



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

7 July 2021 *

(Non-contractual liability – Common foreign and security policy – Restrictive measures against Iran – List of persons and entities subject to the freezing of funds and economic resources – Jurisdiction of the General Court – Limitation – Sufficiently serious breach of a rule of law intended to confer rights on individuals)

In Case T-455/17,

Naser Bateni, residing in Hamburg (Germany), represented by M. Schlingmann, lawyer,

applicant,

v

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

defendant,

supported by

European Commission, represented by C. Hödlmayr, J. Roberti di Sarsina and M. Kellerbauer, acting as Agents,

intervener,

APPLICATION under Articles 268 and 340 TFEU seeking compensation for the damage that the applicant allegedly sustained as a result of his name being included on the lists contained, first, 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), by Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71) and in Annex VIII to 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), by Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), second, in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1) and, third, in the annex to Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413 (OJ 2013 L 306, p. 18) and in the annex to Council Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation No 267/2012 (OJ 2013 L 306, p. 3),

* Language of the case: German.

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, M. Jaeger and O. Porchia (Rapporteur), Judges,

Registrar: B. Lefebvre, Administrator,

having regard to the written part of the procedure and further to the hearing of 20 November 2020,

gives the following

Judgment

Background to the dispute

- 1 The applicant, Mr Naser Bateni, is an Iranian national who, since March 2008, has lived in Germany where, in 2009, he founded HTTS Hanseatic Trade Trust & Shipping GmbH ('HTTS'), a company incorporated under German law carrying on activities of shipping agents and of technical managers of vessels.
- 2 The case was brought in the context of the restrictive measures imposed 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. It concerns in particular measures taken against Islamic Republic of Iran Shipping Lines ('IRISL'), with which, according to the Council of the European Union, the applicant and HTTS maintain links.
- 3 In the international law context, on 23 December 2006 the United Nations Security Council ('the Security Council') adopted Resolution 1737 (2006), in which it expressed serious concern with regard to the nuclear proliferation programme developed by Iran and sought to apply pressure on that State to 'constrain' the programme and to 'suspend' some of its components with a view to maintaining international peace and security.
- 4 On 24 March 2007, the Security Council adopted Resolution 1747 (2007). In paragraph 5 of that resolution it indicated its decision that 'Iran shall not supply, sell or transfer directly or indirectly from its territory or by its nationals or using its flag vessels or aircraft any arms or related materiel, and that all States shall prohibit the procurement of such items from Iran by their nationals, or using their flag vessels or aircraft, and whether or not originating in the territory of Iran'.
- 5 On 3 March 2008, the Security Council adopted Resolution 1803 (2008). In paragraph 11 thereof, it called on all States 'to inspect the cargoes to and from Iran, of aircraft and vessels ... owned or operated by Iran Air Cargo and [IRISL], provided there are reasonable grounds to believe that the aircraft or vessel is transporting goods prohibited under this resolution or resolution 1737 (2006) or resolution 1747 (2007)'.
- 6 By Resolution 1929 (2010) of 9 June 2010, the Security Council adopted a series of additional measures against IRISL. In particular, paragraphs 14 to 22 of that resolution extended the asset-freezing measures in Resolution 1737 (2006) to 'the entities of [IRISL] as specified in Annex III and to any person or entity acting on their behalf or at their direction, and to entities

owned or controlled by them, including through illicit means, or determined by the [Security Council or the [United Nations Security Council sanctions committee] to have assisted them in evading the sanctions of, or in violating the provisions of, [its] resolutions’.

- 7 The European Union adopted Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49) and Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).
- 8 On 17 June 2010, in order to comply with Resolution 1929 (2010), the European Council adopted the Declaration on Iran (Annex II to the conclusions of the European Council of 17 June 2010 (document number EUCO 3/10)) and invited the Council to adopt measures implementing those contained in that resolution as well as accompanying measures, with a view to supporting the resolution of all outstanding concerns regarding Iran’s nuclear proliferation programme through negotiation. Those measures were to be focused on several key sectors of Iran’s economy, including ‘the Iranian transport sector, in particular [IRISL] and its subsidiaries’.
- 9 By Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), the Council implemented the Declaration on Iran adopted by the European Council. Annex II to that decision lists the persons and entities, other than those designated by the Security Council or by the Security Council sanctions committee created by Resolution 1737 (2006), whose assets are frozen.
- 10 By Decision 2010/413, the Council included HTTS’s name on the list of entities in Annex II to that decision, on the grounds that it ‘act[ed] on behalf of [Hafize Darya Shipping Lines] in Europe’. The names of IRISL and a number of other Iranian shipping companies, that is to say, IRISL Europe GmbH, Hafize Darya Shipping Lines (‘HDSL’) and Safiran Pyam Darya Shipping Lines (‘SAPID’) were also listed.
- 11 As a result, by Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation No 423/2007 (OJ 2010 L 195, p. 25), the names of IRISL, IRISL Europe, HDSL, SAPID and HTTS were included on the list in Annex V to Regulation No 423/2007.
- 12 On 8 October 2010, IRISL and 17 other companies, including IRISL Europe, HDSL and SAPID, lodged an action with the General Court seeking annulment of the inclusion of their names in Annex II to Decision 2010/413 and in Annex V to Regulation No 423/2007, as amended by Implementing Regulation No 668/2010. That action was registered at the General Court Registry as case number T-489/10.
- 13 Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81) maintained HTTS’s name on the list in Annex II to Decision 2010/413, on the grounds that it was a company ‘controlled [or] acting on behalf of IRISL’.
- 14 On 1 December 2011, the Council adopted Decision 2011/783/CFSP amending Decision 2010/413 (OJ 2011 L 319, p. 71). Under Decision 2011/783, the applicant’s name was included on the list of persons in Table III in Annex II to Decision 2010/413.

