Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

2 June 2016*

(Common foreign and security policy — Restrictive measures against Iran — Restrictions on transfers of funds involving Iranian financial institutions — Jurisdiction of the General Court — Action for annulment — Regulatory act not entailing implementing measures — Whether directly concerned — Interest in bringing proceedings — Admissibility — Proportionality — Obligation to state reasons — Legal safeguards as referred to in Article 215(3) TFEU — Legal certainty — Non-arbitrariness — Breach of fundamental rights)

In Case T-160/13,

Bank Mellat, established in Tehran (Iran), represented initially by S. Zaiwalla, P. Reddy, F. Zaiwalla, Z. Burbeza, A. Meskarian, Solicitors, D. Wyatt QC, R. Blakeley and G. Beck, Barristers, and subsequently by S. Zaiwalla, P. Reddy, Z. Burbeza, A. Meskarian, D. Wyatt QC, R. Blakeley and G. Beck,

applicant,

v

Council of the European Union, represented by M. Bishop and I. Rodios, acting as Agents,

defendant,

supported by

European Commission, represented by D. Gauci and M. Konstantinidis, acting as Agents,

and by

United Kingdom of Great Britain and Northern Ireland, represented initially by S. Behzadi-Spencer, L. Christie and C. Brodie, and subsequently by C. Brodie and V. Kaye, acting as Agents, and by S. Lee, Barrister,

interveners,

APPLICATION for annulment of Article 1(15) of Council Regulation (EU) No 1263/2012 of 21 December 2012 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 34), or annulment of that provision in so far as it does not provide for an exception that applies in the applicant's case, and for a declaration that Article 1(6) of Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58) is inapplicable,

* Language of the case: English.

THE GENERAL COURT (First Chamber),

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

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 7 July 2015,

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's name was placed on the lists of entities engaged in Iranian 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) and Annex V to Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

4 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) and the applicant's name was included in Annex VIII to the latter regulation. Regulation No 961/2010, in turn, was repealed by Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran (OJ 2012 L 88, p. 1) and the applicant's name was included in Annex IX to the latter regulation.

5 The existing restrictive measures against Iran were amended and new restrictive measures against that country were adopted by Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413 (OJ 2012 L 282, p. 58) and by Council Regulation (EU) No 1263/2012 of 21 December 2012 amending Regulation No 267/2012 (OJ 2012 L 356, p. 34; 'the contested regulation'). In particular, Article 1(6) of Decision 2012/635 amended Article 10 of Decision 2010/413, while Article 1(15) of the contested regulation amended Article 30 of Regulation No 267/2012 and added Articles 30a and 30b to that regulation.

6 Article 10 of Decision 2010/413, as amended by Article 1(6) of Decision 2012/635, provides, in particular, for restrictions on financial transactions between, on the one hand, financial institutions established in Iran and their branches or subsidiaries and, on the other, financial institutions in the European Union.

7 According to paragraph 2 of Article 10 of Decision 2010/413, as amended, only the following transactions may be carried out: (1) transactions regarding foodstuffs, healthcare, medical equipment, or for agricultural or humanitarian purposes ('humanitarian transfers'); (2) transactions regarding personal remittances; (3) transactions regarding the execution of the exemptions provided for in Decision 2010/413; (4) transactions in connection with a specific trade contract not prohibited under

that decision; (5) transactions regarding a diplomatic or consular mission or an international organisation; and (6) transactions regarding payment to satisfy claims against Iran, Iranian persons or entities, and transactions of a similar nature.

8 According to paragraph 3 of Article 10 of Decision 2010/413, as amended, transfers of funds to and from Iran using Iranian banks and financial institutions for the transactions referred to in paragraph 2 of that article are subject, depending on the circumstances and the subject matter of the transfer, and above various thresholds, to a prior notification obligation and to an obligation of prior authorisation by the competent national authority.

9 Articles 30 to 30b of Regulation No 267/2012, as amended by Article 1(15) of the contested regulation, essentially reproduce those restrictions and those notification and authorisation obligations.

10 Thus, Article 30 of Regulation No 267/2012, as amended, provides for restrictions on financial transactions between, on the one hand, credit and financial institutions and bureaux de change domiciled in Iran and their branches or subsidiaries and credit and financial institutions and bureaux de change that are controlled by persons, entities or bodies domiciled in Iran, and, on the other, financial institutions in the European Union.

11 In particular, according to Article 30(2) of Regulation No 267/2012, as amended, only the following may be carried out: (1) humanitarian transfers; (2) transfers regarding personal remittances; (3) transfers in connection with a specific trade contract provided that such transfer is not prohibited under Regulation No 267/2012; (4) transfers regarding diplomatic missions or consular posts or international organisations; (5) transfers regarding payment to satisfy claims by or against an Iranian person, entity or body, or transfers of similar nature; and (6) transfers necessary for the execution of the obligations arising from contracts referred to in Article 12(1)(b) of Regulation No 267/2012.

12 According to Article 30(3), (4) and (5) of Regulation No 267/2012, as amended, transfers of funds which may be authorised under paragraph 2 of that article are subject, depending on the circumstances and their subject matter, and above various thresholds, to a prior notification obligation and to an obligation of prior authorisation by the competent national authority.

13 Article 30a of Regulation No 267/2012 provides, inter alia, for certain restrictions on transfers of funds not covered by Article 30 of that regulation between, on the one hand, Iranian persons, entities or bodies and, on the other, EU nationals.

14 According to Article 30b(1) of Regulation No 267/2012, the restrictions laid down in Articles 30 and 30a of that regulation are not to apply where an authorisation has been granted in accordance with Articles 24, 25, 26, 27, 28 or 28a of that regulation.

15 According to Article 30b(3) of Regulation No 267/2012, for the purposes of Article 30(3)(b) and 30(3)(c) and Article 30a(1)(c) of that regulation, the competent authorities are to grant the authorisation, under such terms and conditions as they deem appropriate, unless they have reasonable grounds to determine that the transfer of funds for which the authorisation is requested could be in breach of any of the prohibitions or obligations in Regulation No 267/2012.

16 By judgment of 29 January 2013 in *Bank Mellat* v *Council* (T-496/10, ECR, EU:T:2013:39), the Court annulled the applicant's entry on the lists in Annex II to Decision 2010/413, Annex V to Regulation No 423/2007, Annex VIII to Regulation No 961/2010 and Annex IX to Regulation No 267/2012. The Court found, in particular, that the circumstances relied on by the Council of the European Union as against the applicant did not establish that the latter had supported nuclear proliferation. By judgment of 18 February 2016 in *Council* v *Bank Mellat* (C-176/13 P, ECR, EU:C:2016:96), the Court of Justice dismissed the Council's appeal against the judgment in *Bank Mellat* v *Council* (EU:T:2013:39).

Procedure and forms of order sought

17 By application lodged at the Court Registry on 15 March 2013, the applicant brought the present action, in which it claims that the Court should:

— annul Article 1(15) of the contested regulation;

— annul Article 1(15) of the contested regulation in so far as it does not provide for an exception that applies in the applicant's case;

— declare that Article 1(6) of Decision 2012/635 is inapplicable to the applicant;

— order the Council to pay the costs;

18 In its defence, lodged at the Court Registry on 27 June 2013, the Council contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

19 By documents lodged at the Court Registry on 24 June and 10 July 2013, the European Commission and the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in the present proceedings in support of the Council. By orders of 9 September 2013, the President of the Fourth Chamber of the General Court granted leave to intervene.

20 The Commission and the United Kingdom contend that the Court should dismiss the action.

21 Following changes to the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the First Chamber, to which the present case was therefore assigned by decision of 4 October 2013.

22 Upon hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided, on 23 April 2015, to open the oral part of the procedure and, by way of measures of organisation of procedure provided for under Article 64 of the Rules of Procedure of the General Court of 2 May 1991, put questions to the parties for written and oral reply, requesting in particular their written observations on the jurisdiction of the General Court to rule on the applicant's third head of claim relating to a declaration of inapplicability of Article 1(6) of Decision 2012/635. The parties responded to that request within the period prescribed by the Court.

23 The parties presented oral argument and their replies to the questions put by the Court at the hearing on 7 July 2015. At that hearing, the applicant explained that its first and second heads of claim were put forward in the alternative and, moreover, that its second head of claim concerned the annulment of Article 1(15) of the contested regulation in so far as that provision did not provide for an exception that would apply in the applicant's case.

24 Before examining the substance of the dispute, the Court must verify of its own motion whether it has jurisdiction to rule on the action and whether the applicant's first two heads of claim are admissible, which is disputed by the Council and by the interveners.

Law

1. *Jurisdiction of the General Court*

25 In reply to a written question from the Court, the Council and the interveners submitted that the Court did not have jurisdiction to rule on the applicant's third head of claim since, as a provision relating to the common foreign and security policy (CFSP), Article 1(6) of Decision 2012/635 was caught by the exception to the jurisdiction of the Court of Justice of the European Union provided for in Article 275 TFEU.

26 The United Kingdom submits, moreover, that the Court's lack of jurisdiction to review the legality of Article 1(6) of Decision 2012/635 means that the Court also lacks jurisdiction to rule on the heads of claim relating to Article 1(15) of the contested regulation, adopted on the basis of Article 1(6).

27 The applicant contends that the General Court does have jurisdiction to rule on the action in its entirety. It states, in particular, that, as an exception to the jurisdiction of the Courts of the European Union, Article 275 TFEU must be interpreted narrowly. It adds that Article 1(6) of Decision 2012/635 concerns natural and legal persons, that is, in particular, Iranian financial institutions and persons and entities seeking to enter into transactions with them, in regard to which it produces legal effects. Therefore, it is, according to the applicant, a decision providing for restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU. In addition, according to the applicant, the General Court's jurisdiction to review the legality of Article 1(6) of Decision 2012/635 also stems from the fact that Article 1(15) of the contested regulation, the annulment of which it is entitled to seek, was adopted on the basis of that provision.

28 Article 275 TFEU provides as follows:

'The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.'

