



## Reports of Cases

### ORDER OF THE PRESIDENT OF THE GENERAL COURT

11 March 2013\*

(Interim relief — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds and economic resources — Application for interim measures — No urgency — Weighing up of interests)

In Case T-110/12 R,

**Iranian Offshore Engineering & Construction Co.**, whose registered office is in Tehran (Iran), represented by J. Viñals Camallonga, L. Barriola Urruticoechea and J. Iriarte Ángel, lawyers,

applicant,

v

**Council of the European Union**, represented by P. Plaza García and V. Piessevaux, acting as Agents,

defendant,

APPLICATION for suspension of the operation of, first, 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), in so far as the applicant's name was on the list in Annex II 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) and, secondly, Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 Implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11), and Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), in so far as those regulations concern the applicant,

THE PRESIDENT OF THE GENERAL COURT

makes the following

### Order

#### Background to the dispute, procedure and forms of order sought by the parties

- 1 The applicant, Iranian Offshore Engineering & Construction Co., is an Iranian company specialising in fixed and movable marine equipment engineering.

\* Language of the case: Spanish.

- 2 On 26 July 2010, the Council of the European Union adopted Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39). Article 20(1) of Decision 2010/413 provides for the freezing of the funds and economic resources of the persons and entities included on the lists in Annexes I and II to that decision.
- 3 On 25 October 2010, following the adoption of Decision 2010/413, the Council adopted Regulation (EU) No 961/2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1). Article 16(2)(a) of Regulation No 961/2010 provided for the freezing of the funds and economic resources of the persons, entities and bodies listed in Annex VIII to that regulation.
- 4 On 1 December 2011, the Council adopted Decision 2011/783/CFSP amending Decision 2010/413 (OJ 2011 L 319, p. 71), by which, inter alia, it added the applicant to the list of persons and entities set out in Annex II to Decision 2010/413 on the ground that the applicant was an '[e]nergy sector firm [which had been] involved in the construction of the uranium enrichment site at Qom/Fordow' and '[was] [s]ubject to UK, Italian and Spanish export denials'.
- 5 On 1 December 2011, the Council adopted Implementing Regulation (EU) No 1245/2011 Implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), by which, inter alia, it added the applicant to the list in Annex VIII to Regulation No 961/2010. The grounds for so doing are identical to those cited by the Council in Decision 2011/783.
- 6 By letter of 5 December 2011, the Council informed the applicant that it had been added to the lists of persons and entities set out in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010, following the adoption of Decision 2011/783 and Regulation No 1245/2011.
- 7 On 23 March 2012, the Council adopted Regulation (EU) No 267/2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1). Regulation No 267/2012 extends the freezing of the applicant's funds and resources. To that end, line 85 of table I.B. of Annex IX to Regulation No 267/2012 sets out, in essence, the same reasons as those set out in the annexes referred to in Article 1 of Decision 2011/783 and Article 1 of Regulation No 1245/2011 (together, 'the contested measures').
- 8 By application lodged at the Registry of the General Court on 2 February 2012, followed by the Reply extending the form of order sought, the applicant brought an action seeking, in essence, annulment of the contested measures in so far as they concern it.
- 9 By separate document lodged at the Court Registry on 1 February 2013, the applicant brought the present application for interim relief, in which it claims, in essence, that the President of the Court should:
  - suspend the operation of the contested measures to the extent that they concern the applicant until the Court has ruled on the main action;
  - order the Council to pay the costs.
- 10 In its observations on the application for interim relief, lodged at the Court Registry on 19 February 2013, the Council contends that the President of the Court should:
  - dismiss the application for interim relief;
  - order the applicant to pay the costs.

- 11 In the main proceedings, at the hearing on 26 February 2013 the parties presented oral arguments and answered the questions put to them by the Court.

