Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber, Extended Composition)

12 July 2023 *

(Commercial policy – Protection against the effects of the extraterritorial application of legislation adopted by a third country – Restrictive measures taken by the United States against Iran – Secondary sanctions preventing natural or legal persons of the European Union from having commercial relationships with undertakings targeted by those measures – Prohibition on complying with such legislation – Second paragraph of Article 5 of Regulation (EC) No 2271/96 – Commission decision authorising a legal person of the European Union to comply with that legislation – Obligation to state reasons – Retroactive effect of authorisation – Account taken of the interests of the undertaking targeted by the restrictive measures of the third country – Right to be heard)

In Case T-8/21,

IFIC Holding AG, established in Düsseldorf (Germany), represented by C. Franz and N. Bornemann, lawyers,

applicant,

v

European Commission, represented by M. Kellerbauer, acting as Agent,

defendant,

supported by

Clearstream Banking AG, established in Eschborn (Germany), represented by C. Schmitt and T. Bastian, lawyers,

intervener,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

composed, at the time of the deliberations, of M. van der Woude, President, A. Marcoulli (Rapporteur), S. Frimodt Nielsen, J. Schwarcz and R. Norkus, Judges,

Registrar: S. Jund, Administrator,

* Language of the case: German.

having regard to the written part of the procedure, in particular:

– the statement in intervention of the intervener lodged at the Registry of the General Court on 31 August 2021;

– the statement of modification of the application lodged at the Court Registry on 21 June 2022 and the observations of the Commission and the intervener lodged at the Court Registry on 16 August 2022 and 1 September 2022 respectively,

further to the hearing on 1 December 2022,

having regard to the applicant's offer of evidence lodged at the Court Registry on 17 March 2023, the order of 4 April 2023 reopening the oral part of the procedure and the Commission's observations on that offer of evidence lodged at the Court Registry on 18 April 2023,

gives the following

Judgment

1 By its action based on Article 263 TFEU, the applicant, IFIC Holding AG, seeks the annulment of Commission Implementing Decision C(2020) 2813 final of 28 April 2020 granting an authorisation to the intervener, Clearstream Banking AG, pursuant to the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ 1996 L 309, p. 1) ('the first contested decision'), as well as of Commission Implementing Decision C(2021) 3021 final of 27 April 2021 granting an authorisation to the intervener pursuant to the second paragraph of Article 5 of Regulation No 2271/96 ('the second contested decision') and of Commission Implementing Decision C(2022) 2775 final of 26 April 2022 granting an authorisation to the intervener pursuant to the second paragraph of Article 5 of Regulation No 2271/96 ('the third contested decision').

Background to the dispute

2 On 8 May 2018, the President of the United States of America announced his decision to withdraw the United States of America from the Iran Nuclear Deal, signed in Vienna on 14 July 2015, and to reinstate the sanctions against Iran which had been lifted on the basis of that deal. Those sanctions prohibit, inter alia, persons outside the jurisdiction of the United States of America (secondary sanctions), such as natural or legal persons of the European Union, from doing business with persons on the 'Specially Designated Nationals and Blocked Persons List' ('the SDN list'), maintained by the Office of Foreign Assets Control (OFAC) (United States).

3 The applicant is a company entered in the register of companies of the Amtsgericht Düsseldorf (Local Court, Düsseldorf, Germany) and has its registered office in Düsseldorf. Its shares are held indirectly by the Iranian State.

4 The applicant has shareholdings in various German undertakings, by virtue of which it has a right to dividends.

5 Since 5 November 2018, the applicant has been included in the SDN list.

6 The intervener is a German company. It is responsible for the settlement of transactions in securities, the safekeeping of securities and the management of domestic and foreign securities. It is the only securities depository bank authorised in Germany. The intervener is responsible, inter alia, for the payment to the applicant of dividends from its holdings in German companies.

7 Since November 2018, the intervener has blocked on a separate account the dividends payable to the applicant and has declined to pay them to it.

8 On 6 February 2020, the applicant brought proceedings against the intervener before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany) in order to obtain information on the status of its dividends and their payment. In the course of those proceedings, the applicant learned that, in accordance with the first contested decision, the intervener was blocking the dividends payable to it.

9 The first contested decision was produced by the intervener before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) by a document dated 5 November 2020, notified to the applicant on 9 November 2020, the date on which the applicant states that it became aware of it.

10 As is apparent from the first contested decision, on 8 November 2018 the intervener submitted to the European Commission an application for authorisation for the purposes of the second paragraph of Article 5 of Regulation No 2271/96.

11 By the first contested decision, the Commission granted the intervener's application, authorising it to comply with certain laws of the United States of America concerning the applicant's securities or funds, for a period of 12 months ('the contested authorisation'). The second and third contested decisions, of which the applicant states that it became aware on 25 May 2022 before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main), the date on which those decisions were notified to it among the annexes to a pleading of the intervener, each renewed the contested authorisation for a period of 12 months.

Forms of order sought

12 The applicant claims that the Court should:

– annul the contested decisions;

– order the Commission to pay the costs;

– order the intervener to bear its own costs.

13 The Commission and the intervener contend that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

14 In support of its action, the applicant relies on four pleas in law, the first alleging an infringement of the right to be heard, the second alleging an infringement of the second paragraph of Article 5 of Regulation No 2271/96, the third alleging a breach of the duty to state reasons and the fourth alleging an error of assessment.

Preliminary observations

15 Regulation No 2271/96 aims, as stated in its sixth recital, to protect the established legal order, the interests of the European Union and those of natural and legal persons exercising rights under the FEU Treaty, in particular by removing, neutralising, blocking or otherwise countering the effects of the laws, regulations and other legislative instruments referred to in the annex of that regulation ('the laws specified in the annex') (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 35).

16 Article 1 of Regulation No 2271/96 states, in that regard, that the EU legislature seeks, by the measures provided for in that regulation, to provide protection against the extraterritorial application of the laws specified in the annex, and of actions based thereon or resulting therefrom, and to counteract their effects, where such application affects the interests of persons, referred to in Article 11, engaging in international trade and/or the movement of capital and related commercial activities between the European Union and third countries (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 36).

17 As is clear from the first to fifth recitals of Regulation No 2271/96, the laws specified in the annex to the regulation are included there because they seek to govern activities of natural and legal persons which fall within the jurisdiction of the Member States and have extraterritorial application. In so doing, they adversely affect the established legal order and harm the interests of the European Union, as well as those of the persons referred to, in violating international law and compromising the realisation of the European Union's objectives. Those objectives seek to contribute to the harmonious development of world trade and progressively to remove restrictions on international trade by promoting, to the greatest extent possible, the free movement of capital between the Member States and third countries and to remove any restrictions on direct investment – including investment in real estate – establishment, on the provision of financial services or on the admission of securities to capital markets (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 37).

