Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

24 May 2016*

(Common foreign and security policy — Restrictive measures against certain persons and entities with the aim of preventing nuclear proliferation in Iran — Freezing of funds — Error of law — Legal basis — Error of assessment — No evidence)

In Joined Cases T-423/13 and T-64/14,

Good Luck Shipping LLC, established in Dubai (United Arab Emirates), represented by F. Randolph, QC, M. Lester, Barrister, and M. Taher, Solicitor,

applicant,

v

Council of the European Union, represented by V. Piessevaux and B. Driessen, acting as Agents,

defendant,

APPLICATION, first, for annulment of Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 156, p. 10) and Council Implementing Regulation (EU) No 522/2013 of 6 June 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 156, p. 3), Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 306, p. 18), and Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 306, p. 3), in so far as those measures relate to the applicant, and, second, for a declaration that Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 272, p. 46) and Council Regulation (EU) No 971/2013 of 10 October 2013 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 272, p. 1) are inapplicable,

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni and L. Madise (Rapporteur), Judges,

Registrar: M. Junius, Administrator,

having regard to the written part of the procedure and further to the hearing on 13 January 2016,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The present cases have been brought in connection with the restrictive measures introduced in order to apply pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems.

2 The applicant, Good Luck Shipping LLC, is a shipping agency business based in Dubai (United Arab Emirates). It arranges ship berthing, discharge and loading of cargoes.

3 On 26 July 2010, the Council of the European Union adopted, on the basis of Article 29 TEU, 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 that decision provides:

‘All funds and economic resources which belong to, are owned, held or controlled, directly or indirectly by the following, shall be frozen:

…

(b) persons and entities not covered by Annex I that are engaged in, directly associated with, or providing support for, Iran’s proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means, or persons and entities that have assisted designated persons or entities in evading or violating the provisions of UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010) or this Decision as well as other senior members and entities of IRGC and IRISL and entities owned or controlled by them or acting on their behalf, as listed in Annex II.

…’

4 In Annex II to Decision 2010/413, under Title III, with the heading ‘Islamic Republic of Iran Shipping Lines (IRISL)’, several companies including IRISL and Hafize Darya Shipping Lines (‘HDSL’) are listed as entities whose funds are frozen.

5 On 8 October 2010, several companies including IRISL and HDSL brought an action before the General Court, registered as Case T-489/10, seeking, inter alia, the annulment of Decision 2010/413, in so far as that decision concerned them.

6 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) of Regulation No 961/2010 provides that the funds and economic resources of persons, entities or bodies listed in Annex VIII to that regulation are to be frozen. The names of several entities, including IRISL and HDSL, were set out in the list in that annex.

7 On 1 December 2011, the Council adopted Decision 2011/783/CFSP amending Decision 2010/413 (OJ 2011 L 319, p. 71), by which, inter alia, it added the applicant to the list in Annex II to Decision 2010/413, under Title III.

8 On the same date, the Council adopted Implementing Regulation (EU) No 1245/2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), by which, inter alia, it added the applicant to the list in Annex VIII to Regulation No 961/2010.

9 In Decision 2011/783 and in Implementing Regulation No 1245/2011 (together 'the measures of December 2011'), the Council set out the following reasons for freezing the applicant's funds and economic resources:

'Company acting on behalf of IRISL. [The applicant] was established to replace the Oasis Freight Company alias Great Ocean Shipping Services, which was sanctioned by the EU and wound up by court order. [The applicant] issued false transport documents for IRISL and entities owned or controlled by IRISL. [The applicant a]cts on behalf of EU-designated HDSL and [Safiran Payam Darya Shipping Lines] in the United Arab Emirates. [The applicant was s]et up in June 2011 as a result of sanctions, to replace Great Ocean Shipping Services and Pacific Shipping.'

10 By letter of 5 December 2011, the Council notified the applicant that it had been included on the lists of persons and entities covered by the restrictive measures against Iran in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010.

11 By letter of 7 February 2012, the applicant submitted its observations on the measures of December 2011 and requested access to the Council's file.

12 On 9 February 2012, the applicant brought an action for annulment of the measures of December 2011 in so far as those measures concerned it. That action was registered as Case T-57/12.

13 On 23 March 2012, Council Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 88, p. 1) repealed Regulation No 961/2010. The applicant was included by the Council in the list in Annex IX to Regulation No 267/2012. Article 23(2) of that regulation provides:

'All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IX shall be frozen. Annex IX shall include the natural and legal persons, entities and bodies who, in accordance with Article 20(1)(b) and (c) of Council Decision 2010/413/CFSP, have been identified as:

...

(b) being a natural or legal person, entity or body that has assisted a listed person, entity or body to evade or violate the provisions of this Regulation, Council Decision 2010/413/CFSP or UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010);

...

(e) being a legal person, entity or body owned or controlled by the Islamic Republic of Iran Shipping Lines (IRISL), or acting on their behalf.'

14 The applicant was listed in Title III, letter B, point 43 of Annex IX to Regulation No 267/2012 for the same reasons as set out in the measures of December 2011 (see paragraph 9 above).

15 By document lodged at the Court Registry on 30 April 2012, the applicant amended its heads of claim in Case T-57/12 in order also to challenge Regulation No 267/2012 in so far as it related to the applicant.

16 By letter of 31 May 2012, the Council replied to the applicant's letter of 7 February 2012 and provided it with the documents on the basis of which it had adopted the measures of December 2011 and added the applicant to the lists of persons and entities covered by the restrictive measures against Iran in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010.

17 By letter of 31 January 2013, the applicant sent the Council its observations on its inclusion on the lists of persons and entities covered by the restrictive measures against Iran in Annex II to Decision 2010/413 and Annex IX to Regulation No 267/2012 ('the lists at issue').

