Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

6 September 2013*

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Rights of the defence — Right to effective judicial protection)

In Case T-24/11,

Bank Refah Kargaran, established in Tehran (Iran), represented by J.-M. Thouvenin, lawyer,

applicant,

v

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

defendant,

supported by

European Commission, represented initially by F. Erlbacher and M. Konstantinidis, and subsequently by A. Bordes and M. Konstantinidis, acting as Agents,

intervener,

APPLICATION for (i) a declaration that Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39) is inapplicable to the applicant; (ii) annulment of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), and Council Regulation (EU) No 1263/2012 of 21 December 2012 amending Regulation No 267/2012 (OJ 2012 L 356, p. 34), and of all future regulations which might supplement or replace those regulations pending final judgment in the action, in so far as those acts concern the applicant; (iii) annulment of Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71), Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), and Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413 (OJ 2012 L 356, p. 71), and of all future measures which might supplement or replace those measures pending final judgment in the action, in so far as those measures concern the applicant; and (iv) annulment of the decisions contained in the letters of 28 October 2010 and 5 December 2011,

* Language of the case: French.

THE GENERAL COURT (Fourth Chamber),

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

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 12 March 2013,

gives the following

Judgment

Background to the dispute

1 The applicant, Bank Refah Kargaran, is an Iranian bank.

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

3 On 26 July 2010, the applicant was entered on the list of entities involved in nuclear proliferation in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

4 Consequently, the applicant was entered on the list in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), by means of Council 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). As a result of that listing, the funds and economic resources of the applicant were frozen.

5 In Decision 2010/413, the Council of the European Union gave the following reasons as regards the applicant:

'[The applicant] has taken over ongoing operations from Bank Melli in the wake of the sanctions imposed on the latter by the European Union.'

6 The following reason was given in relation to the applicant in Implementing Regulation No 668/2010:

'[The applicant] took over Bank Melli's outstanding transactions following the sanctions imposed on the latter bank by the European Union.'

7 By letter of 27 July 2010, the Council informed the applicant of its inclusion in the list in Annex II to Decision 2010/413 and in that in Annex V to Regulation No 423/2007.

8 By letter of 8 September 2010, the applicant asked the Council to remove it from the list in Annex II to Decision 2010/413 and from that in Annex V to Regulation No 423/2007.

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

10 Since Regulation No 423/2007 was repealed by Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran (OJ 2010 L 281, p. 1), the applicant was included by the Council in Annex VIII to the latter regulation. Consequently, the applicant's funds and economic resources were frozen pursuant to Article 16(2) of that regulation.

11 The reasons stated in Regulation No 961/2010 are the same as those stated in Decision 2010/413.

12 By letter of 28 October 2010, the Council replied to the applicant's letter of 8 September 2010 stating that, following a review, it rejected the applicant's request to have its name removed from the list in Annex II to Decision 2010/413 and from that in Annex VIII to Regulation No 961/2010. The Council stated that, as the file did not contain any new information justifying a change in its position, the applicant was to remain subject to the restrictive measures laid down in those acts.

13 By letter of 12 January 2011, the applicant asked the Council to disclose to it the information on which the Council had relied when adopting the restrictive measures against it.

14 By letter of 22 February 2011, in reply to that request, the Council sent the applicant a copy of a proposal for the adoption of restrictive measures submitted by a Member State.

15 On 29 July 2011, the applicant sent the Council a further request for removal of its name from the list in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010. It invoked, in that regard, the fact that the information disclosed on 22 February 2011 was insufficiently detailed.

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

17 By letter of 5 December 2011, the Council informed the applicant that its name would continue to be listed in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010. The Council stated that, in the absence of new information, the reasons set out in those acts remained valid.

18 By letter of 13 January 2012, the applicant again submitted its observations and requested disclosure of all the information on which the Council had relied when adopting Decision 2011/783 and Implementing Regulation No 1245/2011.