18 One of the laws specified in the annex is the Iran Freedom and Counter-Proliferation Act of 2012, the application of which, as is clear from recital 4 of Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Regulation No 2271/96 (OJ 2018 L 199I, p. 1), the United States no longer waived following its withdrawal from the Iranian Nuclear Deal, as it declared on 8 May 2018 (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 38).

19 The persons referred to in Article 11 of Regulation No 2271/96 are, inter alia, first, natural persons residing in the European Union who are nationals of a Member State and, second, legal persons incorporated within the European Union (see Article 11(1) and (2) of that regulation).

20 In order to achieve the objectives recalled in paragraphs 15 to 17 above, Regulation No 2271/96 lays down a variety of rules. Thus, in order to protect the established legal order and the interests of the European Union, Article 4 of the regulation provides, in essence, that no decision external to the European Union giving effect to the laws specified in the annex or to actions based thereon or resulting therefrom, is to be recognised or enforceable. With the same aim, the first paragraph of Article 5 of the regulation essentially prohibits any person referred to in Article 11 thereof from complying with the laws specified in the annex, or actions based thereon or resulting therefrom, while the second paragraph of that Article 5 provides, however, that such a person may be authorised, at any time, to comply fully or partially with those laws, to the extent that non-compliance would seriously damage their interests or those of the European Union. In addition, with the aim of protecting the interests of the persons referred to in Article 11 of Regulation No 2271/96, Article 6 thereof provides that those of them that engage in an activity referred to in Article 1 of that regulation are to be entitled to recover any damages caused to them by the application of those laws or those actions (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 39).

21 With the same aim of protecting the interests of the persons referred to in Article 11 of Regulation No 2271/96, Article 2 thereof provides that, 'where the economic and/or financial interests of any person referred to in Article 11 [thereof] are affected, directly or indirectly, by the laws specified in the annex or by actions based thereon or resulting therefrom, that person shall inform the Commission accordingly within 30 days from the date on which it obtained such information'.

22 Finally, Article 9 of Regulation No 2271/96 seeks to ensure the effective application of those rules, by requiring the Member States to impose, in the event of breach of the rules, sanctions which must be effective, proportional and dissuasive. Such sanctions must therefore be imposed, in particular, when a person referred to in Article 11 of the regulation infringes the prohibition laid down in the first paragraph of Article 5 thereof (judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraph 40).

23 It is in the light of those considerations that the pleas raised by the applicant must be examined.

The third plea in law, alleging breach of the duty to state reasons

24 The applicant argues that the Commission failed to fulfil its duty to state reasons. The Commission did not provide sufficient reasons in the recitals of the first contested decision, in that (i) it failed to take into account the applicant's situation, but considered only the position of the intervener, and (ii) the wording of Articles 1 and 3 of the first contested decision is ambiguous and incomprehensible, as regards the temporal and material scope of that decision and the conditions for its application. The applicant states that it should be put in a position to understand the first contested decision, as the person concerned and affected by it. The applicant states that those arguments may be applied to the second and third contested decisions, in which the reasons are almost identical. Moreover, the second and third contested decisions contain a provision relating to their early termination which is vague and incomprehensible.

25 The Commission and the intervener refute those arguments.

26 Article 296 TFEU provides that legal acts adopted by the EU institutions must state the reasons on which they are based.

27 The Court has been consistently held, with regard to the duty to state reasons under Article 296 TFEU, that the statement of reasons must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (see judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 28 and the case-law cited).

28 Moreover, as is also apparent from settled case-law, the requirement to state reasons must be assessed by reference to the circumstances of the case. It is not necessary for the reasoning to go into all of the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU 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 (see judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 29 and the case-law cited).

29 It is in the light of those principles that the applicant's arguments must be assessed.

30 In the first place, the applicant alleges breach of the duty to state reasons as regards the recitals of the contested decisions.

31 First, it must be observed that the applicant does not refer specifically to any part of the contested decisions, or even to any of their recitals, but merely makes a general claim which is imprecise and non-specific. Moreover, it must be stated that the recitals in the contested decisions describe both the procedure leading to the adoption of those decisions and the elements taken into account by the Commission in that context and on the basis of which it decided to grant the contested authorisation to the intervener.

32 Second, in so far as the applicant submits that, in the recitals of the contested decisions, the Commission did not take its position into account but only that of the intervener, it must be observed that those arguments relate not to the statement of reasons for those decisions, but to the merits of those decisions and overlap with the arguments put forward in the first and fourth pleas, with which they will therefore be examined below. The same is true of the applicant's arguments relating to the elements which, in its view, the Commission wrongly took into account.

33 It follows from the foregoing that no failure to state reasons or inadequacy of the statement of reasons can be established with respect to the recitals of the contested decisions.

34 In the second place, the applicant criticises the wording of the articles of the contested decisions, in that it is not possible to ascertain from those articles the material and temporal scope of the decisions and the conditions for their application. In particular, the applicant's arguments relate to Articles 1 and 3 of the contested decisions and to Article 4 of the second and third contested decisions.

35 As regards, first, the material scope of the contested decisions and the conditions for their application, Article 1 of those decisions reads as follows:

'[The intervener] is authorised to comply with certain US laws [annexed] to the extent required to:

(1) freeze securities or monies under its custody or deposit and decline to process transfers or any instruction thereof;

(2) decline to accept any further security into its securities clearing system; and

(3) freeze any proceeds from corporate actions, including dividends, interest, redemption payment or similar payments or interest received;

where [the intervener] knows or has substantial grounds to suspect that [the applicant] would otherwise benefit or participate, directly or indirectly, from any service.'

36 The first paragraph of that article sets out the US laws specified in the annex with which the intervener is authorised to comply. That information does not appear to be insufficiently reasoned and, moreover, the applicant raises no specific objection in that regard.

37 Next, paragraphs 1 to 3 of that article list the conduct falling under the derogation which the intervener is authorised to engage in by virtue of the contested authorisation, that is to say, in essence, 'freeze' certain assets and 'decline' certain transactions, rather than providing the services which it would generally provide. That information does not appear to be insufficiently reasoned as regards the material scope of the provision, and the applicant raises no specific objection in that regard, except so far as concerns the temporal scope of that conduct, a question which will be examined below in relation to the temporal scope of the authorisation (see paragraph 46 below).

38 Lastly, the second paragraph of that article sets out the conditions under which it is possible to engage in the conduct falling under the derogation, that is to say, where the intervener 'knows' or 'has substantial ground to suspect' that the applicant would otherwise benefit from (or participate in) 'any service', directly or indirectly.

39 The applicant challenges certain terms contained in that second paragraph.

40 However, contrary to the applicant's assertions, the terms 'substantial ground to suspect' and 'any service' used by the Commission do not render that provision imprecise or incomprehensible. The wording of the second paragraph of the article in question, read together with the other paragraph of that article, makes it possible to ascertain which services are covered by the authorised conduct and the conditions laid down.