18 On 6 June 2013, the Council adopted Decision 2013/270/CFSP amending Decision 2010/413 (OJ 2013 L 156, p. 10) and Implementing Regulation (EU) No 522/2013 implementing Regulation (EU) No 267/2012 (OJ 2013 L 156, p. 3). By those measures (together 'the measures of June 2013'), it amended the reasons for including the applicant on the lists at issue as follows:

'Company acting on behalf of IRISL. Controlled by [M.M.F.]. [The applicant] was established to replace the Oasis Freight Company alias Great Ocean Shipping Services, which was sanctioned by the EU and wound up by court order. [The applicant] issued false transport documents for IRISL and entities owned or controlled by IRISL. [The applicant a]cts on behalf of EU-designated HDSL and [Safiran Payam Darya Shipping Lines] in the United Arab Emirates. [It was s]et up in June 2011 as a result of sanctions, to replace Great Ocean Shipping Services.'

19 By letter of 10 June 2013, the Council notified the applicant of the measures of June 2013. The applicant was also informed of the possibility of seeking review of its inclusion on the lists at issue and of challenging those measures before the Court.

20 On 16 August 2013, the applicant brought an action before the Court seeking the annulment of the measures of June 2013, in so far as those measures related to it. That action was registered as Case T-423/13.

21 By judgment of 6 September 2013 in *Good Luck Shipping* v *Council*, (T-57/12, not published, EU:T:2013:410), the Court upheld the action brought by the applicant and annulled, in so far as they concerned the applicant, the measures of December 2011 and Regulation No 267/2012, on the ground that the Council had failed to substantiate the facts alleged against the applicant (judgment of 6 September 2013 in *Good Luck Shipping* v *Council*, T-57/12, not published, EU:T:2013:410, paragraph 68).

22 As regards the temporal effects of the annulment of the measures of December 2011 and of Regulation No 267/2012 decided upon in the judgment mentioned in paragraph 21 above, the Court found that the effects of Decision 2011/783 should be maintained as regards the applicant until the annulment of Regulation No 267/2012 took effect under the second paragraph of Article 60 of the Statute of the Court of Justice, by way of derogation from Article 280 TFEU, on the date of expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 of that Statute.

23 By judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, (T-489/10, EU:T:2013:453), the Court annulled, inter alia, Annex II to Decision 2010/413, Annex VIII to Regulation No 961/2010 and Annex IX to Council Regulation No 267/2012, in so far as those measures provided for the inclusion of IRISL on the lists at issue, on the ground that the Council had not established that IRISL had provided support for nuclear proliferation (judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraph 76). It then annulled the listing of the other entities suspected of acting on behalf of IRISL, which include HDSL, on the ground that the reason for their listing, namely that they were controlled or acted on behalf of IRISL, no longer justified the adoption and maintenance of the restrictive measures to which they were subject, since IRISL had not been properly identified as providing support for nuclear proliferation (judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraph 77).

24 As regards the temporal effects of the annulment decided upon in the judgment mentioned in paragraph 23 above, the Court found that the effects of Decision 2010/413, as amended by Decision 2010/644, should be maintained as regards IRISL and the other applicants, which include HDSL and

Safiran Payam Darya Shipping Lines ('SAPID'), until the annulment of Regulation No 267/2012 took effect under the second paragraph of Article 60 of the Statute of the Court of Justice, by way of derogation from Article 280 TFEU, on the date of expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 of that Statute.

25 On 10 October 2013, the Council adopted Decision 2013/497/CFSP amending Decision 2010/413 (OJ 2013 L 272, p. 46) and Regulation (EU) No 971/2013 amending Regulation No 267/2012 (OJ 2013 L 272, p. 1) (together 'the measures of October 2013'). Those measures modified, in particular, the general listing criteria for the persons or entities subject to restrictive measures with the aim of preventing nuclear proliferation in Iran in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(b) and (c) of Regulation No 267/2012. They included, inter alia, new general listing criteria permitting the inclusion on the lists at issue of:

— persons or entities that have evaded or violated the provisions of United Nations Security Council Resolutions (UNSCR) 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010), Decision 2010/413 and Regulation No 267/2012;

— persons or entities that have assisted designated persons or entities in evading those provisions;

— persons or entities owned or controlled by IRISL, acting on behalf of IRISL or providing insurance or other essential services to IRISL or to entities owned or controlled by them or acting on their behalf.

26 By letter of 14 October 2013, the Council informed the applicant that it had taken note of the judgment of 6 September 2013 in *Good Luck Shipping* v *Council* (T-57/12, not published, EU:T:2013:410), and that it intended to include the applicant again on the lists at issue, applying the new general listing criteria laid down by the measures of October 2013. The Council granted the applicant a deadline of 1 November 2013 to make its observations.

27 On 31 October 2013, the applicant challenged the brevity of the deadline for responding which it had been granted, asked the Council for confirmation that it would not be included again on the lists at issue or, otherwise, requested sight of all information and evidence on which the Council based its decision and to be sent a reasoned response to its letter.

28 On 15 November 2013, the applicant was included on the list in Annex II to Decision 2010/413 by Council Decision 2013/661/CFSP amending Decision 2010/413 (OJ 2013 L 306, p. 18).

29 Consequently, on the same date, the applicant was listed in Annex IX to Regulation No 267/2012 by Council Implementing Regulation (EU) No 1154/2013 implementing Regulation No 267/2012 (OJ 2013 L 306, p. 3).

