Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

18 October 2016*

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Actions for annulment — Period allowed for commencing proceedings — Amendment of pleadings — Admissibility — Obligation to state reasons — Rights of defence — Right to effective judicial protection — Manifest error of assessment — Adjustment of the effects in time of an annulment)

In Case T-418/14,

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

applicant,

v

Council of the European Union, represented by B. Driessen and D. Gicheva, acting as Agents,

defendant,

ACTION under Article 263 TFEU for the annulment, on the one hand, of the Council decision, as contained in the notice published on 15 March 2014 for the attention of the persons and entities subject to the restrictive measures provided for in Council Decision 2010/413/CFSP and in Council Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2014 C 77, p. 1), to maintain the applicant's name on the list 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), as amended by Council Decision 2010/644/CFSP of 25 October 2010 (OJ 2010 L 281, p. 81), and in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), and, on the other, Council Decision 2014/776/CFSP of 7 November 2014 amending Decision 2010/413 (OJ 2014 L 325, p. 19), Council Implementing Regulation (EU) No 1202/2014 of 7 November 2014 implementing Regulation No 267/2012 (OJ 2014 L 325, p. 3), Council Decision 2015/1008/CFSP of 25 June 2015 amending Decision 2010/413 (OJ 2015 L 161, p. 19) and Council Implementing Regulation (EU) 2015/1001 of 25 June 2015 implementing Regulation No 267/2012 (OJ 2015 L 161, p. 1), in so far as those measures maintained the applicant's name on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex IX to Regulation No 267/2012,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, I. Pelikánová (Rapporteur) and E. Buttigieg, Judges,

Registrar: M. Junius, Administrator,

* * Language of the case: English.

having regard to the written part of the procedure and further to the hearing on 8 April 2016,

gives the following

Judgment

Background to the dispute

1. *Restrictive measures adopted against the Islamic Republic of Iran*

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

2. *Restrictive measures directed at the applicant*

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

3 On 26 July 2010, the applicant's name was included on the list 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's name was also 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). Its inclusion on that list 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, 27 July 2010. It had the effect of freezing the applicant's funds and financial resources ('freezing of funds').

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

'This bank is very closely linked to the interests of "Daftar" (Office of the Supreme Leader [of the Islamic Revolution], with an administration of some 500 collaborators). It contributes in this way to funding the regime's strategic interests.'

6 By letter of 27 July 2010, the Council of the European Union informed the applicant that its name had been included on the list in Annex II to Decision 2010/413 and in Annex V to Regulation No 423/2007. A copy of those measures was appended to that letter.

7 By letter of 8 September 2010, the applicant commented on its inclusion on those lists and requested the Council to reconsider the situation.

8 After reviewing the applicant's situation, the Council maintained its name on the list in Annex II to Decision 2010/413, as amended by Council Decision 2010/644/CFSP of 25 October 2010 (OJ 2010 L 281, p. 81), with effect from the same date.

9 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, for the same reasons as those already stated in paragraph 5 above, on the list in Annex VIII to that regulation, with effect from 27 October 2010.

10 By letter of 28 October 2010, notified to the applicant on 5 December 2010, the Council informed the applicant that, following a review of its situation in the light of the observations in its letter of 8 September 2010, it would continue to be subject to restrictive measures.

11 By letters of 6 and 20 December 2010, the applicant contested, through its lawyers, the maintaining of the fund-freezing measure taken against it. For the purposes of exercising the applicant's rights of defence, the lawyers asked the Council to give them access to the file and to notify them of the elements justifying maintenance of the measure taken.

12 By application lodged at the Court Registry on 6 January 2011, the applicant brought an action seeking, in essence, annulment of Annex II to Decision 2010/413, as amended by Decision 2010/644, and of Annex VIII to Regulation No 961/2010, in so far as they concerned the applicant. The case was registered in the Registry of the General Court as Case T-15/11.

13 By letter of 22 February 2011, the Council communicated to the applicant's lawyers the document bearing reference number 6724/11, containing the information in the file that supported the grounds set out in paragraph 5 above.

14 By letter of 18 July 2011, the applicant again contested the continuation of the fund-freezing measure taken against it.

15 After reviewing the applicant's situation, the Council maintained the applicant's name on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010, with effect, respectively, from 1 December 2011, the date of the adoption of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71), and from 2 December 2011, the date of the publication in the *Official Journal of the European Union* of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11).

16 By letter of 5 December 2011, of which the applicant was notified on the same date, the Council informed the applicant that it would continue to be subject to restrictive measures. In that letter, the Council stated that, 'although some 36% of the shares in [the applicant] ha[d] been sold as part of a public offering, the main shareholder [was] still the [Mostazafan] Foundation, which [was] a public body reporting to [the] Supreme Leader' and that 'the Council therefore remain[ed] of the opinion that [the applicant was] closely linked to the interests of the "Daftar" (Office of the Supreme Leader) and contribute[d] in this way to funding the regime's strategic interests'.

17 By letter of 23 January 2012, the applicant once again contested, through its lawyers, the maintaining of the fund-freezing measure taken against it. For the purposes of exercising the applicant's rights of defence, the lawyers asked the Council to give them access to the file and to notify them of the elements justifying maintenance of the measure taken.

18 By application lodged at the Registry of the General Court on 10 February 2012, the applicant brought an action seeking, in essence, annulment, first, of Decision 2011/783 and of Implementing Regulation No 1245/2011 in so far as they had maintained, after review, the listing of the applicant's name in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010, and, secondly, of Article 16(2) of Regulation No 961/2010 and of Article 19(1)(b) and Article 20(1)(b) of Decision 2010/413, in so far as those provisions concerned the applicant. The case was registered in the Registry of the General Court as Case T-67/12.

19 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, the applicant's name was included, for the same reasons as those already stated in paragraph 5 above, on the list in Annex IX to that regulation, with effect from 24 March 2012.

20 By judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11, EU:T:2012:661), the Court annulled Annex II to Decision 2010/413, as amended by Decision 2010/644, and Annex VIII to Regulation No 961/2010, in so far as they concerned the applicant. However, it maintained the effects, as regards the applicant, of Annex II to Decision 2010/413, as amended by Decision 2010/644, until the annulment of Annex VIII to Regulation No 961/2010 took effect, in so far as the latter concerned the applicant. No appeal having been lodged against the judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11, EU:T:2012:661), that judgment became final and acquired the force of *res judicata*.

21 On 15 March 2014, the Council published a notice for the attention of the persons and entities subject to the restrictive measures provided for in Decision 2010/413 and in Regulation No 267/2012 (OJ 2014 C 77, p. 1), setting out its decision, following a review, to continue to apply the restrictive measures provided for by Decision 2010/413 and Regulation No 267/2012 to the persons and entities whose names were included on the list in Annex II to that decision and in Annex IX to that regulation.

22 By letter of 14 April 2014, the applicant again challenged before the Council the maintenance of the fund-freezing measure taken against it.

Facts occurring after the present action had been brought

23 By judgment of 4 June 2014, *Sina Bank* v *Council* (T-67/12, not published, EU:T:2014:348), the Court, on the one hand, dismissed the action before it on the ground that it had no jurisdiction to hear that action, in so far as it sought annulment of Article 19(1)(b) and Article 20(1)(b) of Decision 2010/413, and as being inadmissible, in so far as it sought annulment of Article 16(2) of Regulation No 961/2010 and, on the other, annulled Decision 2011/783 and Implementing Regulation No 1245/2011, in so far as those measures had maintained, after review, the applicant's name on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex VIII to Regulation No 961/2010. No appeal having been lodged against the judgment of 4 June 2014, *Sina Bank* v *Council* (T-67/12, not published, EU:T:2014:348), that judgment became final and acquired the force of *res judicata*.

