Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

11 December 2012*

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Actions for annulment — Duty to state reasons)

In Case T-15/11,

Sina Bank, established in Teheran (Iran), represented by B. Mettetal and C. Wucher-North, lawyers,

applicant,

v

Council of the European Union, represented by M. Bishop and G. Marhic, acting as Agents,

defendant,

supported by

European Commission, represented by F. Erlbacher and M. Konstantinidis, acting as Agents,

intervener,

APPLICATION for: (i) annulment of, first, Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), in so far as the latter concerns the applicant, and, second, the 'decision' in the Council's letter of 28 October 2010 concerning the applicant; and (ii) a declaration of inapplicability, as regards the applicant, of, first, Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2007 L 195, p. 39), as resulting from Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), in so far as the latter concerns the applicant, second, Article 16(2) of Regulation No 961/2010 and, third, Article 20(1)(b) of Decision 2010/413,

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 26 June 2012,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

Restrictive measures adopted against the Islamic Republic of Iran

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

Restrictive measures concerning the applicant

2 The applicant, Sina Bank, is an Iranian bank, incorporated as a public joint-stock company.

3 On 26 July 2010 the applicant was entered on the list of entities involved in the Iranian nuclear proliferation activities referred to in Article 20(1)(b) of Council Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2010 L 195, p. 39), which is set out in Annex II to that decision.

4 Consequently, the applicant was also entered on the list of legal persons, entities and bodies involved in the Iranian nuclear proliferation activities referred to in Article 7(2) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1) set out in Annex V to that regulation, with effect from the date of publication 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) in the *Official Journal of the European Union*, namely 27 July 2010. In consequence of its entry on that list, the applicant's funds and economic resources were frozen in accordance with Article 7(2) of Regulation No 423/2007.

5 The applicant's entry on the lists in Annex II to Decision 2010/413 and Annex V to Regulation No 423/2007, was based on the following grounds:

'This bank is closely linked to the interests of the "Daftar" (Leader's office: administration of around 500 officers). It thus contributes to the financing of the regime's special interests.'

6 By letter of 29 July 2010 the Council of the European Union informed the applicant that it had decided to enter the applicant on the lists of persons and entities subject to restrictive measures set out in Annex II to Decision 2010/413 and Annex V to Regulation No 423/2007 and that the grounds of those decisions appeared in the relevant parts of those annexes, a copy of which was enclosed. That letter also mentioned the possibility open to the applicant of submitting a request to the Council, together with supporting documents, by 15 September 2010, to reconsider the decisions to include the applicant on those lists.

7 By letter of 8 September 2010 the applicant informed the Council that the information on which the Council had based its decisions concerning the applicant was either incomplete or outdated. Finally, the applicant requested the Council, on the basis of up-to-date information relating to its operating methods contained in its letter and also the supporting documents, to reconsider its decisions to include the applicant on the lists.

8 After reconsidering the applicant's situation, the Council decided, on the same grounds as those already stated at paragraph 5 above, to maintain the applicant's entry on the list of entities involved in Iranian nuclear proliferation activities referred to in Article 20(1)(b) of Decision 2010/413, set out in

Annex II to Decision 2010/413, as resulting from Council Decision 2010/644/CFSP of 25 October 2010, amending Decision 2010/413 (OJ 2010 L 281, p. 81), with effect from 25 October 2010, the date of adoption of Decision 2010/644.

9 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) also maintained, on the same grounds as those already stated at paragraph 5 above, the applicant's inclusion on the list of legal persons, entities and bodies referred to in Article 16(2) of Regulation No 961/2010, set out in Annex VIII to Regulation No 961/2010, with effect from 27 October 2010, the date of the publication of Regulation No 961/2010 in the *Official Journal of the European Union*. By the effect of that regulation, the applicant's funds and economic resources continued to be frozen.

10 By letter of 28 October 2010, received by the applicant on 5 December 2010, the Council informed the applicant that, following a review of its inclusion on the lists referred to in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010, in the light of the observations in the applicant's letter of 8 September 2010, it had decided that the applicant should remain subject to the restrictive measures laid down by Decision 2010/413 and Regulation No 961/2010 and that, accordingly, its inclusion on the lists referred to in Annex II to Decision 2010/413, as resulting from Decision 2010/644, and Annex VIII to Regulation No 961/2010 ('the lists at issue'), should be maintained. The Council communicated to the applicant, in an annex to its letter, a copy of the decisions in question.

11 In its letter of 28 October 2010 the Council informed the applicant that the grounds on which it was being maintained on the lists in issue were as follows:

'The Council considers that there are no new elements on the file which would justify a change in its position. Therefore the Council considers that the reasons presented in ... Decision 2010/413 ... are still valid.'

