Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

6 September 2013*

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Legitimate expectations — Review of the restrictive measures adopted — Error of assessment — Equal treatment — Legal basis — Essential procedural requirements — Proportionality)

In Cases T-35/10 and T-7/11,

Bank Melli Iran, established in Tehran (Iran), represented in Case T-35/10 by L. Defalque, and in Case T-7/11 initially by L. Defalque and S. Woog, and subsequently by L. Defalque and C. Malherbe, lawyers,

applicant,

v

Council of the European Union, represented in Case T-35/10 by M. Bishop and R. Szostak, and in Case T-7/11 initially by M. Bishop and G. Marhic, and subsequently by M. Bishop and B. Driessen, acting as Agents,

defendant,

supported by

French Republic, represented by G. de Bergues and É. Ranaivoson, acting as Agents,

by

United Kingdom of Great Britain and Northern Ireland, represented initially by S. Behzadi-Spencer, subsequently by A. Robinson, and finally by A. Robinson and H. Walker, acting as Agents, and by S. Lee, Barrister,

interveners in Case T-35/10,

and by

European Commission, represented in Case T-35/10 by S. Boelaert and M. Konstantinidis, and in Case T-7/11 by S. Boelaert, M. Konstantinidis and F. Erlbacher, acting as Agents,

intervener in both cases,

* Language of the case: English.

APPLICATION, first, for annulment in part of Council Regulation (EC) No 1100/2009 of 17 November 2009 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran and repealing Decision 2008/475/EC (OJ 2009 L 303, p. 31); Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81); 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); Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71); Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (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 No 961/2010 (OJ 2012 L 88, p. 1); and, secondly, for annulment of any future regulation or decision in force as at the date of closure of the oral procedure which supplements or amends any of the contested measures,

THE GENERAL COURT (Fourth Chamber),

composed of I. Pelikánová (Rapporteur), President, K. Jürimäe and M. van der Woude, Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 17 April 2013,

gives the following

Judgment

Background to the dispute

1 The applicant, Bank Melli Iran, is an Iranian commercial bank owned by the Iranian State.

2 The present case has been brought in connection with the restrictive measures introduced in order to apply pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems ('nuclear proliferation').

3 The applicant's name was entered on the list in Annex II to Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49), by means of Council Common Position 2008/479/CFSP of 23 June 2008 amending Common Position 2007/140 (OJ 2008 L 163, p. 43).

4 Consequently, the applicant's name was entered on the list in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), by means of Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation No 423/2007 (OJ 2008 L 163, p. 29), as a result of which its funds were frozen.

5 The applicant brought an action before the General Court in which it sought, in essence, to have the listing of its name in Annex V to Regulation No 423/2007 annulled.

6 By letters of 8 and 21 July 2009, the applicant asked the Council of the European Union to review the decision to include its name in the list in Annex V to Regulation No 423/2007, claiming that it was not involved in nuclear proliferation. In the letter of 8 July 2009, it also requested access to the Council's file.

7 By letter of 27 July 2009, the Council replied that the applicant was subject to the restrictive measures for the reasons set out in Decision 2008/475. The Council refused access to the proposal for the adoption of restrictive measures relating to the applicant ('the initial proposal') on account of the confidential nature of that document, but provided the applicant with two general documents relating to the procedure for the adoption of restrictive measures.

8 By letter of 11 September 2009, the applicant made a further request for access to the Council's file.

9 By letter of 1 October 2009, the Council sent the applicant additional reasons for the adoption of restrictive measures against it.

10 The applicant's action concerning the inclusion of its name in the list in Annex V to Regulation No 423/2007 was dismissed by judgment of the General Court of 14 October 2009 in Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967.

11 By letter of 15 October 2009, the applicant submitted its comments on the additional reasons sent to it on 1 October 2009. It argued that those reasons were insufficiently detailed and failed to establish that it was involved in nuclear proliferation.

12 The entry of the applicant's name in Annex V to Regulation No 423/2007 was maintained by Council Regulation (EC) No 1100/2009 of 17 November 2009 implementing Article 7(2) of Regulation No 423/2007 concerning restrictive measures against Iran and repealing Decision 2008/475 (OJ 2009 L 303, p. 31). The reasons given were as follows:

'Providing or attempting to provide financial support for companies which are involved in or procure goods for Iran's nuclear and missile programmes (AIO, SHIG, SBIG, AEOI, Novin Energy Company, Mesbah Energy Company, Kalaye Electric Company and DIO). Bank Melli serves as a facilitator for Iran's sensitive activities. It has facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programmes. It has provided a range of financial services on behalf of entities linked to Iran's nuclear and missile industries, including opening letters of credit and maintaining accounts. Many of the above companies have been designated by [United Nations Security Council Resolutions] 1737 (2006) and 1747 (2007). Bank Melli continues in this role, by engaging in a pattern of conduct which supports and facilitates Iran's sensitive activities. Using its banking relationships, it continues to provide support for, and financial services to, UN and EU listed entities in relation to such activities. It also acts on behalf of, and at the direction of such entities, including Bank Sepah, often operating through their subsidiaries and associates.'

13 By letter of 18 November 2009, the Council informed the applicant that its name would continue to be listed in Annex V to Regulation No 423/2007. It explained that the observations submitted by the applicant did not justify the lifting of the restrictive measures, given the support the applicant had provided for nuclear proliferation by providing financial services to the entities engaged in it. With regard to the requests for access to the file, the Council reiterated that the initial proposal was confidential. However, it sent the applicant a non-confidential version of the proposal for the adoption of restrictive measures covering the additional reasons communicated on 1 October 2009 ('the additional proposal').

14 By letter of 14 December 2009, the applicant requested a hearing and full access to the Council's file. By letter of 20 January 2010, the Council replied that the applicant had been given a hearing as it had submitted its observations. It also reiterated that the initial proposal was confidential.

15 Following the adoption of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140 (OJ 2010 L 195, p. 39, corrigendum OJ 2010 L 197, p. 19), the applicant's name was listed in Annex II to that decision. The reasons stated in regard to the applicant are the same as those set out in Regulation No 1100/2009.

16 The listing of the applicant's name in Annex V to Regulation No 423/2007 was not affected by the entry into force of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation No 423/2007 (OJ 2010 L 195, p. 25).

17 By letter of 15 September 2010, the applicant submitted to the Council its observations on the continuation of the restrictive measures against it. On that occasion, it repeated its requests for a hearing and for access to the Council's file.

18 The entry of the applicant's name in Annex II to Decision 2010/413 was maintained by Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81).

19 Since Regulation No 423/2007 was repealed by Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran (OJ 2010 L 281, p. 1), the applicant's name was included by the Council in Annex VIII to the latter regulation.

20 The reasons stated in Decision 2010/644 and Regulation No 961/2010 in regard to the applicant are the same as those set out in Regulation No 1100/2009.

21 By letter of 28 October 2010, the Council informed the applicant that its name would continue to be listed in Annex II to Decision 2010/413 and of its inclusion in the list in Annex VIII to Regulation No 961/2010. It stated that there was no new evidence to justify the lifting of the restrictive measures concerning the applicant and that those measures were not based on information other than the documents previously disclosed to the applicant.

22 By letter of 28 July 2011, the applicant asked the Council to reconsider the decision to retain its name on the list in Annex II to Decision 2010/413 and on that in Annex VIII to Regulation No 961/2010. It reiterated that it was not involved in nuclear proliferation.

23 By judgment of 16 November 2011 in Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, the Court of Justice dismissed the appeal brought by the applicant against the judgment in Case T-390/08 *Bank Melli Iran* v *Council*, paragraph 10 above.

24 The listing of the applicant's name in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010 was not affected by the entry into force of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71) and Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11).

25 By letter of 5 December 2011, the Council informed the applicant that its name would continue to be listed in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010. It stated that the observations submitted by the applicant on 28 July 2011 did not justify the lifting of the restrictive measures.

26 By letter of 16 January 2012, the applicant requested access to the evidence relating to the adoption and maintenance of the restrictive measures against it. The Council replied by letter of 21 February 2012, enclosing three documents relating to the review of the restrictive measures.