30 In Decision 2013/661 and in Regulation No 1154/2013 (together 'the measures of November 2013'), the Council adopted the following reasons:

'Good Luck Shipping Company LLC as the agent for HDSL in the United Arab Emirates provides essential services to HDSL which is a designated entity acting on behalf of IRISL.'

31 By letter of 18 November 2013, in response to the applicant's letter of 31 October 2013, the Council informed it that it remained of the opinion that the applicant's renewed designation was justified, that it had therefore included it again on the lists at issue and, at the same time, that it was granting it access to the file comprising the evidence on which it had based its decision.

32 By Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413 (OJ 2013 L 316, p. 46) and by Council Implementing Regulation (EU) No 1203/2013 of 26 November 2013 implementing Regulation (EU) No 267/2012 (OJ 2013 L 316, p. 1), IRISL and HDSL were included again on the lists at issue in accordance with the new general listing criteria laid down by the measures of October 2013.

33 On 29 January 2014, the applicant brought an action, registered as Case T-64/14, challenging the measures of November 2013 and the measures of October 2013.

Procedure and forms of order sought

34 By application lodged at the Court Registry on 16 August 2013, as indicated in paragraph 20 above, the applicant brought an action seeking the annulment of the measures of June 2013, in so far as those measures relate to it. That action was registered as Case T-423/13.

35 Following the partial renewal of the General Court, Case T-423/13 was allocated to a new Judge-Rapporteur. That Judge-Rapporteur was subsequently assigned to the Second Chamber, to which that case was accordingly allocated.

36 By application lodged at the Court Registry on 29 January 2014, as indicated in paragraph 33 above, the applicant brought an action, registered as Case T-64/14, seeking the annulment of the measures of November 2013, in so far as those measures apply to it, and a declaration that the measures of October 2013 are inapplicable, in so far as, in laying down new general criteria for inclusion on the lists at issue, those measures formed the legal basis of the measures of November 2013.

37 By order of the President of the Second Chamber of the Court of 17 July 2014, Cases T-423/13 and T-64/14 were joined for the purposes of the written procedure, the oral procedure and the judgment pursuant to Article 50 of the Rules of Procedure of the General Court of 2 May 1991.

38 On a proposal from the Judge-Rapporteur, the General Court decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 89 of the Rules of Procedure of the General Court, requested the parties to reply to certain written questions. The parties provided their answers within the period prescribed by the Court.

39 In Case T-423/13, the applicant claims that the Court should:

— annul the measures of June 2013, in so far as those measures relate to it;

— order the Council to pay the costs.

40 In Case T-64/14, the applicant claims that the Court should:

— annul the measures of November 2013, in so far as those measures apply to it;

— declare inapplicable, pursuant to Article 277 TFEU, the measures of October 2013;

— order the Council to pay the costs.

41 In Joined Cases T-423/13 and T-64/14, the Council contends that the Court should:

— dismiss the applications;

— order the applicant to pay the costs.

Law

Case T-423/13

42 In support of its action in Case T-423/13, which is directed against the measures of June 2013, the applicant raises four pleas in law. They allege, first, a failure to fulfil the obligation to state reasons, second, a manifest error of assessment stemming from the failure to fulfil the general criteria for inclusion on the lists at issue and a lack of evidence, together with lack of a legal basis, third, an infringement of its rights of the defence and its right to effective judicial review and, fourth, an infringement of the principle of proportionality and of its fundamental rights, such as the right to property, freedom to conduct a business and the right to privacy.

43 It is appropriate first to examine the second plea in law.

44 In the second plea, the applicant has in essence put forward two complaints. The first alleges an error of assessment and seeks to argue that the reasons relied on against it are erroneous and that the Council did not substantiate those reasons. The second alleges lack of a legal basis. In support of its second complaint, the applicant claims, first, that its inclusion on the lists at issue was based on the inclusion of IRISL, which was annulled by the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453), and, secondly that the annulment of its first inclusion on the lists at issue as a result of the judgment of 6 September 2013 in *Good Luck Shipping* v *Council* (T-57/12, not published, EU:T:2013:410) should have led to the annulment of the decision to maintain that listing set out in the measures of June 2013.

45 The Council submits that the inclusion of the applicant on the lists at issue is based on two distinct criteria, that of acting on behalf of IRISL and that of assisting the entities included on those lists in evading the sanctions relating to them. Therefore the reasons set out in the measures of June 2013 and the evidence submitted enable the applicant's inclusion to be justified on the basis of one or other of the two criteria mentioned above.

46 It must be recalled in this connection that, in accordance with the case-law, the Council has a degree of discretion to determine on a case-by-case basis whether the legal criteria on which the restrictive measures at issue are based are met (see judgment of 3 July 2014 in *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraph 54 and the case-law cited).

47 However, the Courts of the European Union must ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the European Union legal order, including review of such measures as are designed to give effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations (judgment of 3 July 2014 in *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraph 55 and the case-law cited).

48 Those fundamental rights include, inter alia, respect for the rights of the defence and the right to effective judicial protection (judgment of 28 November 2013 in *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 59 and the case-law cited).

49 Respect for the rights of the defence, which is affirmed in Article 41(2) of the Charter of Fundamental Rights of the European Union and provided for, in the present case, under Article 24(3) and (4) of Decision 2010/413 and Article 46(3) and (4) of Regulation No 267/2012, includes the right to be heard and the right to have access to the file, subject to legitimate interests in maintaining confidentiality (see, to that effect, judgment of 28 November 2013 in *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 60 and the case-law cited).

50 The right to effective judicial protection, which is affirmed in Article 47 of the Charter of Fundamental Rights, requires that the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to put the latter fully in a position to review the lawfulness of the decision in question (see judgment of 28 November 2013 in *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 61 and the case-law cited).