## Law

- 12 In accordance with Article 278 TFEU and Article 279 TFEU read in conjunction with Article 256(1) TFEU, the judge hearing an application for interim relief may, if he considers that the circumstances so require, order that the operation of a measure challenged before the General Court be suspended or prescribe any necessary interim measures. However, Article 278 TFEU establishes the principle that actions brought before the European Union judicature do not have suspensory effect, since measures adopted by the institutions, bodies, offices and agencies of the European Union enjoy a presumption of legality. It is therefore only in exceptional cases that the judge hearing the application for interim relief may order that the operation of such a measure be suspended or prescribe other interim measures (see, to that effect, the order of the President of the General Court of 17 December 2009 in Case T-396/09 R *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission*, not published in the ECR, paragraph 31 and case-law cited).
- 13 Furthermore, Article 104(2) of the Rules of Procedure of the General Court provides that applications for interim relief must state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for. Thus, suspension of the operation of an act and other interim measures may be ordered by the judge hearing the application if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached on the main action. Those conditions are cumulative, so that applications for interim measures must be dismissed if any one of those conditions is not satisfied (order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK v Commission* [1996] ECR I-4971, paragraph 30).
- 14 In the context of that overall examination, the judge hearing the application for interim relief has a broad discretion and is free to determine, having regard to the specific circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of law imposing a pre-established scheme of analysis within which the need to order interim measures must be assessed (orders of the President of the Court of Justice in Case C-149/95 P(R) *Commission v Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 23, and of 3 April 2007 in Case C-459/06 P(R) *Vischim v Commission*, not published in the ECR, paragraph 25). Where appropriate, the judge hearing the application must also weigh up the interests involved (order of the President of the Court of Justice in Case C-445/00 R *Austria v Council* [2001] ECR I-1461, paragraph 73).
- 15 Having regard to the material in the file, the President of the General Court considers that he has all the material necessary to rule on the present application for interim measures without there being any need first to hear oral arguments from the parties.
- 16 In the circumstances of the present case, it is appropriate to examine first whether the condition relating to urgency is satisfied.

## Urgency

- 17 The applicant claims that it is already suffering serious and irreparable harm, which will continue and increase over time. Referring to documentation annexed to the application for interim relief, the applicant contends that that harm is very varied in nature and affects not only its production, but also

the very structure of its business. In that context, it refers to [Confidential].<sup>1</sup> Lastly, the applicant states that the sanctions have an unlawful extraterritorial effect, which has had repercussions in third States.

- 18 According to the applicant, the harm resulting from the application of the contested measures, which threatens the very existence of its business, manifests itself especially in two extremely adverse effects: delays to projects which the applicant has committed itself to carrying out, [Confidential]. In addition, it is difficult for the applicant to obtain certain goods and equipment required for successfully completing its construction activities. Being unable to deal directly with its customers and suppliers has led to the loss of customers and works not being carried out and, generally, to damage to the applicant's commercial reputation and standing. The harm is difficult to quantify as it is largely impossible to attribute an economic value to it.
- 19 In that regard, it should be recalled that, in accordance with settled case-law, urgency must be assessed in relation to the need for an interim order in order to prevent serious and irreparable harm being caused to the party seeking the interim measure. It is not necessary for the imminence of the harm to be demonstrated with absolute certainty. It is sufficient to show that its occurrence is foreseeable with a sufficient degree of probability (see order of the President of the General Court in Case T-346/06 R *IMS v Commission* [2007] ECR II-1781, paragraphs 121 and 123 and case-law cited). Nevertheless, the party so pleading remains required to prove the facts forming the basis of its claim that serious and irreparable harm is likely (order of the President of the Court of Justice in Case C-335/99 P(R) *HFB and Others v Commission* [1999] ECR I-8705, paragraph 67; orders of the President of the General Court in Case T-151/01 R *Duales System Deutschland v Commission* [2001] ECR II-3295, paragraph 188, and in Case T-34/02 R *B v Commission* [2002] ECR II-2803, paragraph 86) and to submit to the judge hearing the application for interim relief specific and precise particulars, substantiated by detailed documents illustrating its situation and enabling the judge to examine the precise effects which would probably follow if the measures sought were not granted. The party seeking the interim measures is thus required to provide supporting documents and information that establish a true overall picture of its situation, which, in its view, justifies the grant of those measures (see, to that effect, order of the President of the General Court of 7 May 2010 in Case T-410/09 R *Almamet v Commission*, not published in the ECR, paragraphs 32, 57 and 61).
- 20 In so far as the applicant claims in the present case that it is likely to suffer damage of a financial nature, it should be added that according to settled case-law, damage of such a kind cannot, save in exceptional circumstances, be regarded as irreparable or even as being reparable only with difficulty since financial compensation for that damage can normally be obtained subsequently. In such circumstances, the interim measures sought will be justified if it appears that, without those measures, the applicant would be in a position that could jeopardise its financial viability before final judgment is given in the main action or that its market share would be irretrievably and substantially affected, regard being had, in particular, to the size of its business (see order of the President of the General Court of 28 April 2009 in Case T-95/09 R *United Phosphorus v Commission*, not published in the ECR, paragraphs 33 to 35 and case-law cited).
- 21 It follows that, in order to show the serious and irreparable nature of the alleged financial damage by providing a true overall picture of its economic and financial situation, the applicant was required to put before the President of the General Court all of the information to enable him to assess that situation, in particular, the economic and financial characteristics of its business; that true overall picture must, moreover, be provided in the text of application for interim measures itself. Indeed, such an application must be sufficiently clear and specific in itself to enable the defendant to prepare its observations and the judge hearing the application to rule on it, where necessary, without other supporting information, the essential elements of fact and law on which it is founded being set out in a coherent and comprehensible fashion in the actual text of the application for interim relief (orders of

