Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

16 September 2013*

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Error of assessment)

In Case T-489/10,

Islamic Republic of Iran Shipping Lines, established in Tehran (Iran), and the 17 other applicants whose names appear in the annex, represented by F. Randolph QC, M. Lester, Barrister, and M. Taher, Solicitor,

applicant,

v

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

defendant,

supported by

European Commission, represented by M. Konstantinidis and T. Scharf, acting as Agents,

and by

French Republic, represented by G. de Bergues and É. Ranaivoson, acting as Agents,

interveners,

APPLICATION for annulment in part of 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), of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), of Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), 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),

THE GENERAL COURT (Fourth Chamber),

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

* Language of the case: English.

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 23 April 2013,

gives the following

Judgment

Background to the dispute

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

2 On 26 July 2010, the applicants, Islamic Republic of Iran Shipping Lines ('IRISL') and the 17 other applicants whose names appear in the annex, were placed on the list of entities involved in nuclear proliferation set out 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).

3 Consequently, the applicants were entered on the list in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1) by means of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation No 423/2007 (OJ 2010 L 195, p. 25). That listing resulted in the applicants' funds and economic resources being frozen.

4 In Decision 2010/413, the Council of the European Union stated the following grounds in respect of IRISL:

'IRISL has been involved in the shipment of military-related cargo, including proscribed cargo from Iran. Three such incidents involved clear violations that were reported to the [United Nations] Security Council Iran Sanctions Committee. IRISL's connection to proliferation was such that the [United Nations Security Council] called on States to conduct inspections of IRISL vessels, provided there are reasonable grounds to believe that the vessel is transporting proscribed goods, in [United Nations Security Council Resolutions] 1803 and 1929.'

5 In addition, in the statement of reasons in Decision 2010/413 concerning IRISL Marine Services and Engineering Co., the Council stated that IRISL '[had] facilitated repeated violations of provisions of [United Nations Security Council Resolution] 1747'.

6 The other applicants were identified in Decision 2010/413, in essence, as companies owned or controlled by IRISL or acting on its behalf. Khazar Shipping Lines was also identified as a company which '[had] facilitated shipments involving UN- and US-designated entities, such as Bank Melli, by shipping cargo of proliferation concern from countries like Russia and Kazakhstan to Iran'.

7 The grounds set out in Implementing Regulation No 668/2010 in regard to the applicants are essentially the same as those set out in Decision 2010/413.

8 By letter of 25 August 2010, the applicants requested the Council to communicate to them the documents and evidence on the basis of which they had been included in the list in Annex II to Decision 2010/413 and in the list in Annex V to Regulation No 423/2007.

9 By letter of 13 September 2010, the Council replied, in particular, that the allegations against IRISL were described in the 2009 annual report of the Sanctions Committee of the United Nations Security Council ('the Security Council'), a copy of which it enclosed.

10 By letter of 14 September 2010, the applicants requested further explanations and the evidence on which the Council had relied. The Council replied by letter of 20 September 2010, enclosing two proposals for the adoption of restrictive measures against IRISL and Khazar Shipping Lines submitted by Member States.

11 The applicants' listing in Annex II to Decision 2010/413 was maintained by Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81). The reasons stated in regard to the applicants are identical to those set out in Decision 2010/413.

12 Since Regulation No 423/2007 was repealed by Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran (OJ 2010 L 281, p. 1), the applicants were included by the Council in Annex VIII to the latter regulation. Consequently, the applicants' funds and economic resources were frozen pursuant to Article 16(2) of that regulation. The reasons stated in regard to the applicants are essentially the same as those set out in Decision 2010/413.

13 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 applicants were included by the Council in Annex IX to the latter regulation. The reasons stated in regard to the applicants are essentially the same as those set out in Decision 2010/413. Consequently, the applicants' funds and economic resources were frozen pursuant to Article 23(2) of that regulation.

Procedure and forms of order sought

14 By application lodged at the Court Registry on 8 October 2010 the applicants and Cisco Shipping Co. Ltd and IRISL Multimodal Transport Co. brought the present action.

15 By letter of 24 November 2010, Cisco Shipping and IRISL Multimodal Transport discontinued their action. By order of the Court (Fourth Chamber) of 8 December 2010 they were removed from the register as applicants in the present case and ordered to bear their own costs.

