Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

29 January 2013*

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

In Case T-496/10,

Bank Mellat, established in Teheran (Iran), represented initially by S. Gadhia and S. Ashley, Solicitors, D. Anderson QC and R. Blakeley, Barrister, and subsequently by R. Blakeley, S. Zaiwalla, Solicitor, and M. Brindle QC,

applicant,

v

Council of the European Union, represented by M. Bishop and A. Vitro, acting as Agents,

defendant,

supported by

European Commission, represented by S. Boelaert and M. Konstantinidis, acting as Agents,

intervener,

APPLICATION for annulment 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), 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), Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71), Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), and Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1) in so far as those measures concern the applicant,

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: J. Weychert, Administrator,

having regard to the written procedure and further to the hearing on 23 May 2012,

gives the following

Judgment

Background to the dispute

1 The applicant, Bank Mellat, is an Iranian commercial bank.

2 This 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').

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

4 Consequently, the applicant's name was listed in Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), by means of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation No 423/2007 (OJ 2010 L 195, p. 25). As a result of that listing, the funds and economic resources of the applicant were frozen.

5 In Decision 2010/413 the Council of the European Union adopted the following reasons:

'Bank Mellat is a state-owned Iranian bank. Bank Mellat engages in a pattern of conduct which supports and facilitates Iran's nuclear and ballistic missile programmes. It has provided banking services to UN and EU listed entities or to entities acting on their behalf or at their direction, or to entities owned or controlled by them. It is the parent bank of First East Export Bank which is designated under [United Nations Security Council Resolution] 1929.'

6 The reasons stated in Implementing Regulation No 668/2010 are the same as those stated in Decision 2010/413.

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

8 By letters of 16 and 24 August and 2 and 9 September 2010, the applicant asked the Council to disclose the reasons for adopting restrictive measures against it.

9 In reply to requests for access to the applicant's file, by letter of 13 September 2010 the Council sent it copies of two proposals for the adoption of restrictive measures submitted by Member States. The Council also required the applicant to submit its observations on the adoption of restrictive measures against it by no later than 25 September 2010.

10 By letter of 24 September 2010, the applicant asked the Council to reconsider the decision to place it on the list in Annex II to Decision 2010/413 and on the list in Annex V to Regulation No 423/2007.

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

'Bank Mellat engages in a pattern of conduct which supports and facilitates Iran's nuclear and ballistic missile programmes. It has provided banking services to UN and EU listed entities or to entities acting on their behalf or at their direction, or to entities owned or controlled by them. It is the parent bank of First East Export Bank which is designated under [United Nations Security Council Resolution] 1929.'

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 applicant's name was inserted by the Council in Annex VIII to the latter regulation. Consequently, the funds and economic resources of the applicant were frozen under Article 16(2) of that regulation.

13 The reasons stated in Regulation No 961/2010 are the same as those stated in Decision 2010/644.

14 By letter of 28 October 2010 the Council replied to the applicant's letter of 24 September 2010 stating that, after a review, it rejected the applicant's request to have its name removed from the list in Annex II to Decision 2010/413 and the list in Annex VIII to Regulation No 961/2010. The Council stated in that regard that it considered that there was no adequate guarantee that the applicant would not in the future provide banking services to persons and entities participating in nuclear proliferation.

15 As an annex to its rejoinder, the Council sent to the applicant a copy of a third proposal for the adoption of restrictive measures submitted by a Member State.

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

17 Since Regulation No 961/2010 was repealed by Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ 2012 L 88, p. 1), the applicant's name was inserted by the Council in Annex IX to the latter regulation. The reasons stated are the same as those stated in Decision 2010/644. Consequently, the funds and economic resources of the applicant were frozen under Article 23(2) of that regulation.

Procedure and forms of order sought by the parties

18 By application lodged at the Court's Registry on 7 October 2010, the applicant brought the present action.

19 By document lodged at the Court's Registry on 5 November 2010, the applicant adapted its heads of claim following the adoption of Decision 2010/644 and Regulation No 961/2010.

20 By document lodged at the Court's Registry on 14 January 2011, the European Commission sought leave to intervene in the present proceedings in support of the Council. By order of 8 March 2011, the President of the Fourth Chamber of the Court granted leave to intervene.

21 By document lodged at the Court's Registry on 6 February 2012, the applicant adapted its heads of claim following the adoption of Decision 2011/783 and Implementing Regulation No 1245/2011.

22 On hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, requested the parties to lodge certain documents, and put questions in writing to them. The parties responded appropriately.

23 By document lodged at the Court's Registry on 16 April 2012, the applicant adapted its heads of claim following the adoption of Regulation No 267/2012.