51 The effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights also requires that the Courts of the European Union are to ensure that the decision, which affects the person or entity concerned individually, is taken on a sufficiently solid factual basis. That entails a verification of the allegations factored in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (see judgment of 28 November 2013 in *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 64 and the case-law cited).

52 The judicial review of the lawfulness of an act whereby restrictive measures are imposed on 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. In the event of challenge, it is for the Council to present that evidence for review by the Courts of the European Union (see judgments of 6 September 2013 in *Bateni* v *Council*, T-42/12 and T-181/12, not published, EU:T:2013:409, paragraph 46 and the case-law cited, and of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraph 42 and the case-law cited). In other words, it is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded. It is necessary that the information or evidence produced should support the reasons relied on against the person concerned (see judgment of 3 July 2014 in *National Iranian Tanker Company* v *Council*, T-565/12, EU:T:2014:608, paragraph 57 and the case-law cited).

53 In the present case it is appropriate, before examining the merits of the complaints raised in the second plea in law, referred to in paragraph 44 above, to establish what evidence may be relied upon effectively by the Council, having regard to the requirements of respect for the applicant's rights of the defence and its right to effective judicial protection.

Evidence which may be relied upon effectively by the Council

54 It is necessary to assess whether the evidence adduced by the Council in the defence in Case T-423/13 may be relied upon effectively in support of the reasons for the applicant's inclusion on the lists at issue, without undermining the applicant's rights of the defence and its right to effective judicial protection.

55 In the first place, it must be recalled that, as a rule, the legality of contested measures may be assessed only on the basis of the elements of fact and law on which they were adopted and not on the basis of information which was brought to the Council's knowledge after the adoption of those measures, even if the latter takes the view that that information could legitimately complement the grounds stated in those measures and also provide a basis for their adoption. The Court cannot accede to what is, in

short, an invitation by the Council to replace the grounds on which those measures are based (see judgment of 6 September 2013 in *Bateni* v *Council*, T-42/12 and T-181/12, not published, EU:T:2013:409, paragraph 51 and the case-law cited).

56 In the second place, pursuant to case-law, in the case of a subsequent decision to freeze funds, respect for the rights of the defence requires, first, that the party concerned be informed of the information or evidence in the file which, in the view of the Council, justifies maintaining its inclusion on the lists at issue, and also, where applicable, of any new evidence against it and, second, that it must be afforded the opportunity effectively to make known its view on the matter (judgment of 12 December 2006 in *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384, paragraph 126).

57 Therefore, in the case of an initial measure whereby the funds of an entity are frozen, unless overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations preclude it, the evidence adduced against that entity should be disclosed to it either concomitantly with or as soon as possible after the adoption of the measure concerned. At the request of the entity concerned, it also has the right to make known its view on that evidence after the adoption of the measure (judgment of 6 September 2013 in *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 83 and the case-law cited). By contrast, any subsequent decision to freeze funds must be preceded by the possibility of a further hearing and, where appropriate, notification of any new incriminating evidence (judgment of 11 July 2007 in *Sison* v *Council*, T-47/03, not published, EU:T:2007:207, paragraphs 173 and 178).

58 In the present case, it must be stated that it was only on 4 November 2013, when the defence in Case T-423/13 was lodged before the Court, that the Council referred to the evidence, found on the Internet on 11 March 2013 and 28 October 2013, on which it considered it could justify the decision to maintain the applicant's inclusion on the lists at issue. The evidence in question is the following:

(a) the curriculum vitae of one of the applicant's employees found on the Internet on 28 October 2013, which shows, essentially, that its owner works for the applicant, which is an agent for HDSL in the port of Jebel Ali (United Arab Emirates), and acts every time IRISL calls that port to provide it with the necessary assistance;

(b) an extract from the Internet site of the Dubai Shipping Agents Association, found on the Internet on 11 March 2013, which shows that the name of the applicant's representative corresponds to the name of the representative of Great Ocean Shipping Service;

(c) the curriculum vitae of a person residing in Sharjah (United Arab Emirates), found on 11 March 2013 on the Internet site of a company established in Sharjah and stating that the person concerned worked for the applicant and Great Ocean Shipping Service from February 2010 until the present;

(d) an extract from the Internet site of the Iranian Exporters' Organisation of Mining Industrial Products and Engineering Services, found on the Internet on 28 October 2013, showing that the applicant presents itself as an agent of HDSL.

59 It must first be observed in this connection that, prior to the date on which the measures of June 2013 were adopted, the Council had available to it only the evidence found on the Internet on 11 March 2013. It is indeed for that reason that, in accordance with the case-law cited in paragraph 55 above, the other evidence found on the Internet on 28 October 2013, after the date on which the measures of June 2013 were adopted, cannot be relied upon by the Council in support of those measures.

60 Secondly, it is important to note that the decision to maintain the inclusion of the applicant on the lists at issue, set out in the measures of June 2013, is a decision subsequent to the restrictive measures and, pursuant to the case-law cited in paragraphs 56 and 57 above, the Council was thus required to disclose to the applicant, prior to the adoption of that decision, the information or evidence in the file which, in the view of the Council, justified maintaining that listing.

61 That finding is not called into question by the argument, raised by the Council at the hearing, that, in accordance with EU case-law, the applicant should have submitted a request for access to the file for the purposes of acquainting itself with the evidence referred to in paragraph 58 above and, since it did not do so, the Council was not required to spontaneously grant it access to the file.

