Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

13 December 2017*

(Common foreign and security policy — Restrictive measures taken against Iran with a view to preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Non-contractual liability — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

In Case T-692/15,

HTTS Hanseatic Trade Trust & Shipping GmbH, established in Hamburg (Germany), represented by M. Schlingmann and M. Bever, lawyers,

applicant,

v

Council of the European Union, represented by M. Bishop and J.-P. Hix, acting as Agents,

defendant,

supported by

European Commission, represented initially by S. Bartelt and R. Tricot, and subsequently by R. Tricot and T. Scharf, acting as Agents,

intervener,

ACTION brought pursuant to Article 268 TFEU seeking compensation for the damage which the applicant claims to have suffered following the inclusion of its name, first, by Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), 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), and secondly, by 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), in Annex VIII to Regulation No 961/2010.

THE GENERAL COURT (Third Chamber),

composed of S. Frimodt Nielsen, President, I.S. Forrester and E. Perillo (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

* Language of the case: German.

Judgment

I. Facts and background to the dispute

1 HTTS Hanseatic Trade Trust & Shipping GmbH ('HTTS' or 'the applicant') is a company incorporated under German law, formed in March 2009 by N. Bateni, who is the sole shareholder and director. HTTS carries on the activities of shipping agents and technical managers of vessels.

2 This 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'). More specifically, it is one of a number of cases relating to measures taken against a shipping company, Islamic Republic of Iran Shipping Lines ('IRISL') and natural or legal persons alleged to be connected with that company, in particular HTTS and two other shipping companies, Hafize Darya Shipping Lines ('HDSL') and Safiran Pyam Darya Shipping Lines ('SAPID'), which the Council of the European Union allege to be connected with IRISL.

3 HTTS was originally named among the persons, entities and bodies subject to restrictive measures listed 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) on 26 July 2010, following the entry into force of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25). No action for annulment was brought against that listing. The inclusion of HTTS in the list of persons, entities and bodies subject to restrictive measures contained in Annex VIII of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1), which was effected a few months later by that regulation, was however challenged by HTTS and was subsequently annulled by the General Court, which held that sufficient reasons had not been given (see paragraph 5 below).

4 In Regulation No 668/2010, the reason given for the inclusion of HTTS was essentially that it 'act[ed] on behalf of HDSL in Europe'. In Regulation No 961/2010, the reason was that it was 'controlled and/or acting on behalf of IRISL'.

5 By judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), the General Court annulled Regulation No 961/2010 in so far as it concerned HTTS, but with effect from 7 February 2012, so as to give the Council the opportunity, in the meantime, to provide supplementary reasons for relisting that company. In this regard, the General Court held that to annul Regulation No 961/2010 with immediate effect might cause serious and irreparable harm to the effectiveness of the restrictive measures imposed by that regulation against the Islamic Republic of Iran, since 'it cannot be excluded that, as regards the substance, the imposition of restrictive measures on the applicant could nonetheless be justified' (judgment of 7 December 2011, *HTTS* v *Council*, T-562/10, EU:T:2011:716, paragraphs 41 and 42).

6 Following the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), the Council relisted the applicant on several occasions. The listings were each challenged by the applicant, and were annulled by the General Court in the judgments of 12 June 2013, *HTTS* v *Council* (T-128/12 and T-182/12, not published, EU:T:2013:312), and of 18 September 2015, *HTTS and Bateni* v *Council* (T-45/14, not published, EU:T:2015:650).

7 It should also be observed, at this point, that by judgment of 16 September 2013, *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453), the General Court also annulled the inclusion of IRISL and other shipping companies, including HDSL and SAPID, in the relevant lists,

on the ground that the matters advanced by the Council did not justify the listing of IRSL and, consequently, could not justify the adoption or continuation of restrictive measures against the other shipping companies which had been listed on the basis of their connections with IRISL.

8 By letter of 23 July 2015, the applicant sent a request to the Council seeking compensation for the damage which it considered that it had suffered by reason of its initial listing and its subsequent inclusion in the lists of persons connected with the activities of IRISL.

9 In the request for compensation, the applicant asserted that it was entitled to compensation for the material and non-material damage which it considered that it had suffered not only by reason of the listings effected by Regulation Nos 668/2010 and 961/2010, which are the subject-matter of the present dispute, but also by reason of subsequent listings and relistings (see paragraph 6 above). The material damage thus alleged amounted to EUR 11 928 939, and the non-material damage to EUR 250 000, for the period from 26 July 2010 to 18 September 2015.

10 By letter of 16 October 2015, the Council rejected the request.

II. Procedure and forms of order sought

11 By application lodged at the Court Registry on 25 November 2015, the applicant brought the present action.

12 By document lodged at the Court Registry on 5 April 2016, the European Commission applied for leave to intervene in support of the form of order sought by the Council. By decision of 13 May 2016, the President of the Seventh Chamber granted that application pursuant to Article 144(4) of the Rules of Procedure of the General Court.