24 By email of 1 September 2014, the Council informed the applicant's lawyers that, following a review of the applicant's situation, it had decided to maintain its name on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, and in Annex IX to Regulation No 267/2012 (the 'list at issue'), for the following reasons:

'Sina Bank is controlled by the Mostazafan Foundation, a major Iranian parastatal entity directly controlled by the Supreme Leader, and which has an 84% shareholding in Sina Bank. It provides financial services to the Mostazafan Foundation and its group of subsidiary units and companies. Accordingly, Sina Bank provides financial support to the Government of Iran through the Mostazafan Foundation.'

25 In an annex to that message, the Council produced the documents bearing reference MD RELEX 169 to 174/14, containing the information in the file supporting the reasons given in paragraph 24 above.

26 By letter of 17 September 2014, the applicant contested the maintenance of the fund-freezing measure taken against it. In particular, it disputed the percentage of shares in its capital held by the Mostazafan Foundation of the Islamic Republic of Iran ('the Foundation').

27 By Council Decision 2014/776/CFSP of 7 November 2014 amending Decision 2010/413 (OJ 2014 L 325, p. 19), the reasons for including the applicant's name on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, were altered, as indicated in paragraph 24 above, with effect from 8 November 2014.

28 Consequently, by Council Implementing Regulation (EU) No 1202/2014 of 7 November 2014 implementing Regulation No 267/2012 (OJ 2014 L 325, p. 3), the reasons for the applicant's inclusion on the list in Annex IX to Regulation No 267/2012 were amended too, as stated in paragraph 24 above, with effect from 8 November 2014.

29 By letter sent to the applicant on 10 November 2014, the Council stated that the applicant was to remain subject to restrictive measures for the reasons set out in paragraph 24 above. It added that the applicant's assertion, in the letter of 17 September 2014, that the percentage of the shares held by the Foundation in its capital went, after March 2011, from 80% to 63.52% was unsubstantiated and even contradicted by the Foundation's financial statements for 2012, according to which the Foundation's shareholding in the applicant was still 84% in March 2012.

30 By letter of 15 January 2015, the applicant contested the maintenance of the fund-freezing measure taken against it. It reiterated its requests to be given full access to the file and to all the documents justifying that measure.

31 By Council Decision (CFSP) 2015/1008 of 25 June 2015 amending Decision 2010/413 (OJ 2015 L 161, p. 19) and Council Implementing Regulation (EU) 2015/1001 of 25 June 2015 implementing Regulation No 267/2012 (OJ 2015 L 161, p. 1), the Council, after review, maintained the applicant's name on the list at issue, for the reasons given in paragraph 24 above, with effect from 27 June 2015.

32 By letter and email of 26 June 2015, the Council informed the applicant's lawyers that the applicant was to remain subject to restrictive measures for the reasons given in paragraph 24 above.

33 By letter of 31 July 2015, the applicant contested, through its lawyers, the maintenance of the fund-freezing measure taken against it. It reiterated its requests to be given full access to the file and to all the documents justifying the measure taken.

Procedure and forms of order sought

34 By application lodged at the Registry of the Court on 25 May 2014, the applicant brought the present action seeking annulment of the Council's decision, as contained in the notice published on 15 March 2014, to maintain its name on the list at issue ('the contested decision'), and Annex IX to Regulation No 267/2012, in so far as it affects the applicant.

35 On 2 September 2014 the Council lodged its defence.

36 On 22 October 2014 the applicant lodged its reply.

37 On 4 December 2014 the Council lodged its rejoinder.

38 On 16 January 2015, the applicant lodged at the Court Registry a first pleading amending the form of order sought, so that it also relates to Decision 2014/776 and Implementing Regulation No 1202/2014, in so far as those measures had maintained the applicant's name on the list at issue.

39 On 9 February 2015 the Council lodged its observations on the first amendment to the form of order sought in the present action.

40 On 20 September 2015, the applicant lodged at the Court Registry a second pleading amending the form of order sought, so that it should also relate to Decision 2015/1008 and Implementing Regulation 2015/1001, in so far as those measures maintained the applicant's name on the list at issue.

41 On 4 November 2015 the Council lodged its observations on the second amendment to the form of order sought in the present action.

42 On a proposal from the Judge-Rapporteur, the Court decided to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 89(3)(a), (b) and (d) of its Rules of Procedure, requested the parties to reply to a number of questions, to provide certain information and to produce certain documents. The parties complied with those requests within the prescribed period.

43 The parties presented oral argument and replied to the Court's oral questions at the hearing on 8 April 2016.

44 In the application and in the pleadings amending the form of order sought, the applicant claims, in essence, that the Court should:

— annul the contested decision and Annex IX to Regulation No 267/2012, in so far as it relates to the applicant;

— annul Decision 2014/776 and Implementing Regulation No 1202/2014, in so far as those measures maintained its name on the list at issue;

— annul Decision 2015/1008 and Implementing Regulation 2015/1001 (together with Decision 2014/776 and Implementing Regulation No 1202/2014; 'the measures at issue'), in so far as those measures maintained its name on the list at issue;

— order the Council to pay the costs of the proceedings.

45 The Council contends, in essence, that the Court should:

— reject as inadmissible the first head of claim, to the extent that it concerns the annulment of Annex IX to Regulation No 267/2012, in so far as it affects the applicant, and the third head of claim;

— dismiss the remainder of the application as unfounded;

— order the applicant to pay the costs.

Law

1. *Admissibility*

The admissibility of the first head of claim, inasmuch as it concerns the annulment of Annex IX to Regulation No 267/2012, in so far as it concerns the applicant

46 The Council claims that the first head of claim should be rejected as inadmissible, inasmuch as it concerns the annulment of Annex IX to Regulation No 267/2012 to the extent that it concerns the applicant. Regulation No 267/2010 was adopted on 23 March 2012. It was published and came into force on 24 March 2012. The head of claim at issue, contained in the application lodged at the Court Registry on 25 May 2014 (paragraph 34 above), was therefore introduced well beyond the time limit laid down by Article 263 TFEU.

47 The applicant claims that this plea of inadmissibility should be rejected. It submits that it is entitled to seek the annulment of both the contested decision and Annex IX to Regulation No 267/2012, in so far as its name has been maintained therein, in accordance with the contested decision and notwithstanding the delivery of the judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11, EU:T:2012:661).

48 In that regard, first of all, it should be noted that the heads of claim in the present action seeking the annulment of Annex IX to Regulation No 267/2012, in so far as it concerns the applicant, are, in essence, identical to those which directly seek the annulment of the contested decision, namely the decision of the Council, contained in the notice published on 15 March 2014, to maintain the applicant's name on the list at issue. Both relate, essentially, to the same measure, namely that in which, as indicated in the notice published on 15 March 2014, the Council decided, following a review, to maintain the applicant's name on the disputed list.

49 Next, it should be noted that, pursuant to the second paragraph of Article 275 TFEU and the fourth and sixth paragraphs of Article 263 TFEU, the applicant has standing to bring an action for the annulment of the decision to maintain, after review, its name on the list at issue, which underpins the restrictive measures taken against it (see, to that effect, judgment of 11 December 2012, *Sina Bank* v *Council*, T-15/11, EU:T:2012:661, paragraphs 34 and 38).