29 The fourth paragraph of Article 263 TFEU provides that any natural or legal person may, under the conditions laid down in the first and second paragraphs of that provision, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

30 Moreover, according to Article 277 TFEU, notwithstanding the expiry of the period laid down in the sixth paragraph of Article 263 TFEU, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in the second paragraph of Article 263 TFEU in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

31 In the present case, by its third head of claim, the applicant asks the Court to declare that Article 1(6) of Decision 2012/635, which is a provision relating to the CFSP within the meaning of Article 275 TFEU, is inapplicable to it. In the reply, the applicant stated that that request was a plea of illegality for the purposes of Article 277 TFEU.

32 In that regard, according to the case-law, Article 275 TFEU introduces a derogation from the rule of the general jurisdiction conferred on the Court of Justice of the European Union by Article 19 TEU to ensure that in the interpretation and application of the Treaties the law is observed, and it must, therefore, be interpreted narrowly (see, to that effect, judgment of 24 June 2014 in *Parliament* v *Council*, C-658/11, ECR, EU:C:2014:2025, paragraph 70).

33 First, in the present case, the measures laid down by Article 1(6) of Decision 2012/635 are of a general nature, their scope being determined by reference to objective criteria and not by reference to identified natural or legal persons. Consequently, contrary to what the applicant claims, Article 1(6) of Decision 2012/635 does not constitute, in itself, a decision providing for restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU (see, by analogy, judgment of 25 April 2012 in *Manufacturing Support & Procurement Kala Naft* v *Council*, T-509/10, ECR, EU:T:2012:201, paragraph 37, confirmed in that respect by the judgment of 28 November 2013 in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, ECR, EU:C:2013:776, paragraph 99).

34 Secondly, the applicant raised the plea of illegality in respect of Article 1(6) of Decision 2012/635 in support of the action for annulment brought against Article 1(15) of the contested regulation.

35 It is apparent from paragraphs 5 to 15 above that Article 1(15) of the contested regulation is intended to implement, in the field of the FEU Treaty, Article 1(6) of Decision 2012/635.

36 However, Article 1(15) of the contested regulation is not a decision providing for restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU. It applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in a general and abstract manner, in so far as it applies, in particular, to all transfers between any Iranian bank or financial institution and any financial establishment situated within the European Union and its application does not flow from an assessment by the Council of the particular circumstances of a given establishment.

37 Consequently, the plea of illegality in respect of Article 1(6) of Decision 2012/635 put forward by the applicant in the context of its third head of claim has not been raised in support of an action for annulment brought against a decision providing for restrictive measures against natural or legal persons within the meaning of the second paragraph of Article 275 TFEU.

38 In the light of the findings in paragraphs 33 and 37 above, it must be concluded that the General Court does not have jurisdiction under Article 275 TFEU to rule on the applicant's third head of claim.

39 As regards the General Court's jurisdiction to rule on the first and second heads of claim, having regard also to the case-law referred to in paragraph 32 above, the exception to the jurisdiction of the Courts of the European Union provided for in Article 275 TFEU cannot be interpreted as going so far as to preclude review of the legality of a measure adopted under Article 215 TFEU, such as Article 1(15) of the contested regulation, that does not fall within the CFSP, simply because the valid adoption of that measure is contingent on the prior adoption of a decision falling within the CFSP. Such an interpretation of the exception in question would collide both with the general jurisdiction conferred on the Court of Justice by Article 19 TEU and with the specific jurisdiction expressly conferred on it by the first, second and fourth paragraphs of Article 263 TFEU (see, to that effect, judgment of 4 June 2014 in *Sina Bank* v *Council*, T-67/12, EU:T:2014:348, paragraph 41).

40 Consequently, it must be held that the General Court has jurisdiction under Article 263 TFEU to rule on the applicant's first and second heads of claim.

2. *Admissibility of the applicant's first and second heads of claim*

41 The Council, the Commission and the United Kingdom maintain that the application for annulment of Article 1(15) of the contested regulation does not satisfy the conditions of admissibility laid down by Article 263 TFEU.

42 The Council also maintains that the first and second heads of claim are inadmissible in so far as the applicant had no legal interest in bringing proceedings against Article 1(15) of the contested regulation at the time when the action was brought.

43 The applicant's response is that its action is admissible.

Compliance with the conditions laid down in Article 263 TFEU

44 According to the fourth paragraph of Article 263 TFEU, 'any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

45 In the first place, the United Kingdom submits that the contested regulation is not a regulatory act but a legislative measure, which means that the applicant must demonstrate that the regulation is of direct and individual concern to it. There is, however, no individual concern in this case.

46 The applicant submits that the contested regulation is a regulatory act and, moreover, that Article 1(15) is of individual concern to it.

47 In that regard, Article 289 TFEU provides as follows:

'1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.

2. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.

3. Legal acts adopted by legislative procedure shall constitute legislative acts.

4. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.'

48 In the present case, the contested regulation was adopted on the basis of Article 215 TFEU under the procedure provided for by that article, that is to say, by the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

49 Thus, the contested regulation was not adopted under the ordinary legislative procedure referred to in Article 289(1) TFEU and defined in Article 294 TFEU.

50 Moreover, in view of the lack of any involvement of the European Parliament in the adoption of the contested regulation, that regulation cannot be regarded as having been adopted under a special legislative procedure within the meaning of Article 289(2) TFEU.

51 Consequently, in the light of Article 289(3) TFEU, it must be held that the contested regulation does not constitute a legislative act and it is not, therefore, necessary to rule on the United Kingdom's argument that Article 1(15) of that regulation is not of individual concern to the applicant.

52 In the second place, the Council and the interveners submit that, contrary to the requirements of the fourth paragraph of Article 263 TFEU, Article 1(15) of the contested regulation is not of direct concern to the applicant and entails implementing measures.

53 The Council and the interveners state that the prohibition on the transfer of funds laid down in Article 1(15) of the contested regulation is accompanied by a number of exceptions which are implemented by the competent authorities of the Member States, which have a discretion in that respect. Thus, Article 1(15) of the contested regulation does not necessarily prevent transfers of funds being made to or from the applicant. Consequently, Article 1(15) of the contested regulation does not produce direct effects in relation to the applicant's legal situation.

54 In the applicant's submission, Article 1(15) of the contested regulation affects it directly and its implementation does not entail any implementing measures. It submits, in that regard, that that provision is applicable without reference to any transposing national legislation, notably as regards the obligation to request authorisation for all transfers of funds concerned.

55 In that regard, it is apparent, first, from the findings in paragraph 36 above, that Article 1(15) of the contested regulation is of general application and, secondly, from paragraph 51 above, that it does not constitute a legislative act. In those circumstances, it must be concluded that Article 1(15) of the contested regulation constitutes a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU (see, by analogy, order of 6 September 2011 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, ECR, EU:T:2011:419, paragraphs 56 and 63 and the case-law cited).

56 First, as regards the question whether Article 1(15) of the contested regulation is of direct concern to the applicant and does not entail implementing measures, it is apparent from settled case-law that, for an individual to be directly concerned by an EU measure, that measure must directly affect the legal situation of that individual, and there must be no discretion left to the addressees of that measure who are responsible for its implementation, that implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see order in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 55 above, EU:T:2011:419, paragraph 71 and the case-law cited).

57 Secondly, as regards the concept of 'implementing measures', the objective of the final limb of the fourth paragraph of Article 263 TFEU consists in preventing an individual from being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a direct legal remedy before the EU judicature for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment of 19 December 2013 in *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 27).

58 However, where a regulatory act entails implementing measures, judicial review of compliance with the EU legal order is ensured irrespective of whether those measures are adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the EU judicature are protected against the application to them of

such an act by the ability to challenge before the EU judicature or before the national courts, as the case may be, the implementing measures which the act entails (see, to that effect, judgment in *Telefónica* v *Commission*, cited in paragraph 57 above, EU:C:2013:852, paragraphs 28 and 29).

59 In the present case, it must be noted, as a preliminary point, that since the applicant is a financial institution established in Iran, it is not subject to the restrictions introduced by Article 30a of Regulation No 267/2012, as amended by Article 1(15) of the contested regulation. Consequently, the applicant is not directly affected by Article 30a of Regulation No 267/2012, which means that its action is inadmissible as far as that provision is concerned.

60 In addition, the Council correctly states that when, under the restrictions regime introduced into Regulation No 267/2012 by Article 1(15) of the contested regulation ('the regime at issue'), a request for authorisation of a transfer is submitted to the competent national authority, that authority has a discretion to determine, in accordance with the first subparagraph of Article 30b(3) of Regulation No 267/2012, whether the transfer in question could be in breach of any of the prohibitions or obligations in Regulation No 267/2012. Similarly, at the end of that assessment, the competent authority adopts a decision either authorising the transfer concerned or prohibiting it.

61 In those circumstances, it must be concluded that the first subparagraph of Article 30b(3) of Regulation No 267/2012 is not of direct concern to the applicant and, moreover, entails implementing measures, which means that the action is inadmissible as far as that provision is concerned.

62 By contrast, it should be noted that the regime at issue, as introduced by Article 1(15) of the contested regulation, is of direct concern to the applicant and does not entail implementing measures in three other respects.

63 Thus, first of all, under Article 30(1) of Regulation No 267/2012, as amended by Article 1(15) of the contested regulation, authorisation may be granted only in respect of transfers that have one of the purposes provided for in Article 30(2) of that regulation. Transfers that do not have one of those purposes are prohibited by virtue of Regulation No 267/2012 alone and may not be authorised by the competent national authorities.

64 Next, under Article 30(3)(a) and Article 30(5) of Regulation No 267/2012, as amended by Article 1(15) of the contested regulation, transfers defined by those provisions which correspond to or exceed the amount of EUR 10 000 are subject to a prior notification obligation. The notification obligation flows automatically from the regime at issue, is not subject to assessment by the competent national authorities and does not entail implementing measures.