13 The close of the written part of the procedure was notified to the parties on 30 August 2016. No request for a hearing was submitted by the parties within the time limit of three weeks from such notification, laid down by Article 106(2) of the Rules of Procedure.

14 By decision of the President of the Court of 5 October 2016, the present case was assigned to a new Judge-Rapporteur, sitting in the Third Chamber.

15 On 30 May 2017, the Court of Justice delivered judgment in *Safa Nicu Sepahan* v *Council* (C-45/15 P, EU:C:2017:402), dismissing the appeal and cross-appeal brought against the judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council* (T-384/11, EU:T:2014:986).

16 By decision of 8 June 2017, served on the parties the following day, the General Court, taking the view that it had sufficient information available to it from the material in the file, decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure.

17 However, by document lodged at the Court Registry on 12 June 2017, the applicant requested a hearing by reason, in particular, of the delivery of the judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council* (C-45/15 P, EU:C:2017:402). The applicant asked the Tribunal to hear its director and sole shareholder, Mr Bateni, pursuant to a measure of organisation of procedure, particularly in connection with the extent of the material and non-material damage alleged to have been suffered.

18 By decision of 20 June 2017, the Court, first, confirmed its decision of 8 June 2017 (see paragraph 16 above). As regards the applicant's request for a hearing, the Court considered that it had been submitted out of time (see paragraph 13 above), and that there were no new matters that could potentially justify the holding of a hearing. The judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council* (C-45/15 P, EU:C:2017:402), cited by the applicant in support of its request for a hearing, had

merely affirmed the judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council* (T-384/11, EU:T:2014:986), and accordingly it could not justify opening the oral part of the procedure. Secondly, the Court refused the application for a measure of organisation of procedure under which Mr Bateni would be heard, on the ground that it considered that it had sufficient information available to it from the material in the file and from the relevant case-law on the assessment of the damage flowing from an illegal restrictive measure (see also paragraph 93 below).

19 The applicant claims that the Court should:

– Order the Council to pay it compensation in the amount of EUR 2 513 221.50 for material and non-material damage suffered by reason of its inclusion in the lists of persons, entities and bodies contained in Annex V to Regulation (EC) No 423/2007 and Annex VIII to Regulation (EU) No 961/2010 (together, 'the lists at issue');

– Order the Council to pay interest for late payment at a rate of two percentage points over the rate of interest set by the European Central Bank (ECB) for principal refinancing operations, for the period from 17 October 2015;

– Order the Council to pay the costs.

20 The Council, supported by the Commission, contends that the Court should:

– Dismiss the action as inadmissible in part and, in any event, completely unfounded;

– Order the applicant to pay the costs.

III. Law

A. Subject-matter of the action

21 As regards the subject-matter of the action, it should be observed at the outset that the applicant states, essentially, that, 'at this stage', it is only seeking compensation for the damage suffered as from 26 July 2010, by reason of the inclusion of its name in the lists of persons, entities and bodies contained in Annex V to Regulation No 423/2007, by Regulation No 668/2010, and as from 25 October 2010, by reason of the inclusion of its name in the list of persons, entities and bodies contained in Annex VIII to Regulation No 961/2010, by Regulation No 961/2010 (see paragraph 5 above).

22 Thus, *ratione temporis*, the damage in respect of which the applicant is seeking compensation, namely that arising from the two listings referred to above, is said to have been suffered during the period from 26 July 2010, when the applicant was originally listed among the legal persons connected to IRISL, until 23 January 2012, when the Council adopted Implementing Regulation (EU) No 54/2012 of 23 January 2012, implementing Regulation No 961/2010 (OJ 2012 L 19, p. 1). On that date, the listing effected by Regulation No 961/2010 ceased to produce legal effects.

B. The plea that the applicant's action for damages is time-barred

23 Article 46 of the Statute of the Court of Justice of the European Union, which is applicable to the procedure before the General Court pursuant to Article 53 of the Statute, provides:

'Proceedings against the Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union. In the latter event the proceedings must be instituted within the period of two months provided for in Article 263 of the Treaty on the Functioning of the European Union; the provisions of the second paragraph of Article 265 of the Treaty on the Functioning of the European Union shall apply where appropriate.'

24 Although it has not formally raised a plea of inadmissibility by separate document, the Council submits in its rejoinder that the action is time-barred by reason of the expiry of the limitation period prescribed by Article 46 of the Statute of the Court of Justice of the European Union. In this regard it argues that the action, which was brought on 25 November 2015, is based on measures adopted more than five years previously, namely on 26 July 2010 (as regards Regulation No 668/2010) and 25 October 2010 (as regards Regulation No 961/2010).

25 The Council maintains that, in any event, the action is partly inadmissible in that the action for damages is time-barred in so far as it relates to damages alleged to have been suffered before 25 November 2010, which is five years before the action was brought, it having been lodged at the Court Registry on 25 November 2015.