50 Finally, it should be recalled that, according to case-law, the period for bringing an action for the annulment of acts that provide for individual restrictive measures under the fourth paragraph of Article 263 TFEU runs, for each of the persons and entities concerned, from the date of the communication which they must receive (see, to that effect, judgment of 23 April 2013, *Gbagbo and Others* v *Council*, C-478/11 P to C-482/11 P, EU:C:2013:258, paragraph 59).

51 Where the address of the person or entity to which an act providing for restrictive measures is known to the Council, the Council is required to make an individual communication of the act in question to that address (see, to that effect, judgment of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraphs 47 to 52). It is apparent from the case-law that, since the period for bringing an action runs from the date of notification of the act providing for restrictive measures, that period may not begin to run, in respect of the person or entity covered by that act and whose address is known to the Council, so long as the act in question has not been properly communicated to him at that address (see, to that effect, judgments of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraphs 57 and 59, and of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 66).

52 In the present case, it is apparent from the file, in particular from Annex IX to Regulation No 267/2012, that the Council was aware of the applicant's exact address. It was therefore required to communicate the contested decision to it individually. However, the Council merely published a notice in the *Official Journal*, with the result that, since the period for bringing an action runs from the date of notification of the act, that period could not begin to run.

53 In view of the foregoing, it must be held, first, that the heads of claim set out within the present application seeking the annulment of Annex IX to Regulation No 267/2012, in so far as it concerns the applicant, are not independent in scope of those seeking annulment of the contested decision, with which they are associable, and, secondly, that the plea of inadmissibility based on the delay in bringing the present action, in so far as it relates to the annulment of the contested decision, is unfounded and must therefore be rejected.

Admissibility of the third head of claim

54 The Council claims that the third head of claim, seeking annulment of Decision 2015/1008 and of Implementing Regulation 2015/1001, should be rejected as inadmissible, inasmuch as those measures maintained the applicant's name on the list at issue. It is apparent from the letter of 31 July 2015 (paragraph 33 above) that the applicant was indeed notified of the measures in question through its lawyers. Moreover, certain expressions in the letter of 6 December 2010 (paragraph 11 above) suggest the existence of an agreement, within the meaning of the judgment of 5 November 2014, *Mayaleh* v *Council* (T-307/12 and T-408/13, EU:T:2014:926, paragraph 74), between the Council and the applicant, to communicate through the applicant's lawyers. The notification of Decision 2015/1008 and of Implementing Regulation 2015/1001 to the applicant's lawyers, on 26 June 2015 (paragraph 32 above), caused the limitation period for bringing an action against those measures to begin to run; that period expired on 5 September 2015. The third head of claim, in the further pleadings amending the form of order, lodged at the Court Registry on 20 September 2015 (paragraph 40 above), was therefore introduced out of time.

55 The applicant claims that this plea of inadmissibility should be rejected as unfounded.

56 In that regard, it should be recalled that, according to settled case-law, requests to adapt the forms of order sought must be submitted within the period for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU (see, to that effect, judgments of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 55, and of 16 September 2013, *Bank Kargoshaei and Others* v *Council*, T-8/11, not published, EU:T:2013:470, paragraph 40).

57 In order for the period within which the applicant had to bring an action to start running, the Council was required, since it knew the applicant's address, to communicate Decision 2015/1008 and Implementing Regulation 2015/1001 to it individually (see paragraph 51 above).

58 In the present case, the Council communicated Decision 2015/1008 and Implementing Regulation 2015/1001 to the applicant, through its lawyers, by letter and email of 26 June 2015 (paragraph 32 above).

59 In response to a written request from the Court (paragraph 42 above), the Council produced a postal receipt, certifying that the letter of 26 June 2015 had reached the applicant's lawyers on 1 July 2015.

60 However, it should be noted that the sixth paragraph of Article 263 TFEU refers to the 'notification [of the measure] to the plaintiff' and not to the notification of the measure to its representative. It follows that, where a measure must be notified in order for the period for bringing proceedings to begin to run, that notification must, in principle, be sent to the addressee of the measure, not to the lawyers representing it. According to the case-law, notification to an applicant's representative amounts to notification to the addressee only where such a form of notification is expressly provided for in the applicable legislation or by agreement between the parties (see, to that effect, order of 8 July 2009, *Thoss* v *Court of Auditors*, T-545/08, not published, EU:T:2009:260, paragraphs 41 and 42; judgments of 11 July 2013, *BVGD* v *Commission*, T-104/07 and T-339/08, not published, EU:T:2013:366, paragraph 146; and of 5 November 2014, *Mayaleh* v *Council*, T-307/12 and T-408/13, EU:T:2014:926, paragraph 74).

61 In the present case, the applicable rules, namely Article 24(3) of Decision 2010/413 and Article 46(3) of Regulation No 267/2012, make no express reference to the possibility of notifying the restrictive measures taken in respect of a person or entity to its representative, but do expressly provide that, where the address of the person or entity concerned is known, the decision to impose restrictive measures on it must be communicated to it directly. Decision 2015/1008 and Implementing Regulation 2015/1001 had therefore to be notified directly to the applicant, whose address was known to the Council (paragraph 52 above).

62 Moreover, in response to a written question from the Court (paragraph 42 above) and at the hearing, the applicant challenged the contention that an agreement had been reached between it and the Council for all decisions imposing restrictive measures on it to be notified to it at its lawyers' address, and hence through them. The information in the files does not make it possible to establish that such an agreement was reached between the applicant and the Council. Admittedly, the file does show that, following the Council's letter of 28 October 2010 (paragraph 10 above), sent directly to the applicant, the latter's lawyers responded by letters of 6 and 20 December 2010 (paragraph 11 above), setting out their own business address at the bottom of the page and requesting the Council to give them access to the file and to communicate to them the information in support of the Council's decision to impose restrictive measures on their client, and that it is in reference to those letters that the Council then directly sent the letter of 22 February 2011 (paragraph 13 above) to the applicant's lawyers. Although that exchange of letters shows that the applicant approached the Council through its lawyers, and although those lawyers requested access to the file or for certain documents to be communicated to them, it is not apparent, however, that the applicant authorised the Council, by way of derogation from what is provided by the applicable legislation (see paragraph 61 above), to communicate also with it indirectly, through its lawyers. It is in particular apparent from the letter of 18 July 2011 (paragraph 14 above) and from the letter of 5 December 2011 (paragraph 16 above) that, on certain occasions, the applicant and the Council continued to communicate directly with each other. In addition, it is apparent from the letters of 15 January and 31 July 2015 (paragraphs 30 and 33 above) that the applicant desired to have the relevant documents in the Council's file communicated to it directly. Consequently, it must be held that the applicant did not enter into any agreement with the Council for the measures in question to be notified to it at its lawyers' address, and hence through them.

63 It follows that, in the circumstances of the present case, the actual communication of the measures in question to the applicant's lawyers did not amount to a communication, and therefore to a notification, of those measures to the applicant itself.

64 In the light of all of the foregoing, it must be held that the present action is admissible in its entirety.

2. *Substance*

65 In support of the present action, the applicant raises two pleas alleging, first, infringement of the obligation to state reasons, of the principle of respect for the rights of the defence and of the right to effective legal protection, and secondly, a manifest error of assessment.

