Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

20 February 2013 *

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Entity wholly owned by an entity identified as being involved in nuclear proliferation — Plea of illegality — Obligation to state reasons — Rights of the defence — Right to effective judicial protection)

In Case T-492/10,

Melli Bank plc, established in London (United Kingdom), represented initially by S. Gadhia and S. Ashley, Solicitors, and by D. Anderson QC and R. Blakeley, Barrister, and subsequently by Ashley, S. Jeffrey, and A. Irvine, Solicitors, and by D. Wyatt QC and Blakeley,

applicant,

v

Council of the European Union, represented by M. Bishop and R. Liudvinaviciute-Cordeiro, acting as Agents,

defendant,

supported by

European Commission, represented by S. Boelaert and M. Konstantinidis, acting as Agents,

intervener,

APPLICATION for annulment of 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), Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), 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), 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) in so far as those measures concern the applicant and, further an application for a declaration of the inapplicability of Article 16(2)(a) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 to the applicant,

* Language of the case: English.

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 3 July 2012,

gives the following

Judgment

Background to the dispute

1 The applicant, Melli Bank plc, is a public limited company incorporated and having its registered office in the United Kingdom, authorised and regulated by the Financial Services Authority. It commenced its banking activities in the United Kingdom on 1 January 2002, following the conversion of the branch of Bank Melli Iran ('BMI') in that country. BMI, the parent company wholly owning the applicant, is an Iranian bank controlled by the Iranian State.

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

3 Both BMI and its subsidiaries, including the applicant, were named 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, BMI and the applicant were named in 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 (EC) No 423/2007 (OJ 2008 L 163, p. 29), as a result of which their funds were frozen.

5 Both in Common Position 2008/479 and in Decision 2008/475, the Council of the European Union adopted the following reasons as regards BMI and all its branches and subsidiaries:

'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). [BMI] 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 and 1747.'

6 The applicant brought two actions against Decision 2008/475 before the Court. Those actions were dismissed by judgment in Joined Cases T-246/08 and T-332/08 *Melli Bank* v *Council* [2009] ECR II-2629.

7 In the context of the continuation of restrictive measures against the applicant, there was considerable correspondence between the applicant and Council in the period from July 2009 to May 2010. The applicant sent to the Council letters dated 6, 15 and 24 July, 20 August and 15 October, all 2009, and 22 March 2010, to which the Council sent replies dated 23 July, 1 October and 18 November, all 2009, and 11 May 2010.

8 That correspondence concerned the reasons for the adoption and continuation of restrictive measures against BMI and the applicant. In that regard, in the letter of 23 July 2009 the Council stated that the applicant was the subject of restrictive measures because of its status as a subsidiary of BMI. In the letter of 18 November 2009, the Council stated, after review, first, that BMI was providing support to nuclear proliferation, secondly, that the applicant was owned by BMI which could exercise influence over it and, thirdly, that the alternative measures proposed by the applicant would not effectively prevent the risk of BMI circumventing the restrictive measures against it, through the applicant. The Council maintained that position in the letter of 11 May 2010.

9 Further, the applicant sought access to the Council's file. In that context, in the letter of 23 July 2009, the Council refused access to the initial proposal for the adoption of restrictive measures concerning BMI and the applicant ('the initial proposal') because that document was confidential. By letter dated 1 October 2009 the Council notified the applicant of additional reasons concerning the alleged involvement of BMI in nuclear proliferation. By letter of 18 November 2009 the Council sent to the applicant a non-confidential version of the proposal for the adoption of restrictive measures relating to the additional reasons provided in the letter of 1 October 2009 ('the additional proposal').

10 Following the adoption of 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), both BMI and the applicant were named in the list in Annex II to that Decision. The following reasons were stated in relation to BMI:

'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). [BMI] 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). [BMI] 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.'

11 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).

12 By letter of 27 July 2010 the Council informed the applicant of its listing in Annex II to Decision 2010/413.

13 By letter of 17 August 2010 the applicant asked the Council to reconsider the decision to include its name in the list in Annex II to Decision 2010/413 and to continue its listing in Annex V to Regulation No 423/2007. The applicant asked, in that context, to be provided with copies of the Council's entire file relating to the adoption of the restrictive measures against it. The applicant also repeated its offer to provide safeguards with the aim of eliminating any risk that the restrictive measures against BMI would be circumvented.

