JUDGMENT OF THE COURT (Fifth Chamber)

5 March 2015 (*)

(Appeal — Restrictive measures taken against the Islamic Republic of Iran with the aim of preventing nuclear proliferation — Freezing of funds — Restriction of transfers of funds — Assistance to designated entities in evading or violating restrictive measures)

In Case C-585/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 November 2013,

Europäisch-Iranische Handelsbank AG, established in Hamburg (Germany), represented by S. Jeffrey, S. Ashley and A. Irvine, Solicitors, H. Hohmann, Rechtsanwalt, D. Wyatt QC and R. Blakeley, Barrister,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by F. Naert and M. Bishop, acting as Agents,

defendant at first instance,

United Kingdom of Great Britain and Northern Ireland, represented by V. Kaye, acting as Agent, and by R. Palmer, Barrister,

European Commission,

interveners at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas (Rapporteur), E. Juhász and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2014,

gives the following

Judgment

1 By its appeal, Europäisch-Iranische Handelsbank AG (‘EIH’ or ‘the appellant’) seeks to have set aside the judgment of the General Court of the European Union of 6 September 2013 in

Europäisch-Iranische Handelsbank v *Council* (T-434/11, EU:T:2013:405, 'the judgment under appeal'), by which the General Court dismissed its application for annulment of:

– Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71),

– Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11), and

– Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1),

in so far as those acts concern EIH.

Legal context and background to the dispute

2 Concerned by the many reports of the Director General of the International Atomic Energy Agency (IAEA) and resolutions of the IAEA Board of Governors related to the nuclear programme of the Islamic Republic of Iran, the United Nations Security Council ('the Security Council') adopted Resolution 1737 (2006) on 23 December 2006, paragraph 12 of which, read in conjunction with the Annex thereto, lists a series of persons and entities regarded as being involved in nuclear proliferation, whose funds and economic resources were required to be frozen.

3 On 27 February 2007, the Council of the European Union adopted Common Position 2007/140/CFSP concerning restrictive measures against Iran (OJ 2007 L 61, p. 49) in order to implement Resolution 1737 (2006) in the European Union.

4 Article 5(1) of Common Position 2007/140 provided for the freezing of all the funds and economic resources of certain categories of persons and entities listed in Article 5(1)(a) and (b). Thus, point (a) of Article 5(1) referred to persons and entities designated in the Annex to Resolution 1737 (2006) as well as additional persons and entities designated by the Security Council or by the Security Council Committee established pursuant to paragraph 18 of Resolution 1737 (2006). The list of those persons and entities was set out in Annex I to Common Position 2007/140. Point (b) of Article 5(1) referred to persons and entities not covered by Annex I that, inter alia, are engaged in, directly associated with, or providing support for, the Islamic Republic of Iran's proliferation-sensitive nuclear activities. The list of those persons and entities was set out in Annex II to Common Position 2007/140.

5 As regards the powers of the European Community, Resolution 1737 (2006) was implemented by Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), which was adopted on the basis of Articles 60 EC and 301 EC and refers to Common Position 2007/140, the content of which is essentially similar, in that the same names of entities and of natural persons are listed in Annex IV to that regulation with regard to the persons, entities and bodies designated by the Security Council or the Sanctions Committee, and in Annex V to that regulation with regard to persons, entities and bodies other than those listed in Annex IV.

6 Article 7(1) to (3) of Regulation No 423/2007 provides for funds to be frozen. Article 7(4) is worded as follows:

'The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1, 2 and 3 shall be

prohibited.'

7 Articles 8 to 10 of Regulation No 423/2007 list various situations in which the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources.

8 Article 8(a) of that regulation, as amended by Council Regulation (EC) No 618/2007 of 5 June 2007 (OJ 2007 L 143, p. 1), provides that the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources where they are the subject of a judicial, administrative or arbitral lien established before the date on which the person, entity or body has been designated by the Sanctions Committee, the Security Council or by the Council or of a judicial, administrative or arbitral judgment rendered prior to that date.

9 Article 9 of Regulation No 423/2007 provides that the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources provided payment by a listed person, entity or body is due under a contract, agreement or obligation that was concluded by, or arose for the person, entity or body concerned, before the date of their listing. The competent authority concerned must determine the use of the funds and, depending on whether or not the person, entity or body concerned has been designated by the Security Council, must notify the Sanctions Committee or the other Member States and the European Commission of its intention to grant an authorisation.