65 Lastly, the same finding must be made in respect of the obligation to request prior authorisation, laid down in Article 30(3)(b) and (c) and in Article 30(5) of Regulation No 267/2012, as amended by Article 1(15) of the contested regulation. Irrespective of the final outcome of the authorisation procedure, the obligation to initiate it in respect of any transfer exceeding the defined thresholds affects the applicant's legal position, is not subject to assessment by the competent national authorities and does not entail implementing measures.

66 In view of these findings, it must be held that Article 1(15) of the contested regulation directly affects the applicant and does not entail implementing measures in so far as it amended or introduced the provisions of Regulation No 267/2012 referred to in paragraphs 63 to 65 above.

67 In the light of all of the above, under the fourth paragraph of Article 263 TFEU, the Court must reject the plea of inadmissibility raised by the Council and by the interveners in relation to the provisions of Regulation No 267/2012 amended or introduced by Article 1(15) of the contested regulation, referred to in paragraphs 63 to 65 above, and dismiss the action as inadmissible as to the remainder.

The existence of an interest in bringing proceedings at the time when the action was brought

68 The Council claims that, at the time when the action was brought, the applicant had no interest in contesting the lawfulness of Article 1(15) of the contested regulation, since it was already subject to the individual fund-freezing measures adopted under Regulation No 267/2012.

69 In those circumstances, according to the Council, Article 1(15) of the contested regulation does not produce additional legal effects vis-à-vis the applicant. The fact that the individual restrictive measures in question were annulled by the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), is, moreover, irrelevant in that respect since, at the time when the action was brought, the applicant's funds were frozen, pursuant to Article 60 of the Statute of the Court of Justice of the European Union, pending the decision of the Court of Justice on the appeal.

70 Consequently, the Council submits that the application for annulment of Article 1(15) of the contested regulation is inadmissible.

71 The applicant replies that it had an interest in bringing proceedings at the time when the action was brought, particularly since the individual restrictive measures covering the applicant were annulled by the General Court.

72 It must be borne in mind that, in accordance with settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as the applicant has an interest in the annulment of the contested measure. Such an interest presupposes that the annulment of the measure must of itself be capable of having legal consequences and that the action must be likely, if successful, to procure an advantage for the party who brought it (see order of 30 April 1987 in *EnBW Energie Baden-Württemberg* v *Commission*, T-387/04, ECR, EU:T:2007:117, paragraph 96 and the case-law cited).

73 The interest in bringing proceedings must be a vested and present interest (judgment of 17 September 1992 in *NBV and NVB* v *Commission*, T-138/89, ECR, EU:T:1992:95, paragraph 33) and be assessed as at the day on which the application is made (judgment of 16 December 1963 in *Forges de Clabecq* v *High Authority*, 14/63, ECR, EU:C:1963:60, p. 371). It must, however, continue until the final decision, failing which there will be no need to adjudicate (see judgment of 7 June 2007 in *Wunenburger* v *Commission*, C-362/05 P, ECR, EU:C:2007:322, paragraph 42 and the case-law cited).

74 In the present case, at the time when the action was brought, the applicant was subject to individual restrictive measures that stemmed from the applicant's being listed in Annex IX to Regulation No 267/2012 and that were linked to its alleged involvement in nuclear proliferation. Although those restrictive measures were annulled by the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), the taking effect of that annulment was suspended until the determination of the appeal, in accordance with Article 60 of the Statute of the Court of Justice of the European Union.

75 Accordingly, it is certainly true that the adoption of the regime at issue did not have an immediate effective impact on the applicant, inasmuch as the individual restrictive measures to which it had previously been made subject imposed more severe restrictions. That is particularly so since, as noted in paragraph 14 above, according to Article 30b(1) of Regulation No 267/2012, provided that a transfer has been authorised under the rules on individual restrictive measures, it is no longer subject to the restrictions imposed by the regime at issue.

76 However, it must be noted that the regime at issue as such applies to all financial institutions established in Iran, and consequently also to the applicant. This means, inter alia, that when, subsequently, the annulment of the individual restrictive measures relating to the applicant took effect

following the dismissal of the Council's appeal against the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), the applicant was automatically subject to that regime, with all the restrictions flowing therefrom, without any further legal act being involved.

77 In those circumstances, a finding in the present case that the applicant has no interest in bringing proceedings against Article 1(15) of the contested regulation would have the effect of infringing the applicant's right to effective judicial protection, in so far as, after the definitive disappearance of the individual restrictive measures relating to the applicant, it would be subject to the effects of the regime at issue but would not be entitled to seek annulment of Article 1(15) of the contested regulation, because the period for bringing an action would have expired.

78 Therefore, it must be concluded that the applicant has an interest in bringing proceedings to seek annulment of Article 1(15) of the contested regulation, which is capable of having legal consequences for the applicant, and the plea of inadmissibility in that respect must be rejected.

3. *Substance*

79 In support of its first and second heads of claim, the applicant puts forward four pleas in law. The first plea alleges that the regime at issue has no legal basis under Article 215 TFEU in that it has no rational connection with the CFSP aim allegedly pursued. The second plea alleges that the regime at issue has no legal basis under Article 215 TFEU in that it is disproportionate to the CFSP aim allegedly pursued. The third plea alleges that the regime at issue is contrary to the general principles of EU law and also to Article 215(3) TFEU, in so far as it breaches the principles of proportionality and legal certainty, the principle of non-arbitrariness, the obligation to state reasons, the requirement that every sanction must contain the necessary legal safeguards and the principle of equal treatment. The fourth plea alleges breach of the applicant's property rights, its right to trade, the right to free movement of capital and the principle of proportionality.

80 In addition, in the context of several of the pleas set out in paragraph 79 above, the applicant puts forward arguments relating to the nature of the review carried out by the General Court and the burden of proof.

81 Before addressing those pleas and arguments, it is necessary to clarify the scope and structuring of the applicant's heads of claim and pleas in law.

The scope and structuring of the applicant's heads of claim and pleas in law

82 In the first place, as regards the structuring and scope of the first and second heads of claim, the applicant stated at the hearing that while the first head of claim sought annulment of Article 1(15) of the contested regulation as such, the second head of claim sought annulment of that provision only in so far as it did not provide for an exception that would apply in the case of the applicant as an entity that is not involved in nuclear proliferation and which takes due care to ensure that it does not become so involved.

83 That said, since the applicant's arguments in support of the two heads of claim overlap to a large extent, they must be examined together.

84 In the second place, as regards the structuring and scope of the pleas in law put forward in support of the first and second heads of claim, it is apparent from the list in paragraph 79 above that the first and second pleas are expressed in terms of an infringement of Article 215(1) TFEU, according to which, 'where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union [which relates to the CFSP], provides for the interruption or reduction, in part or completely, of

economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures'.

85 According to the applicant, since the regime at issue has no rational connection with the CFSP aim allegedly pursued and is, moreover, disproportionate to that aim, Article 1(15) of the contested regulation is not 'necessary' within the meaning of Article 215(1) TFEU, which means that it has no legal basis.

86 The applicant thus interprets the concept of necessity referred to in Article 215(1) TFEU as relating to the appropriate and necessary nature of the measure adopted in relation to the objective pursued.

87 That interpretation cannot be accepted. It is clear from the wording, the scheme and the purpose of Article 215(1) TFEU that the concept of necessity referred to in that provision does not concern the relationship between the act adopted under Article 215 TFEU and the CFSP aim pursued, but the relationship between that act and the CFSP decision on which the act is based. Thus, the reference to 'necessary measures' is intended to ensure that the Council does not, under Article 215 TFEU, adopt restrictive measures that go beyond those laid down by the corresponding CFSP decision.

88 In the present case, the applicant is not claiming that Article 1(15) of the contested regulation provides for measures going beyond those laid down by Article 1(6) of Decision 2012/635.

89 Nor can such a conclusion be drawn from a comparative analysis of the two provisions in question. While Article 1(15) of the contested regulation is more detailed than Article 1(6) of Decision 2012/635 as regards the practical arrangements for implementing the regime at issue, there is no difference as regards the nature of the restrictions concerned and their scope.

90 In those circumstances, the applicant wrongly claims, in the context of the first and second pleas, that Article 1(15) of the contested regulation has no legal basis.

91 However, given the arguments put forward by the applicant in connection with those pleas, as summarised in paragraphs 85 and 86 above, it must be noted that those pleas concern the proportionality of the regime at issue provided for by Article 1(15) of the contested regulation, rather than the existence of a legal basis.

92 According to the case-law, by virtue of the principle of proportionality, which is one of the general principles of EU law, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures should be appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 14 October 2009 in *Bank Melli Iran* v *Council*, T-390/08, ECR, EU:T:2009:401, paragraph 66 and the case-law cited).

93 In that regard, in the context of the first plea, the applicant disputes the existence of any objective link between nuclear proliferation and the regime at issue and, therefore, the appropriateness of the regime at issue for the prevention of nuclear proliferation.

94 The second plea essentially concerns the sufficiency of the restrictive measures already in place and the allegedly excessive scope of the regime at issue. Thus, that plea relates to the necessary nature of that regime in preventing nuclear proliferation.

95 Furthermore, in the context of the fourth plea, the applicant submits, in essence, that the regime at issue excessively impairs the exercise of its rights and freedoms. In that way, the applicant therefore argues that the disadvantages it suffers as a result of the adoption of that regime are disproportionate to the aims pursued by the Council.

96 In those circumstances, the Court considers it necessary to examine, first of all, the first, second and fourth pleas in law, which all seek ultimately to challenge the proportionality of the regime at issue.

97 It will then be necessary to consider the third plea in law, which relates to the statement of reasons for the adoption of the regime at issue, the legal safeguards applicable under Article 215(3) TFEU, the clarity and predictability of Article 1(15) of the contested regulation and the principle of equal treatment.