<sup>1</sup> — Confidential data omitted.

the President of the Court of Justice of 30 April 2010 in Case C-113/09 P(R) *Ziegler v Commission*, not published in the ECR, paragraph 13, and of the President of the General Court of 31 August 2010 in Case T-299/10 R *Babcock Noell v Joint undertaking for Fusion Energy*, not published in the ECR, paragraph 17). In addition, the particulars setting out such a true overall picture must be supported by detailed documents, certified by an expert independent of the party seeking the interim measures, on the basis of which it is possible to assess the accuracy of those particulars (see, to that effect, orders of the President of the General Court in Case T-241/00 R *Le Canne v Commission* [2001] ECR II-37, paragraph 35; Case T-420/05 R II *Vischim v Commission* [2006] ECR II-4085, paragraph 83; and of 15 March 2010 in Case T-435/09 R *GL2006 Europe v Commission*, not published in the ECR, paragraph 34).

- 22 It is clear that this application for interim relief does not satisfy the criteria set out in that case-law.
- 23 Although the application for interim relief contains some figures as to the financial damage alleged, the applicant has failed to explain the financial situation of its business. In particular, the applicant has not described the different categories of resources available to it, nor the type and value of all of the movable and immovable property owned by it. It has not mentioned the total amount of its funds which are subject to the freezing measures at issue, nor the percentage represented by that amount in terms of the applicant's overall financial strength, nor the volume of its business on the European Union market. The applicant has therefore clearly failed to provide the information that would have made it possible to have a true overall picture of its situation, which would have enabled it validly to rely on the seriousness of the alleged financial damage.
- 24 As regards, in particular, the document dated 30 January 2013 and signed by the applicant's Managing Director annexed to the application for interim relief, that document merely lists, over two pages, the same damage as that referred to in the application. Clearly, that document does not satisfy the conditions referred to in paragraph 21 above, inasmuch as it does not provide a true overall picture of the applicant's economic and financial situation, and has not, moreover, been certified by an expert independent of the applicant.
- 25 Next, it should be recalled that the objective of the freezing of funds regime is to prevent the persons or entities designated from having access to economic or financial resources that they could use to support proliferation-sensitive nuclear activities or to develop nuclear weapon delivery systems. For that prohibition to retain its practical effect and for the sanctions imposed on the Islamic Republic of Iran by the European Union to remain effective, the possibility that those persons and entities may circumvent the freezing of their funds or their economic resources and pursue their activities in support of the Iranian nuclear programme must be precluded. With that end in view, the relevant provisions of the European Union measures relating to the freezing of funds or economic resources enable the competent national authorities to authorise, by derogation, the release of certain frozen funds which should, in principle, enable expenses and basic needs to be covered, or contractual obligations entered into before the freeze took effect to be fulfilled (see, to that effect, orders of the President of the Court of Justice of 14 June 2012 in Case C-644/11 P(R) *Qualitest FZE v Council*, not published in the ECR, paragraphs 41, 42 and 44, and of 25 October 2012 in Case C-168/12 P(R) *Hassan v Council*, not published in the ECR, paragraph 39).
- 26 Therefore, even though restrictive measures such as those at issue in the present case have a considerable impact on the rights and freedoms of the persons, entities or bodies designated (see, to that effect, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 375, and Case C-340/08 *M and Others* [2010] ECR I-3913, paragraph 65), the fact nevertheless remains that the abovementioned derogating provisions make it possible to ensure the survival of the persons, entities and bodies caught by those measures and thus to prevent the very existence of those persons, entities and bodies from being jeopardised (see, to that effect, the order in *Qualitest FZE v Council*, paragraph 43).