- 15 In accordance with Decision 2011/783, Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11) amended Annex VIII to 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), adding the applicant's name, among others, to the list in that annex.
- 16 It can be seen from Decision 2011/783 and from Implementing Regulation No 1245/2011, which include the applicant's name on the list in Annex VIII to Regulation 961/2010 ('the first listing'), that the ground relied upon in relation to the applicant was as follows: 'former Legal Director of IRISL, Managing Director of EU-sanctioned [HTTS]' and 'Managing Director of front company NHL Basic Limited'.
- 17 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), as a result of the adoption of Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413 (OJ 2012 L 19, p. 22). Under Article 23(2)(e) of Regulation No 267/2012 the applicant's name and that of HTTS were included on the list in Annex IX to that regulation, on the same grounds, in essence, as those set out in the first listing, with the exception of the reference to his position as managing director of the front company NHL Basic Limited (in so far as concerns the applicant, 'the second listing').
- 18 By judgment of 12 June 2013, *HTTS v Council* (T-128/12 and T-182/12, not published, EU:T:2013:312), the General Court annulled Decision 2012/35 and Regulation No 267/2012 in so far as concerned HTTS.
- 19 By judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), the General Court upheld the applicant's action for annulment of the second listing and annulled that listing in so far as Implementing Regulation No 1245/2011 concerned the applicant, with effect from 16 November 2013.
- 20 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 upheld the action brought by IRISL and other shipping companies, including IRISL Europe, HDSL and SAPID, against Decision 2010/644, Implementing Regulation No 668/2010, Regulation No 961/2010 and Regulation No 267/2012, in so far as those acts concerned the aforementioned companies.
- 21 On 10 October 2013, the Council adopted Decision 2013/497/CFSP amending Decision 2010/413 (OJ 2013 L 272, p. 46) and Regulation (EU) No 971/2013 amending Regulation No 267/2012 (OJ 2013 L 272, p. 1). According to recital 2 of Decision 2013/497 and of Regulation No 971/2013, those acts are intended to adjust the listing criteria in respect of persons and entities that have assisted designated persons or entities in evading or violating the provisions of the relevant Security Council resolutions or of Decision 2010/413 and Regulation No 267/2012, so that the restrictive measures in question include persons and entities that themselves evade or violate those provisions.
- 22 Decision 2013/497 included in particular a new listing condition in Article 20(1)(b) of Decision 2010/413, targeting 'persons and entities providing insurance or other essential services to ... IRISL, or to entities owned or controlled by [it] or acting on [its] behalf'. In consequence, the same criterion was inserted in Article 23(2)(e) of Regulation No 267/2012 by Regulation No 971/2013.

- 23 After delivery of the judgments referred to in paragraphs 18 to 20 above, the names of the applicant and HTTS were subsequently listed by the Council. On 15 November 2013, the Council adopted Decision 2013/661/CFSP amending Decision 2010/413 (OJ 2013 L 306, p. 18). The same day, it adopted Implementing Regulation (EU) No 1154/2013, implementing Regulation No 267/2012 (OJ 2012 L 306, p. 3). By Decision 2013/661 and that implementing regulation, those names were re-entered on the lists in Annex II to Decision 2010/413 and Annex IX to Regulation No 267/2012 respectively (together, in so far as concerns the applicant, ‘the third listing’).
- 24 The third listing was based on the grounds that the applicant had acted ‘on behalf of IRISL. He was a director of IRISL until 2008, and subsequently Managing Director of IRISL Europe. He is the managing director of [HTTS] which, as their general agent, provides essential services to [SAPID] and [HDSL], both of which are designated entities acting on behalf of IRISL’.
- 25 By judgment of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), the General Court upheld the action brought by the applicant for annulment of the third listing and by HTTS for annulment of Regulation No 1154/2013 in so far as concerned that company.
- 26 By letter of 23 March 2017, the applicant applied to the Council for compensation for the damage allegedly sustained as a result of the restrictive measures taken against him.
- 27 The Council rejected that application by letter of 15 May 2017.
- 28 Concurrently, HTTS’s action seeking an order that the Council pay it compensation in the amount of EUR 2 516 221.50 for material and non-material damage suffered by reason of the restrictive measures taken against it was dismissed by the judgment of 13 December 2017, *HTTS v Council* (T-692/15, EU:T:2017:890). That judgment was then set aside by the Court of Justice by its judgment of 10 September 2019, *HTTS v Council* (C-123/18 P EU:C:2019:694). Under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice referred the case back to the General Court, where it was assigned case number T-692/15 RENV, *HTTS v Council*, and reserved the costs.

Procedure and forms of order sought by the parties

- 29 By application lodged at the Registry of the General Court on 14 July 2017, the applicant brought the present action. The case was allocated to the Third Chamber of the Court.
- 30 The Council lodged its defence on 10 November 2017.
- 31 By document lodged at the Court Registry on 20 October 2017, the European Commission sought leave to intervene in these proceedings in support of the forms of order sought by the Council.
- 32 On 26 October 2017, the Council lodged its observations on the Commission’s application for leave to intervene. The applicant lodged his observations on the Commission’s application for leave to intervene on 9 November 2017.
- 33 By decision of the President of the Third Chamber of the General Court of 17 November 2017, the Commission was granted leave to intervene in these proceedings.

- 34 The Commission lodged its statement in intervention on 8 January 2018 and the main parties lodged their observations on that statement within the prescribed periods.
- 35 The reply and rejoinder were lodged by the applicant, on 9 February 2018, and by the Council, on 23 March 2018, respectively.
- 36 By letter lodged at the Court Registry on 18 April 2018, the applicant applied for a hearing, under Article 106(2) of the Rules of Procedure of the General Court.
- 37 On a proposal from the Judge-Rapporteur, the Court (Third Chamber) ordered a measure of organisation of procedure consisting of hearing the parties on a possible suspension of the proceedings pending the decision of the Court of Justice disposing of the proceedings in Case C-123/18 P. The main parties presented their observations on the matter within the prescribed period.
- 38 By decision of 12 June 2018, the President of the Third Chamber of the General Court suspended the proceedings in the present case.
- 39 Following delivery of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the General Court (Third Chamber), on a proposal from the Judge-Rapporteur, ordered a second measure of organisation of procedure consisting of hearing the parties' views on the consequences of that judgment for the present case. The main parties presented their observations on the matter within the prescribed period.
- 40 Following a change in the composition of the Court, pursuant to Article 27(5) of the Rules of Procedure, the President of the General Court reallocated the case to a different Judge-Rapporteur, who was assigned to the First Chamber in its new formation, to which the present case was therefore allocated.
- 41 On a proposal from the Judge-Rapporteur, the Court granted the applicant's request for a hearing and opened the oral phase of the proceedings.
- 42 By decision of 30 June 2020, under Article 68(1) of the Rules of Procedure, the President of the First Chamber, having heard the parties, joined this case with Case T-692/15 RENV, *HTTS v Council*, for the purposes of the oral part of the procedure.
- 43 After the hearing was deferred several times as a result of the COVID-19 health crisis, the parties presented oral argument and their answers to the oral questions put by the Court at the hearing on 20 November 2020, held via videoconference with the agreement of the applicant.
- 44 The applicant claims that the Court should:
- order the Council to pay him damages in the amount of EUR 250 000 for the non-material damage suffered by him as a result of his name being included
 - in Table III of Annex II to Decision 2010/413 by Decision 2011/783 and in Table III of Annex VIII to Regulation No 961/2010 by Implementing Regulation No 1245/2011;
 - in Table III of Annex IX to Regulation No 267/2012;

