Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

26 October 2012 *

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

In Case T-53/12,

CF Sharp Shipping Agencies Pte Ltd, established in Singapore (Singapore), represented by S. Drury, Solicitor, K. Adamantopoulos and J. Cornelis, lawyers,

applicant,

v

Council of the European Union, represented by B. Driessen and V. Piessevaux, acting as Agents,

defendant,

APPLICATION for 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) and 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), in so far as they concern the applicant,

THE GENERAL COURT (Fourth Chamber),

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

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 11 July 2012,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicant, CF Sharp Shipping Agencies Pte Ltd, is a Singaporean company active, inter alia, as a shipping agency.

2 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.

3 The applicant's name was entered on the list in Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1) by Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11).

4 The entry of the applicant's name on that list had the consequence that its funds and economic resources were frozen, in accordance with Article 16(2) of Regulation No 961/2010.

5 So far as the applicant is concerned, Implementing Regulation No 1245/2011 stated the following reasons:

'[Islamic Republic of Iran Shipping Lines] IRISL front company, owned or controlled by IRISL.'

6 The Council of the European Union informed the applicant that its name had been included in the list in Annex VIII to Regulation No 961/2010 by letter of 5 December 2011, which the applicant claims to have received on 13 December 2011.

7 By letter of 15 December 2011 the applicant requested the Council to communicate to it all the relevant documents concerning the allegations made against it in Implementing Regulation No 1245/2011. The Council acknowledged receipt of that letter on 19 December 2011.

8 By letter of 19 December 2011 the applicant requested the Council to reconsider the decision to include it in the list in Annex VIII to Regulation No 961/2010.

9 On 19 January 2012 the applicant sent the Council a fax requesting information on the time being taken to deal with the requests in its letters of 15 and 19 December 2011. The Council confirmed receipt of the fax by e-mail of the same date.

10 By letter of 23 March 2012 the Council responded to the applicant's letters of 15 and 19 December 2011, stating that, following a reconsideration, it rejected the applicant's request that its name be deleted from the list in Annex VIII to Regulation No 961/2010. The Council explained, in that regard, that while the applicant was not actually owned by Islamic Republic of Iran Shipping Lines (IRISL) it had been used by the latter as a front company in order to make payments to another company covered by restrictive measures, P., which, in turn, acted on behalf of IRISL in the Middle East. The Council further explained that it intended to amend accordingly the reasons stated in Annex VIII to Regulation No 961/2010 concerning the applicant.

11 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's name was included by the Council in Annex IX to the latter regulation. Consequently, the applicant's funds and economic resources were frozen pursuant to Article 23(2) of that regulation. The statement of reasons about the applicant is identical to that set out in Implementing Regulation No 1245/2011.

Procedure and forms of order sought

12 By application lodged at the Registry of the General Court on 12 February 2012, the applicant brought this action.

13 By a separate document lodged at the Registry of the Court on the same day, the applicant made an application for the case to be decided under an expedited procedure in accordance with Article 76a of the Rules of Procedure of the General Court. By decision of 8 March 2012, the Court (Fourth Chamber) granted that request.

14 The Council's statement in defence was lodged on 26 March 2012.

15 On 26 April 2012 the Court requested the parties to provide information about the links between the applicant, IRISL and P. The parties complied with that request within the period prescribed by the Court.

16 On 16 May 2012, the Council submitted additional observations to the Court, in which it alleged that the applicant had received or obtained payments involving companies linked to IRISL, namely I., K., O. and C., aimed at circumventing the restrictive measures directed at IRISL.

17 By letter of 6 June 2012, the applicant submitted written observations on those allegations.

18 The parties presented oral argument and replied to the Court's oral questions at the hearing on 11 July 2012.

19 In its application, the applicant claims that the Court should:

— annul Implementing Regulation No 1245/2011 and Regulation No 961/2010 with immediate effect in so far as they concern the inclusion of the applicant on the list in Annex VIII to Regulation No 961/2010;

— order the Council to pay the costs.

20 At the hearing the applicant adapted its claims to seek also annulment of Regulation No 267/2012 in so far as it concerns its inclusion on the list in Annex IX to that regulation.

21 The Council contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

22 The applicant relies on three pleas in law, alleging, first, a manifest error of assessment in relation to the alleged links with IRISL; second, breach of the obligation to state reasons; and, third, breach of its rights of defence and of its right to effective judicial protection. The applicant requests, moreover, that should the contested measures be annulled such annulment should have immediate effect.