16 By document lodged at the Court Registry on 21 December 2010, the applicants amended their heads of claim following the adoption on 25 October 2010 of Decision 2010/644 and Regulation No 961/2010.

17 By documents lodged at the Court Registry on 14 and 22 March 2011, the European Commission and the French Republic applied to intervene in the present proceedings in support of the Council. By order of 10 May 2011, the President of the Fourth Chamber of the General Court granted them leave to intervene.

18 By document lodged at the Court Registry on 30 April 2012, the applicants amended their heads of claim following the adoption on 23 March 2012 of Regulation No 267/2012.

19 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided, on 12 March 2013, to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 64 of the Rules of Procedure of the General Court, put questions to the parties and to the Council, which were requested to answer them at the hearing.

20 The parties presented oral argument and answered the written and oral questions put by the Court at the hearing on 23 April 2013.

21 The applicants claim that the Court should:

— annul Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644, Regulation No 961/2010 and Regulation No 267/2012, in so far as those measures concern the applicants;

— order the Council to pay the costs.

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

— dismiss the action;

— order the applicants to pay the costs.

23 The French Republic submits that the Court should dismiss the action.

Law

Substance

24 The applicants put forward five pleas in law. The first plea alleges breach of their rights of defence and of their right to effective judicial protection. The second plea alleges breach of the obligation to state reasons. The third plea alleges breach of the principle of proportionality, of their right to property and of their right to carry on an economic activity. The fourth plea alleges error of assessment as regards the adoption of restrictive measures against the applicants. The fifth plea alleges that Article 16(2) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 are unlawful in that those provisions impose a prohibition on the loading and unloading of cargoes.

25 The Court considers it appropriate initially to examine the second plea in law, in so far as it concerns the statement of reasons relating to IRISL, and then the fourth plea in law.

The second plea, alleging breach of the obligation to state reasons, in so far as it concerns the statement of reasons relating to IRISL

26 According to the applicants, the Council breached the obligation to state reasons in two respects. First, the reasons stated in the contested measures in regard to IRISL are insufficient in that they do not demonstrate in a clear and unequivocal manner why the Council considered that IRISL met the criteria for the adoption and maintenance of the restrictive measures against it, notwithstanding the arguments submitted by the applicants. In particular, the Council merely reproduced the Security Council's allegations. Secondly, no reasons relating to IRISL were communicated to the applicants before the restrictive measures concerning them were adopted.

27 The Council, supported by the interveners, contests the merits of the applicants' arguments.

28 According to the case-law, 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 24(3) of Decision 2010/413, Article 15(3) of Regulation No 423/2007, Article 36(3) of Regulation No 961/2010 and Article 46(3) of Regulation No 267/2012, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the measure is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Courts of the European Union and, secondly, to enable the latter to review the lawfulness of that measure. The obligation to state reasons thus laid down constitutes an essential principle of European Union law which may be derogated from only for compelling reasons.

The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him, for 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).

29 Unless, therefore, overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations militate against the communication of certain matters, the Council is bound to apprise an entity that is subject to restrictive measures of the actual and specific reasons why it takes the view that they had to be adopted. It must thus state the facts and points of law on which the legal justification of the measures concerned depends and the considerations which led it to adopt them (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 28 above, paragraph 81 and the case-law cited).

30 Moreover, the statement of reasons must be appropriate to the act at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a measure adversely affecting a person are sufficient if it was adopted in circumstances known to that person which enable him to understand the scope of the measure concerning him (see *Bank Melli Iran* v *Council*, paragraph 28 above, paragraph 82 and the case-law cited).

31 In the first place, as regards the failure to communicate the statement of reasons before the contested measures were adopted, it is sufficient to note that, according to settled case-law, the Council is not obliged to notify the person or entity concerned beforehand of the grounds on which it intends to rely in respect of the initial entry of that person's or entity's name on the list of those whose funds are to be frozen. So that its effectiveness may not be jeopardised, such a measure must, by its very nature, be able to take advantage of a surprise effect and to apply immediately. In such a case, it is as a rule sufficient if the institution notifies the person or entity concerned of the grounds and affords it the right to be heard at the same time as, or immediately after, the decision is adopted (Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 61).