26 In the circumstances of the present case, the Court considers that it is appropriate, in the interests of procedural economy and the proper administration of justice, to begin by examining the issues relating to the substance of the case, without ruling at this stage on the plea of inadmissibility put forward on the basis that the action is time-barred (see, to this effect, judgment of 30 March 2006, *Yedaş Tarim ve Otomotiv Sanayi ve Ticaret* v *Council and Commission*, T-367/03, EU:T:2006:96, paragraph 30 and the case-law cited).

C. Substance

27 In relation first of all to the illegality of the conduct which the applicant seeks to impute to the European Union as a basis for potential non-contractual liability on the part of the Union, it advances two pleas in this regard, respectively alleging that the obligation to state reasons was not complied with, and that the substantive conditions for its inclusion in the lists at issue were not satisfied.

28 Before examining those two pleas, it is appropriate nonetheless to set out, by way of preliminary observations, the factors established by the case-law as being relevant, in the context of an action for damages, to the determination of whether the requirement as to the illegality of the conduct of the institution concerned, being the conduct complained of by the applicant, is satisfied.

1. Preliminary observations as to the factors established by the case-law as being relevant in deciding the issue of illegality in the context of an action for damages

29 It is apparent from settled case-law that a finding that a legal act of the European Union is illegal, made for example in the context of an action for annulment, regrettable as it may be, is not a sufficient basis for holding that the non-contractual liability of the Union, flowing from illegal conduct on the part of one of its institutions, has automatically arisen. In order for that condition to be met, the case-law requires the applicant to demonstrate, first, that the institution in question has not merely breached a rule of law, but that the breach is sufficiently serious and that the rule of law was intended

to confer rights on individuals (see judgment of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 42 and the case-law cited). The applicant must go on to prove, in addition, that the two further conditions which must be satisfied in order for extra-contractual liability to arise on the part of the European Union, namely that there is genuine damage and that there is a direct causal link between the breach in question and that damage, are in fact satisfied.

30 With regard, in particular, to restrictive measures, the Court, in its judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council* (C-45/15 P, EU:C:2017:402, paragraph 62), held, on the basis moreover of its established case-law, that 'it is for the party seeking to establish the European Union's non-contractual liability to adduce conclusive proof as to the existence and extent of the damage it alleges … and as to the existence of a sufficiently direct causal nexus between the conduct of the institution concerned and the damage alleged'.

31 Furthermore, and again according to settled case-law, the requirement for proof of a sufficiently serious breach is intended to avoid, in the field inter alia of restrictive measures, the institution concerned being obstructed in the exercise of the functions which it is responsible for carrying out, in the general interest of the European Union and its Member States, by the risk of having to bear losses, be they financial or non-material, which the persons concerned by its acts might potentially suffer, without however leaving individuals to bear the consequences of flagrant and inexcusable misconduct on the part of the institution concerned (see, to this effect, judgments of 11 July 2007, *Schneider Electric* v *Commission*, T-351/03, EU:T:2007:212, paragraph 125; of 23 November 2011, *Sison* v *Council*, T-341/07, EU:T:2011:687, paragraph 34, and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 51).

32 Those preliminary observations having been made, the Court considers it appropriate to consider the applicant's second plea first, followed by the first plea.

2. The second plea, alleging that the substantive listing conditions were not met

(a) Arguments of the parties

33 The applicant submits, first, that the Council did not provide sufficient support, in the form of concrete facts, for its inclusion in the lists at issue. It observes, furthermore, that in the judgment of 12 June 2013, *HTTS* v *Council* (T-128/12 and T-182/12, not published, EU:T:2013:312) (see paragraph 6 above), the General Court held that Council Regulation No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), was vitiated by a manifest error of assessment, as the Council had not established that it was in fact controlled by IRISL.

34 Thus, relying inter alia on the judgment of 25 November 2014, *Safa Nicu Sepahan* v *Council* (T-384/11, EU:T:2014:986), the applicant argues, first, that the Council had no margin of appreciation as regards its duty to establish that the restrictive measures at issue were well founded, that obligation flowing from its obligation to observe fundamental rights, in particular the right to effective judicial protection.

35 In any case, it maintains, the evidence and information provided by the Council after the event cannot be taken into account at this stage, and accordingly, the Council's breach of its duty to establish that the contested listings were well founded, at the time of their adoption, cannot be regularised retroactively.

36 Furthermore, it submits, the General Court, in paragraph 55 of the judgment of 12 June 2013, *HTTS* v *Council* (T-128/12 and T-182/12, not published, EU:T:2013:312) (see paragraph 6 above), found that the Council had admitted that, when it adopted Regulation No 961/2010, it did not yet have in its

possession relevant material which it subsequently produced, or which was produced by the Federal Republic of Germany as intervener in the proceedings giving rise to that judgment. As to the reports of the United Nations (UN) expert groups cited by the Council in the present case, dating from 2012 and 2013, the applicant observes that these also post-date the adoption of the Regulation in question.

37 In the alternative, the applicant also submits that the material which the Council provided after the event in Case T-182/12, *HTTS* v *Council* (see paragraph 6 above), was not capable of justifying its inclusion in the lists at issue either. In any event, it argues, those documents do not establish that the applicant was in fact 'owned or controlled' by IRISL, but only that the applicant acted as an agent on behalf of SAPID and HDSL.

