The General Court also erred in law by holding, in paragraph 105 of its judgment, that the Council was correct to provide for implementing powers pursuant to the provisions of Article 291(2) TFEU. In addition, the Council also erred in law by finding that the conditions laid down for relying on Article 291(1) TFEU had been satisfied. Article 215 TFEU, it submits, is the only procedure applicable to restrictive measures. Article 291(2) TFEU could not therefore be applied since that article is applicable only to measures necessitating implementing measures. Measures for the freezing of funds are, however, in essence, implementing measures. Such measures cannot therefore fall within the substantive scope of application of Article 291(2) TFEU. Furthermore, the conditions laid down for recourse to Article 291(2) TFEU are not satisfied because the Council did not, in the contested decisions, properly justify its reliance on that procedure.

By its second ground of appeal, the appellant also claims that the General Court erred in law in finding that Article 20(1)(c) of Decision 2010/413⁽²⁾, as amended by Decision 2012/35⁽³⁾, Decision 2012/635 and Article 23(2)(d) of Regulation No 267/2012⁽⁴⁾, did not contravene the principles of legal certainty and predictability, proportionality and the right to property. The criterion of quantitative and qualitative significance referred to in paragraph 79 of the General Court's judgment is not mentioned in the contested acts. The General Court thus artificially created it in order to uphold the contested acts. In addition, that criterion is in itself vague, imprecise and disproportionate. The General Court therefore erred in law in finding that the fact that the appellant had transferred a contribution to the Iranian State constituted support within the meaning of the contested acts.

By its third ground of appeal, the appellant claims that the General Court erred in law in paragraphs 135 and 136 of its judgment in holding that the contested acts were sufficiently reasoned, even though the General Court itself recognised in paragraph 134 of that judgment that the contested acts did not take account of the extent and the detailed arrangements of the support attributed to the appellant. Furthermore, the appellant was unable, on a reading of the contested acts, to understand the reasons for which it had been sanctioned, a fact which points to an inadequacy in the reasoning.

By its fourth ground of appeal, the appellant claims that the General Court erred in law in finding, in paragraph 163 of its judgment, that the failure to re-examine the position of the appellant within the prescribed period was not capable of rendering unlawful its maintenance on the list of sanctioned entities despite the fact that that obligation is one which is strictly objective.

By its fifth ground of appeal, the appellant claims that the General Court erred in law in finding that the contested decisions did not infringe the appellant's fundamental rights and were not disproportionate despite the fact that those contested decisions were vague and imprecise. Similarly, the criterion of quantitative and qualitative significance laid down by the General Court was inherently arbitrary.

By its sixth ground of appeal, the appellant claims that the General Court erred in law in paragraphs 179 and 183 of its judgment in finding that the appellant was supporting the Iranian Government on the ground that it had transferred a mandatory contribution despite the fact that that contribution was merely a tax and that the appellant was in the same situation as any ordinary taxpayer.

By its final ground of appeal, the appellant claims that the General Court failed to find that the Council had contravened the principle of non-discrimination by sanctioning the appellant for having transferred a contribution to the Iranian State, without sanctioning all of the undertakings which were subject to that contribution.

⁽¹⁾ Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58).

⁽²⁾ 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).

⁽³⁾ Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22).

⁽⁴⁾ 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).