



Reports of Cases

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

13 December 2018*

[Text rectified by order of 21 March 2019]

(Non-contractual liability — Common foreign and security policy — Restrictive measures against Iran — Freezing of funds — Inclusion and maintenance of the applicant's name on the lists of persons and entities subject to restrictive measures — Non-material damage)

In Case T-559/15,

Post Bank Iran, established in Tehran (Iran), represented by D. Luff, lawyer,

applicant,

v

Council of the European Union, represented by B. Driessen and M. Bishop, acting as Agents,

defendant,

supported by

European Commission, represented by F. Ronkes Agerbeek and R. Tricot, acting as Agents,

intervener,

APPLICATION pursuant to Article 268 TFEU for compensation for the damage allegedly suffered by the applicant following the adoption of Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81), 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), of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71), of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), and of 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), by which the applicant's name was included and maintained on the lists of persons and entities subject to restrictive measures,

* Language of the case: English.

THE GENERAL COURT (First Chamber, Extended Composition),

composed of I. Pelikánová (Rapporteur), President, V. Valančius, P. Nihoul, J. Svenningsen and U. Öberg, Judges,

Registrar: N. Schall, Administrator,

having regard to the written part of the procedure and further to the hearing on 20 March 2018,

gives the following

Judgment

Background to the dispute

- 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').
- 2 The applicant, Post Bank Iran, is a company incorporated under Iranian law which provides post office banking services.
- 3 On 9 June 2010, the United Nations Security Council adopted Resolution 1929 (2010), which widened the scope of the restrictive measures imposed by earlier Resolutions 1737 (2006) of 27 December 2006, 1747 (2007) of 24 March 2007, and 1803 (2008) of 3 March 2008 and introduced additional restrictive measures against the Islamic Republic of Iran.
- 4 By 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) the applicant's name was included on the list in Annex II to that decision.
- 5 Consequently, the applicant's name was included 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).
- 6 The inclusion of the applicant's name on the list referred to in paragraph 5 above took effect on 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 on 27 July 2010. The result was the freezing of the applicant's funds and economic resources ('the restrictive measures').
- 7 The inclusion of the applicant in the lists cited in paragraphs 4 and 5 above was based on the following grounds:

'[The applicant] has evolved from being an Iranian domestic bank to a bank which facilitates Iran's international trade. Acts on behalf of Bank Sepah (designated under [Security Council Resolution] 1747) carrying out Bank Sepah's transactions and hiding Bank Sepah's connection with transactions in order to circumvent sanctions. In 2009 [the applicant] facilitated business on behalf of Bank Sepah between Iran's defence industries and overseas beneficiaries Has facilitated business with front company for DPRK's Tranchon Commercial Bank, known for facilitating proliferation-related business between Iran and the DPRK.'

- 8 By letter dated 29 July 2010 the Council of the European Union informed the applicant that its name had been included on the lists cited in paragraphs 4 and 5 above. A copy of those acts was enclosed with the letter.
- 9 By letter of 12 September 2010, the applicant asked the Council to review its inclusion on the lists at issue, in the light of information sent to the Council by the applicant.
- 10 By Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), the Council, after reviewing the applicant's situation, maintained the applicant's listing in Annex II to Decision 2010/413, with effect from that date, on the following grounds:

'[The applicant] has evolved from being an Iranian domestic bank to a bank which facilitates Iran's international trade. Acts on behalf of Bank Sepah (designated under [Security Council Resolution] 1747) carrying out Bank Sepah's transactions and hiding Bank Sepah's connection with transactions in order to circumvent sanctions. In 2009 [the applicant] facilitated business on behalf of Bank Sepah between Iran's defence industries and overseas beneficiaries Has facilitated business with front company for DPRK's Tranchon Commercial Bank, known for facilitating proliferation-related business between Iran and the DPRK.'
- 11 When Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1) was adopted, the applicant's name was included on the list in Annex VIII to that regulation with effect from 27 October 2010.
- 12 By letter of 28 October 2010, received by the applicant on 29 October 2010, the Council informed the applicant that, following a reconsideration of its situation in the light of the comments in the letter of 12 September 2010, it would continue to be subject to restrictive measures.
- 13 By letter of 28 December 2010, the applicant denied the allegations made against it by the Council. In order to exercise its rights of defence, it requested access to the file.
- 14 By application lodged at the Court Registry on 7 January 2011, the applicant brought an action seeking, in essence, annulment of the lists cited in paragraphs 4 and 5 above, in so far as they concerned the applicant. That action was registered as Case T-13/11.
- 15 By letter of 22 February 2011, the Council provided the applicant with the extracts concerning it from the listing proposals submitted by Member States, as contained in the Council's cover notes under references 13413/10 EXT 5, 13414/10 EXT 5 and 6723/11.
- 16 By letter of 29 July 2011 the applicant again contested the veracity of the matters of which it was accused by the Council.
- 17 By Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71) and Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), the Council, after reviewing the applicant's situation, maintained the applicant's listing in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010, with effect from 1 and 2 December 2011, respectively.
- 18 By letter of 5 December 2011 the Council informed the applicant that it was to continue to be subject to restrictive measures.
- 19 By letter of 13 January 2012 the applicant again requested access to the file.