62 In this connection, case-law provides that when sufficiently precise information has been disclosed, enabling the entity concerned effectively to state its point of view on the evidence adduced against it by the Council, respect for the rights of the defence does not mean that the Council must spontaneously grant access to all the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see judgment of 6 September 2013 in *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 84 and the case-law cited).

63 However, in the present case, no information enabling the applicant effectively to state its point of view on the evidence adduced against it by the Council was disclosed, pursuant to the case-law cited in paragraph 57 above, prior to the adoption of the measures of June 2013. Moreover, neither the Council's letter of 10 June 2013 (see paragraph 19 above) nor the measures of June 2013 mentioned the new incriminating evidence on which the Council relied in order to include the applicant on the lists at issue.

64 In addition, as the Council itself concedes, the new evidence referred to in paragraph 58 above is in the public domain, in so far as it is on the Internet. There was therefore no overriding consideration pertaining to the security of the European Union or of its Member States or to the conduct of their international relations precluding the disclosure of that evidence prior to the adoption of the measures of June 2013.

65 Lastly, it must be stated that, were the Council allowed to rely on the information mentioned in the defence in Case T-423/13, that would enable it to put forward supplementary reasons, in order to complement those stated in the measures of June 2013, which would also undermine the applicant's rights of the defence and right to effective judicial protection. Since the applicant was not in a position to know the reasons in sufficient time to, first, defend its position during the administrative procedure and, secondly, assess the justification for including it on the lists at issue and the possibility of bringing an action, it would have only the reply and the oral part of the procedure in which to set out its observations against such reasons. The principle of equality of the parties before the Courts of the European Union would accordingly be affected (see, to that effect, judgment of 6 September 2013 in *Bateni* v *Council*, T-42/12 and T-181/12, not published, EU:T:2013:409, paragraph 54 and the case-law cited).

66 In those circumstances, it must be held that the information disclosed for the first time in the defence in Case T-423/13 cannot be taken into consideration by the Court, even if it enables the applicant's inclusion on the lists at issue to be justified. Taking such evidence into consideration would undermine, first, the principle that the legality of contested measures may be assessed only on the basis of the elements of fact and law on which they were adopted and, secondly, the applicant's rights of the defence and its right to effective judicial protection.

67 It is consequently necessary to examine whether the Council committed an error of assessment in considering that the decision to include the applicant again on the lists at issue was adequately substantiated in the absence of the evidence adduced in the defence in Case T-423/13.

The merits of the plea alleging error of assessment

68 As stated in paragraph 44 above, the applicant claims that the reasons relied on to include it on the lists at issue are erroneous and that the Council has not substantiated those reasons.

69 The Council contends in reply that the inclusion of the applicant on the lists at issue, as noted in paragraph 45 above, is based on two distinct criteria: that of acting on behalf of IRISL and that of assisting the entities included on those lists in evading the sanctions relating to them. It submits that, should the Court consider the reasons in relation to the first criterion to be unsubstantiated, the applicant's inclusion might be found to be justified on the basis of the reasons referring to the second criterion.

70 It must be recalled in this connection that, in order to justify the applicant's inclusion on the lists at issue, the Council claims, concerning the first criterion mentioned in paragraph 69 above, that the applicant is controlled by M.M.F., who was the regional director of IRISL for the United Arab Emirates, that it acts, in its capacity as an agent of HDSL, as IRISL's shipping agent in the port of Jebel Ali and that it issued false transport documents for IRISL and entities owned or controlled by IRISL. Concerning the second criterion mentioned in paragraph 69 above, it claims that the applicant was established to replace an entity which had been sanctioned by the EU and then wound up by court order, inasmuch as, first, the applicant and the entity in question are represented by the same person in the Dubai Shipping Agents Association and, secondly, the entity in question provided shipping agency services to HDSL and now the applicant provides those same services to the entity in question, which has been listed since 26 July 2010, thus enabling it to evade the sanctions applying to it.

71 It must be stated however that the only items of evidence adduced by the Council are those, mentioned in paragraph 58 above, which, for the reasons set out in paragraphs 59 to 66 above, cannot be taken into account.

72 Therefore, the inevitable conclusion, in the absence of any evidence which may be relied upon effectively by the Council, is that the applicant's inclusion on the lists at issue was based purely on statements of principle, be it in relation to the reasons for its inclusion referring to the first criterion, or to those in relation to the second criterion (see paragraph 69 above).

The merits of the complaint alleging an error of law

73 In the second plea in law, the applicant goes on to submit, as observed in paragraph 44 above, that there is now no legal basis for its inclusion on the lists at issue as a result of the delivery of the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453). It raises that argument in the reply, on the grounds that the judgment in question had not yet been delivered when proceedings were initiated. In its response to the measures of organisation of procedure it further states that, in the judgment in question, the Court held that the Council had not justified IRISL's inclusion on the lists at issue and therefore that the inclusion of entities (including the applicant) owned or controlled by IRISL or acting on its behalf was unlawful as of July 2010 (when IRISL was first included). It adds that, pursuant to the General Court's case-law, a judgment annulling a designation 'deletes the name of the ... entity in question retroactively from the legal order and the listing is deemed never to have existed'. According to the applicant, that principle is applicable to the present case.

74 The Council challenges the applicant's argument and submits, inter alia, in its response to the measures of organisation of procedure, that the applicant did not in the reply, which was lodged subsequent to the delivery of the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453), put forward any plea or argument alleging that

the inclusion of IRISL and the other entities concerned on the lists at issue was deemed never to have existed at the time of the adoption of the measures of June 2013. Consequently, in the Council's view, the Court could not examine such a plea or argument in the present case without ruling *ultra petita*.