24 By document lodged at the Court's Registry on 11 May 2012, Provincial Investment Companies Association, Saba Tamin Investment, Common Investment Fund, Shirin Asal Food Industrial Group, Sorbon Industrial Production Group and Individual Stock Association sought leave to intervene in the present proceedings in support of the applicant. By order of 16 May 2012 the President of the Fourth Chamber of the General Court dismissed that application on the ground that it was out of time.

25 The parties presented oral argument and replied to questions put by the Court at the hearing on 23 May 2012.

26 The applicant claims that the General Court should:

— annul point 4 of Table B of Annex II to Decision 2010/413, point 2 of Table B of the Annex to Implementing Regulation No 668/2010, point 4 of Table I.B of the Annex to Decision 2010/644, point 4 of Table B of Annex VIII to Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and point 4 of Table I.B of Annex IX to Regulation No 267/2012, in so far as those measures concern the applicant;

— order the Council to pay the costs.

27 The Council and the Commission contend that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

28 The applicant relies on three pleas in law. The first plea is a claim of an infringement of the obligation to state reasons, its rights of defence and its right to effective judicial protection. The second plea is a claim of a manifest error of assessment as regards the adoption of restrictive measures against it. The third plea is a claim of an infringement of its right to property and of the principle of proportionality.

29 The Council and the Commission consider that the applicant's pleas are unfounded. They further maintain, as a preliminary point, that as an emanation of the Iranian State the applicant cannot rely on fundamental rights protection and guarantees.

30 Before considering the various pleas and arguments submitted by the parties, it is appropriate to examine the issue of whether the adaptations to the applicant's claims are admissible.

The adaptations to the applicant's claims

31 As is clear from paragraphs 11, 12 and 17 above, since the date when the application was brought the list in Annex II to Decision 2010/413 has been replaced by a new list, adopted in Decision 2010/644, and Regulation No 423/2007, as amended by Regulation No 668/2010, has been repealed and replaced

by Regulation No 961/2010, which has itself been repealed and replaced by Regulation No 267/2012. Further, in the recitals in the preamble of Decision 2011/783 and Implementing Regulation No 1245/2011, the Council explicitly stated that it had carried out a complete review of the list in Annex II to Decision 2010/413 and in Annex VIII to Regulation No 961/2010 and that it had concluded that the persons and entities listed therein, including the applicant, should continue to be subject to restrictive measures. The applicant has adapted its initial claims so that its action is directed to the annulment not only of Decision 2010/413 and Implementing Regulation No 668/2010 but also Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012 (together, 'the contested measures'). The Council and the Commission have not objected to that adaptation.

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

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

34 It is therefore appropriate, in the present case, to hold that the applicant may seek the annulment of Decision 2010/644, Regulation No 961/2010, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012, in so far as those measures concern the applicant (see, to that effect and by analogy, *People's Mojahedin Organization of Iran* v *Council*, paragraph 47).

Whether it is open to the applicant to rely on fundamental rights protection and guarantees

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

36 In that regard, it must first be observed that neither in the Charter of Fundamental Rights of the European Union (OJ 2010, C 83, p. 389) nor in European Union primary law are there any provisions which state that legal persons who are emanations of States are not entitled to the protection of fundamental rights. On the contrary, the provisions of the Charter which are relevant to the pleas raised by the applicant, and in particular Articles 17, 41 and 47, guarantee the rights of 'everyone', a wording which includes legal persons such as the applicant.

37 Nonetheless, the Council and the Commission rely, in this context, on Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('ECHR'), the effect of which is that applications submitted by governmental organisations to the European Court of Human Rights are not admissible.

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

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

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

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

42 Further, and in any event, the Council and the Commission have not put forward any evidence capable of proving that the applicant was in fact an emanation of the Iranian State, that is, an entity which participated in the exercise of governmental powers or which ran a public service under governmental control (see, to that effect, judgment of the European Court of Human Rights *Islamic Republic of Iran Shipping Lines v. Turkey*, cited above in paragraph 38, § 79).

43 In that regard, first, the Council maintains that the applicant runs a public service under the control of the Iranian government since it provides financial services which are essential for the operation of the Iranian economy. The Council does not however contest the applicant's claims that those services represent commercial activities carried out in a competitive sector and subject to the ordinary law. In those circumstances, the fact that those activities are essential for the operation of a State's economy cannot, by itself, confer on them the status of a public service.

44 Next, the Commission maintains that the fact that the applicant is involved in nuclear proliferation demonstrates that it participates in the exercise of governmental powers. However, in adopting that approach the Commission assumes the truth of a premiss which the applicant denies is true and which is a question of fact at the very core of the dispute before the Court. Further, the claimed involvement of the applicant in nuclear proliferation, as set out in the contested measures, cannot be assimilated to the exercise of State powers, but to commercial transactions entered into with entities engaged in nuclear proliferation. Consequently, that claim cannot justify the classification of the applicant as an emanation of the Iranian State.