19 The Council replied to the applicant's request by letter of 21 February 2012, enclosing three documents.

20 Since Regulation No 961/2010 was repealed by Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ 2012 L 88, p. 1), the applicant was included by the Council in Annex IX to the latter regulation. The reasons stated are the same as those stated in Decision 2010/413. Consequently, the applicant's funds and economic resources are frozen pursuant to Article 23(2) of that regulation.

21 The listing of the applicant's name in Annex II to Decision 2010/413 and Annex IX to Regulation No 267/2012 was not affected by the coming into force of Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413 (OJ 2012 L 356, p. 71), and of Regulation (EU) No 1263/2012 amending Regulation No 267/2012 (OJ 2012 L 356, p. 34).

Procedure and forms of order sought by the parties

22 By application lodged at the Court Registry on 19 January 2011, the applicant brought the present action.

23 By document lodged at the Court Registry on 3 May 2011, the European Commission sought leave to intervene in the present proceedings in support of the Council. By order of 8 July 2011, the President of the Fourth Chamber of the General Court granted leave to intervene.

24 By document lodged at the Court Registry on 16 February 2012, the applicant amended its claims and supplemented its arguments following the adoption of Decision 2011/783 and Implementing Regulation No 1245/2011.

25 By document lodged at the Court Registry on 31 May 2012, the applicant amended its claims and supplemented its arguments following the adoption of Regulation No 267/2012.

26 By order of the President of the Fourth Chamber of the Court of 26 February 2013, after the parties had been heard, the present case and Cases T-4/11 and T-5/11 *Export Development Bank of Iran* v *Council* were joined for the purposes of the oral procedure, pursuant to Article 50 of the Rules of Procedure.

27 The parties presented oral argument and replied to the questions put by the Court at the hearing on 12 March 2013.

28 At the hearing, the applicant amended its claims and supplemented its arguments following the adoption of Decision 2012/829 and Regulation No 1263/2012.

29 The applicant claims that the Court should:

— declare that Decision 2010/413 is inapplicable to it;

— annul Regulation No 961/2010, Regulation No 267/2012 and Regulation No 1263/2012 and all future regulations which might supplement or replace those regulations pending final judgment in the action, in so far as they concern the applicant;

— annul Article 16(2)(a) and (b) of Regulation No 961/2010 and Article 23(2)(a) and (b) and (4) of Regulation No 267/2012, in so far as those provisions concern the applicant;

— annul Decision 2010/644, Decision 2011/783, Implementing Regulation No 1245/2011, Annex IX to Regulation No 267/2012 and Decision 2012/829 and all future measures which might supplement or replace those measures, in so far as they concern the applicant, pending final judgment in the action;

— annul the decisions contained in the letters of 28 October 2010 and 5 December 2011;

— order the Council to pay the costs.

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

— dismiss the action;

— order the applicant to pay the costs.

Law

Admissibility

Admissibility of the application for annulment of future measures

31 As regards the application, made by the applicant at the hearing, for any future measure that might supplement or replace the contested measures to be annulled, it should be observed that only actions for annulment of an act in existence adversely affecting the applicant may be brought before the Court. Accordingly, even if the applicant may be permitted, under certain conditions (see paragraph 49 below), to reformulate its claims so that they seek annulment of acts which have, during the proceedings, replaced the acts initially challenged, that solution cannot authorise the speculative review of the lawfulness of hypothetical acts which have not yet been adopted (order in Case T-22/96 *Langdon* v *Commission* [1996] ECR II-1009, paragraph 16, and judgment in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 32).

32 Consequently, the claims for annulment of any future measure that might supplement or replace the measures contested in the present proceedings must be dismissed as being inadmissible.

Admissibility of the applicant's second and third heads of claim

33 By its second and third heads of claim, the applicant asks the Court, first, to annul Regulation No 961/2010, Regulation No 267/2012 and Regulation No 1263/2012 and, secondly, to annul Article 16(2)(a) and (b) of Regulation No 961/2010 and Article 23(2)(a) and (b) and (4) of Regulation No 267/2012, in so far as those measures and provisions concern the applicant.

