

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

7 December 2011(*)

(Common foreign and security policy – Restrictive measures against Iran with the aim of preventing nuclear proliferation – Freezing of funds – Actions for annulment – Obligation to state the reasons on which the decision is based – Procedure by default – Application to intervene – No need to adjudicate)

In Case T-562/10,

HTTS Hanseatic Trade Trust & Shipping GmbH, established in Hamburg (Germany), represented by J. Kienzle and M. Schlingmann, lawyers,

applicant,

v

Council of the European Union, represented by M. Bishop and Z. Kupčová, acting as Agents,

defendant,

ACTION for annulment of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1) in so far as it concerns the applicant.

THE GENERAL COURT (Fourth Chamber),

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

Registrar: E. Coulon,

having regard to the written procedure,

gives the following

Judgment

Legal context and background to the dispute

- 1 The applicant, HTTS Hanseatic Trade Trust & Shipping GmbH is a German company which trades as a ship broker and technical manager of ships. It provides services, in particular, for the Islamic Republic of Iran Shipping Line ('IRISL').

Restrictive measures against the Islamic Republic of Iran

- 2 The present case has been brought in connection with the restrictive measures introduced in order to apply pressure on the Islamic Republic of Iran to end proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems ('nuclear proliferation').
- 3 The European Union adopted Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49) and Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

- 4 Article 5(1)(b) of Common Position 2007/140 provided for the freezing of all funds and economic resources which belong to certain categories of persons and entities. The list of those persons and entities was contained in Annex II to Common Position 2007/140.
- 5 As regards the powers of the European Community, Article 7(2) of Regulation No 423/2007 provided for the freezing of the funds of the persons, entities or bodies identified by the Council of the European Union as being engaged in nuclear proliferation as provided in Article 5(1)(b) of Common Position 2007/140. The persons, entities, and bodies to which a measure freezing funds pursuant to Article 7(2) of Regulation No 423/2007 applied was listed in Annex V to that document.
- 6 Common Position 2007/140 was repealed by Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran (OJ 2010 L 195, p. 39).
- 7 Article 20(1) of Decision 2010/413 provides for freezing of the funds of several categories of entities. That provision concerns, inter alia, 'persons and entities ... that are engaged in, directly associated with, or providing support for [nuclear proliferation] or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means ... and entities of [IRISL] and entities owned or controlled by them or acting on their behalf, as listed in Annex II.'
- 8 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).
- 9 According to Article 16(2) of Regulation No 961/2010:
- '2. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex VIII shall be frozen. Annex VIII shall include the natural and legal persons, entities and bodies ... who, in accordance with Article 20(1)(b) of Decision [2010/413], have been identified as:
- (a) being engaged in, directly associated with, or providing support for [proliferation] ... or being owned or controlled by such a person, entity or body, including through illicit means, or acting on their behalf or at their direction;
- ...
- (d) being a legal person, entity or body owned or controlled by the [IRISL].'
- 10 According to Article 36 of Regulation No 961/2010:
- '2. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 16(2), it shall amend Annex VIII accordingly.
3. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in [paragraph 2], either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.
4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.'
- Restrictive measures applying to the applicant*
- 11 From the adoption of Decision 2010/413 on 26 July 2010, the applicant was placed, by the Council, on the list of persons, entities and bodies in Table III of Annex II to the decision.
- 12 Consequently, the applicant's name was placed on the list of persons, entities and bodies in Table III of Annex V to Regulation No 423/2007 by Council implementing Regulation (EU)

No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25). The consequence of the adoption of Implementing Regulation No 668/2010 was the freezing of the applicant's funds and economic resources.

