Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

13 December 2018 *

[Text rectified by order of 21 March 2019]

(Non-contractual liability — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds — Inclusion and maintenance of the applicant's name on the lists of persons and entities subject to restrictive measures — Material damage — Non-material damage)

In Case T-558/15,

Iran Insurance Company, established in Tehran (Iran), represented by D. Luff, lawyer,

applicant,

v

Council of the European Union, represented by B. Driessen and M. Bishop, acting as Agents,

defendant,

supported by

European Commission, represented by F. Ronkes Agerbeek and R. Tricot, acting as Agents,

intervener,

APPLICATION pursuant to Article 268 TFEU for compensation for the material and non-material damage allegedly suffered by the applicant following the adoption of Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81), of 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), 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. 71), of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), and of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), by which the applicant's name was included and maintained on the lists of persons and entities subject to restrictive measures,

* Language of the case: English.

THE GENERAL COURT (First Chamber, Extended Composition)

composed of I. Pelikánová (Rapporteur), President, V. Valančius, P. Nihoul, J. Svenningsen and U. Öberg, Judges,

Registrar: N. Schall, Administrator,

having regard to the written part of the procedure and further to the hearing on 20 March 2018,

gives the following

Judgment

I. Background to the dispute

1 The present case has 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 ('nuclear proliferation').

2 The applicant, Iran Insurance Company (also known as Bimeh Iran), is an Iranian insurance company.

3 On 9 June 2010, the United Nations Security Council adopted Resolution 1929 (2010), which widened the scope of the restrictive measures imposed by earlier Resolutions 1737 (2006) of 27 December 2006, 1747 (2007) of 24 March 2007, and 1803 (2008) of 3 March 2008 and introduced additional restrictive measures against the Islamic Republic of Iran.

4 By Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39) the applicant's name was included on the list in Annex II to that decision.

5 Consequently, the applicant's name was included on the list in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

6 The inclusion of the applicant's name on the list referred to in paragraph 5 above took effect on the date of publication of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation No 423/2007 (OJ 2010 L 195, p. 25) in the *Official Journal of the European Union*, namely on 27 July 2010. The result was the freezing of the applicant's funds and economic resources ('freezing of funds' or 'the restrictive measures').

7 The inclusion of the applicant in the lists cited in paragraphs 4 and 5 above was based on the following grounds:

'[The applicant] has insured the purchase of various items that can be used in programmes that are sanctioned by [Security Council Resolution] 1737. Purchased items insured include helicopter spare parts, electronics, and computers with applications in aircraft and missile navigation.'

8 By letter dated 9 September 2010, the applicant asked the Council of the European Union to review the inclusion of its name on the lists at issue, in the light of information which it had sent to the Council. The applicant also asked to be provided with the evidence justifying its listing. Lastly, it requested a hearing.

9 By Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), the Council, after reviewing the applicant's situation, maintained the applicant's listing in Annex II to Decision 2010/413, with effect from that date.

10 When Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/1007 (OJ 2010 L 281, p. 1) was adopted, the applicant's name was included on the list in Annex VIII to that regulation with effect from 27 October 2010.

11 By letter of 28 October 2010, received by the applicant on 23 November 2010, the Council informed the applicant that, following a reconsideration of its situation in the light of the comments in the letter of 9 September 2010, it would continue to be subject to restrictive measures.

12 By letter of 28 December 2010, the applicant denied the allegations made against it by the Council. In order to exercise its rights of defence, it requested access to the file.

13 By application lodged at the Court Registry on 7 January 2011, the applicant brought an action seeking, in essence, annulment of the lists cited in paragraphs 4 and 5 above, in so far as they concerned the applicant. That action was registered as Case T-12/11.

14 By letter of 22 February 2011, the Council provided the applicant with the extracts concerning it from the listing proposals submitted by Member States, as contained in the Council's cover notes under references 13413/10 EXT 6 and 6726/11.

15 By letter of 29 July 2011 the applicant again contested the veracity of the matters of which it was accused by the Council.

16 By Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71) and Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), the Council, after reviewing the applicant's situation, maintained the applicant's listing in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010, with effect from 1 and 2 December 2011, respectively.

17 By letter of 5 December 2011 the Council informed the applicant that it was to continue to be subject to restrictive measures.

18 By letter of 13 January 2012 the applicant again requested access to the file.

19 By letter of 21 February 2012 the Council sent to the applicant documents relating to the 'decision on 1 December 2011 to maintain restrictive measures in force against [the applicant]'.

20 Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413 (OJ 2012 L 19, p. 22) came into force on the day of its adoption. Article 1(7) of Decision 2012/35 amended, as from that date, Article 20 of Decision 2010/413, notably by introducing a new criterion of the provision of support, including financial support, to the Iranian government. That same criterion was introduced in Article 23(2)(d) of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1).

21 When Regulation No 267/2012 was adopted, the applicant was included, on the same grounds as those already referred to in paragraph 7 above, in the list in Annex IX to that regulation (together with the lists in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010, 'the disputed lists'), with effect from 24 March 2012.

22 By a statement lodged at the Court Registry on 4 June 2012, the applicant amended the form of order sought in Case T-12/11 so as to seek, in essence, annulment of the disputed lists, in so far as they concerned the applicant.

23 By judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401), the Court, inter alia, annulled the disputed lists, in so far as they concerned the applicant, on the ground that they were not substantiated by evidence. As no appeal was brought against that judgment, it became final and acquired the force of *res judicata*.

24 By Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413 (OJ 2013 L 306, p.18) and Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation No 267/2012 (OJ 2013 L 306, p. 3), the Council maintained the restrictive measures against the applicant, on the basis of the new criterion of the provision of support, including financial support, to the Iranian government. Those acts entered into force on 16 November 2013, the day on which they were published in the Official Journal.

25 By application lodged at the Court Registry on 29 January 2014, the applicant brought an action for annulment of the acts of 15 November 2013 maintaining the restrictive measures against it. That action was registered as Case T-63/14.

26 By judgment of 3 May 2016, *Iran Insurance* v *Council* (T-63/14, not published, EU:T:2016:264), the Court dismissed the action and ordered the applicant to pay the costs.

27 By letter of 25 July 2015, the applicant submitted to the Council a preliminary claim for compensation for damage allegedly incurred as a result of the restrictive measures taken against it pursuant to Implementing Regulation No 668/2010 and Decision 2010/413. The Council did not reply to that letter.

II. Procedure and forms of order sought

28 By application lodged at the General Court Registry on 25 September 2015, the applicant brought the present action. The case was assigned to the First Chamber of the Court on account of the connection between cases.

29 On 15 January 2016, the Council lodged its defence.

30 By document lodged at the Court Registry on 16 March 2016, the European Commission sought leave to intervene in the present case in support of the form of order sought by the Council.

31 On 14 April 2016, the Council lodged its observations on the application to intervene. The applicant did not lodge any observations on that application within the time limit prescribed.

32 On 13 May 2016, the applicant lodged its reply.

33 By decision of the President of the former First Chamber of the Court of 18 May 2016, adopted pursuant to Article 144(4) of the Rules of Procedure of the General Court, the Commission was granted leave to intervene in the present dispute.

34 On 8 July 2016, the Council lodged its rejoinder.

35 On 19 July 2016, the Commission lodged its statement in intervention. On 7 September and 11 October 2016 respectively, the Council and the applicant lodged their observations on that statement.

36 On a proposal from the Judge-Rapporteur, the Court (First Chamber) adopted a measure of organisation of procedure to hear the parties on the possibility of staying proceedings pending the final decision of the Court of Justice in Case C-45/15 P, *Safa Nicu Sepahan* v *Council*. The main parties submitted their observations in that regard within the time limit prescribed.

37 Following a change in the composition of the Chambers of the General Court, pursuant to Article 27(5) of the Rules of Procedure, the Judge-Rapporteur was assigned to the First Chamber, to which the present case was accordingly allocated.

38 In the light of the observations of the main parties, the President of the First Chamber of the Court decided, by decision of 10 October 2016, to stay the proceedings in the present case.

39 Following delivery of the judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council* (C-45/15 P, EU:C:2017:402), on a proposal from the Judge-Rapporteur, the Court (First Chamber) adopted a measure of organisation of procedure to hear the parties on the consequences for the present case that they drew from that judgment. The main parties submitted their observations in that regard within the time limit prescribed.

40 By letter lodged at the Court Registry on 12 July 2017, the applicant requested a hearing, pursuant to Article 106(1) of the Rules of Procedure.

41 On 14 December 2017, pursuant to Article 28 of the Rules of Procedure and on a proposal from the First Chamber, the Court decided to refer the present case to the Chamber sitting in extended composition.

42 On a proposal from the Judge-Rapporteur, the Court decided to open the oral part of the procedure, to seek the observations of the main parties on a possible joinder of the present case with Case T-559/15, *Post Bank Iran* v *Council*, for the purposes of the oral part of the procedure and to put certain questions to the parties. The parties complied with those requests within the prescribed periods.

43 By decision of 9 February 2018, the President of the First Chamber of the Court decided to join the present case with Case T-559/15, *Post Bank Iran* v *Council*, for the purposes of the oral part of the procedure.

44 The parties presented oral argument and replied to the Court's oral questions at the hearing on 20 March 2018. In its replies, the applicant referred, inter alia, to the unlawfulness, established in the judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401), on which it relied in support of its claim for compensation, formal note of which was taken in the minutes of the hearing.