The first plea, alleging infringement of the obligation to state reasons, of the principle of respect for the rights of the defence and of the right to effective judicial protection

66 The applicant complains that the Council, by adopting the contested decision (paragraph 34 above) and the measures at issue (third indent of paragraph 44, above) (together, 'the contested measures'), infringed the obligation to state reasons, the principle of respect for the rights of the defence and the right to effective legal protection, as interpreted by the EU Courts and the European Court of Human Rights, in that it failed to communicate to the applicant either the specific grounds or the evidence and documents which justified maintenance, following review, of its name on the list at issue. The applicant submits that, according to the case-law, the failure to state reasons amounts to an infringement of essential procedural requirements that cannot be remedied merely by the person concerned learning the reasons for the decision taken in respect of it during the proceedings before the EU Courts. The only reasons that were communicated to it, before the commencement of the present action, are those referred to in paragraph 5 above. As was noted in the judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11, EU:T:2012:661), that statement of reasons is inadequate because too terse and general. Moreover, no evidence was provided to it in respect of its alleged links with the 'Daftar' and a possible contribution by it to the financing of 'strategic interests of the regime', which,

moreover, are not identified. In any event, the reasons communicated are erroneous since, on the one hand, there is no evidence that the applicant is still controlled by the Foundation or that it is controlled by or linked to the 'Daftar' and, on the other, almost all of its funding is directed to individuals and private undertakings, with very little going to the government and state-owned bodies. The additional reasons given in the letter of 5 December 2011 (paragraph 16 above) do not provide an adequate statement of reasons for the measures at issue. The Council merely indicates that its majority shareholder is the Foundation, without stating what are the 'strategic interests of the regime' that it is alleged to have financed, or which specific provisions of Decision 2010/413 and Regulation No 267/2012 justified the maintenance of its name on the list at issue. Despite its requests to that effect, the Council gave it no detailed information on the reasons for the maintenance of its name on the list at issue. The only elements which were communicated to it or of which it availed itself did not provide evidence of what was alleged in the contested measures. The lack of specific and concrete details in the statement of reasons for the contested measures does not enable the applicant to understand their scope, and therefore affects the exercise of the applicant's rights of defence and its right to effective judicial protection.

67 The Council challenges the applicant's arguments and contends that the first plea should be rejected.

Infringement of the obligation to state reasons

68 According to a consistent body of case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act (see judgments of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 49 and the case-law cited).

69 The statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review (see judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 50 and the case-law cited).

70 Since it relates to a Council measure imposing restrictive measures, the statement of reasons must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned (judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 52).

71 Article 24(3) of Decision 2010/413 and Article 46(3) of Regulation No 267/2012 also require the Council to provide individual and specific reasons for the restrictive measures adopted pursuant to Article 20(1)(b) of that decision and to Article 23(2)(a) and (3) of that regulation and to make the persons and entities concerned aware of them (see, to that effect and by analogy, judgment of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 48). According to case-law, the Council must, in principle, fulfil its obligation to state reasons by means of an individual communication, since mere publication in the *Official Journal* is not sufficient (see, to that effect, judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraphs 47 and 48; see also, to that effect and by analogy, judgment of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 52).

72 The statement of reasons required by Article 296 TFEU, Article 24(3) of Decision 2010/413 and Article 46(3) of Regulation No 267/2012 must be adapted to the provisions pursuant to which the restrictive measures were adopted. The requirements to be satisfied by the statement of reasons

depend on the circumstances of each case, in particular the content of the act in question, the nature of the reasons given and the interest which the addressees of the act, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 53 and the case-law cited).

73 In particular, the reasons given for a measure adversely affecting a person will be sufficient if that measure was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (see judgment of 15 November 2012, *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 54 and the case-law cited).

– The contested decision

74 It is apparent from the elements in the file referred to in paragraphs 15 and 16 above that the contested decision is based on both the initial statement of reasons set out in paragraph 5 above and on the additional statement of reasons, notified to the applicant by the letter of 5 December 2011, referred to in paragraph 16 above.

75 The purpose of the entirety of the statement of reasons referred to in paragraphs 5 and 16 above was clearly to apply to the applicant, on the one hand, the criterion of 'control' by a person or an entity recognised as being engaged in, directly associated with, or providing support for, nuclear proliferation, set out in article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and, on the other, the criterion of 'support for nuclear proliferation', set out in those provisions (see, to that effect, judgment of 11 December 2012, *Sina Bank* v *Council*, T-15/11, EU:T:2012:661, paragraph 70).

76 In so far as the contested decision applies to the applicant the criterion of 'control', it is based on both the initial and the additional statement of reasons, which, as was stated in paragraph 70 of the judgment of 4 June 2014, *Sina Bank* v *Council* (T-67/12, not published, EU:T:2014:348), was clearly intended to supplement the initial statement of reasons seeking to apply to the applicant the criterion of 'control'.

77 To the extent that the initial statement of reasons referred to in paragraph 5 above was already deemed insufficient in paragraph 82 of the judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11, EU:T:2012:661), which has the force of *res judicata* (paragraph 20 above), it remains to be examined whether the additional statement of reasons referred to in paragraph 16 above is, in this case, capable of having supplemented it, with the result that the requirements for the statement of reasons were finally met in the event of the adoption of the contested decision. In the judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11, EU:T:2012:661, paragraphs 72 to79), the Court did not have the opportunity to rule on that issue, since it merely held that, to the extent that, in the measures then being contested before it, the Council had relied on that additional statement of reasons, which had been communicated to the applicant after the adoption of those measures, it had infringed the principle of respect for the rights of the defence, and in particular the applicant's right to a prior hearing.

78 In the present case, the additional statement of reasons makes it possible to identify the persons or entities which, according to the Council, have 'control' over the applicant, within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and which are no longer identified, as in the initial statement of reasons, as being the 'Office of the Supreme Leader', but as being the 'Foundation' and the 'Supreme Leader' himself.

79 Furthermore, the additional statement of reasons makes it possible to understand the way in which, according to the Council, the Supreme Leader and the Foundation exercised, directly or indirectly, 'control' over the applicant, within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012. It is apparent from that statement of reasons that the Foundation was viewed as directly controlling the applicant on the ground that it remained the 'main shareholder' thereof. It is clear, moreover, from that statement of reasons that the Supreme Leader was considered indirectly to control the applicant, through the Foundation, since 'the Foundation [was] a public body reporting to the Supreme Leader'.

80 In the context of the present case, the term 'reporting', used by the Council, refers in a sufficiently comprehensible manner to the exercise of 'control' by the Supreme Leader over the Foundation, within the meaning of Article 20(1)(b) of Decision 2010/413 and of Article 23(2)(a) of Regulation No 267/2012.

81 The additional statement of reasons notified to the applicant by letter of 5 December 2011 was therefore sufficient, in the context of the case, to enable it to understand that the contested decision applied the 'control' criterion to it and was based, more specifically, on the fact that it was controlled by the Foundation, and through the latter, by the Supreme Leader. Similarly, the Court is in a position, on the basis of that additional statement of reasons, to control the validity of the contested decision, in that it applies to the applicant the criterion of 'control'.

82 Consequently, in the light of the context of the present case, it must be held that the statement of reasons pertaining to the contested decision, in that it applies to the applicant the criterion of 'control', did meet the requisite legal standard by virtue of the additional statement of reasons provided by the Council.