27 Since Regulation No 961/2010 was repealed by Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ 2012 L 88, p. 1), the applicant's name was included by the Council in Annex IX to the latter regulation. The reasons stated in regard to the applicant are the same as those set out in Regulation No 1100/2009.

Procedure and forms of order sought

28 By application lodged at the Court Registry on 29 January 2010, the applicant brought the action in Case T-35/10 for annulment in part of Regulation No 1100/2009.

29 By order of the President of the Second Chamber of the General Court of 4 May 2010, the proceedings in Case T-35/10 were stayed until the Court of Justice had delivered judgment in Case C-548/09 P *Bank Melli Iran* v *Council*.

30 By documents lodged at the Court Registry on 17 and 28 May and 7 June 2010 respectively, the European Commission, the French Republic and the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in Case T-35/10 in support of the Council.

31 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Fourth Chamber, to which Case T-35/10 was consequently assigned.

32 By application lodged at the Court Registry on 7 January 2011, the applicant brought an action in Case T-7/11 for, inter alia, annulment in part of Decision 2010/644 and Regulation No 961/2010.

33 By document lodged at the Court Registry on 4 April 2011, the Commission sought leave to intervene in Case T-7/11 in support of the Council. By order of 9 June 2011, the President of the Fourth Chamber of the General Court granted leave to intervene.

34 On 24 November 2011, the General Court (Fourth Chamber) requested the parties, as a measure of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, to submit their observations on the implications for Case T-35/10 of the judgment in Case C-548/09 P *Bank Melli Iran* v *Council*, paragraph 23 above. The parties complied with that request.

35 By order of 8 February 2012, the President of the Fourth Chamber of the General Court granted the Commission, the French Republic and the United Kingdom leave to intervene in support of the Council in Case T-35/10.

36 By document lodged at the Court Registry on 15 February 2012, the applicant amended its heads of claim in Case T-7/11 following the adoption of Decision 2011/783, Implementing Regulation No 1245/2011, Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413 (OJ 2012 L 19, p. 22), Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation No 961/2010 (OJ 2012 L 19, p. 1), and Council Regulation (EU) No 56/2012 of 23 January 2012 amending Regulation No 961/2010 (OJ 2012 L 19, p. 10).

37 By document lodged at the Court Registry on 30 July 2012, the applicant amended its heads of claim in Case T-7/11 following the adoption of Regulation No 267/2012. Moreover, it applied for the annulment of any future regulation or decision in force as at the date of closure of the oral procedure which supplements or amends any of the contested measures.

38 By order of the President of the Fourth Chamber of the General Court of 5 March 2013, Cases T-35/10, T-7/11 and T-8/11 were joined for the purposes of the oral procedure, in accordance with Article 50 of the Rules of Procedure.

39 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 64 of the Rules of Procedure, put questions to the parties in writing. The parties replied to the Court's questions within the prescribed period.

40 The parties presented oral argument and answered the written and oral questions put by the Court at the hearing on 17 April 2013.

41 In its written pleadings, the applicant claims that the Court should:

— annul point 4 of Part B of the annex to Regulation No 1100/2009, point 5 of Part B of the annex to Decision 2010/644, point 5 of Part B of Annex VIII to Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011, Decision 2012/35, Implementing Regulation No 54/2012, Regulation No 56/2012, and point 5 of Part I.B of Annex IX to Regulation No 267/2012, in so far as they concern the applicant;

— annul the Council's decisions notified to the applicant by letters from the Council of 18 November 2009, 28 October 2010 and 5 December 2011;

— declare that Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010 do not apply to the applicant;

— annul any future regulation or decision in force as at the date of closure of the oral procedure which supplements or amends any of the contested measures;

— order the Council to pay the costs.

42 At the hearing, the applicant withdrew its action in so far as it sought annulment of Decision 2012/35, Implementing Regulation No 54/2012 and Regulation No 56/2012. Moreover, it stated that its second head of claim was in fact indissociable from the first head of claim, and that it was therefore abandoning its action in so far as it sought annulment of the letters of 18 November 2009, 28 October 2010 and 5 December 2011.

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

— dismiss the actions;

— order the applicant to pay the costs.

44 The United Kingdom contends that the Court should dismiss the action in Case T-35/10.

45 The French Republic contends that the Court should dismiss the action in Case T-35/10 and order the applicant to pay the costs.

Law

46 As a preliminary point, in view of the connection between Cases T-35/10 and T-7/11, the Court hereby decides that they shall be joined for the purpose of the judgment, in accordance with Article 50 of the Rules of Procedure.

47 Furthermore, it must be noted that the third head of claim, seeking a declaration that Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010 do not apply to the applicant, is in fact indissociable from the arguments contesting the lawfulness of Decision 2010/413 and Regulation No 961/2010 put forward in support of the applicant's first head of claim. Consequently, the third head of claim need not be examined separately by the Court.

48 In support of its first head of claim, the applicant relies on the following pleas in law in its written pleadings:

— the first plea in Case T-35/10 and the third plea in Case T-7/11, alleging breach of the obligation to state reasons, of its rights of defence and of its right to effective judicial protection, of the principles of sound administration and protection of legitimate expectations, and of the Council's obligation to review the restrictive measures adopted, in the light of the observations made;

— the second plea in Case T-35/10 and the fourth plea in Case T-7/11, alleging error of assessment as regards the Council's view that the applicant was involved in nuclear proliferation;

— the third plea in Case T-35/10, alleging infringement of essential procedural requirements and error of law as regards the legal basis for Regulation No 1100/2009, and the second plea in Case T-7/11, alleging error of law as regards the legal basis for Decision 2010/644 and Regulation No 961/2010;

— the fourth plea in Case T-35/10 and the fifth plea in Case T-7/11, alleging breach of the principle of proportionality and of its right to property owing to the Council's failure to take into account the resolutions of the United Nations Security Council;

— the first plea in Case T-7/11, alleging infringement of Article 215 TFEU and Article 40 TEU and breach of the principle of equal treatment;

— the sixth plea in Case T-7/11, alleging that Article 23(4) of Regulation No 267/2012 is unlawful.

49 At the hearing, the applicant also submitted that Regulation No 267/2012 was not notified to it individually.

50 The Council, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Commission contest the merits of the applicant's pleas.

51 The Council and the Commission maintain, moreover, that the applicant is an emanation of the Iranian State and is therefore not entitled to take advantage of fundamental rights protection and guarantees. The Council also relies on the inadmissibility of the applicant's fourth head of claim.

52 The Court must examine not only the parties' pleas in law and arguments but also the admissibility of the applicant's amendments of its heads of claim.

Admissibility

The amendments of the applicant's heads of claim

53 According to the case-law, when a decision or a regulation of direct and individual concern to an individual is replaced, during the proceedings, by another measure with the same subject-matter, this is to be considered a new factor allowing the applicant to adapt its claims and pleas in law. It would be contrary to the principle of due administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application. Moreover, it would be inequitable if the institution in question were able, in order to counter criticisms of a measure, contained in an application to the Courts of the European Union, to amend the contested measure or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later measure or

of submitting supplementary pleadings directed against that measure (see, by analogy, Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 46 and the case-law cited).

54 The same conclusion applies in respect of measures, such as Decision 2011/783 and Implementing Regulation No 1245/2011, which, without repealing an earlier measure, maintain an entity's entry on the lists of entities subject to restrictive measures, following a review procedure expressly required by the relevant legislation.

55 However, in order to be admissible, a request to amend the form of order sought must be submitted within the time-limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU. It has consistently been held that the time-limit for bringing proceedings is mandatory and must be applied by the Courts of the European Union in such a way as to safeguard legal certainty and equality of persons before the law (see Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 101). It is thus for the Courts to verify, if necessary of their own motion, whether that time-limit has been observed (see order of 11 January 2012 in Case T-301/11 *Ben Ali* v *Council*, not published in the ECR, paragraph 16).