45 In its application, the applicant claims, in essence, that the Court should:

– order the Council to pay it, by way of compensation for the material and non-material damage it suffered as a result of the unlawful inclusion of its name on the disputed lists, between July 2010 and November 2013, pursuant to Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012 ('the disputed acts'), damages in the sum of EUR 4 774 187.07, GBP 84 767.66 (approximately EUR 94 939) and USD 1 532 688 (approximately EUR 1 318 111), plus any other amount that may be established in the course of the procedure;

– order the Council to pay the costs.

46 In its reply and its observations on the statement in intervention, the applicant amended its claim for damages, thenceforth claiming damages by way of compensation for the material and non-material damage suffered in the sum of EUR 3 494 484.07, GBP 84 767.66 (approximately EUR 94 939), 33 945 million Iranian rials (IRR) (approximately EUR 678 900), USD 1 532 688 (approximately EUR 1 318 111), plus any other amount that may be established in the course of the procedure.

47 The Council contends, in essence, that the Court should:

– dismiss the action, in part, for lack of jurisdiction and, for the remainder, as being manifestly inadmissible or, in any event, manifestly unfounded;

– order the applicant to pay the costs.

48 The Commission contends that the Court should dismiss the action in its entirety.

III. Law

A. The jurisdiction of the Court

49 [As rectified by order of 21 March 2019] In its rejoinder, the Council takes the view that, in so far as the applicant based its claim for compensation on the unlawfulness of its inclusion on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, the Court has no jurisdiction to rule on the present action, since the second paragraph of Article 275 TFEU does not give the Court any jurisdiction to rule on a claim for compensation based on the unlawfulness of an act relating to the common foreign and security policy (CFSP).

50 In its written replies to the Court's questions (paragraph 42 above), the applicant maintains that the Council's plea of inadmissibility is inadmissible, due to its lateness, and that it is unfounded, since the CFSP measures were implemented, in the present case, by regulations adopted on the basis of Article 215 TFEU.

51 In that regard, it should be borne in mind that a plea of inadmissibility that was raised at the rejoinder stage, when it could have been raised at the stage of the defence, must be held to be out of time (see, to that effect, judgment of 18 February 2016, *Jannatian* v *Council*, T-328/14, not published, EU:T:2016:86, paragraph 29). The present plea of inadmissibility, which could have been raised by the Council at the stage of the defence, is out of time and, as such, inadmissible.

52 Nevertheless, under Article 129 of the Rules of Procedure, the Court may at any time, of its own motion, after hearing the parties, rule on whether there exists any absolute bar to proceeding with a case, which, according to case-law, includes the jurisdiction of the Courts of the European Union to hear the action (see, to that effect, judgments of 18 March 1980, *Ferriera Valsabbia and Others* v *Commission*, 154/78, 205/78, 206/78, 226/78 to 228/78, 263/78, 264/78, 31/79, 39/79, 83/79 and 85/79, EU:C:1980:81, paragraph 7, and of 17 June 1998, *Svenska Journalistförbundet* v *Council*, T-174/95, EU:T:1998:127, paragraph 80).

53 It follows from the sixth sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU that, in principle, the Court of Justice is not to have jurisdiction with respect to the provisions of primary law relating to the CFSP or with respect to legal acts adopted on the basis of those provisions. It is only on an exceptional basis that, under the second paragraph of Article 275 TFEU, the Courts of the European Union are to have jurisdiction in matters relating to the CFSP. That jurisdiction includes review of whether Article 40 TEU has been complied with and actions for annulment brought by individuals, under the conditions set out in the fourth paragraph of

Article 263 TFEU, against restrictive measures adopted by the Council in connection with the CFSP. However, the second paragraph of Article 275 TFEU does not give the Court of Justice jurisdiction to hear or determine any kind of claim for compensation (judgment of 18 February 2016, *Jannatian* v *Council*, T-328/14, not published, EU:T:2016:86, paragraph 30).

54 It follows from this that a claim seeking compensation for the damage allegedly suffered as a result of the adoption of an act relating to the CFSP falls outside the jurisdiction of the Court (judgment of 18 February 2016, *Jannatian* v *Council*, T-328/14, not published, EU:T:2016:86, paragraph 31).

55 However, the Court has always held that it has jurisdiction to hear a claim for damages allegedly suffered by a person or entity, as a result of restrictive measures against it, in accordance with Article 215 TFEU (judgments of 11 July 2007, *Sison* v *Council*, T-47/03, not published, EU:T:2007:207, paragraphs 232 to 251, and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraphs 45 to 149, confirmed on appeal in the judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402).

56 In the present case, the restrictive measures taken against the applicant, by Decision 2010/644 and Decision 2011/783 respectively, were implemented by the disputed acts, adopted in accordance with Article 215 TFEU.

57 It follows that, even if the Court does not have jurisdiction to hear the applicant's claim for compensation, in so far as the applicant seeks compensation for the damage that it allegedly suffered as a result of the adoption of Decision 2010/644 and Decision 2011/783, it does have jurisdiction to hear that claim, in so far as the applicant seeks compensation for the damage that it allegedly suffered as a result of the implementation of those decisions by the disputed acts.

58 Consequently, the present action need be examined only in so far as it seeks compensation for the damage the applicant claims to have suffered as a result of the restrictive measures taken against it in Decisions 2010/644 and 2010/783 being implemented by the disputed acts.

B. The admissibility of the action

59 Without raising any objection by separate document, the Council, supported by the Commission, takes the view that the present action is manifestly inadmissible, in that, in essence, the application does not contain the essential factual elements to determine whether all the conditions necessary for the European Union to incur liability have been satisfied in the present case.

60 The Commission adds that, given the date on which the present action was brought, namely 25 September 2015, the action was brought outside the five-year limitation period provided for in Article 46 of the Statute of the Court of Justice of the European Union, in so far as it claims for alleged losses arising before 25 October 2010. In accordance with the case-law, the present action should therefore be declared partially inadmissible. According to the Commission, the issue of whether the action is partially time-barred can be examined of the Court's own motion on grounds of public policy.

61 The Council takes the view that the question of a time bar does not appear to arise in the present case, since the applicant only seeks compensation for its inclusion on the disputed lists after 25 September 2010. The Council nevertheless indicates that, if there were a situation of a time bar, that could be raised of the Court's own motion as a matter of public policy.

62 The applicant maintains that the plea of inadmissibility alleging, in essence, non-compliance with the requirement of precision laid down in Article 21 of the Statute of the Court of Justice of the European Union and Article 76(d) of the Rules of Procedure is inadmissible due to its lateness, and in

any event is unfounded, in so far as the application was sufficiently complete, precise and reasoned. As for the plea of inadmissibility by which, in essence, it is alleged that the action that forms the basis of the present proceedings is partially time-barred, the applicant contends that the plea is inadmissible and cannot be examined by the General Court of its own motion, because it does not amount to an absolute bar to proceedings. In any event, it claims that that plea of inadmissibility is unfounded.

63 As regards the plea of inadmissibility which, in essence, alleges non-compliance with the requirement of precision laid down in Article 21 of the Statute of the Court of Justice of the European Union and Article 76(d) of the Rules of Procedure, it must be borne in mind that, in accordance with those provisions, every application must state the subject matter of the proceedings, and the pleas in law and arguments relied on. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, in order for a plea to be admissible, that the essential matters of law and fact relied on are stated, at least in summary form, coherently and intelligibly in the application itself (see, by analogy, judgment of 3 February 2005, *Chiquita Brands and Others* v *Commission*, T-19/01, EU:T:2005:31, paragraph 64 and the case-law cited).

64 It should also be borne in mind that, pursuant to the second paragraph of Article 340 TFEU, 'in the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties'. In accordance with settled case-law, in order for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU for unlawful conduct of its institutions, a number of conditions must be satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct complained of and the damage pleaded (see judgment of 9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 106 and the case-law cited; judgments of 11 July 2007, *Schneider Electric* v *Commission*, T-351/03, EU:T:2007:212, paragraph 113, and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 47).

65 Thus, in order to satisfy the requirements of clarity and precision arising from Article 76(d) of the Rules of Procedure, as interpreted by the case-law, an application seeking compensation for damage allegedly caused by an EU institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers there is a causal link between that conduct and the damage it claims to have suffered, and the nature and extent of that damage (see, to that effect and by analogy, judgment of 3 February 2005, *Chiquita Brands and Others* v *Commission*, T-19/01, EU:T:2005:31, paragraph 65 and the case-law cited).

66 In the present case, the applicant has identified in its application the conduct alleged against the Council, namely the adoption of the disputed acts, which were found to be unlawful in the judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401). Moreover, the applicant has described and quantified the material and non-material damage it allegedly suffered as a result of those acts, namely non-material damage consisting in damage to its good reputation, assessed *ex aequo et bono* at EUR 1 000 000, and material damage, corresponding, first, to the loss of interest that it would have been able to recover if it had been able to transfer funds held in its accounts in the European Union to Iran and to invest them there, in the amounts of GBP 2 544.82 (approximately EUR 2 850), USD 17 733.48 (approximately EUR 15 250) and USD 421.05 (approximately EUR 362), second, to the loss of interest that it would have been able to recover if it had been able to transfer sums owed to it by three insurance and reinsurance companies to Iran and to invest them there, in the amounts of EUR 557 196.09, GBP 82 222.84, (approximately EUR 92 089), and USD 1 532 266.95, (approximately EUR 1 317 749) and, third, to the loss of profit that it suffered as a result of the failure to take out insurance contracts for the transport of passengers for up to an amount finally assessed at EUR 1 919 554.50 and for the failure to take out contracts of insurance for freight, up to an amount

finally assessed at IRR 33 945 million (approximately EUR 678 900). Finally, the applicant has explained that the non-material and material damage thus suffered was linked to the adoption of the disputed acts.