12 By letter with acknowledgement of receipt of 6 December 2010 the applicant informed the Council that it had received no reply from the Council to its letter of 8 September 2010. The applicant also requested, as a matter of urgency, access to its file and communication of the documents supporting its inclusion or maintenance on the lists at issue. It reiterated that information and that request in a letter with acknowledgement of receipt of 20 December 2010.

13 By letter of 22 December 2010 the Council provided the applicant, in response to its letters of 6 and 20 December 2010, with a copy of its letter of 28 October 2010 in response to the applicant's letter of 8 September 2010.

14 By letter with acknowledgement of receipt of 28 December 2010 the applicant informed the Council that, first, the lack of precision in its letter of 22 December 2010 did not enable it to know the complaints against it; second, that it vigorously denied any involvement in Iranian nuclear proliferation activities or the financing of such activities; and, third, that the Council must clarify the reasons for its decisions to include or maintain the applicant on the lists at issue, specifying the complaints against the applicant. In addition, the applicant proposed a meeting in Brussels (Belgium) with the official in charge of the file, enabling the applicant to have access to it.

15 After reconsidering the applicant's situation, the Council maintained its inclusion on the lists at issue, with effect from 1 December 2011, the date of adoption of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CSFP (OJ 2011 L 319, p. 71), or from 2 December 2011, the date of publication in the *Official Journal of the European Union* of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11).

16 By application lodged at the Court Registry on 10 February 2012, the applicant brought an action for, in substance, annulment of the maintenance of its inclusion on the lists at issue, after reconsideration of its situation on the occasion of the adoption of Decision 2011/783 and Implementing Regulation No 1245/2011. That application was registered at the Registry of the General Court under reference T-67/12.

Procedure and forms of order sought

17 By application lodged at the Court Registry on 6 January 2011 the applicant brought the present action.

18 By document lodged at the Court Registry on 20 April 2011 the European Commission sought leave to intervene in the present proceedings in support of the Council. By order of 9 June 2011 the President of the Fourth Chamber of the General Court granted leave to intervene.

19 On 11 April 2011 the Council lodged its defence.

20 On 8 June 2011 the applicant lodged its reply.

21 By letter lodged at the Court Registry on 6 July 2011 the Commission stated that it agreed with the Council's defence, fully supported it and, in the interest of procedural economy, waived the right to lodge a statement in intervention.

22 On 29 July 2011 the Council lodged its rejoinder.

23 On hearing the report of the Judge-Rapporteur, the General Court decided to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 64 of its Rules of Procedure, requested the parties to reply to a number of questions. The applicant and the Council complied with that request within the prescribed time-limit. The Commission merely indicated that it would not attend the hearing.

24 The applicant and the Council presented oral argument and replied to the oral questions of the Court at the hearing on 26 June 2012.

25 The applicant claims, in substance, that the Court should:

— annul Annex VIII to Regulation No 961/2010, in so far as it concerns the applicant, and also the Council's letter of 28 October 2010, in so far as it constitutes a Council decision vis-à-vis the applicant;

— declare that Annex II to Decision 2010/413, as resulting from Decision 2010/644, in so far as it relates to the applicant, and also Article 16(2) of Regulation No 961/2010 and Article 20(1)(b) of Decision 2010/413 are inapplicable to the applicant;

— order the Council to pay the costs.

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

— dismiss, as inadmissible, the application for annulment of the 'decision' in the Council's letter of 28 October 2010 and the application for a declaration that Annex II to Decision 2010/413, as resulting from Decision 2010/644, in so far as it relates to the applicant, and also Article 20(1)(b) of Decision 2010/413 are inapplicable to the applicant;

— dismiss the remainder of the application as unfounded;

— order the applicant to pay the costs.

Law

The pleas for annulment of Annex VIII of Regulation No 961/2010, in so far as it concerns the applicant

27 These pleas should be understood as seeking annulment of the Council's inclusion of the applicant on the list appearing in Annex VIII to Regulation No 961/2010, in accordance with Article 36(2) of that regulation, so that the restrictive measures referred to in Article 16(2) of that regulation be applied to the applicant.

Admissibility

28 The Council, supported by the Commission, submits that the Court should dismiss as inadmissible the application for annulment of the 'decision' in the Council's letter of 28 October 2010 and the applications for declarations that Annex II to Decision 2010/413, as resulting from Decision 2010/644, in so far as it concerns the applicant, and Article 20(1)(b) of Decision 2010/413 are inapplicable to the applicant.

The plea of inadmissibility based on inadmissibility of the pleas for annulment of the Council's 'decision' in the letter of 28 October 2010 concerning the applicant

29 The Council, supported by the Commission, argues, essentially, that the letter of 28 October 2010 is not a measure open to challenge, within the meaning of Article 263 TFEU, since it did not produce any legal effects vis-à-vis the applicant distinct from the measures whereby the Council decided to maintain, without any amendment, the applicant's inclusion on the lists at issue. The letter merely provided information about the existence and content of the measures in question.