38 Secondly, the applicant contends that it follows from the judgment of 16 September 2013, *Islamic Republic of Iran Shipping Lines and Others* v *Council* (T-489/10, EU:T:2013:453) (see paragraph 7 above), that the fact that there was a link between it, on the one hand, and IRISL, SAPID or HDSL, on the other, cannot justify its inclusion in the lists at issue. It maintains that in that judgment, the General Court found precisely that the Council had not established that IRISL was directly involved in nuclear proliferation activities.

39 For all of those reasons, the applicant submits that the Council breached clear and precise provisions of law which do not give rise to any difficulty of application or interpretation, and do not relate to a situation of particular complexity. It argues that the Council thus breached the duty to exercise ordinary care and diligence, according to criteria which, moreover, are apparent from settled case-law of the European Union Courts, such as the judgments of 23 November 2011, *Sison* v *Council* (T-341/07, EU:T:2011:687, paragraphs 36 and 37); of 25 November 2014, *Safa Nicu Sepahan* v *Council* (T-384/11, EU:T:2014:986, paragraph 53), and of 18 February 2016, *Jannatian* v *Council* (T-328/14, not published, EU:T:2016:86, paragraph 44).

40 In the rejoinder the Council, for its part, first relies on the lateness of the complaint concerning the failure to provide evidence in support of the reasons for including the applicant in the disputed lists, arguing that that is a new plea which the applicant had not advanced at any stage prior to the reply.

41 As to the substance, the Council, supported by the Commission (which agrees with its observations) argues that it did not commit a sufficiently serious breach and disputes all of the applicant's arguments.

(b) Findings of the Court

42 It should be recalled that, according to settled case-law, an action for damages under the second paragraph of Article 340 TFEU is an autonomous form of action which differs from an action for annulment in that its end is not the abolition of a particular legal act, but compensation for damage caused by an EU institution (judgments of 2 December 1971, *Zuckerfabrik Schöppenstedt* v *Council*, 5/71, EU:C:1971:116, paragraph 3, and of 18 September 2014, *Georgias and Others* v *Council and Commission*, T-168/12, EU:T:2014:781, paragraph 32).

43 It is, moreover, well settled that Article 215 TFEU, which is the provision of that treaty constituting the legal basis for the Council to adopt restrictive measures against natural or legal persons, serves as a bridge between, on the one hand, the objectives of the EU Treaty which are pursued by the European Union and the Member States in matters of the Common Foreign and Security Policy (CFSP) (see, in particular, Article 24(3) TEU, under which Member States are obliged to support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity, and to comply with the Union's action in that area) and, on the other hand, the actions of the Union involving the

adoption of economic or restrictive measures which fall within the scope of the FEU Treaty, and which are necessary to attain those objectives (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 89 and the case-law cited).

44 In this context, an individual restrictive measure capable of applying to a non-State entity, such as a measure freezing funds, is not in itself an autonomous act of the Council in the nature of a penal or administrative sanction adopted against that entity, but a measure which is necessary, within the meaning of Article 215(2) TFEU, for implementing that specific policy, intended to enable the European Union to achieve, step by step, the practical outcome which it is seeking in the context of international relations, here to bring an end to the nuclear proliferation activities of the Islamic Republic of Iran.

45 Furthermore, it should be observed that, again according to settled case-law, the wider objective of maintaining peace and international security, in accordance with the objectives of the Union's external action stated in Article 21 TEU, is such as to justify negative consequences for economic operators, even significant negative consequences, arising from decisions implementing acts adopted by the Union with a view to achieving that fundamental objective (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 150 and the case-law cited).

46 Thus, in assessing the conduct of the institution concerned, the Court, hearing an action for damages brought by an economic operator, is also required, having regard in particular to Article 215(2) TFEU, to take account of that fundamental objective of Union foreign policy, except where the operator is able to establish that the Council failed to comply with its mandatory obligations in a flagrant or inexcusable manner, or that it infringed, again in a flagrant or inexcusable manner, a fundamental right recognised by the Union.

47 In those circumstances and having regard, in particular, to the gradual increase, over the period covered by the events which make up the subject-matter of the action, in the severity of the restrictive measures adopted by the Council in response to the nuclear proliferation activities of the Islamic Republic of Iran, the interference with the commercial activity of HTTS and with its freedom to manage its own financial resources, resulting from the freezing of its funds pursuant to the restrictive measure in question, cannot be regarded as giving rise, automatically, to non-contractual liability on the part of the Union. It is also necessary, under the criteria defined by the case-law arising out of the judgment of 4 July 2000, *Bergaderm and Goupil* v *Commission* (C-352/98 P, EU:C:2000:361, paragraph 42 and case-law cited) (see paragraph 29 above), that the Court determining whether extra-contractual liability has arisen is able to find, on the facts of the case, that there has been a flagrant or inexcusable failure to comply on the part of the institution concerned, or that it has made manifest errors of assessment, in relation to the alleged links between the entity in question and the other companies concerned, first and foremost IRISL.