The review carried out by the General Court and the burden of proof

98 The applicant submits that the review of the legality of Article 1(15) of the contested regulation must be full and vigorous. It argues, in that regard, that the Council is required to establish, on the basis of evidence and information, that the entities or activities covered by a restrictive measure are in fact involved in nuclear proliferation, the risk of that being the case not being sufficient. It refers in that respect to judgments delivered by the General Court in disputes concerning individual restrictive measures, notably the judgments of 28 November 2013 in *Council* v *Fulmen and Mahmoudian* (C-280/12 P, ECR, EU:C:2013:775); *Manufacturing Support & Procurement Kala Naft* v *Council*, cited in paragraph 33 above (EU:T:2012:201); and *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), which in its view can be applied by analogy to the present case.

99 The Council, supported by the interveners, contends that it has a very wide margin of discretion in deciding whether, in a specific case, it is appropriate to employ individual or general restrictive measures or a combination of the two, and in defining the criteria for their application. It maintains that, in accordance with the judgment in *Bank Melli Iran* v *Council*, cited in paragraph 92 above (EU:T:2009:401, paragraph 36), that margin of discretion is subject to only restricted judicial review.

100 According to the case-law of the Court of Justice, the Courts of the European Union must, in accordance with the powers conferred on them by the FEU Treaty, ensure the review, in principle the full review, of the lawfulness of all EU acts in the light of the fundamental rights forming an integral part of the general principles of EU law (judgments of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, ECR, EU:C:2008:461, paragraph 326, and *Council* v *Fulmen and Mahmoudian*, cited in paragraph 98 above, EU:C:2013:775, paragraph 58).

101 In the present case, it is necessary to take account of the particular nature of the regime at issue, which must be distinguished both from the individual restrictive measures to which the case-law invoked by the applicant relates, and from the general criteria for the adoption of those measures with respect to specified persons and entities, to which the case-law cited by the Council relates. First, as is apparent from the findings in paragraph 36 above, Article 1(15) of the contested regulation, which established the regime at issue, is of general application and does not therefore constitute an individual act. Secondly, it is apparent from paragraphs 52 to 67 above that, unlike the general criteria for the adoption of individual restrictive measures, certain provisions of Regulation No 267/2012 amended or introduced by Article 1(15) of the contested regulation are of direct concern to the applicant and do not entail implementing measures.

102 In those circumstances, while the General Court's review cannot be regarded as restricted, given the case-law of the Court of Justice recalled in paragraph 100 above, it should be acknowledged that the Council has a margin of discretion as to whether it is appropriate as such to adopt restrictive

measures, and in determining the general restrictive measures to be adopted in order to attain its objective within the field of the CFSP. That field is particularly sensitive, since it concerns international relations and the security of the European Union and of its Member States.

103 Further, the applicant's arguments in relation to the burden of proof that allegedly falls on the Council cannot be accepted.

104 The judgments relied on by the applicant and cited in paragraph 98 above concern individual restrictive measures adopted by the Council on the basis of the criterion relating to entities 'engaged in, directly associated with, or providing support' for nuclear proliferation. Thus, in the cases in question, the General Court and the Court of Justice were called upon to determine the merits of the Council's claims and assessments according to which specific persons or entities were in fact involved in nuclear proliferation and accordingly satisfied the criterion for the adoption of individual restrictive measures. That determination could be made only on the basis of specific evidence and information concerning the activities of the persons or entities in question.

105 However, since the regime at issue is not an individual restrictive measure but an act of general application, the resulting restrictions are not based on specific assessments or claims by the Council concerning the involvement of particular persons or entities in nuclear proliferation, but on a general assessment of the mechanisms enabling such proliferation to be funded and of the general measures that could prevent it.

106 Consequently, there is no need to apply the case-law cited in paragraph 98 above to the present case by analogy, and therefore there is, in particular, no need to require the Council to establish that the entities affected by the regime at issue are actually involved in nuclear proliferation.

107 The applicant further contends in that regard that a general restrictive measure, such as the regime at issue, cannot be subject to less severe requirements than the individual restrictive measures at issue in the judgments cited in paragraph 98 above, since both types of measure have comparable consequences for the persons and entities they affect.

108 However, that assertion is unfounded. The restrictions to which the person or entity concerned is subject as a result of the adoption of individual restrictive measures are much more extensive. Thus, the funds of the person or entity concerned are frozen and an exception has to be made for every transfer that involves them, the categories of transfers for which an exception may be made being relatively limited. The regime at issue, on the other hand, does not entail the freezing of funds, provides for a much broader list of authorised purposes than in the case of individual restrictive measures, and limits the obligation to obtain authorisation to transfers exceeding certain thresholds.

109 Moreover, in any event, it must be noted that the matters to which the General Court's examination must relate and the possible existence of a special burden of proof and its subject matter do not depend on the severity of the consequences of a particular restrictive measure but on the question whether that measure is of individual or general application and, accordingly, whether it was adopted following an assessment of the particular circumstances of a specific person or entity. As is evident from the above examination, the regime at issue is a measure of general application.

110 In the light of the foregoing, and the explanations in paragraphs 82 to 97 above, the General Court must, in this case, first, determine the proportionality of the regime at issue, and accordingly examine whether the Council was entitled to find that the adoption of that regime was appropriate and necessary in order to achieve the objective of preventing nuclear proliferation and its funding, and that it did not cause disproportionate disadvantages to the persons and entities affected, including the applicant.

111 Secondly, it is necessary to examine whether Article 1(15) of the contested regulation is affected by the flaws invoked in connection with the third plea.

The first, second and fourth pleas in law

The first plea, concerning the appropriateness of the regime at issue

112 The applicant maintains, in essence, that the regime at issue is not appropriate in order to achieve the CFSP aim pursued by the Council, in so far as it does not have any rational connection with nuclear proliferation or with its funding. The applicant's arguments relate to two aims that might have been pursued by the Council in adopting the regime at issue.

113 Thus, first, the applicant does not dispute the legitimacy of the aim of preventing transfers of funds that could, as such, contribute to nuclear proliferation ('the first aim'), but takes the view that that aim is not in fact being pursued by the adoption of the regime at issue, since that regime is too general to achieve it. Consequently, according to the applicant, there is no connection between the regime at issue and the first aim.

114 Secondly, in the applicant's view, the adoption of the regime at issue was in fact motivated by the broader aim of putting economic pressure on Iran by preventing Iranian financial institutions and, more generally, Iranian economic operators from having access to the EU financial market, regardless of whether the transfers affected were themselves connected with nuclear proliferation ('the second aim'). It maintains that that is not a legitimate aim.

115 The applicant also claims, on the basis of a number of factors, that, in order to be appropriate, restrictive measures aimed at nuclear proliferation must specifically target activities relating to nuclear proliferation.

116 The Council, supported by the interveners, disputes the merits of the applicant's arguments. It takes the view, in particular, that the regime at issue pursues both the first and the second aim and that both aims are legitimate. The interveners state in that regard that the adoption of the regime at issue is motivated by the failure of earlier restrictive measures, notably individual restrictive measures, and seeks to compel Iran to engage in negotiations concerning nuclear proliferation, or even to abandon it, for lack of sufficient resources to pursue it.

– The first aim

117 As noted in paragraph 113 above, the legitimacy of the first aim is not disputed by the applicant. In any event, the aim of preventing transfers of funds that could contribute to nuclear proliferation falls clearly within the parameters of the legitimate aim of preventing nuclear proliferation in itself and its funding, which underpins all the provisions of Decision 2010/413 and of Regulation No 267/2012.

118 As to whether the regime at issue does in fact pursue the first aim, it must be noted, in the first place, that such a link between that aim and the regime at issue is apparent from the wording of recital 12 of Decision 2012/635, to which recital 7 of the contested regulation refers. Recital 12 of Decision 2012/635 is worded as follows:

'In order to prevent the transfer of any financial or other assets or resources that could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems, transactions between Union and Iranian banks and financial institutions should be prohibited, unless authorised in advance by the relevant Member State. This should not prevent the continuation of trade which is not prohibited under Decision 2010/413/CFSP.'

119 It follows explicitly from that provision that the adoption of a general regime of restrictions on transfers of funds involving the banks and financial institutions of the European Union and of Iran, namely the adoption of the regime at issue, does pursue the first aim.

120 In addition to that general consideration, the Council relies on two circumstances which are, in its view, relevant for the purpose of assessing whether there is a connection between the regime at issue and the first aim.

121 Thus, first, the Council maintains that the financing of nuclear proliferation necessarily depends on the services provided by Iranian banks, in particular those which, like the applicant, have an international presence. Secondly, given the clandestine nature of the activities concerned, it is possible that the bank in question will not be aware that the transfers of funds which it carries out are connected with nuclear proliferation.

122 Those two assumptions, if proved correct, would indeed corroborate the existence of a connection between the regime at issue and the first aim. Whilst there is a not insignificant danger that Iranian financial institutions may, in some circumstances unwittingly, be used to carry out transactions linked to nuclear proliferation, more systematic control of the transfers of funds in which they are involved, thanks to a system of prior notification and authorisation, will enable the competent authorities of the Member States to obtain relevant information about the transfers in question and will give them an opportunity to identify and to ban those whom they suspect could contribute to nuclear proliferation. Such a mechanism could thus make the funding of nuclear proliferation more difficult.

123 The applicant nevertheless disputes the fact that the two circumstances highlighted by the Council may be taken into consideration. It maintains that those circumstances are hypothetical and unsupported by any specific evidence, contrary to the requirements of the case-law, and notably the judgments cited in paragraph 98 above.

124 It must be borne in mind in that regard that it is evident from paragraphs 98 to 109 above that the judgments invoked by the applicant concerned individual restrictive measures, which means that the rules they lay down in relation to the burden of proof cannot be applied by analogy to the present case.

125 Moreover, it must be noted that the validity of the assumptions put forward by the Council is confirmed by the circumstances at issue in the case giving rise to the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), on which the applicant itself relies to support its case.