10 Article 10(1) of Regulation No 423/2007 provides that the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources to satisfy the basic needs of persons, to pay for the provision of legal services or to pay fees for holding funds. Where the authorisation relates to a person, entity or body designated by the Security Council, the authority must notify the Sanctions Committee of its intention to grant an authorisation. Article 10(2) of that regulation provides that the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources for extraordinary expenses. Where the authorisation concerns a person, entity or body designated by the Security Council, the authority must notify its determination to the Sanctions Committee, which must approve it. Where the authorisation concerns a person, entity or body not designated by the Security Council, the competent authority must first notify the grounds on which it considers that a specific authorisation should be granted to the other competent authorities of the Member States and to the Commission. Article 10(3) of that regulation provides that the relevant Member State is to inform the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2 of that article.

11 In accordance with Article 18(d) and (e) of Regulation No 423/2007, the regulation is to apply, inter alia, to any legal person, entity or body which is incorporated or constituted under the law of a Member State, or in respect of any business done in whole or in part within the Community.

12 Noting that the Islamic Republic of Iran was pursuing its nuclear enrichment-related activities and not collaborating with the IAEA, the Security Council adopted Resolution 1803 (2008) on 3 March 2008. In paragraph 10 of that resolution, the Security Council:

'Calls upon all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems, as referred to in resolution 1737 (2006)'.

13 In order to implement that resolution, the Council adopted Common Position 2008/652/CFSP amending Common Position 2007/140 (OJ 2008 L 213, p. 58, and corrigendum OJ 2008 L 285, p. 22) on 7 August 2008. Article 3b(1) of Common Position 2007/140, as amended by Common

Position 2008/652, provides that Member States are to exercise vigilance over the activities of financial institutions within their jurisdiction with banks domiciled in Iran, in particular with Bank Saderat, branches and subsidiaries of those banks, and financial entities controlled by persons and entities domiciled in Iran if those establishments are listed in Annexes III or IV to Common Position 2007/140, as amended, in order to avoid such activities contributing to proliferation-sensitive nuclear activities. Article 3b(2) of Common Position 2007/140, as amended, provides that Member States must require financial institutions, inter alia, to:

'(a) exercise continuous vigilance over account activity including through their programmes on customer due diligence and under their obligations relating to money-laundering and financing of terrorism;

(b) require that all information fields of payment instructions which relate to the originator and beneficiary of the transaction in question be completed; and if that information is not supplied, refuse the transaction;

(c) maintain all records of transactions for a period of five years and make them available to national authorities on request;

(d) if they suspect or have reasonable grounds to suspect that funds are related to proliferation financing, promptly report their suspicions to the Financial Intelligence Unit … or another competent authority designated by the Member State concerned. …'

14 On 10 November 2008, the Council adopted Regulation (EC) No 1110/2008 amending Regulation No 423/2007 (OJ 2008 L 300, p. 1). Article 3b of Common Position 2007/140, as amended by Common Position 2008/652, was implemented by an Article 11a added to Regulation No 423/2007, which is applicable, inter alia, to entities, legal persons and bodies incorporated or constituted under the law of a Member State, or in respect of any business done within the Community. Article 11b of Regulation No 423/2007, as amended by Regulation No 1110/2008, lays down specific provisions for Bank Saderat branches and subsidiaries.

15 Noting that the Islamic Republic of Iran was not complying with the resolutions of the Security Council, that it had constructed a power plant at Qom in breach of its obligations to suspend all nuclear enrichment-related activities and had not disclosed this until September 2009, that it was failing to notify and refusing to cooperate with the IAEA, the Security Council adopted stricter measures by Resolution 1929 (2010) of 9 June 2010. Paragraphs 21 to 24 of that resolution relate to financial services. In paragraph 21 of that resolution, the Security Council calls upon States 'to prevent the provision of financial services, including insurance or re-insurance, or the transfer to, through, or from their territory, or to or by their nationals or entities organised under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources if they have information that provides reasonable grounds to believe that such services, assets or resources could contribute to Iran's proliferation-sensitive nuclear activities, or the development of nuclear weapon delivery systems, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are related to such programmes or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation'.