32 In the second place, as regards the claim that the statement of reasons is insufficient, it must be noted as a preliminary point that, according to the Council and the Commission, the restrictive measures concerning IRISL can be founded on two separate legal bases. First, according to them, the facts alleged against IRISL demonstrate that IRISL provided support for nuclear proliferation within the meaning of Article 20(1)(b) of Decision 2010/413, Article 7(2) of Regulation No 423/2007, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012 ('the first criterion'). Secondly, it is evident from those facts that IRISL assisted a listed person, entity or body in infringing the provisions of Decision 2010/413, Regulation No 961/2010, Regulation No 267/2012 and the Security Council resolutions applicable, as referred to in Article 20(1)(b) of Decision 2010/413, Article 16(2)(b) of Regulation No 961/2010 and Article 23(2)(b) of Regulation No 267/2012 ('the second criterion').

33 It is necessary therefore to ascertain whether the Council stated to the requisite legal standard the reasons for applying each of those two alternative criteria to IRISL. In that context, it is necessary to take into consideration not only the statement of reasons for the contested measures but also the 2009 annual report of the Security Council's Sanctions Committee, sent to the applicants on

13 September 2010, and the proposal for the adoption of restrictive measures against IRISL, which the Council sent to the applicants by letter of 20 September 2010. Those documents were communicated before the action was brought.

34 With regard to the first criterion, the statement of reasons in the contested measures, reproduced in paragraph 4 above, relates, on the one hand, to three incidents in which IRISL was involved in the shipment of military material from Iran, described by the Council as 'proliferation', and, on the other, to the Security Council's position vis-à-vis IRISL.

35 The annual report for 2009 of the Sanctions Committee of the Security Council provides additional details of the three incidents in question, particularly in so far as it explains that they involved the seizure of proscribed cargo by the authorities and identifies the vessels concerned.

36 Taken as a whole, that evidence is sufficient to enable the applicants to understand that, in concluding that IRISL was providing support for nuclear proliferation, the Council relied on the three incidents involving the shipment of proscribed cargo by IRISL and on the fact that the Security Council considered it necessary to call on States to conduct inspections of IRISL vessels in certain circumstances. Moreover, the three incidents were described with sufficient precision, as demonstrated by the fact that the circumstances surrounding them were addressed in detail by the applicants both in their observations submitted to the Council and in their written pleadings before this Court.

37 Against that background, the Court must also reject the applicants' argument that the Council was wrong to do no more than repeat the grounds relied on by the Security Council. There is nothing to preclude the Council from adopting the reasons provided by other bodies or institutions, provided that they are sufficiently precise.

38 By contrast, the reasons for applying the second criterion to IRISL are not stated to the requisite legal standard. The statement of reasons reproduced in paragraph 4 above does not refer to the fact that the actions of which IRISL is accused are linked to an intention to circumvent the effect of the restrictive measures to which a third party is subject. Moreover, while the statement of reasons reproduced in paragraph 5 above refers to the fact that IRISL had facilitated repeated violations of the provisions of Security Council Resolution 1747 (2007), it does not specify the nature of the alleged violations or their dates or the entities or goods concerned. Consequently, even if that statement of reasons could be taken into consideration notwithstanding the fact that it was not explicitly invoked in respect of IRISL, it is excessively vague.

39 In those circumstances, the second plea must be rejected in so far as it concerns the application to IRISL of the first criterion, and upheld in so far as it concerns the application to IRISL of the second criterion. In view of the fact that the two criteria mentioned above are alternative criteria, the insufficiency of the statement of reasons relating to the second criterion does not justify the annulment of the contested measures in so far as they concern IRISL. However, in the light of the Court's finding in paragraph 38 above, the second criterion cannot be taken into account in the examination of the applicants' other pleas.

The fourth plea, alleging error of assessment as regards the adoption of restrictive measures against the applicants

40 The applicants maintain that the Council made an error of assessment in taking the view that they should be affected by the restrictive measures, since it relied on mere presumptions, did not identify any evidence to support the conclusion that they were involved in nuclear proliferation and did not take their arguments into account.

41 The Council, supported by the Commission and by the French Republic, contests the merits of the applicants' arguments.

42 According to settled case-law, the judicial review of the lawfulness of an act whereby restrictive measures are imposed on an entity extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. In the event of challenge, it is for the Council to present that evidence for review by the Courts of the European Union (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 28 above, paragraphs 37 and 107).