41 The fact that the contested decisions allow the intervener to rely on a 'substantial ground to suspect' does not indicate any absence or inadequacy of the statement of reasons for those decisions. As is apparent from Article 1 of the contested decisions, the concept of 'substantial ground to suspect' used in the second paragraph of that provision allows the intervener to conclude that the applicant benefits from (or participates in) certain services, without the intervener being required to be certain that this is so, by relying on a suspicion based on a substantial ground. Accordingly, there is no ambiguity in that regard.

42 Moreover, nor does the use of the concept of 'any service' in the second paragraph of Article 1 of the contested decisions give rise to any uncertainty. It is true that the Commission made no cross-reference to the first paragraph of that article or to the services referred to in that paragraph. However, that term cannot be interpreted out of context as referring to any service unrelated to the services and conduct referred to in that provision. In the scheme of that article which, moreover, constitutes a single sentence, the expression 'any service' cannot have any meaning other than that of referring to the services normally provided by the intervener which are the subject matter of the conduct that falls under the derogation and is identified in the first paragraph, where the applicant directly or indirectly benefits from or participates in those services. There is therefore no difficulty of understanding in that regard.

43 Consequently, the applicant's arguments relating to the statement of reasons for the contested decisions as regards the definition of their material scope and the definition of the conditions for their application cannot be accepted.

44 As regards, second, the temporal scope of the contested decisions, first of all, it should be pointed out that Article 3 of each of those decisions states that 'this decision is valid for a period of 12 months, starting from the date of its notification'.

45 It must therefore be held, contrary to what is suggested by the applicant, that the temporal scope of the contested decisions is clearly defined by Article 3 thereof, and that no failure to state reasons or lack of precision is discernible in that connection. It is clear from that article that each of the contested decisions is valid, and therefore that the contested authorisation applies, for a period of 12 months from the date of notification of those decisions.

46 Next, as regards the applicant's argument that the contested authorisation covers conduct engaged in or funds obtained prior to its adoption, it is sufficient to point out that that argument is based on a misunderstanding of the scope of the authorisation. It is apparent from Article 1 of the contested decisions, read together with Article 3 thereof, that, during the period of validity of those decisions, the intervener is authorised to engage in the conduct identified in Article 1 thereof and, accordingly, to refuse to provide certain services where the applicant could directly or indirectly benefit from them or participate in them. In other words, it is during that period of validity of 12 months that the intervener is authorised to 'freeze' the assets or to 'decline' the transactions referred to in the first paragraph of Article 1, irrespective of the date on which the intervener or the applicant came into possession of those assets or the date on which those transactions were requested. There is therefore no uncertainty as to the statement of reasons in that regard.

47 Finally, in the context of the second plea, the applicant criticises the allegedly vague nature of Article 4 of the second and third contested decisions, and even its allegedly incomprehensible nature in relation to the first paragraph of Article 3 of the third contested decision. Those arguments must be examined in the context of the present plea, alleging breach of the duty to state reasons.

48 In that regard, it must be stated that Article 4 of the second and third contested decisions is not vitiated by the legal defects alleged by the applicant, considered both individually and together with the first paragraph of Article 3 of the third contested decision.

49 First, Article 4 of the second and third contested decisions states that each of those decisions will immediately cease to apply if and as of the date when the applicant is removed from the SDN list within the meaning of the laws specified in the annex referred to in Article 1 of those decisions or if the extraterritorial application of the laws specified in the annex to persons in Article 11 of Regulation No 2271/96 'is suspended, waived' or 'otherwise ceases'. Contrary to the applicant's claims, Article 4 of the second and third contested decisions is not vague. The first part of that article clearly covers situations in which the applicant, as such, is no longer on the SDN list, by providing that, in such situations, those decisions immediately cease to apply. In that regard, the word 'immediately' gives rise to no uncertainty, but means that the decisions cease to apply automatically on the date on which the applicant is removed from the SDN list by decision of the United States, without the need for any further measures or review. The same applies, moreover, under the second part of Article 4, where, in essence, again by decision of the United States, the laws specified in the annex cease to have extraterritorial application in the European Union.

50 Second, nor does the relationship between Article 4 of the second and third contested decisions and the first paragraph of Article 3 of the third contested decision give rise to any difficulty of understanding. The second sentence of the latter article states that if, during the 12-month period of validity of that decision, an 'agreement' leads to the suspension, waiver or cessation, in whole or in part, of the extraterritorial application of the laws specified in the annex to the persons referred to in Article 11 of Regulation No 2271/96, the Commission is required to examine promptly whether the grounds on which the third contested decision was based are still valid or whether there are grounds for amending or terminating that decision. Accordingly, unlike Article 4 of the third contested decision, the second sentence of the first paragraph of Article 3 of that decision refers not to unilateral action by the United States, but to the effects of an 'agreement' such as, as is apparent from recital 29 of that decision, the Iranian Nuclear Deal. Moreover, unlike the situation referred to in Article 4 of that decision, the effects of the conclusion of such an 'agreement' on the third contested decision are neither immediate nor automatic; rather it would be for the Commission to determine the effects on that decision.

51 Consequently, the applicant's arguments relating to the statement of reasons for the contested decisions as regards the definition of their temporal scope cannot be accepted.

52 It follows from all of the foregoing that no failure to state reasons can be established with respect to the recitals of the contested decisions.

53 The third plea must therefore be dismissed.

The second plea in law, alleging an infringement of the second paragraph of Article 5 of Regulation No 2271/96

54 The applicant argues that the Commission infringed the second paragraph of Article 5 of Regulation No 2271/96 by granting retroactive authorisation. Neither that regulation nor Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Regulation No 2271/96 (OJ 2018 L 199I, p. 7) provides for such retroactive effect, which is also excluded by the Commission's Guidance Note entitled 'Questions and Answers: adoption of update of the Blocking Statute' of 7 August 2018 (OJ 2018 C 277I, p. 4). Moreover, the intervener claimed before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) that the first contested decision has retroactive effect. The applicant also argues that the temporal scope of the second and third contested decisions is not sufficiently precise. Furthermore, although the latter decisions contain

a provision relating to their early termination, the absence of which from the first contested decision should lead to the annulment of that decision, that provision does not clarify the situation.

55 The Commission and the intervener refute those arguments.

56 First, it is sufficient to point out that the second plea is based on erroneous premisses. It is not apparent from the contested decisions that they have retroactive effect. To the contrary, as pointed out in paragraphs 44 to 46 above, Article 3 of each of the contested decisions clearly states that those decisions are valid from the date of their notification, and only for a period of 12 months, so that they cannot be regarded as having retroactive effect or an imprecise temporal scope. Moreover, the recitals of those decisions which explain why the Commission set that period of validity contain no indication that those decisions have retroactive effect.