16 In a declaration annexed to its Conclusions of 17 June 2010, the European Council underlined its deepening concerns about Iran's nuclear programme, welcomed the adoption by the Security Council of Resolution 1929 (2010) and noted the last report of the IAEA, dated 31 May 2010.

17 In paragraph 4 of that declaration, the European Council considered the introduction of new restrictive measures to have become inevitable. In the light of the work undertaken by the

Foreign Affairs Council, it invited the latter to adopt at its next session measures implementing those contained in Security Council Resolution ('UNSCR') 1929 (2010). These measures were to focus inter alia on 'the financial sector, including freeze of additional Iranian banks and restrictions on banking and insurance'.

18 By Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140 (OJ 2010 L 195, p. 39, and corrigendum OJ 2010 L 197, p. 19), the Council implemented that declaration, repealing Common Position 2007/140 and adopting additional restrictive measures. Recitals 17 to 20 in the preamble to Decision 2010/413, relating to financial activities, recall the decisions of the Security Council in Resolution 1929 (2010) and the Declaration of the European Council of 17 June 2010. Chapter 2 of Decision 2010/413 deals with the financial sector. Article 10(1) of that decision provides that, in order to prevent the provision of financial services, or the transfer to, through, or from the territories of Member States, or to or by nationals of Member States or entities organised under their laws (including branches abroad), or persons or financial institutions in the territories of Member States, 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, Member States are to exercise enhanced monitoring over all the activities of financial institutions within their jurisdiction with banks domiciled in Iran, branches, subsidiaries or entities controlled by them. Article 10(3) of that decision provides for the control of transfers of funds.

19 Article 20(1) of Decision 2010/413 provides for the funds of several categories of persons and entities to be frozen. Point (a) of Article 20(1) refers to persons and entities designated by the Security Council, who are listed in Annex I to the decision. Point (b) of Article 20(1) concerns 'persons and entities not covered by Annex I that are engaged in, directly associated with, or providing support for, Iran's proliferation-sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means, or persons and entities that have assisted designated persons or entities in evading or violating the provisions of UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010) or this Decision as well as other senior members and entities of [the Islamic Revolutionary Guards Corps] and [Islamic Republic of Iran Shipping Lines] and entities owned or controlled by them or acting on their behalf, as listed in Annex II'.

20 Regulation No 423/2007 was repealed and replaced by Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 423/2007 (OJ 2010 L 281, p. 1), which was adopted on the basis of Article 215 TFEU. Article 16 of Regulation No 961/2010 provides, inter alia, for the funds and economic resources belonging to or controlled by certain persons, entities and bodies to be frozen. Article 16(1) refers to the persons, entities or bodies designated by the Security Council and listed in Annex VII to that regulation.

21 Under Article 16(2) to (4) 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 Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems by Iran, including through involvement in the procurement of prohibited goods and technology, 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;

(b) being a natural or legal person, entity or body that has assisted a listed person, entity or body to evade or violate the provisions of this Regulation, [Decision 2010/413] or UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010);

...

3. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes VII and VIII.

4. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1, 2 and 3 shall be prohibited.'

22 Articles 18 and 19 of Regulation No 961/2010 concern the possibilities of certain frozen funds or economic resources being released, and correspond to Articles 9 and 10 of Regulation No 423/2007.

23 Restrictions on transfers of funds and on financial services are laid down in Chapter V of Regulation No 961/2010. Article 21, which is included in that chapter, lays down specific rules governing the transfer of funds to and from an Iranian person, entity or body. In particular, Article 21 imposes an obligation to obtain prior authorisation from the competent national authorities for any transfer — other than transfers covered by Article 21(1)(a) — of or above EUR 40 000. In accordance with Article 21(4) of Regulation No 961/2010, such authorisation is to be granted unless the transfer of funds envisaged contributes to the activities mentioned in that provision. By contrast, transfers of funds below EUR 40 000 do not require prior authorisation, but must be notified if above EUR 10 000. Article 21(5) of Regulation No 961/2010 provides that that article is not to apply where an authorisation for a transfer has been granted in accordance with, inter alia, Articles 18 or 19 of that regulation.