- in Table III of the annex to Decision 2013/661 and in Table III of the annex to Implementing Regulation No 1154/2013 (together, ‘the lists at issue’);
- order the Council to pay default interest calculated at the rate applied by the European Central Bank (ECB) to its main refinancing operations, plus two percentage points, from 24 March 2017 until payment in full of the sum of EUR 250 000;
- order the Council to pay the costs.

45 The Council contends that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

46 The Commission contends that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

Law

Jurisdiction of the General Court

- 47 In the defence, the Council contends that the General Court lacks jurisdiction to rule on an action for damages by reference to Decisions 2011/783 and 2013/661, adopted pursuant to the Common Foreign and Security Policy (CFSP).
- 48 It must be observed in that respect that the principle of effective judicial protection of persons or entities subject to restrictive measures requires, in order for such protection to be complete, that the Court of Justice of the European Union be able to rule on an action for damages brought by such persons or entities seeking damages for the harm caused by the restrictive measures taken in CFSP decisions (judgment of 6 October 2020, *Bank Refah Kargaran v Council*, C-134/19 P, EU:C:2020:793, paragraph 43).
- 49 The General Court must therefore be found to have jurisdiction to rule on an action for damages in so far as it seeks to obtain compensation for the harm allegedly caused by restrictive measures taken against natural or legal persons pursuant to CFSP decisions (judgment of 6 October 2020, *Bank Refah Kargaran v Council*, C-134/19 P, EU:C:2020:793, paragraph 44).
- 50 In the present case it must be observed that, as the applicant confirmed at the hearing, the present action for damages seeks compensation for the non-material damage arising from the adoption of Implementing Regulation No 1245/2011, Regulation No 267/2012 and Implementing Regulation No 1154/2013. Furthermore, the applicant refers to Decisions 2011/783 and 2013/661 only to the extent that they were the basis of and a precondition for those regulations.
- 51 That being the case, it must be held that the General Court has jurisdiction to hear the applicant’s claim for damages.

Limitation of the action for damages

- 52 In the defence, the Council contends that the action for damages is partially time-barred.
- 53 The Council claims in that respect that the rights on which the applicant relies have their basis in acts of the Council of 1 December 2011, 23 March 2012 and 15 November 2013 and that, for actions whose cause lies in those acts, the limitation period began to run on the relevant one of those dates.
- 54 The Council submits that the limitation period was not interrupted until 23 March 2017, when the applicant sent it his claim for compensation in respect of adoption of the measures at issue.
- 55 Any damages arising from events that occurred more than five years before 23 March 2017 are therefore subject to limitation, in particular as regards the claim for compensation in so far as it has its basis in Implementing Regulation No 1245/2011, which was repealed by Regulation No 267/2012.
- 56 The Council adds that either the applicant sustained damage before 23 March 2012 and, therefore, his claim for compensation in respect of that damage is time-barred, or he sustained damage after 23 March 2012, that is to say, the date on which the first listing was repealed by Regulation No 267/2012.
- 57 The applicant contends, first, that under Article 46 of the Statute of the Court of Justice of the European Union the limitation period must be determined by reference to the occurrence of the damage rather than the occurrence of the event giving rise to the claim for compensation. The non-material damage arising from the first listing became apparent for the first time, according to the applicant, in April 2012.
- 58 Next, the applicant asserts that the reputational damage is continuing damage that occurred from April 2012 until the date on which the third listing was annulled.
- 59 The applicant relies on the judgment of 7 June 2017, *Guardian Europe v European Union* (T-673/15, EU:T:2017:377), in particular paragraphs 39 to 42, arguing that, in the case of continuing damage, the limitation period referred to in Article 46 of the Statute of the Court of Justice of the European Union applies, with the date of the event which interrupted the limitation period as the reference point, to the period preceding that date by more than five years; does not affect rights which arose during subsequent periods; and is independent of the date of the event giving rise to the claim for compensation.
- 60 Last, the applicant states that while the harm for which he is seeking compensation did indeed arise from each of the unlawful restrictive measures adopted by the Council, that harm only became apparent over the course of time, primarily from April 2012.
- 61 Under Article 46 of the Statute of the Court of Justice of the European Union, which applies to proceedings before the General Court by virtue of the first paragraph of Article 53, actions against the European Union in matters of non-contractual liability become barred five years after occurrence of the event giving rise to the action.