48 Furthermore, the fact that one or more of the acts of the Council giving rise to the losses claimed by the applicant may have been annulled, even by a judgment of the General Court delivered before the action for damages had been brought, is not irrefutable evidence of a sufficiently serious breach on the part of that institution, giving rise *ipso jure* to liability on the part of the Union.

49 Moreover, it should be observed that, unlike an action for annulment, an action based on non-contractual liability may be brought up to five years after the occurrence of the event giving rise to the damage in question. Consequently, the institution in respect of which non-contractual liability is said to have arisen is, in principle, entitled to rely, by way of defence, on all relevant facts and matters occurring before the action for damages was, within that five-year period, brought against it, just as the applicant is entitled to rely on evidence post-dating the occurrence of damage in order to prove the scope and extent of such damage.

50 As to the fact that it is possible for the institution to rely, by way of defence, on all relevant facts and matters occurring before the action for damages was brought against it, it should be observed that this answers the need for the competent court to determine, on an *inter partes* basis, the relevance and importance of the facts alleged by the parties to the case so as to make a ruling as to whether or not extra-contractual liability has arisen on the part of the Union. The justification for this possibility is particularly clear in an area of European Union activity such as the CFSP, which, by reason of its objectives and content, is subject to specific rules and procedures which are laid down by the Treaties (see the second subparagraph of Article 24(1) TEU) and are intended inter alia to take account, as necessary, of the development of the factual and legal situation to which the Union's international action relates.

51 To that extent, to render effects brought about by the institution concerned nugatory, in the context of an action for damages, where that institution, pursuant to a decision adopted in accordance with Title V, Chapter 2 TEU, has proceeded, on the basis of Article 215(2) TFEU, to adopt the freezing of funds measure in question, would be to create a serious hindrance to the effective exercise of the functions which the treaties assign, in matters of the CFSP, to the Union institutions, by providing for the necessary restrictive measures to be adopted in aid of the implementation of the CFSP.

52 Those principles having been set out, it is appropriate in the circumstances to observe, first, that in paragraphs 41 and 42 of the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), the General Court held that to annul Regulation No 961/2010 with immediate effect might have caused serious and irreparable harm to the effectiveness of the restrictive measures imposed by that regulation since, 'it cannot be excluded that, as regards the substance, the imposition of restrictive measures on the applicant could nonetheless be justified'.

53 Thus, in this action for damages, the General Court cannot ignore the relevant reasons and evidence which the Council has put forward by way of defence, with a view to demonstrating that the requirements which must be met in order for non-contractual liability to arise on the part of the Union are not in fact met.

54 Next, in relation to the applicant's first contention, alleging a sufficiently serious breach of the substantive conditions for its inclusion in the lists at issue, by reason of an indirect link between its economic activity and that of IRISL (see paragraph 4 above), it should be observed that the Council's objection that this argument has been advanced late is not relevant, given that the applicant had, from the filing of its action for damages, based its claim for compensation, inter alia, on that argument, which is therefore a logical development of the plea under examination.

55 That being so, as regards, first, the characterisation of the applicant as a company 'owned or controlled by another entity', which the applicant disputes on the basis that it is neither owner nor controlled by IRISL, it suffices to observe that this concept does not have the same meaning in the present case as it generally has in company law, where it serves to ascertain the commercial liability of a company which is legally subject to the control, as regards decision-making, of another commercial entity.

56 In assessing the legality of a restrictive measure, what is contemplated by the concept is a situation in which the natural or legal person involved in the nuclear proliferation activity of the State in question is able to influence the commercial decisions of another undertaking with which it has a commercial relationship, even in the absence of any legal tie between the two economic entities, or any link in terms of ownership or equity participation.

57 In this regard, furthermore, the Court of Justice has expressly held that the Council must assess whether an entity is 'owned or controlled' on a case-by-case basis, by reference, inter alia, to the degree to which the entity concerned is owned or controlled, and that the Council has a certain margin of appreciation in this regard (judgments of 12 June 2013, *HTTS* v *Council*, T-128/12 and

T-182/12, not published, EU:T:2013:312, paragraph 48, and of 6 September 2013, *Bateni* v Council, T-42/12 and T-181/12, not published, EU:T:2013:409, paragraph 45; see also, to this effect, judgment of 13 March 2012, *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137, paragraphs 40 to 42).

58 In the present case, the information and items of evidence advanced by the Council constitute relevant indicators which are sufficiently precise and coherent and which justify the conclusion, in the context of this action for damages, that it is at least plausible that HTTS was 'controlled and/or acting on behalf of IRISL'.