67 The summary, in the application, of the conduct which the applicant alleges against the Council, the reasons why the applicant considers there to be a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage satisfy the precision requirements that arise from Article 76(d) of the Rules of Procedure.

68 Consequently, the plea of inadmissibility raised by the Council, which alleges non-compliance with the requirement of precision laid down by Article 21 of the Statute of the Court of Justice of the European Union and Article 76(d) of the Rules of Procedure, must be rejected as unfounded.

69 As regards the plea of inadmissibility raised by the Commission by which it alleges that the right of action on which the present proceedings are based is partially time-barred, it should be noted that the Council's claim for dismissal of the present action does not in any way rely on such a time bar. However, under the fourth paragraph of Article 40 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union, and under Article 142(1) of the Rules of Procedure, the form of order sought by an application to intervene is to be limited to supporting, in whole or in part, the form of order sought by one of the main parties. Moreover, the intervener must accept the case as he finds it at the time of his intervention, in accordance with Article 142(3) of the Rules of Procedure.

70 It follows that the intervener was not entitled to raise the objection of inadmissibility independently and that the Court is therefore not bound to consider the pleas on which the intervener relies exclusively, which do not relate to public policy (see, to that effect, judgments of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraph 22, and of 3 July 2007, *Au Lys de France* v *Commission*, T-458/04, not published, EU:T:2007:195, paragraph 32).

71 Moreover, it has already been held that, in so far as actions to establish non-contractual liability are governed, pursuant to Article 340 TFEU, by the general principles common to the laws of the Member States and where a comparison of the legal systems of the Member States shows that, as a general rule, subject to very few exceptions, a court may not of its own motion raise the issue of time limitation, it is unnecessary for the Court to consider of its own motion the question whether the right of action on which the proceedings at issue are based may be time-barred (judgment of 30 May 1989, *Roquette Frères* v *Commission*, 20/88, EU:C:1989:221, paragraph 12; see also, to that effect, judgment of 8 November 2012, *Evropaïki Dynamiki* v *Commission*, C-469/11 P, EU:C:2012:705, paragraph 51).

72 Consequently, the plea of inadmissibility raised by the Commission must be rejected as inadmissible.

C. The admissibility of the evidence adduced in annexes to the reply and the applicant's request for leave to produce additional evidence during the course of the proceedings

73 In its rejoinder, the Council, supported by the Commission, claims that evidence presented in Annexes R.1 to R.15 to the reply should be rejected as it was produced too late and is therefore inadmissible. According to the Council, that evidence could have and should have, in accordance with the case-law, been produced at the application stage.

74 In its reply, the applicant requested leave from the Court, under a measure of inquiry, to produce additional evidence in the course of the proceedings. In its written replies to the Court's questions (paragraph 42 above), the applicant argues that the plea of inadmissibility should be rejected, on the grounds that the evidence adduced in Annexes R.1 to R.15 to the reply contains supplementary evidence of facts that are already well-established in the application and which are necessary to rebut

the arguments relied on by the Council in its defence. The Council could have fully exercised its rights of defence to this evidence in its rejoinder. The Commission also had the opportunity to verify and assess that evidence.

75 In the present case, it is apparent from the application that the present action is concerned with a claim for compensation for the material and non-material damage allegedly suffered by the applicant following the Council's adoption of the disputed acts. It is therefore an action by which the applicant seeks to invoke the non-contractual liability of the European Union.

76 In accordance with well-established case-law, in the context of an action to establish non-contractual liability, it is for the applicant to provide the Courts of the European Union with the evidence to establish the fact and the extent of the loss which it claims to have suffered (see judgment of 28 January 2016, *Zafeiropoulos* v *Cedefop*, T-537/12, not published, EU:T:2016:36, paragraph 91 and the case-law cited; judgment of 26 April 2016, *Strack* v *Commission*, T-221/08, EU:T:2016:242, not published, paragraph 308).

77 Admittedly, the Courts of the European Union have acknowledged that, in certain cases, particularly where it is difficult to express the alleged damage in figures, it is not absolutely necessary to particularise its exact extent in the application or to calculate the amount of the compensation claimed (see judgment of 28 February 2013, *Inalca and Cremonini* v *Commission*, C-460/09 P, EU:C:2013:111, paragraph 104 and the case-law cited).

78 The application in the present case was brought on 25 September 2015. With the exception of one of the heads of material damage for which it was unable to provide a definitive figure, the applicant quantified, at the application stage, the material and non-material damage which it claimed to have suffered, relying on the evidence annexed to that application. At the reply stage, the applicant amended the quantification of its damage to take account of the Council's objection that it should have deducted its costs from particular heads of material damage and provided a definitive figure for the head of material damage in respect of which it had until then only provided a provisional figure.

79 As a preliminary point, it should be borne in mind that, in accordance with Article 76(f) of the Rules of Procedure, which came into force on 1 July 2015, and which are thus applicable to the present application, every application must contain, where appropriate, any evidence produced or offered.

80 Moreover, Article 85(1) of the Rules of Procedure provides that evidence produced or offered is to be submitted in the first exchange of pleadings. Article 85(2) adds that in reply or rejoinder a party may produce or offer further evidence in support of its arguments, provided that the delay in the submission of such evidence is justified. In the latter case, in accordance with Article 85(4) of the Rules of Procedure, the Court is to decide on the admissibility of the evidence produced or offered after the other parties have been given an opportunity to comment on such evidence.

81 Evidence in rebuttal and the amplification of previous evidence, submitted in response to evidence in rebuttal put forward by the opposing party are not covered by the time-bar rule in Article 85(1) of the Rules of Procedure (see judgment of 22 June 2017, *Biogena Naturprodukte* v *EUIPO (ZUM wohl)*, T-236/16, EU:T:2017:416, paragraph 17 and the case-law cited).

82 It follows from the case-law relating to the application of the time-bar rule provided for in Article 85(1) of the Rules of Procedure that the parties must give reasons for the delay in producing or offering new evidence (see, to that effect and by analogy, judgment of 18 September 2008, *Angé Serrano and Others* v *Parliament*, T-47/05, EU:T:2008:384, paragraph 54) and that the Courts of the European Union have the power to check the merits of the reasons given for the delay in producing or offering the evidence and, as the case may be, the content thereof, and, where that late production is not justified to the requisite legal standard or well-founded, the power to reject the evidence (see, to

that effect and by analogy, judgments of 14 April 2005, *Gaki-Kakouri* v *Court of Justice*, C-243/04 P, not published, EU:C:2005:238, paragraph 33, and of 18 September 2008, *Angé Serrano and Others* v *Parliament*, T-47/05, EU:T:2008:384, paragraph 56).

83 It has already been held that the late submission, by one party, of evidence or offers of evidence could be justified where that party was unable, previously, to obtain possession of the evidence in question, or if evidence produced belatedly by the other party justifies completing the file so as to ensure observance of the rule that both parties should be heard (see, to that effect and by analogy, judgments of 14 April 2005, *Gaki-Kakouri* v *Court of Justice*, C-243/04 P, not published, EU:C:2005:238, paragraph 32, and of 18 September 2008, *Angé Serrano and Others* v *Parliament*, T-47/05, EU:T:2008:384, paragraph 55).

84 Lastly, according to the case-law, the Court is the sole judge of whether the information available concerning the cases before it needs to be supplemented by ordering a measure of inquiry, which cannot be intended to make up for the omission of the applicant in the taking of evidence (see judgment of 16 July 2009, *SELEX Sistemi Integrati* v *Commission*, C-481/07 P, not published, EU:C:2009:461, paragraph 44 and the case-law cited).

85 It follows from the legal framework recalled in paragraphs 79 to 84 above that the Court does not have the power, in the context of a measure of inquiry, to give the applicant general authorisation to produce all the evidence it might wish to submit in the course of the proceedings, as the applicant has requested from the Court, and that, therefore, such a request must be refused.

86 In the present case, the applicant has produced certain evidence to support the application for compensation, in Annexes R.1 to R.15 to the reply, without providing specific justification for the delay in producing that evidence. With the exception of Annex R.14 to the reply, that evidence does not relate to the head of damage for which the applicant had not provided a definitive figure at the stage of the reply.

87 In so far as the applicant, in its replies to the Court's questions (see paragraph 42 above), argued that Annexes R.1 to R.15 to the reply contained supplementary evidence of facts that were already well-established in the application, that justification must be rejected as ineffective, since the mere fact that the facts had already been established is not capable of justifying the late submission of new evidence.

88 In so far as, in its replies to the Court's questions (see paragraph 42 above), the applicant claimed that Annexes R.1 to R.15 to the reply contained evidence necessary to rebut the arguments relied on by the Council in its defence, it must be noted that the evidence adduced in Annexes R.1 to R.12 and R.15 to the reply was produced for the sole purpose of establishing, in accordance with the case-law cited in paragraph 76 above, the fact and the extent of the material and non-material damage alleged, as quantified in the application, and not to undermine the evidence annexed to the Council's defence. The fact that the Council, in its defence, argued that the applicant had not proved to the requisite legal standard the fact and the extent of the damage allegedly suffered cannot be regarded as evidence in rebuttal, within the meaning of the case-law cited in paragraph 81 above, and does not allow for the evidence contained in Annexes R.1 to R.12 and R.15 to the reply to be regarded as an amplification of previous evidence submitted in response to evidence in rebuttal, nor for the late production of that evidence thus to be considered justified by the necessity of responding to the Council's arguments and ensuring observance of the rule that both parties should be heard.