57 As a result, the contested authorisation has no retroactive effect and does not cover conduct that took place before the date on which the contested decisions, in particular the first contested decision, took effect, but only conduct which took place after that date.

58 In addition, the fact that, according to the applicant, the intervener defended the opposite view before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) is irrelevant in that regard, since the scope of the contested decisions can be determined only by reference to the relevant legal framework, their content and the intention of their author.

59 Similarly, on the one hand, the applicant's argument that the intervener wrongly froze its assets before obtaining the contested authorisation and, on the other hand, the intervener's argument that its conduct should not be regarded as contrary to the prohibition laid down in the first paragraph of Article 5 of Regulation No 2271/96, without taking into account the fact that an authorisation procedure was under way and the outcome of that procedure, are also both irrelevant in the context of the present dispute, which relates solely to the legality of the contested decisions and not to the intervener's conduct. Moreover, it is not for the Court to determine whether or not the intervener's conduct is contrary to Regulation No 2271/96.

60 Second, it is necessary to reject the applicant's argument that the absence from the first contested decision of a provision relating to the early termination of that decision, such as that in Article 4 of the second and third contested decisions or that in the first paragraph of Article 3 of the third contested decision, should entail the annulment of that first decision. There is no evidence before the Court to suggest that the absence of such a provision would, in itself, render the first contested decision unlawful. Moreover, it must be observed that, even in the absence of such a provision, it would have been open to the Commission to withdraw the first contested decision, in particular if a change in circumstances so required.

61 The second plea must therefore be dismissed.

The fourth plea in law, alleging an error of assessment

62 The applicant argues that the Commission failed to exercise its discretion or made an error of assessment because, first, it did not take into account the applicant's situation and interests, or the effects on it of the first contested decision, although the applicant, as a result of the first contested decision, was completely unable to carry out its activities. Nor did the Commission take into account the question whether less onerous means existed, or the question of the right

to compensation for the damage suffered. Second, the Commission should not have taken into account, as it did in recital 15 of the first contested decision, the fact that the applicant had brought an action against the intervener before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main), since the exercise of its right to a judicial remedy could not be prejudicial to the intervener.

63 The applicant claims that the intervener does not provide it with any service. Moreover, the facts referred to in recital 15 of the first contested decision demonstrate that the Commission was aware that the intervener was infringing Regulation No 2271/96.

64 The applicant states, also in relation to the second and third contested decisions, that the Commission did not use its discretion and did not carry out any review of proportionality, failing in particular to take account of the easing of the sanctions. According to the applicant, the second and third contested decisions are also based on unverified and unsubstantiated data, irrelevant factors and a one-sided presentation of certain facts.

65 The Commission and the intervener refute those arguments.

66 As a preliminary point, it must be observed that, in the fourth plea, the applicant raises various objections to the assessments contained in the contested decisions. Moreover, since, in the context of the other pleas in the action, the applicant also challenges certain assessments contained in the contested decisions, it is appropriate to examine all those arguments together below.

67 In the first place, in essence, the applicant challenges the contested decisions on the ground that the Commission did not take its interests into account, but only those of the intervener.

68 In that regard, first of all, it must be observed that the second paragraph of Article 5 of Regulation No 2271/96 provides that the grant of authorisation to comply with the laws specified in the annex is subject to the condition that non-compliance with those laws would seriously damage the interests of the person seeking the authorisation or the interests of the European Union. It is therefore apparent from that provision that it is only those two sets of interests which must be examined by the Commission in determining whether those interests would be seriously damaged by non-compliance with the laws specified in the annex, so that it may be possible to grant authorisation. By contrast, that provision does not refer to the interests of the third party targeted by the restrictive measures of the third country ('the third party targeted by the restrictive measures'), in relation to which the applicant seeks authorisation to comply with the laws specified in the annex. If the intention of the EU legislature had been to include the interests of such a third party among the interests to be taken into account in the context of that assessment, it would have expressly so stated, instead of referring exclusively to the interests of the European Union and the interests of the applicant.

69 Next, Article 4 of Implementing Regulation 2018/1101 sets out the non-cumulative criteria which the Commission takes into account when assessing an application for authorisation. That provision also refers solely to the protected interests set out in the second paragraph of Article 5 of Regulation No 2271/96, namely those of the applicant and those of the European Union, and refers neither to the third party targeted by the restrictive measures nor, a fortiori, to its interests. Moreover, none of the criteria laid down by that provision refers to any consideration of the interests of that third party, or to a balancing of its interests with those of the applicant or those of the European Union. Furthermore, the reference to 'any other relevant factor' in Article 4(n)

of Implementing Regulation 2018/1101 cannot lead to a different interpretation and to the taking into account of factors which are unrelated both to the letter and to the spirit of the second paragraph of Article 5 of Regulation No 2271/96, since such factors are irrelevant in the context of the application of that provision.

70 Finally, as is clear from the fifth and sixth recitals of Regulation No 2271/96 and from the case-law referred to in paragraph 15 above, that regulation is intended to protect only the established legal order, on the one hand, and the interests of the European Union and those of natural or legal persons exercising rights under the FEU Treaty, on the other hand.

71 While it is of course possible that the third party targeted by the restrictive measures may be a person covered by Article 11 of Regulation No 2271/96 and thus falls within the scope of certain provisions of that regulation, such as Article 2 thereof, that cannot lead, in the context of the application of the exception provided for in the second paragraph of Article 5 of that regulation, to taking into account interests other than those provided for by that regulation and is therefore irrelevant in that context.

72 Therefore, it follows from the legal framework governing the grant of authorisation under the second paragraph of Article 5 of Regulation No 2271/96 that the Commission, when assessing an application for authorisation submitted under that provision, is not required to take into account the interests of third parties targeted by restrictive measures, such as persons included in the SDN list like the applicant.

73 That finding is also consistent with that made in point 73 of the Opinion of Advocate General Hogan in *Bank Melli Iran* (C-124/20, EU:C:2021:386), according to which the second paragraph of Article 5 of Regulation No 2271/96 'does not provide that, in deciding whether to grant such an exemption, [the Commission] should take into account the interests of third parties'.

74 Moreover, it must be observed that, although the applicant claims that the Commission erroneously failed to take its interests into account, it does not validly rely on any element arising from the relevant legal framework in support of its argument. In particular, as pointed out in paragraph 69 above, Article 4 of Implementing Regulation 2018/1101, which was referred to by the applicant at the hearing, in no way supports its line of argument.

75 Consequently, the applicant's arguments do not allow the conclusion to be drawn that the Commission made an error of assessment by failing to take into account its interests.

76 In the second place, in essence, the applicant challenges the contested decisions on the ground that the Commission failed to take into account the possibility of having recourse to less onerous alternatives or the possibility for the applicant to claim compensation.

77 In that regard, it is sufficient to note that the relevant legal framework does not impose such obligations on the Commission.