- 62 It must be recalled that the limitation period laid down in Article 46 of the Statute of the Court of Justice of the European Union has the function, first, of ensuring protection of the rights of the aggrieved person, who must have sufficient time in which to gather the appropriate information with a view to a possible action, and, second, of preventing the aggrieved person from being able to delay indefinitely the exercise of his or her right to damages. That period thus definitively protects the aggrieved person and the person responsible for the harm (see, to that effect, judgments of 8 November 2012, *Evropaïki Dynamiki v Commission*, C-469/11 P, EU:C:2012:705, paragraphs 33 and 53 and the case-law cited, and of 10 September 2019, *HTTS v Council*, C-123/18 P, EU:C:2019:694, paragraph 49).
- 63 According to the case-law, that period begins to run as soon as the requirements governing the obligation to make good the damage are satisfied and, in particular, in cases where liability stems from a legislative measure, that limitation period cannot begin to run before the injurious effects of the measure have materialised. Where that solution is applied to disputes arising from individual measures, the period of limitation begins as soon as the decision has produced its effects vis-à-vis the persons concerned by it (see to that effect, judgment of 19 April 2007, *Holcim (Deutschland) v Commission*, C-282/05 P, EU:C:2007:226, paragraphs 29 and 30).
- 64 In the present case, the applicant submits that the non-material damage for which he is seeking compensation arose from the first to the third listings and that the first listing only had effects on him from 1 December 2011 to 22 March 2012.
- 65 It must be observed that the first act interrupting the limitation period in relation to the first listing, that is to say, the claim for compensation sent by the applicant to the Council, did not take place until 23 March 2017, that is to say, more than five years after Implementing Regulation No 1245/2011 was adopted and, in any event, after that implementing regulation had begun to have effects on the applicant in terms of non-material damage, as acknowledged by him, on 1 December 2011.
- 66 The applicant also states that, while the damage for which he is seeking compensation arose from each of the unlawful restrictive measures adopted by the Council, it only occurred over the course of time, primarily from April 2012.
- 67 It should be noted, concurring with the Council, that, by that time, the first listing had ceased to have effect, having been repealed by the second listing on 23 March 2012.
- 68 It also needs to be said that the applicant's argument that there was continuing harm arising from the first listing, which allegedly only became apparent in April 2012 and had effects throughout the period during which the applicant was the subject of the restrictive measures at issue, is likewise untenable in relation to that listing.
- 69 In contrast to the case that gave rise to the judgment of 7 June 2017, *Guardian Europe v European Union* (T-673/15, EU:T:2017:377), which the applicant adduces to support the existence of continuing harm, according to the applicant's own assertions, the non-material damage in the present case arose not from a single unlawful act but from three separate acts, that is to say, the first to the third listings. Furthermore, the applicant himself claims that the damage for which he is seeking compensation occurred only from April 2012, and therefore after the date on which the first listing came to an end.

- 70 Under those circumstances, the applicant's action for damages, to the extent that it seeks compensation for the non-material damage allegedly arising from the first listing, must be found to be time-barred and, therefore, inadmissible.
- 71 In respect of the second and third listings (together, 'the listings at issue'), it should be noted that the applicant sent his claim for compensation by fax on 23 March 2017, that is to say, five years after the date of the second listing, and that he subsequently brought his claim for damages on 14 July 2017, that is to say, within two months from receiving the Council's letter rejecting his claim, which was dated 15 May 2017. Accordingly, to the extent that it seeks compensation for the non-material damage allegedly arising from those listings, the present action for damages must be found to have been brought within the time limit under Article 46 of the Statute of the Court of Justice of the European Union.

The alleged sufficiently serious breach of rules of law intended to confer rights on individuals

- 72 In support of his claim that there was a sufficiently serious breach of rules of law intended to confer rights on individuals, the applicant contends that by breaching its obligation to verify the facts and provide evidence to substantiate the grounds for restrictive measures, the Council committed a sufficiently serious breach of the substantive listing conditions (first complaint); that it committed a sufficiently serious breach of his right to effective judicial protection (second complaint); and that it committed a sufficiently serious breach of the right to respect for private and family life, the right to the protection of personal data, the right freely to conduct business and the right to property (third complaint).
- 73 The applicant submits four arguments in relation to the first complaint.
- 74 First, he asserts that, in its judgment of 25 November 2014, *Safa Nicu Sepahan v Council* (T-384/11, EU:T:2014:986), confirmed by the judgment of 30 May 2017, *Safa Nicu Sepahan v Council* (C-45/15 P, EU:C:2017:402), the General Court found that the unjustified listing of a person without a sufficient factual basis is a sufficiently serious breach of rules of law intended to confer rights on individuals because the Council has no discretion in relation to that obligation and because the rule establishing that obligation does not relate to a particularly complex situation. The applicant further states that that rule was established before the listings at issue were adopted, by the judgments of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran v Council* (T-228/02, EU:T:2006:384), and of 14 October 2009, *Bank Melli Iran v Council* (T-390/08, EU:T:2009:401), and that, in the present case, as in the case that gave rise to the judgment of 25 November 2014, *Safa Nicu Sepahan v Council* (T-384/11, EU:T:2014:986), the Council failed to discharge its duty to assess the facts and provide evidence substantiating the grounds for adopting restrictive measures against him.
- 75 Second, relying on the judgments of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), and of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), relating to the second and third listings respectively, the applicant submits that, in the proceedings giving rise to annulment of the first listing the Council stated (i) that at the time of the second listing it did not have either the information provided by the Federal Republic of Germany or the *New York Times* article of 7 June 2010 (judgment of 6 September 2013, *Bateni v Council*, T-42/12 and T-181/12, not published, EU:T:2013:409, paragraph 52), and (ii) that it included persons and entities on the sanctions list at the request of the governments of the EU Member States without carrying out any verification.

- 76 The applicant also states that in the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), the General Court found that the Council had made a ‘manifest error of assessment’ and that, in the judgment of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), the General Court considered that the Council had acted with a ‘lack of care’.
- 77 In addition, the applicant submits that, in paragraphs 47 and 48 of the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), the General Court expressly held that neither the contested measures nor the letter that the Council had sent to the applicant on 23 March 2012 explaining the reasons for keeping his name on the list of persons accused of promoting nuclear proliferation in Iran contained the slightest indication of the nature of IRISL’s alleged control over HTTS or of which activities carried on by HTTS on behalf of IRISL were capable of justifying the second listing.
- 78 Last, in relation to the third listing, the applicant contends that while the Council did produce a number of documents, described as ‘evidence’, those documents were not such as to establish a link between him and IRISL and IRISL Europe capable of justifying restrictive measures being adopted against him. He also states in that respect that it was established in the case that gave rise to the judgment of 30 May 2017, *Safa Nicu Sepahan v Council* (C-45/15 P, EU:C:2017:402), that there was a manifestly serious breach of EU law where a breach had persisted despite delivery of a judgment finding the conduct to be unlawful, and that this principle should apply to the breach that occurred when the third listing was adopted even though the second listing had been annulled by the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409).
- 79 Third, the applicant submits that no particular difficulty prevented the Council from finding that an earlier activity did not in itself justify imposing restrictive measures against a person and that the Council therefore had no discretion in that respect, or at the very most a considerably reduced margin of discretion.
- 80 Fourth, according to the applicant, at the time of the third listing the Council overlooked the fact that, by its 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 annulled IRISL’s listing and that of other companies to which the General Court referred, including SAPID and HDSL, meaning that the ‘evidence’ provided was, from the outset, completely irrelevant.
- 81 In relation to the second and third complaints, the applicant contends that the breach of the obligation to provide evidence of the existence of a link between him and IRISL has resulted in a sufficiently serious breach of the right to judicial protection and in infringement of the right to respect for private and family life, the right to the protection of personal data, the right freely to conduct business and the right to property.
- 82 The Council and the Commission dispute all the applicant’s arguments.