126 One of the reasons relied on by the Council when adopting individual restrictive measures against the applicant was the fact that the applicant was providing account management services to Novin Energy Company ('Novin'), itself subject to restrictive measures adopted by the United Nations Security Council ('the Security Council'). The applicant admitted having provided the services in question but denied having been aware of Novin's involvement in nuclear proliferation before the Security Council adopted restrictive measures against Novin. In the absence of 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 Court accepted the applicant's assertion on that point. It held, in consequence, that the services supplied to Novin by the applicant before the adoption of restrictive measures against Novin did not constitute support for nuclear proliferation within the meaning of Decision 2010/413 and Regulation No 267/2012 and did not, therefore, justify the adoption of individual restrictive measures against the applicant (judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above, EU:T:2013:39, paragraphs 119 to 138).

127 Those facts, established in proceedings before the General Court, confirm that Iranian entities involved in nuclear proliferation use the financial services supplied by the Iranian banks, and, moreover, that those banks may provide such services, which include the execution of instructions to transfer funds, unwittingly, which means that they may be induced to carry out transfers of funds that could contribute to nuclear proliferation.

128 Thus, the financial services supplied to Novin by the applicant, referred to in the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), corroborate the two assumptions relied on by the Council and, in consequence, the existence of a connection between the first aim and the regime at issue.

129 In order to challenge the existence of that connection, the applicant further maintains, in the first place, that the regime at issue is not appropriate to achieving the first aim because it is excessively general in so far as it does not cover only transfers of funds that could contribute to nuclear proliferation but all transfers between Iranian banks and EU banks.

130 That argument is ineffective in the context of the present plea as it does not relate to the actual existence of a connection between the first aim and the regime at issue, and thus the appropriateness of that regime, but to the question whether the regime at issue is necessary in order to achieve that aim or whether less general measures would have been sufficient. Consequently, it is necessary to examine that argument in the context of the second plea, together with the other arguments relating to the scope of the regime at issue (see paragraphs 187 to 199 below).

131 In the second place, according to the applicant, the regime at issue is not appropriate to achieving the first aim because it is ineffective in so far as it covers only relations with EU financial institutions and is not sufficient for the purpose of bringing the activities of persons or entities involved in nuclear proliferation to an end.

132 First of all, however, the fact that a measure is not in itself sufficient for achieving an aim does not in any way mean that it is inappropriate for achieving it within the meaning of the case-law referred to in paragraph 92 above. Thus, the fact that the regime at issue is only one of the restrictive measures — general and individual — adopted by the Council in order to prevent nuclear proliferation and its funding does not mean that the regime is unlawful.

133 Next, in so far as the applicant must be understood as claiming that the regime at issue should have been applied also to transfers of funds involving EU nationals other than financial or credit institutions, it must be noted that, as is apparent from paragraph 13 above, Article 30a of Regulation No 267/2012 provides that such transfers are subject to restrictions similar, albeit not strictly identical, to those arising under the regime at issue.

134 Lastly, in so far as the applicant's argument should be interpreted as meaning that the Council ought to have adopted measures concerning relations between Iranian financial institutions and those of third countries, it is sufficient to observe that there is, *prima facie*, no EU competence in respect of such relations, beyond those situations referred to in Article 49 of Regulation No 267/2012, which defines the scope of that regulation.

135 In the light of the foregoing, it must be concluded that the regime at issue is connected with the first aim, which is a legitimate CFSP aim, and that it is therefore appropriate to achieving that aim, for the purposes of the case-law cited in paragraph 92 above.

– The second aim

136 As observed in paragraph 114 above, the second aim consists of putting economic pressure on Iran by limiting the access of Iranian financial institutions and, more generally, Iranian economic operators to the EU financial market, regardless of whether the transfers affected are themselves connected with nuclear proliferation.

137 The applicant is of the view that the regime at issue pursues the second aim, and that the second aim is not legitimate particularly as it does not relate to nuclear proliferation but is based on economic reasons and is not, therefore, covered by Decision 2010/413 or by Regulation No 267/2012. It adds that the second aim would justify any measure designed to damage Iran, its economy and its government, and any ban on trade.

138 The Council, supported by the interveners, contends that while the regime at issue does indeed pursue the second aim following the failure of earlier restrictive measures, the aim is nevertheless a legitimate one, in that it seeks to compel Iran to engage in negotiations concerning nuclear proliferation, or even to abandon it.

139 Although the parties, including the Council as author of Decision 2012/635 and of the contested regulation, agree that the regime at issue pursues the second aim, their view in that respect is not supported by an examination of the relevant provisions of those acts.

140 The wording of recital 5 of Decision 2012/635, which is implemented by the contested regulation, does refer in general terms to the fact that Iran has failed to engage seriously in negotiations concerning its nuclear programme, as a reason for the adoption of additional restrictive measures.

141 However, as has already been set out in paragraph 118 above, recital 12 of Decision 2012/635, which specifically covers the regime at issue, refers to the fact that it is appropriate to 'prevent the transfer of any financial or other assets or resources that could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems', on the understanding that it is not necessary to 'prevent the continuation of trade which is not prohibited under Decision [2010/413]'. That wording does not refer to a desire to put general economic pressure on Iran and even expressly mentions the fact that legitimate commerce must not be prevented.

142 The fact that the regime at issue does not pursue the second aim is confirmed, contextually and teleologically, by an analysis of the nature and impact of the resulting restrictions. The regime does not provide for the confiscation or freezing of funds of Iranian financial institutions or other Iranian entities, but limits some of the permissible purposes of transfers of funds involving them and makes those transfers subject to obligations of prior notification and authorisation. Likewise, under the first subparagraph of Article 30b(3) of Regulation No 267/2012, introduced by Article 1(15) of the contested regulation, the only situation in which a transfer that has a permissible purpose may be refused is if it could be in breach of the prohibitions in Regulation No 267/2012. Thus, while the regime at issue entails an additional administrative burden for the entities targeted and may well restrict the ability to make certain transfers, it does not appear to be designed, as such, to put economic pressure on Iran by generally preventing Iranian economic operators from having access to the EU financial market.

143 In the light of the foregoing, it must be concluded that, notwithstanding the parties' claims, which cannot prevail over a literal, contextual and teleological interpretation of the relevant provisions, the second aim is not pursued by the regime at issue. Consequently, that aim cannot be taken into consideration in the further examination of the present action, and the applicant's arguments in relation to it, put forward in the context of the present plea, must be rejected as being ineffective.

– The requirement of a specific connection between the regime at issue and the activities relating to nuclear proliferation

144 The applicant submits that it is apparent from the case-law cited in paragraph 98 above and from Declaration No 25, entitled 'Declaration on Articles 75 and 215 of the [FEU Treaty]', annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 (OJ 2008 C 115, p. 346), that restrictive measures relating to nuclear proliferation must specifically target activities relating to nuclear proliferation.

145 The same finding follows, according to the applicant, from the Recommendations for working methods for EU autonomous sanctions adopted by the Council on 21 December 2011 (Document 18920/11, 'the Recommendations'), and the Council's Guidelines on implementation and evaluation of restrictive measures (sanctions) in the context of the CFSP of 15 June 2012 (Document No 11205/12, 'the Guidelines'). According to those documents, targeted restrictive measures are more effective and have less harmful consequences for third parties than general restrictions. Consequently, the restrictive measures adopted should target the policies and activities that prompted the EU decision and the persons and entities responsible for those policies and activities, and should not be adopted on economic grounds. However, according to the applicant, the regime at issue does not specifically target either nuclear proliferation or the persons responsible for it, but the entire Iranian financial sector. Similarly, the regime at issue was adopted for essentially economic reasons.

146 It must be noted in that regard, first of all, that it is apparent from paragraphs 98 to 109 above that, while it is for the Court to ascertain that the regime at issue is appropriate in order to achieve the aim of preventing nuclear proliferation and its financing, that nonetheless does not mean that the Council is obliged to demonstrate that the entities affected by the regime at issue are in fact involved in nuclear proliferation.

147 Next, it follows from the examination carried out in paragraphs 117 to 135 above that the regime at issue is intended to achieve the first aim, that is to say, to prevent transfers of funds that could, as such, contribute to nuclear proliferation. Consequently, that regime is aimed at nuclear proliferation and its financing, and was not adopted for economic reasons, particularly inasmuch as it does not pursue the second aim.

148 In so far as the applicant maintains in that context that the regime at issue targets the entire Iranian financial sector and that it is an 'indiscriminate' measure, its arguments will be examined in the context of the second plea, together with the other arguments relating to the scope of the regime at issue (see paragraphs 187 to 199 below).

149 Lastly, Declaration No 25, entitled 'Declaration on Articles 75 and 215 of the [FEU Treaty]', notably requires that decisions subjecting an individual or entity to restrictive measures must be based on clear and distinct criteria. However, as is apparent from paragraph 36 above, Article 1(15) of the contested regulation, which introduced the regime at issue, is not a decision within the meaning of the declaration in question, since it does not target specific individuals or entities, but provides for a regime of general application. Moreover, and in any event, the question whether the provisions laying down the regime at issue are sufficiently clear will be examined in the context of the third plea below.

150 As regards the Recommendations and the Guidelines, these do indeed make clear that targeted restrictive measures enable the adverse consequences for those not responsible for the policies and actions that have prompted the EU action to be limited, and are more effective than indiscriminate measures. However, this general finding does not in any way imply that general restrictive measures are not appropriate to achieving the aim pursued by the Council, or that the Council could not in any circumstances adopt such general restrictive measures, notwithstanding the competence conferred on it by Article 215(1) TFEU.

151 That being the case, the Court must reject the applicant's arguments relating to the requirement of a specific connection between the regime at issue and activities relating to nuclear proliferation.

152 In the light of all of the above, it must be concluded that the regime at issue pursues the first aim, which is legitimate. In those circumstances, that regime is appropriate for the purposes of the case-law cited in paragraph 92 above, which means that the first plea in law must be rejected.

The second plea, concerning the necessity of the regime at issue

153 The applicant maintains that, even on the assumption that the regime at issue does have a rational connection with the Council's CFSP aim, it is not necessary in order to achieve it, which implies that it is disproportionate.