- 20 Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413 (OJ 2012 L 19, p. 22) came into force on the day of its adoption. Article 1(7) of Decision 2012/35 amended, as from that date, Article 20 of Decision 2010/413, notably by introducing a new criterion of the provision of support, including financial support, to the Iranian government.
- 21 By letter of 21 February 2012 the Council sent to the applicant documents relating to the ‘decision on 1 December 2011 to maintain restrictive measures in force against [the applicant]’.
- 22 When 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) was adopted, that same criterion of the provision of support, including financial support, to the Iranian government was introduced in Article 23(2)(d) of that regulation. Moreover, the applicant was included, on the same grounds as those already referred to in paragraph 10 above, in the list in Annex IX to Regulation No 267/2012 (together with the lists in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010, ‘the disputed lists’), with effect from 24 March 2012.
- 23 By a statement lodged at the Court Registry on 4 June 2012, the applicant amended the form of order sought in Case T-13/11 so as to seek, in essence, annulment of the disputed lists, in so far as they concerned the applicant.
- 24 By judgment of 6 September 2013, *Post Bank Iran v Council* (T-13/11, not published, EU:T:2013:402), the Court, inter alia, annulled the disputed lists, in so far as they concerned the applicant, on the ground that they were not substantiated by evidence. As no appeal was brought against that judgment, it became final and acquired the force of *res judicata*.
- 25 By Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413 (OJ 2013 L 306, p. 18) and Implementing Regulation (EU) No 1154/2013 of 15 November 2013 implementing Regulation No 267/2012 (OJ 2013 L 306, p. 3), the Council maintained the restrictive measures against the applicant, on the basis of the new criterion of the provision of support, including financial support, to the Iranian government. Those acts entered into force on 16 November 2013, the day on which they were published in the Official Journal.
- 26 By application lodged at the Court Registry on 29 January 2014, the applicant brought an action for annulment of the acts of 15 November 2013 maintaining the restrictive measures against it. That action was registered as Case T-68/14.
- 27 By judgment of 3 May 2016, *Post Bank Iran v Council* (T-68/14, not published, EU:T:2016:263), the Court dismissed the action and ordered the applicant to pay the costs.
- 28 By letter of 25 July 2015, the applicant submitted to the Council a preliminary claim for compensation for damage allegedly incurred as a result of the restrictive measures taken against it pursuant to Implementing Regulation No 668/2010 and Decision 2010/413. The Council did not reply to that letter.

Procedure and forms of order sought

- 29 By application lodged at the General Court Registry on 25 September 2015, the applicant brought the present action. The case was assigned to the First Chamber of the Court on account of the connection between cases.
- 30 On 2 February 2016, the Council lodged its defence.

- 31 By document lodged at the Court Registry on 16 March 2016, the European Commission sought leave to intervene in the present case in support of the form of order sought by the Council.
- 32 On 12 April and 4 May 2016 respectively, the Council and the applicant lodged their observations on the application to intervene.
- 33 By decision of the President of the First Chamber of the Court of 18 May 2016, adopted pursuant to Article 144(4) of the Rules of Procedure of the General Court, the Commission was granted leave to intervene in the present dispute.
- 34 On 27 May 2016, the applicant lodged its reply.
- 35 On 22 July 2016, the Council lodged its rejoinder.
- 36 On 19 July 2016, the Commission lodged its statement in intervention. On 7 September and 13 October 2016 respectively, the Council and the applicant lodged their observations on that statement.
- 37 On a proposal from the Judge-Rapporteur, the Court (First Chamber) adopted a measure of organisation of procedure to hear the parties on the possibility of staying proceedings pending the final decision of the Court of Justice in Case C-45/15 P, *Safa Nicu Sepahan v Council*. The main parties submitted their observations in that regard within the time limit prescribed.
- 38 Following a change in the composition of the Chambers of the General Court, pursuant to Article 27(5) of the Rules of Procedure, the Judge-Rapporteur was assigned to the First Chamber, to which the present case was accordingly allocated.
- 39 In the light of the observations of the main parties, the President of the First Chamber of the Court decided, by decision of 10 October 2016, to stay the proceedings in the present case.
- 40 Following delivery of the judgment of 30 May 2017, *Safa Nicu Sepahan v Council* (C-45/15 P, EU:C:2017:402), on a proposal from the Judge-Rapporteur, the Court (First Chamber) adopted a measure of organisation of procedure to hear the parties on the consequences for the present case that they drew from that judgment. The main parties submitted their observations in that regard within the time limit prescribed. In its observations, the applicant stated, *inter alia*, that it was withdrawing its claims in so far as they related to compensation for material damage.
- 41 Neither of the main parties requested a hearing of oral argument, pursuant to Article 106(1) of the Rules of Procedure, within the time limit prescribed.
- 42 On 15 December 2017, pursuant to Article 28 of the Rules of Procedure and on a proposal from the First Chamber, the Court decided to refer the present case to the Chamber sitting in extended composition.
- 43 On a proposal from the Judge-Rapporteur, the Court decided to open the oral part of the procedure, to seek the observations of the main parties on a possible joinder of the present case with Case T-558/15, *Iran Insurance v Council*, for the purposes of the oral part of the procedure, and to put certain questions to the parties. The parties complied with those requests within the prescribed periods.
- 44 By decision of 9 February 2018, the President of the First Chamber of the Court decided to join the present case with Case T-558/15, for the purposes of the oral part of the procedure.

- 45 The parties presented oral argument and replied to the Court's oral questions at the hearing on 20 March 2018. In its replies, the applicant referred, *inter alia*, to the unlawfulness, established in the judgment of 6 September 2013, *Post Bank Iran v Council* (T-13/11, not published, EU:T:2013:402), on which it relied in support of its claim for compensation, formal note of which was taken in the minutes of the hearing.
- 46 Following its amendment of the form of order sought (see paragraph 40 above), the applicant claims, in essence, that the Court should:
- order the Council to pay it, by way of compensation for the non-material damage it suffered, between July 2010 and November 2013, as a result of the unlawful inclusion of its name on the disputed lists, pursuant to Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012, damages in the sum of EUR 1 000 000;
 - order the Council to pay the costs.
- 47 The Council contends, in essence, that the Court should:
- dismiss the action, in part, for lack of jurisdiction and, for the remainder, as being manifestly unfounded;
 - order the applicant to pay the costs.
- 48 The Commission contends that the action should be dismissed in its entirety.