75 It must be pointed out in this connection that, contrary to what is contended by the Council, the applicant in the reply did request the Court to rule on the consequences produced by the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453) for the measures of June 2013 (see paragraph 44 above) and its observations in the response to the measures of organisation of procedure are merely a development of that argument, which has therefore been established to be admissible.

76 Moreover, a plea regarding any consequences stemming from a judgment of the Court which has the force of *res judicata* is, in any event, a matter of public policy, which may be raised by the EU judicature of its own motion (see, by analogy, judgment of 1 June 2006 in *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission*, C-442/03 P and C-471/03 P, EU:C:2006:356, paragraph 45). It follows that, even in the absence of the applicant's arguments in the reply and its response to the measures of organisation of procedure, the Court would have been required to assess of its own motion the effects of the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453) on the contested measures.

77 Concerning the assessment of the substance of the applicant's argument alleging an error of law by the Council, it is apparent from the case-law that the legality of an entity's inclusion on the list of persons or entities covered by restrictive measures on the grounds of its links with another entity included on that list is conditional on the fact that, at the date of listing, that other entity must be lawfully included on that list. Pursuant to that case-law, the freezing of the funds of entities owned or controlled by an entity which has been lawfully included on the list in question, or acting on its behalf, is necessary and appropriate in order to ensure the effectiveness of the measures adopted vis-à-vis the latter entity and to ensure that those measures are not circumvented. Accordingly, if IRISL is not lawfully included on the lists at issue, the inclusion on those lists of entities acting on its behalf or providing essential services to IRISL or to other entities acting on its behalf can no longer be held to be justified by the objective of ensuring the effectiveness of the measures adopted vis-à-vis IRISL and ensuring that those measures are not circumvented (see, to that effect, judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraphs 75 to 77; see also judgment of 9 December 2014 in *BT Telecommunications* v *Council*, T-440/11, not published, EU:T:2014:1042, paragraph 149 and the case-law cited).

78 In the present case, it is important to recall that the judgment in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453), which annulled the restrictive measures against IRISL and other entities, including HDSL and SAPID, was delivered on 16 September 2013. It should be noted in this respect that the restrictive measures against IRISL were used to justify the applicant's inclusion on the lists at issue under the first criterion mentioned in paragraph 69 above, namely that of acting on IRISL's behalf, whereas, as is apparent on reading the measures of June 2013 (see paragraph 18 above), the restrictive measures against HDSL and SAPID were used to justify the applicant's inclusion on those lists under the second criterion mentioned in paragraph 69 above, namely that of assisting designated entities in evading the sanctions relating to them.

79 Although the effects of the inclusion of IRISL, HDSL and SAPID on the lists at issue were maintained until the expiry of the period referred to in the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, by way of derogation from Article 280 TFEU, namely until the expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 of that Statute, the fact remains that, on the expiry of that period, that listing was deleted retroactively from the legal order and deemed never to have existed (judgment of 28 May 2013 in *Abdulrahim* v *Council*

and Commission, C-239/12 P, EU:C:2013:331, paragraph 68; see also judgment of 9 December 2014 in *BT Telecommunications* v *Council*, T-440/11, not published, EU:T:2014:1042, paragraph 149 and the case-law cited).

80 The Court may prescribe a period during which the effects of an annulment of a measure will be suspended in order to enable the Council to remedy the infringements identified by adopting, as appropriate, new general criteria for inclusion on the list of persons or entities subject to restrictive measures and new restrictive measures intended to freeze the funds of the entity concerned for the future. However, it must be pointed out that neither those new general listing criteria nor those new restrictive measures enable measures found to be illegal by a judgment of the Court to be rendered lawful (see, to that effect, judgment of 22 September 2015 in *First Islamic Investment Bank* v *Council*, T-161/13, ECR, EU:T:2015:667, paragraph 102).

81 It follows that the suspension of the effects of the annulment of a measure does not affect the principle, set out in the case-law mentioned in paragraph 79 above, that, once the period of suspension has expired, the annulment of the measures concerned produces effects retroactively, so that the measures covered by the annulment are deemed never to have existed.

82 Thus, in the present case, inasmuch as the inclusion of IRISL, HDSL and SAPID on the lists at issue was annulled by the Court, it is no longer possible to justify the adoption and maintenance of the restrictive measures to which the applicant is subject, be it under the first criterion (alleging that the applicant acts on behalf of IRISL) or under the second criterion (alleging that the applicant assists designated entities in evading the sanctions relating to them by acting on behalf of HDSL and SAPID or by replacing Great Ocean Shipping Services to resume the activities which that company carried out for HDSL), since those criteria are subject to those entities being listed lawfully (see, to that effect, judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraphs 75 to 77; see also, by analogy, judgment of 9 December 2014 in *BT Telecommunications* v *Council*, T-440/11, EU:T:2014:1042, paragraph 149 and the case-law cited).

83 Consequently, it must be held that the Council erred in law basing the decision to maintain the applicant's inclusion on the lists at issue on reasons connected with one or other of the criteria mentioned in paragraph 82 above.

84 The second plea in law in Case T-423/13 must therefore be upheld, as must the action in its entirety, and the measures of June 2013 annulled in so far as they relate to the applicant, without it being necessary to examine the other pleas in law of the action.

Case T-64/14

85 In Case T-64/14, the applicant raises seven pleas in law in support of its application for annulment of the measures of November 2013. Those pleas allege, first, the absence of a legal basis for the contested measures as a result of the unlawfulness of the general listing criteria provided for by the measures of October 2013, second, breaches of the principles of protection of legitimate expectations, finality, legal certainty, *ne bis in idem*, *res judicata* and non-discrimination, third, a breach of the duty to give reasons, fourth, a violation of its rights of the defence, fifth, an error of assessment, failure to fulfil the listing criteria, failure to provide any evidence justifying the restrictive measures taken and, in essence, an error in law, sixth, the breach of its fundamental rights, namely its right to property, its freedom to conduct a business and its reputation, and, seventh, an abuse of powers by the Council.