24 Article 32(2) of Regulation No 961/2010 is worded as follows:

'The prohibitions set out in the present Regulation shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.'

25 By Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413 (OJ 2011 L 136, p. 65), and Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation No 961/2010 (OJ 2011 L 136, p. 26) (together 'the measures of 23 May 2011'), the Council included EIH on the lists of persons and entities in Annex II to Decision 2010/413 and Annex VIII to Regulation No 961/2010 ('the 2010 lists').

26 In the measures of 23 May 2011, the Council gave the following reasons for the freezing of the appellant's funds and economic resources:

'EIH has played a key role in assisting a number of Iranian banks with alternative options for completing transactions disrupted by EU sanctions targeting Iran. EIH has been noted acting as the advising bank and intermediary bank in transactions with designated Iranian entities.

For example, EIH froze the accounts of EU-designated bank Saderat Iran and Bank Mellat located at EIH Hamburg [Germany] in early August 2010. Shortly afterwards, EIH resumed Euro-denominated business with Bank Mellat and Bank Saderat Iran using EIH accounts with a non-designated Iranian bank. In August 2010, EIH was setting up a system to enable routine

payments to be made to Bank Saderat London and Future Bank Bahrain, in such a way as to avoid EU sanctions. As of October 2010, EIH was continuing to act as a conduit for payments by sanctioned Iranian banks, including Bank Mellat and Bank Saderat. These sanctioned banks are to direct their payments to EIH via Iran's Bank of Industry and Mine. In 2009, EIH was used by Post Bank in a sanctions evasion scheme which involved handling transactions on behalf of UN-designated Bank Sepah. EU-designated Bank Mellat is one of EIH's parent banks.'

27 In its Conclusions of 1 December 2011, the Council reiterated its concerns over the nature of the Islamic Republic of Iran's nuclear programme and, in the light of those concerns, announced the designation of a further 180 entities and individuals to be subject to restrictive measures.

28 In recital 3 of Decision 2011/783 and recital 3 of Implementing Regulation No 1245/2011, the Council stated that the persons, entities and bodies listed in the 2010 lists, which include EIH, were to continue to be subject to the specific restrictive measures provided for therein.

29 In its Conclusions of 9 December 2011, the European Council invited the Council to proceed with its work related to extending the scope of EU restrictive measures and broadening existing sanctions by examining additional measures against the Islamic Republic of Iran as a matter of priority, and to adopt these measures no later than by its next session.

30 Referring to those conclusions, the Council adopted new measures by Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413 (OJ 2012 L 19, p. 22).

31 Likewise, it adopted new measures by Regulation No 267/2012, which repeals and replaces Regulation No 961/2010. The freezing of funds and economic resources is provided for in Article 23 of Regulation No 267/2012. Article 23(2)(a) and (b) of that regulation provides for the funds and economic resources of the persons, entities or bodies listed in Annex IX to that regulation to be frozen. The appellant's name is on the list set out in that annex.

The procedure before the General Court and the judgment under appeal

32 By application lodged at the General Court Registry on 3 August 2011, EIH brought an action for annulment of Decision 2011/299 and Implementing Regulation No 503/2011. It subsequently amended its heads of claim and sought annulment of Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012.

33 In support of its action, EIH put forward four pleas in law and raised a plea of illegality. The pleas alleged (i) breach of the obligation to state reasons, of EIH's rights of defence and of its right to effective judicial protection; (ii) manifest error of assessment; (iii) breach of the principle of protection of legitimate expectations, of the principle of legal certainty and of the right to good administration; and (iv) breach of the principle of proportionality, of EIH's right to property and of its freedom to conduct a business. The plea of illegality was raised against Article 20(1)(b) of Decision 2010/413, Article 16(2)(b) of Regulation No 961/2010 and, in consequence of the second amendment of the form of order sought, Article 23(2) of Regulation No 267/2012.

34 The General Court repeatedly found that EIH had admitted in its pleadings that it had carried out transactions involving designated Iranian banks, but was claiming that those transactions were lawful. As is apparent from paragraph 168 of the judgment under appeal, the General Court also noted that EIH had admitted carrying out such transactions, notably in its letter to the Council of 29 July 2011, when it submitted its observations on the entry of its name on the 2010 lists by the measures of 23 May 2011.