Law

The jurisdiction of the Court to hear the action

- 49 [As rectified by order of 21 March 2019] In its rejoinder, the Council takes the view that, in so far as the applicant based its claim for compensation on the unlawfulness of its inclusion on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, the Court has no jurisdiction to rule on the present action, since the second paragraph of Article 275 TFEU does not give the Court any jurisdiction to rule on a claim for compensation based on the unlawfulness of an act relating to the common foreign and security policy (CFSP).
- 50 In its written replies to the Court's questions (paragraph 43 above), the applicant maintains that the Council's plea of inadmissibility is inadmissible, due to its lateness, and that it is unfounded, since the CFSP measures were implemented, in the present case, by regulations adopted on the basis of Article 215 TFEU.
- 51 In that regard, it should be borne in mind that a plea of inadmissibility that was raised at the rejoinder stage, when it could have been raised at the stage of the defence, must be held to be out of time (see, to that effect, judgment of 18 February 2016, *Jannatian v Council*, T-328/14, not published, EU:T:2016:86, paragraph 29). The present plea of inadmissibility, which could have been raised by the Council at the stage of the defence, is out of time and, as such, inadmissible.
- 52 Nevertheless, under Article 129 of the Rules of Procedure, the Court may at any time, of its own motion, after hearing the parties, rule on whether there exists any absolute bar to proceeding with a case, which, according to case-law, includes the jurisdiction of the Courts of the European Union to hear the action (see, to that effect, judgments of 18 March 1980, *Ferriera Valsabbia and Others v*

Commission, 154/78, 205/78, 206/78, 226/78 to 228/78, 263/78, 264/78, 31/79, 39/79, 83/79 and 85/79, EU:C:1980:81, paragraph 7, and of 17 June 1998, *Svenska Journalistförbundet v Council*, T-174/95, EU:T:1998:127, paragraph 80).

- 53 It follows from the sixth sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU that, in principle, the Court of Justice of the European Union is not to have jurisdiction with respect to the provisions of primary law relating to the CFSP or with respect to legal acts adopted on the basis of those provisions. It is only on an exceptional basis that, under the second paragraph of Article 275 TFEU, the Courts of the European Union are to have jurisdiction in matters relating to the CFSP. That jurisdiction includes review of whether Article 40 TEU has been complied with and actions for annulment brought by individuals, under the conditions set out in the fourth paragraph of Article 263 TFEU, against restrictive measures adopted by the Council in connection with the CFSP. However, the second paragraph of Article 275 TFEU does not give the Court of Justice of the European Union jurisdiction to hear or determine any kind of claim for compensation (judgment of 18 February 2016, *Jannatian v Council*, T-328/14, not published, EU:T:2016:86, paragraph 30).
- 54 It follows from this that a claim seeking compensation for the damage allegedly suffered as a result of the adoption of an act relating to the CFSP falls outside the jurisdiction of the Court (judgment of 18 February 2016, *Jannatian v Council*, T-328/14, not published, EU:T:2016:86, paragraph 31).
- 55 However, the Court has always held that it has jurisdiction to hear a claim for damages allegedly suffered by a person or entity, as a result of restrictive measures against it, in accordance with Article 215 TFEU (see, to that effect, judgments of 11 July 2007, *Sison v Council*, T-47/03, not published, EU:T:2007:207, paragraphs 232 to 251, and of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraphs 45 to 149).
- 56 In the present case, the restrictive measures taken against the applicant, by Decision 2010/644 and Decision 2011/783 respectively, were implemented by Regulation No 961/2010, Implementing Regulation No 1245/2011 and Regulation No 267/2012, adopted in accordance with Article 215 TFEU.
- 57 It follows that, even if the Court does not have jurisdiction to hear the applicant's claim for compensation, in so far as the applicant seeks compensation for the damage that it allegedly suffered as a result of the restrictive measures taken against it in Decision 2010/644 and Decision 2011/783, it does have jurisdiction to hear that claim, in so far as the applicant seeks compensation for the damage that it allegedly suffered as a result of the implementation of those measures by Regulation No 961/2010, Implementing Regulation No 1245/2011 and Regulation No 267/2012 ('the disputed acts').
- 58 Consequently, the present action need be examined only in so far as it seeks compensation for the damage the applicant claims to have suffered as a result of the restrictive measures taken against it in Decisions 2010/644 and 2010/783 being implemented by the disputed acts.

The admissibility of the action

- 59 Without raising any objection by separate document, the Commission submits that, given the date on which the present action was brought, namely 25 September 2015, the action was brought outside the five-year limitation period provided for in Article 46 of the Statute of the Court of Justice of the European Union, in so far as it claims for alleged losses arising before 25 October 2010. In accordance with the case-law, the present action should therefore be declared partially inadmissible. According to the Commission, the issue of whether the action is partially time-barred can be examined of the Court's own motion on grounds of public policy.

- 60 The Council takes the view that the question of a time bar does not appear to arise in the present case, since the applicant only seeks compensation for its inclusion on the disputed lists after 25 September 2010. The Council nevertheless indicates that, if there were a situation of a time bar, that could be raised of the Court's own motion as a matter of public policy.
- 61 The applicant claims that the present plea of inadmissibility should be rejected as inadmissible and cannot be examined by the General Court of its own motion, because it does not amount to an absolute bar to proceedings. In any event, it claims that that plea of inadmissibility is unfounded. The applicant adds that the question of the time bar has ceased to be of any legal interest following the withdrawal of its claim for compensation for material damage.
- 62 As regards the present plea of inadmissibility put forward by the Commission, it should be noted that the Council's claim for dismissal of the present action does not in any way rely on the right of action on which the present proceedings are based being partially time-barred. However, under the fourth paragraph of Article 40 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union, and under Article 142(1) of the Rules of Procedure, the form of order sought by an application to intervene is to be limited to supporting, in whole or in part, the form of order sought by one of the main parties. Moreover, the intervener must accept the case as he finds it at the time of his intervention, in accordance with Article 142(3) of the Rules of Procedure.
- 63 It follows that the intervener was not entitled to raise the objection of inadmissibility independently and that the Court is therefore not bound to consider the pleas on which the intervener relies exclusively, which do not relate to public policy (see, to that effect, judgments of 24 March 1993, *CIRFS and Others v Commission*, C-313/90, EU:C:1993:111, paragraph 22, and of 3 July 2007, *Au Lys de France v Commission*, T-458/04, not published, EU:T:2007:195, paragraph 32).
- 64 Moreover, it has already been held that, in so far as actions to establish non-contractual liability are governed, pursuant to Article 340 TFEU, by the general principles common to the laws of the Member States and where a comparison of the legal systems of the Member States shows that, as a general rule, subject to very few exceptions, a court may not of its own motion raise the issue of time limitation, it is unnecessary for the Court to consider of its own motion the question whether the right of action on which the proceedings at issue are based may be time-barred (judgments of 30 May 1989, *Roquette Frères v Commission*, 20/88, EU:C:1989:221, paragraphs 12 and 13, and of 8 November 2012, *Evropaïki Dynamiki v Commission*, C-469/11 P, EU:C:2012:705, paragraph 51).
- 65 Consequently, the plea of inadmissibility raised by the Commission must be rejected as inadmissible.