89 However, the evidence contained in Annexes R.13 and R.14 to the reply, namely an affidavit from the Sanjideh Ravesh Arya Audit and Financial Services Institute ('the SRA Institute'), which had drawn up a 'report on the financial consequences of damages resulting from the restrictive measures adopted by the European Union', annexed to the application ('the SRA report'), and a letter from that institute seeking to provide clarification on the methods that it used to prepare that report, were produced by

the applicant for the purposes of responding to the Council's arguments in the defence, calling into question the independence of that institute and the methods or the data used in that report. For this reason, the late production of the evidence contained in Annexes R.13 and R.14 to the reply is justified by the necessity of responding to the Council's arguments and ensuring observance of the rule that both parties should be heard.

90 Moreover, Annex R.14 to the reply sought to justify the definitive quantification of the head of damage which the applicant had been able to estimate only provisionally at the application stage.

91 It follows from all of the foregoing assessments that, amongst the evidence produced in the annexes to the reply, only that contained in Annexes R.13 and R.14 to the reply is admissible and must be taken into account in the examination of the substance of the action.

D. Substance

92 In support of the present action, the applicant argues that the three conditions for the European Union to incur non-contractual liability, recalled in paragraph 64 above, are satisfied in the present case.

93 The Council, supported by the Commission, submits, in the alternative, that the action should be dismissed as unfounded, on the grounds that it is for the applicant to adduce evidence that all the conditions necessary for the European Union to incur non-contractual liability are satisfied in the present case, and that it has failed to do so.

94 According to settled case-law, the conditions necessary for the European Union to incur non-contractual liability within the meaning of the second paragraph of Article 340 TFEU, as already listed in paragraph 64 above, are cumulative (judgment of 7 December 2010, *Fahas* v *Council*, T-49/07, EU:T:2010:499, paragraphs 92 and 93, and order of 17 February 2012, *Dagher* v *Council*, T-218/11, not published, EU:T:2012:82, paragraph 34). It follows that, where one of those conditions is not satisfied, the application must be dismissed in its entirety (judgment of 26 October 2011, *Dufour* v *ECB*, T-436/09, EU:T:2011:634, paragraph 193).

95 It is therefore necessary to ascertain, in the present case, whether the applicant has discharged the burden of proving the unlawfulness of the conduct that it alleges against the Council, namely the adoption of the disputed acts, that it has actually suffered the material and non-material damage that it claims, and the causal link between that adoption and the damage that it alleges.

1. The alleged unlawfulness

96 The applicant submits that the condition relating to the unlawful conduct on the part of an institution is satisfied since the adoption of the disputed acts amounts to a sufficiently serious breach, on the part of the Council, of a rule of law intended to confer rights on individuals for the European Union to incur non-contractual liability in accordance with the case-law.

97 In that regard, the applicant maintains that the inclusion and retention of its name on the disputed lists, pursuant to the disputed acts, are clearly unlawful, as was held by the Court in the judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401). Moreover, the legal provisions which it claims have been breached in the present case are intended essentially to protect the individual interests of the persons and entities concerned, on whom they confer rights (see, to that effect and by analogy, judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraphs 57 and 58).

98 According to the applicant, the fact that the Council included or maintained on the lists the name of a person about whom the Council had no information or evidence to establish, to the requisite legal standard, that the restrictive measures were well founded, amounts to a sufficiently serious breach of those provisions (see, to that effect and by analogy, judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraphs 59, 63 and 68). In the present case, the Council adopted the disputed acts, as a result of which, between July 2010 and November 2013, restrictive measures were taken against it, without the slightest evidence of the conduct of which it was accused.

99 Finally, the applicant takes the view that the Council cannot claim that the provisions which it infringed were confused, ambiguous or unclear since, at the time of the adoption of the disputed acts, it was clear that the Council had to adduce evidence in support of the restrictive measures it was taking.

100 The Council, supported by the Commission, does not contest the unlawfulness of the disputed acts, but takes the view that it does not suffice to trigger the non-contractual liability of the European Union, since it does not amount to a sufficiently serious breach of a rule of law intended to confer rights on individuals. Such a breach could only be established if it had been shown, in accordance with the case-law, that the Council had manifestly and gravely disregarded the limits of its discretion, which is not so in the present case.

101 In the judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401), the Court held that the disputed acts were unlawful.

102 Nevertheless, it should be borne in mind that, according to well-established case-law of the General Court, the finding that a legal act is unlawful is not sufficient, however regrettable that unlawfulness may be, for a finding that the condition for the non-contractual liability of the European Union relating to the unlawfulness of the conduct of the institutions complained of is satisfied (see, to that effect, judgments of 6 March 2003, *Dole Fresh Fruit International* v *Council and Commission*, T-56/00, EU:T:2003:58, paragraphs 72 to 75; of 23 November 2011, *Sison* v *Council*, T-341/07, EU:T:2011:687, paragraph 31; and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 50).

103 The condition underlying the existence of unlawful conduct by EU institutions requires a sufficiently serious breach of a rule of law that is intended to confer rights on individuals (see judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 29 and the case-law cited).

104 The requirement of a sufficiently serious breach of a rule of law that is intended to confer rights on individuals is intended, whatever the nature of the unlawful act at issue, to avoid the risk of having to bear the losses claimed by the persons concerned obstructing the ability of the institution concerned to exercise to the full its powers in the general interest, whether that be in its legislative activity or in that involving choices of economic policy or in the sphere of its administrative competence, without, however, thereby leaving individuals to bear the consequences of flagrant and inexcusable misconduct (see judgment of 23 November 2011, *Sison* v *Council*, T-341/07, EU:T:2011:687, paragraph 34 and the case-law cited; judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 51).

105 Having identified the rules of law which are alleged by the applicant, in the present case, to have been infringed, it is necessary to examine, first, whether those rules are intended to confer rights on individuals and, second, whether the Council has committed a sufficiently serious breach of those rules.

(a) The rules of law alleged to have been infringed

106 During the hearing, in response to the Court's oral questions, the applicant stated, as regards the rules of law that were found to have been infringed in the judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401), that it was referring solely to the finding, in paragraphs 129 and 130 of that judgment, that, in so far as they covered the provision by the applicant itself of insurance services on the purchase of helicopter spare parts, electronics, and computers with applications in aircraft and missile navigation, the disputed acts were unfounded because they were not substantiated by evidence and that they infringed, in essence, Article 20(1)(b) of Decision 2010/413, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012.

(b) The question whether the rules of law which are alleged to have been infringed are intended to confer rights on individuals

107 It follows from the case-law that the provisions which set forth exhaustively the conditions in which restrictive measures may be adopted are intended essentially to protect the interests of persons and entities liable to be concerned by those measures, by limiting the cases in which such measures may lawfully be applied to them (see, by analogy, judgments of 23 November 2011, *Sison* v *Council*, T-341/07, EU:T:2011:687, paragraph 51 and the case-law cited, and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 57).

108 Those same provisions thus ensure that the individual interests of the persons and entities liable to be concerned by the restrictive measures are protected and are, therefore, to be considered to be rules of law intended to confer rights on individuals. If the substantive conditions in question are not satisfied, the person or the entity concerned is entitled not to have the restrictive measures imposed on it. Such a right necessarily implies that the person or the entity on which restrictive measures are imposed in circumstances not provided for by the provisions in question may seek compensation for the harmful consequences of those measures, if it should prove that their imposition was founded on a sufficiently serious breach of the substantive rules applied by the Council (see, by analogy, judgments of 23 November 2011, *Sison* v *Council*, T-341/07, EU:T:2011:687, paragraph 52 and the case-law cited, and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 58).

109 It follows that the rules alleged by the applicant, in the present case, to have been infringed are rules of law that confer rights on individuals, including the applicant, as a person concerned by the disputed acts.

(c) The question whether the Council committed a sufficiently serious breach of the rules of law which are alleged to have been infringed

110 The Court has already had the opportunity to clarify that the infringement of a rule of law that confers rights on individuals could be considered to be sufficiently serious where it implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion, the factors to be taken into consideration in that connection being, inter alia, the degree of clarity and precision of the rule breached and the measure of discretion left by that rule to the EU authorities (see judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 30 and the case-law cited).

111 According to the case-law, where the institution in question has only considerably reduced, or even no, discretion, the mere infringement of EU law may be sufficient to establish the existence of a sufficiently serious breach (see judgment of 11 July 2007, *Sison* v *Council*, T-47/03, not published, EU:T:2007:207, paragraph 235 and the case-law cited).

112 Lastly, it follows from the case-law that a breach of EU law will, in any event, clearly be sufficiently serious if it has persisted despite a judgment finding the breach in question to be established, or despite a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted a breach (see judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 31 and the case-law cited).

113 At the time of adoption of the disputed acts by the Council, namely between 25 October 2010 and 23 March 2012, it was already clearly and specifically apparent from the case-law that, in the event of challenge, it was for the Council to provide the information and the evidence establishing that the conditions for applying the criterion of 'support' for nuclear proliferation, set out in Article 20(1)(b) of Decision 2010/413, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012, were satisfied. The Court has, in addition, already been called upon to find, on the basis of case-law that predated the adoption of the disputed acts, that the obligation on the Council to provide, in the event of a challenge, information or evidence substantiating the restrictive measures against a person or entity was apparent from well-established case-law of the Court (see judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraphs 35 to 40 and the case-law cited).

114 Moreover, in so far as the Council's obligation to verify and establish that the restrictive measures taken against a person or entity are well founded before those measures are adopted arises from the requirement to observe the fundamental rights of the person or entity concerned, and in particular their right to effective judicial protection, the Council does not enjoy any discretion in that regard (judgment of 18 February 2016, *Jannatian* v *Council*, T-328/14, not published, EU:T:2016:86, paragraph 52; see also, to that effect, judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraphs 59 to 61). Thus, in the present case, the Council had no margin of discretion in implementing that obligation.