43 Consequently, in the present case, the Court must establish whether the Council was right to take the view that the applicants should be subject to restrictive measures on account of the fact that IRISL and Khazar Shipping Lines were involved in nuclear proliferation and on account, moreover, of the fact that the applicants other than IRISL were owned or controlled by IRISL or acted on its behalf.

– IRISL's involvement in nuclear proliferation

44 The applicants deny that the circumstances invoked with respect to IRISL justify the adoption and maintenance of the restrictive measures to which it is subject. They state, in particular, that the three incidents involving the shipment by IRISL of proscribed goods did not relate to nuclear proliferation but to military material, and did not therefore justify the adoption of the restrictive measures relating to nuclear proliferation. In their view that statement is corroborated by the fact that the incidents concerned did not result in the Security Council's adoption of restrictive measures against IRISL or the other applicants. In addition, in any event, IRISL was unaware of the nature of the goods shipped.

45 The Council and the interveners contest the merits of the applicants' arguments. According to the Council, in the first place, although the three incidents in respect of which IRISL is accused relate to military material, they constitute support for nuclear proliferation, given, in particular, that they violate the Security Council resolutions relating to nuclear proliferation. That statement is supported by the Security Council's position. In the second place, irrespective of the classification of the three incidents mentioned above, the fact that IRISL, as a large shipping company with an international presence that is owned by the Iranian State, transported prohibited military material means that it also necessarily transported material linked to nuclear proliferation, given that the development of activities linked to nuclear proliferation depends on shipping transport services. In the third place, in any event, the three incidents involving IRISL establish that there is a serious risk of IRISL transporting material linked to nuclear proliferation. Therefore, the adoption and maintenance of the restrictive measures to which it is subject is justified on a precautionary basis.

46 The Court must examine the merits of the justification put forward by the Council for the adoption and maintenance of the restrictive measures concerning IRISL.

47 In the first place, Article 20(1)(b) of Decision 2010/413 provides for the freezing of funds of 'persons and entities … that are … providing support for … Iran's proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology'. Similarly, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012 cover inter alia entities designated as 'providing support for Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems by Iran, including through involvement in the procurement of prohibited goods and technology'. Article 7(2)(a) and (b) of Regulation No 423/2007 covers inter alia persons and entities providing support for nuclear proliferation, without referring expressly to the procurement of prohibited technology and goods.

48 The wording used by the legislature implies that the adoption of restrictive measures against a person or an entity on account of the support which that person or entity has allegedly given to nuclear proliferation presupposes that that person or entity has actually done so. By contrast, the mere risk that the person or entity concerned may in the future provide support for nuclear proliferation is not sufficient (see, to that effect, Case T-509/10 *Manufacturing Support & Procurement Kala Naft* v *Council* [2012] ECR, paragraph 115).

49 Therefore, Article 20(1)(b) of Decision 2010/413, Article 7(2) of Regulation No 423/2007, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012 required the Council to establish that support for nuclear proliferation had actually been provided by IRISL.

50 In that regard, it must be borne in mind that, by Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2009), the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted a certain number of restrictive measures aimed at persuading the Islamic Republic of Iran to comply with Resolution 1737 (2006), under which the Islamic Republic of Iran was required without further delay to suspend all enrichment-related and reprocessing activities and work on all heavy water-related projects and to take certain steps required by the International Atomic Energy Agency (IAEA) Board of Governors, which the Security Council deemed essential to build confidence in the exclusively peaceful purpose of the Iranian nuclear programme. In addition to prohibiting the Islamic Republic of Iran from exporting goods and technology linked to its proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems (paragraph 7 of Resolution 1737 (2006)), those resolutions also state that the Islamic Republic of Iran must not supply, sell or transfer directly or indirectly from its territory or by its nationals or using its flag vessels or aircraft any arms or related material, and that all States are to prohibit the procurement of such items from the Islamic Republic of Iran by their nationals, or using their flag vessels or aircraft, and whether or not originating in the territory of Iran (paragraph 5 of Resolution 1747 (2007)).

51 While those prohibitory measures fall within the same general context and pursue the same objective, they are nevertheless distinct as regards the goods and technology to which they relate. Thus, the fact that goods are covered by the prohibition laid down in paragraph 5 of Resolution 1747 (2007) does not necessarily mean that they are also covered by the prohibition relating to the goods and technology linked to the Islamic Republic of Iran's proliferation-sensitive nuclear activities or the development by the Islamic Republic of Iran of nuclear weapon delivery systems, provided for in paragraph 7 of Resolution 1737 (2006).