78 As is apparent from Article 3 of Implementing Regulation 2018/1101, the Commission's assessment consists in ascertaining whether the evidence submitted by the applicant and, where appropriate, the additional evidence requested from the applicant by the Commission, allows the conclusion, in the light of the criteria laid down in Article 4 of that regulation, that, in the event of non-compliance with the laws specified in the annex, the interests of the applicant or of the European Union would be seriously damaged, within the meaning of the second paragraph of

Article 5 of Regulation No 2271/96. It also follows from Article 5(1) and (2) of Implementing Regulation 2018/1101 that the outcome of such an assessment follows, in essence, a binary logic: if the Commission concludes that there is insufficient evidence that serious damage to those interests would occur, it prepares a draft decision rejecting the application; if it concludes that there is sufficient evidence that such damage would occur, it prepares a draft decision granting authorisation, by laying down the appropriate measures. Accordingly, it is not apparent from the relevant legal framework that the Commission, having received an application for authorisation and having reached the latter conclusion, must examine whether there are alternatives to authorisation.

79 Moreover, the applicant does not rely on any element arising from the relevant legal framework in support of its argument.

80 Furthermore, the possible existence of less onerous alternatives for the interests of third parties appears, in any event, to be irrelevant. As pointed out in paragraphs 68 to 75 above, the Commission is not obliged to take into account the interests of third parties when assessing an application for authorisation. Accordingly, in the present case, the Commission was not required to examine whether there were less onerous alternatives for the applicant.

81 For the same reasons, the Commission was under no obligation to examine whether the applicant could have claimed any compensation, a question which is irrelevant in the context of the assessment of an application for authorisation under the second paragraph of Article 5 of Regulation No 2271/96.

82 Furthermore, the applicant submits that the Commission did not verify whether the intervener had tried to 'clarify the situation' with the American authorities. However, it must be observed that the applicant does not specify the basis for such an obligation on the part of the Commission, which is, moreover, rather vaguely formulated. There is therefore no basis for finding that the Commission was under that obligation to verify.

83 Finally, as regards the applicant's claim that the Commission did not take into account the fact that the intervener provided a service not to the applicant but rather to its depository bank, it is sufficient to point out that such an argument is based on a partial reading of the scope of the contested authorisation. As pointed out in paragraphs 38 and 42 above, the contested decisions relate to the services offered by the intervener and from which the applicant benefits (or in which the applicant participates) directly or indirectly, the latter including services which are not offered directly to the applicant, but from which the applicant benefits (or in which the applicant participates) even indirectly.

84 Consequently, the applicant's arguments do not allow the conclusion to be drawn that the Commission failed to take into account certain relevant factors in the context of its assessment of the intervener's applications for authorisation.

85 In the third place, the applicant challenges certain assessments contained in the contested decisions. The first concerns the taking into account, in the first contested decision, of the action brought by the applicant before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main). The second concerns the taking into account, in the second and third contested decisions, of factors alleged to be irrelevant or arising from a one-sided presentation of the facts.

86 First, the fact relied on by the applicant that, in recital 15 of the first contested decision, the Commission referred to the action which the applicant brought before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) does not mean that the Commission took into account the applicant's interests or, contrary to what the applicant claims, that reference to that action was prejudicial to it in the context of the Commission's assessment or that the Commission was aware of a possible infringement of Regulation No 2271/96 by the intervener. It is clear from the first contested decision that, in recital 15, the Commission merely referred to the evidence relied on by the intervener in support of its application, without making any assessment in that regard. The applicant's arguments are therefore based on erroneous premisses and unfounded claims.

87 Second, the applicant refers to recital 16 of the third contested decision, in which the Commission set out the content of the intervener's application for authorisation relating, in particular, to certain elements relied on by the intervener to demonstrate that it might face risks in the United States. These were, inter alia, transactions carried out by a 'sister company' of the intervener with the US authorities and investigations pending before those authorities. The Commission referred to those risks and elements in its assessment in recital 22 of the third contested decision. It must also be observed that those elements were, in essence, also referred to in recitals 22 to 25 of the first contested decision.

88 Contrary to the applicant's assertions, those elements are not irrelevant and the Commission did not commit an error of assessment in relying on them. On the one hand, although those elements, in that they relate to two sets of proceedings from 2014, are neither numerous nor recent, they nonetheless demonstrate that the risk of sanctions (or of having to carry out transactions to avoid such sanctions) was real in the United States. On the other hand, the fact that those elements concern a 'sister company' of the intervener, and not the intervener itself, does not invalidate the Commission's analysis. As the Commission points out, Article 4(c) of Implementing Regulation 2018/1101 expressly provides that, for the purpose of assessing the connecting link with the country which is at the origin of the laws specified in the annex, the Commission may take into account, 'for example', whether the applicant 'has parent companies or subsidiaries', which implies that the risks facing a 'sister company' of the intervener are equally relevant.

89 Moreover, the fact that, in footnotes 8 and 9 to the third contested decision, the Commission erroneously referred to the intervener instead of its 'sister company' in relation to those elements constitutes, in the present case, a clerical error which does not affect the understanding of that decision and is not capable of calling into question its legality, in the light of the content of recital 16 thereof and also recitals 22 to 25 of the first contested decision.

90 Third, the applicant refers to recital 24 of the third contested decision (which had, in part, previously been included in recital 16 of the second contested decision) and footnotes 15 and 16 thereto, concerning the changing situation in the United States after the election of the new US President in 2020. According to the applicant, the Commission had failed to take due account of the fact that the sanctions had been relaxed in February 2022 and had based its assessment on a single press article.

91 However, it must be observed, first, that the applicant's claims concerning the alleged easing of the US sanctions are not substantiated and, second, that, in recital 16 of the second contested decision and recitals 24 and 25 of the third contested decision, the Commission did in fact take into account the developments in the United States and concluded that, despite those developments,

there had been no change in the substance or the enforcement of US sanctions targeting Iran. Moreover, as the Commission points out, when each of the contested decisions was adopted, the applicant was still on the SDN list.

92 Consequently, none of the applicant's arguments provide a basis for concluding that the Commission made an error of assessment.

93 The fourth plea must therefore be dismissed.

The first plea in law, alleging an infringement of the right to be heard

94 The applicant argues that the general principle deriving from Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), according to which persons affected by a measure have the right to be heard, is applicable to it, as a person who is, in an indirect manner, adversely affected by the first contested decision. During the procedure leading to the adoption of the first contested decision, the Commission did not grant it the right to be heard, and therefore the opportunity to submit its observations. The first contested decision made no reference to its situation or to the fact that the intervener had blocked its assets without authorisation. If the Commission had heard the applicant, the Commission would have excluded the retroactive effect of the authorisation. The applicant was not heard on the 'substantial ground' referred to in the first contested decision. The applicant concludes that the first contested decision is vitiated by an infringement of an essential procedural requirement and that that infringement must result in the annulment of the first contested decision.