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

15 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 names of the applicant and BMI were inserted by the Council in Annex VIII to the latter regulation. Consequently, the funds and economic resources of the applicant were frozen under Article 16(2) of that regulation.

16 The reasons stated with regard to BMI in Decision 2010/644 and in Regulation No 961/2010 are the same as those stated in Decision 2010/413.

17 By letter of 28 October 2010 the Council informed the applicant that it would continue to be listed in Annex II to Decision 2010/413 and its name would be included in the list in Annex VIII to Regulation No 961/2010. The Council stated, in that regard, that the observations submitted by the applicant on 17 August 2010 did not justify the lifting of the restrictive measures against it and that its file did not contain any further information or evidence concerning it.

18 By letter of 29 July 2011 the applicant asked the Council to reconsider the decision to continue its listing in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010. The applicant repeated its offer to provide safeguards, in particular as regards the appointment and removal of its directors, with the aim of eliminating any risk that the restrictive measures against BMI would be circumvented, and stressed the efficacy and feasibility of those safeguards.

19 The listing of BMI and the applicant in Annex II to Decision 2010/413 and 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).

20 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. The Council considered that the observations submitted by the applicant on 29 July 2011 did not justify the lifting of the restrictive measures to which it was subject, inter alia because the safeguards offered by the applicant in relation to the appointment and removal of directors were not sufficient to ensure its independence vis-à-vis BMI.

21 By letter of 31 January 2012 the applicant claimed that, in its opinion, the review of the continuation of restrictive measures against it was vitiated by errors. The applicant stated, inter alia, that, again in its opinion, the Council had failed in its letter of 5 December 2011 to give reasons to the requisite legal standard for the refusal to take into consideration the additional safeguards which it had offered.

22 By judgment of 13 March 2012 in Case C-380/09 P *Melli Bank* v *Council* [2012] ECR, the Court of Justice dismissed the appeal brought by the applicant against the judgment in Joined Cases T-246/08 and T-332/08 *Melli Bank* v *Council*.

23 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 names of the applicant and BMI were inserted by the Council in the list in Annex IX to the latter regulation. The reasons stated with regard to BMI, including all its branches and subsidiaries, are the same as those stated in Decision 2010/413. Consequently, the applicant's funds and economic resources were frozen under Article 23(2) of that regulation.

24 By letter of 24 April 2012 the Council informed the applicant of the continued listing of its name in Annex II to Decision 2010/413 and its inclusion in the list in Annex IX to Regulation No 267/2012. The Council referred, on this occasion, to the arguments set out by it previously both in its correspondence with the applicant and before the General Court. The Council also drew to the applicant's attention the findings made by the Court of Justice in Case C-380/09 P *Melli Bank* v *Council*.

Procedure and forms of order sought by the parties

25 By application lodged at the Court's Registry on 7 October 2010, the applicant brought the present action.

26 By document lodged at the Court's Registry on 5 November 2010, the applicant adapted its heads of claim following the adoption of Decision 2010/644 and Regulation No 961/2010.

27 By document lodged at the Court's Registry on 14 January 2011, the European Commission sought leave to intervene in the present proceedings in support of the Council. By order of 8 March 2011, the President of the Fourth Chamber of the Court granted leave to intervene.

28 In its reply lodged at the Court's Registry on 7 March 2011, the applicant abandoned its action in so far as it sought the annulment of Implementing Regulation No 668/2010.

29 By document lodged at the Court's Registry on 31 January 2012, the applicant, first, adapted its heads of claim following the adoption of Decision 2011/783 and Implementing Regulation No 1245/2011 and, secondly, requested that the contested measures, if appropriate, be annulled with immediate effect.

30 By document lodged at the Court's Registry on 27 April 2012, the applicant adapted its heads of claim following the adoption of Regulation No 267/2012.

31 On 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 under Article 64 of the Rules of Procedure of the General Court, put questions in writing to the parties on the implications, for this case, of the judgment of 13 March 2012 in Case C-380/09 P *Melli Bank* v *Council*, paragraph 22 above, and on the admissibility of the applicant's fourth plea in law. The parties replied to the Court's questions.

