

- The Commission made a manifest error in having interpreted Article 11(4) of Directive 2003/54/EC as not requiring the national authorities to put forward, and prove the existence of, reasons concerning security of supply in order to be able to adopt measures which are incompatible with the rules pursuing harmonisation in the directive. Such an interpretation is in breach of the obligation to give a restrictive interpretation to a provision establishing an exception.
 - The Commission's interpretation of Article 11(4) of Directive 2003/54/EC would mean that Member States could make indefinite use of a rule which may, by virtue of Article 114 of the Treaty, be of only transitory application. The Commission's interpretation is therefore incompatible with the legal basis of Directive 2003/54/EC.
 - The Commission made a manifest error in having calculated the 15 % threshold laid down in Directive 2003/54/EC in such a way that it does not have the practical effect sought by the European Union legislature.
 - The Commission made a manifest error given that there are no problems of security of supply in Spain such as to justify the adoption of the notified measure.
 - The notified measure does not comply with the conditions laid down in Article 3(2) of Directive 2003/54/EC, which provides that public service obligations must be clearly defined, transparent, non discriminatory, verifiable and must guarantee equality of access for EU electricity companies to national consumers.
2. The second plea alleges that the Commission made a manifest error in holding that Article 106(2) of the Treaty is applicable to the notified measure. On the basis of that, the applicants maintain that:
- The Commission made a manifest error in taking the view that the provision made by Article 11(4) of Directive 2003/54/EC renders it unnecessary to consider whether in the present case the mandatory conditions for establishing a public service obligation is met.
 - The Commission made a manifest error in failing to assess the proportionality of the notified measure correctly and in having limited that analysis to determining that the compensation was not excessive.
 - In its application of Article 106(2) of the Treaty, the Commission failed to assess the infringement which the notified measure entailed for the right to property laid down in the Charter of Fundamental Rights of the European Union.

3. In relation to their third plea, concerning infringement of certain rules relating to procedural matters, the applicants claim that:

- The Commission infringed Article 108 of the Treaty and Article 4(4) of Regulation (EC) No 659/1999 ⁽²⁾ in failing to initiate a formal investigation procedure, despite the fact that there was objective and coherent evidence showing that the assessment of the compatibility of the notified measure entailed serious difficulties.
- In using the pre-notification phase in order to avoid opening a formal investigation procedure, the Commission misused its powers.

⁽¹⁾ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37).

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 7 October 2010 — Melli Bank v Council

(Case T-492/10)

(2010/C 328/82)

Language of the case: English

Parties

Applicant: Melli Bank plc (London, United Kingdom) (represented by: S. Gadhia, S. Ashley, Solicitors, D. Anderson, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

- annul paragraph 5 of Table B of Annex II to Council Decision 2010/413/CFSP ⁽¹⁾ in so far as it relates to the applicant;
- annul paragraph 3 of Table B of the Annex to Council Implementing Regulation (EU) No 668/2010 ⁽²⁾ in so far as it relates to the applicant;
- declare Article 7(2)(d) of Council Regulation (EC) No 423/2007 ⁽³⁾ inapplicable to the applicant; and
- order the Council to pay the costs of the application.

Pleas in law and main arguments

In the present case the applicant seeks the partial annulment of Council Implementing Regulation No 668/2010 and of Council Decision 2010/413/CFSP in so far as the applicant is included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision. Furthermore, the applicant applies, in accordance with Article 277 TFUE, for the inapplicability of Article 7(2)(d) of Council Regulation (EC) No 423/2007.

The applicant puts forward the following pleas in law in support of its claims.

First, the applicant argues that the contested regulation and decision were adopted in violation of the applicant's rights of defence and its right to effective judicial protection since the reasons given by the Council are insufficient for the applicant to understand the basis on which it has been designated and has consequently had its assets frozen. Furthermore, the applicant claims that the Council has failed to provide it with the evidence and/or documents from the file on which the Council has relied and accordingly the applicant has been unable to make effective representations regarding its designation.

Second, the applicant contends that the substantive criteria for its designation are not met and/or the Council committed a manifest error of assessment in determining whether or not those criteria were met. The applicant states that it is not 'owned or controlled' by an entity engaged in, directly associated with, or providing support for, Iran's alleged proliferation-sensitive nuclear activities or development of nuclear weapon delivery systems within the meaning given to the expression 'owned or controlled' in *Melli Bank v Council* Court's judgment (T-246/08) ⁽⁴⁾.

Third, the applicant argues that in so far as Article 7(2)(d) of Council Regulation (EC) No 423/2007 and/or Article 20(1)(b) of Council Decision 2010/413/CFSP are mandatory and require the Council to designate any subsidiary of a designated parent, the same are unlawful.

Fourth, the applicant submits that the substantive criteria for the designation of its parent and therefore the applicant are not met and/or the Council committed a manifest error of assessment in determining whether or not those criteria were met. The applicant argues that in so far as its parent is successful in its challenges to Council Regulation (EC) No 1100/2009 ⁽⁵⁾ (Case T-35/10) ⁽⁶⁾ and Council Decision 2008/475/EC ⁽⁷⁾ (Case T-390/08 ⁽⁸⁾), Council Implementing Regulation (EU) No 668/2010 and Council Decision 2010/413/CFSP must be annulled in so far as they apply to the applicant.

Fifth, the applicant claims that its designation and the freezing of all its assets worldwide have no rational relationship with the

aim being pursued by the Council and violates its right to property. Further it contends that the restrictive measures imposed are disproportionate in that they inflict considerable harm on the applicant and are not the least restrictive means that could have been employed.

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- (¹) Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, OJ 2010 L 195, p. 39
- (²) Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ 2010 L 195, p. 25
- (³) Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran, OJ 2007 L 103, p. 1
- (⁴) Joint Cases T-246/08 et T-332/08, *Melli Bank v Council*, [2009] ECR II-2629, currently under appeal as Case C-380/09 P, *Melli Bank v Council*, OJ 2009 C 282, p. 30
- (⁵) Council Regulation (EC) No 1100/2009 of 17 November 2009 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran and repealing Decision 2008/475/EC, OJ 2009 L 303, p. 31
- (⁶) Case T-35/10, *Bank Melli Iran v Council*, OJ 2010 C 100, p. 47
- (⁷) Council Decision of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran, OJ 2008 L 163, p. 29
- (⁸) Joint Case T-390/08, *Bank Melli Iran v Council*, [2009] ECR II-3967, currently under appeal as Case C-548/09 P, *Bank Melli Iran v Council*, OJ 2010 C 80, p. 10

Action brought on 7 October 2010 — Persia International Bank v Council

(Case T-493/10)

(2010/C 328/83)

Language of the case: English

Parties

Applicant: Persia International Bank plc (London, United Kingdom) (represented by: S. Gadhia, S. Ashley, Solicitors, D. Anderson, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— annul paragraph 2 of Table B of the Annex to Council Implementing Regulation (EU) No 668/2010 ⁽¹⁾ in so far as it relates to the applicant;