154 In support of its position, the applicant puts forward three complaints. First, it submits that the restrictive measures in place at the time of the adoption of the regime at issue were sufficient for the purpose of achieving the Council's aim. Secondly, it maintains that the regime at issue is not necessary in so far as it is excessively general in scope since it also includes transfers and entities which have no connection with nuclear proliferation. Thirdly, the applicant submits that the regime at issue has deleterious effects on the entire Iranian economy and population that are disproportionate.

155 The other parties dispute the merits of the applicant's arguments.

156 As a preliminary point, it must be noted that the applicant's third complaint is largely ineffective in the context of the present plea. Even on the assumption that the regime at issue is in fact responsible for excessively harmful effects, that does not mean that it is not necessary in order to achieve the aim pursued, but that, irrespective of the question of its necessity, it causes disproportionate disadvantages for the persons and entities it affects. In those circumstances, it is necessary to examine the third argument in the context of the fourth plea, which concerns the seriousness of the disadvantages caused (see paragraphs 204 to 214 below).

– The sufficiency of the restrictive measures in place at the time of the adoption of the regime at issue

157 According to the applicant, at the time of the adoption of the regime at issue, individual restrictive measures against the entities involved in nuclear proliferation were already in place and new individual measures against other entities could, if appropriate, be adopted. According to the judgment in *Bank Melli Iran* v *Council*, cited in paragraph 92 above (EU:T:2009:401, paragraph 68), such measures are capable of ensuring that the funds of the entities concerned are no longer used to further nuclear proliferation.

158 In that context, according to the applicant, the Council's assertion that persons other than those identified in the individual restrictive measures are involved in nuclear proliferation cannot be taken into consideration, since it would enable the Council to circumvent its obligation, enshrined in case-law, to prove that the persons and entities concerned are involved in nuclear proliferation.

159 The applicant adds that, before the adoption of the regime at issue, Regulation No 267/2012 already provided for a complex system of notifications and checks that restricted transfers of funds and the provision of financial services to and from Iranian persons and entities. According to the applicant, under those rules, European banks were already required, at least implicitly, to check the payments and business relationships in question, which means that there was no need to adopt the regime at issue.

160 Furthermore, the effectiveness of the restrictive measures, both general and individual, implemented before the adoption of the regime at issue had never been questioned and was even confirmed by the judgment in *Bank Melli Iran* v *Council*, cited in paragraph 92 above (EU:T:2009:401). Likewise, it is apparent from the Guidelines that individual restrictive measures are more effective and have less harmful effects for legitimate commerce than general, indiscriminate measures.

161 First, as regards individual restrictive measures, it must be observed, as did the Council, that their implementation presupposes that the person or entity in question has been identified previously as satisfying one of the criteria laid down by the legislation applicable. Consequently, while, as is apparent from paragraph 68 of the judgment in *Bank Melli Iran* v *Council*, cited in paragraph 92 above (EU:T:2009:401), freezing the funds of entities regarded as engaged in, directly associated with or providing support for nuclear proliferation is capable of ensuring that the funds of those entities are no longer used to further nuclear proliferation, it is not likely to prevent such a use of funds of persons or entities who are not yet known to be involved in nuclear proliferation. As is apparent from the summary of the circumstances in which the applicant had provided financial services to Novin, set out in paragraphs 125 to 128 above, the existence of such persons and entities is not hypothetical but has, on the contrary, been established in proceedings before the General Court.

162 Secondly, it is certainly true that at the time of the adoption of the regime at issue, general restrictive measures regulating transfers of funds involving an Iranian person or entity were already laid down in Article 30 of Regulation No 267/2012 ('the earlier regime'). The earlier regime laid down, in particular, an obligation of prior notification above a threshold of EUR 10 000 and an obligation of prior authorisation for transfers of or above EUR 40 000 other than humanitarian transfers. Authorisation could be refused if the competent authority had reasonable grounds to determine that the transfer of funds in question could breach one of the prohibitions or obligations laid down in Regulation No 267/2012.

163 In that regard, it is evident from a comparison of the earlier regime with the regime at issue that the latter is not a qualitatively new regime, as the applicant suggests, but is based on partial adjustments intended to reinforce the earlier regime.

164 So far as concerns Iranian financial institutions, including the applicant, the adoption of the regime at issue reinforced the existing restrictions provided for by the earlier regime only in three respects: first, by providing an exhaustive list of the categories of transfer that could be made; secondly, by introducing a threshold for authorisation of humanitarian transfers; and, lastly, by lowering the threshold for authorisation of certain categories of transfers. In addition, the effect of the first amendment is mitigated by the fact that the list of permissible purposes is broad, notably in that it includes transfers in connection with a specific trade contract.

165 This comparative analysis tends to undermine the applicant's claim regarding the excessively general, and thus unnecessary, nature of the regime at issue. In so far as the applicant does not explicitly challenge the necessity of the earlier regime and even states that it was capable, along with other measures, of achieving the aim pursued by the Council, the applicant cannot legitimately claim that the regime at issue — which is indistinguishable in its essential characteristics from the earlier regime — is not necessary.

166 Thirdly, inasmuch as the applicant's arguments must be interpreted as challenging the necessity both of the regime at issue and, implicitly, of the earlier regime, in that both subject transfers between Iranian financial institutions and EU financial institutions to systematic scrutiny by the competent authorities of the Member States, rather than to internal scrutiny by those institutions, also envisaged by Regulation No 267/2012, the Council relies on two circumstances to justify this choice.

167 It submits, first, that it cannot rely on Iranian banks to carry out prior checks, given the deficiencies in the Iranian system for combating money laundering and terrorism financing identified by the Financial Action Task Force (FATF), an intergovernmental organisation responsible for setting standards and promoting the effective application of legislative, regulatory and operational measures to combat money laundering, the financing of terrorism and other related threats which pose a risk to the integrity of the international finance system.

168 Secondly, according to the Council, notwithstanding the scrutiny obligation to which EU financial institutions are subject, those institutions cannot be in a position to identify and deal with suspicious transfers, particularly as the entities involved in nuclear proliferation tend to conceal the identities of the parties to the transactions concerned.

169 With regard to the Council's first argument, the applicant does not dispute the FATF's conclusions. It maintains, however, that they are not relevant, in so far as the regime at issue targets nuclear proliferation, not money laundering or the financing of terrorism.

170 That argument cannot be accepted. While these are certainly separate fields, they are nevertheless closely related, in that all three involve the use of financing to achieve clandestine aims. That is, moreover, reflected in the definition of the FATF's tasks and in the fact that discussions held within that organisation also concern the financing of the proliferation of weapons of mass destruction.

171 In those circumstances, it must be held that the FATF's conclusions can be applied to the present case and thus support the conclusion that, in view of the deficiencies in the Iranian system for combating money laundering and the financing of terrorism, Iranian entities, and in particular financial institutions, also run the increased risk of being induced to participate, intentionally or unwittingly, in transfers that could contribute to nuclear proliferation. That is *a fortiori* so given that, in so far as nuclear proliferation activities are managed by the Iranian Government, it is not realistic to expect that government to take legislative or administrative steps to prevent it.

172 As to the Council's second argument, it must be noted that the extract from the FATF report it put forward notably not only invites enhanced scrutiny by financial institutions, but also urges member jurisdictions of the FATF to apply effective countermeasures to protect their financial sectors from the risks emanating from Iran. That statement implies that, in the opinion of the FATF, the financial institutions are not capable by themselves of dealing adequately with the risk in question.

173 In that context, it has been pointed out in paragraph 161 above that the applicant itself was unwittingly induced to provide account management services to an Iranian entity involved in nuclear proliferation, notwithstanding its internal control systems. In those circumstances, it is not inconceivable that an EU financial institution might, equally involuntarily, be induced to participate in a transfer of funds that could contribute to nuclear proliferation.

174 Consequently, the circumstances put forward by the Council establish that a regime such as the regime at issue was necessary, notwithstanding the parallel internal scrutiny obligations imposed on EU financial institutions.

175 Lastly, the applicant's arguments summarised in paragraph 160 above, that the effectiveness of the restrictive measures implemented before the adoption of the regime at issue had never been questioned and was confirmed by the Guidelines, cannot be accepted.

176 Thus, first of all, while the Council did not put forward anything specific to show that the effectiveness of the restrictive measures had been challenged or qualified, the fact remains that, since the adoption of Regulation No 423/2007, which was the first regulation relating to nuclear proliferation, the same measures have been progressively expanded, strengthened and clarified, which suggests that the Council was constantly seeking to improve their effectiveness.

177 Next, as is apparent from paragraph 161 above, the judgment in *Bank Melli Iran* v *Council*, cited in paragraph 92 above (EU:T:2009:401), only confirmed the effectiveness of individual restrictive measures in relation to the funds of the persons and entities subject to those measures. By contrast, it does not enable valid conclusions to be drawn regarding the effectiveness in general of the regime of restrictive measures targeting nuclear proliferation.

178 Lastly, the statement in the Guidelines according to which, in essence, individual restrictive measures are generally more effective and have less harmful effects for legitimate commerce than indiscriminate restrictive measures does not in any way mean that general restrictive measures are not necessary in order to achieve the aim pursued by the Council, in particular when individual restrictive measures prove by themselves to be insufficient for that purpose, as is the case here. Moreover, in any event, as is apparent from the examination of the arguments concerning the scope of the regime at issue in paragraphs 187 to 199 below, the applicant wrongly describes the regime at issue as an 'indiscriminate' measure.

179 In the light of the foregoing, it must be concluded that the applicant's arguments do not establish that the adoption of the regime at issue or, more generally, of a regime which subjects transfers between Iranian financial institutions and EU financial institutions to systematic scrutiny by the competent authorities of the Member States is not necessary owing to the existence of the other restrictive measures implemented under Regulation No 267/2012.

180 Consequently, the present complaint must be rejected.

– The scope of the regime at issue

181 The applicant maintains that the regime at issue does not target transfers of funds which contribute to nuclear proliferation but in reality constitutes a general embargo which stops all economic activity and all transfers of funds between EU financial institutions and Iran. In so far as the regime at issue targets the entire Iranian financial sector, the Council wrongly imposed blanket bans on the basis of generalisations concerning all of a country's banks. Thus the regime at issue unjustifiably places virtually all Iranian banks under suspicion of involvement in nuclear proliferation and money laundering.