Summary of the case-law on the non-contractual liability of the European Union

- 83 It must be recalled that an action for damages is an autonomous remedy which is not directed at the annulment of a particular measure, but rather at obtaining compensation for the damage caused by an institution (see, to that effect, judgment of 2 December 1971, *Zuckerfabrik Schöppenstedt v Council*, 5/71, EU:C:1971:116, paragraph 3), and that an action for annulment is not a precondition for bringing an action for damages before the General Court.
- 84 Furthermore, it is clear from the case-law of the Court of Justice that in order for the European Union to incur non-contractual liability, a number of conditions must be satisfied, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (see, to that effect, judgments of 19 April 2012, *Artegodan v Commission*, C-221/10 P, EU:C:2012:216, paragraph 80 and the case-law cited, and of 10 September 2019, *HTTS v Council*, C-123/18 P, EU:C:2019:694, paragraph 32).
- 85 According to settled case-law, the conditions for the European Union to incur non-contractual liability, within the meaning of the second paragraph of Article 340 TFEU, are cumulative (see, to that effect, judgment of 7 December 2010, *Fahas v Council*, T-49/07, EU:T:2010:499, paragraph 93, and order of 17 February 2012, *Dagher v Council*, T-218/11, not published, EU:T:2012:82, paragraph 34). Accordingly, where any one of those conditions is not satisfied, the entire action must be dismissed and it is unnecessary to consider the other conditions (see, to that effect, judgments of 9 September 1999, *Lucaccioni v Commission*, C-257/98 P, EU:C:1999:402, paragraph 14, and of 26 October 2011, *Dufour v ECB*, T-436/09, EU:T:2011:634, paragraph 193).
- 86 It emerges from settled case-law that a finding, in an action for annulment, for example, that a legal act of the European Union is illegal, however regrettable that unlawfulness may be, is not a sufficient basis for holding that the non-contractual liability of the European 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 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 5 June 2019, *Bank Saderat v Council*, T-433/15, not published, EU:T:2019:374, paragraph 48 and the case-law cited).
- 87 Furthermore, 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 (judgment of 5 June 2019, *Bank Saderat v Council*, T-433/15, not published, EU:T:2019:374, paragraph 49).
- 88 The wider objective of maintaining peace and international security, in accordance with the objectives of the European Union's external action stated in Article 21 TEU, is in fact such as to justify negative consequences for economic operators, even significant negative consequences, arising from decisions implementing acts adopted by the European Union with a view to achieving that fundamental objective (judgment of 5 June 2019, *Bank Saderat v Council*, T-433/15, not published, EU:T:2019:374, paragraph 50).

Summary of the principles established in the judgment of 10 September 2019, HTTS v Council (C-123/18 P)

- 89 In paragraph 33 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the Court of Justice called to mind that a sufficiently serious breach of a rule of law intended to confer rights on individuals is established where the breach is one that implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion, the factors to be taken into consideration in that connection being, inter alia, the complexity of the situations to be regulated, the degree of clarity and precision of the rule breached and the measure of discretion left by that rule to the EU institution.
- 90 The Court of Justice observed in that respect, first, in paragraph 34 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), that the requirement that there be a sufficiently serious breach of a rule of EU law stems from the need to strike a balance between, on the one hand, the protection of individuals against unlawful conduct of the institutions and, on the other, the leeway that must be accorded to the institutions in order not to paralyse action by them. That balancing exercise proves all the more important in the field of restrictive measures, in which the obstacles encountered by the Council in terms of availability of information often make the assessment that it must carry out particularly difficult.
- 91 Second, in paragraph 43 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the Court of Justice stated that non-contractual liability of the European Union could arise only if an irregularity is found that would not have been committed in similar circumstances by an administrative authority exercising ordinary care and diligence.
- 92 Third, in paragraphs 44 and 46 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the Court of Justice found that the parameters that are required to be taken into account when assessing whether there is a sufficiently serious breach of a rule of EU law all relate to the date on which the decision or the conduct was adopted by the institution concerned, meaning that the existence of a sufficiently serious breach of a rule of EU law necessarily has to be assessed on the basis of the circumstances in which the institution acted on that particular date.
- 93 Fourth, in paragraph 41 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the Court of Justice established that, where a regulation adopting a restrictive measure is annulled by a judgment of the General Court that has the force of *res judicata*, the first component of the first condition for non-contractual liability of the European Union, that is to say, a breach of a rule of EU law intended to confer rights on individuals, is fulfilled as regards that regulation.
- 94 Fifth, in paragraphs 77 to 79 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the Court of Justice held that, for the purposes of the adoption of measures, acting under the control of a person or entity and acting on behalf of such a person should be equated. It stated that this conclusion was borne out by analysis of the aim of the provision in question which had the objective of enabling the Council to adopt effective measures against persons involved in nuclear proliferation and of preventing such measures from being circumvented. It also noted that the foregoing conclusion was also supported by analysis of the context of Article 16(2)(d) of Regulation No 961/2010.