95 In response to the Commission, which had argued that the applicant had failed to fulfil its obligation to provide information under Article 2 of Regulation No 2271/96, the applicant states that that provision is not binding and cannot therefore entail adverse consequences for economic operators. Moreover, in the absence of information, it is impossible for operators to submit observations on an application for authorisation, the applicant having become aware of it after it had been granted. The applicant also exhausted all the means available, including for the purposes of Article 2 of Regulation No 2271/96, by applying to a competent authority of a Member State. Finally, the applicant submits that it could only speculate as to whether the Commission would have adopted a different decision.

96 The applicant claims that the Opinion of Advocate General Hogan in *Bank Melli Iran* (C-124/20, EU:C:2021:386) does not indicate that the interests of third parties should not be taken into consideration. The intervener's refusal to transfer dividends and sell securities undermined all the applicant's activities and deprived it of all value. Finally, the applicant confirms that it has submitted a complaint to the Hauptzollamt Gießen (Principal Customs Office, Giessen, Germany) and the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, Germany), and states that there are no provisions governing the manner in which the information referred to in Article 2 of Regulation No 2271/96 is to be provided to the national authorities.

97 The applicant claims that the second and third contested decisions are vitiated by the same irregularities. Its arguments therefore apply to the three contested decisions, since the Commission failed to hear it and inform it in connection with all those decisions. Moreover, having been unaware of the contested decisions, it was compelled to bring costly actions against several operators.

98 In the context of its offer of evidence of 17 March 2023, the applicant argues that the Commission heard a third party targeted by restrictive measures in the context of a similar authorisation procedure conducted under the second paragraph of Article 5 of Regulation No 2271/96, without any confidentiality obligations. Those circumstances demonstrate that it is necessary and mandatory for the Commission to hear third parties targeted by restrictive measures, such as the applicant, since a difference in treatment between such third parties is not provided for by Regulation No 2271/96 and is therefore unlawful.

99 The Commission and the intervener refute those arguments.

100 Observance of the right to be heard is a fundamental principle of EU law, now affirmed by Article 41 of the Charter, which guarantees the right to good administration (see, to that effect, judgment of 18 June 2020, *Commission* v *RQ*, C-831/18 P, EU:C:2020:481, paragraphs 64 and 65).

101 Article 41(2) provides that the right to good administration includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken.

102 As follows from its very wording, that provision is of general application. The right to be heard must be observed in all proceedings which are liable to culminate in a measure adversely affecting a person, even where the applicable legislation does not expressly provide for such a procedural requirement. That right guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely (see, to that effect, judgment of 18 June 2020, *Commission* v *RQ*, C-831/18 P, EU:C:2020:481, paragraph 67).

103 That said, it must also be observed that Article 52(1) of the Charter allows for limitations on the exercise of the rights recognised by the Charter, including the right to be heard enshrined in Article 41 thereof. However, Article 52(1) of the Charter requires that any limitation must be provided for by law and respect the essence of the fundamental right in question. It also requires that, subject to the principle of proportionality, any such limitation is necessary and genuinely meets objectives of general interest recognised by the European Union (judgment of 18 June 2020, *Commission* v *RQ*, C-831/18 P, EU:C:2020:481, paragraph 71).

104 Further, the question whether there is an infringement of the right to be heard must be examined in relation to the specific circumstances of each particular case, including the nature of the act at issue, the context of its adoption and the legal rules governing the matter in question (see, to that effect, judgments of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 34, and of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraph 33).

105 It is in the light of those principles that the first plea must be examined.

106 At the outset, it must be observed that contrary to the Commission's assertions, Article 2 of Regulation No 2271/96 has no relevance in that regard. The Commission's argument that a third party which has not informed it under that provision is 'barred' from exercising its right to be heard in proceedings under the second paragraph of Article 5 of Regulation No 2271/96 is unfounded, since the information procedure laid down by the first provision is distinct from the authorisation procedure laid down by the second provision.

107 As a preliminary point, it must be observed that neither Regulation No 2271/96 nor Implementing Regulation 2018/1101 provides, in the context of the procedure for the adoption of a decision under the second paragraph of Article 5 of Regulation No 2271/96, for the participation of third parties targeted by restrictive measures (such as third parties on the SDN list, like the applicant) in connection with which an applicant for authorisation (such as the intervener) is seeking authorisation to comply with the laws specified in the annex. Those regulations do not provide for any procedural role for such third parties, which are neither informed nor heard by the Commission in the context of the procedure for the adoption of a decision under the second paragraph of Article 5 of Regulation No 2271/96.

108 Consequently, since the relevant legal framework does not provide for third parties targeted by restrictive measures to be heard as an essential procedural requirement that is intrinsically linked to the correct formation or expression of the intention of the author of the act (see, to that effect, judgment of 10 March 2022, *Commission* v *Freistaat Bayern and Others*, C-167/19 P and C-171/19 P, EU:C:2022:176, paragraph 89), it is necessary to dismiss the applicant's argument that the fact that it was not heard constitutes, in the present case, an infringement of an essential procedural requirement which, as such, should result in the annulment of the contested decisions.

109 It must nevertheless be observed that, in accordance with the case-law referred to in paragraph 102 above, even though the applicable legislation does not expressly provide for a right to be heard, the possibility remains that third parties targeted by restrictive measures may rely on such a right in the context of the procedure leading to the adoption of a decision under the second paragraph of Article 5 of Regulation No 2271/96, if such a decision adversely affects them.

110 However, in accordance with the case-law set out in paragraph 103 above, the exercise of the right to be heard may be subject to limitations. In the present case, according to the Commission, several factors inherent in the system established by Regulation No 2271/96 justify not hearing third parties targeted by restrictive measures in the context of such a procedure. It must therefore be determined whether such a limitation of the right to be heard based on the relevant legal framework, relied on, in essence, by the Commission, can be accepted within the meaning of that case-law.

111 First, as is apparent from the examination of the fourth plea, the absence, in the context of the relevant legal framework, of provisions providing for a right to be heard for third parties targeted by restrictive measures (paragraph 107 above) forms part of a system which does not provide for the interests of those third parties to be taken into account when the Commission assesses an application for authorisation submitted under the second paragraph of Article 5 of Regulation No 2271/96. In other words, the EU legislature chose to establish a system in which the interests of those third parties are not to be taken into account and those third parties are not to be involved in procedures conducted under that provision.

112 The purpose of derogating decisions taken by the Commission under that provision is to prevent, in specific and duly justified circumstances (recital 5 of Implementing Regulation 2018/1101), serious damage to the interests of the European Union or the applicant resulting from non-compliance with the laws specified in the annex. The adoption of a decision under that article therefore meets the general interest objectives of protecting the interests of the European Union or of persons exercising rights under the FEU Treaty system against the serious damage which can result from non-compliance with the laws specified in the annex. Moreover, in the present case, in each of the contested decisions, the Commission concluded its assessment by

emphasising that granting the authorisation was in line not only with the objectives of Regulation No 2271/96, but also with the general policy objectives of the European Union (recital 38 of the first contested decision, recital 18 of the second contested decision and recital 27 of the third contested decision), which, in itself, is not disputed by the applicant.