32 In its reply to the Court's questions, lodged at the Court's Registry on 8 June 2012, the applicant stated that it was no longer pursuing (i) part of its complaint, within the first plea in law, of an infringement of the obligation to state reasons, the principle of respect for the rights of the defence and the right to effective judicial protection (ii) part of its complaint, within the second plea in law, of an error of assessment as regards whether the applicant was owned or controlled by BMI and (iii) the third plea in law, claiming that Article 20(1)(b) of Decision 2010/413, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 were unlawful.

33 The parties presented oral argument and replied to questions put by the Court at the hearing on 3 July 2012.

34 By order of the Court (Fourth Chamber) of 4 September 2012, the oral procedure was re-opened in order to obtain the observations of the applicant on the order of the President of the Court of Justice of 19 July 2012 in Case C-110/12 P(R) *Akhras* v *Council*, and the observations of the other parties. The oral procedure was again closed on 4 October 2012.

35 The applicant claims that the General Court should:

— annul, with immediate effect, point 5 of Table B of Annex II to Decision 2010/413, point 5 of Table I.B of the Annex to Decision 2010/644, point 5 of Table B of Annex VIII to Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012, in so far as those measures concern the applicant;

— declare that Article 16(2)(a) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 are not applicable to it;

— order the Council to pay the costs.

36 The Council and the Commission contend that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

37 In its written pleadings, the applicant relies on five pleas in law. The first plea in law is a claim of infringement of the obligation to state reasons, the principle of respect for the rights of the defence and the right to effective judicial protection. The second plea in law is a claim of an error of assessment as regards whether the applicant is owned or controlled by BMI. The third plea in law is a claim that Article 20(1)(b) of Decision 2010/413, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 are disproportionate and therefore unlawful. The fourth plea in law is a claim of an error of assessment as regards BMI's involvement in nuclear proliferation. The fifth plea in law is a claim of breach of the principle of proportionality and the applicant's right to property and right to conduct a business.

38 As stated in paragraph 32 above, the applicant has abandoned in the course of the proceedings its third plea in law and part of its complaint relied on within the first and second pleas. Since the third plea in law was the sole plea relied on in support of the second head of claim, seeking a declaration that Article 7(2)(d) of Regulation No 423/2007, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 are not applicable to it, the partial abandonment by the applicant means, furthermore, that that head of claim has become devoid of purpose.

39 The Council and the Commission consider that the applicant's pleas are unfounded. Further, in its rejoinder, the Council contended that the applicant could not validly plead a breach of its fundamental rights, since it was an emanation of the Iranian State.

40 In the first place, it is appropriate to examine the admissibility of, first, the adaptations to the applicant's claims, next, the fourth plea in law and, lastly, the Council's arguments on whether the applicant is entitled to rely on the protection of its fundamental rights.

Admissibility

Admissibility of the adaptations to the applicant's claims

41 As is clear from paragraphs 14, 15 and 23 above, since the date when the application was brought the list in Annex II to Decision 2010/413 has been replaced by a new list, adopted in Decision 2010/644, and Regulation No 423/2007 has been repealed and replaced by Regulation No 961/2010, which has

itself been repealed and replaced by Regulation No 267/2012. Further, in the recitals in the preamble of Decision 2011/783 and Implementing Regulation No 1245/2011, the Council explicitly stated that it had carried out a complete review of the list in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010 and that it had concluded that the persons, entities and bodies listed therein, including the applicant, should continue to be subject to restrictive measures. The applicant has adapted its initial claims so that its action is directed to the annulment not only of Decision 2010/413 but also of Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012 (together, 'the contested measures'). The Council and the Commission have not objected to that adaptation.

42 In that regard, it is to be borne in mind that, 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 it (see, by analogy, Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 46 and case-law cited).

43 The same conclusion applies in respect of measures, such as Decision 2011/783 and Implementing Regulation No 1245/2011, which declare that a decision or a regulation is to continue to affect directly and individually certain individual parties, further to a process of review expressly required by the decision or regulation concerned.

44 It is therefore appropriate, in the present case, to hold that the applicant may seek the annulment of Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012, in so far as those measures concern the applicant (see, to that effect and by analogy, *People's Mojahedin Organization of Iran* v *Council*, paragraph 47).