Findings of the General Court

- 95 Whether or not the conditions for the non-contractual liability of the European Union to arise are satisfied in the present case must be examined in the light of the principles summarised in paragraphs 83 to 94 above.
- 96 It must be observed, as a preliminary matter that, in the light of paragraph 93 above, because the listings at issue were annulled, by the judgments of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), and of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), respectively, which have the force of *res judicata*, the first component of the first condition for the non-contractual liability of the European Union to arise, that is to say, a breach of a rule of EU law intended to confer rights on individuals, must be found to be fulfilled in respect of those listings. It is therefore now necessary to determine whether the material adduced by the applicant demonstrates that those listings constitute a sufficiently serious breach of a rule of law intended to confer rights on individuals.
- *The first complaint, alleging a sufficiently serious breach of the substantive listing conditions in breach of the obligation to verify the facts and provide evidence to substantiate the grounds for restrictive measures*
- 97 The General Court is called upon to determine whether the Council committed a sufficiently serious breach of a rule of law intended to confer rights on individuals by adopting the listings at issue, having regard solely to the evidence available to it on the dates of those listings.
- 98 As a preliminary matter, it is necessary to call to mind what material was available to the Council on the date of the first listing, since that material forms part of the context in which the listings at issue were adopted. Specifically, the Council has stated that the first listing was based on the fact that the applicant had been the director of IRISL until 2008, before settling in Europe and founding HTTS. It also stated that HTTS was established in Hamburg (Germany), at Schottweg 7, and that IRISL Europe, IRISL's European subsidiary, was established at Schottweg 5, Hamburg. As the Council notes, on the date on which it adopted the first listing, it did indeed have information about HTTS's address, as can be seen from the identifying information about the undertakings included on the list in Annex V to Regulation No 423/2007, as amended by Part III, point 1(d) and (j) of the Annex to Implementing Regulation No 668/2010.
- 99 Furthermore, the Council notes that it also had access to Resolutions 1803 (2008) and 1929 (2010) on IRISL and the report of the Security Council sanctions committee which recorded three manifest breaches by that company of the arms embargo imposed by Resolution 1747 (2007). First, as the Council correctly states, the fact that those documents are referred to in the grounds for IRISL's listing in Annex II, Part III, to Decision 2010/413 and in Part III of the Annex to Implementing Regulation No 668/2010 is evidence that they were indeed in its possession.
- 100 Second, it has not been disputed that the three violations of the arms embargo established in that report did in fact occur, and the contents of that report are also common ground, in so far as they show that IRISL had begun to engage in activities in order to circumvent the measures adopted by transferring its activities to other undertakings and that its registered office in Europe was close to that of HTTS, a company founded and managed by the applicant. As the Council has, in essence, asserted, those were evidence for the first listing, since that listing was a direct consequence of the

listing of IRISL, and also of HDSL, for which HTTS acted and whose name had been included in Annex II, Part III to Decision 2010/413 and in Part III of the Annex to Implementing Regulation No 668/2010 as itself acting on behalf of IRISL.

- 101 Moreover, it must be observed that the applicant has not disputed that the registered offices of IRISL Europe and HTTS were geographically close. As regards that proximity, at the hearing the applicant even acknowledged that at the time of the listings at issue HTTS was able to use the employees of IRISL Europe, which had made some of its staff available to it.
- 102 Last, the Council asserts – without being challenged by the applicant as to the veracity of the facts – that at the time of the first listing HTTS, of which the applicant was the director, traded as a shipping agent on behalf of HDSL, which was regarded as closely linked to IRISL and whose name was also included on the list of entities suspected of facilitating nuclear proliferation in Iran on 26 July 2010 on the grounds that it ‘act[ed] on behalf of IRISL performing container operations using vessels owned by IRISL’, and that Mr Bateni had been the director of IRISL until 2008 before settling in Europe and founding HTTS.
- 103 That context must be borne in mind when examining the material that formed the basis of the second listing. The Council states that the second listing was underpinned in essence by one precise undisputed circumstance, that is to say, the fact that the applicant had been the director of IRISL until 2008 and was the director of HTTS at the time of the first listing. It states that that is moreover clearly apparent from the letter of 17 January 2012 in which the applicant disputed the grounds of the first listing.
- 104 In respect of the third listing, the Council states that the documents referred to in Annexes A.3 and A.5 to the application were also available and had been disclosed to the applicant, before that measure was adopted. They related in particular to a public source in the form of the *New York Times* article of 7 June 2010 entitled ‘Companies Linked to IRISL’, which contained a list of 66 undertakings, including HTTS and HDSL, which were linked to IRISL and to which IRISL had allegedly transferred vessels, and documents substantiating the fact that the applicant had been the director of IRISL Europe since 2009 and of HTTS since 2010.
- 105 Furthermore, it is clear from Annexes A.3 and A.5 to the application that, before it adopted the third listing, the Council disclosed to the applicant material substantiating the fact that he had been the director of IRISL until 2008 and then the director of IRISL Europe and that HTTS was the European agent for SAPID and HDSL for the supply of essential ship broking services.
- 106 Moreover, the Council asserts that, at the time of the third listing, it took into account the final report, of 12 June 2012, of the Panel of Experts created by Resolution 1929 (2010), and the final report of that Panel of Experts of 5 June 2013, from which it can be seen that IRISL had transferred vessels to two connected companies, namely HDSL and SAPID. Furthermore, since 2008, IRISL and the companies connected to it had made many changes to the actual owner and registered owner of vessels, and vessels whose actual owners were IRISL and its connected companies had constantly changed names, flags and registered owners. As regards the availability of those final reports of the United Nations Panel of Experts, it is common ground that they constitute internationally recognised facts.
- 107 The Council also states that, at the time of the third listing, it had access to information from a public source, in particular the Iran Watch report of 2 August 2012 and statements made by the Federal Republic of Germany in the proceedings that gave rise to the judgment of

6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409). It is apparent from those statements by the Federal Republic of Germany, first, that HTTS maintained relations with HDSL, which had been created in spring 2009 in connection with the privatisation of IRISL; second, that at the end of November 2009, HDSL had taken over IRISL's fleet of container vessels and that, concurrently, HTTS was incorporated, allegedly with the sole aim of circumventing the restrictive measures against IRISL; third, that HTTS was HDSL's agent in Europe, while IRISL Europe continued to be IRISL's agent for the rest of that company's fleet; and, fourth, that HTTS carried on all its activities for IRISL.

- 108 It is important to clarify in that respect that the Council had access to those statements at the time of the third listing, given that they are referred to in the judgment of 12 June 2013, *HTTS v Council* (T-128/12 and T-182/12, not published, EU:T:2013:312), as can be seen from paragraph 53 of that judgment, and given that the judgment was delivered before that listing.
- 109 Last, replying to request from the General Court at the hearing, the Council clarified that the material referred to in Annexes A.3 and A.5 to the application and referred to in paragraphs 104 and 105 above was in its possession at the time it adopted the third listing and that the General Court took it into consideration in the proceedings that gave rise to the judgment of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650).
- 110 It can be seen from the foregoing that the Council has provided evidence in the present proceedings that it had access to a matrix of indicia when it adopted the restrictive measures at issue and did not adopt them without any evidence.
- 111 Further, the applicant's argument that in the present case direct evidence of a serious and manifest breach flows, first, from the Council's statements in the proceedings that gave rise to the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), and, second, from that judgment and the judgment of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), is not such as to demonstrate a sufficiently serious breach by the Council of a rule of law intended to confer rights on individuals.
- 112 With regard to the Council's statements in the proceedings that gave rise to the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), contrary to the applicant's submissions, the Council did not admit in those proceedings that it included the applicant's name on the lists at issue on the basis solely of information from the Member States and without any evidence. It merely stated that a Member State had informed it that the applicant was the director of IRISL Europe, that is to say, a fact that had not been mentioned in the grounds of the second listing and which the General Court therefore did not analyse in the context of the action against that listing. Furthermore, although the Council stated, at the hearing in the case giving rise to that judgment, that at the time it adopted the second listing neither the information provided by the Federal Republic of Germany nor the *New York Times* article of 7 June 2010 were available to it, it is apparent that the second listing was not based on those two elements alone but on a larger number of indicia. The material referred to in paragraphs 98 to 103 above supports that finding.
- 113 Second, as regards the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), in which the General Court found that the Council had made a 'manifest error of assessment', and the judgment of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), it must be observed at the outset that a manifest error of assessment adduced as a plea in support of an action for annulment must be