45 Lastly, the Commission considers that the applicant is an emanation of the Iranian State because of the latter's participation in its share capital. Leaving aside the fact that, according to the information provided by the applicant, which is not disputed by the Council and the Commission, the holding concerned is only a minority shareholding, that participation does not by itself imply that the applicant participates in the exercise of governmental powers or that it runs a public service.

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

The first plea in law: infringement of the obligation to state reasons, the applicant's rights of defence and its right to effective judicial protection

47 By its first plea in law, the applicant claims that the Council infringed the obligation to state reasons, the applicant's rights of defence and its right to effective judicial protection since, first, the Council did not provide it with sufficient information to enable it to make effective representations regarding the adoption of restrictive measures against it and to guarantee it a fair hearing and, secondly, both the assessment prior to the adoption of the restrictive measures affecting it and the regular review of those measures are vitiated by a number of errors.

48 The Council, supported by the Commission, contends that the applicant's arguments are unfounded. It submits, in particular, that the applicant cannot plead the principle of respect for the rights of the defence.

49 Firstly, it must be recalled that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for by the second paragraph of Article 296 TFEU and, more particularly in this case, by Article 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 therefore 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 case-law cited).

50 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the disclosure of certain information, the Council is required to inform the entity covered by restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. It must thus state the matters of fact and law which constitute the legal basis of the measures concerned and the considerations which led it to adopt them (see, to that effect, *Bank Melli Iran* v *Council*, cited above in paragraph 49, paragraph 81 and case-law cited).

51 Moreover, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons is adequate must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a decision are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure adversely affecting him (see *Bank Melli Iran* v *Council*, cited above in paragraph 49, paragraph 82 and case-law cited).

52 Secondly, according to settled case-law, observance of the rights of the defence, especially the right to be heard, in all proceedings initiated against an entity which may lead to a measure adversely affecting that entity, is a fundamental principle of European Union law which must be guaranteed, even when there are no rules governing the procedure in question (*Bank Melli Iran* v *Council*, cited above in paragraph 49, paragraph 91).

53 The principle of respect for the rights of the defence requires, first, that the entity concerned must be informed of the evidence adduced against it to justify the measure adversely affecting it. Secondly, it must be afforded the opportunity effectively to make known its view on that evidence (see, by analogy, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 93).

54 Consequently, as regards an initial measure whereby the funds of an entity are frozen, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which preclude it, the evidence adduced against that entity should be disclosed to it either concomitantly with or as soon as possible after the adoption of the measure concerned. At the request of the entity concerned, it also has the right to make known its view on that evidence after the adoption of the measure. Subject to the same proviso, any subsequent decision to freeze funds must as a general rule be preceded by disclosure of further evidence adduced against the entity concerned and a further opportunity for it to make known its view (see, by analogy, *Organisation des Modjahedines du peuple d'Iran* v *Council*, cited above in paragraph 53, paragraph 137).

55 It must also be observed that, when sufficiently precise information has been disclosed, enabling the entity concerned effectively to state its point of view on the evidence adduced against it by the Council, the principle of respect for the rights of the defence does not mean that the institution is obliged spontaneously to grant access to the documents in its file. It is only on the request of the party concerned that the Council is required to provide access to all non-confidential official documents concerning the measure at issue (see *Bank Melli Iran* v *Council*, cited above in paragraph 49, paragraph 97 and case-law cited).

56 Thirdly, the principle of effective judicial protection is a general principle of European Union law, stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR and in Article 47 of the Charter of Fundamental Rights of the European Union. The effectiveness of judicial review means that the European Union authority in question is bound to disclose the grounds for a restrictive measure to the entity concerned, so far as possible, either when that measure is adopted or, at the very least, as swiftly as possible after that decision, in order to enable the entity concerned to exercise, within the periods prescribed, its right to bring an action. Observance of that obligation to disclose the grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Courts of the European Union, and also to put the latter fully in a position to carry out the review of the lawfulness of the measure in question which is the duty of those courts (see, to that effect and by analogy, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraphs 335 to 337 and case-law cited).