The admissibility of the evidence adduced in annexes to the reply

- 66 In its rejoinder, the Council, supported by the Commission, claims that evidence presented in Annexes R.1 to R.15 to the reply should be rejected as it was produced too late and is therefore inadmissible. According to the Council, that evidence could have and should have, in accordance with the case-law, been produced at the application stage.
- 67 In their written replies to the Court's questions (see paragraph 43 above), the Council and the Commission recognise that, as a result of the amendment of the form of order sought in the action, (see paragraph 40 above), it is no longer necessary to rule on the admissibility of the evidence adduced in Annexes R.2 to R.15 to the reply, which related solely to the material damage allegedly suffered by the applicant.
- 68 The applicant also concedes that, as a result of the amendment of the form of order sought (see paragraph 40 above), the plea of inadmissibility remains relevant only with regard to Annex R.1 to the reply. It argues that the plea of inadmissibility should be rejected, on the grounds that the evidence

adduced in Annex R.1 to the reply contains supplementary evidence of facts that are already well-established in the application and which are necessary to rebut the arguments relied on by the Council in its defence. The Council could have fully exercised its rights of defence to this evidence in its rejoinder. The Commission also had the opportunity to verify and assess that evidence.

- 69 In the present case, it follows from the applicant's amended claims that the present action is concerned with a claim for compensation for the non-material damage allegedly suffered by the applicant following the Council's adoption of the disputed acts. It is therefore an action by which the applicant seeks to invoke the non-contractual liability of the European Union.
- 70 In accordance with well-established case-law, in the context of an action to establish non-contractual liability, it is for the applicant to provide the Courts of the European Union with the evidence to establish the fact and the extent of the loss which it claims to have suffered (see judgment of 28 January 2016, *Zafeiropoulos v Cedefop*, T-537/12, not published, EU:T:2016:36, paragraph 91 and the case-law cited; judgment of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, not published, paragraph 308).
- 71 Admittedly, the Courts of the European Union have acknowledged that, in certain cases, particularly where it is difficult to express the alleged damage in figures, it is not absolutely necessary to particularise its exact extent in the application or to calculate the amount of the compensation claimed (see judgment of 28 February 2013, *Inalca and Cremonini v Commission*, C-460/09 P, EU:C:2013:111, paragraph 104 and the case-law cited).
- 72 The application in the present case was brought on 25 September 2015. In that application, the applicant quantified the non-material damage which it claimed to have suffered, relying on the evidence annexed to that application.
- 73 As a preliminary point, it should be borne in mind that, in accordance with Article 76(f) of the Rules of Procedure, which came into force on 1 July 2015, and which are thus applicable to the present application, every application must contain, where appropriate, any evidence produced or offered.
- 74 Moreover, Article 85(1) of the Rules of Procedure provides that evidence produced or offered is to be submitted in the first exchange of pleadings. Article 85(2) adds that in reply or rejoinder a party may produce or offer further evidence in support of its arguments, provided that the delay in the submission of such evidence is justified. In the latter case, in accordance with Article 85(4) of the Rules of Procedure, the Court is to rule on the admissibility of the evidence produced or offered after the other parties have been given an opportunity to comment on such evidence.
- 75 Evidence in rebuttal and the amplification of previous evidence, submitted in response to evidence in rebuttal put forward by the opposing party are not covered by the time-bar rule in Article 85(1) of the Rules of Procedure (see judgment of 22 June 2017, *Biogena Naturprodukte v EUIPO (ZUM wohl)*, T-236/16, EU:T:2017:416, paragraph 17 and the case-law cited).
- 76 It follows from the case-law relating to the application of the time-bar rule provided for in Article 85(1) of the Rules of Procedure that the parties must give reasons for the delay in producing or offering new evidence (judgment of 18 September 2008, *Angé Serrano and Others v Parliament*, T-47/05, EU:T:2008:384, paragraph 54) and that the Courts of the European Union have the power to check the merits of the reason given for the delay in producing or offering the evidence and, as the case may be, the content thereof, and, where that late production is not justified to the requisite legal standard or well-founded, the power to reject the evidence (judgments of 14 April 2005, *Gaki-Kakouri v Court of Justice*, C-243/04 P, not published, EU:C:2005:238, paragraph 33, and of 18 September 2008, *Angé Serrano and Others v Parliament*, T-47/05, EU:T:2008:384, paragraph 56).