115 Therefore, in not complying with its obligation to substantiate the disputed acts, the Council has committed, in the present case, a sufficiently serious breach of a rule of law that confers rights on an individual, namely the applicant.

116 Consequently, the condition relating to the unlawfulness of the conduct alleged against the Council, namely the adoption of the disputed acts, is satisfied with regard to the rules of law invoked by the applicant, the breach of which was established in paragraphs 129 and 130 of the judgment of 6 September 2013, *Iran Insurance* v *Council* (T-12/11, not published, EU:T:2013:401).

2. The alleged damage and the existence of a causal link between the unlawfulness of the conduct complained of and that damage

117 The applicant claims to have proved that it suffered real and certain material and non-material damage as a result of the disputed acts.

118 The Council, supported by the Commission, takes the view that the condition relating to the existence of damage is not satisfied in the present case. The disputed acts were not penal sanctions imposed on the applicant and were not intended to cause injury to the applicant. Their purpose was only to discourage nuclear proliferation.

119 As regards the condition of actual damage, according to the case-law, (see, to that effect, judgments of 27 January 1982, *De Franceschi* v *Council and Commission*, 51/81, EU:C:1982:20, paragraph 9; of 13 November 1984, *Birra Wührer and Others* v *Council and Commission*, 256/80, 257/80, 265/80, 267/80, 5/81, 51/81 and 282/82, EU:C:1984:341, paragraph 9; and of 16 January 1996, *Candiotte* v *Council*, T-108/94, EU:T:1996:5, paragraph 54), the European Union can incur non-contractual liability only if an applicant has actually suffered real and certain loss. It is for the applicant to prove

that this condition has been fulfilled, (see judgment of 9 November 2006, *Agraz and Others* v *Commission*, C-243/05 P, EU:C:2006:708, paragraph 27 and the case-law cited) and, in particular, to adduce conclusive proof of both the existence and extent of the damage (see judgment of 16 September 1997, *Blackspur DIY and Others* v *Council and Commission*, C-362/95 P, EU:C:1997:401, paragraph 31 and the case-law cited).

120 More specifically, any claim for compensation for damage, whether the damage is material or non-material, and whether the indemnity is symbolic or actual, must give particulars of the nature of the damage alleged in connection with the conduct at issue and must quantify the whole of that damage, even if approximately (see judgment of 26 February 2015, *Sabbagh* v *Council*, T-652/11, not published, EU:T:2015:112, paragraph 65 and the case-law cited).

121 As regards the condition that there be a causal link between the conduct and the alleged damage, that damage must be a sufficiently direct consequence of the conduct complained of, which must be the determining cause of the damage, although there is no obligation to make good every harmful consequence, even a remote one, of an unlawful situation (see, to that effect, judgment of 4 October 1979, *Dumortier and Others* v *Council*, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79, EU:C:1979:223, paragraph 21; see, also, judgment of 10 May 2006, *Galileo International Technology and Others* v *Commission*, T-279/03, EU:T:2006:121, paragraph 130 and the case-law cited). It is for the applicant to adduce evidence of a causal link between the conduct and the damage alleged (see judgment of 30 September 1998, *Coldiretti and Others* v *Council and Commission*, T-149/96, EU:T:1998:228, paragraph 101 and the case-law cited).

122 It must therefore be determined whether, in the present case, the applicant has proved that it suffered real and certain material and non-material damage as a result of the adoption of the disputed acts and the existence of a causal link between that adoption and that damage.

(a) The non-material damage allegedly suffered

123 The applicant claims that, in so far as they affected its reputation, the disputed acts caused it significant non-material damage, which it assesses *ex aequo et bono* at EUR 1 million, as it had already stated in its letter to the Council of 25 July 2015. The applicant maintains, in that regard, that in a similar situation, the Courts of the European Union have already accepted and awarded damages for non-material damage done to a company in the form of injury to its reputation (judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraphs 80 and 83).

124 Contrary to the argument put forward by the Council in reliance on a judgment of the European Court of Human Rights ('the ECtHR'), namely the judgment of the ECtHR of 19 July 2011, *Uj v. Hungary* (CE:ECHR:2011:0719JUD002395410), the applicant takes the view that companies have a moral dimension and may suffer non-material damage, for example, as a result of injury done to their reputation and to their ability to carry on their commercial activities. The applicant submits that the Council's reference to that judgment of the ECtHR is inadequate, as it only examined the protection of reputation in relation to restrictions that could be put on freedom of expression. Maintaining a good reputation is a particularly important factor in the insurance sector, in which the applicant is active, since the sector relies on a network of trust among operators. The applicant argues that, prior to the adoption of the disputed acts, it enjoyed a good reputation internationally, as is shown by the fact that it conducted international insurance business, it had concluded contracts with reputed international insurance and reinsurance companies, it had been awarded well-known international quality certificates, and the expertise of its members was internationally recognised, as shown by the fact that they participated in international professional conferences and scientific meetings. The disputed acts, which associated its name with a serious threat to international peace and security and led to the involuntary cessation of its activities in the European Union, tainted its reputation. According to the applicant, after the adoption of those acts, it was no longer able to take out

contracts with international companies, nor was it able to participate in scientific or consultative meetings or in the activities of professional associations or encounters organised at an international level, or to obtain ratings from international rating organisations. In any event, in the commercial sector, whenever an entity involuntarily ceases its activities, damage to its reputation and credibility are evident and inevitable. Even after the restrictive measures against it were lifted in 2016, it found registration for professional seminars difficult, and even impossible. In order to restore its reputation, it would be required to conduct a global advertising campaign, the estimated cost of which would be USD 45 million (approximately EUR 38.7 million). As it had not yet evaluated the costs of restoring its reputation precisely, the Court could, as a measure of inquiry, appoint an independent expert to carry out that evaluation. Lastly, the applicant takes the view that it is not necessary to show that it has incurred expenses, in particular for advertising, to restore its reputation, and that it is sufficient to invoke the existence of damage to its reputation, restoration of which will require substantial spending.

125 The Council, supported by the Commission, takes the view that, in any event, the claim for compensation for the non-material damage allegedly suffered should be rejected as unfounded. In that regard, it maintains that, in the disputed acts, the applicant was not stigmatised as an organisation which, in itself, constitutes a threat to international peace and security, and that the applicant has offered no evidence that such is the case. It was merely identified as an organisation that had been involved in the purchase of various items that could be used in programmes sanctioned by United Nations Security Council Resolution 1737, which was sufficient to justify the inclusion of its name on the disputed lists. The Council contends that the applicant has not adduced any evidence to prove that it has suffered any non-material damage as a result of the adoption of those acts, as is required by the case-law (order of 17 February 2012, *Dagher* v *Council*, T-218/11, not published, EU:T:2012:82, paragraph 46). There is no evidence that it had a good reputation internationally, that it lost any business as a result of injury to that reputation, or that it had spent money on advertising or other means to restore that reputation. The newspaper article annexed to its application concerning the estimated cost of a global advertising campaign is irrelevant since it relates to a company unrelated to the applicant, in an unrelated branch of business and on a different continent from the applicant and unrelated to the restrictive measures taken by the European Union. The applicant's claims in the reply provide no evidence of any injury to its reputation and, consequently, of any non-material damage linked to that. In any event, as the ECtHR held in paragraph 22 of the judgment of 19 July 2011, *Uj v. Hungary* (CE:ECHR:2011:0719JUD002395410), there is a difference between the damage to the commercial reputation of a company and damage to the reputation of an individual concerning his or her social status, with the former being devoid of a moral dimension. The Court itself has referred to that case-law in a case concerning restrictive measures (judgment of 12 February 2015, *Akhras* v *Council*, T-579/11, not published, EU:T:2015:97, paragraph 152). By asking the Court to appoint an expert, by way of a measure of inquiry, the applicant is, it is claimed, attempting to circumvent the fact that the burden of proof falls on the applicant to prove the existence of the damage it alleges and to quantify it. If the Court were to take the view that the European Union's non-contractual liability has been incurred, it should find, in accordance with the case-law, that the annulment of the disputed acts constitutes adequate compensation for the non-material damage suffered by the applicant. In any event, the amount of EUR 1 million claimed by the applicant by way of compensation for non-material damage is excessive, in view of the case-law, and is unsubstantiated.

126 The Commission adds that the type of non-material damage claimed by the applicant, namely the cost of an advertising campaign to restore its image, is indistinguishable from material damage, for which it would need to prove real and concrete damage.

127 In respect of the compensation for the damage which it classifies as 'moral', or non-material, the applicant refers to injury to its reputation as a result of the association of its name with a serious threat to international peace and security, the fact of which is shown by the fact that the adoption of the disputed acts affected the conduct of third parties with respect to the applicant and the extent of which can be measured in relation to the cost of the investment in advertising that the applicant would have to make in order to restore its reputation.

128 The damage for which the applicant thus seeks compensation, on the basis of non-material damage, is by nature intangible and consists of damage to its image or to its reputation.