30 According to consistent case-law, any measure the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his legal position is an act or a decision which may be the subject of an action for annulment under Article 263 TFEU (Case 60/81 *IBM* v *Commission* [1981] ECR I-2639, paragraph 9; Case T-81/97 *Regione Toscana* v *Commission* [1998] ECR II-2889, paragraph 21). Moreover, it has been held that a measure of a purely informative character can neither affect the interests of the addressee or change his legal position compared with the situation prior to receipt of that measure (see, to that effect, order of the Court of Justice of 4 October 2007 in Case C-457/06 P *Finland* v *Commission*, not published in the ECR, paragraph 36).

31 In this case, as rightly argued by the Council, supported by the Commission, the letter of 28 October 2010 is only the measure whereby the Council communicated to the applicant, first, the maintenance, after review, of its inclusion on the lists at issue, and, in addition, the grounds for maintaining that inclusion, in accordance with Article 24(3) of Decision 2010/413 and Article 36(3) of Regulation No 961/2010. This was therefore a purely informative measure, which, as such, is not capable of forming the subject-matter of an action for annulment under Article 263 TFEU.

32 That is, however, without prejudice to the fact that the pleas for annulment of the 'decision' in the Council's letter of 28 October 2010 in relation to the applicant must be interpreted in the light of the terms used in the application and the context in which those pleas were submitted.

33 In reply to the written and oral questions of the Court, the Council did argue that the present action, formally directed against the letter of information, could not be interpreted as being, in reality, directed against the maintenance, after review, of the inclusion of the applicant on the lists at issue.

34 However, the Council failed to consider that it is apparent from the application that the action seeks, in practice, the annulment of the maintenance, after review, of the inclusion of the applicant on the lists at issue, which is at the origin of the restrictive measures taken against it.

35 At paragraph 64 of the application, the applicant has itself indicated that, by letter of 28 October 2010, the Council informed it of Decision 2010/413, as arising from Decision 2010/644, of Regulation No 961/2010 and of the fact that it would continue to be subject to the restrictive measures.

36 Moreover, the Council has not taken account of the fact that, in the context of Article 24 of Decision 2010/413 and Article 36 of Regulation No 961/2010, it entered on the lists at issue the person or body to which it wanted the measures freezing funds and economic resources contained in those provisions applied, then it communicated that entry and the grounds for it to the person or entity concerned.

37 In the light of the above considerations, it is appropriate in this case to interpret the pleas for annulment of the 'decision' as regards the applicant in the Council's letter of 28 October 2010 as being directed not at the letter as such but at the maintenance, after review, of the inclusion of the applicant on the lists at issue, for the purposes of applying to it restrictive measures under Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010, and at the grounds for maintaining that inclusion, which were communicated to the applicant by the letter of 28 October 2010.

38 In accordance with Article 275(2) TFEU and Article 263(4) and (6) TFEU, the applicant has the capacity to bring an action for the annulment of those inclusions.

39 Consequently, this Court must dismiss as unfounded the plea of inadmissibility raised by the Council, supported by the Commission, against the pleas for annulment of the 'decision' in the Council's letter of 28 October 2010 in respect of the applicant, which must be interpreted, in this case, as seeking annulment of the maintenance, after review, of the inclusion of the applicant on the lists at issue.

On the pleas of inadmissibility based on inadmissibility of the pleas for a declaration of inapplicability as regards the applicant of Annex II to Decision 2010/413, as resulting from Decision 2010/644, in so far as the latter concerns the applicant, and Article 20(1)(b) of Decision 2010/413, and on the admissibility of the pleas that Article 16(2) of Regulation No 961/2010 should be declared inapplicable to the applicant

40 The Council, supported by the Commission, maintains that the pleas that Annex II to Decision 2010/413, as resulting from Decision 2010/644, in so far as it concerns the applicant, and Article 20(1)(b) of Decision 2010/413 be declared inapplicable to the latter are inadmissible in so far as they are not accompanied by pleas for annulment of the individual measure whereby it decided to keep the applicant included on the list in Annex II to Decision 2010/413, as resulting from Decision 2010/644. It maintains that Article 277 TFEU, which allows a party to challenge the legality of a measure of general scope by pleading its inapplicability to the said party, is ancillary in character and should thus be raised in support of an action for annulment directed against the individual measure taken in respect of the applicant on the basis of the measures of general scope the legality of which it challenges in the particular case.