- 77 It has already been held that the late submission, by one party, of evidence or offers of evidence could be justified by the fact that that party was unable, previously, to obtain possession of the evidence in question, or if evidence produced belatedly by the other party justifies completing the file so as to ensure observance of the rule that both parties should be heard (judgments of 14 April 2005, *Gaki-Kakouri v Court of Justice*, C-243/04 P, not published, EU:C:2005:238, paragraph 32, and of 18 September 2008, *Angé Serrano and Others v Parliament*, T-47/05, EU:T:2008:384, paragraph 55).
- 78 In the present case, the applicant has produced certain evidence to support the application for compensation for the alleged non-material damage, in Annex R.1 to the reply, without providing exact justification for the delay in producing that evidence.
- 79 In so far as the applicant, in its replies to the Court's questions (see paragraph 43 above), argued that Annex R.1 to the reply contained supplementary evidence of facts that were already well-established in the application, that justification must be rejected as ineffective, since the mere fact that the facts had already been established is not capable of justifying the late submission of new evidence.
- 80 In so far as, in those replies, the applicant claimed that Annex R.1 to the reply contained evidence necessary to rebut the arguments relied on by the Council in its defence, it must be noted that the evidence adduced in that annex was produced by the applicant for the sole purpose of establishing, in accordance with the case-law cited in paragraph 70 above, the fact and the extent of the non-material damage alleged, as quantified in the application, and not to undermine the evidence annexed to the Council's defence. The fact that the Council, in its defence, argued that the applicant had not proved to the requisite legal standard the fact and the extent of the damage allegedly suffered cannot be regarded as evidence in rebuttal, within the meaning of the case-law cited in paragraph 75 above, and does not allow for the evidence contained in Annex R.1 to the reply to be regarded as an amplification of previous evidence submitted in response to evidence in rebuttal, nor for the late production of that evidence thus to be considered justified by the necessity of responding to the Council's arguments and ensuring observance of the rule that both parties should be heard.
- 81 It follows that the evidence produced in Annex R.1 to the reply must be rejected as inadmissible and will not, therefore, be taken into account in the examination of the substance of the action.

Substance

- 82 Under the second paragraph of Article 340 TFEU, 'in the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties'. In accordance with settled case-law, in order for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU for unlawful conduct of its institutions, a number of conditions must be satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct complained of and the damage pleaded (see judgment of 9 September 2008, *FIAMM and Others v Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 106 and the case-law cited; judgments of 11 July 2007, *Schneider Electric v Commission*, T-351/03, EU:T:2007:212, paragraph 113, and of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraph 47).
- 83 In support of the present action, the applicant argues that the three conditions referred to above are satisfied in the present case.
- 84 The Council, supported by the Commission, contends that the present action should be dismissed as unfounded, on the grounds that it is for the applicant to adduce evidence that all the conditions necessary for the European Union to incur non-contractual liability are satisfied in the present case, and that it has failed to do so.

85 According to settled case-law, the conditions necessary for the European Union to incur non-contractual liability within the meaning of the second paragraph of Article 340 TFEU, as already listed in paragraph 82 above, are cumulative (judgment of 7 December 2010, *Fahas v Council*, T-49/07, EU:T:2010:499, paragraphs 92 and 93, and order of 17 February 2012, *Dagher v Council*, T-218/11, not published, EU:T:2012:82, paragraph 34). It follows that, where one of those conditions is not satisfied, the application must be dismissed in its entirety (judgment of 26 October 2011, *Dufour v ECB*, T-436/09, EU:T:2011:634, paragraph 193).

86 It is therefore necessary to ascertain, in the present case, whether the applicant has discharged the burden of proving the unlawfulness of the conduct that it alleges against the Council, namely the adoption of the disputed acts, that it has actually suffered the non-material damage that it claims, and the causal link between that adoption and the damage that it alleges.

The alleged unlawfulness

87 The applicant submits that the condition relating to the unlawful conduct on the part of an institution is satisfied since the adoption of the disputed acts amounts to a sufficiently serious breach, on the part of the Council, of a rule of law intended to confer rights on individuals for the European Union to incur non-contractual liability in accordance with the case-law.

88 In that regard, the applicant maintains that the inclusion and retention of its name on the disputed lists, pursuant to the disputed acts, are clearly unlawful, as was held by the Court in the judgment of 6 September 2013, *Post Bank Iran v Council* (T-13/11, not published, EU:T:2013:402). Moreover, the legal provisions which it claims have been breached in the present case are intended essentially to protect the individual interests of the persons and entities concerned, on whom they confer rights (see, to that effect and by analogy, judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraphs 57 and 58).

89 According to the applicant, the fact that the Council included or maintained on the lists the name of a person about whom the Council had no information or evidence to establish, to the requisite legal standard, that the restrictive measures were well founded, amounts to a sufficiently serious breach of those provisions (see, to that effect and by analogy, judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraphs 59, 63 and 68). In the present case, the Council adopted the disputed acts, as a result of which, between July 2010 and November 2013, restrictive measures were taken against it, without the slightest evidence of the conduct of which it was accused.

90 Finally, the applicant takes the view that the Council cannot claim that the provisions which it infringed were confused, ambiguous or unclear since, at the time of the adoption of the disputed acts, it was clear that the Council had to adduce evidence in support of the restrictive measures it was taking.

91 The Council, supported by the Commission, does not contest the unlawfulness of the disputed acts, but takes the view that it does not suffice to trigger the non-contractual liability of the European Union, since it does not amount to a sufficiently serious breach of a rule of law intended to confer rights on individuals. Such a breach could only be established if it had been shown, in accordance with the case-law, that the Council had manifestly and gravely disregarded the limits of its discretion, which is not so in the present case.

92 In its judgment of 6 September 2013, *Post Bank Iran v Council* (T-13/11, not published, EU:T:2013:402), the Court held that the disputed acts were unlawful.