34 The fourth paragraph of Article 263 TFEU provides that any natural or legal person may, under the conditions laid down in the first and second paragraphs of that provision, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

35 In the first place, with regard to the application for annulment of Regulation No 961/2010 and Regulation No 267/2012 in so far as they concern the applicant, according to the case-law, those regulations at the same time resemble both measures of general application, in that they impose on a category of addressees, determined in a general and abstract manner, a prohibition on, inter alia, making available funds and economic resources to the persons and entities named in the lists contained in their annexes, and also a bundle of individual decisions affecting those persons and entities (see, to that effect, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraphs 241 to 244). It must, in addition, be recalled that, as regards measures adopted on the basis of provisions relating to the Common Foreign and Security Policy, such as Regulation No 961/2010 and Regulation No 267/2012, it is the individual nature of those measures which, in accordance with the second paragraph of Article 275 TFEU and the fourth paragraph of Article 263 TFEU, permits access to the Courts of the European Union.

36 It follows that the applicant, which is named in Annex VIII to Regulation No 961/2010 and Annex IX to Regulation No 267/2012, is entitled to seek the annulment of those two regulations, in so far as they concern the applicant.

37 In the second place, as regards the application for annulment of Article 16(2)(a) and (b) of Regulation No 961/2010 and of Article 23(2)(a) and (b) and (4) of Regulation No 267/2012, in so far as those provisions concern the applicant, it should be stated, first of all, that it cannot be interpreted as a plea of illegality in respect of those provisions, since the applicant does not merely claim that they are unlawful, but expressly seeks their annulment.

38 Next, still with regard to that same application, it should be pointed out that none of the three situations referred to in the fourth paragraph of Article 263 TFEU, as set out in paragraph 34 above, arises in the present case.

39 First, the applicant is not the addressee of those provisions.

40 Secondly, it is true that the applicant is directly and individually concerned by the regulations at issue inasmuch as it is expressly named in their annexes in which the names of the persons and entities covered by the restrictive measures are set out. However, that consideration does not apply to the provisions in respect of which the applicant is expressly seeking annulment, which apply to a category of persons referred to in a general and abstract manner, that is, the categories of persons and entities defined in Article 16(2) of Regulation No 961/2010 and Article 23(2) and (4) of Regulation No 267/2012, or all of the economic operators that may maintain commercial relationships with those entities or with Iran. Consequently, those provisions are, so far as concerns the applicant, general in nature.

41 Thirdly, without there being any need to determine whether those provisions are regulatory acts within the meaning of the fourth paragraph of Article 263 TFEU, it should be stated that they entail implementing measures. Thus, in order for the restrictive measures laid down therein to be applicable to specific individuals, the latter have to be included or maintained in the lists set out in the annexes to those regulations, as is apparent from Article 36(2) of Regulation No 961/2010 in the case of the restrictions imposed by Article 16(2) of that regulation, and from Article 46(2) of Regulation No 267/2012 in the case of the restrictions imposed by Article 23(2) of that regulation. In the present case, such implementing measures were adopted, so far as concerns the applicant, in the form of the various measures by which it was included or maintained, after review, in the lists set out in Annex VIII to Regulation No 961/2010 and in Annex IX to Regulation No 267/2012 respectively.

42 Consequently, the applicant is not entitled to seek the annulment of Article 16(2)(a) and (b) of Regulation No 961/2010 or of Article 23(2) and (4) of Regulation No 267/2012.

43 Those findings are not called in question by the fact that the applicant has stated that it is challenging the provisions at issue only in so far as they concern the applicant. The fact that they have been applied to the applicant does not alter their legal nature as measures of general application.