56 In that regard, it must be borne in mind that, according to the case-law, the principle of effective judicial protection means that the European Union authority which adopts individual restrictive measures against a person or entity is bound to communicate the grounds on which those measures are based, either when those measures are adopted or, at the very least, as swiftly as possible after their adoption, in order to enable those persons or entities to exercise their right to bring an action (see, to that effect, Case C-548/09 P *Bank Melli Iran* v *Council*, paragraph 23 above, paragraph 47 and the case-law cited).

57 It follows from this that the time-limit for bringing an action for annulment of an act imposing restrictive measures on a person or entity starts to run only from the date on which that act is notified to the interested party. Likewise, the time-limit for submitting a request to extend the pleadings to an act which maintains those measures starts to run only from the date on which that new act is notified to the person or entity concerned.

58 In the present case, on the one hand, Decision 2011/783 and Implementing Regulation No 1245/2011 were notified individually to the applicant by letter of 5 December 2011. Therefore, the request made on 15 February 2012 to amend the form of order sought in relation to those acts was submitted within the period of two months laid down in the sixth paragraph of Article 263 TFEU, extended on account of distance by the 10 days provided for by Article 102(2) of the Rules of Procedure.

59 On the other hand, Regulation No 267/2012 was not notified individually to the applicant even though the Council was aware of its address. Accordingly, the time-limit for amending the applicant's heads of claim with respect to Regulation No 267/2012 has not started to run, and therefore the applicant's request of 30 July 2012 cannot be considered to be out of time.

60 In the light of the foregoing, it must be concluded that the applicant is entitled to seek the annulment of Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012.

The claim for annulment of any future regulation or decision in force as at the date of closure of the oral procedure which supplements or amends any of the contested measures

61 The Council contests the admissibility of the fourth head of claim, by which the applicant seeks annulment of any future regulation or decision in force as at the date of closure of the oral procedure which supplements or amends any of the contested measures.

62 In that regard, according to the case-law, only actions for annulment of an act in existence adversely affecting the applicant may be brought before the Court. Even if the applicant may be permitted to reformulate its claims so as to seek annulment of acts which have, during the proceedings, replaced the acts initially challenged, that solution cannot authorise the speculative review of the lawfulness of hypothetical acts which have not yet been adopted (see Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 32 and the case-law cited).

63 Accordingly, the applicant's fourth head of claim must be rejected as inadmissible.

Substance

Whether the applicant may rely on fundamental rights protection and guarantees

64 The Council and the Commission contend that, under European Union law, legal persons which are emanations of non-Member countries cannot rely on fundamental rights protection and guarantees. They claim that since the applicant is an emanation of the Iranian State, that rule applies to it.

65 In that regard, it must be observed that neither in the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389) nor in European Union primary law are there any provisions which state that legal persons which are emanations of States are not entitled to the protection of fundamental rights. On the contrary, the provisions of the Charter which are relevant to the pleas raised by the applicant, and in particular Articles 17, 41 and 47, guarantee the rights of '[e]veryone' or '[e]very person', a form of wording which includes legal persons such as the applicant.

66 None the less, the Council and the Commission rely, in this context, on Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), the effect of which is that applications submitted by governmental organisations to the European Court of Human Rights are not admissible.

67 First, Article 34 of the ECHR is a procedural provision which is not applicable to procedures before the Courts of the European Union. Secondly, according to the case-law of the European Court of Human Rights, the aim of that provision is to ensure that a State which is a party to the ECHR is not both applicant and defendant before that court (see, to that effect, judgment of the European Court of Human Rights of 13 December 2007, *Islamic Republic of Iran Shipping Lines v. Turkey*, no. 40998/98, § 81, ECHR 2007-V). That reasoning is not applicable to the present case.

68 The Council and the Commission also argue that the justification of the rule on which they rely is that a State is the guarantor of respect for fundamental rights in its territory but cannot qualify for such rights.

69 However, even if that justification were applicable in relation to an internal situation, the fact that a State is the guarantor of respect for fundamental rights in its own territory is of no relevance as regards the extent of the rights to which legal persons which are emanations of that same State may be entitled in the territory of third countries.

70 In the light of the foregoing, it must be held that European Union law contains no rule preventing legal persons which are emanations of non-Member States from taking advantage of fundamental rights protection and guarantees. Those rights may therefore be relied on by those persons before the Courts of the European Union in so far as those rights are compatible with their status as legal persons.

71 Further, and in any event, the Council and the Commission have not put forward any evidence capable of proving that the applicant was in fact an emanation of the Iranian State, that is an entity which participated in the exercise of governmental powers or which ran a public service under government control (see, to that effect, judgment of the European Court of Human Rights, *Islamic Republic of Iran Shipping Lines v. Turkey*, paragraph 67 above, § 79).

72 In that regard, first, the Council maintains that the applicant runs a public service under the control of the Iranian government since it provides financial services which are necessary for the operation of the Iranian economy. The Council does not however contest the applicant's claims that those services represent commercial activities carried out in a competitive sector and subject to the ordinary law. In those circumstances, the fact that those activities are necessary for the operation of a State's economy cannot, by itself, confer on them the status of a public service.

73 Next, the Commission maintains that the fact that the applicant is involved in nuclear proliferation demonstrates that it participates in the exercise of governmental powers. However, in adopting that approach, the Commission assumes the truth of a premiss which the applicant denies is true and which is a question of fact at the very core of the dispute before the Court. Further, the claimed involvement of the applicant in nuclear proliferation, as set out in the contested measures, cannot be assimilated to the exercise of State powers, but to commercial transactions entered into with entities engaged in nuclear proliferation. Consequently, that claim cannot justify the classification of the applicant as an emanation of the Iranian State.

74 Lastly, the Commission considers that the applicant is an emanation of the Iranian State because of the latter's participation in its share capital. By itself, however, that fact does not imply that the applicant participates in the exercise of governmental powers or that it runs a public service.

75 In the light of all the foregoing, it must be concluded that the applicant may take advantage of fundamental rights protection and guarantees.

The first plea in Case T-35/10 and the third plea in Case T-7/11, alleging breach of the obligation to state reasons, of the applicant's rights of defence and of its right to effective judicial protection, of the principles of sound administration and protection of legitimate expectations, and of the Council's obligation to review the restrictive measures adopted, in the light of the observations made

76 The applicant claims that, as regards the adoption of the contested measures, the Council breached the obligation to state reasons, the applicant's rights of defence and the obligation to review the restrictive measures adopted, in the light of the observations made. Furthermore, the consequence of those breaches is a breach of its right to effective judicial protection and of the principles of sound administration and protection of legitimate expectations.

77 The Council, the French Republic, the United Kingdom and the Commission contest the merits of the applicant's arguments.

78 It must be borne in mind, in the first place, that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for by the second paragraph of Article 296 TFEU and, more particularly in this case, by Article 24(3) of Decision 2010/413, Article 15(3) of Regulation No 423/2007, Article 36(3) of Regulation No 961/2010 and Article 46(3) of Regulation No 267/2012, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the measure is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Courts of the European Union and, secondly, to enable the latter to review the lawfulness of that measure. The obligation to state reasons thus laid down constitutes an essential principle of European Union law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same

time as the act adversely affecting him, for failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the Courts of the European Union (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 80 and the case-law cited).

79 Unless, therefore, overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations militate against the communication of certain matters, the Council is bound to apprise an entity that is subject to restrictive measures of the actual and specific reasons why it takes the view that they had to be adopted. It must thus state the facts and points of law on which the legal justification of the measures concerned depends and the considerations which led it to adopt them (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 81 and the case-law cited).

80 Moreover, the statement of reasons must be appropriate to the act at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (see *Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 82 and the case-law cited).

81 In the second place, according to settled case-law, observance of the rights of the defence, especially the right to be heard, in all proceedings initiated against an entity which may lead to a measure adversely affecting that entity, is a fundamental principle of European Union law which must be guaranteed, even when there are no rules governing the procedure in question (*Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 91).

82 The principle of respect for the rights of the defence requires, first, that the entity concerned must be informed of the evidence adduced against it to justify the measure adversely affecting it. Secondly, it must be afforded the opportunity effectively to make known its view on that evidence (see, by analogy, *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 62 above, paragraph 93).