- 93 Nevertheless, it should be borne in mind that, according to well-established case-law of the General Court, the finding that a legal act is unlawful is not sufficient, however regrettable that unlawfulness may be, for a finding that the condition for the non-contractual liability of the European Union relating to the unlawfulness of the conduct of the institutions complained of is satisfied (judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraph 50; see also, to that effect, judgments of 6 March 2003, *Dole Fresh Fruit International v Council and Commission*, T-56/00, EU:T:2003:58, paragraphs 72 to 75, and of 23 November 2011, *Sison v Council*, T-341/07, EU:T:2011:687, paragraph 31). The fact that one or more of the acts of the Council giving rise to the losses claimed by the applicant may have been annulled, even by a judgment of the General Court delivered before the action for damages had been brought, is not, therefore, irrefutable evidence of a sufficiently serious breach on the part of that institution, giving rise *ipso jure* to non-contractual liability on the part of the European Union (judgment of 13 December 2017, *HTTS v Council*, T-692/15, under appeal, EU:T:2017:890, paragraph 48).
- 94 The condition underlying the existence of unlawful conduct by EU institutions requires a sufficiently serious breach of a rule of law that is intended to confer rights on individuals (see judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 29 and the case-law cited).
- 95 The requirement of a sufficiently serious breach of a rule of law that is intended to confer rights on individuals is intended, whatever the nature of the unlawful act at issue, to avoid the risk of having to bear the losses claimed by the persons concerned obstructing the ability of the institution concerned to exercise to the full its powers in the general interest, whether that be in its legislative activity or in that involving choices of economic policy or in the sphere of its administrative competence, without however thereby leaving individuals to bear the consequences of flagrant and inexcusable misconduct (see judgment of 23 November 2011, *Sison v Council*, T-341/07, EU:T:2011:687, paragraph 34 and the case-law cited; judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraph 51).
- 96 Having identified the rules of law which are alleged by the applicant, in the present case, to have been infringed, it is necessary to examine, first, whether those rules are intended to confer rights on individuals and, second, whether the Council has committed a sufficiently serious breach of those rules.

– *The rules of law alleged to have been infringed*

- 97 During the hearing, in response to the Court's oral questions, the applicant stated, as regards the rules of law that were found to have been infringed in the judgment of 6 September 2013, *Post Bank Iran v Council* (T-13/11, not published, EU:T:2013:402), that it was referring solely to the finding, in paragraphs 133 and 134 of that judgment, that, in so far as the disputed acts applied the criterion of the 'assistance' provided to a listed person or entity to violate the restrictive measures or to evade them, those acts were unfounded because they were not substantiated by evidence and infringed, in essence, Article 20(1)(b) of Decision 2010/413, Article 16(2)(b) of Regulation No 961/2010 and Article 23(2)(b) of Regulation No 267/2012.

– *The question whether the rules of law which are alleged to have been infringed are intended to confer rights on individuals*

- 98 It follows from the case-law that the provisions which set forth exhaustively the conditions in which restrictive measures may be adopted are intended essentially to protect the interests of persons and entities liable to be concerned by those measures, by limiting the cases in which such measures may

lawfully be applied to them (see, to that effect, judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraph 57; see also, to that effect and by analogy, judgment of 23 November 2011, *Sison v Council*, T-341/07, EU:T:2011:687, paragraph 51).

⁹⁹ Those same provisions thus ensure that the individual interests of the persons and entities liable to be concerned by the restrictive measures are protected and are, therefore, to be considered to be rules of law intended to confer rights on individuals. If the substantive conditions in question are not satisfied, the person or the entity concerned is entitled not to have the restrictive measures imposed on it. Such a right necessarily implies that the person or the entity on which restrictive measures are imposed in circumstances not provided for by the provisions in question may seek compensation for the harmful consequences of those measures, if it should prove that their imposition was founded on a sufficiently serious breach of the substantive rules applied by the Council (see, to that effect, judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraph 58; see also, to that effect and by analogy, judgment of 23 November 2011, *Sison v Council*, T-341/07, EU:T:2011:687, paragraph 52 and the case-law cited).

¹⁰⁰ It follows that the rules alleged by the applicant, in the present case, to have been infringed are rules of law that confer rights on individuals, including the applicant, as a person concerned by the disputed acts.

– *The question whether the Council committed a sufficiently serious breach of the rules of law which are alleged to have been infringed*

¹⁰¹ The Court has already had the opportunity to clarify that the infringement of a rule of law that confers rights on individuals could be considered to be sufficiently serious where it implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion, the factors to be taken into consideration in that connection being, inter alia, the degree of clarity and precision of the rule breached and the measure of discretion left by that rule to the EU authorities (see judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 30 and the case-law cited).

¹⁰² According to the case-law, where the institution in question has only considerably reduced, or even no, discretion, the mere infringement of EU law may be sufficient to establish the existence of a sufficiently serious breach (see judgment of 11 July 2007, *Sison v Council*, T-47/03, not published, EU:T:2007:207, paragraph 235 and the case-law cited).

¹⁰³ Lastly, it follows from the case-law that a breach of EU law will, in any event, clearly be sufficiently serious if it has persisted despite a judgment finding the breach in question to be established, or despite a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted a breach (see judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 31 and the case-law cited).

¹⁰⁴ At the time of adoption of the disputed acts by the Council, namely between 25 October 2010 and 23 March 2012, it was already clearly and specifically apparent from the case-law that, in the event of challenge, it was for the Council to provide the information and the evidence establishing that the conditions for the application of the criterion of ‘assistance’ in infringing or evading the restrictive measures, set out in Article 20(1)(b) of Decision 2010/413, Article 16(2)(b) of Regulation No 961/2010 and Article 23(2)(b) of Regulation No 267/2012, were satisfied. The Court has, in addition, already been called upon to find, on the basis of case-law that predated the adoption of the disputed acts, that the obligation on the Council to provide, in the event of a challenge, information or evidence substantiating the restrictive measures against a person or entity was apparent from well-established case-law (see judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraphs 35 to 40 and the case-law cited).

- 105 Moreover, in so far as the Council's obligation to verify and establish that the restrictive measures taken against a person or entity are well founded before those measures are adopted arises from the requirement to observe the fundamental rights of the person or entity concerned, and in particular their right to effective judicial protection, the Council does not enjoy any discretion in that regard (judgment of 18 February 2016, *Jannatian v Council*, T-328/14, not published, EU:T:2016:86, paragraph 52; see also, to that effect, judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraphs 59 to 61). Thus, in the present case, the Council had no margin of discretion in implementing that obligation.
- 106 Therefore, in not complying with its obligation to substantiate the disputed acts, the Council has committed, in the present case, a sufficiently serious breach of a rule of law that confers rights on an individual, namely the applicant.
- 107 Consequently, the condition relating to the unlawfulness of the conduct alleged against the Council, namely the adoption of the disputed acts, is satisfied with regard to the rules of law invoked by the applicant, the breach of which was established in paragraphs 133 and 134 of the judgment of 6 September 2013, *Post Bank Iran v Council* (T-13/11, not published, EU:T:2013:402).