Admissibility of the fourth plea in law: error of assessment as regards the involvement of BMI in nuclear proliferation

45 By its fourth plea, the applicant maintains that the adoption of restrictive measures with respect to BMI is not justified. The applicant refers, in that regard, to actions brought before the Courts of the European Union by BMI and explains that, if BMI is no longer the subject of restrictive measures at the time when judgment in this case is delivered, the measures to which it is subject ought to be annulled.

46 That said, the applicant pleads no specific complaint in order to challenge the lawfulness of the restrictive measures against BMI. In particular the applicant expresses no view, with a sufficient degree of detail, on the additional reasons concerning the alleged involvement of BMI in nuclear proliferation of which it was notified by the Council's letter of 1 October 2009 (see paragraph 9 above), since the applicant does not even indicate whether it disputes the truth of what BMI is accused of having done or the classification of such conduct as support for nuclear proliferation.

47 In those circumstances, the Court is not in a position to rule on the fourth plea in law, in the absence of sufficiently detailed argument from the applicant. Consequently, that plea in law must be declared to be inadmissible pursuant to Article 44(1)(c) of the Rules of Procedure, as contended by the Commission.

Admissibility of the Council's arguments on the admissibility of pleas claiming breach of the applicant's fundamental rights

48 In its rejoinder, the Council contended that the applicant should be regarded as an emanation of the Iranian State and therefore could not have the benefit of fundamental rights protection and safeguards. The Council therefore considers that the pleas in the action concerning an alleged breach of those rights must be declared to be inadmissible.

49 On that point, it must be observed, first, that the Council does not dispute the actual right of the applicant to seek the annulment of the contested measures. The Council denies only that it has certain rights upon which it relies in order to obtain that annulment.

50 Secondly, the question whether the applicant does or does not have the right which it pleads as part of a plea in support of a claim for annulment does not concern the admissibility of that plea, but its merits. Consequently, the Council's argument that the applicant is an emanation of the Iranian State must be dismissed in so far as it is aimed at obtaining a declaration that the action is partly inadmissible.

51 Thirdly, that argument was raised for the first time in the rejoinder, but the Council did not claim that it was based on matters of law or fact which had come to light in the course of the procedure. Therefore, so far as the substance of the case is concerned, it is a new plea in law within the meaning of the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court, from which it follows that it must be ruled to be inadmissible.

Substance

52 Following the applicant's partial abandonment of its action and given the inadmissibility of the fourth plea in law, the Court need examine solely the first, second and fifth pleas.

53 The Court considers that, first, it should examine together the second plea, claiming an error of assessment as regards whether the applicant is owned or controlled by BMI, and the fifth plea, claiming an infringement of the principle of proportionality, the right to property and the right to conduct a business. Secondly, the first plea, claiming an infringement of the obligation to state reasons, the principle of respect for the rights of the defence and the right to effective judicial protection, must be examined.

The second plea: error of assessment as regards whether the applicant is owned or controlled by BMI and the fifth plea: an infringement of the principle of proportionality, the right to property and the right to conduct a business

54 In its reply to the Court's questions, lodged at the Court's Registry on 8 June 2012 (see paragraph 32 above), the applicant stated that, following the judgment in Joined Cases T-246/08 and T-332/08 *Melli Bank* v *Council*, it no longer maintained that it was not owned by BMI for the purposes of Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010 or that it did not belong to BMI for the purposes of Article 23(2)(a) of Regulation No 267/2012. The applicant considers none the less that the adoption and continuation of the restrictive measures against it constitutes a disproportionate restriction on its right to property and its right to conduct a business.

55 In that regard, it is clear from the case-law that when the funds of an entity identified as being engaged in nuclear proliferation are frozen, there is a not insignificant danger that that entity may exert pressure on the entities it owns or controls in order to circumvent the effect of the measures applying to it. Consequently, the freezing of the funds of such entities, as imposed by the Council by Article 20(1)(b) of Decision 2010/413, Article 16(2) of Regulation No 961/2010 and Article 23(2)(a) of

Regulation No 267/2012 is necessary and appropriate in order to ensure the effectiveness of the measures adopted and to ensure that those measures are not circumvented (see, to that effect and by analogy, judgment of 13 March 2012 in Case C-380/09 P *Melli Bank* v *Council*, paragraph 22 above, paragraphs 39 and 58).