59 Thus, for example, the fact of the applicant having acted as a shipping agent for entities which were closely linked to IRISL, some of which (namely HDSL and SAPID) were using vessels made available to them by IRISL, of the financial relationship between the applicant on the one hand and HDSL and SAPID on the other, and between the applicant and the EU subsidiary of IRISL, evidenced by the audit report of 31 December 2010, of the functions of the legal director of IRISL having been previously carried out by the director of the applicant, Mr Bateni, and of the applicant and IRISL Europe having the same address, constitute a matrix of factual indicators which are relevant and coherent, and which moreover are not contested by the applicant, of close links between the applicant and IRISL. Furthermore, as the Council points out, in the judgment of 12 June 2013, *HTTS* v *Council* (T-128/12 and T-182/12, not published, EU:T:2013:312, paragraph 56), the General Court emphasised that although it could not have regard, in the context of the action for annulment which it was hearing, to the information provided by the Federal Republic of Germany, which in fact included some of the indicators referred to above, the possibility could not be ruled out that that information might, 'by reason of its detailed and relevant nature, justify the inclusion of the applicant on the lists at issue'.

60 Hence, it is apparent from the material and indicators produced by the Council in this case, taken as a whole, that in adopting the freezing of funds measure at issue, it did not commit a flagrant or inexcusable breach or make manifest errors of assessment as to the scope of the commercial relationship that HTTS had with IRISL, and, through that company, with the nuclear proliferation activity of Islamic Republic of Iran, which could provide a justification — if the other conditions for liability to arise on the part of the Union were made out — for compensating HTTS for the damage it claims to have suffered in consequence (see paragraph 59 above). In any event, the applicant has not put forward sufficiently concrete and relevant evidence capable of supporting a finding of liability on the part of the Council in respect of any such serious and inexcusable breach.

61 It follows that the first contention, alleging a sufficiently serious breach of the substantive listing conditions in that the Council has not established, by means of adequate evidence, that the applicant was controlled by IRISL, must be dismissed.

62 In relation to the second contention, alleging that there was no justification for the contested listings of HTTS, here on the basis that the General Court annulled the listing of IRISL and other shipping companies, including HDSL and SAPID, it should once again be observed (see paragraph 48 above) that the annulment of those listings is not sufficient, by itself, to establish that the listings of HTTS referred to above were vitiated by a sufficiently serious breach of the kind which would also give rise to liability on the part of the Union.

63 In this regard, it must be observed that, when the applicant was included in the lists at issue, first by Regulation No 668/2010, and subsequently by Regulation No 961/2010, the listings of IRISL, HDSL and SAPID had not yet been annulled. Above all, however, it must also be pointed out that the Council observes, correctly, that in the present case, the listing of IRISL was based essentially on a report of the United Nations Sanctions Committee which established that that company had committed three manifest breaches of the arms embargo instituted by Security Council resolution 147(2007). Having regard to the conclusions reached in that report, the fact that the Council took the view that IRISL was involved in the nuclear proliferation activities of the Islamic Republic of Iran cannot be regarded, in the context of this action for damages, as manifestly erroneous. Moreover, the applicant has not

contested this by reference to any supporting evidence. Consequently, the later annulment of the listings of IRISL, SAPID and HDSL, on which the applicant now relies, is not a basis for holding that the Council made a manifest error of assessment of such a serious and inexcusable kind as to give rise to extra-contractual liability on the part of the Union.

64 In those circumstances, it cannot ultimately be said that the Council, in basing the listings of the applicant which are the subject-matter of this action on the links between it and IRISL, committed a breach which would not have been committed, in analogous circumstances, by an administration exercising ordinary care and diligence on which the Treaties conferred specific competences, such as those relating to the adoption of restrictive measures regarded as necessary in the context of the Union's efforts to maintain peace and international security, the exercise of which was liable to arise for consideration as a result of nuclear proliferation activity on the part of the Islamic Republic of Iran (see paragraph 44 above).

65 It follows that the second contention, alleging the illegality of the contested listings following the *ex tunc* annulment of the listings of IRISL, HSDL and SAPID, cannot be upheld any more than the first, such that the applicant's second plea must be dismissed in its entirety.

66 That being so, it is now convenient to examine, in the light of the foregoing considerations, the first plea advanced by the applicant in support of its claim for damages.

3. The first plea, alleging breach of the obligation to state reasons

(a) Arguments of the parties

67 In seeking to demonstrate that the alleged lack of reasons for the contested listings constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals, the applicant essentially relies, in support of this plea, on the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), annulling the inclusion of its name in the list contained in Annex VIII to Regulation No 961/2010 on the ground that there was no adequate statement of reasons (see paragraph 5 above). The applicant observes, essentially, that in that judgment, the General Court laid particular emphasis on the fact that the obligation to state reasons is a general principle of EU law, to be derogated from only where there are compelling reasons. Accordingly, the reasons for listing an entity ought, in principle, to be communicated to that entity at the same time as the act adversely affecting it.

68 Furthermore, in the reply, the applicant raises for the first time, in support of this plea, an argument that in the present case, the breach of the obligation to state reasons and the failure to communicate the specific and concrete reasons for its inclusion in the lists at issue also infringed its right to effective judicial protection. It argues that the Council thus infringed a fundamental rule of EU law which serves to protect individuals, breach of which is capable of giving rise to liability on the part of the Union.