- 27 In the circumstances of this case, it is Article 20(3), (4) and (6) of Decision 2010/413 and Articles 24 to 26 of Regulation No 267/2012 that make it possible, by way of derogation, to ensure that the magnitude of the financial damage caused to the applicant by the freezing of its funds and economic resources is not such as to threaten its very existence. Accordingly, the present application for suspension of the operation of the contested measures must be assessed having regard to the application of the derogations enabling the release of certain frozen funds to the applicant's situation (see, to that effect, order in *Qualitest FZE v Council*, paragraph 66, and order in *Hassan v Council*, paragraph 40).
- 28 The applicant has, however, remained silent as to the possibility of the release of funds pursuant to Article 20 of Decision 2010/413 and Articles 24 to 26 of Regulation No 267/2012. In particular, the applicant has not indicated whether it has submitted a request for authorisation to use frozen funds or whether it has encountered difficulties in securing such authorisation from, or been refused such authorisation by, the competent authorities of a Member State.
- 29 For that further reason, the seriousness of the alleged financial damage has not been established.
- 30 As regards the irreparable nature of the harm, it should be recalled that damage of a financial nature, such as that invoked in this case, can normally be the subject of subsequent financial compensation. In the event of annulment of the contested measures, the applicant might obtain financial compensation by bringing an action for damages pursuant to Article 268 TFEU and Article 340 TFEU, it being understood that, according to settled case-law, the mere possibility of bringing such an action is sufficient to demonstrate that financial damage is, in principle, reparable, notwithstanding the uncertainty as to the outcome of such proceedings (see, to that effect, orders of the President of the Court of Justice in Case C-404/01 P(R) *Commission v Euroalliances and Others* [2001] ECR I-10367, paragraphs 70 to 75, and in *Hassan v Council*, paragraphs 77 to 81).
- 31 It follows that the condition relating to urgency is not satisfied in the present case.
- 32 This outcome is consistent with the balance of the different interests involved.

#### *Balance of interests*

- 33 It is settled case-law that, in weighing up the different interests involved, the judge hearing the application for interim relief has to determine, in particular, whether or not the interest of the party seeking suspension of operation of the contested measure in securing that suspension outweighs the interest in the immediate application of the measure, by examining, more specifically, whether the possible annulment of the measure by the Court when ruling on the main application would allow the situation that would be brought about by its immediate implementation to be reversed and, conversely, whether suspension of operation of the measure would prevent it from being fully effective in the event of the main action being dismissed (see, to that effect, order of the President of the Court of Justice in Joined Cases C-182/03 R and C-217/03 R *Belgium and Forum 187 v Commission* [2003] ECR I-6887, paragraph 142, and order in *Babcock Noell v Joint undertaking for Fusion Energy*, paragraph 64).
- 34 In the present case, it is clear that suspension of operation of the contested measures might prevent their being fully effective in the event of dismissal of the main action and, therefore, make reversal of the situation impossible. Suspension would make it possible for the applicant to withdraw immediately all of the funds held in the banks obliged to ensure that they are frozen and to empty its bank accounts before judgment is delivered in the main action. Thus, it would be possible for the applicant to avail itself of its funds by circumventing the purpose of the restrictive measures adopted, which is to put pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems, and it would not be possible for that situation to be reversed by a subsequent decision dismissing the main action. According to settled

case-law, the interim measures sought from the judge hearing the application must not invalidate in advance the effects of the decision to be given subsequently in the main action (order in *Commission v Atlantic Container Line and Others*, paragraph 22, and order of the President of the General Court in Case T-306/01 *R Aden and Others v Council and Commission* [2002] ECR II-2387, paragraph 41).