86 It is appropriate first to examine the fifth plea in law.

87 The applicant puts forward six arguments in the fifth plea in law. First, it claims that the decision to maintain IRISL's inclusion on the lists at issue had not yet been adopted at the time of the decision, set out in the measures of November 2013, to maintain the applicant's inclusion on those lists. Second, it submits that it does not provide IRISL with any services at all. Third, it asserts that no decision to maintain the inclusion of HDSL on those lists had been adopted either when the applicant was relisted on them and therefore that the applicant's inclusion, justified on the ground that it was claimed to provide essential services to HDSL, has no legal basis. Fourth, it submits that acting as an agent for HDSL cannot justify its inclusion on the lists in question and it adds, in the reply, that the explanations provided by the Council to explain the reason for its inclusion are late and insufficiently proven. Fifth, it states that there is no evidence that it has any connection with nuclear proliferation. Sixth, it submits that its employee, whose curriculum vitae the Council has produced, does not provide any services to IRISL vessels, which indeed never call at the port of Jebel Ali.

88 The Council contests the merits of the applicant's arguments. First, it submits that IRISL and HDSL were still included on the lists at issue when the applicant was listed on them because, when the Court annulled the listing of the former companies, it also provided for the effects of the measures concerned to be maintained until the partial annulment of Regulation No 267/2012 took effect (judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraphs 80 to 83), on the expiry of the period for bringing an appeal before the Court of Justice referred to in Article 56 of the Statute of the Court of Justice of the European Union. Second, it maintains that the services provided by the applicant to HDSL, in its capacity as agent, are essential in so far as without them HDSL could not operate in the United Arab Emirates. Third, it contends that the criteria which served as a basis for including the applicant in those lists are not derived from its connection with nuclear proliferation but are the general listing criteria provided for by the measures of October 2013, set out in paragraph 25 above. Fourth, it submits that it has provided evidence for maintaining the applicant's inclusion on those lists by producing, in particular, the curriculum vitae of one of the applicant's employees, which states that he acts when IRISL vessels call at the port of Jebel Ali.

89 It should be noted that the applicant was included on the lists at issue on the basis of the general listing criteria provided for by the measures of October 2013, permitting the inclusion of, inter alia 'persons or entities owned or controlled by IRISL, acting on behalf of IRISL or providing insurance or other essential services to IRISL or to entities owned or controlled by them or acting on their behalf', for which the following reasons were given: '[The applicant] provides essential services to HDSL which is a designated entity acting on behalf of IRISL'.

90 The applicant's inclusion on the lists at issue took place on 16 November 2013 and was based on the fact that it provided, as an agent, essential services to HDSL, which was an entity acting on behalf of IRISL. There were thus two interconnected strands to the justification given for that listing, the first alleging that the applicant provided essential services to HDSL and the second alleging that HDSL was an entity acting on behalf of IRISL.

91 As stated in paragraph 78 above, the inclusion of IRISL and of HDSL on the lists at issue was annulled by the Court (judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453) and, as mentioned in paragraph 79 above, since that annulment produces effects retroactively, those listings must be deemed never to have existed.

92 As stated in paragraph 32 above, IRISL and HDSL were re-included on the lists at issue on 26 November 2013, after the applicant was included on those lists on 16 November 2013.

93 It follows from the foregoing that, when the applicant was included on the lists at issue, that being the date at which the legality of the contested measures is to be assessed in accordance with the case-law cited in paragraph 55 above, IRISL and HDSL were not lawfully included on those lists.

94 It must therefore be held that, for the same reasons as those set out in paragraphs 77 to 82 above and as the applicant submits, the Council erred in law in deciding, in the measures of November 2013, to maintain the applicant's inclusion on the lists at issue on the basis of the inclusion of IRISL and HDSL, in the absence of any lawful inclusion of those entities on the lists in question at the date of the applicant's inclusion.

95 As stated in paragraph 77 above, in the absence of any lawful inclusion of IRISL and HDSL on the lists at issue, the applicant's inclusion on those lists on the ground that it provided essential services to HDSL, an entity acting on behalf of IRISL, can no longer be held is justified by the objective of ensuring the effectiveness of the measures adopted vis-à-vis IRISL and HDSL and ensuring that those measures are not circumvented (see, to that effect, judgments of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council*, T-489/10, EU:T:2013:453, paragraphs 75 to 77, and 9 December 2014 in *BT Telecommunications* v *Council*, T-440/11, not published, EU:T:2014:1042, paragraph 149 and the case-law cited).

96 That finding is not invalidated by the argument, raised by the Council in its response to the measures of organisation of procedure, to the effect that the facts mentioned in the reasoning for IRISL's inclusion on the lists at issue were not called into question by the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453), and that therefore, as of the date on which the general listing criteria were modified by the measures of October 2013, adopted in order to remedy the illegalities identified by that judgment, the same facts which justified IRISL's inclusion, annulled by the Court, were brought into line with one of those general listing criteria, namely that authorising the listing of persons or entities that have evaded or violated the provisions of United Nations resolutions or EU measures. In other words, in the Council's submission, the modification of the general listing criteria by the measures of October 2013, which took place before the applicant was included on those lists by the measures of November 2013, rendered lawful, as of the date on which the measures of October 2013 were adopted, the inclusion of IRISL and HDSL on those lists.