113 In that context, as the Commission and the intervener point out, not only is the exercise of a right to be heard by third parties targeted by restrictive measures in the procedure in question inconsistent with the general interest objectives pursued by the second paragraph of Article 5 of Regulation No 2271/96, but also risks jeopardising the attainment of those objectives of protecting the interests of the European Union or of persons exercising rights under the FEU Treaty. As the Commission explains, the exercise of that right could lead to an uncontrolled dissemination of information. In particular, that could enable the authorities of the third country which enacted the laws specified in the annex to be apprised of the fact that a person has sought authorisation, within the meaning of that provision, and that that person may as a consequence not comply with the extraterritorial legislation of that third country, which would entail risks in terms of investigations and sanctions against that person and, therefore, harm to the interests of that person and, possibly, to the European Union. As the Commission argues, such a risk would still exist in particular for persons who have applied for authorisation without obtaining it, and who, being required to comply with the prohibition laid down in the first paragraph of Article 5 of Regulation No 2271/96, could be the focus of investigations and subject to sanctions by the third country.

114 In those circumstances, the limitation of the right to be heard of third parties targeted by restrictive measures in the context of the procedure for the adoption of a decision under the second paragraph of Article 5 of Regulation No 2271/96 appears to be a corollary of the system introduced by the EU legislature through that regulation and to be necessary in order to allow that regulation to achieve its objectives.

115 Second, it must be observed that no factor inherent in the personal circumstances of such third parties is directly included among the factors which must be included in an application for authorisation, for the purposes of Article 3(2) of Implementing Regulation 2018/1101 ('applications shall include the name and contact details of the applicants, shall indicate the precise provisions of the listed extra-territorial legislation or the subsequent action at stake, and shall describe the scope of the authorisation that is being requested and the damage that would be caused by non-compliance'), or among the criteria taken into account by the Commission when assessing such an application, within the meaning of Article 4 of that regulation. Although Article 4(n) of that regulation refers to 'any other relevant factor', that provision cannot be interpreted as referring to the personal circumstances of the third parties targeted by restrictive measures. The criteria laid down in Article 4 of that regulation are intended to assess whether serious damage would be caused to the protected interests referred to in the second paragraph of Article 5 of Regulation No 2271/96. However, the interests of those third parties are irrelevant in the context of that assessment (see paragraphs 68 to 72 above).

116 Moreover, in the present case, as the Commission points out and as is apparent from the contested decisions, it must be observed that the applicant is referred to in those decisions only in so far as it is on the SDN list or is identified for that purpose in the intervener's applications for authorisation (see recitals 12 to 14 and Article 1 of the first contested decision, recitals 11, 12 and 21 and Articles 1 and 4 of the second contested decision, and recitals 11 to 13 and 31 and Articles 1 and 4 of the third contested decision) and that the Commission did not take into account any factor inherent in its personal circumstances when assessing the conditions laid

down in the second paragraph of Article 5 of Regulation No 2271/96 in the light of the criteria in Article 4 of Implementing Regulation 2018/1101 (see recitals 16 to 38 of the first contested decision, recitals 14 to 18 of the second contested decision and recitals 20 to 27 of the third contested decision).

117 It follows that, in the system established by Regulation No 2271/96, in particular as regards the adoption of a decision under the second paragraph of Article 5 of that regulation, the third parties targeted by the restrictive measures do not appear to be able to rely on errors or factors relating to their personal circumstances which might support taking or not taking such a decision or its having a particular content.

118 In those circumstances, it must be held that a limitation of the right to be heard of third parties targeted by restrictive measures in the context of such a procedure does not appear, having regard to the relevant legal framework and the objectives pursued by that framework, to be disproportionate and to fail to respect the essential content of that right.

119 In addition, it must be observed, as the Commission and the intervener argue, that a decision taken under the second paragraph of Article 5 of Regulation No 2271/96, such as the contested decisions, is limited to granting the applicant authorisation to comply with the laws specified in the annex, without infringing the prohibition contained in the first paragraph of that provision. Since that authorisation does not exempt the applicant from complying with national law and, where appropriate, the other relevant provisions of EU law, the applicant's conduct which has been authorised may be subject to review, in particular in the context of national administrative proceedings or proceedings before a national court, both under national law and in the light of other relevant provisions of EU law.

120 It follows from all the foregoing factors, which are inherent in the nature of the contested decisions, the context of their adoption and the legal rules governing the matter in question, that the limitation of the right to be heard apparent from the relevant legal framework and relied on, in essence, by the Commission is, in the specific circumstances of the present case, justified within the meaning of the case-law referred to in paragraph 103 above, in that it is necessary and proportionate having regard to the objectives pursued by Regulation No 2271/96 and, in particular, by the second paragraph of Article 5 of that regulation. Therefore, the Commission was not required to hear the applicant in the context of the procedure leading to the adoption of those decisions.

121 Moreover, the fact, relied on by the applicant in the offer of evidence of 17 March 2023, that the Commission, after the hearing in the present case, heard another third party subject to restrictive measures in the context of another authorisation procedure under the second paragraph of Article 5 of Regulation No 2271/96 cannot lead to a different conclusion. Not only have the circumstances in which the Commission heard or sought out another third party in the context of another procedure not been clearly established, but, in addition, the fact relied on by the applicant is subsequent to the adoption of the contested decisions, and therefore irrelevant in the circumstances of the present case.

122 Consequently, the Commission did not infringe the applicant's right to be heard.

123 In any event, even if the Commission had been required to hear the applicant in the present case, it must be recalled that, according to the settled case-law, an infringement of the right to be heard results in the annulment of the decision taken at the end of the administrative procedure at issue

only if, had it not been for such an irregularity, the outcome of the procedure might have been different (see, to that effect, judgment of 18 June 2020, *Commission* v *RQ*, C-831/18 P, EU:C:2020:481, paragraph 105 and the case-law cited).

124 In that regard, an applicant who relies on infringement of his or her right to be heard cannot be required to show that the decision of the EU institution concerned would have been different in content but simply that such a possibility cannot be totally ruled out (see, to that effect, judgment of 18 June 2020, *Commission* v *RQ*, C-831/18 P, EU:C:2020:481, paragraph 106).

125 The assessment of that question must, moreover, be made in the light of the factual and legal circumstances of each case (see, to that effect, judgment of 18 June 2020, *Commission* v *RQ*, C-831/18 P, EU:C:2020:481, paragraph 107).

126 In the present case, the arguments put forward by the applicant do not allow the conclusion to be drawn that, had it been heard during the administrative procedure leading to the adoption of the contested decisions, it cannot be totally ruled out that those decisions could have been different in content.