41 As a preliminary observation, it should be recalled that, under Article 113 of the Rules of Procedure, the General Court may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding, which, according to the case-law, would include lack of

jurisdiction of the EU judicature to hear an action (Joined Cases 154/78, 205/78, 206/78, 226/78 to 228/78, 263/78, 264/78, 31/79, 39/79, 83/79 and 85/79 *Valsabbia and Others* v *Commission* [1980] ECR 907, paragraph 7; Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289, paragraph 80) and questions concerning the admissibility of the action (Case 6/60 *Humblet* v *État belge* [1960] ECR 559, 570). Review by the General Court is thus not limited to absolute bars to proceeding raised by the parties (order in Case T-387/00 *Comitato organizzatore del convegno internazionale* v *Commission* [2002] ECR II-3031, paragraph 36). However, the EU judicature cannot, in principle, base its decision on a plea in law or an absolute bar to proceeding, even as a matter of public policy, without having first invited the parties to submit their observations (see, to that effect, Case C-89/08 P *Commission* v *Ireland and Others* [2009] ECR I-11245, paragraphs 50 to 59; Case C-197/09 RX II *Review M* v *EMEA* [2009] ECR I-12033, paragraph 57).

42 Although the basis of the pleas referred to by the Council's pleas of inadmissibility, supported by the Commission, has not been expressly stated in the application, it cannot, having regard to their formulation, reside in anything other than Article 277 TFEU, according to which 'any party may, in proceedings in which an act of general application adopted by an institution ... of the Union is at issue, plead the grounds specified in Article 263, second paragraph, in order to invoke before the [EU judicature] the inapplicability of that act'. In reply to the written and oral questions of the General Court, the applicant and the Council have, moreover, confirmed that those pleas corresponded, in substance, to pleas of illegality raised in support of pleas for annulment of the inclusion, or the maintenance, after review, of the inclusion of the applicant in the lists at issue.

43 Concerning, first, the plea of illegality of Annex II to Decision 2010/413, as resulting from Decision 2010/644, in so far as the latter concerns the applicant, it should be stated that, by the latter, the applicant raises, in substance, the inapplicability of the maintenance of its inclusion on the list in Annex II to Decision 2010/413, as resulting from Decision 2010/644. According to consistent case-law, Article 277 TFEU gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being attacked, if that party was not entitled under Article 263 TFEU to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void (Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraph 39). It may, further, be inferred from the case-law that the remedy of the plea of illegality is open only in the absence of any other available remedy (see, to that effect, Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraph 17; Case C-239/99 *Nachi Europe* [2001] ECR I-1197, paragraph 37; Case C-441/05 *Roquette Frères* [2007] ECR I-1993, paragraph 40; Case T-120/99 *Kik* v *OHIM (Kik)* [2001] ECR II-2235, paragraph 26). In this case, under the second paragraph of Article 275 TFEU, the applicant has the right to bring a direct action for annulment of the measure against which it claims to raise an objection of illegality. It follows that it cannot admissibly plead the illegality of that measure.

44 Consequently, and without it being necessary to rule on the Council's plea of inadmissibility, supported by the Commission, this Court must dismiss as inadmissible the pleas seeking a declaration that Annex II of Decision 2010/413, as resulting from Decision 2010/644, is inapplicable in so far as it concerns the applicant. That is without prejudice to the examination of the substance of the pleas for annulment of the maintenance, after review, of the inclusion of the applicant on the list in Annex II to Decision 2010/413, as resulting from Decision 2010/644, which have been validly brought by the applicant (see paragraphs 37 to 39 above).

45 Concerning, second, the pleas of illegality against Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010, it should be noted that those latter provisions provide for the freezing of funds and economic resources of the 'persons and entities …, as listed in Annex II' to Decision 2010/413 or 'in Annex VIII' to Regulation No 961/2010. They thus appear, with regard to the applicant, which is not referred to in them by name, as acts of general scope for the purposes of

Article 277 TFEU. They apply to objectively determined situations and have legal effects in relation to categories of persons and entities envisaged in a general and abstract manner (see, to that effect and by analogy, Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 9). The applicant does not have the right to bring a direct action, under Article 263 TFEU, against those provisions, which nevertheless constitute one of the legal bases of its inclusion or maintenance, after revision, on the lists at issue. Those inclusions were made for the purposes of applying the restrictive measures referred to in Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010. Consequently, those are measures the inapplicability of which may be pleaded by the applicant on the basis of Article 277 TFEU.

46 However, in order to determine whether the applicant may rely, in support of an action against an individual measure, on the irregularity of the general decision on which the latter is based, it needs to be examined in particular whether the applicant raises against that general decision one of the four pleas for annulment referred to in the second paragraph of Article 263 TFEU (see, to that effect, Case 9/56 *Meroni* v *High Authority* [1957 and 1958] ECR 133). In the event, in its application, the applicant did not state what were the pleas or arguments, provided for in the second paragraph of Article 263 TFEU, specifically supporting its claims that Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010 were unlawful. Moreover, the applicant has been unable to reply to the written and oral questions of the General Court requesting it to identify, in the application at first instance, the pleas or arguments specifically supporting those pleas of illegality.

47 Consequently, those pleas of illegality cannot be regarded as complying with the requirement of a summary of the pleas in law on which the application is based, as set out in Article 44(1)(c) of the Rules of Procedure.