The alleged damage and the existence of a causal link between the unlawfulness of the conduct complained of and that damage

- 108 The applicant claims to have proved that it suffered real and certain non-material damage as a result of the disputed acts. It claims that, in so far as they affected its reputation, the disputed acts caused it significant non-material damage, which it assesses *ex aequo et bono* at EUR 1 million, as it had already stated in its letter to the Council of 25 July 2015. The applicant maintains, in that regard, that in a similar situation, the Courts of the European Union have already accepted and awarded damages for non-material damage done to a company in the form of injury to its reputation (judgment of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraphs 80 and 83).
- 109 Contrary to the argument put forward by the Council in reliance on a judgment of the European Court of Human Rights ('the ECtHR'), namely the judgment of the ECtHR of 19 July 2011, *Uj v. Hungary* (CE:ECHR:2011:0719JUD002395410), the applicant takes the view that companies have a moral dimension and may suffer non-material damage, for example, as a result of injury done to their reputation and to their ability to carry on their commercial activities. The applicant submits that the Council's reference to that judgment of the ECtHR is inadequate, as it only examined the protection of reputation in relation to restrictions that could be put on freedom of expression. Maintaining a good reputation is a particularly important factor in the banking sector, in which the applicant is active, since the sector relies on a network of trust among operators. The applicant argues that, prior to the adoption of the disputed acts, it enjoyed a good reputation internationally, as is shown by the fact that it conducted banking business at that level. Furthermore, the applicant had invested considerably in advertising its international services in Iran, to convey the image of an international financial operator. The disputed acts, which associated its name with a serious threat to international peace and security and led to the involuntary cessation of its activities in the European Union, had negatively affected its reputation. The renewal of the relationship with professional partners in the sector such as the Society for Worldwide Interbank Financial Telecommunication (SWIFT), and with its former customers in the international financial market would be costly. In any event, in the commercial sector, whenever an entity involuntarily ceases its activities, damage to its reputation and credibility are evident and inevitable. In order to restore its reputation, it would be required to conduct a global advertising campaign, the estimated cost of which would be 45 million US dollars (USD) (approximately EUR 38.7 million). As it had not yet evaluated the costs of restoring its reputation precisely, the Court could, as a measure of inquiry, appoint an independent expert to carry

out that evaluation. Lastly, the applicant takes the view that it is not necessary to show that it has incurred expenses, in particular for advertising, to restore its reputation, and that it is sufficient to invoke the existence of damage to its reputation, restoration of which will require substantial spending.

- 110 The Council, supported by the Commission, takes the view that the condition relating to the existence of damage is not satisfied in the present case. The disputed acts were not penal sanctions imposed on the applicant and were not intended to cause it damage. Their purpose was only to discourage nuclear proliferation. Thus, the applicant was not stigmatised as an organisation which, in itself, constitutes a threat to international peace and security, and had offered no evidence that such is the case. It was merely identified as a person that had facilitated commercial operations connected with nuclear proliferation, which was sufficient to justify its inclusion on the disputed lists. The Council contends that the applicant has not adduced any evidence to prove that it has suffered any non-material damage as a result of the adoption of those acts, as is required by the case-law. There is no evidence that it had a good reputation internationally, that it lost any business as a result of injury to that reputation, or that it had spent money on advertising or other means to restore that reputation. The newspaper article annexed to its application concerning the estimated cost of a global advertising campaign is irrelevant since it relates to a company unrelated to the applicant, in an unrelated branch of business and on a different continent from the applicant and unrelated to the restrictive measures taken by the European Union. The applicant's claims in the reply provide no evidence of any injury to its reputation, particularly in Iran, and, consequently of any non-material damage linked to that. In addition, the applicant provides no explanation or evidence in support of its claims that restoring its relationship with SWIFT would be costly. In any event, as the ECtHR held in paragraph 22 of the judgment of 19 July 2011, *Uj v. Hungary* (CE:ECHR:2011:0719JUD002395410), there is a difference between the damage to the commercial reputation of a company and damage to the reputation of an individual concerning his or her social status, with the former being devoid of a moral dimension. The Court itself has referred to that case-law in a case concerning restrictive measures (judgment of 12 February 2015, *Akhras v Council*, T-579/11, not published, EU:T:2015:97, paragraph 152). By asking the Court to appoint an expert, by way of a measure of inquiry, the applicant is, it is claimed, attempting to circumvent the fact that the burden of proof falls on the applicant to prove the existence of the damage it alleges and to quantify it. If the Court were to take the view that the European Union's non-contractual liability has been incurred, it should find, in accordance with the case-law, that the annulment of the disputed acts constitutes adequate compensation for the non-material damage suffered by the applicant. In any event, the amount of EUR 1 million claimed by the applicant by way of compensation for non-material damage is excessive, in view of the case-law, and is unsubstantiated.
- 111 The Commission adds that the type of non-material damage claimed by the applicant, namely the cost of an advertising campaign to restore its image, is indistinguishable from material damage, for which it would need to prove real and concrete damage.
- 112 As regards the condition of actual damage, according to the case-law, (see, to that effect, judgments of 27 January 1982, *De Franceschi v Council and Commission*, 51/81, EU:C:1982:20, paragraph 9; of 13 November 1984, *Birra Wührer and Others v Council and Commission*, 256/80, 257/80, 265/80, 267/80, 5/81, 51/81 and 282/82, EU:C:1984:341, paragraph 9; and of 16 January 1996, *Candiotte v Council*, T-108/94, EU:T:1996:5, paragraph 54), the European Union can incur non-contractual liability only if an applicant has actually suffered real and certain loss. It is for the applicant to prove that this condition has been fulfilled, (see judgment of 9 November 2006, *Agraz and Others v Commission*, C-243/05 P, EU:C:2006:708, paragraph 27 and the case-law cited) and, in particular, to adduce conclusive proof of both the existence and extent of the damage (see judgment of 16 September 1997, *Blackspur DIY and Others v Council and Commission*, C-362/95 P, EU:C:1997:401, paragraph 31 and the case-law cited).