83 By contrast, the statement of reasons pertaining to the contested decision is not adequate, to the extent that it applies to the applicant the criterion of 'support for nuclear proliferation'. The initial statement of reasons referred to in paragraph 5 above, as amended by the additional statement of reasons referred to in paragraph 16 above, in essence, merely states that the applicant contributes 'to funding the regime's strategic interests', in so far as its 'main shareholder [is] still the Foundation, which [is] a public body reporting to [the] Supreme Leader'.

84 Even assuming that nuclear proliferation could be regarded as falling within 'the regime's strategic interests', the statement of reasons pertaining to the contested decision does not make it possible to ascertain the actual and specific reasons why the Council held that the applicant contributed to the funding of nuclear proliferation.

85 Even assuming that it is possible to infer from the grounds mentioning the capitalistic links between the Foundation and the applicant, as submitted by the Council in its pleadings, that the applicant pays big dividends and provides financial services to the Foundation, the fact remains that those grounds do not provide any explanation as to the use of those amounts or financial services by the Foundation or by the Supreme Leader in order to contribute to nuclear proliferation. On the one hand, it is not apparent from the statement of reasons pertaining to the contested decision that the Foundation is, directly or indirectly, involved in nuclear proliferation, while that involvement cannot be presumed in the present case. On the other hand, there is nothing to suggest in that statement of reasons that the dividends paid or the financial services offered by the applicant to the Foundation would or could be used to contribute, directly or indirectly, to nuclear proliferation. Such use cannot be presumed in the present case.

86 Consequently, it must be held that the contested decision, in that it applies to the applicant the criterion of 'support for nuclear proliferation', has not been substantiated to the requisite legal standard.

87 It is therefore necessary to uphold the complaint alleging breach of the obligation to state reasons, in so far as it seeks the annulment of the contested decision, in that it applies to the applicant the criterion of 'support for nuclear proliferation' (paragraph 86 above), and to reject that complaint in so far as it seeks annulment of that decision, to the extent that it applies to the applicant the criterion of 'control' (paragraph 82 above).

– The measures at issue

88 It is apparent from the information in the file mentioned in paragraphs 24, 27, 28, 31 and 32 above that the measures at issue are based on a new statement of reasons, set out in paragraph 24 above.

89 In the new statement of reasons, the Council recalled, while specifying them, the links between the applicant, the Foundation and the Supreme Leader, that '[the applicant was] controlled by the Foundation ..., a major Iranian parastatal entity directly controlled by the Supreme Leader, and which has an 84% shareholding in [the applicant]'. Furthermore, it stated that '[the applicant] provid[ed] financial services to the … Foundation and its group of subsidiary units and companies', from which it concluded that '[the applicant] provid[ed] financial support to the Government of Iran through the … Foundation'.

90 The purpose of those grounds is clearly to apply to the applicant, on the one hand, the criterion of 'control' by a person or an entity engaged in, directly associated with, or providing support for, nuclear proliferation, set out in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and, on the other, the criterion of 'support to the Government of Iran', set out in Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012. In that regard, the measures at issue are therefore based on a new criterion in relation to the contested decision (see paragraph 75 above).

91 The first part of the statement of reasons set out in paragraph 89 above was sufficient, in the context of the present case, to allow the applicant to understand that the measures at issue applied the criterion of 'control' to it and were based more specifically on the fact that, through the Foundation, it was controlled by the Supreme Leader. Furthermore, the Court is in a position, on the basis of that statement of reasons, to check the validity of the measures at issue, in that they apply to the applicant the criterion of 'control'.

92 With respect to the second part of the statement of reasons set out in paragraph 89 above, that part was sufficient, in the context of the present case, to enable the applicant to understand that the measures at issue also applied the criterion of 'support to the Government of Iran' to it and were based, more specifically, on the fact that it provided financial services to the Foundation and its group of subsidiaries and companies, which, given the parastatal nature of the Foundation and the direct control exercised over it by the Supreme Leader, amounted to indirectly providing financial support to the Government of Iran. Furthermore, the Court is in a position, on the basis of that statement of reasons, to review the validity of the measures at issue, in that they apply to the applicant the criterion of 'support to the Government of Iran'.

93 Consequently, given the context of the present case, it is appropriate to find that the statement of reasons for the measures at issue did meet the requisite legal standard and, accordingly, to reject the complaint alleging breach of the obligation to state reasons, inasmuch as it seeks the annulment of those measures.

94 In view of the foregoing, it is appropriate to uphold the complaint relating to the breach of the obligation to state reasons, in so far as it seeks the annulment of the contested decision, to the extent that it applies to the applicant the criterion of 'support for nuclear proliferation' (paragraph 86 above), and to reject it as to the remainder (paragraphs 87 and 93 above).

Infringement of the principle of the rights of the defence and of the right to effective judicial protection

95 The fundamental right to respect for the rights of defence during a procedure preceding the adoption of restrictive measures is expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, recognised by Article 6(1) TEU as having the same legal value as the Treaties (see judgment of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraph 31 and the case-law cited).

96 The principle of respect for the rights of the defence requires, on the one hand, that the evidence adduced against the person or entity concerned to justify the measure adversely affecting it be communicated to it and, on the other, that the person or entity concerned be afforded the opportunity effectively to make known its view on that evidence (see, to that effect, judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran* v *Council*, T-228/02, EU:T:2006:384, paragraph 93).

97 In the context of the adoption of a decision maintaining the name of a person or entity in a list of persons or entities subject to restrictive measures, the Council must respect the right of that person or entity to a prior hearing where new evidence, namely evidence which was not included in the initial listing decision, is admitted against it (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 62, and of 13 September 2013, *Makhlouf* v *Council*, T-383/11, EU:T:2013:431, paragraphs 42 and 43).

– The contested decision

98 On 5 December 2011, the Council communicated individually to the applicant the additional statement of reasons pertaining to the contested decision, referred to in paragraph 16 above.

99 As regards the application to the applicant of the criterion of 'control', set out in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, it is apparent from paragraph 82 above that the statement of reasons pertaining to the contested decision was sufficient.

100 Moreover, the Council states that it sent the applicant all the documentary evidence on which that statement of reasons was based (paragraph 13 above).

101 Contrary to what was the position with respect to the measures annulled by the judgment of 11 December 2012, *Sina Bank* v *Council* (T-15/11 EU:T:2012:661, paragraphs 72 to 79) (paragraph 77 above), the applicant was thus able to challenge effectively, in the case of the contested decision, the merits of the statement of reasons concerning the application to it of the criterion of 'control' and the information on which it was based, and thus even before the adoption of that decision, in particular in the letters of 23 January 2012 (paragraph 17 above) and of 14 April 2014 (paragraph 22 above). It was further able effectively to exercise its right of appeal in respect of the merits of that statement of reasons, as shown by the present action.

102 By contrast, in so far as the contested decision applies to the applicant the criterion of 'support for nuclear proliferation', it follows from paragraph 86 above that the statement of reasons pertaining to the contested decision was inadequate. For that reason, the applicant was not able, prior to the commencement of the present action, or in the course thereof, meaningfully or effectively to challenge the validity of the application of that criterion to its circumstances.

103 Therefore, it must be held that the contested decision, in that it applies to the applicant the criterion of 'support for nuclear proliferation', infringes the latter's rights of the defence as well as its right to effective judicial protection, but that it does not infringe those rights, in so far as it applies to the applicant the criterion of 'control'.