57 In the light of that case-law, the Court considers that the arguments submitted by the parties in respect of the first plea in law should be examined in five stages, as follows. First, the Court must examine the preliminary argument of the Council and the Commission that the applicant cannot rely on the principle of respect for the rights of the defence. Secondly, the Court must examine the arguments relating to (i) the obligation to state reasons and (ii) the claimed infringement of the applicant's rights of defence as regards the initial disclosure of the evidence adduced against it. Thirdly, the Court must examine the arguments on the claimed infringement of the rights of the defence in relation to access to the Council's file. Fourthly, the Court will examine the arguments dealing with (i) the claimed infringement of the applicant's rights of defence as regards whether it had the opportunity to state its point of view and (ii) the claimed infringement of its right to effective judicial protection. Fifthly, the arguments relating to the claimed errors vitiating the assessment and review carried out by the Council will be considered.

Whether the applicant may rely on the principle of respect for the rights of the defence

58 The Council and the Commission dispute the applicability of the principle of respect for the rights of the defence to the present case. Referring to Case T-181/08 *Tay Za* v *Council* [2010] ECR II-1965, paragraphs 121 to 123, they claim that the applicant was not the subject of restrictive measures because of its own activities, but because of its membership of a general category of persons and entities which had supported nuclear proliferation. Consequently, the procedure for the adoption of the restrictive measures was not initiated against the applicant within the meaning of the case-law cited in paragraph 52 above and the applicant can consequently not rely on the rights of the defence or can do so to only a limited extent.

59 That argument cannot be accepted.

60 First, the judgment of the General Court in *Tay Za* v *Council*, cited above in paragraph 58, was set aside on appeal, in its entirety, by the judgment of the Court of Justice of 13 March 2012 in Case C-376/10 P *Tay Za* v *Council*. Consequently, what is stated in that judgment is no longer part of the legal order of the European Union and cannot validly be relied on by the Council and the Commission.

61 Secondly, Article 24(3) and (4) of Decision 2010/413, Article 15(3) of Regulation No 423/2007, Article 36(3) and (4) of Regulation No 961/2010 and Article 46(3) and (4) of Regulation No 267/2012 set out provisions to safeguard the rights of defence of entities which are subject to restrictive measures adopted under those acts. Respect for those rights is subject to review by the Courts of the European Union (see, to that effect, *Bank Melli Iran* v *Council*, cited above in paragraph 49, paragraph 37).

62 In those circumstances, it must be concluded that the principle of respect for the rights of the defence, as stated in paragraphs 52 to 55 above, may be relied on by the applicant in this case.

The obligation to state reasons and the initial disclosure of inculpatory evidence

63 It must be observed at the outset that in order to assess whether the obligation to state reasons and the obligation to disclose to the entity concerned the evidence considered to inculpate it have been fulfilled, there must be taken into consideration not only the reasons stated in the contested measures, but the three proposals for the adoption of restrictive measures sent by the Council to the applicant.

64 First, it is apparent from those proposals, as disclosed to the applicant, that they were submitted to the delegations of the Member States in the context of adoption of the restrictive measures affecting the applicant and that those proposals constitute, consequently, evidence on which those measures are based.

65 Secondly, it is true that the third proposal was disclosed to the applicant both after the action was brought and after the adaptation of claims following adoption of Decision 2010/644 and Regulation No 961/2010. Consequently, it cannot validly supplement the reasons stated for Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010. It may, however, be taken into consideration for the assessment of the legality of the later measures, namely Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012.

66 The contested measures state the following four reasons as regards the applicant:

— according to Decision 2010/413 and Implementing Regulation No 668/2010, the applicant is a State-owned Bank (‘the first reason’);

— the applicant engages in a pattern of conduct which supports and facilitates Iran's nuclear and ballistic missile programmes ('the second reason');

— the applicant has provided banking services to UN and EU listed entities, to entities acting on their behalf or at their direction, or to entities owned or controlled by them ('the third reason');

— the applicant is the parent bank of First East Export [Bank] ('FEE'), which is designated under [United Nations Security Council Resolution] 1929 [2010] ('the fourth reason').

67 The first of the two proposals for adoption of restrictive measures notified on 13 September 2010 partly overlaps the second reason provided in the contested measures. It adds the following reasons:

— the applicant provides banking services to the Atomic Energy Organisation of Iran ('AEOI') and to Novin Energy Company ('Novin') which are subject to restrictive measures adopted by the United Nations Security Council ('the fifth reason');

— the applicant manages the accounts of officials of the Aerospace Industries Organisation and an Iranian procurement agent ('the sixth reason').

68 The second proposal notified on 13 September 2010 essentially overlaps the statement of reasons in the contested measures. There is one additional reason: that since at least 2003 the applicant has facilitated the movement of millions of dollars for the Iranian nuclear programme ('the seventh reason').

69 The third proposal for the adoption of restrictive measures, which is annexed to the rejoinder, contains no additional information as compared with the contested measures and the two proposals notified on 13 September 2010.

70 The applicant maintains that such a statement of reasons does not explain in sufficient detail why restrictive measures against it were adopted. It considers that that deficiency implies, further, an infringement of its rights of defence.