35 As regards the first plea in law, the General Court held, in paragraphs 45 to 47 of the judgment

under appeal, that the legal basis of the entry and maintenance of EIH on the 2010 lists and on the list in Annex IX to Regulation No 267/2012 was Article 20(1)(b) of Decision 2010/413, Article 16(2)(b) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012, that is to say, the criterion relating to an entity that has assisted a designated person, entity or body in evading or violating restrictive measures. After examining the statement of reasons for the entry of EIH on those lists, the General Court concluded in paragraph 55 of the judgment under appeal that the statement of reasons for Decision 2011/299, Implementing Regulation No 503/2011, Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012 (together 'the contested measures') with regard to that criterion was sufficient in that it enabled EIH to understand the conduct of which it was accused, and the General Court to exercise its power of review.

36 In its examination of the second plea in law, the General Court observed in paragraph 166 of the judgment under appeal that, 'in regard to the initial entry of [EIH's] name on the 2010 lists … the file contains nothing to suggest that the Council checked the validity of the allegations contained in the listing proposal'. It therefore upheld the argument that the Council could not, in the absence of evidence, assess the validity of EIH's entry on those lists in so far as that argument related to the measures of 23 May 2011. It rejected the second plea as to the remainder.

37 The General Court went on to reject the third and fourth pleas in law and the plea of illegality.

38 As a result, the General Court annulled Decision 2011/299 and Implementing Regulation No 503/2011, and dismissed the action as to the remainder.

39 The General Court ordered EIH to bear three fifths of its own costs and to pay three fifths of the costs incurred by the Council, and the Council to bear two fifths of its own costs and pay two fifths of the costs incurred by EIH. It decided that the United Kingdom of Great Britain and Northern Ireland and the Commission should bear their own costs.

Forms of order sought

40 EIH claims that the Court should:

– set aside the judgment under appeal in the detailed respects indicated in the present appeal;

– annul Decision 2011/783, Implementing Regulation No 1245/2011 and Regulation No 267/2012 immediately in so far as they apply to it; and

– order the Council to pay its costs of the proceedings before the General Court and before the Court of Justice on appeal.

41 The Council contends that the Court of Justice should dismiss the appeal as unfounded in its entirety and order EIH to pay the Council's costs.

42 The United Kingdom contends that the Court of Justice should dismiss the appeal.

The appeal

The first ground of appeal

Arguments of the parties

43 By its first ground of appeal, alleging breach of the obligation to state reasons and of the rights of the defence, EIH submits that the General Court erred in law and reached a conclusion incompatible with the claims made in the application when it concluded that EIH had conceded that it carried out the transactions to which the Council referred in order to justify EIH's designation as a person, entity or body subject to restrictive measures.

44 It challenges paragraphs 115 to 117 of the judgment under appeal, and paragraphs 51 and 52 thereof, to which paragraph 115 of the judgment under appeal refers. In those paragraphs the General Court found that EIH had admitted carrying out a certain number of banking transactions, including those which it was accused of having carried out. In the light of that finding, the General Court concluded, in paragraph 118 of the judgment under appeal, that the Council was not bound to produce proof of facts that were not in dispute.

45 EIH recalls the first plea of the application, relating to the inadequacy of the statement of reasons for the contested measures and to breach of the rights of the defence. According to EIH, it could not be inferred that it had acknowledged having carried out the transactions referred to in the statement of the reasons for its entry on the 2010 lists and on the list in Annex IX to Regulation No 267/2012.

46 The Council and the United Kingdom contend that, as the General Court stated in paragraph 114 of the judgment under appeal, EIH had admitted in its written pleadings that it had carried out transactions involving Iranian banks designated as being persons, entities or bodies subject to restrictive measures, but maintained that those transactions were lawful. The General Court did not, therefore, err in law in ruling that there was no breach of the obligation to state reasons or of the rights of the defence.

Findings of the Court

47 The General Court repeatedly found that EIH had carried out transactions involving Iranian banks designated as being persons, entities or bodies subject to restrictive measures. As is evident from paragraphs 52, 167 and 168 of the judgment under appeal, that finding stems from an examination of the application lodged at first instance and the letter of 29 July 2011, by which the appellant submitted its observations to the Council on its entry on the 2010 lists by the measures of 23 May 2011.