104 It is therefore necessary to uphold the complaint alleging breach of the principle of respect for the rights of the defence and of the right to effective judicial protection, in so far as it seeks the annulment of the contested decision, to the extent that it applies to the applicant the criterion of 'support for nuclear proliferation', and to reject it as to the remainder, namely in so far as it seeks annulment of the contested decision, to the extent that it applies to the applicant the criterion of 'control'.

– The measures at issue

105 On 1 September 2014, the Council communicated individually to the applicant the statement of reasons for the measures at issue, referred to in paragraph 24 above.

106 It follows from paragraph 93 above that that statement of reasons could be considered sufficient, having regard to the requirements laid down by case-law, in respect of the application to the applicant both of the criterion of 'control', set out in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and of the criterion of 'support to the Government of Iran', set out in Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012.

107 Moreover, the Council states that it sent the applicant all the documentary evidence on which the statement of reasons was based (paragraph 25 above).

108 The applicant was able to challenge that statement of reasons and the elements underpinning it even before the adoption of the measures at issue, in particular in the letters of 17 September 2014 (paragraph 26 above) and of 15 January 2015 (paragraph 30 above).

109 In addition, the applicant was able effectively to exercise its right to appeal by objecting in particular, as part of the present action, that it '[did] not support the government financially more than any other central bank in the world' and that 'it contribut[ed] still less the kind of support to which the contested measures referred, namely support for nuclear proliferation activities'.

110 Accordingly, the applicant's rights of defence and its right to effective judicial protection were fully respected when the measures at issue were adopted.

111 Consequently, the complaint alleging infringement of the principle of respect for the rights of the defence and of the right to effective judicial protection must be rejected, inasmuch as it seeks annulment of the measures at issue.

112 It follows from all of the foregoing that the first plea must be upheld only in so far as it concerns the contested decision and in so far as that decision applies to the applicant the criterion of 'support for nuclear proliferation'. The first ground of appeal must be rejected as to the remainder.

113 To the extent that the application to the applicant of the criterion of 'control', in the contested measures, as well as the criterion of 'support to the Government of Iran', in the measures at issue, is not affected by the illegalities found to have occurred in paragraphs 87, 94 and 104 above, those illegalities cannot justify the annulment of those acts. With regard to the review of the lawfulness of a decision adopting restrictive measures, the Court of Justice has held that, having regard to their preventive nature, if the Courts of the European Union consider that, at the very least, one of the reasons mentioned is sufficiently detailed and specific, is substantiated and constitutes in itself a

sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that decision (see, to that effect, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 130).

114 It is therefore appropriate to continue by examining the second plea, while restricting the examination to whether, to the extent that the Council applied the criterion of 'control' in the contested measures as well as that of 'support to the Government of Iran' in the measures at issue, it vitiated all of those measures by an error of assessment.

The second plea in law, alleging a manifest error of assessment

115 The applicant complains that the Council committed a manifest error of assessment by deciding, after review, in the contested measures, to maintain the applicant's name on the list at issue. It states that the only reasons communicated to it to justify maintenance of that listing are incorrect, since it neither is linked to the interests of the 'Daftar' nor contributes to the funding of the 'regime's strategic interests' or, more specifically, of nuclear proliferation. The Council, it submits, failed to take into account the fact that it is organised and operates as an ordinary private bank. The members of its Board of Directors were chosen for their ability and qualities and none of them was appointed by the 'Daftar' or is linked to it. Its services and its loans are provided to individuals, private persons and undertakings, rather than to State-owned bodies. Even though the Foundation is still its major shareholder, that cannot justify the maintenance of its name on the list at issue, since both the Foundation and the Daftar operate independently of the government and of the Iranian executive power, either for institutional and organisational reasons, or by virtue of the constitutional principle of the separation of powers set out in Article 57 of the Iranian Constitution. The Council did not, in the present case, apply the only criterion that, according to the case-law, makes it possible to adopt a freezing-of-funds measure in respect of a person or entity, namely support provided to the Iranian Government, support which, furthermore, cannot be merely indirect but must be direct. Like the authorities of the United Kingdom of Great Britain and Northern Ireland, the Council must give due effect to the judgment of 4 June 2014, *Sina Bank* v *Council* (T-67/12, not published, EU:T:2014:348), which requires the fund-freezing measure taken against it to be brought to an end.

116 The Council disputes the applicant's arguments and claims that the second plea should be rejected as unfounded.

117 As is apparent from the case-law of the Court of Justice, judicial review of a measure laying down restrictive measures covering a person or an entity requires, inter alia, that the Courts of the European Union ensure that the act in question is adopted on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that measure, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that measure, is substantiated (see judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 64 and the case-law cited).

118 To that end, it is for the Courts of the European Union, to carry out that examination, by requesting, where necessary, the competent European Union authority to produce information or evidence, confidential or not, which is relevant to such an examination (see judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 120 and the case-law cited).

119 It is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person or entity concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (see judgment of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 66 and the case-law cited).

120 As a preliminary point, it is apparent from the case-law referred to in paragraphs 117 to 119 above that the review carried out by the Court in the present case is not restricted to a review of whether there has been a manifest error of assessment. Accordingly, there is no need to pay particular attention to the fact that, according to the applicant, the error committed by the Council is manifest.

The contested decision

121 As noted in paragraphs 75 and 78 to 81 above, it is apparent from the initial and supplementary statement of reasons pertaining to the contested decision set out in paragraphs 5 and 16 above that that decision is based in particular on the application, to the applicant, of the criterion of 'control', set out in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and is based, more specifically, on the fact that the applicant was controlled by the Foundation, and through the latter, by the Supreme Leader.

122 The applicant's arguments may be understood, in essence, as alleging that the Council, in the contested decision, made an error of assessment in holding that the applicant was controlled by a person or entity recognised as being engaged in, directly associated with, or providing support for, nuclear proliferation, within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012.

123 In that regard, the application of the criterion of 'control' rests on the existence of a not insignificant risk that, where the funds of a person or entity recognised as participating in nuclear proliferation are frozen, that person or entity puts pressure on people and entities which it owns or controls in order to circumvent the effect of the restrictive measures applying to it by encouraging them either to transfer to it directly or indirectly their funds or to conduct transactions that it cannot itself conduct because of the freezing of its funds (see, to that effect, judgment of 13 March 2012, *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137, paragraph 58). In the light of that risk, the freezing of funds of persons and entities controlled by the person or entity whose funds have been frozen is a necessary and appropriate measure in order to ensure the effectiveness of the measures adopted and to guarantee that those measures will not be circumvented (see, to that effect, judgment of 13 March 2012, *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137, paragraph 58).

124 Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012 require the Council to freeze the funds of any person or entity controlled by a person or entity recognised as being engaged in, directly associated with or providing support for, nuclear proliferation, without the measure adopted on that ground having to be based on the fact that the person or entity owned or controlled is itself engaged in nuclear proliferation (see, to that effect, judgment of 13 March 2012, *Melli Bank* v *Council*, C-380/09 P, EU:C:2012:137, paragraphs 39 and 40).

125 In the light of the wording of Article 23(2)(a) of Regulation No 267/2012, which targets individuals and entities that, depending on the language versions, have been 'recognised' or 'identified' as being involved in nuclear proliferation, and the case-law relating to the application of the criterion of 'control' referred to in paragraphs 123 and 124 above, the Council may not adopt restrictive measures in respect of persons and entities whose names were included on a list of persons and entities subject to restrictive measures on the ground that they are controlled by persons or entities 'recognised' or 'identified' as being engaged in, directly associated with, or providing support for, nuclear proliferation.