71 The Council, supported by the Commission, contends that the applicant's argument is unfounded.

72 The first reason is sufficiently detailed since it enables the applicant to appreciate that the allegation made against it by the Council is that part of its share capital is held by the Iranian State.

73 On the other hand, the second and third reasons are excessively vague in that they give no details of the nature of the conduct alleged on the part of either the applicant or the other entities concerned.

74 The fourth reason is set out in sufficient detail, since it enables the applicant to appreciate that the allegation made against it by the Council concerns the control it exercises over FEE.

75 The same is true of the fifth reason, which identifies the entities to which the financial services at issue were allegedly supplied.

76 Lastly, the sixth and seventh reasons are not sufficiently detailed, since the sixth does not identify the persons concerned and the seventh contains no details of the entities and transactions concerned.

77 In the light of the foregoing, it must be held that the Council is in breach of the obligation to state reasons and the obligation to disclose to the applicant, as the entity concerned, the evidence adduced against it as regards the second, third, sixth and seventh reasons. On the other hand, those obligations were fulfilled as regards the other reasons.

Access to the file

78 As stated in paragraphs 9 and 15 above, the Council notified the applicant on 13 September 2010 of two proposals for the adoption of restrictive measures submitted by Member States and subsequently of a third proposal as an annex to the rejoinder.

79 The applicant considers that that access was not sufficient to enable it effectively to make known its point of view.

80 The Council, supported by the Commission, contends that the applicant's arguments are unfounded.

81 In that regard, in relation to the extent of the access granted, it must be observed that it is not apparent from the information in the Court file that the Council relied, when the contested measures were adopted, on material other than the three proposals submitted by the Member States. In those circumstances, the Council cannot be criticised for not having notified the applicant of additional evidence.

82 On the other hand, unlike the two proposals for the adoption of restrictive measures annexed to the letter of 13 September 2010, the applicant was notified of the third proposal only as an annex to the rejoinder, in other words after the expiry of the period within which the applicant was required by the Council to submit its observations following the adoption of Decision 2010/413 and Implementing Regulation No 668/2010, after the lodging of the action and after the adoption of Decision 2010/644 and Regulation No 961/2010.

83 The Council maintains, in that regard, that it notified the applicant of the third proposal as soon as it obtained the agreement of the Member State which submitted the proposal.

84 That argument cannot be accepted. Where the Council intends to rely on information submitted by a Member State in order to adopt restrictive measures affecting an entity, it is obliged to ensure, before the adoption of those measures, that the entity concerned can be notified of the information in question in good time so that it is able effectively to make known its point of view.

85 In those circumstances, it must be concluded that, since the Council notified the applicant of the third proposal for the adoption of restrictive measures only as an annex to the rejoinder, it did not give the applicant access to that information in its file in good time, and thereby infringed the rights of the defence.

Whether the applicant had the opportunity effectively to make known its point of view and the right to effective judicial protection

86 First, the applicant claims that it did not have an opportunity effectively to make known its point of view and that, in any event, the observations which it was able to present were not taken into consideration by the Council.

87 The Council, supported by the Commission, contends that the applicant's arguments are unfounded.

88 First, it is clear that, following the adoption of the first measures whereby the applicant's funds were frozen, on 26 July 2010, the applicant sent a letter to the Council on 24 September 2010 setting out its point of view and asking for the restrictive measures against it to be lifted. The Council replied by letter of 28 October 2010. Next, before the adoption of Decision 2011/783 and Implementing Regulation No 1245/2011, the applicant submitted its observations to the Council by letter of

29 August 2011, to which the Council replied on 5 December 2011. Lastly, no argument is put forward by the applicant to suggest that it was not in a position to submit further observations to the Council, in a similar fashion, before the adoption of Regulation No 267/2012.

89 Accordingly, it must be held that the applicant had the opportunity effectively to make known its point of view, except as regards (i) the second, third, sixth and seventh reasons provided by the Council, which are excessively vague (see paragraph 77 above) and (ii) the proposal for the adoption of restrictive measures notified as an annex to the rejoinder, since that proposal was not known to the applicant when it submitted its observations (see paragraph 82 above).

90 As regards whether the observations submitted were taken into consideration, it is admittedly true that the reply to the applicant's arguments in the Council's letters of 28 October 2010 and 5 December 2011 is brief. The fact remains that the Council made clear, in the letter of 28 October 2010, that it considered, contrary to the position of the applicant, that there was no adequate guarantee that the applicant would not in the future supply banking services to persons and entities engaged in nuclear proliferation. The Council reiterated that position in its letter of 5 December 2011.