distinguished from the manifest and grave disregard for the limits set on an institution's discretion relied upon when alleging a sufficiently serious breach of a rule of law intended to confer rights on individuals in an action for damages.

- 114 Next, as can be seen from paragraph 44 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), and as indicated in paragraph 92 above, the parameters that must be taken into account when assessing whether there is a sufficiently serious breach of a rule of EU law intended to confer rights on individuals must all relate to the date on which the decision or the conduct was adopted by the institution concerned.
- 115 Therefore, the applicant's arguments concerning the judgments of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), and of 18 September 2015, *HTTS and Bateni v Council* (T-45/14, not published, EU:T:2015:650), cannot be taken into account as material available on the date of the listings at issue for the purpose of determining whether there was a sufficiently serious breach by the Council of a rule of law intended to confer rights on individuals when it adopted those listings.
- 116 Last, as regards the line of argument that the third listing took place after the judgment of 6 September 2013, *Bateni v Council* (T-42/12 and T-181/12, not published, EU:T:2013:409), and that, pursuant to the judgment of 25 November 2014, *Safa Nicu Sepahan v Council* (T-384/11, EU:T:2014:986), such a listing constitutes a serious and manifest violation of a rule of law intended to confer rights on individuals, it must be observed that, between the date on which that judgment was delivered and the date of the third listing a new listing criterion was established by Decision 2013/497 and Regulation No 971/2013 – in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(e) of Regulation No 267/2012 respectively – which is broader than the criterion covering legal persons, entities and bodies owned or controlled by IRISL or acting on its behalf. That new criterion which also mentioned 'persons and entities providing insurance or other essential services to ... IRISL, or to entities owned or controlled by [it] or acting on [its] behalf' was, therefore, not limited to persons owned, controlled or acting on behalf of IRISL but targeted also those providing services to entities owned, controlled or acting on behalf of that company.
- 117 Furthermore, at the time of the third listing, the Council did not merely reiterate the grounds given at the time of the second listing. The third listing was founded, inter alia, on the fact that the applicant was the managing director of HTTS which, as their general agent, provided essential services to SAPID and HDSL. The applicant's relisting was therefore based on a new listing criterion, that is to say, the provision of essential services to entities acting on behalf of IRISL.
- 118 As regards the applicant's line of argument that the Council's conduct in the present case was identical to that in the case which gave rise to the judgment of 25 November 2014, *Safa Nicu Sepahan v Council* (T-384/11, EU:T:2014:986), it must be held that although the General Court held, in that judgment, that the Council had acted unlawfully, as it did not have any discretion, that illegality arose due to the fact that, on the date on which it adopted the measures at issue, the Council did not have information or evidence to substantiate the reasons for the adoption of restrictive measures against the applicant and had therefore infringed an obligation that already existed, on the date on which those measures were adopted, under the settled case-law of the Court of Justice, and in respect of which the Council had no discretion (see judgment of 5 June 2019, *Bank Saderat v Council*, T-433/15, not published, EU:T:2019:374, paragraph 69 and the case-law cited).

- 119 However, the present case does not concern whether or not the Council discharged its obligation to provide evidence in support of the listings at issue. Here, it is necessary to determine whether, by adopting those listings on the basis of the material available to it on the date on which it adopted them, including that referred to in paragraphs 98 to 109 above, the Council committed a sufficiently serious breach such as to give rise to the non-contractual liability of the European Union. It is necessary to bear in mind in that regard the discretion that the Council enjoyed when it assessed the indicia used to substantiate the restrictive measures at issue.
- 120 Addressing the applicant's argument that, when the listings at issue were adopted there was no particular difficulty preventing the Council from finding that an earlier activity could not in itself justify imposing restrictive measures against a person and that, therefore, the Council had no discretion in that regard or had at most a considerably reduced margin of discretion, it must be observed that the second listing is based on the fact that the applicant had been the director of HTTS, a company sanctioned as acting on behalf of IRISL, and the legal director of IRISL, and that the third listing was based on the fact that the applicant acted on behalf of IRISL, had been IRISL's director until 2008 and then the managing director of IRISL Europe and, last, managing director of HTTS which, as their general agent, provided essential services to SAPID and HDSL, both of which were designated as entities acting on behalf of IRISL.
- 121 The listings at issue were therefore based both on the personal link between the applicant and IRISL and on the fact that he had a management role within a company allegedly controlled or owned by IRISL, in particular HTTS, which provided essential services to other companies allegedly controlled or owned by IRISL, in particular HDSL and SAPID.
- 122 In any event, as regards whether a person's earlier activity could sufficiently justify adopting restrictive measures against that person or whether there must be other indicia, it should be noted that, depending on the circumstances, reference to an activity carried on in the past may constitute sufficient justification for adopting a restrictive measure (see, by analogy, judgment of 28 July 2016, *Tomana and Others v Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraph 86).
- 123 In addition, on the date on which the listings at issue were adopted, the concept of a company 'owned or controlled by another entity', in so far as concerned restrictive measures, also left a measure of discretion to the Council. Moreover, although, in the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694), the Court of Justice clarified the meanings of the terms 'owned' and 'controlled', in paragraph 70 of that judgment it confirmed what the General Court had recalled in the judgment of 13 December 2017, *HTTS v Council* (T-692/15, EU:T:2017:890), namely that in the area of restrictive measures the concept of a 'company owned or controlled' does not have the same meaning 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. The Court of Justice has favoured a fairly broad definition of 'control' in the area of restrictive measures and has not provided any strict definition of the terms 'owned' and 'controlled', as can be seen in essence from paragraphs 74 and 75 of the judgment of 10 September 2019, *HTTS v Council* (C-123/18 P, EU:C:2019:694).
- 124 Therefore, it must be held, concurring with the Council and the Commission, that, on the date on which the listings at issue were adopted, there may have been some uncertainty as to the exact meaning of 'company owned or controlled by another entity' and that, in consequence, the

Council had a certain discretion when assessing the material capable of establishing that HTTS, of which the applicant was the director, was owned or controlled by a company directly associated with or providing support for Iran's nuclear activities and therefore engaged in those activities.