52 In the present case, it is apparent from the 2009 annual report of the Sanctions Committee of the Security Council that the three incidents involving IRISL related to alleged breaches of the prohibition laid down in paragraph 5 of Resolution 1747 (2007) concerning the export of arms and related material by the Islamic Republic of Iran. By contrast, the other documents in the file, communicated to the applicants at their request by the Council and produced before this Court, do not contain evidence to suggest that the goods in question were also covered by the prohibition relating to material linked to nuclear proliferation, laid down in paragraph 7 of Resolution 1737 (2006).

53 At the hearing, the Council contended that the three incidents in question were linked to nuclear proliferation in that the export of arms and related material was used by the Islamic Republic of Iran in order to finance it. However, that assertion does not appear in the statement of reasons for the contested measures or in the documents and evidence communicated to the applicants at their request. Consequently, it cannot be taken into account in the present case in order to justify IRISL's listing on the basis of the legal criterion relating to the provision of support for nuclear proliferation. In addition, and in any event, it should be added that the Council has not produced before this Court any specific evidence that would substantiate the assertion that the transportation by IRISL of proscribed military material served to finance nuclear proliferation.

54 The Council claims, however, that the fact that the three incidents involving IRISL constitute support for nuclear proliferation, notwithstanding the fact that they did not concern material linked thereto, is established by the Security Council's position vis-à-vis IRISL.

55 In that regard, it is indeed true that the Security Council called on States to conduct inspections of IRISL vessels, provided that there were reasonable grounds for believing that the vessels were transporting proscribed goods, in Resolutions 1803 (2008) and 1929 (2009). Likewise, it adopted restrictive measures against three entities owned or controlled by IRISL.

56 However, the restrictive measures imposed by the Security Council do not cover IRISL itself, and the Court's file does not contain evidence setting out the precise grounds for their adoption.

57 Moreover, the request to States to conduct inspections of IRISL vessels in certain circumstances demonstrates that, in the opinion of the Security Council, there is a risk that IRISL may provide support for nuclear proliferation. On the other hand, that request does not establish that such support has actually been provided by IRISL, contrary to the requirements of Article 20(1)(b) of Decision 2010/413, Article 7(2) of Regulation No 423/2007, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012.

58 In those circumstances, it must be concluded that it has not been established that, by having transported – on three occasions – military material in breach of the prohibition laid down in paragraph 5 of Resolution 1747 (2007), IRISL provided support for nuclear proliferation. Therefore, the three incidents in question do not justify the adoption and maintenance of the restrictive measures concerning IRISL.

59 In the second place, it must be noted that the adoption and maintenance of restrictive measures cannot properly be based on a presumption for which no provision has been made in the relevant legislation and which is inconsistent with the objective of that legislation (see, to that effect, Case C-376/10 P *Tay Za* v *Council* [2012] ECR, paragraph 69).

60 Yet in the present case, the Council's assertion that, if IRISL transported military material in breach of the prohibition laid down in paragraph 5 of Resolution 1747 (2007), it necessarily also transported material linked to nuclear proliferation is not supported by any specific information or evidence. Thus it rests on a presumption for which there is no provision in Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 or Regulation No 267/2012, as is evident from paragraph 48 above. Such a presumption is, moreover, at variance with the scheme of the abovementioned legislation, in that it disregards the distinction between the measures prohibiting the export of arms and related material and those prohibiting the transportation of material linked to nuclear proliferation.

61 In those circumstances, the Council's assertion that IRISL has necessarily transported material linked to nuclear proliferation cannot be accepted.

62 In the third place, in so far as the Council claims that the three incidents involving IRISL establish that there is a serious risk of IRISL transporting material linked to nuclear proliferation, it must be borne in mind that, as is apparent from paragraph 48 above, the existence of such a risk is not sufficient to justify the adoption and maintenance of restrictive measures in the light of the wording of Article 20(1)(b) of Decision 2010/413, Article 7(2)(a) and (b) of Regulation No 423/2007, Article 16(2)(a) of Regulation No 961/2010 and Article 23(2)(a) of Regulation No 267/2012.