48 In accordance with Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal is to be limited to points of law. The General Court therefore has exclusive jurisdiction to establish the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess the evidence accepted. The establishment of those facts and the assessment of that evidence do not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject as such to review by the Court of Justice (judgments in *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 78 and the case-law cited, and *Commune de Millau and SEMEA* v *Commission*, C-531/12 P, EU:C:2014:2008, paragraph 56).

49 It should be noted in that respect that distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment in *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraph 54).

50 As the Advocate General noted in points 29 and 30 of his Opinion, the appellant admitted in the application that it had carried out transactions involving entities designated as being subject to restrictive measures, but disputed the unlawful nature of those transactions. In those circumstances, it is not obvious that the General Court distorted the facts established in

paragraphs 51, 52, 101 and 114 to 117 of the judgment under appeal.

51 With regard to the complaint that the General Court erred in law in holding that the Council was not bound to produce proof of the materiality of the transactions concerned, it must be borne in mind that it is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded (judgment in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 121). Since the facts relating to the actual existence of the relevant transactions may be regarded as being undisputed in the present case, the General Court did not err in law.

52 Having regard to those considerations, the first ground of appeal must be rejected as unfounded.

The second ground of appeal

Arguments of the parties

53 By its second ground of appeal, EIH maintains that the General Court erred in law in finding that the substantive criteria for its designation as a person, entity or body subject to restrictive measures were met.

54 By the first part of the second ground of appeal, EIH submits that the General Court erred in law in finding that it had conceded that it carried out the transactions relied upon by the Council to justify its designation as a person, entity or body subject to restrictive measures.

55 The Council and the United Kingdom contend that the first part of the second ground of appeal is indissociable from the first ground of appeal and must be rejected for the same reasons as those put forward to counter the first ground of appeal.

56 In the second part of the second ground of appeal, EIH submits that the General Court made a series of errors of law when examining the three categories of transactions which EIH carried out and which, according to EIH, were not prohibited. These are, first, transactions excluded from the scope of the relevant legislation; secondly, authorised transactions; and, thirdly, transactions carried out in accordance with the procedure known as the 'Third Way' ('the Third Way procedure'), that is a procedure which gives an entity designated as being subject to restrictive measures the opportunity to discharge a debt, arising from an obligation predating its designation, due to a creditor established within the European Union, by transferring assets for the attention of that creditor via an entity not designated as being subject to such measures.

57 The appellant disputes first of all paragraph 145 of the judgment under appeal, in which the General Court held that EIH had merely maintained that certain transactions were excluded from the scope of the restrictive measures without otherwise substantiating its reasoning.

58 As regards the category of authorised transactions, EIH is critical of paragraphs 147 to 149 of the judgment under appeal. It asserts that the General Court erred in law in concluding that it had failed to produce evidence of authorisations under Article 21 of Regulation No 961/2010 in relation to transfers of funds to or from an Iranian person, entity or body for transactions which took place after 2 September 2010, since only examples of such authorisations were provided.

59 As regards transactions carried out under the Third Way procedure ('Third Way transactions'), EIH submits that the General Court erred in law:

– in considering that the Bundesbank's approval of EIH's old business transactions with the sanctioned banks was unlawful because it was a general approval and only transactions authorised on a case-by-case basis create valid exceptions to the EU sanctions regime;

– in concluding that the Bundesbank's authorisations under Article 21 of Regulation No 961/2010 did not confirm the lawfulness of the Third Way transactions; and

– in holding that EIH's Third Way transactions were unlawful as they infringed the prohibition on circumvention in Article 16(4) of Regulation No 961/2010, in that EIH had knowingly and intentionally participated in the circumvention of sanctions.

60 It maintains in that respect that it had no opportunity to make submissions on the lawfulness of the general approvals, which constitutes a breach of its rights of defence.

61 The appellant maintains that the relevant provisions of the regulations concerned do not exclude general licences and that such general licences are frequently issued by Member States. It gives the example of general licences issued and applied by the United Kingdom Treasury.