48 By this plea raised of the Court's own motion, it is therefore necessary to dismiss as inadmissible the pleas of illegality against Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010 raised by the applicant.

49 It follows from the whole of those considerations that the action is admissible only in so far as it seeks annulment of the inclusion or maintenance after review of the applicant on the lists at issue ('the contested measures'). For the remainder, the action must be dismissed as inadmissible.

Substance

50 In support of its action, the applicant makes four pleas in law for the annulment of the contested measures. The first plea claims manifest error of assessment, resulting from the fact that the Council included or maintained it on the lists at issue without it fulfilling the substantive criteria permitting such inclusion. The second plea claims that it was treated differently from other Iranian banks not included on the lists at issue, from the Daftar (office of the Leader of the Islamic revolution, hereinafter referred to, respectively, as 'the Leader's office' and 'the Leader') and from the Mostaz'afan Foundation of the Islamic Republic of Iran ('the Foundation') and in an identical manner with other Iranian banks included on the lists at issue. The third plea claims infringement of the principle of respect for the rights of the defence, of the right to effective judicial protection and the duty to state reasons, arising from the fact that the applicant did not have communicated to it either the precise grounds or the evidence and documents justifying its inclusion or maintenance on the lists at issue. The fourth plea claims infringement of the right to property and the principle of proportionality, resulting from the fact that, in any event, the freezing of its funds and economic resources unnecessarily and disproportionately affected its right to property.

51 For reasons of the sound administration of justice, economy of procedure and convenience, it is appropriate to examine the third plea first. In that plea, the applicant makes three claims, alleging, first, infringement of the principle of respect for the rights of the defence, second, infringement of the

right to effective judicial protection, and, third, infringement of the duty to state reasons, arising from the fact that the Council adopted the contested measures without communicating to it the precise grounds, the evidence and the documents justifying its inclusion or maintenance on the lists at issue.

52 For the same reasons as set out in paragraph 51 above, it is appropriate to begin by examining the third complaint in the third plea, claiming infringement of the duty to state reasons.

53 By the latter, the applicant maintains that, in adopting the contested measures, the Council infringed the essential formal requirement that it communicate to the person concerned the reasons for inclusion on the lists at issue, giving it the opportunity to submit its comments, as expressly recalled in Article 36(3) of Regulation No 961/2010. It argues that the grounds invoked in support of the contested measures are too brief, vague, imprecise or evasive to count as a statement of reasons. The Council did not state in what way the applicant was supposedly linked to the Leader's office or contributed to nuclear proliferation, or even merely 'strategic interests of the regime'. It did not mention what the alleged support consisted of (supplying financial services, including proposing letters of credit and keeping accounts), or the alleged beneficiaries of that support. The Council's attempts to remedy that lack of reasoning in the course of the present legal proceedings cannot be taken into account, the applicant submits, without undermining the right to a fair legal process and the principle of the equality of parties before the EU judicature.

54 The Council, supported by the Commission, disputes the applicant's arguments, and pleads that the third complaint of the third plea should be dismissed as unfounded.

55 As a preliminary observation, it should be recalled that the freezing of funds and economic resources has considerable effects for the entities concerned, as it may restrict the exercise of their fundamental rights (Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraph 49).

56 The principle of effective judicial protection means that the EU authority which adopts an act imposing restrictive measures against a person or entity is bound to communicate the grounds on which it is based, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after it has been adopted in order to enable those persons or entities to exercise their right to bring an action (*Bank Melli Iran* v *Council*, cited in paragraph 55 above, paragraph 47 and case-law cited). In any event, the reasoning for the measure must be provided to the person concerned by the measure before the latter brings an action against it. Non-compliance with the duty to state reasons cannot be regularised by the fact that the person concerned becomes cognisant thereof during proceedings before the EU judicature (see, to that effect, Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 80 and case-law cited).

57 It is with a view to compliance with the right to effective judicial protection that Article 24(3) of Decision 2010/413 and Article 36(3) of Regulation No 961/2010 require the Council to give individual and specific reasons which justify the measures freezing funds and economic resources, taken in accordance with Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010, and to bring them to the knowledge of the persons, entities and bodies concerned by those measures (see, to that effect and by analogy, *Bank Melli Iran* v *Council*, paragraph 55 above, paragraph 48). It is clear from the case-law that it is by an individual communication that the Council must perform, in this case, its obligation under Article 24(3) of Decision 2010/413 and Article 36(3) of Regulation No 961/2010 (see, to that effect and by analogy, *Bank Melli Iran* v *Council*, cited in paragraph 55 above, paragraph 52).

58 In this case, the Council indicated to the applicant, by the letter of 28 October 2010, that the contested measures were based on the fact that '[t]he Council considers that there are no new elements on the file which would justify a change in its position [with regard to the freezing of the applicant's funds and economic resources]. Therefore ... the reasons presented in ... Decision 2010/413 ... are still valid'.