91 Further, it is common ground that the Council removed, in Decision 2010/644 and in Regulation No 961/2010, the statement that the applicant was a State-owned bank, which the applicant denied was the case.

92 In the light of those circumstances, it must be held that the applicant's observations were taken into consideration by the Council during its review, contrary to what is claimed by the applicant.

93 Secondly, the applicant claims that the inadequacy of the information and evidence disclosed to it affected its right to effective judicial protection.

94 The Council, supported by the Commission, contends that that argument is unfounded.

95 It follows from paragraph 89 above that it must be held that, in so far as there was individual notification to the applicant of reasons which were sufficiently detailed, namely the first, fourth and fifth reasons relied on by the Council, the applicant's right to effective judicial protection was respected.

96 On the other hand, the vagueness of the second, third, sixth and seventh reasons provided by the Council and the late notification of the third proposal for the adoption of restrictive measures constitute an infringement of the applicant's right to effective judicial protection.

The defects in the Council's assessment

97 The applicant claims that the Council did not carry out a genuine assessment of the circumstances of the case, but did no more than adopt the proposals submitted by Member States. That defect affects both the assessment prior to the adoption of the restrictive measures against and the regular review of those measures.

98 Further, according to the applicant, it is clear from diplomatic cables, made public through the Wikileaks organisation ('the diplomatic cables'), that Member States, in particular the United Kingdom, were subject to pressure from the United States Government to ensure the adoption of restrictive measures against Iranian entities. That fact, it is claimed, casts doubt on the lawfulness of the measures adopted and of the procedure for their adoption.

99 The Council, supported by the Commission, contends that the applicant's argument is unfounded. It contends, in particular, that no account should be taken of the diplomatic cables.

100 First, it must be observed that acts which establish restrictive measures against entities allegedly involved in nuclear proliferation are acts of the Council, which must, therefore, ensure that their adoption is justified. Consequently, when adopting an initial act establishing such measures, the Council must assess the relevance and the validity of the information and evidence submitted to it, pursuant to Article 23(2) of Decision 2010/413, by a Member State or by the High Representative of the Union for Foreign Affairs and Security Policy. When adopting subsequent acts affecting the same entity, the Council is required, in accordance with Article 24(4) of that decision, to review the need to maintain those measures in the light of observations submitted by that entity.

101 In the present case, there is nothing in the Court file to suggest that the Council checked the relevance and the validity of the evidence concerning the applicant submitted to it before the adoption of Decision 2010/413 and Implementing Regulation No 668/2010. On the contrary, the incorrect statement, in those acts, that the applicant was a State-owned bank, the inaccuracy of which is not denied by the Council, is an indication that no such checking took place.

102 Further, it is clear from paragraphs 90 to 92 above that, when adopting the subsequent contested measures, the Council reviewed the circumstances of the case in the light of the applicant's observations, since it removed the statement that the applicant was a State-owned bank and expressed its view on the applicant's arguments relating to financial services supplied to entities involved in nuclear proliferation.

103 Secondly, as regards the diplomatic cables, the fact that some Member States were subject to diplomatic pressure, even if proved, does not imply, by itself, that such pressure affected the contested measures which were adopted by the Council or the assessment carried out by the Council when they were adopted.

104 In those circumstances, the Court must uphold the applicant's arguments relating to the defects affecting the assessment carried out by the Council in relation to Decision 2010/413 and Implementing Regulation No 668/2010, but must reject those arguments for the remainder.

105 In the light of paragraphs 47 to 104 above, it must be observed that, first, the Council infringed the applicant's rights of defence and its right to effective judicial protection in that it did not notify the applicant, in good time, of the proposal for the adoption of restrictive measures annexed to the rejoinder. Since that proposal was relied on by the Council as justification of all the contested measures against the applicant, and taking into account the date when it was notified, that defect affects the lawfulness of Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010, in so far as those measures concern the applicant.

106 Next, the Council did not, when adopting Decision 2010/413 and Implementing Regulation No 668/2010, comply with the obligation to assess the relevance and the validity of the information and evidence against the applicant submitted to it, with the consequence that those measures are tainted by illegality.

107 Lastly, the Council infringed the obligation to state reasons as regards the second, third, sixth and seventh reasons relied on against the applicant. Nonetheless, taking into account the fact that the various reasons relied on by the Council are independent of each other and that other reasons are sufficiently detailed, that fact does not justify the annulment of Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012. It implies only that the second, third, sixth and seventh reasons cannot be taken into consideration for the purposes of assessment of the second plea in law concerning the question whether the restrictive measures against the applicant are well founded.

108 In the light of all the foregoing, the Court must uphold the first plea in law to the extent that it concerns the annulment of Decision 2010/413, Implementing Regulation No 668/2010, Decision 2010/644 and Regulation No 961/2010 in so far as those acts concern the applicant, and reject that plea for the remainder.