182 In that context, the Council's assertion that persons other than those identified in the individual restrictive measures are involved in nuclear proliferation cannot justify the scope of the regime at issue, according to the applicant. That assertion does not relate specifically to banks, which, nonetheless, are most affected by the regime at issue, but to persons or entities in general. Accordingly, the regime at issue is not appropriate to the aim pursued, since it is designed certainly to affect numerous entities not involved in nuclear proliferation and transfers not connected thereto in order possibly to affect some that are.

183 The applicant submits in that regard that the criterion laid down in the first subparagraph of Article 30b(3) of Regulation No 267/2012, introduced by the contested regulation, according to which any transfer of funds may be prohibited that 'could be in breach' of any of the prohibitions or obligations in Regulation No 267/2012 is speculative and too general. In the applicant's opinion, in order to be compatible with the principle of proportionality, the ban in question should target only transfers of funds that 'would be in breach' of the prohibitions or obligations in question.

184 The applicant adds that its case serves to show the excessive scope of the regime at issue. Even on the assumption that it was in fact involved in nuclear proliferation, as the Council claimed, the individual restrictive measures imposed on it would have been both appropriate and sufficient to avoid the risk associated with the transfers of funds which it carried out, and no additional measures were necessary. Since it is apparent from the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above

(EU:T:2013:39) that the applicant was not involved in nuclear proliferation, there is even less need to limit its lawful activities by means of the regime at issue. That is particularly the case since, as is apparent from the judgment of the United Kingdom Supreme Court concerning the United Kingdom restrictive measures imposed on the applicant, the latter has put in place a mechanism which makes it possible to avoid any breach of the restrictive measures put in place by the Security Council.

185 In that context, the applicant claims, in the alternative, that the Council should at least have excluded the application of the regime at issue, in so far as it is a bank which, according to the findings of the General Court and the United Kingdom courts, is not involved in nuclear proliferation and takes due care to ensure that it does not become so involved.

186 The applicant submits, lastly, that it is manifestly disproportionate for the regime at issue to prevent legitimate investment or payments into the European Union.

187 As a preliminary point, it must be noted that the applicant's arguments in relation to the interpretation of the criterion laid down in the first subparagraph of Article 30b(3) of Regulation No 267/2012, put forward at the hearing and summarised in paragraph 183 above, are inadmissible for the reasons set out in paragraphs 60 and 61 above.

188 With regard to the other arguments, in the first place, the applicant wrongly claims, by the argument referred to in paragraph 181 above, that the regime at issue is a 'general embargo' which stops all economic activity and all transfers of funds between EU financial institutions and Iran. As is apparent from Article 30 of Regulation No 267/2012, as amended by the contested regulation, the regime at issue expressly permits transfers that are made for the purposes it defines, which include, in particular, transfers regarding personal remittances and transfers in connection with a specific trade contract.

189 Moreover, while the regime at issue is intended to prevent transfers made by Iranian financial institutions that could contribute to nuclear proliferation, its adoption does not mean that the Council has any suspicion as regards the intentional or deliberate involvement of those institutions in nuclear proliferation.

190 In the second place, as regards procedural obligations, it is true that the notification obligation applies to all transfers defined in Article 30(3)(a) of Regulation No 267/2012. Similarly, the obligation to seek prior authorisation applies to all transfers referred to in Article 30(3)(b) and (c) of Regulation No 267/2012. Thus, those two obligations apply both to transfers that could contribute to nuclear proliferation and to those that could not.

191 However, that is inevitable given the purpose of the obligations in question, which are intended to provide the competent national authorities with the information necessary in order to identify in advance those transfers which could contribute to nuclear proliferation and to prohibit them. If they do not have either prior notification of a transfer or a request for its prior authorisation, those authorities cannot assess it in order to determine whether or not it may proceed.

192 In those circumstances, the fact that the notification obligation and the obligation to request authorisation cover transfers which are not capable of contributing to nuclear proliferation does not mean that those obligations are not necessary. Furthermore, in so far as the provisions laying down those obligations do not themselves prohibit the transfers from being carried out, they also do not establish any kind of 'general embargo'.

193 In the third place, inasmuch as the applicant submits, in paragraph 182 above, that the Council is relying on claims which do not specifically concern the banks, but persons or entities in general, it must be borne in mind that, as is apparent from paragraph 13 above, Article 30a of Regulation No 267/2012, introduced by the contested regulation, provides for similar restrictions concerning Iranian persons, entities or bodies which do not fall within the scope of the regime at issue.

194 Furthermore, the Council's choice, to provide that the regime at issue must apply to transfers involving Iranian financial institutions, while other transfers are subject to a restrictive regime that differs in certain respects, falls within the scope of the power which the Council must be acknowledged to have in that regard, as is apparent from paragraph 102 above. Moreover, that choice is justified by the particular danger posed by Iranian financial institutions, as noted in paragraph 171 above.

195 In the fourth place, the particular circumstances of the applicant, invoked by the applicant in paragraph 184 above, tend to corroborate the necessity of the regime at issue rather than to cast doubt on it. As noted in paragraphs 125 to 127 above, the applicant provided financial account management services, which include the execution of instructions to transfer funds, to an entity involved in nuclear proliferation before that involvement was known publicly. As a result, the applicant was unwittingly induced to carry out transfers which were capable of contributing to nuclear proliferation, notwithstanding its internal control systems.

196 In those circumstances, making transfers of funds between the applicant and EU financial institutions subject to the regime at issue does not go beyond what is necessary in order to prevent transfers of funds that could contribute to nuclear proliferation, notwithstanding the fact that the Council has not established the applicant's involvement in nuclear proliferation, as both the General Court and the courts of the United Kingdom have held.

197 Consequently, the applicant wrongly maintains that the Council was obliged to exclude it specifically from the scope of the regime at issue.

198 In the fifth place, as regards the argument concerning investment and payments into the European Union, referred to in paragraph 186 above, it is sufficient to observe that it is apparent from paragraphs 141 and 142 above that the regime at issue is not intended to stop legitimate commerce or, therefore, to prohibit legitimate transfers.

199 In the light of the foregoing, the present complaint must be rejected, as, therefore, must the second plea in law in its entirety.

The fourth plea in law, concerning the disadvantages caused by the regime at issue

200 In the first place, as regards the disadvantages caused by the regime at issue in general, the applicant submits that that regime is general, indiscriminate and non-targeted, in so far as it targets the Iranian financial sector in its entirety. Thus, the regime at issue is designed to weaken significantly the Iranian economy and thereby inevitably to harm Iranians who are neither linked to nuclear proliferation nor capable of influencing the policy pursued by the Iranian regime. Such a harmful effect, which is capable of extending beyond the economic sector to the humanitarian sphere, for example as regards the availability of life-saving medicinal products, is manifestly disproportionate and contrary to the need to avoid such consequences, consistently referred to by the European Union.

201 The applicant adds, in that context, that the exceptions provided for by the regime at issue are not sufficient to render it proportionate, since they are extremely narrow, are granted entirely at the discretion of the competent authorities and, as is apparent from the third plea, are contrary to the requirements of legal certainty and non-arbitrariness.

202 In the second place, as regards the disadvantages caused to the applicant itself, the applicant submits that there can be no doubt that the exercise of its rights and freedoms has been significantly restricted, since the regime at issue prohibits all transfers of funds between the applicant and the European Union. In so far as the regime at issue is not necessary in order to prevent nuclear proliferation or its funding, it is neither the least onerous measure, nor does it constitute the minimum impairment of the applicant's rights, particularly as the applicant has never supported nuclear proliferation, as is apparent from the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39).

203 The other parties dispute the merits of the applicant's arguments.

204 According to the case-law, any restrictive economic or financial measure entails, *ex hypothesi*, consequences which could cause harm to parties who have not been found to be responsible for the situation giving rise to the measures in question. The importance of the aims pursued by the legislation at issue is such as to justify negative consequences, even of a substantial nature, for some operators (see, to that effect, judgment of 9 July 2009 in *Melli Bank* v *Council*, T-246/08 and T-332/08, ECR, EU:T:2009:266, paragraph 111 and the case-law cited).

205 As regards the disadvantages caused by the regime at issue to the Iranian economy in general, it is true that the regime at issue could have a certain impact on the Iranian economy, in that it subjects the transfers of funds concerned to additional requirements and its implementation may take the form of a ban on certain transfers. However, that impact is limited in two respects.

206 First, as noted in paragraph 164 above, the list of permissible purposes under the regime at issue is broad, including as it does humanitarian transfers, transfers regarding personal remittances and transfers in connection with a specific trade contract.

207 It must be emphasised in that context that humanitarian transfers, which constitute a permissible purpose, specifically include transfers regarding healthcare or medical equipment. Thus, the shortage of essential medicines in Iran, invoked by the applicant, cannot be attributed to the regime at issue as such.

208 Secondly, as is apparent from paragraphs 187 to 199 above, the regime at issue is not a general, indiscriminate and non-targeted embargo, notably since it does not seek to prevent legitimate commerce, as is required by recital 12 of Decision 2012/65, which it implements.

209 Furthermore, it is apparent from the examination of the third plea below that the regime at issue is not contrary to the requirements of legal certainty and non-arbitrariness in that its implementation is left entirely to the discretion of the competent authorities.

210 As regards the disadvantages allegedly caused to the applicant itself, it must be accepted that the applicant's economic activities, as a financial institution, may be rendered more difficult by the implementation of the regime at issue, which imposes additional requirements on it.

211 That said, the applicant does not put forward any specific evidence that might establish the extent of the disadvantages it could suffer as a result of the regime at issue.

212 Moreover, those difficulties could be offset by the matters referred to in paragraphs 206 to 208 above.

213 In those circumstances, given the prime importance of the preservation of international peace and security, which are the underlying ultimate objectives of the measures seeking to prevent nuclear proliferation and its funding, the disadvantages caused both to the Iranian economy in general and to the applicant are not disproportionate to the ends sought.