59 That letter does not give the specific and individual reasons which justify the freezing of the applicant's funds and economic resources. However, it is apparent from the case-law that the statement of reasons must. In particular, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (*Bank Melli Iran* v *Council*, cited in paragraph 56 above, paragraph 82 and case-law cited).

60 In this case, account must therefore be taken of the fact that, first, a copy of Decision 2010/413 was annexed to the letter of 28 October 2010 and, second, at the time when the applicant received that letter, Decision 2010/413 had already been published in the *Official Journal of the European Union*, namely on 27 July 2010. Thus, the applicant was in a position to take cognisance of the grounds set out in Decision 2010/413 to justify the decision to freeze its funds and economic resources, as already set out in paragraph 5 above.

61 Moreover, in its defence, the Council acknowledged that it did not have 'any other information concerning the applicant, in addition to the information mentioned in the Council's statement of reasons for the applicant's [inclusion on the lists at issue]'. No additional ground was therefore communicated to the applicant before the present action was brought.

62 In so far as, before the General Court, the Council claims to support the contested measures on the basis of evidence produced by the applicant in support of its action, which is claimed to show that the Leader indirectly controls the applicant, through the intermediary of the Foundation, it is important to note that, in accordance with the case-law cited in paragraph 56 above, that complement to the argument cannot be taken into account for the purposes of perfecting the argument, which might be insufficient, contained in the contested measures since it was communicated to the applicant after the bringing of the present action.

63 Therefore, the Court must reply to the claim alleging infringement of the duty to state reasons having regard only to the grounds set out in paragraph 5 above.

64 In that respect, it should be remembered that, in order to fulfil its function, which is to guarantee compliance with the right to effective judicial protection, the statement of reasons must, first, provide the person concerned with sufficient information to defend his rights and 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 EU judicature and, secondly, enable the latter to review the lawfulness of that measure (*Bank Melli Iran* v *Council*, cited in paragraph 56 above, at paragraph 80). It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. (*Bank Melli Iran* v *Council*, cited in paragraph 56 above, at paragraph 82).

65 It follows that the reasoning of the contested measures must be assessed having regard in particular to the provisions on the basis of which they were adopted, namely, respectively, Article 20(1)(b) of Decision 2010/413 and Article 16(2) of Regulation No 961/2010, which must, themselves, be interpreted taking account of their wording, the context in which they were adopted and the aims pursued by the legislation of which they form part (Case C-380/09 P *Melli Bank* v *Council* [2012] ECR, paragraph 38 and case-law cited).

66 Article 20(1)(b) of Decision 2010/413 and Article 16(2)(a) of Regulation No 961/2010 require the Council to freeze the funds and economic resources of natural and legal persons, entities and organisations which have been recognised as being 'engaged in, directly associated with, or providing support for, [nuclear proliferation] activities' or 'owned or controlled by [the latter] including through illicit means, or acting on their behalf or at their direction', the Council assessing on a case-by-case

basis whether one or other of those conditions has been met in respect of each person, entity or organisation concerned (see, to that effect and by analogy, *Melli Bank* v *Council*, cited in paragraph 65 above, paragraphs 39 and 40).

67 It follows that the individual and specific reasons which the Council is required to give, pursuant to Article 24(3) of Decision 2010/413 and Article 36(3) of Regulation No 961/2010 (see paragraph 55 above), are those relating to the inclusion of the persons, entities and organisations concerned on the lists at issue, that is to say to engagement in, direct association with or support for nuclear proliferation or, concerning entities owned or controlled by, or acting on behalf of or under instructions from others, those reasons which caused it to consider that the condition of ownership, control or acting on behalf of or under instructions from others was met (see, to that effect and by analogy, *Melli Bank* v *Council*, cited in paragraph 65 above, paragraph 43).

68 It is apparent from consistent case-law that, in order correctly to perform its obligation to give reasons for a measure imposing restrictive measures, the Council must mention the elements of fact and law on which the legal justification of those measures depends and the considerations which led it to take them (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 56 above, paragraph 81 and case-law cited). It follows that, in principle, the statement of reasons for such a measure must concern not only the legal conditions for applying restrictive measures, but also the specific and concrete reasons why the Council considers, in the exercise of its broad discretion, that the person concerned should be subject to such measures (see, to that effect and by analogy, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 146; Case T-49/07 *Fahas* v *Council* [2010] ECR II-5555, paragraph 53; Case T-86/11 *Bamba* v *Council* [2011] ECR II-2749, paragraph 47).

69 Thus, a measure freezing funds and economic resources adopted by the Council cannot be regarded as being sufficiently reasoned unless the Council mentions the elements of fact and law which have led it to consider, as the case may be, that the person, entity or organisation concerned has participated in, been directly associated with, or supported nuclear proliferation, or that that person, entity or organisation was owned or controlled by, or acted on behalf of or under the instructions of, a person, entity or organisation engaged in, being directly associated with, or supporting, nuclear proliferation.