69 In the present case, it submits, the statement of reasons is even less adequate, and therefore constitutive of a serious and inexcusable breach on the part of the Council, for the fact that, prior to delivery of the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), the Council had not produced any evidence capable of supporting the inclusion of HTTS in Annex VIII of Regulation No 961/2010. In this respect, the applicant relies, in particular, on its letters of 10 and 13 September 2010, by which it asked the Council to reconsider its decision to include it in the lists at issue and forwarded it certain documents in that regard, and on its letter of 23 November 2010, in which it requested access to its file.

70 Finally, the applicant argues that the Council infringed its right to effective judicial protection in that, after each of the judgments annulling its inclusion in the lists at issue, HTTS was immediately relisted on the basis, quite simply, of reasons which were slightly amended from those which had initially been given. Furthermore, it argues, the Council's conduct in that regard evinces an attitude which it took towards the applicant throughout.

71 The Council, supported by the Commission, disputes those arguments.

(b) Findings of the Court

72 Before turning to the merits of the various contentions advanced in relation to the applicant's first plea, it is appropriate to consider the procedural matter of the plea of inadmissibility which is put forward by the Council, on the basis that it was not until the reply that the applicant put forward its arguments relating to infringement of the right to effective judicial protection, and to the alleged lack of evidence demonstrating that the listings at issue were well founded, and that those arguments were therefore raised late.

(1) The lateness of the argument based on infringement of the right to effective judicial protection

73 In this regard, the first step must be to reject, as inoperative, the submission advanced by the applicant on the basis that the Council automatically included it in the lists at issue, despite the annulling judgments of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), and 12 June 2013, *HTTS* v *Council* (T-128/12 and T-182/12, not published, EU:T:2013:312) (see paragraph 70 above). These proceedings, which relate to a period delimited by the applicant itself, do not include a claim for compensation for the damage it suffered by reason of having been relisted following each of those judgments; rather, the claim is for compensation for the damage it suffered between 26 July 2010 and 23 January 2012 (see paragraph 22 above). Thus, for the purposes of these proceedings, the Council's conduct after 23 January 2012 is completely irrelevant.

74 In relation to the Council's objection that the two complementary arguments advanced by the applicant in the reply were raised late, it should first be observed that, in the application, HTTS made a clear connection between the obligation to state reasons for its inclusion in the lists of persons connected with the activities of IRISL and the Council's obligation to communicate the reasons for such inclusion to it (see paragraph 67 above).

75 According to settled case-law, the principle of effective judicial protection means that an EU institution which adopts an act imposing restrictive measures against a person or non-State entity is bound to communicate the grounds on which it is based, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after it has been adopted, precisely so that those persons or non-State entities can exercise their right to bring an action (judgments of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 47, and the case-law cited, and 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 100).

76 The purpose of the obligation to state the reasons on which an act adversely affecting a person is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act as fully as possible (judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 49; of 18 February 2016, *Council* v *Bank Mellat*, C-176/13 P, EU:C:2016:96, paragraph 74, and of 11 July 2007, *Sison* v *Council*, T-47/03, not published, EU:T:2007:207, paragraph 185).

77 Furthermore, where the person concerned is not afforded the opportunity to be heard before the adoption of an initial decision to freeze funds, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the person concerned, at least after the adoption of that decision, to make effective use of the legal remedies available to him in order to challenge its lawfulness (judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 51; of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384, paragraph 140, and of 11 July 2007, *Sison* v *Council*, T-47/03, not published, EU:T:2007:207, paragraph 187).

78 Thus, it follows from the case-law cited in paragraphs 75 to 77 above, in particular, that the obligation to state reasons and the right of the person concerned to be informed of the specific and concrete grounds for its inclusion in the lists in question, which is a corollary of that obligation, are intended to safeguard not only the rights of the defence, but also the principle of effective judicial protection.

79 Accordingly, in the context of the present claim for damages, the contention regarding infringement of the right to effective judicial protection, which was not raised by the applicant at any stage until the reply, must be regarded as a development, made in the course of the proceedings, of the first plea, which alleges infringement of the obligation to state reasons and of the right of the person concerned to be informed of the specific and concrete reasons for its inclusion in the lists at issue (see paragraph 74 above). Accordingly, that contention cannot be regarded as a new plea which has been raised late by the applicant.

(2) The lateness of the second contention, alleging that the Council failed to disclose its evidence

80 The applicant argues that the Council did not produce the evidence supporting the reasons for its inclusion in the lists at issue. In this regard, it refers in particular to its letter of 23 November 2010 (see paragraph 69 above). In making that argument, the applicant is essentially relying on a breach on the part of the Council of its right of access to its file.

81 On that specific point, it should be recalled that, in paragraph 19 of the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), the General Court observed, in setting out the background to the dispute, that the Council had not replied to the applicant's letter of 23 November 2010 before the action in that case was brought. In that judgment, however, the Court went on to limit its consideration to the plea alleging failure to state reasons, and accordingly it did not examine the other plea, concerning compliance with the rules governing the right of access to the file.

