Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

26 October 2012*

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Action for annulment — Obligation to state the reasons on which the decision is based)

In Case T-63/12,

Oil Turbo Compressor Co. (Private Joint Stock), established in Tehran (Iran), represented by K. Kleinschmidt, lawyer,

applicant,

v

Council of the European Union, represented by M. Bishop and Z. Kupčová, acting as Agents,

defendant,

ACTION for annulment of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 17),

THE GENERAL COURT (Fourth Chamber),

composed of I. Pelikánová, President, K. Jürimäe (Rapporteur) and M. van der Woude, Judges,

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 11 July 2012,

gives the following

Judgment

Background to the dispute

1 The applicant, Oil Turbo Compressor Co. (Private Joint Stock), is a company established in Iran, which carries out production, research and service activities in the gas, petrochemical and energy sectors. In particular, it produces and markets turbines and turbocompressors adapted specifically to the needs of its clients.

* Language of the case: German.

2 On 26 July 2010, the Council adopted Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39). Article 20(1) of Decision 2010/413 provides for the freezing of the funds and economic resources of the persons and entities mentioned on the list in Annexes I and II thereto.

3 On 25 October 2010, following the adoption of Decision 2010/413, the Council adopted Regulation (EU) No 961/2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1). Article 16(2)(a) of Regulation No 961/2010 provides that all funds and economic resources of the persons, entities and bodies listed in Annex VIII to that regulation are to be frozen.

4 On 1 December 2011 the Council adopted Decision 2011/783/CFSP amending Decision 2010/413 concerning restrictive measures against Iran (OJ 2011 L 319, p. 71; 'the contested decision'), whereby, inter alia, it added the applicant to the list of persons and entities set out in Annex II to Decision 2010/413.

5 On the same day, the Council adopted Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), by which it added the applicant's name to the list in Annex VIII to Regulation No 961/2010.

6 In the contested decision, the Council gave the following reasons for the freezing of the applicant's funds and economic resources:

'Affiliated to EU-designated Sakhte Turbopomp va Kompressor (SATAK) (a.k.a. Turbo Compressor Manufacturer, TCMFG).'

7 By letter of 5 December 2011, the Council informed the applicant that it had been added to the list of persons and entitles in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010. That letter was returned to the Council with 'not at this address' stamped on it by the Iranian postal services.

8 By letter of 9 February 2012, the applicant requested the Council to re-examine the decision to include it on the list of persons and entities in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010.

Procedure and forms of order sought

9 By application lodged at the Court Registry on 13 February 2012, the applicant brought the present action.

10 By separate document lodged at the Court Registry on the same day, it applied for the case to be decided under an expedited procedure in accordance with Article 76a of the Rules of Procedure of the General Court.

11 By decision of 13 March 2012, the General Court (Fourth Chamber) granted that application.

12 At the hearing held on 11 July 2012, the parties presented their oral arguments and answered the oral questions asked by the Court.

13 The applicant claims that the Court should:

— annul the contested decision in so far as that decision concerns it;

— adopt a measure of organisation of procedure, under Article 64 of the Rules of Procedure, ordering the Council to produce all the documents in connection with the contested decision in so far as they concern it;

— order the Council to pay the costs.

14 The Council contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

Law

15 In support of its application, the applicant puts forward four pleas in law. The applicant alleges, first, a manifest error of assessment of the facts on which the contested decision is based; second, infringement of the right to a fair trial and to effective judicial protection; third, breach of the principle of proportionality; and, fourth, breach of the duty to state reasons on which a decision is based and of the right to be heard.

16 Under the first plea, first of all, the applicant claims that it has never been a branch of Sakhte Turbopomp va Kompressor (SATAK) and that the latter has never been one of its branches. Second, the Council confuses Turbo Compressor Manufacturer (TCMFG), which was a company associated with the applicant, with SATAK. Third, since it does not contain any evidence that TCMFG participated in nuclear activities involving a risk of proliferation and/or the development of nuclear weapon delivery systems or other weapons systems, the applicant takes the view that Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413 concerning restrictive measures against Iran (OJ 2011 L 136, p. 65), by which the Council added TCMFG to the persons and entities listed in Annex II to Decision 2010/413, is unlawful in so far as it concerns TCMFG. Fourth, on the date on which the contested decision was adopted there were no longer any cross shareholdings between the applicant and TCMFG, so that all the shares held by TCMFG were sold to D. on 6 June 2011 and all the shares the applicant held in TCMFG were sold to Sa.

17 The Commission contests the merits of the applicant's arguments.

18 According to the case-law, the review of the legality of an act by which restrictive measures are adopted with respect to an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based (see, to that effect, Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraphs 37 and 107).