56 Again, in accordance with the case-law, where an entity is wholly owned by an entity regarded as being engaged in nuclear proliferation, the ownership test contained in Article 20(1)(b) of Decision 2010/413 and in Article 16(2)(a) of Regulation No 961/2010 is satisfied (see, by analogy, judgment of 13 March 2012 in Case C-380/09 P *Melli Bank* v *Council*, paragraph 22 above, paragraph 79). The same conclusion must apply to the concept, to be found in Article 23(2)(a) of Regulation No 267/2012, of an entity 'belonging' to an entity considered to be involved in nuclear proliferation.

57 It follows that the adoption of restrictive measures against an entity wholly owned by, or wholly belonging to, an entity considered to be involved in nuclear proliferation (an 'owned entity') is not a consequence of an assessment by the Council as to the risk that that owned entity might be led to circumvent the effect of the measures adopted against the parent entity, but is the direct result of the implementation of the relevant provisions of Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012, as interpreted by the Courts of the European Union.

58 Accordingly, arguments which dispute the proportionality of freezing the funds of an owned entity are not directed to the lawfulness of any assessment that may have been made by the Council of the circumstances of this case. Ultimately, such arguments concern the lawfulness of general provisions, such as Article 20(1)(b) of Decision 2010/413, Article 16(2) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012, which require the Council to freeze funds of all owned entities.

59 Consequently, where an owned entity seeks to dispute the proportionality of the restrictive measures against it, it is required to invoke, within an action aimed at the annulment of the acts whereby those measures were adopted or continued, the inapplicability of those general provisions, by means of a plea of illegality under Article 277 TFEU.

60 In the present case, it is not disputed that the applicant is wholly owned by BMI or that it wholly 'belongs' to BMI. It is also not disputed that BMI was considered by the Council to be involved in nuclear proliferation.

61 It cannot however be considered that the applicant has raised a plea of illegality based on the arguments relied on within the second and fifth pleas in law.

62 First, no plea of illegality based on those arguments was expressly stated either in the applicant's written pleadings, or in its reply of 8 June 2012 to the Court's questions, or at the hearing.

63 Secondly, the arguments relied on by the applicant within the second and fifth pleas in law are based on circumstances which are peculiar to it, since they have been presented in such a way as to refer to the applicant's actual situation and to the specific measures which it proposed to the Council. Consequently, those arguments have no relevance to examination of the lawfulness of the general rules laid down in Article 20(1)(b) of Decision 2010/413, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012.

64 That being the case, the second and fifth pleas in law must be rejected as being ineffective.

The first plea: infringement of the obligation to state reasons, the principle of respect for the rights of the defence and the right to effective judicial protection

65 By its first plea, the applicant maintains that the Council is in breach of the obligation to state reasons, its rights of defence and its right to effective judicial protection since, first, the Council did not provide it with sufficient information to enable it to make effective representations on the adoption of restrictive measures against it and to afford it a fair hearing and, secondly, the regular review of the restrictive measures against it is vitiated by a number of errors.

66 The Council, supported by the Commission, contends that the applicant's arguments are unfounded. The Council maintains, in particular, that the applicant may not validly rely on the principle of respect for the rights of the defence.

67 Firstly, it must be recalled 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 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 therefore 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, Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 80 and case-law cited).

68 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the disclosure of certain information, the Council is required to inform the entity covered by restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. It must thus state the matters of fact and law which constitute the legal basis of the measures concerned and the considerations which led it to adopt them (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 67 above, paragraph 81 and case-law cited).

69 Moreover, the statement of reasons must be appropriate to the measure 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 matters of fact and law, since the question whether the statement of reasons is adequate 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 decision are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure adversely affecting him (see *Bank Melli Iran* v *Council*, paragraph 67 above, paragraph 82 and case-law cited).

70 Secondly, 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 67 above, paragraph 91).

71 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, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 93).

72 Consequently, as regards an initial measure whereby the funds of an entity are frozen, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which 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 71 above, paragraph 137).

73 It must also be observed that, when sufficiently precise information has been disclosed, 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 institution 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 67 above, paragraph 97 and case-law cited).