- 35 On the other hand, since the applicant has failed to show that it will suffer serious and irreparable harm if the application for interim relief is dismissed, it is clear that annulment of the contested measures, to the extent that they concern the applicant, by the Court adjudicating on the substance, would make it possible for the situation brought about by their immediate implementation to be reversed.
- 36 It should be added that, according to the case-law of the Court of Justice, measures such as the contested measures are of a 'legislative nature' (judgments in *Kadi and Al Barakaat International Foundation v Council and Commission*, paragraphs 241 to 243, and in Case C-548/09 P *Bank Melli Iran v Council* [2011] ECR I-11381, paragraph 45). As regards the temporal effects of the annulment of a legislative measure, the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union provides that decisions of the General Court declaring such a measure to be void are to take effect only as from the date of expiry of the period for bringing an appeal or, if an appeal has been brought within that period, as from the date of dismissal of that appeal by the Court of Justice (Case T-494/10 *Bank Saderat Iran v Council* [2013] ECR, paragraphs 119 to 124).
- 37 The maintenance of the validity of sanctions has been justified by the need to give the Council the opportunity to remedy the unlawfulness established by adopting new measures, if appropriate (*Bank Saderat Iran v Council*, paragraph 125). Indeed, the Court of Justice itself, in disposing of the case that gave rise to the judgment in *Kadi and Al Barakaat International Foundation v Council and Commission*, ordered that the sanctions that it had just annulled be maintained for three months, on the ground that their annulment with immediate effect would be capable of seriously and irreversibly prejudicing the effectiveness of such measures, because in the interval preceding their possible replacement by new measures, the persons concerned might prevent those new measures from being applied effectively to them (*Kadi and Al Barakaat International Foundation v Council and Commission*, paragraphs 373 and 376).
- 38 The foregoing considerations, which have been developed in relation to regulations, have automatically been extended to decisions to freeze funds and economic resources, pursuant to the second paragraph of Article 264 TFEU, which empowers the General Court to state which of the effects of the measure which it has declared void are to be considered as definitive. Thus, as regards, specifically, Decision 2010/413 as amended by Decision 2011/783, the General Court held, in *Bank Saderat Iran v Council* (paragraph 126 and case-law cited), that since Decision 2010/413 and Regulation No 267/2012 imposed identical measures on Bank Saderat Iran, if the dates when the annulment of those measures took effect were to differ, that would be likely seriously to jeopardise legal certainty. The General Court therefore maintained the effects of Decision 2010/413 in respect of Bank Saderat Iran until the annulment of Regulation No 267/2012 took effect.
- 39 It follows that if, at the conclusion of the main proceedings, the General Court were to adopt the reasoning followed by it in the case giving rise to the judgment in *Bank Saderat Iran v Council*, even the annulment of the contested measures would not result in the immediate removal of the applicant's name from those measures. The measures freezing the applicant's funds would be maintained, therefore, beyond the date of delivery of the judgment annulling the measures. In any event, even if the temporal effects of annulment of Decision 2010/413, as amended by Decision 2011/783, were not aligned with those of the annulment of Regulation No 267/2012, the fact remains that the measures freezing the applicant's funds under that regulation would be maintained beyond the date of delivery of the judgment annulling the measures pursuant to the second paragraph of Article 60 of the Statute of the Court of Justice, so that the applicant's name would not, in any case, be immediately removed as a result of that judgment.

- 40 As the procedure for interim relief is merely ancillary to the main action to which it is an adjunct and aims simply to guarantee the full effectiveness of the future decision on the main action (see order of the President of the General Court in Case T-345/12 R *Akzo Nobel and Others v Commission* [2012] ECR, paragraph 25 and the case-law cited) and, under Article 107(3) of the Rules of Procedure, any interim measures ordered by the judge hearing the application automatically lapse when final judgment is delivered, it follows that the applicant's interest in having its funds and economic resources provisionally unfrozen relates to an advantage that it could not have secured even through a judgment annulling the contested measures. Such a judgment could produce the practical effects sought by the applicant – namely the removal of its name from the list of persons whose funds and economic resources are frozen – only from a date after the date on which the judgment is delivered, whereas on that date, the judge hearing applications for interim relief at first instance would no longer have any jurisdiction *ratione temporis* and, in any event, the applicant's name could be maintained on the list as a result of a new restrictive measure replacing those annulled within the period laid down in the second paragraph of Article 60 of the Statute of the Court of Justice. In those circumstances, the applicant's interest in securing, through proceedings for interim relief, the provisional unfreezing of its funds and economic resources, cannot be protected by the judge hearing the application.
- 41 It follows from all of the foregoing that the balance of the different interests in the case does not weigh in favour of the applicant.
- 42 Consequently, the application for interim measures must be dismissed, without it being necessary to decide whether or not a *prima facie* case has been made out.
- 43 As regards the proceedings concerning the funds and economic resources freezing measures, it is therefore apparent that the most appropriate procedure for ensuring urgent judicial protection might have been the expedited procedure under Article 76a of the Rules of Procedure, which should have been requested by the applicant by separate document lodged at the same time as the application initiating the main proceedings.

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

1. **The application for interim measures is dismissed.**
2. **The costs are reserved.**

Luxembourg, 11 March 2013.

E. Coulon  
Registrar

M. Jaeger  
President