83 Consequently, as regards an initial measure whereby the funds of an entity are frozen, unless overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations preclude it, the evidence adduced against that entity should be disclosed to it either concomitantly with or as soon as possible after the adoption of the measure concerned. At the request of the entity concerned, it also has the right to make known its view on that evidence after the adoption of the measure. Subject to the same proviso, any subsequent decision to freeze funds must as a general rule be preceded by disclosure of further evidence adduced against the entity concerned and a further opportunity for it to make known its view (see, by analogy, *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 62 above, paragraph 137).

84 It must also be noted that, when sufficiently precise information has been communicated, enabling the entity concerned effectively to state its point of view on the evidence adduced against it by the Council, the principle of respect for the rights of the defence does not mean that the Council is obliged spontaneously to grant access to the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see *Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 97 and the case-law cited).

85 In the third place, the principle of effective judicial protection is a general principle of European Union law, stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR and in Article 47 of the Charter of Fundamental Rights. The effectiveness of judicial review means that the European Union authority in question is bound to communicate the grounds for a restrictive measure to the entity concerned, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after its adoption, in order to enable the entity concerned to exercise, within the prescribed period, its right to bring an action. Observance of that obligation to communicate the grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Courts of the European Union, and also to put the latter fully in a position to carry out the review of the lawfulness of the measure in question which is the duty of those courts (see, to that effect and by analogy, 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, paragraphs 335 to 337 and the case-law cited).

– The obligation to state reasons

86 According to the applicant, the reasons stated in the contested measures are inadequate. The reasons set out in Regulation No 1100/2009, the additional reasons communicated to it on 1 October 2009 and the reasons set out in the subsequent contested measures are so vague and imprecise that the applicant is unable to investigate and respond to them.

87 The Council, the French Republic, the United Kingdom and the Commission contest the merits of the applicant's arguments.

88 It should be noted that the applicant has been subject to restrictive measures since 23 June 2008. In correspondence between that date and the date of adoption of the first of the contested measures, namely 17 November 2009, a number of documents passed to and from the applicant and the Council, including, in particular, the Council's letter of 1 October 2009 whereby the Council informed the applicant of additional reasons for the adoption of the restrictive measures concerning the applicant. That document is part of the background to the adoption of the contested measures in the present cases and may, consequently, be taken into consideration in their examination.

89 The reasons set out in the contested measures, as supplemented and expounded by the additional reasons communicated on 1 October 2009, are sufficiently detailed to satisfy the Council's obligation to state reasons. Those reasons make it possible to identify not only the entities to which the applicant provided financial services and which are subject to restrictive measures adopted by the European Union or by the United Nations Security Council, but also the period during which the services concerned were provided and, in certain cases, the specific transactions to which those services were linked.

90 Accordingly, the complaint alleging breach of the obligation to state reasons must be rejected.

– Breach of the principle of respect for the rights of the defence

91 The applicant submits that, despite repeated requests, it was not given sufficient access to the Council's file or a hearing by the Council, with the result that it is unaware of the evidence adduced against it and, therefore, unable to defend itself. Moreover, in so far as the Council provided it with documents from its file, that disclosure was long overdue.

92 The first point to be noted here is that the Council, the French Republic, the United Kingdom and the Commission deny that the principle of respect for the rights of the defence is applicable to the present case, referring to the fact that the applicant was not subject to restrictive measures because of its own activities but because of its membership of a general category of persons and entities which supported nuclear proliferation.

93 That argument cannot be accepted. Article 24(3) and (4) of Decision 2010/413, Article 15(3) of Regulation No 423/2007, Article 36(3) and (4) of Regulation No 961/2010 and Article 46(3) and (4) of Regulation No 267/2012 set out provisions to safeguard the rights of the defence of entities which are subject to restrictive measures adopted under those acts. Respect for those rights is subject to review by the Courts of the European Union (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 37).

94 The Council and the United Kingdom also maintain that the Council cannot be required to provide the entities concerned with the evidence and information supporting the grounds for the restrictive measures when the evidence and information comes from confidential sources and is, as such, kept by the Member States holding it, or by third countries with which those Member States are cooperating, with a view to protecting the sources. The United Kingdom states that there is no provision in the Rules of Procedure which might allow the Court to take account of confidential evidence without that evidence being disclosed to the other parties, which means that there is no means of safeguarding the confidentiality of information that may be submitted and, therefore, of properly protecting the overriding considerations which militate against its disclosure to the entity concerned. Accordingly, such considerations should prevail, including so far as concerns the procedure before the Court.

95 In that regard, it is evident from the case-law cited in paragraph 83 above that the evidence adduced against the entities concerned may in fact not be disclosed to them where overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations preclude it.

96 However, taking into consideration the essential role of judicial review in the context of the adoption and the maintenance of restrictive measures, the Courts of the European Union must be able to review the lawfulness and merits of such measures, including compliance with the procedural safeguards available to the entities concerned (see, to that effect and by analogy, *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 62 above, paragraph 155), on the basis that the confidential nature of some evidence may possibly justify restrictions in relation to the communication of that evidence to the applicant or its lawyers that would apply to the entire proceedings before the Court (see, to that effect and by analogy, *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 62 above, paragraph 155).

97 Moreover, under the third subparagraph of Article 67(3) of the Rules of Procedure, '[w]here a document to which access has been denied by an institution has been produced before the General Court in proceedings relating to the legality of that denial, that document shall not be communicated to the other parties'. That provision enables the Court to review the legality of the denial of access to a document in the Council's file without communicating that document to the entity concerned.

98 As regards the applicant's complaints, it must be noted, in the first place, that it is evident from paragraphs 86 to 90 above that the contested measures contain sufficient reasons. In those circumstances, the Council has also complied with its obligation regarding the initial communication of inculpatory evidence.

99 In the second place, as regards access to the file, it must be noted that the restrictive measures to which the applicant is subject are based on two separate proposals. On the one hand, the initial adoption of those measures, in 2008, against which the applicant brought the action in Case T-390/08 (see paragraphs 5, 10 and 23 above), proceeded on the basis of the initial proposal, which the Council

refused to communicate to the applicant, notwithstanding several requests to that effect. On the other hand, the additional reasons, communicated to the applicant on 1 October 2009, were supported by the additional proposal, a non-confidential copy of which was sent to the applicant on 18 November 2009, that is at the time when the applicant was informed of the adoption of Regulation No 1100/2009.

100 It must be held that the failure to communicate a document on which the Council relied in order to adopt or maintain the restrictive measures to which an entity is subject does not constitute a breach of the rights of the defence that would justify annulment of the acts concerned unless it is established that the restrictive measures concerned could not have been lawfully adopted or maintained if the document that was not communicated had to be excluded as inculpatory evidence.

101 Consequently, in the present case, even if the Council had been wrong to refuse to communicate the initial proposal to the applicant, that could not justify the annulment of the contested measures unless it was also established that maintaining the restrictive measures concerning the applicant could not be justified by the information communicated to the applicant in good time, namely the reasons set out in the contested measures, the additional reasons provided on 1 October 2009 and the additional proposal communicated on 18 November 2009.

102 It is evident from paragraphs 122 to 150 below that the arguments relied on by the applicant are not such as to call in question the merits of the justification – referred to in paragraph 149 below and which is apparent from the evidence communicated to the applicant – for the restrictive measures to which the applicant is subject. Accordingly, the failure to communicate the initial proposal is not capable of justifying the annulment of the contested measures.

103 In the third place, the applicant is wrong to maintain that it was unable to secure a hearing by the Council.

104 The applicant does not deny that it was able to submit written observations to the Council on 8 and 21 July and 15 October 2009, and on 15 September 2010 and 28 July 2011.

105 Moreover, contrary to what is suggested by the applicant, neither the legislation in question nor the general principle of respect for the rights of the defence gives the applicant the right to a formal hearing (see, by analogy, *People's Mojahedin Organization of Iran* v *Council*, paragraph 53 above, paragraph 93 and the case-law cited), the opportunity to submit its observations in writing being sufficient.