74 Thirdly, 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 Convention on the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 and in Article 47 of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389). The effectiveness of judicial review means that the European Union authority in question is bound to disclose 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 that decision, in order to enable the entity concerned to exercise, within the periods prescribed, its right to bring an action. Observance of that obligation to disclose 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 case-law cited).

75 In the light of that case-law, the Court considers that it is appropriate to examine, first, the preliminary arguments submitted by the Council and the Commission that the applicant cannot rely on the principle of respect for the rights of the defence. Next, the Court must examine the claimed infringement of the obligation to state reasons, the applicant's rights of defence and its right to effective judicial protection as a consequence of the fact that it was not given sufficient information concerning the adoption of restrictive measures against it. Lastly, the Court will examine the arguments relating to the defects allegedly affecting the regular review of the restrictive measures to which the applicant was subject.

– Whether the applicant may rely on the principle of respect for the rights of the defence

76 The Council and the Commission dispute the applicability of the principle of respect for the rights of the defence to the present case. Referring to Case T-181/08 *Tay Za* v *Council* [2010] ECR II-1965, paragraphs 121 to 123, they claim that the applicant was not the subject of restrictive measures because of its own activities, but because of its membership of a general category of persons and entities which had supported nuclear proliferation. Consequently, the procedure for the adoption of the restrictive measures was not initiated against the applicant within the meaning of the case-law cited in paragraph 70 above and the applicant can consequently not rely on the rights of the defence or can do so to only a limited extent.

77 That argument cannot be accepted.

78 First, the judgment of the General Court in *Tay Za* v *Council* was set aside on appeal, in its entirety, by the judgment of the Court of Justice of 13 March 2012 in Case C-376/10 P *Tay Za* v *Council*. Consequently, what is stated in that judgment is no longer part of the legal order of the European Union and cannot validly be relied on by the Council and the Commission.

79 Secondly, 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 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 67 above, paragraph 37).

80 In those circumstances, it must be concluded that the principle of respect for the rights of the defence, as stated in paragraphs 70 to 73 above, may be relied on by the applicant in this case.

– The infringement of the obligation to state reasons, the applicant's rights of defence and its right to effective judicial protection as a consequence of its not having obtained sufficient information on the adoption of restrictive measures against it

81 In its reply to the Court's questions, lodged at the Court's Registry on 8 June 2012 (see paragraph 32 and 54 above), the applicant stated that, further to the judgment of 13 March 2012 in *Melli Bank* v *Council*, paragraph 22 above, it no longer claimed that the Council had infringed the obligation to state reasons and its rights of defence on the ground that the Council had not informed it, first, of the reasons why the Council considered that it was owned by BMI and, secondly, of the evidence supporting that finding.

82 The applicant none the less claims that, notwithstanding repeated requests for information, it did not receive sufficient information on the adoption of restrictive measures with respect to BMI and, in particular, it did not receive any evidence relating to the alleged involvement of BMI in nuclear proliferation. In that regard, the applicant does not accept that the initial proposal was confidential, as contended by the Council, and states that the information disclosed on 1 October and 18 November 2009 is not adequate.

83 The applicant concludes that the disclosure of that information did not allow it to make effective representations on the adoption of restrictive measures both against it and against BMI and was not such as to afford it a fair hearing.

84 First, it must be recalled that the applicant has been the subject of restrictive measures since 23 June 2008. In correspondence between that date and the date of adoption of the first of the contested measures, namely 26 July 2010, a number of documents passed to and from the applicant and the Council, including, in particular, the Council's letters of 1 October and 18 November 2009 whereby

the Council informed the applicant of additional reasons for the adoption of restrictive measures and sent to it a non-confidential version of the additional proposal. Those documents are part of the background to the adoption of the contested measures and may, consequently, be taken into consideration in the examination of this plea.

85 It must also be observed that the basis of the restrictive measures against the applicant is twofold, namely, first, the initial proposal and secondly, the information disclosed on 1 October and 18 November 2009.

86 Since those two bases are autonomous, an infringement of the applicant's procedural rights in relation to the initial proposal, even if established, could only justify annulment of the contested measures if it was further established that the information disclosed on 1 October and 18 November 2009 was incapable, by itself, of providing a basis for the adoption of the restrictive measures against the applicant.

87 In that regard, it has already been held in paragraphs 45 to 47 above that the fourth plea in law, which disputes, inter alia, the substantive validity of the reasons notified on 1 October 2009, is inadmissible.