97 However, the fact that the Council, during the period in which the effects of the annulment ordered in the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453) were suspended and before the applicant's inclusion on the lists at issue by the measures of November 2013, modified, by the adoption of the measures of October 2013, the general listing criteria for the persons or entities subject to restrictive measures in order, in particular, to ensure that the inclusion of IRISL and HDSL on those lists was brought into line with those new general listing criteria, does not affect the finding that, as stated in paragraphs 79 to 81 above, on the expiry of the period during which the effects of the annulment ordered in that judgment were suspended, IRISL and HDSL's listings, annulled by that judgment, were deleted retroactively from the legal order and deemed never to have existed. The modification of the new general listing criteria does not of itself render lawful, from that modification onwards, the inclusion of IRISL and HDSL on the lists at issue on the basis of the previous general listing criteria, and therefore cannot remedy the illegalities identified in judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453), which annulled those listings.

98 A different interpretation to that stated in paragraph 97 above would be inconsistent with the principle recalled in paragraph 55 above. Thus the elements of fact and law postdating the inclusion of IRISL and HDSL on the lists at issue cannot be taken into account for the purposes of assessing the lawfulness of those listings.

99 It follows that, as set out in paragraph 80 above, the Council could not, merely by modifying the general listing criteria by the measures of October 2013, remedy the illegalities identified by the judgment of 16 September 2013 in *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, ECR, EU:T:2013:453) and maintain the inclusion of IRISL and HDSL on the lists at issue. Indeed, as regards their inclusion, it must be stated that the Council did not confine itself to simply

modifying those general listing criteria, but went on to make new listings based, inter alia, on the new general listing criteria. However, as stated in paragraphs 92 and 93 above, those new listings were made after the inclusion of the applicant on those lists and therefore, for the reasons set out in paragraphs 94 and 95 above, do not allow the applicant's inclusion to be justified on the basis of the measures of November 2013.

100 It follows that the fifth plea in law must be upheld and the measures of November 2013 annulled, in so far as they apply to the applicant, without it being necessary to examine the other pleas in the action or the plea of illegality concerning the general listing criteria provided for by the measures of October 2013.

The effects of the partial annulment of the contested measures

101 As regards Implementing Regulation No 522/2013, by which the applicant was included on the list in Annex IX to Regulation No 267/2012, that regulation no longer produces legal effects as a result of the adoption of Regulation No 1154/2013. Consequently, the annulment of Implementing Regulation No 522/2013, in so far as that measure relates to the applicant, concerns only the effects which that measure produced between the date on which it entered into force and the date of adoption of Regulation No 1154/2013.

102 As regards Decision 2013/270, by which the applicant was included on the list in Annex II to Decision 2010/413, the effects of its annulment are, in so far as that measure concerns the applicant, immediate and definitive.

103 So far as concerns the temporal effects of the annulment of Regulation No 1154/2013, under the second paragraph of Article 60 of the Statute of the Court of Justice, by way of derogation from Article 280 TFEU, the annulment of that regulation, in so far as that measure relates to the applicant, is to take effect only as of the date of expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 of that Statute or, if an appeal has been brought within that period, as of the date of dismissal of the appeal (see, by analogy, judgments of 16 September 2011 in *Kadio Morokro* v *Council*, T-316/11, not published, EU:T:2011:484, paragraph 38, and of 6 September 2013 in *Good Luck Shipping* v *Council*, T-57/12, not published, EU:T:2013:410, paragraph 74).

104 So far as concerns Decision 2010/413, as amended by Decision 2013/661, it must be recalled that, under the second paragraph of Article 264 TFEU, the General Court may, if it considers it necessary, state which of the effects of the act which it has declared void are to be considered definitive (see, to that effect, judgments of 6 September 2013 in *Europäisch-Iranische Handelsbank* v *Council*, T-434/11, EU:T:2013:405, paragraph 220, and *Good Luck Shipping* v *Council*, T-57/12, not published, EU:T:2013:410, paragraph 75).

105 In this connection, if the date on which the partial annulment of Regulation No 1154/2013 amending Annex IX to Regulation No 267/2012 and that on which Annex II to Decision 2010/413, as resulting from Decision 2013/661, take effect were to differ, that would be likely to seriously jeopardise legal certainty, since both those acts impose identical measures on the applicant.

106 The effects of Annex II to Decision 2010/413, as resulting from Decision 2013/661, must therefore be maintained as regards the applicant until the partial annulment of Regulation No 1154/2013 on Annex IX to Regulation No 267/2012 takes effect (see, by analogy, judgments of 11 December 2012 in *Sina Bank* v *Council*, T-15/11, EU:T:2012:661, paragraph 89, and 6 September 2013 in *Good Luck Shipping* v *Council*, T-57/12, not published, EU:T:2013:410, paragraph 76).

Costs

107 Under Article 134(1) 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 in both of the Joined Cases T-423/13 and T-64/14, it must bear its own costs and be ordered to pay those incurred by the applicant, in accordance with the form of order sought by the latter.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Annuls the following measures, in so far as they concern Good Luck Shipping LLC:**

   — **Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;**

   — **Council Implementing Regulation (EU) No 522/2013 of 6 June 2013 implementing Regulation (EU) No 267/2012 on restrictive measures against Iran;**

   — **Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran;**

   — **Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation (EU) No 267/2012 on restrictive measures against Iran;**

2. **Orders that the effects of Decision 2013/661 be maintained as regards Good Luck Shipping until the annulment of Regulation No 1154/2013 takes effect;**

3. **Orders the Council of the European Union to bear its own costs and to pay the costs incurred by Good Luck Shipping.**

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 24 May 2016.

[Signatures]

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