44 In the third place, as regards Regulation No 1263/2012, it should be observed that it inserts into Regulation No 267/2012 additional restrictive measures against Iran, without, however, altering Annex IX to the latter regulation and without the Council having carried out a review of that annex. Although those additional measures may increase the degree to which the applicant is affected by its inclusion in the lists of persons and entities covered by the restrictive measures, they are nevertheless general in nature, like Article 16(2)(a) and (b) of Regulation No 961/2010 and Article 23(2)(a) and (b) and (4) of Regulation No 267/2012. Therefore, the applicant is likewise not entitled to seek annulment of Regulation No 1263/2012.

45 It follows that the applicant's third head of claim must be dismissed as inadmissible, as must the second head of claim, in so far as it covers Regulation No 1263/2012.

The amendments to the applicant's claims

46 As is clear from paragraphs 9, 10 and 20 above, since the application was brought, the list in Annex II to Decision 2010/413 has been replaced by a new list, adopted in Decision 2010/644, and Regulation No 423/2007, as amended by Implementing Regulation No 668/2010, has been repealed and replaced by Regulation No 961/2010, which has itself been repealed and replaced by Regulation No 267/2012. Further, in the recitals in the preambles to Decision 2011/783 and Implementing Regulation No 1245/2011, the Council explicitly stated that it had carried out a complete review of the list in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010 and that it had concluded that the persons, entities and bodies listed therein, including the applicant, should continue to be subject to the restrictive measures. The applicant amended its initial claims so that its application for annulment relates not only to Decision 2010/644, but also to Decision 2011/783, Implementing Regulation No 1245/2011, Annex IX to Regulation No 267/2012 and Decision 2012/829. The Council and the Commission have raised objections only as regards the amendment concerning the last of those measures.

47 It should be observed in this connection that, when a decision or a regulation of direct and individual concern to an individual is replaced, during the proceedings, by another measure with the same subject-matter, this is to be considered a new factor allowing the applicant to adapt its claims and pleas in law. It would be contrary to the principle of due administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application. Moreover, it would be inequitable if the institution in question were able, in order to counter criticisms of a measure, contained in an application to the Courts of the European Union, to amend the contested measure or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later measure or of submitting supplementary pleadings directed against that measure (see, by analogy, Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 46 and the case-law cited).

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

49 It is therefore appropriate, in the present case, to hold that the applicant may also seek the annulment of Decision 2011/783 and Implementing Regulation No 1245/2011, including it and maintaining it on the lists of persons covered by the measures for the freezing of funds, as annexed to Regulation No 961/2010, and of Annex IX to Regulation No 267/2012, in so far as those acts concern the applicant (see, to that effect and by analogy, *People's Mojahedin Organization of Iran* v *Council*, cited at paragraph 47 above, paragraph 47).

50 By contrast, Decision 2012/829 does not replace an earlier measure of direct and individual concern to the applicant and nor was it adopted further to a complete review of the lists of persons subject to the restrictive measures. That decision only contains provisions relating to financial institutions established in the territory of the European Union, and an addition to the list of persons covered by restrictive measures set out in Annex II to Decision 2010/413. Consequently, it is not of either direct or individual concern to the applicant and the applicant is not entitled, as the Council contended at the hearing, to amend its claims to seek its annulment.

Substance

51 By its fourth head of claim, to the extent that it is admissible (see paragraph 32 above), the applicant asks the Court, in essence, to annul the measures including and maintaining it on the lists of persons covered by the measures for the freezing of funds. In addition, by its second head of claim, to the extent that it is admissible (see paragraphs 32 and 44 above), the applicant asks the Court to annul Regulation No 961/2010 and Regulation No 267/2012, in so far as they concern the applicant. However, it is apparent from the considerations set out in paragraph 35 above that the applicant is concerned by those measures precisely because it is expressly named in their respective Annexes VIII and IX. Accordingly, the second head of claim is in fact indissociable from the fourth.