70 It is apparent from the grounds communicated to the applicant before the bringing of this action, by the letter of 28 October 2010, that the contested measures were based on 'the reasons presented in Decision … 2010/413', namely the following reasons: '[The applicant] is closely linked to the interests of the "Daftar" (Leader's office: administration of around 500 officers). It thus contributes to the financing of the regime's special interests'. At the hearing, the Council stated that it had thus intended to base the contested measures on a dual reason, first that the applicant was effectively controlled by the Iranian regime and, second, that it could be inferred, with near certainty, from such control that the applicant financed nuclear proliferation. It follows that the Council's intention was to base the contested measures, first, on the applicant's participation in, direct association with, or support for nuclear proliferation and, second, on control of the applicant by a person or entity engaged in, being directly associated with, or supporting those same activities, which is identified in the grounds communicated to the applicant as the Leader's office. That dual reason was well understood by the applicant, which denies, first, being under the control of persons, entities or organisations which participated in, were directly associated with, or supported nuclear proliferation, such as the Iranian authorities, and, second, having participated in, been directly associated with or supported nuclear proliferation.

71 Concerning, first, the grounds communicated to the applicant which refer to control of the applicant by persons, entities or organisations having participated in, been directly associated with, or supporting nuclear proliferation, the latter are not sufficiently specific and concrete to allow the applicant and the Court to understand the reasons which led the Council to consider that that criterion was fulfilled in this case.

72 According to the Council, '[the applicant] is closely linked to the interests of the "Daftar" (Leader's office: administration of around 500 officers'. However, the concept of being 'linked to the interests of' a third party is, in itself, vague and imprecise. It is not evidently and directly connected to the concept of 'control' referred to in Article 20(1)(b) of Decision 2010/413 and Article 16(2)(a) of Regulation No 961/2010. The Council has not mentioned any precise and concrete element attesting to any control exercised by the Leader's office over the applicant.

73 In the context of this case, recourse to the concept of 'linkage to the interests' of the 'Daftar (Leader's office: administration of around 500 officers)' is all the more vague and imprecise in that the said office has not been identified, as such, as a person, entity or organisation engaged in, being directly associated with or supporting nuclear proliferation. As the applicant has correctly observed, the Leader's office does not appear on the lists at issue, whereas other entities exercising political responsibilities in Iran or other government organs were included on those lists, on the ground that they constituted persons, entities or organisations having participated in, being directly associated with, or supporting nuclear proliferation. Moreover, the Council has not specified the concrete means allegedly enabling the Leader's office, as such or through the intermediary of its members, to control the applicant so that it act in accordance with its interests and, in particular, that it provide financial support to nuclear proliferation.

74 In so far as the applicant admits in its pleadings that it was and still is partially owned by the Foundation, itself directed by the Leader, and the Council purports, in these proceedings, to rely on those factors to justify the contested measures, it must be held that those grounds are new, since the Council never communicated to the applicant, before the bringing of this action, grounds concerning the links existing between it and the Leader, through the intermediary of the Foundation, but only grounds based on the links existing between it and the Leader's office. The links existing between the Leader, the Foundation and the applicant were never mentioned by the Council before the bringing of this action and may even have been unknown to the latter until that latter date. Even if those links were sufficient to justify the freezing of the applicant's funds and economic resources, the fact remains that they constitute new grounds, raised out of time, and cannot, for that reason, be upheld by the General Court, in accordance with the case-law cited in paragraph 56 above.

75 Therefore, it is not possible, in the absence of any other specific and concrete factor communicated by the Council, to judge the foundation of the contested measures, in so far as the latter are based on the links existing, for the purposes of Article 20(1)(b) of Decision 2010/413 and Article 16(2)(a) of Regulation No 961/2010, between the applicant and the Iranian regime, merely from the grounds actually communicated by the Council, namely that '[the applicant] is closely linked to the interests of the "Daftar" (Leader's office: administration of around 500 officers).'

76 That first type of grounds communicated to the applicant cannot therefore be regarded as providing a sufficient statement of reasons for the contested measures.

77 Concerning, second, the grounds communicated to the applicant which relate to the latter's participation in, direct association with or support for nuclear proliferation, those grounds are not sufficiently specific and concrete to enable the applicant and the General Court to understand the reasons which led the Council to consider that one or other of the statutory criteria for establishing that a person, entity or organisation is directly involved in nuclear proliferation was fulfilled in this case.

78 According to the Council, the applicant 'contributes to the financing of the regime's special interests'. Even if, as the applicant observes, that ground evokes merely its supposed contribution 'to the financing of the regime's special interests' and not to nuclear proliferation, the fact remains, as the Council argues, that the latter activity is necessarily included within the concept of the 'regime's special interests'. Consequently, this ground could be interpreted as meaning that the Council was actually accusing the applicant of contributing to the financing of nuclear proliferation.

