



Reports of Cases

Joined Cases T-174/12 and T-80/13

Syrian Lebanese Commercial Bank SAL

v

Council of the European Union

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Amendment of the form of order sought — Time-limit — Manifest error of assessment — Obligation to state reasons — Right to effective judicial protection — Rights of the defence)

Summary — Judgment of the General Court (Sixth Chamber), 4 February 2014

1. *Judicial proceedings — Decision or regulation replacing the contested measure in the course of proceedings — New factor — Admissibility of new pleas*

(Rules of Procedure of the General Court, Art. 48(2); Council Decision 2013/109/CFSP)

2. *Actions for annulment — Time-limits — Point from which time starts to run — Measure entailing restrictive measures against a person or body — Communication to the person concerned by means of publication in the Official Journal of the European Union — Cognisance taken of the measure at the date of publication — Application to amend pleadings regarding that publication as the starting point of the period for bringing proceedings — Admissibility*

(Charter of Fundamental Rights of the European Union, Art. 47; Rules of Procedure of the General Court, Art. 102(1))

3. *Acts of the institutions — Statement of reasons — Obligation — Scope — Freezing of the funds of persons, entities or bodies responsible for violent repression against the civil population in Syria — Obligation to communicate the reasoning to the person concerned at the same time as the measure adversely affecting him or immediately thereafter — Correction of an error of reasoning during the proceedings before the Court — Not permissible*

(Art. 296, second para., TFEU; Council Decisions 2011/782/CFSP and 2012/739/CFSP; Council Regulations No 36/2012, No 55/2012 and No 1117/2012)

4. *Acts of the institutions — Statement of reasons — Obligation — Scope — Freezing of the funds of persons, entities or bodies responsible for violent repression against the civil population in Syria — Obligation to communicate the reasoning to the person concerned at the same time as the measure adversely affecting him or immediately thereafter — Limits — Safety of the Union and the Member States or conduct of their international relations — Decision falling within a context known to the person concerned, enabling him to understand the scope of the measure taken in his regard — Admissibility of a summary statement of reasons*

(Art. 296, second para., TFEU; Council Decisions 2011/782/CFSP and 2012/739/CFSP; Council Regulations No 36/2012, No 55/2012 and No 1117/2012)

5. *Actions for annulment — Grounds — Infringement of essential procedural requirements — Obligation to state reasons — Plea distinct from that of the lawfulness of the contested decision*

(Art. 263, second para., TFEU)

6. *Common foreign and security policy — Restrictive measures against Syria — Freezing of the funds of persons, entities or bodies responsible for violent repression against the civil population — Capacity of an entity held or controlled by such an entity — Subsidiary held by a parent company concerned by such measures to an extent allowing the parent company to control the general meeting of the subsidiary — Sufficient shareholding link*

(Council Regulation No 36/2012, Art. 15(1))

7. *Common foreign and security policy — Restrictive measures against Syria — Freezing of the funds of persons, entities or bodies responsible for violent repression against the civil population — Capacity of an entity held or controlled by such an entity — Clear shareholding link between a parent company and its subsidiary — Supervision of the activities of the subsidiary by the central bank of a non-member country — No effect*

(Council Regulation No 36/2012, Art. 15(1))

8. *EU law — Principles — Rights of the defence — Right to effective judicial protection — Freezing of the funds of persons, entities or bodies responsible for violent repression against the civil population in Syria — No right to be heard prior to the adoption of such measures — Rights guaranteed by judicial review exercised by the EU judicature and by the possibility of a hearing after the measures are taken — Obligation to communicate inculpatory evidence — Scope*

(Art. 6(1) TEU; Charter of Fundamental Rights of the European Union, Arts 41(2)(a) and 47; Council Decisions 2011/782/CFSP, Art. 21(2) and (3), 2012/739/CFSP, Art. 27(2) and (3), and 2013/255/CFSP, Art. 30(2) and (3); Council Regulation No 36/2012, Art. 32(2) and (3))