126 In response to a written question from the Court (paragraph 42 above), the Council indicated that, when the contested decision was adopted, neither the name of the Foundation nor the name of the Supreme Leader had been included on the list at issue, which featured the names of persons or entities officially 'recognised' or 'identified' as being engaged in, directly associated with, or providing support for, nuclear proliferation, within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and requiring, for that reason, to be made subject to restrictive measures, such as the freezing of their funds. Consequently, the risk of the fund-freezing sanction being circumvented, which, as was noted in paragraph 123 above, normally justifies the application of the criterion of 'control', does not exist in the present case.

127 As a result of not having included the name of the Supreme Leader and the name of the Foundation on the list at issue, when the contested decision was adopted, the Council was not entitled to adopt that decision, inasmuch as it applies to the applicant the criterion of 'control'.

128 Any other solution would, moreover, place the applicant in an extremely unfavourable procedural position, from the point of view of the defence of its rights and its right to effective judicial protection, since, in order to contest the restrictive measures taken against it, it might be required to challenge the responsibility of the Supreme Leader and of the Foundation for nuclear proliferation, without being able to expect assistance in that regard from the Supreme Leader and the Foundation, against which no restrictive measures were adopted.

129 The Council therefore committed an error of assessment in the contested decision by applying to the applicant the criterion of 'control'.

130 Therefore, it is appropriate to uphold the second plea and to find that the contested decision is unfounded in so far as it applies to the applicant the criterion of 'control'.

131 The contested decision must therefore be annulled on the ground that, in part, the reasons given in the statement of reasons are insufficient (paragraph 87 above) and contrary to the principle of respect for the rights of the defence and the right to effective judicial protection (paragraph 104 above) and, in part, unfounded (paragraph 130 above).

The measures at issue

132 As noted in paragraphs 90 and 91 above, it is apparent from the statement of reasons pertaining to the measures at issue set out in paragraph 24 above that that statement is based in particular on the application to the applicant of the criterion of 'control', set out in Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012, and is based, more specifically, in that regard, on the fact that the applicant was controlled by the Foundation, and through the latter, by the Supreme Leader.

133 The applicant's arguments may be understood, in essence, as alleging that the Council, in the contested decision, made an error of assessment in holding that the applicant was controlled by a person or entity recognised as participating, being directly associated with, or providing support for nuclear proliferation within the meaning of Article 20(1)(b) of Decision 2000/413 and Article 23(2)(a) of Regulation No 267/2012.

134 For the reasons set out in paragraphs 123 to 125 above, the Council may adopt restrictive measures only in respect of persons and entities that are controlled by persons or entities whose names have been included on a list of individuals and entities subject to restrictive measures, as persons or entities 'recognised' or 'identified' as being engaged in, directly associated with, or providing support for, nuclear proliferation.

135 In response to a written question from the Court (paragraph 42 above), the Council acknowledged that, when the measures at issue were adopted, neither the name of the Foundation nor the name of the Supreme Leader had been entered on the list at issue, which included the names of persons or entities officially recognised or identified as being engaged in, directly associated with, or providing support for, nuclear proliferation, within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012. Accordingly, the Council was not authorised to adopt those measures, in that they applied to the applicant the criterion of 'control'.

136 The Council therefore committed an error of assessment in the measures at issue in applying to the applicant the criterion of 'control'.

137 It follows that the measures at issue are unfounded, in that they apply to the applicant the criterion of 'control'.

138 To the extent, however, that the measures at issue are based on the application of two different criteria, that substantive error is not in itself sufficient to justify the annulment of those measures, in accordance with the case-law referred to in paragraph 113 above, according to which the fact that a single criterion laid down by the legislation providing for restrictive measures is met is sufficient to justify the application of those measures.

139 As noted in paragraph 90 above, it is apparent from the statement of reasons pertaining to the measures at issue set out in paragraph 24 above that they are also based on the application to the applicant of the criterion of 'support to the Government of Iran', set out in Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012, and, more specifically, on the fact that the applicant 'provid[es] financial services to the … Foundation and its group of subsidiary units and companies'.

140 To the extent that, in its pleadings, the Council refers to the payment, made by the applicant to the Foundation, of 'dividends and bonuses' and, in particular, to the fact that it is apparent from the applicant's articles of incorporation and its financial statements for the tax year ending 20 March 2010, which were submitted as annexes to the application, that, as a shareholder of the applicant, the Foundation receives significant dividends and bonuses, those arguments cannot be taken into account, since they are not related to the specific grounds given in the measures at issue in order to justify applying to the applicant the criterion of 'support to the Government of Iran', namely that it 'provid[ed] financial services to the … Foundation and its group of subsidiary units and companies'.

141 The distribution of dividends or bonuses by a company to its shareholders cannot be treated as equivalent to the supply of a financial service by the former to the latter. By using that line of argument, the Council thus seeks to rely on information other than that on the basis of which the measures at issue were adopted.

142 The legality of the contested measures may be assessed only on the basis of the elements of fact and law pursuant to which they were adopted; the Court cannot accept the Council's invitation to substitute the grounds on which those measures are based (see, to that effect, judgment of 26 October 2012, *Oil Turbo Compressor* v *Council*, T-63/12, EU:T:2012:579, paragraph 29).

143 Consequently, the Council's arguments based on the payment of dividends or bonuses to the Foundation may not be taken into account for the purpose of assessing the merits of the measures at issue, to the extent that they apply to the applicant the criterion of 'support to the Government of Iran'.

144 In any event, the Council relies only on the applicant's distribution of dividends and bonuses to the Foundation, whereas the grounds for the measures at issue refer to financial services provided by the applicant not only to the Foundation itself, but also to the 'group of subsidiary units and companies' thereof.

145 Furthermore, in its pleadings, the Council refers to the fact that it is apparent from the applicant's articles of incorporation and its financial statements for the tax year ending 20 March 2010 that, as the applicant's shareholder, the Foundation 'participates in a series of transactions involving [it]'.

146 The applicant, for its part, argues that 'no substantial evidence of priority given to any governmental or state owned organisations was brought by the Council' and observes that 'figures and financial reports confirm that almost all of [its] loans, facilities and other services are offered to and used by private individual and entities rather than the government and state owned entities' and that '[its] services and loans are offered and used by the regular private individuals and entities rather than the government and state owned entities', referring in that regard to a list of its main clients for the period from March to November 2010, produced as an annex to the application.

147 In that regard, it should be noted that the criterion of 'support to the Government of Iran,' which expands the scope of restrictive measures in order to reinforce pressure on the Islamic Republic of Iran, covers only the activity of a person or entity which, irrespective of any link, direct or indirect, established with nuclear proliferation, is liable, as a result of its quantitative or qualitative importance, to enable that proliferation, by providing support to the Government of Iran in the form of resources or material, financial or logistical facilities, allowing it to pursue proliferation (see, to that effect, judgment of 16 July 2014, *National Iranian Oil Company* v *Council*, T-578/12, not published, EU:T:2014:678, paragraphs 118 to 120, 140 and 141). The criterion of 'support to the Government of Iran' thus does not refer to all forms of support, however small or symbolic, provided to the Government of Iran, but only to forms of support which, by their quantitative or qualitative importance, are likely to enable that government to pursue nuclear proliferation. Interpreted, subject to review by the Courts of the European Union, by reference to the objective of applying pressure on the Government of Iran in order to force it to end nuclear proliferation, the criterion at issue thus objectively establishes a limited category of persons and entities which may be subject to fund-freezing measures (see, to that effect, judgment of 16 July 2014, *National Iranian Oil Company* v *Council*, T-578/12, not published, EU:T:2014:678, paragraph 119).