- 13 Both in Decision 2010/413 and in Regulation 668/2010, the Council gave the following reason for its decision: 'Acts on behalf of HDSL [Hafize Darya Shipping Lines] in Europe'.
- 14 The Council informed the applicant that its name had been placed on the list of persons, entities and bodies in Table III of Annex V to Regulation No 423/2007 by letter of 28 July 2010. It gave no reasons other than those appearing in Implementing Regulation No 668/2010.
- 15 By letters of 10 and 13 September 2010, the applicant asked the Council to reconsider the decision to place it on the list of persons, entities and bodies in Table III of Annex V to Regulation No 423/2007.
- 16 Regulation No 423/2007 having been repealed by Regulation No 961/2010, the applicant's name was placed, by the Council, in point 26(c) of Table B of Annex VIII to the latter regulation. Consequently, the applicant's funds and economic resources were frozen pursuant to Article 16(2) of that regulation.
- 17 Point 26 of Table B of Annex VIII to Regulation No 961/2010 concerns IRISL. The Council gave the following reason for placing the applicant in that point: 'Controlled and/or acting on behalf of IRISL'.
- 18 By letter of 28 October 2010, the Council replied to the applicant's letters of 10 and 13 September 2010 stating that, after a review, it rejected the applicant's request to have its name removed from the list of persons, entities and bodies in Annex VIII to Regulation No 961/2010 (the 'contested list'). It stated that, as the file did not contain any additional factors which justified a change in its position, the applicant was to remain subject to the restrictive measures laid down in that regulation.
- 19 By letter of 23 November 2010, the applicant asked the Council to show it the evidence for placing of its name on the contested list. The Council had not replied to that letter before the action was brought.

Procedure and form of order sought

- 20 By application lodged at the Court Registry on 16 December 2010, the applicant brought the present action. The action was notified to the Council on 29 December 2010.
- 21 The Council lodged its defence on 14 March 2011.
- 22 By documents lodged at the Registry of the Court on 17 March and 4 April 2011 respectively, the Commission and the Federal Republic of Germany applied to intervene in the present proceedings in support of the form of order sought by the Council.
- 23 Since the defence was lodged outside the time-limit laid down in Article 46(1), Article 101(1) and Article 102(2) of the Rules of Procedure of the General Court, on 29 March 2011 the Court asked the applicant to submit its observations on the further steps to be taken in the proceedings. By a written document dated 31 March, the applicant requested the Court to give judgment by default, in accordance with Article 122(1) of the Rules of Procedure.
- 24 The applicant claims that the Court should:
 - annul Regulation No 961/2010 in so far as it is concerned by it;

- order the Council to pay the costs.

Law

The applications to intervene

- 25 According to the fourth paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to procedure before the General Court by virtue of the first paragraph of Article 53 thereof, an application to intervene is limited to supporting the form of order sought by one of the parties.
- 26 In the present case, the Commission and the Federal Republic of Germany have applied to intervene in support of the form of order sought by the Council.
- 27 However, as noted in paragraph 23 above, the Council has not lodged a defence within the prescribed time-limit. For that reason, it also has not sought a form of order in support of which the Commission and the Federal Republic of Germany could intervene.
- 28 Under those circumstances, there is no longer any need to adjudicate on the applications to intervene submitted by the Commission and the Federal Republic of Germany.

Substance

- 29 According to Article 122(2) of the Rules of Procedure, the Court must consider whether the applicant's submissions appear to be well founded.
- 30 In support of its action, the applicant puts forward, essentially, six pleas in law. The first alleges an infringement of the duty to give reasons. The second alleges an infringement of the rights of the defence and, in particular, of the right to be heard. The third alleges infringement of the right to effective judicial protection. The fourth alleges an error of assessment in the application of Article 16(2) of Regulation No 961/2010. The fifth alleges an infringement of the right to respect for property. The sixth alleges an infringement of the principle of proportionality.
- 31 In the context of the first plea, the applicant claims that the Council's grounds for placing its name on the contested list are inadequate and contradictory.
- 32 The purpose of the obligation to state the reasons for an act adversely affecting a person, as laid down in the second paragraph of Article 296 TFEU, and more particularly in the present case, in Article 36(3) of Regulation No 961/2010, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the act is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Courts of the European Union and, second, to enable those Courts to review the lawfulness of the act. The obligation to state reasons thus laid down constitutes an essential principle of European Union law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him and a failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the Courts of the European Union (see, to that effect and by analogy, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran v Council* [2006] ECR II-4665, the '*OMPI judgment*', paragraphs 138 and 139, and the case-law cited).
- 33 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the communication of certain information (see, by analogy, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 342), the Council is required, under Article 36(3) of Regulation No 961/2010, to inform the entity covered by a measure adopted under Article 16(2) of that regulation of the actual and specific reasons why it considers that that provision is applicable to the entity concerned. It must thus state the matters of fact and law which constitute the

legal basis of the measure and the considerations which led it to adopt that measure (see, to that effect and by analogy, the *OMPI judgment*, paragraph 32 above, paragraph 143, and the case-law cited).