79 In so far as the Council attempts to infer the applicant's 'contribution' to the 'financing' of nuclear proliferation from the fact that it is 'closely linked to the interests of the ... Leader's office', it should be noted that, for the same reasons as set out in paragraphs 73 to 76 above, the contested measures have not been justified to a sufficient legal standard, since the connected interests at issue have not been sufficiently specified and concretised to enable the applicant and the General Court to assess whether the said measures are well founded on that point.

80 Even if it was the Council's intention to establish the applicant's contribution to the financing of nuclear proliferation, it did not in any event provide any specific and concrete evidence of the financing of that activity by the applicant, concerning, for example, the nature, amount or destination of the financing.

81 That second type of grounds communicated to the applicant can therefore serve no better than the first to provide sufficient justification for the contested measures.

82 Consequently, it must be held that the contested measures have not been justified to a sufficient legal standard by the Council, which has therefore infringed the obligation to communicate the grounds, incumbent on it under Article 24(3) of Decision 2010/413 and Article 36(3) of Regulation No 961/2010, and the duty to state reasons, which is more generally incumbent upon it in respect of the measures which it adopts.

83 In the light of the above, this Court must uphold the third complaint of the third plea, claiming infringement of the duty to state reasons, and therefore annul the contested measures on that basis, without there being any need to rule on the first and second complaints of the third plea or on the first, second and fourth pleas of the action.

84 As regards the temporal effects of annulment of Annex VIII to Regulation No 961/2010, in so far as the latter concerns the applicant, it should be remembered that the latter implies the annulment of the applicant's very inclusion on the list appearing in that annex. That inclusion is of the same nature as Regulation No 961/2010, which is of general scope and Article 41, second paragraph, of which provides that it is binding in all respects and directly applicable in all Member States, which corresponds to the effects of a regulation, as provided in Article 288 TFEU.

85 By virtue of Article 60, second paragraph, of the Statute of the Court of Justice of the European Union, by derogation from Article 280 TFEU, decisions of the General Court annulling a regulation, or even only a provision of a regulation, take effect only as from the expiry of the time-limit for an appeal laid down by the first paragraph of Article 56 of that Statute, or, if an appeal has been introduced within that time-limit, as from the dismissal of the latter. The Council will thus have a period of 2 months, plus the time-limit for distance of 10 days, as from the notification of this judgment, to remedy the infringement found herein, by adopting a new restrictive measure in respect of the applicant.

86 In this case, the risk of a serious and irreversible undermining of the effectiveness of the restrictive measures imposed by Annex VIII to Regulation No 961/2010 on the applicant does not appear to be sufficiently high, bearing in mind the major impact of those measures on the rights and freedoms of the latter, to justify maintaining the effects in the said regulation in its regard during a period going beyond that laid down by Article 60, second paragraph, of the Statute of the Court of Justice (see, by analogy, Case T-316/11 *Kadio Morokro* v *Council*, not published in the ECR, paragraph 38).

87 Under Article 264, second paragraph, TFEU, the General Court may, if it considers necessary, indicate which of the effects of the annulled measure must be regarded as definitive.

88 In this case, the existence of a difference between the date of effectiveness of the annulment of Annex VIII to Regulation No 961/2010 and that of Annex II to Decision 2010/413, as resulting from Decision 2010/644, would be likely to entail a serious undermining of legal certainty, those two measures imposing identical measures on the applicant.

89 The effects of Annex II to Decision 2010/413, as resulting from Decision 2010/644, must therefore be retained as regards the applicant until the annulment of Annex VIII to Regulation No 961/2010 takes effect (see, by analogy, *Kadio Morokro* v *Council*, cited in paragraph 86 above, paragraph 39).

Costs

90 Under Article 87(3) of the Rules of Procedure, the General Court may order that the costs be shared or that each party bear its own costs if each party succeeds on some and fails on other heads.

91 As the action has been only partially upheld (see paragraph 49 above), it is fair in the circumstances of the case to decide that the Council must bear two thirds of the applicant's costs and two thirds of its own costs. The applicant must bear one third of its own costs and one third of the Council's costs.

92 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. **Annuls Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, as resulting from Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413, and Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007, in so far as the latter concern Sina Bank;**

2. **Orders that the effects of Annex II to Decision 2010/413, as resulting from Decision 2010/644, be maintained in relation to Sina Bank until annulment of Annex VIII to Regulation No 961/2010 takes effect;**

3. **Dismisses the action as to the remainder;**

4. **Orders the Council to bear two thirds of the costs incurred by Sina Bank and two thirds of its own costs;**

5. **Orders Sina Bank to bear one third of its own costs and one third of the Council's costs;**

6. **Orders the European Commission to bear its own costs.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 11 December 2012.

[Signatures]