63 In that context the Council submits that, given the clandestine nature of nuclear proliferation activities, if it were required to identify shipments specifically relating to material linked to nuclear proliferation, rather than other prohibited goods, the restrictive measures would be wholly deprived of their precautionary effect.

64 On that point, if the Council is of the opinion that the applicable legislation does not enable it to intervene in a sufficiently effective manner in order to combat nuclear proliferation, it is open to the Council to amend it in its role as legislator – subject to a review of lawfulness by the Courts of the European Union – so as to extend the situations in which restrictive measures may be adopted.

65 On the other hand, the desire to ensure that the restrictive measures have the broadest possible preventive effect cannot result in the legislation in force being interpreted contrary to its clear wording.

66 Therefore, even if it appears appropriate to regard the fact that IRISL was involved in the three incidents concerning the shipment of military material in breach of the prohibition laid down in paragraph 5 of Resolution 1747 (2007) as increasing the risk that IRISL may also be involved in incidents relating to the shipment of material linked to nuclear proliferation, that does not, as the relevant legislation now stands, justify the adoption and maintenance of restrictive measures against it.

67 In the light of all the foregoing, it must be concluded that the evidence put forward by the Council does not justify the adoption and maintenance of restrictive measures against IRISL.

68 Accordingly, the fourth plea must be upheld with respect to IRISL.

– The involvement of Khazar Shipping Lines in nuclear proliferation

69 According to the statement of reasons in the contested measures, Khazar Shipping Lines is involved in nuclear proliferation in that it facilitated shipments involving entities designated by the United Nations and the United States of America, including 'Bank Melli'.

70 Khazar Shipping Lines maintains that it is not involved in nuclear proliferation, and submits in particular that it has neither transported cargoes linked to nuclear proliferation nor provided services to Bank Melli Iran. It adds that it refuted the allegations against it in the observations it submitted to the Council.

71 The Council and the interveners contest the arguments of Khazar Shipping Lines.

72 In that regard, it is sufficient to note that, while Khazar Shipping Lines challenges the substance of the allegations against it, the Council has not provided any information or evidence to support them. In those circumstances, in accordance with the case-law cited in paragraph 42 above, those allegations do not justify the adoption and maintenance of the restrictive measures against Khazar Shipping Lines. Consequently, the fourth plea must be upheld in so far as it concerns the involvement of Khazar Shipping Lines in nuclear proliferation.

– The fact that the applicants other than IRISL are owned or controlled by IRISL or act on its behalf

73 The applicants other than IRISL dispute the proposition that the restrictive measures must be applied to them because they are owned or controlled by IRISL or act on its behalf. They submit, inter alia, that some of them are not shipping companies, are not owned by IRISL or are owned only on the basis of a minority holding.

74 The Council and the interveners contest the merits of the applicants' arguments.

75 In that regard, when the funds of an entity identified as providing support for nuclear proliferation are frozen, there is a not insignificant danger that that entity may exert pressure on the entities it owns or controls or which act on its behalf, in order to circumvent the effect of the measures applying to it. That being so, the freezing of the funds of entities owned or controlled by an entity identified as

providing support for nuclear proliferation or acting on its behalf is necessary and appropriate in order to ensure the effectiveness of the measures adopted vis-à-vis that entity and to ensure that those measures are not circumvented (see, by analogy, Joined Cases T-246/08 and T-332/08 *Melli Bank* v *Council* [2009] ECR II-2629, paragraph 103).

76 However, as is apparent from paragraphs 44 to 68 above, in the present case the Council has not established that IRISL had provided support for nuclear proliferation.

77 In those circumstances, even if the applicants other than IRISL are in fact owned or controlled by it or act on its behalf, that does not justify the adoption and maintenance of the restrictive measures to which they are subject, since IRISL has not been properly identified as providing support for nuclear proliferation.

78 Accordingly, the fourth plea must be upheld in so far as it relates to the fact that the applicants other than IRISL are owned or controlled by IRISL or act on its behalf.

79 In the light of all the foregoing, the fourth plea must be upheld in regard to all the applicants and the contested measures must, in consequence, be annulled in so far as they concern the applicants, without there being any need to examine the applicants' other arguments and pleas in law.