129 According to the case-law based on Article 268 TFEU, read in conjunction with the second paragraph of Article 340 TFEU, non-material damage can, in principle, be compensated with regard to legal persons (see, to that effect, judgments of 28 January 1999, *BAI* v *Commission*, T-230/95, EU:T:1999:11, paragraph 37, and of 15 October 2008, *Camar* v *Commission*, T-457/04 and T-223/05, not published, EU:T:2008:439, paragraph 56 and the case-law cited), and such damage can take the form of damage to the image or to the reputation of that person (see, to that effect, judgments of 9 July 1999, *New Europe Consulting and Brown* v *Commission*, T-231/97, EU:T:1999:146, paragraphs 53 and 69; of 8 November 2011, *Idromacchine and Others* v *Commission*, T-88/09, EU:T:2011:641, paragraphs 70 to 76; and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraphs 80 to 85).

130 In so far as the Council seeks to rely on the case-law of the ECtHR, it must be recalled that this does not exclude, in the light of its own case-law and that practice, the possibility that even a commercial company may be awarded pecuniary compensation for non-pecuniary damage, with such compensation depending on the circumstances of each case (ECtHR, 6 April 2000, *Comingersoll S.A. v. Portugal*, CE:ECHR:2000:0406JUD003538297, § 32 and 35). That damage may include, for such a company, elements that are to a greater or lesser extent 'objective' or 'subjective', among which account should be taken of the company's reputation, for which there is no precise method of calculating the consequences (ECtHR, 6 April 2000, *Comingersoll S.A. v. Portugal*, CE:ECHR:2000:0406JUD003538297, § 35). As is clear from the ECtHR judgment of 2 February 2016, *Magyar Tartalomszolgáltatók Egyesülete and index.hu Zrt v. Hungary* (CE:ECHR:2016:0202JUD002294713, § 84), that case-law of the ECtHR has not been called into question by the ECtHR judgment of 19 July 2011, *Uj v. Hungary* (CE:ECHR:2011:0719JUD002395410), cited by the Council, which merely clarified that such damage was, for a company, of a commercial rather than moral nature.

131 Therefore, both the Commission's arguments that the non-material damage allegedly suffered by the applicant is indistinct from the material damage that it invokes, and the Council's arguments that the applicant, as a commercial company, cannot be compensated for non-material damage represented by damage to its reputation, must be rejected.

132 As regards the actual non-material damage allegedly suffered, it should be recalled that, concerning such damage in particular, if adducing or offering evidence is not necessarily held to be a condition for the recognition of that damage, it is for the applicant to at least establish that the conduct alleged against the institution concerned was capable of causing damage to it (see judgment of 16 October 2014, *Evropaïki Dynamiki* v *Commission*, T-297/12, not published, EU:T:2014:888, paragraph 31 and the case-law cited; see also, to that effect, judgment of 28 January 1999, *BAI* v *Commission*, T-230/95, EU:T:1999:11, paragraph 39).

133 Moreover, while the Court of Justice held, in the judgment of 28 May 2013, *Abdulrahim* v *Council and Commission* (C-239/12 P, EU:C:2013:331), that the annulment of unlawful restrictive measures was capable of constituting a form of reparation for non-material damage suffered, it does not follow from this that that form of reparation is necessarily sufficient, in every case, to ensure full reparation for such damage, every decision in that regard being required to be taken on the basis of an assessment of the circumstances of the case (judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 49).

134 In the present case, the only admissible evidence submitted by the applicant does not, however, support a finding that the recognition of the unlawfulness of the conduct alleged against the Council and the annulment of the disputed acts would have been insufficient, as such, to compensate for the non-material damage allegedly suffered as a result of the injury to the applicant's reputation caused by the disputed acts.

135 Thus, without there being any need to examine the condition that there must be a causal link, the applicant's claim for compensation for non-material damage must be rejected.

(b) The material damage allegedly suffered

136 The applicant claims to have suffered material damage as a result of the adoption of the disputed acts. In that respect, the applicant requests, in the application, that the Council be ordered to pay it compensation in the amounts of EUR 3 774 187.07, GBP 84 767.66 (approximately EUR 94 939) and USD 1 532 688 (approximately EUR 1 318 111). In the reply, the applicant amended its claims, seeking compensation in the amounts of EUR 2 494 484.07, GBP 84 767.66 (approximately EUR 94 939), IRR 33 945 million (approximately EUR 678 900) and USD 1 532 688 (approximately EUR 1 318 111), respectively.

137 The applicant thus distinguishes, within the material damage which it claims, three elements.

138 The first element of the material damage allegedly suffered consists of the loss of interest that the applicant would have received had it been able to transfer funds held in its accounts in the European Union to Iran and to invest them there. The period to be taken into account in that regard runs from July 2010, when the first restrictive measures were taken against it, until November 2013, when the disputed acts ceased to have effect. For that element, the applicant seeks, in the application, compensation of EUR 17 733.48, GBP 2 544.82 (approximately EUR 2 850) and USD 421.05 (approximately EUR 362).

139 The second element of the material damage allegedly suffered consists of the loss of interest that the applicant could have received had it been able to transfer funds which three insurance and reinsurance companies should have paid into its EU accounts to Iran and to invest them there. The period to be taken into account in that regard runs from the date the funds in question fell due until November 2013, when the disputed acts ceased to have effect. For that element, the applicant seeks, in the application, compensation of EUR 557 196.09, GBP 82 222.84 (approximately EUR 92 089) and USD 1 532 266.95, (approximately EUR 1 317 749).

140 The third element of the material damage allegedly suffered consists of loss of profit which the applicant considers it suffered as a result of the non-issuance of insurance contracts for the transport of passengers and freight. The period to be taken into account in that regard runs from July 2010, when the first restrictive measures were taken against it, until November 2013, when the disputed acts ceased to have effect. For that element, the applicant seeks, in its application, damages in the sum of EUR 3 199 257.50 in respect of the non-issuance of insurance contracts for the transport of passengers, and indicates that the amount of damages for the non-issuance of insurance contracts for the transport of freight will be established at a later stage in the procedure. In its reply, the applicant claims damages in the sum of EUR 1 919 554.50 in respect of the non-issuance of insurance contracts for the transport of passengers, plus damages in the sum of IRR 33 945 million (approximately EUR 678 900) in respect of the non-issuance of insurance contracts for freight.

141 In order to establish that all of the alleged elements of the material damage were actually suffered, the applicant relies on the SRA report. In a declaration annexed to the reply, the SRA Institute certifies that it complied with the principles of independence and impartiality, verified the relevant evidence and documents and held interviews with the relevant directors and authorities. According to the applicant, evidence of loss of profit necessarily relies on reasonable assumptions being made.

142 In relation to the first element of the material damage allegedly suffered, the applicant argues that the sums deposited in its accounts in the European Union are evidenced to the requisite legal standard by the documents annexed to the application. The SRA report made a conservative estimate of the return that could have been obtained in Iran from the sums in question, by applying to them an interest rate of 6%, certified by the SRA Institute.

143 At the reply stage and in its observations on the statement in intervention, the applicant emphasises that, as a result of the adoption of the disputed acts, it was deprived of the possibility of holding the funds that had been frozen in its EU accounts and, in particular, of investing them profitably in a dynamic market in Iran. The SRA Institute based its estimate on the applicant's practice of using its foreign currencies for the purposes of concluding reinsurance contracts which are stipulated in those same currencies. In addition, it is common practice in Iran for insurance contracts or accounts to be stipulated in foreign currency.

144 In relation to the second element of the material damage allegedly suffered, the applicant argues that the sums which three insurance and reinsurance companies should have paid into its EU accounts are evident from the documents annexed to the application. They were verified by the SRA Institute before being included in the SRA report. The loss of interest on those sums was calculated according to a method that was explained in that report. At the reply stage, and in its observations on the statement in intervention, the applicant emphasises that, as a result of the adoption of the disputed acts, it was deprived of the possibility of holding the foreign currency owed to it by three insurance and reinsurance companies and, in particular, of investing it profitably in a dynamic market in Iran.

145 In relation to the third element of the material damage allegedly suffered, the applicant argues that the existence of a potential profit that was lost as a result of the adoption of the disputed acts is established by the fact that the applicant concluded insurance contracts for the transport of passengers in the European Union before the adoption of those acts, as indicated in the SRA report, and as evidenced by the credit note addressed to an insurance company, annexed to the application. The loss of those contracts in the European Union is due to those acts and not to US legislation, which was applicable only within the United States. An estimate of the number and value of the insurance contracts for the transport of passengers that were not concluded, based on the number and value of contracts concluded in the past, appears in the SRA report. The SRA Institute confirms, in a document annexed to the reply, that it based that estimate on 'records of passenger insurance policies issued within the two years preceding the adoption of restrictive measures, on the basis of the audited financial reports of the [applicant] in cooperation with [that insurance company]'. At the reply stage, the applicant applies, in accordance with the instructions of that institute, a deduction of 40%, corresponding to the level of its costs, to the amount of compensation initially sought in the application, in respect of the non-issuance of insurance contracts for passengers. In relation to the non-issuance of insurance contracts for freight transport, the amount of the damage was evaluated by that institute by directly applying the deduction of 40% corresponding to the level of its costs.

146 The Council, supported by the Commission, disputes, in any event, that the applicant has proved the existence of the three elements of the material damage allegedly suffered.

147 The Council, supported by the Commission, questions the evidential value of the SRA report, to the extent that it is not substantiated by detailed documents and certified by an expert independent from the applicant, as required by the case-law. In addition, that report is written in Farsi and is only accompanied by a free translation provided by the applicant. The declaration from the SRA Institute

produced by the applicant in order to prove the reliability of that report is, in the Council's submission, not sufficient to meet evidentiary requirements. The applicant does not provide the evidence on which the SRA based its report. The applicant cannot validly claim that those documents are confidential since the Iranian rules on the duty of confidentiality do not override the case-law of the Courts of the European Union, which requires the applicant to supply evidence of the damage that it alleges and of the causal link between the alleged damage and the alleged unlawfulness.