23 The Court considers it appropriate to begin by examining the issue of whether the adaptations to the applicant's claims are admissible.

Admissibility of the adaptations of the applicant's claims

24 As evidenced by paragraph 11 above, since the application was lodged, Regulation No 961/2010, as amended by Implementing Regulation No 1245/2011, was repealed and replaced by Regulation No 267/2012. At the hearing the applicant asked to be allowed to adapt its initial claims so that its action is directed to the annulment of all of those measures (together, 'the contested measures'). The Council indicated that it did not object to this.

25 It is to be borne in mind in this connection that, when 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 brought before the European Union courts against that measure, 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).

26 As regards the time period during which an adaptation of claims may be made, the Court considers that the two-month time period provided for in the sixth paragraph of Article 263 TFEU is, in principle, as applicable when the action for annulment of a measure is brought by application as when, in the course of a pending case, it is made through an adaptation of the claims for annulment of an earlier measure which has been repealed and replaced by the measure in question.

27 This outcome is justified by the fact that rules concerning time-limits for bringing proceedings are mandatory and must be applied by the court in question in such a way as to safeguard legal certainty and equality of persons before the law (Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 101), whilst avoiding any discrimination or arbitrary treatment in the administration of justice (Case 152/85 *Misset* v *Council* [1987] ECR 223, paragraph 11).

28 However, by way of an exception to that rule, the Court considers that that period is not applicable in proceedings in which, first, the act in question and the measure which that act repeals and replaces have, with regard to the person concerned, the same subject-matter, are essentially based on the same grounds and have essentially the same content, and therefore differ only by reason of their respective scopes of application ratione temporis and, second, the adaptation of the claim is not based on any new plea, fact or evidence apart from the actual adoption of the act in question repealing and replacing that earlier act.

29 In such circumstances, since the subject-matter and context of the dispute as established by the original action have not undergone any alteration except as regards its temporal dimension, legal certainty is in no way affected by the fact that the adaptation of the claim was made after the two-month period in question had expired.

30 It follows that, in the circumstances described in paragraph 28 above, an applicant may adapt its claims and pleas in law, even if the adaptation is made after the two-month period in provided for in the sixth paragraph of Article 263 TFEU has expired.

31 In the present case, since all the requirements set out in paragraph 28 above are satisfied, the Court finds that the applicant may seek annulment of Regulation No 267/2012, in so far as it concerns its inclusion in the list in Annex IX to that regulation.

Substance

32 The Court finds it appropriate to examine the second plea first, alleging infringement of the obligation to state the reasons on which the decision is based.

33 The applicant maintains that when adopting the restrictive measures against it the Council did not state its reasons to the requisite legal standard. More specifically, the assertion that it is owned or controlled by IRISL is merely a repetition of the applicable legal rule and therefore does not state the actual and specific reasons why the Council considered that the applicant should be the subject of restrictive measures. In particular, the Council did not specify the nature of the ownership or control allegedly exercised by IRISL over the applicant; nor did it supply further information on the reasons why the applicant is alleged to be a 'front company' for IRISL.

34 The Council contends that the reasons stated are sufficient, since it specified the nature of the links between the applicant and IRISL, namely that the applicant was used as a front company for the purpose of making payments to P.

35 It must be borne in mind that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for by the second paragraph of Article 296 TFEU and, more particularly in this case, by Article 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 act is well founded or whether it is vitiated by an error which may permit its validity to be contested before the European Union courts and, secondly, to enable those courts to review the lawfulness of that act. 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 and 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).

36 Consequently, unless there are compelling reasons relating to the security of the European Union or its Member States or the conduct of their international relations which preclude the disclosure of certain elements, the Council is required to inform an entity against which restrictive measures are directed of the actual and specific reasons why they had to be adopted. It must therefore state the facts and paragraphs of law on which the legal justification of the measure depend and the considerations which led the Council to adopt it (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 35 above, paragraph 81 and the case-law cited).

37 Moreover, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons is adequate must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a 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*, paragraph 35 above, paragraph 82 and the case-law cited).