The temporal effects of the annulment of the contested measures

80 First, as regards the temporal effects of the annulment of the contested measures, it must be noted that Implementing Regulation No 668/2010, which amended the list in Annex V to Regulation No 423/2007, no longer has any legal effect following the repeal of Regulation No 423/2007 by Regulation No 961/2010. Likewise, Regulation No 961/2010 has itself been repealed by Regulation No 267/2012. Consequently, the annulment of Implementing Regulation No 668/2010 and Regulation No 961/2010 concerns only the effects which those measures produced between the date of their entry into force and the date of their repeal.

81 Next, as regards Regulation No 267/2012, it must be noted that, under the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, by way of derogation from Article 280 TFEU, decisions of the General Court declaring a regulation to be void are to take effect only as from the date of expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 of that statute or, if an appeal has been brought within that period, as from the date of dismissal of the appeal (see, by analogy, judgment of 16 September 2011 in Case T-316/11 *Kadio Morokro* v *Council*, not published in the ECR, paragraph 38).

82 That being the case, the Council has a period of two months, extended on account of distance by ten days, as from the notification of this judgment, to remedy the infringements established by adopting, if appropriate, new restrictive measures with respect to the applicants. In the present case, the risk of serious and irreparable harm to the effectiveness of the restrictive measures imposed by Regulation No 267/2012 does not appear sufficiently great, having regard to the considerable impact of those measures on the applicants' rights and freedoms, to warrant the maintenance of the effects of that regulation with respect to the applicants for a period exceeding that laid down in the second paragraph of Article 60 of the Statute of the Court of Justice (see, by analogy, *Kadio Morokro* v *Council*, paragraph 81 above, paragraph 38).

83 Lastly, as regards the temporal effects of the annulment of Decision 2010/413, as amended by Decision 2010/644, it must be recalled that, under the second paragraph of Article 264 TFEU, the General Court may, if it considers it necessary, state which of the effects of the act which it has declared void are to be considered as definitive. In the present case, if the dates when the annulment of Regulation No 267/2012 and that of Decision 2010/413, as amended by Decision 2010/644, take effect were to

differ, that would be likely seriously to jeopardise legal certainty, since those two acts impose on the applicants measures which are identical. The effects of Decision 2010/413, as amended by Decision 2010/644, must therefore be maintained as regards the applicants until the annulment of Regulation No 267/2012 takes effect (see, by analogy, *Kadio Morokro* v *Council*, paragraph 81 above, paragraph 39).

Costs

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

85 Under the first subparagraph of Article 87(4), the Member States and institutions which have intervened in the proceedings are to bear their own costs. The Commission and the French Republic shall therefore bear their own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls the following measures, in so far as they concern Islamic Republic of Iran Shipping Lines and the 17 other applicants whose names appear in the annex:**

   — **Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP;**

   — **the annex to Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran;**

   — **the annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413;**

   — **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;**

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

2. **Orders the effects of Decision 2010/413, as amended by Decision 2010/644, to be maintained as regards Islamic Republic of Iran Shipping Lines and the 17 other applicants whose names appear in the annex until the annulment of Regulation No 267/2012 takes effect;**

3. **Orders the Council of the European Union to bear its own costs and to pay those incurred by Islamic Republic of Iran Shipping Lines and the 17 other applicants whose names appear in the annex;**

4. **Orders the European Commission and the French Republic to bear their own costs.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 16 September 2013.

[Signatures]

Annex

Bushehr Shipping Co. Ltd, established in Valletta (Malta),

Hafize Darya Shipping Lines (HDSL), established in Tehran (Iran),

Irano – Misr Shipping Co., established in Tehran,

Irinvestship Ltd, established in London (United Kingdom),

IRISL (Malta) Ltd, established in Sliema (Malta),

IRISL Club, established in Tehran,

IRISL Europe GmbH, established in Hamburg (Germany),

IRISL Marine Services and Engineering Co., established in Qeshm (Iran),

ISI Maritime Ltd, established in Valletta,

Khazar Shipping Lines, established in Anzali (Iran),

Leadmarine, established in Singapore (Singapore),

Marble Shipping Ltd, established in Sliema,

Safiran Payam Darya Shipping Lines (SAPID), established in Tehran,

Shipping Computer Services Co., established in Tehran,

Soroush Saramin Asatir Ship Management, established in Tehran,

South Way Shipping Agency Co. Ltd, established in Tehran,

Valfajr 8th Shipping Line Co., established in Tehran.

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