- 113 More specifically, any claim for compensation for damage, whether the damage is material or non-material, and whether the indemnity is symbolic or actual, must give particulars of the nature of the damage alleged in connection with the conduct at issue and must quantify the whole of that damage, even if approximately (see judgment of 26 February 2015, *Sabbagh v Council*, T-652/11, not published, EU:T:2015:112, paragraph 65 and the case-law cited).
- 114 In respect of the compensation for the damage which it classifies as ‘moral’, or non-material, the applicant refers to injury to its reputation as a result of the association of its name with a serious threat to international peace and security, the fact of which is shown by the fact that the adoption of the disputed acts affected the conduct of third parties with respect to the applicant and the extent of which can be measured in relation to the cost of the investment in advertising that the applicant would have to make in order to restore its reputation.
- 115 The damage for which the applicant thus seeks compensation, on the basis of non-material damage, is by nature intangible and consists of damage to its image or to its reputation.
- 116 According to the case-law based on Article 268 TFEU, read in conjunction with the second paragraph of Article 340 TFEU, non-material damage can, in principle, be compensated with regard to legal persons (see, to that effect, judgments of 28 January 1999, *BAI v Commission*, T-230/95, EU:T:1999:11, paragraph 37, and of 15 October 2008, *Camar v Commission*, T-457/04 and T-223/05, not published, EU:T:2008:439, paragraph 56 and the case-law cited), and such damage can take the form of damage to the image or to the reputation of that person (see, to that effect, judgments of 9 July 1999, *New Europe Consulting and Brown v Commission*, T-231/97, EU:T:1999:146, paragraphs 53 and 69; of 8 November 2011, *Idromacchine and Others v Commission*, T-88/09, EU:T:2011:641, paragraphs 70 to 76; and of 25 November 2014, *Safa Nicu Sepahan v Council*, T-384/11, EU:T:2014:986, paragraphs 80 to 85).
- 117 In so far as the Council seeks to rely on the case-law of the ECtHR, it must be recalled that this does not exclude, in the light of its own case-law and that practice, the possibility that even a commercial company may be awarded pecuniary compensation for non-pecuniary damage, with such compensation depending on the circumstances of each case (ECtHR, 6 April 2000, *Comingersoll S.A. v. Portugal*, CE:ECHR:2000:0406JUD003538297, § 32 and 35). That damage may include, for such a company, elements that are to a greater or lesser extent ‘objective’ or ‘subjective’, among which account should be taken of the company’s reputation, for which there is no precise method of calculating the consequences (ECtHR, 6 April 2000, *Comingersoll S.A. v. Portugal*, CE:ECHR:2000:0406JUD003538297, § 35). As is clear from the ECtHR judgment of 2 February 2016, *Magyar Tartalomszolgáltatók Egyesülete and index.hu Zrt v. Hungary* (CE:ECHR:2016:0202JUD002294713, § 84), that case-law of the ECtHR has not been called into question by the ECtHR judgment of 19 July 2011, *Uj v. Hungary* (CE:ECHR:2011:0719JUD002395410), cited by the Council, which merely clarified that such damage was, for a company, of a commercial rather than moral nature.
- 118 Therefore, both the Commission’s arguments that the non-material damage allegedly suffered by the applicant is material damage and the Council’s arguments that the applicant, as a commercial company, cannot be compensated for non-material damage represented by damage to its reputation, must be rejected.
- 119 As regards the actual non-material damage allegedly suffered, it should be recalled that, concerning such damage in particular, if adducing or offering evidence is not necessarily held to be a condition for the recognition of that damage, it is for the applicant to at least establish that the conduct alleged against the institution concerned was capable of causing damage to it (see judgment of 16 October 2014, *Evropaïki Dynamiki v Commission*, T-297/12, not published, EU:T:2014:888, paragraph 31 and the case-law cited; see also, to that effect, judgment of 28 January 1999, *BAI v Commission*, T-230/95, EU:T:1999:11, paragraph 39).

- ¹²⁰ Moreover, while the Court of Justice held, in the judgment of 28 May 2013, *Abdulrahim v Council and Commission* (C-239/12 P, EU:C:2013:331), that the annulment of unlawful restrictive measures was capable of constituting a form of reparation for non-material damage suffered, it does not follow from this that that form of reparation is necessarily sufficient, in every case, to ensure full reparation for such damage, every decision in that regard being required to be taken on the basis of an assessment of the circumstances of the case (see, to that effect, judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 49).
- ¹²¹ In the present case, the only admissible evidence submitted by the applicant does not, however, support a finding that the recognition of the unlawfulness of the conduct alleged against the Council and the annulment of the disputed acts would have been insufficient, as such, to compensate for the non-material damage allegedly suffered as a result of the injury to the applicant's reputation caused by the disputed acts.
- ¹²² Thus, without there being any need to examine the condition that there must be a causal link, the applicant's claim for compensation for non-material damage must be rejected, and, therefore, the action must be dismissed in its entirety.

Costs

- ¹²³ Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Council.
- ¹²⁴ Under Article 138(1) of the Rules of Procedure, institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

- 1. Dismisses the action;**
- 2. Orders Post Bank Iran to bear its own costs and to pay those incurred by the Council of the European Union;**
- 3. Orders the European Commission to bear its own costs.**

Pelikánová
Svenningsen

Valančius

Nihoul
Öberg

Delivered in open court in Luxembourg on 13 December 2018.

E. Coulon
Registrar

President