- 125 Last, the applicant argued that, at the time of the third listing the Council disregarded the circumstance that by the 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 had annulled IRISL's listing and that of other companies to which it referred, including SAPID and HDSL, and that the 'evidence' provided was therefore, from the outset, completely irrelevant. As the Court of Justice stated in paragraph 48 of the judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others v Council* (C-225/17 P, EU:C:2019:82), the actual occurrence of the three violations of the embargo established by Resolution 1747 (2007) was not called into question by the judgment of 16 September 2013, *Islamic Republic of Iran Shipping Lines and Others v Council* (T-489/10, EU:T:2013:453). In paragraph 66 thereof the General Court found that 'it appear[ed] appropriate to regard the fact that IRISL was involved in the three incidents concerning the shipment of military material in breach of the prohibition laid down in paragraph 5 of Resolution 1747 (2007) as increasing the risk that IRISL may also [have been] involved in incidents relating to the shipment of material linked to nuclear proliferation'.
- 126 Accordingly, it does not follow from the fact that the listings of IRISL, SAPID and HDSL were annulled subsequently to the second and third listings that the Council infringed substantive listing conditions in a manner giving rise to non-contractual liability on the part of the European Union.
- 127 It is clear from all of the foregoing that, contrary to the applicant's assertions in his first complaint, on the dates on which it adopted the second and third listings, material was available to the Council that can be regarded as evidence that the applicant had links to IRISL and was able to act on behalf of IRISL in Europe and to act in IRISL's interests within HTTS.
- 128 Therefore, in those circumstances, even if the Council did commit a manifest error of assessment in connection with the second and third listings by relying on the circumstances adduced, that error cannot be regarded as flagrant and inexcusable and it cannot be found that an administrative authority exercising ordinary care and diligence would not have made that error in similar circumstances (see, by analogy, judgment of 5 June 2019, *Bank Saderat v Council*, T-433/15, not published, EU:T:2019:374, paragraph 73).
- 129 It must therefore be held that, on the dates on which the listings at issue were adopted, the Council did not depart from the conduct that would have been followed by an administrative authority exercising ordinary care and diligence.
- 130 The first complaint, alleging that the Council has failed to establish by means of adequate evidence that the applicant was controlled by IRISL, must accordingly be rejected.

– *The second complaint, alleging a sufficiently serious breach of the fundamental right to effective judicial protection*

- 131 In respect of the second complaint, it is apparent from the case file that the applicant did receive the information necessary to understand the reasons for adoption of the restrictive measures against him and that he was in a position to bring a claim that the restrictive measures against him were unlawful and to have them annulled.

132 Moreover, it must be recalled that, since the applicant brought an action against the restrictive measures against him and the General Court annulled those measures, he cannot rely on any sufficiently serious breach of his right to effective judicial protection in the present case (see, to that effect, judgment of 10 December 2018, *Bank Refah Kargaran v Council*, T-552/15, not published, EU:T:2018:897, paragraph 51).

133 The second complaint must therefore be dismissed as unfounded.

– *The third complaint, alleging a sufficiently serious breach of the right to respect for private and family life, the right to the protection of personal data, the right freely to conduct business and the right to property*

134 It must be observed, as pointed out by the Council, that the applicant's arguments in respect of the third complaint are not supported by any evidence and therefore do not satisfy the requirements of Article 76(d) of the Rules of Procedure.

135 In that regard, it must be recalled that, under Article 76(d) of the Rules of Procedure, the application must include a summary of the pleas in law relied upon. In addition, according to consistent case-law, that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and for the General Court to rule on the action, if necessary without needing to request further information. If an action is to be admissible, the essential points of fact and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible, in order to ensure legal certainty and the sound administration of justice. Likewise, according to settled case-law, any plea which is not adequately articulated in the application initiating the proceedings must be held to be inadmissible. Similar requirements apply where a complaint is relied upon in support of a plea. That absolute bar to proceedings must be raised *ex officio* by the EU court (see, to that effect, judgments of 12 May 2016, *Italy v Commission*, T-384/14, EU:T:2016:298, not published, paragraph 38 and the case-law cited, and of 12 February 2020, *Kampete v Council*, T-164/18, not published, EU:T:2020:54, paragraph 112).

136 In the present case, it must be observed that, in his application, the applicant merely summarises the substance of the principles relied upon and fails to provide any material to substantiate the existence of serious breaches of the right to respect for private and family life, the right to the protection of personal data, the right freely to conduct business and the right to property. Furthermore, in response to a question by the General Court at the hearing, the applicant stated that the matters he had addressed in the part relating to the existence of non-material damage as a result of the adoption of the restrictive measures against him could not be used to demonstrate the existence of a sufficiently serious breach of those fundamental rights.

137 Therefore, it is clear from the foregoing that the applicant has not pleaded the arguments in support of the alleged serious infringement of the foregoing fundamental rights to the requisite legal standard.

138 The third complaint must therefore be dismissed as inadmissible.

139 It emerges from the foregoing that the action must be dismissed in its entirety and that it is unnecessary to examine whether the other conditions for the non-contractual liability of the European Union to arise are satisfied.

Costs

- 140 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.
- 141 Furthermore, under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.
- 142 Since the applicant has been unsuccessful, he must be ordered to bear his own costs and to pay those incurred by the Council, in accordance with the form of order sought by the Council. The Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

- 1. Dismisses the action as in part inadmissible and in part unfounded;**
- 2. Orders Mr Bateni to bear his own costs and those incurred by the Council of the European Union;**
- 3. Orders the European Commission to bear its own costs.**

Kanninen

Jaeger

Porchia

Delivered in open court in Luxembourg on 7 July 2021.

[Signatures]