127 First, the applicant argues that, if it had been heard, the Commission would not have granted the contested authorisation with retroactive effect. However, such an argument is based on an erroneous premiss, since, as is apparent from the examination of the second plea, the contested authorisation granted by the Commission in the contested decisions does not have retroactive effect.

128 Second, the applicant submits that the arguments put forward by the intervener before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) concerning the absence of a legal relationship between them contradict the contested decisions. However, the applicant has failed to explain how it could have better defended itself during the administrative procedures leading to the adoption of the contested decisions. Even assuming that, by that argument, the applicant seeks to indicate that it could have argued before the Commission that it had no legal relationship with the intervener, as the latter allegedly maintained before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main), it must be observed that such a claim would have had no bearing on the content of the contested decisions. As has already been pointed out in paragraph 83 above, the contested decisions relate also to services which are not offered directly to the applicant, but from which the applicant benefits (or in which the applicant participates) even indirectly.

129 Third, the applicant argues, in essence, that it could have informed the Commission of the fact that the intervener had blocked its funds even before obtaining the contested authorisation, in breach of Regulation No 2271/96. The applicant thus seems to suggest that such authorisation would not have been granted to an applicant which had infringed Regulation No 2271/96. However, irrespective of the fact that it is not for the Court to determine whether the intervener blocked the applicant's funds without authorisation, in breach of Regulation No 2271/96, it is sufficient to point out that, even if the applicant had been able to put forward such a claim before the Commission, that claim could not have had any bearing on the content of the contested decisions. There is nothing in Regulation No 2271/96 to suggest that a person who has infringed the prohibition laid down in the first paragraph of Article 5 of that regulation cannot obtain an authorisation within the meaning of the second paragraph of Article 5 of that regulation. Finally, since the contested authorisation granted by the Commission in the contested decisions does not have retroactive effect, it does not relate to any prior conduct of the applicant.

130 Fourth, the applicant argues that the Commission did not take into account the possibility of implementing alternative mechanisms. However, on the one hand, the applicant has failed to indicate which alternative mechanisms it could have brought to the Commission's attention if it had been heard and what impact that might have had on the content of the contested decisions, and merely refers, in a vague and unsubstantiated manner, to a mechanism known as 'INSTEX', the relevance of which the Commission also disputes. On the other hand, it should be recalled that, as pointed out in the context of the examination of the fourth plea, it is not apparent from the relevant legal framework that the Commission was required to examine or take into account the existence of alternative mechanisms. Consequently, even if the applicant had been able to put forward such an argument in the administrative procedure leading to the adoption of the contested decisions, it has not been shown that it could have had a bearing on the content of those decisions.

131 Moreover, the argument put forward by the applicant at the hearing that it could have made constructive proposals in an attempt to reach a compromise which would have made it possible, in particular, to restructure its portfolio and meet the needs of the intervener is also irrelevant, since it relates to the relationship between the applicant and the intervener and not to the content of the contested decisions.

132 Fifth, the applicant submits that the fact that it was not heard and informed of the contested decisions obliged it to bring costly actions against several economic operators in order to obtain payment of its dividends or even simply to ascertain their status. Even assuming that those claims are true, which it is not for the Court to determine in the context of the present case, it must be noted that they are irrelevant as regards the infringement of the applicant's right to be heard during the administrative procedure leading to the adoption of the contested decisions, since those claims do not relate to the question whether the content of the contested decisions could have been different.

133 Sixth, the applicant argues that the Commission took into account only the intervener's interests and not also the applicant's interests. It is sufficient to note that those arguments overlap with those put forward in the fourth plea and must therefore be dismissed. On the one hand, as is clear from the examination of that plea, the Commission was not required to take account of those interests. On the other hand, it has not been shown that, if the applicant had been able to assert its interests before the Commission, this could have had a bearing on the content of the contested decisions.

134 Seventh, the applicant submits that it was not heard in relation to the 'substantial ground' on which the Commission relied, in particular in recital 14 and Article 1 of the first contested decision, as a basis for granting the contested authorisation. However, it is sufficient to point out that the applicant's argument is based on an erroneous reading of the contested decisions, since the Commission has not based the contested decisions on the existence of a 'substantial ground'. Indeed, as is clear from paragraph 41 above, the concept of 'substantial ground' has been used in Article 1 of the contested decisions in order to define the conditions for the application of the authorisation granted by the Commission.

135 It follows from the foregoing that, even if the applicant should have been heard during the administrative procedure leading to the adoption of the contested decisions, the arguments put forward by the applicant before the Court do not allow the conclusion to be drawn that, if the applicant had been heard, the contested decisions could have been different in content.

136 Moreover, the applicant adds that, in order to comply with its right to be heard, the Commission should have published, at the very least, the operative part of the contested decisions.

137 However, without it being necessary to rule on the admissibility of such a complaint, which was contested by the Commission at the hearing, it is sufficient to note that there is no basis on which it can be found that the Commission has such an obligation to publish, and the applicant does not rely on any relevant provision in support of that complaint. Such an obligation to publish does not follow from footnote 40 to the Opinion of Advocate General Hogan in *Bank Melli Iran* (C-124/20, EU:C:2021:386), cited by the applicant at the hearing, while the rules and circumstances of the present judicial proceedings, referred to by the applicant in its submissions, are irrelevant. Moreover, the publication of the contested decisions after their adoption is not capable of affecting the exercise of any right of the applicant to be heard in the administrative procedure leading to their adoption and, furthermore, the applicant has not put forward any argument on the basis of which it is possible to conclude otherwise. For the same reasons, and in the context of the alleged infringement of the right to be heard during the administrative procedure, the applicant's argument that, in the alternative, the Commission should have communicated the contested decisions to it after their adoption must be rejected.

138 Therefore, it cannot be held that, by failing to publish or communicate the contested decisions to the applicant after their adoption, the Commission committed any procedural irregularity capable of giving rise to an infringement of the applicant's right to be heard.

139 Accordingly, the first plea must also be dismissed.

140 Consequently, the action must be dismissed in its entirety, without there being any need to rule on its admissibility, on which the parties were questioned at the hearing. In the circumstances of the case, the proper administration of justice justifies the dismissal of the action on the merits in this case without a prior ruling on its inadmissibility (see, to that effect, judgment of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraph 52).

Costs

141 Under Article 134(1) of the Rules of Procedure of the General Court, 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 bear its own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the latter.

142 Pursuant to Article 138(3) of the Rules of Procedure, the intervener is to bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders IFIC Holding AG to bear its own costs and to pay those incurred by the European Commission;

3. Orders Clearstream Banking AG to bear its own costs.

van der Woude Marcoulli Frimodt Nielsen

Schwarcz Norkus

Delivered in open court in Luxembourg on 12 July 2023.

[Signatures]