148 In the present case, the Council does not claim that the applicant directly provides financial support to the Government of Iran, but that it provides such support 'through the Foundation'. Thus, in the statement of reasons for the measures at issue, although the Foundation is described as 'a major Iranian parastatal entity directly controlled by the Supreme Leader', it is not equated, purely and simply, with the Government of Iran.

149 Such indirect application of the criterion of 'support to the Government of Iran' is justified, in the light of the objective pursued by that criterion, as noted in paragraph 147 above, only if it is established that the person or entity acting as an intermediary either is itself providing support to the Government of Iran, within the meaning of Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012, or is manipulated by that government in order to continue nuclear proliferation.

150 In the present case, it has not been established that the Foundation provided support to the Government of Iran, within the meaning of Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012.

151 The mere fact, relied on by the Council, that the Foundation is 'a major Iranian parastatal entity directly controlled by the Supreme Leader' is not sufficient to establish that it provides support to the Government of Iran which, through its quantitative or qualitative importance, is likely to allow it to pursue nuclear proliferation, as required by the case-law referred to in paragraph 147 above, or that it is an instrument for the pursuit by the Government of Iran of a policy of nuclear proliferation.

152 In addition, the Foundation's name was not entered by the Council on the disputed list as one of the persons or entities providing support to the Government of Iran, within the meaning of Article 20(1)(c) of Decision 2010/413 and Article 23(2)(d) of Regulation No 267/2012, or among the persons and entities engaged in, directly associated with, or providing support for, nuclear proliferation, within the meaning of Article 20(1)(b) of Decision 2010/413 and Article 23(2)(a) of Regulation No 267/2012.

153 Finally, as part of the present procedure, the Council has furnished no evidence proving that the Foundation provides support to the Government of Iran or that it is engaged in, directly associated with, or provides support for, nuclear proliferation.

154 The conditions justifying an indirect application to the applicant of the criterion of 'support to the Government of Iran' (paragraph 149 above) are therefore not met in the present case.

155 It must therefore be held that the Council committed an error of assessment, in the measures at issue, in applying the criterion of 'support to the Government of Iran' to the applicant.

156 Consequently, and without it even being necessary to examine whether the applicant provided financial services to the Foundation, it is necessary to uphold the second plea and to find that the measures at issue are unfounded, to the extent that they apply to the applicant the criterion of 'support to the Government of Iran'.

157 The measures at issue must therefore be annulled as being unfounded.

158 In the light of the conclusions reached in paragraphs 131 and 157 above, the present action must be upheld in its entirety and all of the contested measures annulled.

The effects in time of the annulment of the contested measures

159 As stated by the Council in response to a written question from the Court (paragraph 42 above), the effects of the maintenance of the applicant's name on the list at issue are suspended, pursuant to Article 26(5) of Decision 2010/413, as amended by Council Decision (CFSP) 2015/1863 of 18 October 2015 (OJ 2015 L 274, p. 174), applicable since 16 January 2016, in accordance with Article 1 of Council Decision (CFSP) 2016/37 of 16 January 2016 concerning the date of application of Decision 2015/1863 (OJ 2016 L 11 I, p. 1). The fact remains that, as long as the applicant's name remains on the list at issue, as a result of Decision 2015/1008 and Implementing Regulation 2015/1001, the applicant runs the risk of a restoration of the restrictive measures taken against it, should the Islamic Republic of Iran fail to abide by the commitments which it made to the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland, the People's Republic of China, the United States of America and the Russian Federation, with the support of the High Representative of the European Union for Foreign Affairs and Security Policy, as part of a Joint Plan of Action setting out an approach towards reaching a long-term comprehensive solution to nuclear proliferation.

160 With respect to Implementing Regulation 2015/1001, it must be recalled that, under the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, and 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 that appeal.

161 In the present case, Implementing Regulation 2015/1001 has the nature of a regulation within the meaning of the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, since Article 2 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, judgment of 21 April 2016, *Council* v *Bank Saderat Iran*, C-200/13 P, EU:C:2016:284, paragraph 121). The second paragraph of Article 60 of the Statute of the Court of Justice is therefore applicable to Implementing Regulation 2015/1001.

162 The Council therefore has, in accordance with the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, a period of two months, plus the 10-day period to take account of distance, as from the notification of the present judgment, to remedy the infringements found to have occurred in respect of Implementing Regulation 2015/1001, by adopting, as necessary, new restrictive measures in respect of the applicant.

163 In respect of Decision 2015/1008, it should be noted that, under the second paragraph of Article 264 TFEU, the General Court may, if it considers it necessary to do so, indicate which of the effects of the annulled measure must be regarded as definitive. In the present case, the existence of a difference between the date on which the decision annulling Implementing Regulation 2015/1001 takes effect and the date of the expiry of the effects of Decision 2015/1008 is liable seriously to impair legal certainty, inasmuch as Decision 2015/1008 and Implementing Regulation 2015/1001 provide for the imposition of identical restrictive measures on the applicant. It is therefore appropriate to maintain the effects of Decision 2015/1008, in so far as it retains the applicant's name on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, until the date on which the present judgment takes effect, in that it annuls Implementing Regulation 2015/1001, inasmuch as that regulation maintains the applicant's name on the list in Annex IX to Regulation No 267/2012 (see, to that effect, judgment of 6 September 2013, *Persia International Bank* v *Council*, T-493/10, EU:T:2013:398, paragraph 129 (not published) and the case-law cited).

164 Since the other contested measures do not have any further effects at the present time, they are not affected by the application of the second paragraph of Article 264 TFEU.

Costs

165 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 Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Annuls the decision of the Council of the European Union, as contained in the notice published on 15 March 2014 for the attention of the persons and entities subject to the restrictive measures provided for in Council Decision 2010/413/CFSP and in Council Regulation (EU) No 267/2012 concerning restrictive measures against Iran, to maintain the name of Sina Bank on the list 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, as amended by Council Decision 2010/644/CFSP of 25 October 2010, and in Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010;

2. **Annuls Council Decision 2014/776/CFSP of 7 November 2014 amending Decision 2010/413, Council Implementing Regulation (EU) No 1202/2014 of 7 November 2014 implementing Regulation No 267/2012, Council Decision (CFSP) 2015/1008 of 25 June 2015 amending Decision 2010/413, and Council Implementing Regulation (EU) 2015/1001 of 25 June 2015 implementing Regulation No 267/2012, in so far as those measures maintained the name of Sina Bank on the list in Annex II to Decision 2010/413, as amended by Decision 2010/644, or in Annex IX to Regulation No 267/2012;**

3. **Maintains the effects of Decision 2015/1008, in respect of Sina Bank, from the date of its entry into force until the date of expiry of the period for bringing an appeal against the present judgment, referred to in the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union, or, if an appeal has been brought within that period against the present judgment, until the date on which that appeal is dismissed;**

4. **Orders the Council to pay the costs.**

Kanninen Pelikánová Buttigieg

[Signatures]

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