The second plea in law: manifest error of assessment in relation to the adoption of restrictive measures against the applicant

109 The applicant claims that the reasons relied on against it by the Council, set out in paragraphs 66 to 69 above, do not satisfy the conditions laid down by Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012 and are not substantiated by evidence. Consequently, the Council made a manifest error of assessment by adopting restrictive measures against it on the basis of those reasons.

110 The Council, supported by the Commission, disputes the applicant's arguments.

111 In accordance with the case-law, the judicial review of the lawfulness of a measure 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*, cited above in paragraph 49, paragraphs 37 and 107).

112 Having regard to that case-law, taking into consideration the fact that the second, third, sixth and seventh reasons relied on by the Council against the applicant do not constitute an adequate statement of reasons (see paragraph 107 above), the Court need be concerned only with the determination of whether the first, fourth and fifth reasons relied on are well founded.

113 As regards the first reason, relied on solely in Decision 2010/413 and Implementing Regulation No 668/2010, it has now been established that the applicant is not a State-owned bank. Consequently, the first reason is based on a mistaken factual premiss and cannot therefore justify the restrictive measures imposed on the applicant by Decision 2010/413 and Implementing Regulation No 668/2010.

114 As regards the fourth reason, it is certainly the case that FEE, a wholly owned subsidiary of the applicant, was the subject of United Nations Security Council Resolution 1929 (2010).

115 First, it is apparent from that resolution that the adoption of restrictive measures against FEE was justified solely by the alleged involvement of the applicant in nuclear proliferation.

116 Secondly, that involvement was described in Resolution 1929 (2010) in imprecise terms which correspond, essentially, to the seventh reason provided by the Council, namely that '[o]ver the last seven years, [the applicant] has facilitated hundreds of millions of dollars in transactions for Iranian nuclear, missile and defense entities'.

117 In those circumstances, it must be concluded that the fourth reason is not only based on mere allegations but also does not constitute an autonomous reason distinct from those directly concerning the applicant. Consequently, it cannot justify the adoption of restrictive measures against the applicant.

118 As regards the fifth reason, the applicant denies having supplied services to AEOI. The Council has produced no evidence or information to establish that such services were supplied. Consequently, it must be concluded that the allegations concerning AEOI also do not justify the adoption of restrictive measures against the applicant.

119 On the other hand, the applicant admits having supplied account operation services to Novin, which has been the subject of restrictive measures adopted by the United Nations Security Council since 24 March 2007, by reason of its alleged engagement in nuclear proliferation. The applicant explains however, first, that it was not informed of Novin's involvement in nuclear proliferation, inter alia because the services supplied were not connected thereto. Secondly, the applicant claims that it gradually ran down, then completely ended, its relationship with Novin after the adoption of restrictive measures against Novin.

120 The response of the Council, supported by the Commission, is that the services supplied by the applicant to Novin justify the adoption of restrictive measures against the applicant, taking account of the risk that the applicant may in the future supply similar support to other listed entities. In that context, it is of no relevance whether the applicant knew or might have known that Novin was in fact involved in nuclear proliferation or that the transactions concerned were connected thereto.

121 Having regard to the parties' arguments, it is necessary to examine whether, as maintained by the Council, the services supplied by the applicant to Novin constitute support to nuclear proliferation within the meaning of Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012.

122 In that regard, it must be recalled, first, that, under Article 18 of Regulation No 423/2007, Article 39 of Regulation No 961/2010 and Article 49 of Regulation No 267/2012, those regulations are applicable within the territory of the European Union, including its airspace, on board any aircraft or any vessel under the jurisdiction of a Member State, to any person inside or outside the territory of the European Union who is a national of a Member State, to any legal person, entity or body which is incorporated or constituted under the law of a Member State and to any legal person, entity or body in respect of any business done in whole or in part within the European Union.

123 Accordingly, as regards transactions carried out outside the European Union, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012 are not capable of imposing legal obligations on a financial institution established in a non-Member country and constituted under the law of that country (a 'foreign financial institution') such as the applicant. Consequently, such a financial institution is not obliged, under those regulations, to freeze the funds of entities involved in nuclear proliferation.

124 The fact remains however that if a foreign financial institution is engaged in, is directly associated with or is providing support to nuclear proliferation, its funds and economic resources which are located within the European Union, involved in business carried out wholly or in part within the European Union or held by nationals of Member States or by any legal persons, entities or bodies which are incorporated or constituted under the law of a Member State, can be struck at by restrictive measures adopted pursuant to Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012.