148 In relation to the first element of the material damage allegedly suffered, the Council, supported by the Commission, argues that the SRA report is based on a mere assumption of damage, without explaining how that damage actually occurred. It does not contain any explanation or specific documentation and is therefore not sufficient to prove the existence of the alleged damage. It is impossible to know whether the SRA report took account of the fact that interest would have accrued to the applicant's EU-held bank accounts. The disputed acts did not prevent such interest from being paid but merely from potentially being withdrawn. In principle, therefore, according to the Council, the applicant has not incurred any damage as a result of lost interest on its EU accounts. The applicant has not shown that, had it been able to reinvest in Iran the sums frozen in its EU accounts, it would been able to achieve an average interest rate of 6%, that is cumulative interest of 19% over three years. It has not taken account of the fact that, had those sums been converted into its national currency, they would have fallen in value due to the loss of value of the Iranian Rial of 57% vis-à-vis the euro between July 2010 and November 2013. Nor has the applicant shown that it could have obtained an average interest rate of 6% on its accounts held in euros.

149 In relation to the second element of the material damage allegedly suffered, the Council, supported by the Commission, disputes that the applicant has shown that it would have been able to obtain the purported return on the amounts owed to it by three insurance and reinsurance companies. The Council puts forward the same arguments as it does in relation to the sums frozen in the applicant's EU bank accounts (paragraph 148 above). It comments that the documents supplied by the applicant do not contain any evidence of the amounts allegedly owed to it by the three companies concerned.

150 In relation to the third element of the material damage allegedly suffered, the Council, supported by the Commission, argues that where the alleged damage consists of a lost opportunity to conduct business entailing activities of a speculative nature, as in the present case, the requisite standard of proof is particularly high, according to the case-law, and that the applicant has failed to meet such a standard of proof. As regards the non-issuance of insurance contracts for the transport of passengers, the applicant merely extrapolates its loss of profit between July 2010 and November 2013, finally estimated at EUR 1 919 554.50, from the average annual turnover of EUR 969 471.97 that it had achieved for this type of contract during the two preceding years. However, it did not supply the insurance contracts issued in 2008 and 2009 for the transport of passengers. The credit note addressed to an insurance company in Germany, produced by the applicant, proves neither that it had concluded a contract with that company for the amount claimed, nor even that it had a long-standing contractual relationship with the company. In any event, the applicant fails to consider that the loss of profit can relate only to the profits made on the turnover and not to the turnover itself. In the absence of any information on the applicant's costs, in particular, those pertaining to the contract that it claims it concluded with an insurance company, and without being able to verify the reliability of the information supplied in that regard, notably when it claims that its costs amounted to 40%, it is not possible to determine an exact figure for the potential loss of profit incurred by the applicant. As regards the non-issuance of insurance contracts for the transport of freight, the applicant merely deduces its loss of profit from a note that has no evidential value, since it was prepared by the applicant itself, and which is imprecise, in that it contains no indication of the type of insurance contracts allegedly affected nor of the forgone profits in relation to those contracts.

151 As a preliminary point, it is important to underline that the applicant, in the context of the present action, is justified only in claiming material damage that relates to the period during which its funds were frozen by the disputed acts, namely the period from 27 October 2010 to 15 November 2013 ('the relevant period').

152 To the extent that a large part of the applicant's claims in relation to the material damage is based on the evaluations contained in the SRA report, the evidential value of which is disputed by the Council, supported by the Commission, it is appropriate to begin with an examination of the evidential value of that report.

(1) The evidential value of the SRA report evaluating the material damage allegedly suffered

153 Given that there is no legislation at EU level governing the concept of proof, the Courts of the European Union have laid down a principle of unfettered production of evidence or freedom as to the form of evidence adduced, which is to be interpreted as the right to rely, in order to prove a particular fact, on any form of evidence, such as oral testimony, documentary evidence, confessions, and so on (see, to that effect, judgments of 23 March 2000, *Met-Trans and Sagpol*, C-310/98 and C-406/98, EU:C:2000:154, paragraph 29; of 8 July 2004, *Dalmine* v *Commission*, T-50/00, EU:T:2004:220, paragraph 72; and Opinion of Advocate General Mengozzi in *Archer Daniels Midland* v *Commission*, C-511/06 P, EU:C:2008:604, points 113 and 114). Correspondingly, the Courts of the European Union have laid down a principle of the unfettered evaluation of evidence, according to which the determination of reliability or, in other words, the probative value of an item of evidence is a matter for those Courts (judgment of 8 July 2004, *Dalmine* v *Commission*, T-50/00, EU:T:2004:220, paragraph 72, and Opinion of Advocate General Mengozzi in *Archer Daniels Midland* v *Commission*, C-511/06 P, EU:C:2008:604, points 111 and 112).

154 In order to establish the evidential value of a document, it is necessary to take account of several factors, such as the origin of the document, the circumstances in which it was drawn up, the person to whom it was addressed and its content, and whether, according to those aspects, the information it contains appears sound and reliable (judgments of 15 March 2000, *Cimenteries CBR and Others* v *Commission*, T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77, paragraph 1838, and of 7 November 2002, *Vela and Tecnagrid* v *Commission*, T-141/99, T-142/99, T-150/99 and T-151/99, EU:T:2002:270, paragraph 223).

155 In that context, the Courts of the European Union have already taken the view that an analysis, produced by an applicant, could not be regarded as a neutral and independent expert report, in so far as it was requested and paid for by the applicant and drawn up on the basis of information provided by the applicant, without the accuracy or the relevance of that information being subject to any kind of independent assessment (see, to that effect, judgment of 3 March 2011, *Siemens* v *Commission*, T-110/07, EU:T:2011:68, paragraph 137).

156 The Courts of the European Union have also already had occasion to state that an expert report could only be considered to be evidential as regards its objective content, and that a mere unsubstantiated statement, contained in such a document was not, in itself, conclusive (see, to that effect, judgment of 16 September 2004, *Valmont* v *Commission*, T-274/01, EU:T:2004:266, paragraph 71).

157 It is in light of the principles referred to in paragraphs 153 to 156 above that it is appropriate to assess, in the present case, the evidential value of the SRA report.

158 In that regard, it must be noted that the SRA report was originally drawn up in Farsi and that the translation provided by the applicant, in the language of the case, is a free translation. To that extent, the Court has no guarantee that the translation of that report into the language of the case, provided

by the applicant, is faithful to the original. Moreover, that report was drawn up by an entity established in Iran, the SRA Institute, which is presented as being an official public accountant. However, there is no evidence included in the file in that regard. It is apparent from the translation of that report into the language of the case that 'the [...] audit [it contains was] solely accomplished for the purpose of assisting [the applicant] in the estimation of the amount of damages suffered' as a result of the disputed acts. The report in question was thus prepared at the request of the applicant and financed by it for the purposes of providing evidence, in the context of the present action, of the fact and extent of the material damage alleged. In addition, as is apparent from the translation of the report concerned into the language of the case, that report essentially relies on documents or information provided by the applicant. It should, however, be underlined that the documents provided by the applicant are not annexed to the report and were not produced in the context of the present proceedings, and therefore the Court cannot inspect them. Lastly, the translation of the report at issue into the language of the case indicates that the figures provided by the applicant were accepted in the absence of 'any evidence which shows inaccuracy'.

159 In so far as the free translation, into the language of the case, of the declaration by the SRA Institute indicates that it is an Official Public Accountant, subject to respect for the principles of independence and impartiality, and that it has '[verified the] evidence and documents' provided by the applicant, as is also mentioned in the SRA report, it should be noted that this declaration was issued by a declarant that is certifying on its own behalf, and that it is not supported by any external evidence that corroborates the content of that certificate.

160 Due to the context in which the SRA report was prepared and pursuant to the principles referred to in paragraphs 153 to 156 above, the evidential value of that report must not be overstated. The report cannot be regarded as being sufficient to prove its contents, in particular in relation to the fact and extent of the damage alleged. At most, it could serve as prima facie evidence, which should be corroborated by other, conclusive evidence.

(2) The first element of the material damage allegedly suffered

161 In so far as, for the purposes of proving the first element of the material damage allegedly suffered, the applicant relies on paragraph 1 of the SRA report, it must be borne in mind that, as was already noted in paragraph 160 above, that report cannot be regarded as being sufficient to prove its contents, and that it must be corroborated by other evidence.

162 The only admissible evidence provided by the applicant consists of letters of 6 and 23 August 2010 from a first bank, of 23 August 2010 and 25 April 2014 from a second bank, and of 28 July 2010 and 22 April 2014 from a third bank, which point to sums totalling EUR 89 563.02, GBP 12 853.84 (approximately EUR 14 396) and USD 2 126.51 (approximately EUR 1 828) deposited by the applicant into EU bank accounts and that were subject to fund-freezing measures taken against it from 26 July 2010. Those letters seem to have provided the basis for the sums reported in the first table reproduced in paragraph 1 of the SRA report. They also attest to the fact that requests for the transfer of funds which the applicant addressed to those banks in the summer of 2010 were rejected by those banks due to the fund-freezing measures taken against it from 26 July 2010.

163 The Council does not dispute the sums reported in the letters mentioned in paragraph 161 above but observes, in essence, that the applicant has not established, to the requisite legal standard, that those sums had produced no interest during the relevant period, or that those sums, if it had been possible to transfer them to Iran, would have generated 6% annual interest during the relevant period. The Commission also observed, in paragraph 11(i) of the statement in intervention, that 'Annexes A-12 to A-14 [of the application] offer a few random, incomplete snapshots of different transactions and account balances'.