19 Moreover, according to settled case-law, the legality of a European Union measure must be assessed on the basis of the elements of fact and of law existing at the time when the measure was adopted (see, by way of analogy, case T-322/01 *Roquette Frères* v *Commission* [2006] ECR II-3137, paragraph 325 and the case-law cited).

20 In the present case, the Council set out its reasoning for the freezing of the applicant's funds and economic resources as follows:

'Affiliated to EU-designated Sakhte Turbopomp va Kompressor (SATAK) (a.k.a. Turbo Compressor Manufacturer, TCMFG).'

21 It must be observed that the applicant acknowledges that it was associated with TCMFG, but produces several documents to show that there were no longer any cross shareholdings between it and that company at the time the contested decision was adopted on 1 December 2011, so that the Council's assertion that, at that time, it was a branch of TCMFG must be regarded as being substantively incorrect.

22 Thus, it is clear from the information in the file that TCMFG sold all the shares it held in the applicant to D. on 6 June 2011. The applicant also produces in that regard a copy of the notarised act and the copy of a receipt, dated 6 June 2011, for the payment of the sale price of IRR 363 036 010 000 (Iranian rials) (EUR 23 970 600). Furthermore, it produced the copy of the proof of payment for the tax paid on that sale to the Iranian tax authorities in the amount of IRR 14 521 440 400 (EUR 958 825). Finally, it must be observed, as the applicant submits, that the minutes of the meeting of its Board of 13 June 2011 endorsed the sale by TCMFG of its shares to D.

23 Likewise, the applicant produced documents proving that it no longer held any shares in TCMFG. In particular, it provided evidence that it sold its shares in TCMFG to Sa on 8 June 2011, that is to say the copy of the contract of sale, the copy of the receipt for payment of the sale price of IRR 160 772 410 000 (EUR 10 612 500) and a copy of the receipt for the payment of tax to the Iranian tax authorities for that sale of IRR 6 430 896 400 (EUR 424 621).

24 At the hearing, the Council stated that it did not challenge the relevance of that information. Therefore, it must be held that, even if TCMFG held shares in the applicant until 6 June 2011, the date on which TCMFG sold all those shares. The contested decision is based on an incorrect factual premiss, it being understood, as stated in paragraph 19 above, that the legality of that decision must be determined on the date of its adoption, that is on 1 December 2011.

25 That conclusion cannot be called in question by the Council's arguments.

26 In its defence, the Council submits that the sale of the cross shareholdings held by TCMFG and the applicant was only done to give the appearance of a demerger and to conceal the real shareholdings, which means that the reasons justifying the inclusion of the applicant on the list of persons and entities listed in Annex II to Decision 2010/413 were valid on the day on which the contested decision was adopted and remain so. Furthermore, at the hearing, it stated that despite the sale, TCMFG still had links with the applicant.

27 In that connection, it must be observed, as mentioned in paragraph 20 above, that the Council merely set out, in the contested decision, the fact that the applicant was a branch of SATAK alias TCMFG. It made no reference at all to the fact that, although TCMFG no longer held any shares in the applicant, that it exercised *de facto* control of the latter, the sale of the shares being a manoeuvre intended to circumvent the application of regulatory provisions enabling the Council to include in the list of persons and entities listed in Annex II to Decision 2010/413 the entities which are the property or under the control of persons and entities directly associated or providing support to Iran's nuclear activities posing a risk of proliferation or to the development of nuclear weapons systems.

28 Furthermore, it must be observed that, at the hearing, the Council expressly recognised that it had put forward further arguments in order to justify the inclusion of the applicant in the list in the defence and in the oral proceedings, since it did not have relevant evidence to support that reasoning when the contested decision was adopted.

29 The Court observes that the legality of the contested decision may be assessed only on the basis of the elements of fact and law on which it was adopted and not on the basis of information which was brought to the Council's knowledge after the adoption of that decision, even if the latter takes the view that that information could legitimately be the basis for the adoption of that decision. In short,

the Court cannot accept the Council's invitation to substitute the grounds on which that decision is based (see, by analogy, judgment of 28 March 2012 in Case T-190/10 *Egan and Hackett* v *Parliament*, not published in the ECR, paragraphs 102 and 103 and the case-law cited).

30 Having regard to the foregoing, the first plea must be upheld. It follows that the contested decision must be annulled in so far as it concerns the applicant, without there being any need to examine the parties' other pleas and arguments or to order the Council to produce the documents referred to by the applicant in its second head of claim.

Costs

31 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls Council Decision 2011/783/CFSP amending Decision 2010/413/CFSP concerning restrictive measures against Iran in so far as it concerns the applicant;**

2. **Orders the Council of the European Union to bear its own costs and to pay those incurred by Oil Turbo Compressor.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 26 October 2012.

[Signatures]