9. *Common foreign and security policy — Restrictive measures against Syria — Freezing of the funds of persons, entities or bodies responsible for violent repression against the civil population — Rights of the defence — Disclosure of inculpatory evidence — Subsequent decision maintaining the name of a person on the list of persons concerned by those measures — No infringement of the right to be heard*

(Council Decisions 2012/739/CFSP, 2013/109/CFSP and 2013/255/CFSP; Council Regulations No 1117/12 and No 363/13)

10. *Common foreign and security policy — Restrictive measures against Syria — Freezing of funds and economic resources — Procedure for entering name on the list of persons concerned — Procedure guaranteeing compliance with fundamental rights — Choice of legal basis — Article 215 TFEU and not Article 75 TFEU — Lawfulness*

(Arts 75 TFEU and 215(2) and (3) TFEU; Charter of Fundamental Rights of the European Union, Art. 51(1); Council Decision 2011/273/CFSP; Council Regulation No 36/2012, Art. 32(2) to (4))

1. See the text of the decision.

(see paras 51-54)

2. The question whether Article 102(1) of the Rules of Procedure must be interpreted as applying where the adoption of an act containing restrictive measures was communicated to the person concerned by the publication of a notice is crucial in establishing whether a request to amend the form of order sought was lodged before the expiry of the period for bringing proceedings against a regulation, calculated from the publication of the notice in question.

In this regard, where individual communication is not possible and the Council replaces this with the publication of a notice, the persons concerned can become aware of that notice only on reading the *Official Journal of the European Union*. The purpose of the 14-day period laid down in Article 102(1) of the Rules of Procedure is to ensure that interested parties have sufficient time within which to bring an action against the published measures and, consequently, to ensure observance of the right to effective judicial protection, as now laid down in Article 47 of the Charter of Fundamental Rights of the European Union. As the Rules of Procedure provide, in Article 102(1), for an additional period of 14 days to bring proceedings against measures published in the Official Journal, that provision must also be applied, by analogy, where the event triggering the period for bringing proceedings is a notice relating to those measures, which is itself also published in the *Official Journal of the European Union*. The same reasons which justify the granting of an additional period of 14 days in respect of published measures apply to published notices, unlike individual communications.

In addition, if the view were taken that that article of the Rules of Procedure were not applicable in the circumstances of the case, individuals would be in a less favourable position than they would have been in in the absence of the obligation to communicate individually. In that latter case, mere publication of the acts containing the restrictive measures would have been sufficient to trigger the period for bringing proceedings, including the additional 14 days mentioned in Article 102(1) of the Rules of Procedure.

(see paras 63-66)

3. See the text of the decision.

(see para. 75)

4. See the text of the decision.

(see paras 76, 77, 131, 132, 144)

5. See the text of the decision.

(see para. 86)

6. Where the funds of an entity identified as supporting the Syrian regime are frozen, there is a not insignificant danger that that entity may exert pressure on the entities which it holds, owns or controls in order to circumvent the effect of the measures taken against it. Consequently, the freezing of the funds of those entities is necessary and appropriate in order to ensure the effectiveness of the measures adopted and to guarantee that those measures are not circumvented. Moreover, where the capital of a legal person is held by another person which must undoubtedly be covered by restrictive measures, to the extent that that latter person is able to control the general meeting of the said legal person, that legal person must also be subject to those measures, by reason solely of that shareholding link, on condition that the measures by which the restrictive measures in question were adopted provide for their application to legal persons owned or controlled by legal persons already covered by such restrictive measures.

By including and maintaining a person in the lists of those covered by restrictive measures by reason of the identity of its majority shareholder, the Council has in view not that person's autonomous conduct, contrary to the requirements of the measures establishing such measures, but its shareholder structure and therefore its close association with its parent company.

