



Reports of Cases

Case T-110/12R

Iranian Offshore Engineering & Construction Co.
v
Council of the European Union

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

Summary — Order of the President of the General Court, 11 March 2013

1. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Serious and irreparable damage — Cumulative nature — Balancing of all the interests involved — Discretion of the court hearing the application for interim relief*

(Arts 256(1) TFEU, 278 TFEU and 279 TFEU; Rules of Procedure of the General Court, Art. 104(2))

2. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Urgency — Serious and irreparable damage — Financial loss — Situation which could jeopardise the existence of the applicant company — Burden of proof — Need to provide a true overall picture of the financial situation of the undertaking*

(Arts 278 TFEU and 279 TFEU; Rules of Procedure of the General Court, Art. 104(2))

3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Measures freezing funds or economic resources — Account to be taken of the objective of the freezing and the need to ensure its effectiveness*

(Art. 278 TFEU; Rules of Procedure of the General Court, Art. 104(2); Council Regulation No 267/2012; Council Decision 2010/413)

4. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable damage — Financial loss — Damage that can be made good by the grant of compensation in the action in the main proceedings — Not irreparable*

(Arts 268 TFEU, 278 TFEU, 279 TFEU and 340 TFEU; Rules of Procedure of the General Court, Art. 104(2))

5. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests involved — Decision to freeze assets in the context of the fight against terrorism — Jurisdiction of the EU judicature to annul the measure at the earliest after the expiry of the period for bringing an appeal — Interest of the applicant not capable of being protected by the court hearing the application for interim measures*

(Art. 278 TFEU; Statute of the Court of Justice, Art. 60, second para.; Rules of Procedure of the General Court, Art. 107(3); Council Regulation No 267/2012; Council Decision 2010/413)

1. See the text of the decision.

(see paras 12-14, 33, 34)

2. See the text of the decision.

(see paras 19-21)

3. 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.

Therefore, even though restrictive measures have a considerable impact on the rights and freedoms of the persons, entities or bodies designated, 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 paras 25, 26)

4. See the text of the decision.

(see para. 30)

5. In weighing up the different interests involved, the court 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.

As regards the suspension of operation of a measure freezing funds and economic resources, since such a measure is of a legislative nature and 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, the annulment of the measure would not result in the immediate removal of the applicant's name from the measure. The measure freezing the applicant's funds would be maintained, therefore, beyond the date of delivery of the judgment annulling the measures.

Consequently, 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 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 court hearing the application.

(see paras 33, 36, 39, 40)