38 In the present case, as regards the statement of reasons for the contested measures, it should be observed, first, as maintained by the applicant, that the reference to its being 'owned or controlled' by IRISL is merely a direct repetition of the wording of Article 16(2)(d) of Regulation No 961/2010 and of Article 23(e) of Regulation No 267/2012, without any further specifics about the applicant's individual situation, in particular the nature of the control exercised or the ownership.

39 Secondly, the reference to the applicant's being a 'front company' for IRISL has no autonomous content from the statement that it is owned or controlled by IRISL. Although the notion of 'front company' has no specific legal meaning, it is used to designate, in essence, an interposed entity, created to conceal the identity of the party behind certain conduct. In order to be able to serve as a 'front company' for that purpose, the interposed entity must necessarily be controlled or held, directly or indirectly, by the entity whose conduct must be concealed. Accordingly, the categorisation as 'front company' casts no further light on why the Council adopted restrictive measures in respect of the applicant.

40 In that context, the Council is incorrect in arguing that the reasons given for the contested measures enable the applicant to understand that restrictive measures were adopted in respect of it either because it was used by IRISL to make payments to P., as indicated by the Council in the letter of 23 March 2012, or because it received or made payments involving I., K., O. and C., as alleged by the Council in its observations of 16 May 2012.

41 In fact, not only are those two explanations at first glance contradictory because they are not based on the same sets of facts, it should also be observed that the reasons given in the contested measures do not refer to P., I., K., O. or C., or even the fact that the applicant was used by IRISL to receive or make payments.

42 Moreover, the circumstances referred to by the Council in the letter of 23 March 2012 and in the observations of 16 May 2012, even if they were established, do not prove that the applicant is held or controlled by IRISL as a 'front company', but rather that it helped IRISL or closely-related entities to avoid the effects of the restrictive measures directed at them.

43 Thus, contrary the Council's submissions, the reasons given for the contested measures do not explain why the Council relied on the circumstances set out in its letter of 23 March 2012 or in its observations of 16 May 2012.

44 In the light of the foregoing, the Court finds that the Council did not state its reasons for the contested measures to the requisite legal standard.

45 The second plea must therefore be upheld and Implementing Regulation No 1245/2011 and Regulation No 961/2010 annulled in so far as the inclusion of the applicant in the list in Annex VIII to Regulation No 961/2010 is concerned, as must Regulation No 267/2012 in so far as the inclusion of the applicant in the list in Annex IX to that regulation is concerned, without its being necessary to examine the first and third pleas.

46 The applicant further requests that the contested measures be annulled with immediate effect.

47 It should be noted, first, that Regulation No 961/2010, as amended by Implementing Regulation No 1245/2011, was repealed by Regulation No 267/2012. Consequently, those measures no longer produce legal effects, with the result that the applicant no longer has an interest in requesting their annulment with immediate effect. In those circumstances, it is no longer necessary to adjudicate on its request in so far as Regulation No 961/2010, as amended by Implementing Regulation No 1245/2011, is concerned.

48 Secondly, as regards Regulation No 267/2012, it must be remembered 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 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 (see, by analogy, judgment of 16 September 2011 in Case T-316/11 *Kadio Morokro* v *Council*, not published in the ECR, paragraph 38).

49 Regulation No 267/2012, including Annex IX thereto, is of the same nature as a regulation, since the second paragraph of Article 51 thereof provides that it is to be binding in its entirety and directly applicable in all Member States, which corresponds to the effects of a regulation as provided for in Article 288 TFEU (see, to that effect, Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraph 45).

50 In those circumstances, the applicant's action must be dismissed as regards the effects of the annulment of Regulation No 267/2012.

Costs

51 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. Furthermore, under Article 87(6) of those rules, where a case does not proceed to judgment the costs are in the discretion of the Court. Since the Council has been unsuccessful, it must be ordered to pay the costs, as applied for by the applicant.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 and Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 in so far as they concern the inclusion of CF Sharp Shipping Agencies Pte Ltd on the list in Annex VIII to Regulation No 961/2010.**

2. **Annuls Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 in so far as it concerns the inclusion of CF Sharp Shipping Agencies on the list in Annex IX thereto.**

3. **Holds that there is no longer any need to adjudicate on the application by CF Sharp Shipping Agencies seeking annulment of Regulation No 961/2010 and Implementing Regulation No 1245/2011 with immediate effect.**

4. **Dismisses the action as to the remainder.**

5. **Orders the Council of the European Union to pay the costs.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 26 October 2012.

[Signatures]