

2. Second plea in law: infringement of the principle of proportionality

Pursuant to this principle, the levying of an administrative charge by the defendant has to be proportionate to the work involved for the defendant. According to the applicant, a comparison of the fee (EUR 20 700) with the administrative work involved for the defendant, shows that this is not the case.

3. Third plea in law: infringement of the general principle of equality

In this regard, the applicant submits that the varying administrative charges levied in accordance with the size of an undertaking also constitutes unequal treatment, which is unlawful. Moreover, with the adjustment of its administrative practice, the defendant infringed the principle of equal treatment, in that it treated the applicant differently from other registered undertakings which the defendant permitted, after receiving a registration number, to make adjustments to the size of the undertaking registered so as to avoid the imposition of an administrative charge.

4. Fourth plea in law: infringement of the principle of legal certainty and the right to good administration

Although the defendant realised that, in practice, it is difficult to communicate the correct size of an undertaking for the purposes of registration, it did not provide the applicant with the opportunity — contrary to the right to good administration — to adjust its figures to avoid payment of the administrative charge.

5. Fifth plea in law: unlawful delegation of legislative competencies to the defendant

Article 13(4) of Regulation No 340/2008 empowers the defendant to levy an administrative charge, without specifying the details of how a charge is to be levied or, in particular, any details regarding the charge itself. In the applicant's view, this constitutes an unlawful delegation of legislative competencies to the defendant.

(¹) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

(²) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6).

Action brought on 17 April 2012 — Khwanda v Council

(Case T-178/12)

(2012/C 174/45)

Language of the case: English

Parties

Applicant: Mahran Khwanda (Damascus, Syria) (represented by: S. Jeffrey and S. Ashley, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 22 of the Annex to Council Implementing Decision 2012/37/CFSP of 23 January 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 19, p. 33), in so far as it relates to the applicant;

— Annul paragraph 22 of the Annex to Council Implementing Regulation (EU) No 55/2012 of 23 January 2012 implementing Article 33(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 19, p. 6), in so far as it relates to the applicant;

— Declare Articles 18(1) and 19(1) of Council Decision 2011/782/CFSP (¹) inapplicable to the applicant;

— Declare Articles 14(1) and 15(1) of Council Regulation (EU) No 36/2012 (²) inapplicable to the applicant;

— Declare that the annulment of paragraph 22 of the Annex to Council Decision 2012/37/CFSP and paragraph 22 of the Annex to Council Regulation (EU) No 55/2012 has immediate effect; and

— Order the Council to pay the cost of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging

— that the substantive criteria for designation under the contested measures are not met in the applicant's case since there is no legal or factual basis for his designation and that the Council committed a manifest error of assessment in this respect; furthermore that the Council designated the applicant on the basis of insufficient evidence;

— that the applicant produced solid evidence in support of his positive claim and that he has in fact taken active steps to prevent pro-Government elements from accessing Kadmos Transport's fleet of buses. Whereas the Council failed to produce sufficient evidence to contest these statements.

2. Second plea in law, alleging

— that the designation of the applicant is in violation of his human rights and fundamental freedoms, including his right to respect for his private and family life and to peaceful enjoyment of his possessions and/or in violation of the principle of proportionality.

3. Third plea in law, alleging

— that the Council has in any event breached the procedural requirements: (a) to inform the applicant of his designation individually; (b) to give adequate and sufficient reasons for his listing; (c) respect his rights of defence and the right to effective judicial protection.

⁽¹⁾ OJ L 319, p. 56

⁽²⁾ OJ L 16, p. 1

Action brought on 26 April 2012 — *Bateni v Council*

(Case T-181/12)

(2012/C 174/46)

Language of the case: German

Parties

Applicant: Naser Bateni (Hamburg, Germany) (represented by: J. Kienzle and M. Schlingmann, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 to the extent that it concerns the applicant;

— order the Council to pay the costs, including those of the applicant;

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of the applicant's rights of defence

— The Council infringed the applicant's right to effective judicial protection and in particular the obligation to state reasons in so far as it did not provide a sufficient statement of reasons for the inclusion of the applicant in Annex IX to the contested regulation.

— The Council infringed the applicant's right to a hearing by not providing it with the opportunity, conferred by Article 46(3) and (4) of the contested regulation, to present observations on its inclusion in the sanctions lists and thus to cause the Council to carry out a review.

2. Second plea in law, alleging that there was no basis for including the applicant in the sanctions lists

— The reasons given for including the applicant in the sanctions lists did not make it possible to identify the precise legal basis on which the Council acted.

— An activity carried out by the applicant until only March 2008 cannot justify his inclusion in the sanctions lists in December 2011.

— The applicant's activity as manager of the Hanseatic Trade Trust & Shipping (HTTS) GmbH does not justify his inclusion in the sanctions lists, in particular because the General Court of the European Union annulled Regulation (EU) No 961/2010 ⁽¹⁾ to the extent that it concerned HTTS GmbH.

— The mere fact that the applicant was manager of an English company which has since been dissolved cannot constitute a reason under Article 23(2) of the contested regulation for including the applicant in the sanctions lists.

3. Third plea in law, alleging infringement of the applicant's fundamental right to property

— The applicant's inclusion in the sanctions lists constitutes an unjustified interference with his fundamental right to property, since the applicant — because of the inadequate reasons given by the Council — is unable to understand the reasons why he was included in the list of persons affected by the sanctions.

— The applicant's inclusion in the sanctions lists is obviously inappropriate for the pursuit of the goals of the contested regulation and also constitutes a disproportionate interference with his property rights.

⁽¹⁾ 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).