106 In the light of all the foregoing, the complaints as to breach of the principle of respect for the rights of the defence must be rejected as in part ineffective and in part unfounded.

– The defects allegedly affecting the review carried out by the Council

107 According to the applicant, the Council breached the obligation to review the restrictive measures adopted, in the light of the applicant's observations. In particular, it did not actually review those measures, nor did it provide a detailed response to those observations, confining itself to sending standard letters. Similarly, the review carried out by the Council was not based on the relevant information and evidence.

108 In that regard, the Council contends, without being contradicted by the applicant, that prior to the adoption of the contested measures, the delegations of the Member States had received the observations submitted by the applicant. Consequently, those observations, which include detailed

information about the applicant's relationships with the entities mentioned in the statement of reasons for the contested measures, and the evidence substantiating that information, could be taken into account.

109 Moreover, it is apparent from the Council's letters of 27 July and 18 November 2009, 28 October 2010 and 5 December 2011 that the Council considered those observations and replied to them, emphasising in particular the fact that the applicant had provided financial services to entities involved in nuclear proliferation.

110 Accordingly, the arguments that there are defects allegedly affecting the review of the restrictive measures concerning the applicant must be rejected as unfounded.

– The failure to notify Regulation No 267/2012 to the applicant individually

111 At the hearing, the applicant submitted, without being contradicted by the Council, that Regulation No 267/2012 had not been notified to it individually.

112 While it is true that an act adopting or maintaining restrictive measures against a person or entity must be notified to that person or entity and it is that notification which starts time running for the purpose of the bringing of an action, by the person or entity concerned, for annulment of the act in question pursuant to the fourth paragraph of Article 263 TFEU, that does not mean that the absence of such notification justifies, by itself, the annulment of the act in question.

113 Moreover, the applicant does not put forward any arguments that would demonstrate that, in the present case, the failure to notify Regulation No 267/2012 to it individually resulted in an infringement of its rights which would justify the annulment of that regulation in so far as it concerns the applicant. Nor is the existence of such an infringement apparent from the evidence in the file, given, first of all, that the reasons stated in regard to the applicant in Regulation No 267/2012 are identical to those in the earlier acts of which it was aware; secondly, that it was able to amend the form of order sought in Case T-7/11 so as to seek annulment of Regulation No 267/2012; and, lastly, that it was able to learn of that regulation from another source and to attach a copy of it to the statement by which it amended the form of order sought.

114 In those circumstances, the Court must reject the applicant's argument that the Council breached its obligation to notify Regulation No 267/2012 to the applicant, and there is no need to consider whether it is admissible.

– The other alleged breaches

115 According to the applicant, the breaches of the obligation to state reasons, of its rights of defence and of the obligation to review the restrictive measures adopted also entail a breach of its right to effective judicial protection and of the principles of sound administration and protection of legitimate expectations, as the Council did not act in good faith and diligently.

116 It is apparent from the review carried out above that the complaints concerning breach of the obligation to state reasons, of the applicant's rights of defence and of the Council's obligation to review the restrictive measures do not justify the annulment of the contested measures. Accordingly, the complaint as to breach of the applicant's right to effective judicial protection and of the principles of sound administration and protection of legitimate expectations, which is not substantiated by specific arguments and is not therefore independent in scope, must also be rejected.

117 In the light of all the foregoing, the first plea in Case T-35/10 and the third plea in Case T-7/11 must be rejected as in part ineffective and in part unfounded.

The second plea in Case T-35/10 and the fourth plea in Case T-7/11, alleging error of assessment as regards the Council's view that the applicant was involved in nuclear proliferation

118 The applicant claims that the Council made an error of assessment in concluding that the restrictive measures had to be applied to the applicant. It denies having provided financial services to certain entities mentioned in the statement of reasons for the contested measures. Moreover, it submits that the services which it did provide to entities involved in nuclear proliferation do not justify the adoption of the restrictive measures, particularly since they are not linked to that proliferation.

119 Furthermore, according to the applicant, the Council's error entails an abuse of power on its part.

120 The Council, the French Republic, the United Kingdom and the Commission contest the merits of the applicant's arguments.

121 As a preliminary point, it must be noted that a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see *Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 50 and the case-law cited). In the present case, however, the applicant has not adduced any evidence to suggest that, by adopting the contested measures, the Council was pursuing an aim other than that of preventing nuclear proliferation and the financing thereof. Therefore, the argument as to an alleged 'abuse of power' on the part of the Council must be rejected at the outset.

122 With regard to the applicant's other arguments, it is apparent from the case-law that the judicial review of the lawfulness of an act whereby restrictive measures are imposed on an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence for review by the Courts of the European Union (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 10 above, paragraphs 37 and 107).

123 The Council and the United Kingdom reiterate the argument set out in paragraph 94 above, according to which the Council cannot be required to produce the evidence and information supporting the grounds for the restrictive measures when the evidence and information comes from confidential sources and is, as such, kept by the Member States holding it, or by third countries with which those Member States are cooperating, with a view to protecting the sources. They state that, in those circumstances, the judicial review carried out by the Court should be limited. Thus, according to the Council, the Court should confine itself to verifying that the Member States' allegations are 'objectively plausible', while according to the United Kingdom, the judicial review undertaken by the Court should not cover the substantive merits of the acts adopting the restrictive measures.

124 That argument cannot be accepted.

125 The fact that the restrictive measures against the applicant were adopted on the basis of evidence obtained by a Member State in no way detracts from the fact that the contested measures are measures taken by the Council, which must, therefore, ensure that their adoption is justified, if necessary by requesting the Member State concerned to submit to it the evidence and information required for that purpose.

126 Similarly, the Council cannot rely on a claim that the evidence concerned comes from confidential sources and cannot, consequently, be disclosed. While that circumstance might, possibly, justify restrictions in relation to the communication of that evidence to the applicant or its lawyers, the fact remains that, taking into consideration the essential role of judicial review in the context of the adoption of restrictive measures, the Courts of the European Union must be able to review the

lawfulness and merits of such measures without it being possible to raise objections that the evidence and information used by the Council is secret or confidential. Moreover, the Council is not entitled to base an act adopting restrictive measures on information or evidence in the file communicated by a Member State, if that Member State is not willing to authorise its communication to the Court of the European Union whose task is to review the lawfulness of that decision.

127 Consequently, it is necessary to examine the merits of the justification for the restrictive measures in the light of the information and evidence communicated both to the applicant and to the Court.

128 The statement of reasons for the contested measures and the information communicated by the Council on 1 October and 18 November 2009 refer to a total of nine entities allegedly involved in nuclear proliferation to which the applicant provided financial services: the Aerospace Industries Organisation (AIO), Shahid Hemmat Industrial Group (SHIG), Shahid Bagheri Industrial Group (SBIG), the Atomic Energy Organisation of Iran (AEOI), Novin Energy Company, Mesbah Energy Company, Kalaye Electric Company, the Defence Industries Organisation (DIO) and Bank Sepah.

129 The applicant denies having provided financial services to SHIG, SBIG, Novin Energy Company and Kalaye Electric Company. Since the Council has not put forward any evidence or information to substantiate its claims in relation to the services allegedly provided to those four companies, those claims cannot justify the adoption and maintenance of the restrictive measures concerning the applicant, in accordance with the case-law cited in paragraph 122 above.

130 By contrast, the applicant does not deny having provided financial services to AIO, AEOI, Mesbah Energy Company, DIO and Bank Sepah. It is therefore appropriate to consider whether, as the Council maintains, those services constitute support for nuclear proliferation within the meaning of Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012.

131 In that regard, it must be noted that, under Article 18 of Regulation No 423/2007, Article 39 of Regulation No 961/2010 and Article 49 of Regulation No 267/2012, those regulations are applicable within the territory of the European Union, including its airspace, on board any aircraft or any vessel under the jurisdiction of a Member State, to any person inside or outside the territory of the European Union who is a national of a Member State, to any legal person, entity or body which is incorporated or constituted under the law of a Member State and to any legal person, entity or body in respect of any business done in whole or in part within the European Union.