- 34 Moreover, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons is adequate must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a decision are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure concerning him (see the *OMPI judgment*, paragraph 32 above, paragraph 143, and the case-law cited).
- 35 In the present case, it must be pointed out from the start that the reasons provided by the Council, on the one hand, in Annex VIII to Regulation No 961/2010 and, on the other, in its letter of 28 October 2010 are, at first sight, contradictory. Whereas that letter refers to a reconsideration of the applicant's situation and to the absence of new factors justifying a change in the Council's position, the reasons provided in Annex VIII to the above regulation differ from those relied on previously in regard to the applicant in Implementing Regulation No 668/2010. It is therefore not clear if the applicant's name was placed on the list at issue because of the continuance of the circumstances relied on in Implementing Regulation No 668/2010, namely the links between the applicant and HDSL, or the new circumstances, namely the direct links between the applicant and IRISL.
- 36 Moreover, regardless of the circumstances on which the Council actually relied to justify placing the applicant's name on the list at issue, the reasons provided by it are inadequate having regard to the rules set out in paragraphs 32 to 34 above.
- 37 On the one hand, if the Council based itself on the links between the applicant and HDSL, neither Annex VIII of Regulation No 961/2010 nor the Council's letter of 28 October 2010 make it possible to assess the reasons why the Council considered that the matters set out by the applicant in its letters of 10 and 13 September 2010, concerning, in particular, the nature of its activities and its autonomy in regard to HDSL and IRISL, were not capable of altering the position with regard to the continuance of restrictive measures concerning it.
- 38 On the other hand, if the Council based itself on the direct links between the applicant and IRISL, neither Annex VIII to Regulation No 961/2010 nor the Council's letter of 28 October 2010 specify the nature of the control allegedly exercised over the applicant by IRISL or the activities which the applicant carries out on behalf of IRISL and which justify the adoption of restrictive measures in regard to it.
- 39 Under those circumstances, it must be concluded that the Council appears to have infringed the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and Article 36(3) of Regulation No 961/2010. Consequently, the first plea in law appears to be founded and must therefore be accepted.
- 40 Regulation No 961/2010 must therefore be annulled in so far as it concerns the applicant without it being necessary to consider the other pleas.
- 41 However, inasmuch as it follows from the present judgment that Regulation No 961/2010 must be annulled in so far as it concerns the applicant for infringement of the obligation to state reasons, it cannot be excluded that, as regards the substance, the imposition of restrictive measures on the applicant could none the less be justified.
- 42 Thus, the annulment of Regulation No 961/2010 in so far as it concerns the applicant, with immediate effect, might do serious and irreparable harm to the effectiveness of the restrictive measures imposed by that regulation since, in the interval preceding its possible

replacement by a new measure, the applicant could engage in conduct intended to circumvent the effect of later restrictive measures.

- 43 Consequently, pursuant to Article 254 TFEU and Article 41 of the Statute of the Court of Justice, the effects of Regulation No 961/2010, inasmuch as it places the applicant's name in the list comprising Annex VIII thereto, must be maintained for a period of no more than two months from the date of delivery of this judgment.

Costs

- 44 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.
- 45 Furthermore, since there is no longer any need to adjudicate on the applications to intervene submitted by the Commission and the Federal Republic of Germany, there is also no need to make an order as to their costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

- 1. Decides that there is no longer any need to adjudicate on the applications to intervene submitted by the European Commission and the Federal Republic of Germany;**
- 2. Annuls Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 in so far as it concerns HTTS Hanseatic Trade Trust & Shipping GmbH;**
- 3. Maintains the effects of Regulation No 961/2010 in so far as it concerns the applicant for a period of no more than two months from the date of delivery of this judgment;**
- 4. Orders the Council of the European Union to bear its own costs and to pay the costs incurred by HTTS Hanseatic Trade Trust & Shipping.**

Pelikánová

Jürimäe

van der Woude

Delivered in open court in Luxembourg on 7 December 2011.

[Signatures]