214 Consequently, the fourth plea in law must be rejected.

The third plea in law

215 The applicant maintains that the regime at issue breaches the principles of proportionality and legal certainty, the principle of non-arbitrariness, the obligation to state reasons, the requirement that every sanction must contain the necessary legal safeguards, and the principle of equal treatment.

216 First, the applicant submits that the Council did not state the reasons why the adoption of general restrictive measures was necessary or appropriate for the achievement of the aim pursued.

217 Secondly, it argues that the regime at issue does not, by its nature, contain the attendant procedural and substantive safeguards enshrined in Article 215(3) TFEU that the Court has deemed essential in order to protect the persons and entities targeted by restrictive measures. In particular, according to the applicant, in so far as that regime dispenses with the Council's obligation to determine whether the imposition of a measure against a specific bank is justified, necessary and proportionate, it reverses the burden of proof. Likewise, the regime at issue provides only for excessively limited exceptions to the prohibition it lays down.

218 The applicant adds in that context that the individual restrictive measures targeting Iranian banks, including, in particular, the applicant itself, were annulled by the General Court on the ground of the legal rights and safeguards which those banks enjoyed and which were enshrined in Article 215(3) TFEU. By replacing the individual restrictive measures with the regime at issue, the Council did not take further measures to remedy the failures of which the General Court complained, notwithstanding the fact that the regime at issue has, overall, harmful effects similar to those of the individual restrictive measures.

219 In those circumstances, the applicant submits that, in so far as the Council's competence to adopt general restrictive measures is not greater than its competence to adopt individual measures, the unlawfulness of the individual restrictive measures to which it is subject, established in the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), implies that the regime at issue is unlawful as far as concerns the applicant.

220 Thirdly, according to the applicant, the regime at issue does not satisfy the requirements of clarity, legal certainty and non-arbitrariness laid down in the case-law.

221 In fact, there is no provision that limits the national authorities' discretion to refuse a particular transfer, since the relevant provisions merely refer to funds that 'could contribute' to nuclear proliferation and to the fact that the competent national authorities have 'reasonable grounds to determine' that a transfer 'could be in breach of any of the prohibitions or obligations' laid down. The criteria thus defined are, according to the applicant, arbitrary and capricious.

222 Fourthly, the applicant maintains that the regime at issue breaches the principle of equal treatment in two respects.

223 First, the applicant claims that the regime at issue is discriminatory in that it is aimed only at Iranian banks, although banks established in other States run the same risk of being induced to support nuclear proliferation. In the absence of justification by the Council, the applicant submits that that difference in treatment constitutes discrimination on the ground of nationality.

224 Secondly, in the absence of sufficiently clear and precise criteria, the obligation of prior authorisation provided for by the regime at issue is discriminatory, as is apparent from the judgment of 1 June 1999 in *Konle* (C-302/97, ECR, EU:C:1999:271, paragraph 49).

225 The other parties dispute the merits of the applicant's arguments.

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

227 The statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measures in such a way as to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review (see judgment in *Council* v *Bamba*, cited in paragraph 226 above, EU:C:2012:718, paragraph 50 and the case-law cited).

228 In the present case, it is apparent from recital 12 of Decision 2012/635, to which recital 7 of the contested regulation refers, that, 'in order to prevent the transfer of any financial or other assets or resources that could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems, transactions between Union and Iranian banks and financial institutions should be prohibited, unless authorised in advance by the relevant Member State'.

229 That statement of reasons is sufficient as regards the adoption of an act of general application such as the regime at issue. It was in fact understood by the applicant, who has been able to challenge, in detail, the legality of the regime at issue, and notably its alleged incompatibility with the principle of proportionality. Likewise, the General Court is in a position to review the legality of the regime at issue.

230 In those circumstances, the applicant's first complaint must be rejected.

231 In the second place, as regards the legal safeguards required by Article 215(3) TFEU, the applicant's arguments in relation to the alleged link between the unlawfulness of the individual restrictive measures and the regime at issue cannot be accepted.

232 Both in the judgment in *Bank Mellat* v *Council*, cited in paragraph 16 above (EU:T:2013:39), and in the other judgments annulling individual restrictive measures targeting Iranian banks, relied on by the applicant, the annulment was based on the lack of proof that the entity concerned did in fact fulfil the criterion applied to it by the Council, and on certain infringements of the procedural rights of that entity in the context thereof. As is evident from paragraphs 36 and 105 above, as a measure of general application, the regime at issue provided for by Article 1(15) of the contested regulation is not based on the application of a criterion to the applicant's specific case or to that of another entity, which means that it is not implemented in the same way as individual restrictive measures.

233 In those circumstances, the annulment of individual restrictive measures relating to the applicant or other Iranian banks does not, as such, have an impact on the legality of the regime at issue, particularly given that, as noted in paragraph 108 above, the effects of the regime at issue are considerably less extensive than the effects of freezing funds.

234 As to the safeguards which allegedly apply to the regime at issue itself, it is apparent from paragraphs 98 to 109 above that it is not necessary to apply the case-law relating to individual restrictive measures to the present case by analogy, which means that there is no need, in particular,

to require the Council to establish that the entities affected by the regime at issue are in fact involved in nuclear proliferation. For the same reasons, the Council was not obliged to assess that circumstance at the time of the adoption of the regime at issue.

235 Instead, it was for the Council, at the stage of the adoption of the regime at issue, to determine the proportionality of the regime at issue and accordingly to examine whether its adoption was appropriate and necessary in order to achieve the aim of preventing nuclear proliferation and its funding, and that it was not causing disproportionate disadvantages to the persons and entities affected, including the applicant.

236 The examination carried out in respect of the first, second and fourth pleas above, which also related to the scope of the permissible purposes of transfers, has not revealed that the regime at issue is incompatible with the principle of proportionality.

237 Moreover, the applicant does not put forward specific arguments regarding the procedural safeguards that should apply to the regime at issue. In any event, as observed in paragraph 232 above, as a measure of general application, the regime at issue is not based on the individual application of a given criterion to the applicant's or another entity's specific case. In those circumstances, unlike the procedure for the adoption of individual restrictive measures, the legal safeguards required by Article 215(3) TFEU do not include an obligation for the Council to give the actual and specific reasons in respect of each person or entity affected, an obligation to grant access to the file or an opportunity for persons and entities affected to submit observations, or an obligation for the Council to take such observations into consideration.

238 As regards an act of general application such as the regime at issue, the essential legal procedural safeguard consists in the effective judicial review of the legality of the act in question.

239 That safeguard is provided, on the one hand, by the present action and, on the other, by the possibility of challenging, before the national court having jurisdiction, any refusals by the authorities of Member States to authorise individual transfers, the national court being able, if necessary, to refer a question on the validity or interpretation of the relevant provisions of Regulation No 267/2012 to the Court of Justice of the European Union for a preliminary ruling.

240 In those circumstances, it must be concluded that the regime at issue is not contrary to Article 215(3) TFEU, which means that the applicant's second complaint must be rejected.

241 In the third place, in so far as the applicant's arguments relating to the requirements of clarity, legal certainty and non-arbitrariness concern the criterion laid down in the first subparagraph of Article 30b(3) of Regulation No 267/2012, they are inadmissible for the reasons set out in paragraphs 60 and 61 above.

242 As regards the other aspects of the regime at issue, it must be noted that the principle of legal certainty, which is a general principle of EU law and which requires, particularly, that rules of law be clear, precise and predictable in their effects, in particular where they may have negative consequences on individuals and undertakings (judgment of 18 November 2008 in *Förster*, C-158/07, ECR, EU:C:2008:630, paragraph 67), is, it is true, applicable with regard to restrictive measures such as those provided for by that regime.

243 In the present case, Article 30(2) of Regulation No 267/2012, as amended by the contested regulation, contains an exhaustive list of the circumstances in which a transfer may be authorised, while Article 30(3) and (4) prescribes the thresholds below which prior notification or authorisation is not required. Thus, those provisions define, in a sufficiently clear and precise manner, the scope of the restrictions and obligations they lay down.

244 In those circumstances, the applicant's third complaint must be rejected.

245 In the fourth place, as regards the complaint alleging breach of the principle of equal treatment, it must be borne in mind that, according to the case-law, that principle constitutes a fundamental principle of law and prohibits comparable situations from being treated differently or different situations from being treated in the same way, unless such difference in treatment is objectively justified (judgment in *Bank Melli Iran* v *Council*, cited in paragraph 92 above, EU:T:2009:401, paragraph 56).

246 First, as regards alleged discrimination on the ground of nationality, it has been held in paragraph 171 above that Iranian entities, and in particular financial institutions, run the increased risk of being induced to participate, intentionally or unwittingly, in transfers that could contribute to nuclear proliferation. That circumstance justifies the unequal treatment of Iranian financial institutions envisaged by the regime at issue.

247 Secondly, the prior authorisation obligation provided for under the regime at issue applies to all transfers between any financial institution established in Iran and any financial institution established in the European Union that exceed defined thresholds, irrespective of the identity of those entities. In those circumstances, the applicant wrongly claims that that obligation is discriminatory, particularly as the provisions which provide for it are sufficiently clear and precise, as found in paragraph 243 above.

248 That finding is not, moreover, capable of being called into question by the judgment in *Konle*, cited in paragraph 224 above (EU:C:1999:271), and cited by the applicant. That judgment concerns a system of prior authorisation for the acquisition of land and was therefore delivered in factual circumstances that differ substantially from those at issue in the present case, which means that it is not relevant.

249 In those circumstances, the fourth complaint must be rejected, as, therefore, must the third plea in law in its entirety.

250 Since all the pleas have been rejected, the action must be dismissed.

Costs

251 Under Article 134(1) of the Rules of Procedure of the General Court, 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 applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Council.

252 Under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. Accordingly, the United Kingdom and the Commission must be ordered to bear their own costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Bank Mellat to bear its own costs and to pay those incurred by the Council of the European Union;**

3. Orders the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 2 June 2016.

[Signatures]