132 Accordingly, as regards transactions carried out outside the European Union, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012 are not capable of imposing legal obligations on a financial institution established in a non-Member State and constituted under the law of that State (a ‘foreign financial institution’) such as the applicant. Consequently, such a financial institution is not obliged, under those regulations, to freeze the funds of entities involved in nuclear proliferation.

133 The fact remains however that if a foreign financial institution is engaged in, is directly associated with or is providing support for nuclear proliferation, its funds and economic resources which are located within the European Union, involved in business carried out wholly or in part within the European Union, or held by nationals of Member States or by any legal persons, entities or bodies which are incorporated or constituted under the law of a Member State, can be caught by the restrictive measures adopted pursuant to Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012.

134 It follows that it is very much in the interests of a foreign financial institution to ensure that it is not engaged in, is not directly associated with and is not providing support for nuclear proliferation, in particular by supplying financial services to an entity involved in nuclear proliferation. Consequently,

where it knows or may reasonably suspect that one of its customers is involved in nuclear proliferation, it should bring to an end the supply of financial services to that customer without delay, taking into account the applicable legal obligations, and should not supply any further services.

135 In the present case, the Council does not claim that the services at issue fell within the scope of Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012, as referred to in paragraph 131 above. Accordingly, it is necessary to consider whether the applicant acted without delay in bringing to an end the supply of financial services to each of the five entities mentioned in paragraph 130 above when it knew or could reasonably have suspected that they were involved in nuclear proliferation.

136 On that point, first of all, the applicant maintains that it made only one payment in relation to AIO on 14 March 2007, that is to say, before the adoption by the Council of the restrictive measures against AIO on 23 April 2007.

137 Yet the Council has not put forward any specific evidence or information to suggest that services were provided to AIO by the applicant after the adoption of the restrictive measures concerning AIO, or that the applicant knew or could reasonably have suspected that AIO was engaged in nuclear proliferation as at 14 March 2007.

138 That being the case, the payment made in relation to AIO does not justify the maintenance of the restrictive measures with respect to the applicant.

139 Secondly, the applicant admits that it carried out transactions on behalf of Bank Sepah, Mesbah Energy Company and DIO both before and after the adoption of restrictive measures concerning those entities. It maintains, however, that all the transactions carried out arose from commitments entered into before those measures were adopted, and that, in any event, they were not linked to nuclear proliferation.

140 In that regard, it must be noted that Article 20(6) of Decision 2010/413, Article 9 of Regulation No 423/2007, Article 18 of Regulation No 961/2010 and Article 25 of Regulation No 267/2012 essentially permit the release of funds of entities that are subject to restrictive measures, for the purpose of making payments due under obligations concluded by them prior to their being listed, provided that those payments are not linked to nuclear proliferation. In those circumstances, the applicant, which was in this case under no obligation to freeze the funds of Bank Sepah, Mesbah Energy Company and DIO pursuant to the abovementioned legislation, as is clear from paragraphs 132 and 135 above, should not be required to apply stricter rules in respect of those entities.

141 The Council has not put forward any evidence or information to suggest that the applicant knew or could reasonably have suspected that Bank Sepah, Mesbah Energy Company and DIO were involved in nuclear proliferation before the restrictive measures concerning them were adopted, or that it carried out transactions on the basis of instructions given after the adoption of those measures, or indeed that the transactions carried out after the adoption of those measures were linked to nuclear proliferation.

142 Accordingly, the transactions carried out on behalf of Bank Sepah, Mesbah Energy Company and DIO also do not justify the maintenance of the restrictive measures concerning the applicant.

143 Thirdly, the applicant admits that, until 18 April 2007, it carried out transactions on behalf of AEOI that were linked to the payment of scholarships and education-related expenses and involved sums not exceeding EUR 8 000.

144 AEOI has been subject to the restrictive measures adopted by the United Nations Security Council since 23 December 2006. Thus, from that date, the applicant could at least have suspected that AEOI was involved in nuclear proliferation.

145 Moreover, the applicant does not claim that the transactions carried out after 23 December 2006 were based on instructions received before that date.

146 In any event, since AEOI is responsible for nuclear research and development, there is reason to consider that the scholarships paid in its name are linked to those activities and, therefore, to nuclear proliferation.

147 Consequently, the considerations set out in paragraph 140 above do not apply to the transactions carried out on behalf of AEOI.

148 Furthermore, the applicant is wrong to rely on the fact that the payments made on behalf of AEOI were not very large. First, according to the information provided by the applicant, the total amount of those payments made in 2007 was EUR 17 768; 68 341 United States dollars (USD); and 2 041 Australian dollars (AUD), which is a not insignificant sum. Secondly, in so far as the availability of highly-qualified personnel is of paramount importance for nuclear research and development, the payment of scholarship funds intended to ensure education in that field, even of relatively small individual amounts, constitutes support for the activities in question and, consequently, for nuclear proliferation.

149 Accordingly, it must be concluded that the fact that the applicant made payments in respect of scholarships and education-related expenses on behalf of AEOI after the adoption by the United Nations Security Council of the restrictive measures concerning that entity constitutes support for nuclear proliferation which justifies the restrictive measures concerning the applicant.

150 Consequently, the second plea in Case T-35/10 and the fourth plea in Case T-7/11 must be rejected as unfounded.

The third plea in Case T-35/10, alleging infringement of essential procedural requirements and error of law as regards the legal basis for Regulation No 1100/2009, and the second plea in Case T-7/11, alleging error of law as regards the legal basis for Decision 2010/644 and Regulation No 961/2010

151 The applicant relies on errors with regard to the legal basis of various acts by which the restrictive measures to which it is subject were adopted.

152 The Council, the French Republic, the United Kingdom and the Commission contest the merits of the applicant's arguments.

153 In the first place the applicant claims, in Case T-35/10, that the Council committed an infringement of essential procedural requirements and errors of law as regards the legal basis for Regulation No 1100/2009. According to the applicant the legal basis for that regulation is Regulation No 423/2007, which is unlawful in that it was adopted by the Council acting by a qualified majority and not unanimously as required both by Article 308 EC and by Common Position 2007/140. Consequently, Regulation No 1100/2009 has no legal basis. In addition, Regulation No 1100/2009 should itself have been adopted by the Council acting unanimously and not by a qualified majority, as is apparent from Common Position 2007/140 which constitutes its legal basis.

154 In that regard, first, it must be borne in mind as regards Regulation No 423/2007 that, according to the case-law, Articles 60 EC and 301 EC constituted a sufficient legal basis for the adoption of Regulation No 423/2007, and it was not necessary to have recourse to Article 308 EC. Similarly, it was clear from

Article 301 EC, to which Article 60 EC referred, that Common Position 2007/140 did not constitute a legal basis for Regulation No 423/2007 and the implementing acts, such as Regulation No 1100/2009 (see, to that effect, Case C-548/09 P *Bank Melli Iran* v *Council*, paragraph 23 above, paragraphs 66 to 72).

155 As a result, both the voting rule laid down by Article 308 EC and that which applies to the adoption of Common Position 2007/140 and to its amendment are irrelevant as regards Regulation No 423/2007. Compliance with the appropriate voting rule and the other procedural conditions must therefore be verified on the basis of the wording of Article 301 EC alone, to which Article 60 EC refers.

156 According to Article 301 EC, '[w]here it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission'.

157 In the present case, the applicant does not dispute that Regulation No 423/2007 was adopted by a qualified majority, in accordance with the rule laid down by Article 301 EC. Nor is it disputed that the adoption of Regulation No 423/2007 was preceded by the unanimous adoption of Common Position 2007/140. Accordingly, it must be concluded that the conditions laid down by Article 301 EC have been complied with so far as concerns the adoption of Regulation No 423/2007.