52 Finally, the applicant's fifth head of claim seeks annulment of the decisions allegedly contained in the letters of 28 October 2010 and 5 December 2011. Since it is by those two letters that the applicant was informed that it would be maintained on the lists of persons covered by the measures for the freezing of funds, after the adoption of Decision 2010/644 and Regulation No 961/2010, and of Decision 2011/783 and Implementing Regulation No 1245/2011 respectively, and those letters do not, therefore, contain any independent decision, the fifth head of claim is in fact indissociable from the fourth.

53 On that basis, the applicant puts forward five pleas in law, alleging (i) infringement of Article 215 TFEU; (ii) breach of the obligation to state reasons, of the rights of the defence and of the right to effective judicial protection; (iii) errors of law and of assessment; (iv) breach of the principle of proportionality and of the right to respect for property; and (v) breach of the principle of equal treatment.

54 The Council and the Commission contest the merits of the applicant's pleas in law. They further maintain that, as an emanation of the Iranian State, the applicant cannot rely on fundamental rights protection and guarantees.

55 The Court considers that it is appropriate first to examine the second plea, alleging breach of the obligation to state reasons, of the rights of the defence and of the right to effective judicial protection. However, as a preliminary point, it is necessary to examine whether the applicant may rely on fundamental rights protection and guarantees.

Whether the applicant may rely on fundamental rights protection and guarantees

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

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

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

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

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

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

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

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

64 The Council contends that the applicant is, in fact, owned and controlled by the Iranian State or Government, inasmuch as its 'General meeting' is composed of various members of the Iranian Government. Moreover, according to the Council, the applicant runs a public service under the control of the Iranian authorities since it has as its aim the promotion of Iranian foreign trade in connection with cooperation with developing countries. In addition, the provision of banking services is fundamental for economic activities and society in general.

65 However, neither the fact that the Iranian State owns the majority of the applicant's share capital, nor the fact that the banking services provided by it are necessary to the operation of a State's economy confers on those activities the status of a public service or implies that the applicant participates in the exercise of governmental powers.

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

The second plea in law, alleging breach of the obligation to state reasons, of the rights of the defence and of the right to effective judicial protection

67 The applicant claims, first, that it was not given a hearing before it was included in Annex VIII to Regulation No 961/2010; secondly, that the statement of reasons provided is inadequate; and, thirdly, that, despite its earlier requests, it was given access to the Council's file only after the expiry of the period for bringing the action.

68 As regards, in particular, the statement of reasons, the applicant claims, in essence, that it is not in a position to understand the basis on which it was included in the lists of persons covered by the measures for the freezing of funds, that the inadequacy of the statement of reasons was not remedied by the documents disclosed at a later stage and that the letter of 5 December 2011 that the Council sent to it is formulaic.

69 The Council, supported by the Commission, disputes those arguments.

70 It is appropriate to examine, first of all, the claim alleging breach of the obligation to state reasons.

71 It must be recalled, in this connection, that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for by the second paragraph of Article 296 TFEU and, more particularly in the present case, by Article 24(3) of Decision 2010/413, Article 15(3) of Regulation No 423/2007, Article 36(3) of Regulation No 961/2010 and Article 46(3) of Regulation No 267/2012, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the measure is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Courts of the European Union and, secondly, to enable the latter to review the lawfulness of that measure. The obligation to state reasons thus laid down constitutes an essential principle of European Union law which may be derogated from only for compelling reasons. The statement of reasons must, therefore, in principle be notified to the person concerned at the same time as the act adversely affecting him, for a failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the Courts of the European Union (see, to that effect, Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 80 and the case-law cited).

72 Consequently, unless overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations militate against the communication of certain matters, the Council is bound to apprise an entity that is subject to restrictive measures of the actual and specific reasons why it takes the view that they had to be adopted. It must thus state the facts and points of law on which the legal justification of the measures in question depends and the considerations which led the Council to adopt them (see, to that effect, *Bank Melli Iran* v *Council*, cited at paragraph 71 above, paragraph 81 and the case-law cited).