164 In that regard, it must be noted that the information contained in the letters mentioned in paragraph 161 above amounts to simple statements issued by the banks in question. Even if those statements were issued by banks that were themselves subject to restrictive measures, they are not devoid of any evidential value, due to their precision, detail and reasonableness. Those statements refer to account numbers and to specific, relatively modest sums as at 6 August 2010, as regards the first bank referred to in paragraph 162 above, 20 March 2013, as regards the second bank referred to in paragraph 162 above, and 20 March 2014, as regards the third bank referred to in paragraph 162 above. Moreover, the Commission's argument based on the randomness of the sums referred to must be placed in context to a certain extent, given that the applicant's funds remained continuously frozen between 27 July 2010 and 18 October 2015, the date on which the applicant's name was removed from the disputed lists, and given the fact that, apart from interest accumulated, neither any third parties nor the applicant had to make transfers to those accounts after the adoption of the first restrictive measures against the applicant. In addition, the requests for the transfer of funds sent by the applicant to the second and third banks mentioned above confirm that sums equivalent to those indicated in March 2013 or in March 2014 already appeared in the applicant's accounts in summer 2010.

165 That being noted, in order to constitute sufficient evidence of the first element of the material damage allegedly suffered, the declarations in the SRA report and the letters mentioned in paragraph 161 above should have been corroborated by other evidence.

166 Only evidence such as bank statements or agreements dating from the relevant period would have allowed the Court to satisfy itself that the funds deposited in the accounts in question had not changed during the entire relevant period, and that those funds had not produced any interest during that period. There is no information about interest in the letters from the first and third banks mentioned in paragraph 162 above. Moreover, while the letter of 25 April 2014 from the second bank mentioned in paragraph 162 above indicates that no interest was paid on the accounts to 20 March 2014, or that only negligible interest was paid, it does not specify the date from which that interest was calculated. However, the funds contained in the applicant's EU accounts during the relevant period and the information relating to potential interest generated by those funds during that same period was essential information for evaluating the first element of the material damage allegedly suffered.

167 It should be noted that admissible evidence should have been produced to establish that, if it had been possible for the funds in the applicant's EU accounts during the relevant period to have been transferred to Iran, they would have generated 6% annual interest. The letters cited in paragraph 161 above do not contain any information in that regard. The fact that the SRA report applies such a rate, presented as the 'average of the yearly interest rate for foreign currency accounts' in the second table produced in paragraph 1 of that report, is not sufficient, taking into account the fact that that report is not in itself sufficient to prove its contents.

168 The applicant has thus failed to discharge its burden of proving the first element of the material damage allegedly suffered, consisting in the loss of interest that it could have received had it been able to transfer funds held in its accounts in the European Union to Iran and to invest them there.

169 In those circumstances, the applicant's claim for compensation for the material damage allegedly suffered must be rejected as regards the first element of that damage.

(3) The second element of the material damage allegedly suffered

170 In so far as, for the purposes of proving the second element of the material damage allegedly suffered, the applicant relies on paragraph 2 of the SRA report, it must be borne in mind that that report cannot be regarded as being sufficient to prove its contents, and that it must be corroborated by other evidence.

171 The only admissible evidence provided by the applicant in that regard is an account statement from a first insurance and reinsurance company indicating a balance owed to the applicant of EUR 1 053 268.62 on 1 April 2014, a debit note for a sum of EUR 189 547.60 issued by the applicant with regard to that company on 20 April 2009, an account statement, in Farsi, from a second insurance and reinsurance company, a debit note for a sum of EUR 265 444.21 issued by the applicant with regard to the latter company on 5 December 2009, an account statement from a third insurance and reinsurance company indicating a balance owed to the applicant of EUR 1 344 859.30 on 30 September 2014, as well as a letter and emails sent by that company to the applicant dated 25 November 2010 and 2 and 8 October 2012, indicating the impossibility or the difficulty of making the payments to the applicant as a result of the sanctions taken against it.

172 The Council, supported by the Commission, disputes that the debit notes and account statements produced by the applicant suffice to prove the amount of the funds owed to it by the three insurance and reinsurance companies in question and the payment of which would have been frozen as a result of the disputed acts. Moreover, the Council takes the view that the applicant has not established to the requisite legal standard that, if it had been able to transfer those funds to Iran, they would have generated annual interest of 6% during the relevant period.

173 In that regard, it must be held that the account statement from the second insurance and reinsurance company referred to in paragraph 171 above is not evidence that can be taken into account by the Court, in so far as it is written in Farsi and no translation into the language of the case, namely English, has been provided. In particular, the figures used in that document being Farsi figures, it is not possible to inspect them and to compare them with those reproduced in the applicant's written pleadings. That document must therefore be held not to have any evidential value.

174 The account statements from the first and third insurance and reinsurance companies referred to in paragraph 171 above were drawn up, respectively, on 1 April and 30 September 2014 and there is no information contained in those statements that provides certainty that they concern only claims or debts between each of the three insurance and reinsurance companies and the applicant that arose during the relevant period, namely between 27 October 2010 and 15 November 2013. It must therefore be held that those documents do not provide sufficient evidence of funds that were owed to the applicant by those insurance and reinsurance companies and the payment of which would have been frozen as a result of the disputed acts.

175 The debit notes issued by the applicant with regard to the first and second insurance and reinsurance companies referred to in paragraph 171 above date, respectively, from 20 April and from 5 December 2009, and necessarily refer to claims that arose before the relevant period, during which the disputed acts produced their effects. Therefore, those documents are not capable of providing evidence of funds that were owed to the applicant by those insurance and reinsurance companies and the payment of which would have been frozen as a result of the disputed acts.

176 Lastly, the letter and the emails sent by the third insurance and reinsurance company referred to in paragraph 171 above to the applicant do not mention any amount owed to the applicant by that company. Therefore, those documents are not capable of providing evidence of funds that were owed to the applicant by that insurance and reinsurance company and the payment of which would have been frozen as a result of the disputed acts.

177 In any event, none of the documents mentioned in paragraphs 173 to 176 above contains information in relation to the possibility that the applicant would have received annual interest of 6% on those funds, if they could have been transferred to Iran. As was already noted in paragraph 167 above, the file is lacking certain supplementary and admissible evidence in that regard.

178 The applicant has thus failed to discharge its burden of proving the second element of the material damage allegedly suffered, consisting in the loss of interest that it could have received had it received the funds that were owed to it by three insurance and reinsurance companies, transferred those funds to Iran and invested them there.

179 In those circumstances, the applicant's claim for compensation for the material damage allegedly suffered must be rejected as regards the second element of that damage.

(4) The third element of the material damage allegedly suffered

180 In so far as, for the purposes of proving the third element of the material damage allegedly suffered, the applicant relies on paragraph 3 of the SRA report, it must be borne in mind that that report cannot be regarded as being sufficient to prove its contents, and that it must be corroborated by other evidence.

181 The only admissible evidence provided by the applicant in that regard is a credit note for the sum of EUR 76 187.65 issued with regard to an insurance company on 24 April 2010 as well as an internal letter of 14 April 2014, in Farsi, issued by the Director of Legal and Contractual Affairs, accompanied by a free translation into the language of the case.

182 The Council, supported by the Commission, takes the view, in essence, that the documents produced by the applicant do not show the existence of an established and long-standing contractual relationship for the amounts sought by the applicant.

183 In that regard, it must be observed that the credit note issued by the applicant with regard to an insurance company dates back to 20 April 2010 and refers to the execution of a travel insurance programme during a period which predates the relevant period, during which the disputed acts produced their effects. That document does not provide any indication that the travel insurance programme which it concerns was intended, after the period of execution that was mentioned therein, to be continued or renewed, in particular for the duration of the relevant period. That document is therefore not capable of providing evidence of a loss of profit suffered by the applicant as a result of the non-issuance of insurance contracts for the transport of passengers and freight that was connected with the restrictive measures taken against the applicant in the disputed acts.

184 Moreover, the letter of 14 April 2014 issued by the applicant's Director of Legal and Contractual Affairs can be considered, as such, to have only weak evidential value, in so far as there was only a free translation of it and it was issued by the very party that was relying on it in support of its own claims. In any event, it is apparent from the free translation of that letter that 'on the basis of brief investigation damages of the Company (premiums) resulting from the restrictive measures adopted by the European Union for several months amounts to 56 601 043 645 [IRR (approximately EUR 1 132 020)]'. Such a statement is too vague and imprecise to allow for a finding that, during the relevant period, the applicant actually suffered a loss of profit, as a result of the non-issuance of insurance contracts for the transport of passengers and freight that was connected with the adoption of the disputed acts, in the amounts referred to in its written pleadings.

185 The applicant has thus failed to discharge the burden of proving, to the requisite legal standard, the third element of the material damage allegedly suffered consisting in the loss of profit incurred as a result of the non-issuance of insurance contracts for the transport of passengers and freight.

186 In those circumstances, the applicant's claim for compensation for the material damage allegedly suffered must be rejected as regards the third element of that damage.

187 Thus, without there being a need to examine the condition that there must be a causal link, the applicant's claim for compensation for material damage must be rejected in its entirety.

188 In the light of the foregoing findings, the action must be dismissed in its entirety.

Costs

189 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 applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Council.

190 Under Article 138(1) of the Rules of Procedure, institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition),

hereby:

1. **Dismisses the action;**

2. **Orders Iran Insurance Company to bear its own costs and to pay those incurred by the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

Pelikánová Valančius Nihoul

Svenningsen Öberg

Delivered in open court in Luxembourg on 13 December 2018.

E. Coulon
Registrar

President

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