88 Further, as stated in paragraph 82 above, within the first plea in law the applicant disputes the sufficiency of the information disclosed on 1 October and 18 November 2009, stating in particular that those letters contained no evidence of the alleged involvement of BMI in nuclear proliferation.

89 First, it must be observed that the additional reasons for the adoption of restrictive measures, disclosed on 1 October 2009, are sufficiently detailed to satisfy the criteria laid down in the case-law as set out in paragraphs 67 to 74 above. That information makes possible the identification not only of the entities to which BMI had provided financial services and which are the subject of restrictive measures adopted by the European Union or by the United Nations Security Council, but also the period when the services concerned had been provided and, in certain cases, the specific transactions to which those services were linked.

90 Secondly, as regards the failure to disclose evidence, it must be observed that, according to the principle of respect for the rights of the defence, the Council is not required to disclose information other than that contained in its file. In the present case, the Council states, without contradiction by the applicant, that its file contains no additional evidence concerning the reasons notified on 1 October 2009.

91 In the light of the foregoing, the applicant's arguments relating to the alleged insufficiency of the information disclosed on 1 October and 18 November 2009 must be rejected as being unfounded.

92 That being the case, taking into consideration what is stated in paragraphs 85 and 86 above, the Court must also reject as ineffective the applicant's arguments challenging the failure to disclose the initial proposal.

– The defects allegedly affecting the regular review of the restrictive measures against the applicant

93 First, the applicant maintains that the Council did not undertake a genuine review of the restrictive measures against it since it relied solely on the existing information, which included information which was not disclosed to the applicant. In particular, the Council did not examine the safeguards which the applicant offered, which were capable of preventing any risk that the restrictive measures against BMI would be circumvented.

94 In that regard, first, it is clear from paragraphs 85 and 86 above that the basis of the restrictive measures against the applicant is twofold, namely, first, the initial proposal and, secondly, the information provided on 1 October and 18 November 2009. That being the case, the defects affecting the review of the reasons included in the initial proposal, even if established, have no effect on the lawfulness of the review of reasons based on the information disclosed on those dates.

95 Next, the Council claims, without contradiction by the applicant, that, before the adoption of the contested measures, the delegations of the Member States had received observations submitted by BMI and by the applicant, so that those observations could be taken into consideration. Likewise, it is clear from the Council's letters of 18 November 2009, 11 May and 28 October 2010, 5 December 2011 and 24 April 2012 that the Council examined those observations and replied to them, including a reply in relation to the additional safeguards offered by the applicant.

96 Lastly, as regards those safeguards, it must be recalled that, as stated in paragraph 57 above, the adoption of restrictive measures against an owned entity is not a consequence of an assessment by the Council as to the risk that that entity might be led to circumvent the effect of the measures adopted against its parent entity, but is the direct result of the implementation of the relevant provisions of Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012, as interpreted by the Courts of the European Union. In those circumstances, as part of the review of restrictive measures carried out by the Council, the Council was not, in any event, required to take into consideration the additional safeguards offered by the applicant in order to reduce the risk that the measures concerned might be circumvented.

97 Secondly, according to the applicant, it is clear from diplomatic cables that Member States, in particular the United Kingdom of Great Britain and Northern Ireland, were subject to pressure from the United States Government to ensure the adoption of restrictive measures against Iranian entities. That fact, it is claimed, casts doubt on the lawfulness of the measures adopted and of the procedure for their adoption.

98 The fact that some Member States were subject to diplomatic pressure, even if proved, does not imply, by itself, that such pressure affected the contested measures which were adopted by the Council or the assessment carried out by the Council when they were adopted.

99 In those circumstances, the Court must reject as unfounded the arguments that there are defects which allegedly affect the regular review of the restrictive measures against the applicant.

100 In the light of all the foregoing, the first plea in law must be rejected and the action must therefore be dismissed in its entirety, the application that the contested measures be annulled with immediate effect now being devoid of purpose.

Costs

101 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. As the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Council.

102 Under the first subparagraph of Article 87(4) of the Rules of Procedure, institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission shall bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Melli Bank plc to bear its own costs and to pay the costs of the Council of the European Union;

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

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 20 February 2013.

[Signatures]

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