125 It follows that it is very much in the interests of a foreign financial institution to ensure that it is not engaged in, is not directly associated with and is not providing support to nuclear proliferation, in particular by supplying financial services to an entity involved in nuclear proliferation. Consequently, where it knows or may reasonably suspect that one of its clients is involved in nuclear proliferation, it should bring to an end the supply of financial services to that client without delay, taking into account the applicable legal obligations, and should not supply any further services.

126 In the present case, it is not disputed by the Council that the services supplied to Novin by the applicant were supplied in Iran, and their relationship is governed by Iranian law.

127 Accordingly, it is necessary to examine whether the applicant acted without delay to bring to an end the supply of financial services to Novin, taking into account the applicable obligations laid down by Iranian law, as soon as it knew or might reasonably have suspected that Novin was involved in nuclear proliferation.

128 In that regard, the applicant denies having been aware of the involvement of Novin in nuclear proliferation before Novin became the subject of restrictive measures adopted by the United Nations Security Council. Since the Council has not submitted, pursuant to the case-law cited in paragraph 111 above, detailed and specific evidence or information to suggest that the applicant knew or might reasonably have suspected that Novin was involved in nuclear proliferation at an earlier date, the applicant's claim on that point must be accepted.

129 As regards the period subsequent to the adoption of restrictive measures against Novin, the applicant explains that it issued without delay an internal circular requesting that its employees inform Novin that it could no longer supply services to it. Thereafter, no further services were supplied and no further instructions were accepted. The applicant confined itself to effecting payments from Novin's accounts, which were due under instructions, cheques and promissory notes issued before the date of the adoption of restrictive measures against Novin, taking into account that none of those payments were linked to nuclear proliferation or to the acquisition of goods in general. As soon as the balance in any account was extinguished as a result of payments made, the accounts were closed by the applicant. Any residual balances, which were negligible, were returned to Novin.

130 The Council and the Commission do not dispute the accuracy of that factual account, which is substantiated by the written statements of the applicant's director.

131 As regards whether those measures are sufficient when judged by the test set out in paragraph 124 above, it must be held that, taking into account the specific features of services related to the operation of accounts, the applicant demonstrates that it acted without delay to bring to an end the supply of financial services to Novin as soon as it learned of Novin's involvement in nuclear proliferation.

132 In that regard, it is true that payments were effected by the applicant from Novin's accounts after the adoption of the restrictive measures concerned.

133 However, the applicant explains, and is not contradicted by the Council or the Commission, that it was required, by virtue of its obligations to Novin, to effect the payments in compliance with instructions, cheques and promissory notes issued previously.

134 In that regard, it must be observed that Article 20(6) of Decision 2010/413, Article 9 of Regulation No 423/2007, Article 18 of Regulation No 961/2010 and Article 25 of Regulation No 267/2012 permit, in essence, the unfreezing of funds of entities subject to restrictive measures in order to make payments due under obligations entered into by them prior to their being listed, provided that those payments are not linked to nuclear proliferation. In those circumstances, the applicant, which was in this case under no obligation, as is clear from paragraphs 123 to 126 above, to freeze Novin's funds pursuant to the abovementioned measures, should not be required to apply stricter rules in respect of Novin.

135 Yet the Council and the Commission do not even claim that the payments at issue were linked to nuclear proliferation.

136 Further, the applicant admits that it paid back to Novin any residual balances in closed accounts. The applicant states, however, and this is not disputed by either the Council or the Commission, that it was not entitled to retain the balances concerned.

137 In those circumstances, it must be held that neither the services supplied by the applicant to Novin before the adoption of restrictive measures against Novin nor the arrangements for the termination of the applicant's commercial relationship with Novin constitute support to nuclear proliferation within the meaning of Decision 2010/413, Regulation No 423/2007, Regulation No 961/2010 and Regulation No 267/2012.

138 Consequently, those circumstances do not justify the adoption of restrictive measures against the applicant.

139 Since none of the first, fourth or fifth reasons relied on by the Council against the applicant justify the adoption of the restrictive measures against it, the second plea in law must be upheld.

140 In the light of all the foregoing, the contested measures must be annulled in so far as they concern the applicant, and there is no need to examine the third plea in law, claiming an infringement of the principle of proportionality.

Costs

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

142 Under the first subparagraph of Article 87(4) of the Rules of Procedure, institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission shall bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

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

— point 4 of Table B of Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP;

— point 2 of Table B to 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;

— point 4 of Table I.B in the Annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413;

— point 4 of Table B of Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007;

— Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413;

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

— **point 4 of Table I.B of 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 Council of the European Union to bear its own costs and to pay the costs of Bank Mellat;**

3. **Orders the European Commission to bear its own costs.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 29 January 2013.

[Signatures]