73 Moreover, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person, which enable him to understand the scope of the measure concerning him (see *Bank Melli Iran* v *Council*, cited at paragraph 71 above, paragraph 82 and the case-law cited).

74 It must be observed at the outset that, in order to assess whether the obligation to state reasons has been fulfilled, it is necessary to take into consideration not only the reasons stated in the contested measures but also the proposal for the adoption of restrictive measures sent by the Council to the applicant.

75 First, it is apparent from the proposal, as disclosed to the applicant, that it was submitted to the delegations of the Member States in the context of the adoption of the restrictive measures affecting the applicant and that it constitutes, consequently, evidence on which those measures are based.

76 Secondly, it is true that the proposal was disclosed to the applicant both after the adoption of Decision 2010/644 and Regulation No 961/2010 and after the action was brought. Therefore, it cannot validly supplement the reasons stated for Decision 2010/644 and Regulation No 961/2010. It may, however, be taken into consideration for the assessment of the legality of the later measures, namely, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012.

77 In relation to the applicant, the contested measures set out a single reason: that it has taken over ongoing operations from Bank Melli in the wake of the sanctions imposed on the latter by the European Union.

78 The proposal for the adoption of restrictive measures sent on 22 February 2011 matches the statement of reasons in the contested measures.

79 Finally, the letter of 5 December 2011 sent to the applicant states merely that, following a review, the Council decided that the applicant should continue to be subject to the restrictive measures provided for under Decision 2010/413 and Regulation No 961/2010, since there was nothing new on the file which would justify a change in its position, and the reasons for inclusion in the annexes to those two measures therefore remained valid.

80 The single reason put forward by the Council is not sufficiently detailed, inasmuch as it does not specify how 'taking over' is to be construed with regard to banking operations, or which of Bank Melli's operations the applicant has allegedly taken over, or who were the third parties whom the transactions at issue were ultimately to benefit. Furthermore, the letter of 5 December 2001, sent to the applicant, does not contain any additional information such as to justify the measures imposed on the applicant.

81 As regards the meaning of 'taking over' ongoing banking operations, the Council stated at the hearing, in response to a question put by the Court, that that notion covered the fact of taking over those Bank Melli operations that had been blocked because of the restrictive measures, in the context of complex transactions that might relate to all of the operations provided by a bank in connection with long-term transactions, such as letters of credit or financing. Clearly, however, those statements are just as general as those contained in the single reason given, and do not provide, in particular, any clarification as to the specific nature of the services allegedly provided by the applicant. It must be pointed out, in that regard, that letters of credit or financing were mentioned only by way of example and that the Council did not identify any specific operation purportedly 'taken over' from Bank Melli and carried out by the applicant.

82 Accordingly, it must be held that the Council is in breach of the obligation to state reasons provided for in the second paragraph of Article 296 TFEU, Article 24(3) of Decision 2010/413, Article 15(3) of Regulation No 423/2007, Article 36(3) of Regulation No 961/2010 and Article 46(3) of Regulation No 267/2012, and of the obligation to disclose to the applicant, as the entity concerned, the evidence used against it as regards the reason given for the fund-freezing measures decided upon in its case.

83 It follows that the second plea in law must be upheld in so far as it alleges a breach of the obligation to state reasons; a finding which justifies, on its own, the annulment of the contested measures in so far as they concern the applicant.

84 In the light of all the foregoing, the acts including and maintaining the applicant on the lists of persons covered by the measures for the freezing of funds must be annulled, without there being any need to examine the other arguments and pleas in law relied on in support of the fourth and fifth heads of claim put forward by the applicant.

85 In view of the fact that the applicant's inclusion in the lists annexed to the contested measures is to be annulled, it can no longer be affected by Decision 2010/413. Consequently, there is no need to adjudicate on the applicant's first head of claim, set out in paragraph 29 above, or to examine the plea of inadmissibility raised in relation to it by the Council.