(see paras 101, 102, 104, 108, 123, 144, 169)

7. The shareholding link between a person subject to restrictive measures and its parent company is not called into question by the fact that the activities of that person are subject to supervision by the central bank of a non-member country. The supervisory activity and the measures adopted by such a bank relate to funds which the person holds in its country. By contrast, measures taken by the Council relate only to the funds which the applicant holds or might hold within the European Union and the transactions that it might wish to carry out using those funds. In addition, such a person cannot call into question whether it is appropriate to include and maintain it in the lists of the persons covered by the restrictive measures against Syria adopted by the Council on the ground that its activities, including those that are connected with the European Union, are supervised by the national authority of a non-member State.

(see paras 116-122)

8. Observance of the rights of the defence, in particular the right to be heard, with regard to restrictive measures, does not require the European Union authorities, before the name of a person or entity is entered in the list imposing restrictive measures for the first time, to communicate the grounds for that inclusion to the person or entity concerned. Such prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by that regulation. In order to attain their objective, such measures must, by their very nature, take advantage of a surprise effect and apply with immediate effect. Thus, the Council is not required to hear a person subject to restrictive measures before it is included for the first time in the lists of persons covered by those measures. In that regard, the possibility for such a person to contact the Council after receiving notice of its inclusion in the lists of persons covered by restrictive measures is sufficient to ensure that its rights of defence are respected. Moreover, neither the legislation in question nor the general principle of observance of the rights of the defence gives the persons concerned the right to such a hearing. The important factor is that that person should have been able, from the time at which it was included in the lists of persons covered by the restrictive measures, to exercise its rights of defence and its right to effective judicial protection by explaining to the Council and to the Court the reasons why it took the view that its listing is not justified.

(see paras 137-140, 145, 147)

9. In the matter of restrictive measures taken in the context of the Common Foreign and Security Policy, the argument of the surprise effect of those measures cannot, in principle, be legitimately relied on as regards compliance with defence rights in relation to subsequent measures maintaining the name of an applicant in the list of persons covered by restrictive measures.

However, the right to be heard prior to the adoption of measures maintaining restrictive measures in respect of persons already covered by them presupposes that the Council has admitted new evidence against those persons.

Where a person has made use of the possibility to be heard on the subject of the adoption of certain subsequent measures by means of a letter sent to the Council, to which the latter replies only after the bringing of the action by that person against those measures, the fact that the Council ought to

have heard that person before adopting those measures is inconsequential where the Council has maintained the name of that person on the lists in question without admitting any new evidence against it.

(see paras 148-154)

10. Whilst participation by the Parliament in the legislative process is the reflection, at EU level, of the fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly, the difference between Article 75 TFEU and Article 215 TFEU, so far as the Parliament's involvement is concerned, is the result of the choice made by the framers of the Treaty of Lisbon conferring a more limited role on the Parliament with regard to the European Union's action under the common foreign and security policy.

In this regard, it is not contrary to EU law for it to be possible for measures to be adopted that impinge directly on the fundamental rights of natural or legal persons by means of a procedure that excludes the Parliament's participation, since the duty to respect fundamental rights is imposed, in accordance with Article 51(1) of the Charter of Fundamental Rights, on all the institutions and bodies of the European Union. In addition, under Article 215(3) TFEU, the measures referred to in that article are to include necessary provisions on legal safeguards. In consequence, a measure such as Regulation No 36/2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation No 442/2011, may be adopted on the basis of Article 215(2) TFEU on condition that it contains safeguards for the respect of the fundamental rights of the persons concerned.

In this case, Regulation No 36/2012 contains the necessary provisions to protect fundamental rights as, in Article 32(2) to (4) in particular, it requires the Council to include the grounds for including any natural or legal person in the list of persons covered by the restrictive measures contained in that regulation, to communicate to those persons, directly or through the publication of a notice, the fact that they have been listed, providing them with an opportunity to present observations, to review its decision where substantial new evidence is presented or where observations are submitted, and to review the lists at regular intervals and at least every 12 months.

(see paras 161-163)