82 The applicant has not challenged the Council's refusal of its request for access to the file in the application, and accordingly this contention, presented though it may be under the rubric of a potential infringement of the right to effective judicial protection, must be held to be inadmissible, in accordance with Article 84(1) of the Rules of Procedure, in that it constitutes a new plea which is not based on matters of law or fact which have come to light in the course of the procedure.

83 That procedural contention having been rejected, it is now appropriate to turn to the merits of the applicant's first plea.

(3) The merits of the first plea

84 The parties' arguments concerning this plea having been summarised, respectively, in paragraphs 67 to 71 above, it suffices here to observe that in Regulation No 668/2010, the reason given for including HTTS in Annex V to Regulation No 423/2007 was that the applicant 'act[ed] on behalf of HDSL in Europe', the reason given for including HDSL in the lists at issue being that it 'act[ed] on behalf of

IRISL performing container operations using vessels owned by IRISL', and that in Regulation No 961/2010, the reason given for including HTTS in Annex VIII to that Regulation was that it was 'controlled and/or acting on behalf of IRISL'(see paragraph 4 above).

85 The reasons given for the contested listing having been set out, the first observation to make as regards infringement of the obligation to state the reasons for the initial listing of the applicant, in the list annexed to Regulation No 668/2010, is that the applicant's position is clearly based on a mistaken reading of the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716). That judgment only concerned the validity of Regulation No 961/2010, listing the applicant in the annex to that regulation. The General Court did not make any ruling as to the adequacy or inadequacy of the reasons given for the initial listing, effected by Regulation No 668/2010. This is apparent merely from the wording of the grounds for that judgment, paragraph 39 of which reads as follows:

'Under those circumstances, it must be concluded that the Council appears to have infringed the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and Article 36(3) of Regulation No 961/2010. Consequently, the first plea in law [alleging that the statement of reasons in that regulation was inadequate] appears to be founded and must therefore be accepted.'

86 In any event, since the applicant has not challenged the legality of Regulation No 668/2010 by means of an action for annulment (see paragraph 3 above), it is incumbent on it, in the present action for damages, to prove the illegality of that restrictive measure as a requirement which must be satisfied if the General Court is to order the Council — assuming that the other requirements for liability to arise on the part of the European Union are satisfied, which has not been shown — to compensate the applicant for the damage it claims to have suffered (see paragraph 29 above). The reference which the applicant makes in this case to the judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716) (see paragraph 67 above), does not provide a basis for concluding that the requirement for a sufficiently serious breach is satisfied as regards the initial listing of the applicant by Regulation No 668/2010; indeed, in the absence of any action for annulment, that act must be presumed to be lawful until the contrary is shown.

87 Turning next to Regulation No 961/2010, there is no dispute that by its judgment of 7 December 2011, *HTTS* v *Council* (T-562/10, EU:T:2011:716), the General Court annulled that act in so far as it concerned the applicant, on the ground that the reasons given for including it in the list annexed to that regulation were inadequate.

88 Nevertheless, in relation to whether the non-contractual liability on the part of the European Union which could potentially arise from the annulment of that regulation has in fact arisen, it is apparent from settled case-law that, in principle, the fact that the reasons given for an act are inadequate does not give rise to liability on the part of the Union (judgment of 11 July 2007, *Sison* v *Council* (T-47/03, not published, EU:T:2007:207, paragraph 238).

89 That being so, in the present action for damages the legality of the restrictive measure in question must, in any event, be determined having regard not only to the reasons originally given, but also to those subsequently given by the Council, in Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22), which maintained the inclusion of the applicant in the list annexed to 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), giving the following reasons:

'Controlled by and/or acting on behalf of IRISL. HTTS is registered under the same address as IRISL Europe GmbH in Hamburg, and its principal [Mr Bateni] was previously employed with IRISL.'

90 Those supplementary reasons make it possible, in this action seeking compensation for damage which the applicant claims to have suffered during the period from 26 July 2010 to 23 January 2012, both for the applicant to understand why it was included in the lists at issue during that period, and for the Court to make an overall assessment of the causes which the parties respectively allege to have given rise to the damage which the applicant claims to have suffered during that period.

91 In the light of the foregoing considerations, the plea under consideration must be rejected in its entirety.

92 The action must therefore be dismissed in its entirety, it being unnecessary to consider whether the other requirements for liability to arise on the part of the European Union are met, or to express a view on the plea of inadmissibility based on limitation.

93 In those circumstances, it is not necessary to grant the applicant's application for a measure of organisation of procedure for its director and sole shareholder to be heard as a witness.

IV. Costs

94 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.

95 In accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs.

96 Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council. The Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders HTTS Hanseatic Trade Trust & Shipping GmbH to bear its own costs and to pay those incurred by the Council of the European Union;**

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

Frimodt Nielsen Forrester Perillo

Delivered in open court in Luxembourg on 13 December 2017.

[Signatures]

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