158 Secondly, as regards Regulation No 1100/2009, it must be observed that the applicant does not dispute that it was adopted, on the basis of Article 15(2) of Regulation No 423/2007, by a qualified majority and after the applicant's name had been added to the list in Annex II to Common Position 2007/140 by Common Position 2008/479, which was adopted, in accordance with Article 7(2) of Common Position 2007/140, unanimously. Moreover, as has already been pointed out in paragraph 154 above, contrary to what the applicant claims, Common Position 2007/140 did not constitute a legal basis for Regulation No 1100/2009, and so the voting rule which it lays down is irrelevant as regards the adoption of that regulation.

159 In those circumstances, the applicant's arguments with regard to Regulation No 423/2007 and Regulation No 1100/2009 must be rejected.

160 In the second place, according to the applicant, in so far as Decision 2010/644 and Regulation No 961/2010 provide for restrictive measures against entities that are not covered by the United Nations Security Council resolutions, they should have been adopted pursuant to the procedure laid down in Article 75 TFEU rather than that laid down in Article 215 TFEU. Alternatively, the contested measures could have been based on a joint application of Articles 75 TFEU and 215 TFEU.

161 It has consistently been held that the choice of legal basis for a European Union measure must rest on objective factors which are amenable to judicial review, including the aim and the content of the measure (see Case C-130/10 *Parliament* v *Council* [2012] ECR, paragraph 42 and the case-law cited).

162 Article 75 TFEU is included in Title V of Part Three of the FEU Treaty, which concerns the area of freedom, security and justice within the European Union. It enables restrictive measures to be adopted which are intended to achieve the objectives defined by that title, which are set out in Article 67 TFEU, and only as regards preventing and combating terrorism and related activities.

163 Article 215 TFEU, on the other hand, is included in Title IV of Part Five of the FEU Treaty, which concerns external action by the Union. It enables restrictive measures to be adopted against third countries and against natural or legal persons and groups and non-State entities in order to implement a decision adopted in accordance with Chapter 2 of Title V of the EU Treaty in the field of the common foreign and security policy ('the CFSP').

164 In the present case it must be observed, as a preliminary point, that the applicant is wrong to claim that Decision 2010/644 should have been based on Article 75 TFEU, since it is an act that was adopted not pursuant to the FEU Treaty but to the EU Treaty, in particular Article 29 thereof.

165 As to Regulation No 961/2010, the Council correctly contends that the restrictive measures provided for by that regulation concern neither the objectives set out in Article 67 TFEU, nor, *a fortiori*, the prevention and combating of terrorism and related activities. They relate to the activities of the Islamic Republic of Iran – that is to say, a third country – which are linked to nuclear proliferation.

166 Furthermore, Regulation No 961/2010 was adopted in order to implement measures covered by the CFSP, namely Decision 2010/413 and Decision 2010/644.

167 Accordingly, it must be concluded that Article 215 TFEU constitutes an appropriate and sufficient legal basis for the adoption of Regulation No 961/2010, as the restrictive measures laid down by that regulation fall outside the scope *ratione materiae* of Article 75 TFEU.

168 The fact, invoked by the applicant, that the restrictive measures to which it is subject go beyond those adopted by the United Nations Security Council is irrelevant in that context.

169 On that point, it is apparent from the case-law that nothing in Articles 60 EC and 301 EC permits the inference that the powers conferred on the Community by those provisions were limited to the implementing of measures decided by the United Nations Security Council (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 10 above, paragraphs 51, 52 and 64). Those findings can be applied to the restrictive measures adopted pursuant to Article 215 TFEU, which reflects the content of Articles 60 EC and 301 EC (see, to that effect, *Parliament* v *Council*, paragraph 161 above, paragraph 51).

170 Therefore, the fact that restrictive measures adopted under the CFSP go beyond those decided by the United Nations Security Council has no impact on the appropriateness and sufficiency of Article 215 TFEU as a legal basis for those measures.

171 Furthermore, according to the case-law, the differences in the procedures applicable under Articles 75 TFEU and 215(1) TFEU mean that it is not possible for the two provisions to be applied concurrently so as to serve as a twofold legal basis for a measure such as Regulation No 961/2010 (see, by analogy, *Parliament* v *Council*, paragraph 161 above, paragraph 49).

172 In so far as the applicant further maintains in that context that recourse to Article 75 TFEU would ensure a proper level of democratic accountability through the intervention of the European Parliament, it must be noted, first of all, that it is not procedures that define the legal basis of a measure but the legal basis of a measure that determines the procedures to be followed in adopting that measure (*Parliament* v *Council*, paragraph 161 above, paragraph 80). Thus, the desire to involve the Parliament in the process of adoption of restrictive measures cannot result in the measures concerned having to be founded on a legal basis that is not applicable *ratione materiae*, such as, in this instance, Article 75 TFEU.

173 Next, the difference between Article 75 TFEU and Article 215 TFEU, so far as the Parliament's involvement is concerned, is the result of the choice made by the framers of the Treaty of Lisbon conferring a more limited role on the Parliament with regard to the Union's action under the CFSP (*Parliament* v *Council*, paragraph 161 above, paragraph 82).

174 Lastly, under Article 215(3) TFEU, the acts referred to in that article are to include necessary provisions on legal safeguards (*Parliament* v *Council*, paragraph 161 above, paragraph 83).

175 Accordingly, it must be concluded that the Council did not make a mistake as regards the legal basis for Decision 2010/644 and Regulation No 961/2010.

176 In the light of all the foregoing, the third plea in Case T-35/10 and the second plea in Case T-7/11 must be rejected as in part ineffective and in part unfounded.

The fourth plea in Case T-35/10 and the fifth plea in Case T-7/11, alleging breach of the principle of proportionality and of the applicant's right to property owing to the Council's failure to take into account the resolutions of the United Nations Security Council

177 The applicant submits that the Council breached the principle of proportionality and its right to property.

178 The Council contests the merits of the applicant's arguments.

179 According to the case-law, by virtue of the principle of proportionality, which is one of the general principles of European Union law, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures should be appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (*Bank Melli Iran* v *Council*, paragraph 10 above, paragraph 66).

180 In this instance, in the first place, the applicant submits that it is subject to restrictive measures that go beyond those provided for in the resolutions of the United Nations Security Council, even though the contested measures are supposed to reflect those resolutions. Accordingly, the restrictive measures to which it is subject are disproportionate, since the Council has not provided any objective justification for that disparity.

181 On that point, it has already been stated in paragraph 169 above that, according to the case-law, the Council was competent to adopt, pursuant to Articles 60 EC and 301 EC, restrictive measures going beyond those decided by the United Nations Security Council and, moreover, that that finding can be applied to the restrictive measures adopted pursuant to Article 215 TFEU, such as those provided for by Regulation No 961/2010 and by Regulation No 267/2012.

182 The same conclusion must be applied, by analogy, to the restrictive measures adopted pursuant to Article 29 TEU, such as those provided for by Decision 2010/413 and by the decisions adopted in order to implement it. Article 29 TEU also does not limit the powers it confers on the Council to the implementing of measures decided by the United Nations Security Council.

183 Consequently, the mere fact that the restrictive measures to which the applicant is subject go beyond those adopted by the United Nations Security Council does not mean that the Council has breached the principle of proportionality.

184 Moreover, the applicant is wrong to claim that the Council was obliged to provide 'objective justification' for the fact that it was adopting autonomous restrictive measures with respect to the applicant. According to the case-law, autonomous restrictive measures against the entities involved in nuclear proliferation pursue a legitimate objective which corresponds to those pursued by the resolutions of the United Nations Security Council, namely to prevent nuclear proliferation and its funding. They are, moreover, appropriate and necessary in order to achieve that objective (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 10 above, paragraphs 67 and 68). Accordingly, the Council was not obliged to provide the applicant with 'objective justification' but only with the actual and

specific reasons why it took the view that the criteria for the adoption of autonomous restrictive measures applied to the applicant. As is apparent from paragraphs 86 to 90 above, the Council complied with that obligation.

185 In those circumstances, the complaint that the restrictive measures to which the applicant is subject are disproportionate in that they go beyond those provided for by the United Nations Security Council must be rejected as unfounded.