The temporal effects of the annulment

86 As regards the temporal effects of the annulment of the acts including and maintaining the applicant on the lists of persons covered by the measures for the freezing of funds, it must be noted, first, that Annex VIII to Regulation No 961/2010, as amended in particular by Implementing Regulation No 1245/2011, ceased to have legal effect after the repeal of the latter regulation by Regulation No 267/2012. Consequently, the annulment of the applicant's listing in Annex VIII to Regulation No 961/2010, as amended in particular by Implementing Regulation No 1245/2011 in so far as it relates to the applicant, concerns only the effects of that listing on the applicant between its coming into force and its repeal.

87 Next, as regards Annex IX to Regulation No 267/2012, it must be recalled that under the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, by way of derogation from Article 280 TFEU, decisions of the General Court declaring a regulation to be void are to take effect only as from the date of expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 of that Statute or, if an appeal has been brought within that period, as from the date of dismissal of the appeal. The Council therefore has a period of two months, extended on account of distance by ten days, as from the notification of this judgment, to remedy the infringement established by adopting, if appropriate, new restrictive measures in relation to the applicant.

88 In the present case, the risk of serious and irreparable harm to the effectiveness of the restrictive measures imposed by Regulation No 267/2012 does not appear sufficiently great, having regard to the considerable impact of those measures on the applicant's rights and freedoms, to warrant the maintenance of the effects of that regulation in relation to the applicant for a period exceeding that laid down in the second paragraph of Article 60 of the Statute of the Court of Justice (see, by analogy, the judgment of 16 September 2011 in Case T-316/11 *Kadio Morokro* v *Council*, not published in the ECR, paragraph 38).

89 Finally, as regards the temporal effects of the annulment of the applicant's listing in Annex II to Decision 2010/413, as resulting from Decision 2010/644 and subsequently from Decision 2011/783, it must be recalled that, under the second paragraph of Article 264 TFEU, the Court may, if it considers it necessary, state which of the effects of the act which it has declared void are to be considered as definitive.

90 In the present case, if the dates when the annulment of the applicant's listing in Annex IX to Regulation No 267/2012 and the annulment of its listing in Annex II to Decision 2010/413, as resulting from Decision 2010/644 and subsequently from Decision 2011/783, take effect were to differ, that would be likely seriously to jeopardise legal certainty, since those acts impose identical restrictive measures on the applicant. The effects of Annex II to Decision 2010/413, as resulting from Decision 2010/644 and subsequently from Decision 2011/783, must therefore be maintained in relation to the applicant until the annulment of the applicant's listing in Annex IX to Regulation No 267/2012 takes effect (see, by analogy, *Kadio Morokro* v *Council*, cited at paragraph 88 above, paragraph 39).

Costs

91 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Moreover, under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are in the discretion of the Court. In the present case, since the Council has been largely unsuccessful, it must be ordered to pay the costs, as applied for by the applicant.

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. Therefore, the Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Annuls the following measures in so far as they concern Bank Refah Kargaran:

— 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 amended by Council Decision 2010/644/CFSP of 25 October 2010, and subsequently by Council Decision 2011/783/CFSP of 1 December 2011;

— Decision 2010/644;

— 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, as amended by Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010;

— Decision 2011/783;

— Implementing Regulation No 1245/2011;

— Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010;

2. Orders the effects of Annex II to Decision 2010/413, as amended by Decision 2010/644 and subsequently by Decision 2011/783, to be maintained as regards Bank Refah Kargaran until the annulment of Annex IX to Regulation No 267/2012 takes effect, in so far as it concerns Bank Refah Kargaran;

3. Declares that there is no need to adjudicate on the application for a declaration that Decision 2010/413 is not applicable to Bank Refah Kargaran;

4. Dismisses the action as to the remainder;

5. Orders the Council of the European Union to bear its own costs and to pay the costs of Bank Refah Kargaran;

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

Pelikánová Jürimäe van der Woude

Delivered in open court in Luxembourg on 6 September 2013.

[Signatures]

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