186 In the second place, the applicant submits that the restrictive measures to which it is subject apply not only to its own funds but also to those of its depositors, which is incompatible with the relevant United Nations Security Council resolutions.

187 However, on the one hand, as the Council contends, Article 20(6) of Decision 2010/413, Article 9 of Regulation No 423/2007, Article 18 of Regulation No 961/2010 and Article 25 of Regulation No 267/2012 enable customers of the applicant who are not themselves caught by the restrictive measures to withdraw, under certain conditions, the funds which were deposited with the applicant before the adoption of the restrictive measures to which the applicant is subject. Consequently, the applicant's argument has no basis in fact as regards the depositors who are not caught by the restrictive measures.

188 On the other hand, as regards the depositors who are themselves subject to restrictive measures, their inability to withdraw the funds which they have deposited with the applicant and which have been frozen is not in consequence of the adoption of the restrictive measures relating to the applicant, but of those relating to the entities concerned. Therefore, that circumstance cannot affect the lawfulness of the restrictive measures concerning the applicant.

189 In the light of the foregoing, the fourth plea in Case T-35/10 and the fifth plea in Case T-7/11 must be rejected as unfounded.

The first plea in Case T-7/11, alleging infringement of Article 215 TFEU and Article 40 TEU and breach of the principle of equal treatment

190 The applicant maintains, in Case T-7/11, that by adopting Regulation No 961/2010 the Council infringed Article 215 TFEU and Article 40 TEU and breached the principle of equal treatment.

191 The Council contests the merits of the applicant's arguments.

192 First, the applicant submits that, whereas Article 215(2) TFEU provides that the Council 'may' adopt restrictive measures, which means that it has discretion in the matter, Decision 2010/413 – adopted within the framework of the CFSP – obliged the Council to adopt restrictive measures, contrary to Article 215 TFEU and, as a result, to Article 40 TEU.

193 It must be noted in that regard that, while the prior adoption of a decision in accordance with Chapter 2 of Title V of the EU Treaty is a condition that is necessary in order for the Council to be able to adopt restrictive measures under the powers conferred on it by Article 215 TFEU, the mere existence of such a decision cannot create an obligation on the part of the Council to adopt such measures.

194 The Council remains free to assess, in the exercise of the powers conferred on it by the FEU Treaty, the detailed arrangements for implementing decisions adopted in accordance with Chapter 2 of Title V of the EU Treaty, including the possible adoption of any restrictive measures based on Article 215 TFEU.

195 Consequently, the applicant is wrong to claim that Decision 2010/413 obliges the Council to adopt restrictive measures. There are no grounds, therefore, for holding that there has been an infringement of Article 215 TFEU or of Article 40 TEU.

196 Secondly, according to the applicant, contrary to the requirements of Article 29 TEU, Decision 2010/413 does not define the approach of the Union to a particular matter of a geographical or thematic nature, but imposes specific obligations on Member States and on persons under their jurisdiction. Consequently, that decision has no legal basis and the Council thus infringed Article 215(2) TFEU by taking that decision as a basis for the adoption of Regulation No 961/2010.

197 It must be noted in that regard that there is nothing in Article 29 TEU to preclude the definition of a geographical or thematic approach from also covering the actual measures to be implemented by all the Member States faced with an event or a development.

198 That is particularly the case as Article 29 TEU requires Member States to ensure that their national policies conform to the positions thus defined. The precise definition both of the measures to be taken and of the persons, entities and bodies to which those measures apply may be necessary in order to ensure consistency in the implementation of the Council's approach by all the Member States.

199 In the present case, the objective of preventing nuclear proliferation and its funding, which underlies the adoption of Decision 2010/413, is reflected, inter alia, in the freezing of the funds of certain persons, entities and bodies. The effectiveness of such measures largely depends, however, on their uniform and simultaneous implementation by all the Member States, which is dependent on a precise definition both of their content and of the persons, entities and bodies to which they relate.

200 Accordingly, it must be concluded that Decision 2010/413 complies with Article 29 TEU. As a result, the Council was able to refer to it without infringing Article 215 TFEU when it adopted Regulation No 961/2010.

201 Thirdly, the applicant submits that Regulation No 961/2010 and Regulation No 267/2012 do not contain the necessary provisions on legal safeguards, contrary to the requirements of Article 215(3) TFEU. The absence of such provisions, both in Regulation No 961/2010 and Regulation No 267/2012 and in Decision 2010/413, entails, moreover, a breach of the principle of equal treatment in relation to the entities covered by the acts imposing restrictive measures adopted pursuant to Article 75 TFEU. Against that background, Article 24 of Decision 2010/413, Article 36 of Regulation No 961/2010 and Article 46 of Regulation No 267/2012 do not constitute sufficient legal safeguards, according to the applicant, in view also of the fact that they are not actually implemented by the Council.

202 On that point, the argument as to the lack of legal safeguards in the acts in question has no basis in fact. As noted in paragraph 93 above, Article 24(3) and (4) of Decision 2010/413, Article 36(3) and (4) of Regulation No 961/2010 and Article 46(3) and (4) of Regulation No 267/2012 set out provisions to safeguard the rights of the defence of entities which are subject to restrictive measures adopted under those acts, respect for those rights being subject, moreover, to review by the Courts of the European Union.

203 Against that background, the question whether Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012 provide for the legal safeguards required by Article 215(3) TFEU is separate from the question whether those safeguards are actually implemented by the Council on the adoption of restrictive measures against particular persons, entities or bodies. Therefore, the argument concerning the lack of effective implementation of those measures is irrelevant in the context of the complaint of an infringement of Article 215(3) TFEU and of a resulting breach of the principle of equal treatment. Moreover, respect for the legal safeguards provided for by Decision 2010/413, Regulation

No 961/2010 and Regulation No 267/2012 in the context of the adoption and maintenance of the restrictive measures to which the applicant is subject has been examined in paragraphs 76 to 117 above, and consideration of the applicant's arguments has not revealed any unlawfulness that would justify the annulment of the contested measures.

204 It follows from what has just been stated that the complaint as to breach of the principle of equal treatment must be rejected, given that it rests on the incorrect factual premiss that there are no legal safeguards in Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012.

205 Therefore, it must be held that the Council has neither infringed Article 215(3) TFEU nor breached the principle of equal treatment.

206 In the light of the foregoing, the first plea in Case T-7/11 must be rejected as in part ineffective and in part unfounded.

The sixth plea in Case T-7/11, alleging that Article 23(4) of Regulation No 267/2012 is unlawful

207 The applicant claims, in Case T-7/11, that Article 23(4) of Regulation No 267/2012, which prohibits the supply of specialised financial messaging services to the persons and entities affected by the restrictive measures, is unlawful.

208 However it must be observed that, in its amendment of the heads of claim with respect to Regulation No 267/2012, lodged on 30 July 2012, the applicant neither requested the annulment of Article 23(4) of that regulation nor formally raised a plea of illegality in respect of that provision for the purposes of Article 277 TFEU. At the hearing, the applicant explained that it had mentioned the provision in question solely to illustrate the fact that Regulation No 267/2012 introduced new restrictions on the entities affected by the restrictive measures.

209 Accordingly, it must be held that, even if it were the case that the plea alleging that Article 23(4) of Regulation No 267/2012 is unlawful were well founded, that cannot have the effect that the form of order sought by the applicant must be granted.

210 Accordingly, the sixth plea in Case T-7/11 must be rejected as ineffective.

211 In the light of all the foregoing, the actions must be dismissed in their entirety.

Costs

212 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Council.

213 Under the first subparagraph of Article 87(4), the Member States and institutions which intervened in the proceedings are to bear their own costs. Accordingly, the French Republic, the United Kingdom and the Commission shall bear their own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Joins Cases T-35/10 and T-7/11 for the purpose of the judgment;

2. Dismisses the actions;

3. Orders Bank Melli Iran to bear its own costs and to pay those incurred by the Council of the European Union;

4. Orders the French Republic, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.

Pelikánová Jürimäe van der Woude

Delivered in open court in Luxembourg on 6 September 2013.

[Signatures]

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