62 It submits, in essence, that the Council cannot impose restrictive measures by reason of transactions undertaken in accordance with a procedure that is approved by a competent national authority, where that approval falls within the implicit scope of the powers of such an authority under Regulation No 423/2007. Accordingly, if a competent national authority is requested to grant an exemption under Article 9 of that regulation, but considers that in that case, or in that category of cases, Article 7 of that regulation does not apply and thus no authorisation is required or appropriate, and informs the commercial operator accordingly, that commercial operator must have the same legal protection as he would have had if that authority had concluded that Article 7 did apply and had granted the exemption sought.

63 EIH maintains that the General Court's conclusion in paragraph 150 of the judgment under appeal — that the Bundesbank's authorisations under Article 21 of Regulation No 961/2010 did not confirm the legality of the Third Way transactions — is wrong in law. It submits, in particular, that a commercial operator which makes full disclosure to a competent national authority of a proposed transaction, and relies upon an authorisation or approval granted by that authority to carry out the transaction in question, cannot be regarded as having knowingly and intentionally engaged in the circumvention of the asset freezing regime for the purposes of Article 16(4) of that regulation.

64 EIH also disputes the General Court's conclusion that the Third Way procedure infringes Article 16(4) of Regulation No 961/2010, on the ground that the General Court raised a new plea of its own motion. In the alternative, it notes that the transactions which it carried out were subject, first, to a general approval by the Bundesbank and/or a generally applicable assurance that no authorisation was required, and, secondly, to authorisations under Article 21 of that regulation that confirmed the legality of those transactions. Lastly, the appellant disagrees with the conclusions drawn by the General Court from the various documents before it.

65 As regards transactions allegedly excluded from the scope of the restrictive measures, the Council is of the view that the General Court's conclusion that EIH had not substantiated its claims is correct.

66 As regards transactions that were allegedly authorised, again, in the Council's opinion, the General Court did not err in law.

67 As regards Third Way transactions, the Council recalls that the General Court put a question to the parties concerning the legal value of the approval, by a competent national authority, of such a procedure, and that they were able to express their views on this. In the Council's view, again, the General Court did not err in law.

68 The United Kingdom recalls Article 18 of Regulation No 961/2010, according to which a competent national authority is required to establish that the conditions for authorisation are

met. Approval is given after individual scrutiny and cannot cover a series of different, unspecified transactions. Nor can such scrutiny be avoided by adopting an indirect means of routing the payment. The United Kingdom also states that the EU institutions and other Member States are not bound by the interpretation of one Member State's competent authority that a form of general approval can be given for certain transactions. As regards licences issued pursuant to United Kingdom legislation, to which the appellant refers, the United Kingdom submits that they are applicable in the context of another EU regulation and are not relevant in the present case.

69 The United Kingdom notes, moreover, that EIH sought to justify its transactions by reference to the fact that the Bundesbank had issued authorisations under Article 21 of Regulation No 961/2010, but that that provides no answer to the charge that EIH acted in breach of Article 16(4) of that regulation. Whatever the status in national law of representations by the competent national authority, they do not bind the Council when it assesses whether a person, entity or body has carried out transactions on behalf of banks designated as being subject to restrictive measures in order to circumvent Article 16(1) and (2) of that regulation.

Findings of the Court

70 As regards the first part of the second ground of appeal, it must be held that it is indissociable from the first ground of appeal, which has been rejected in paragraph 52 of the present judgment.

71 As regards the second part of the second ground of appeal, it must first be noted that, as the General Court held in paragraph 47 of the judgment under appeal, the Council intended to base the adoption of the restrictive measures taken in respect of the appellant on the fact that the latter had assisted a designated person, entity or body in evading the restrictive measures or in violating them.

72 The first restrictive measures taken in respect of the appellant were adopted by the Council on 23 May 2011. The facts mentioned in the grounds of the measures of 23 May 2011 date from 2009 and 2010.

73 The restrictive measures taken in respect of the appellant and the facts mentioned in the measures of 23 May 2011 fall within a context of growing suspicion and of increased and ever stricter controls of the financial transactions referred to in paragraphs 12 to 24 of the present judgment, a context of which the appellant could not have been unaware, given its status as a bank specialising in services and businesses relating to or in Iran.

74 According to its own statements, EIH carried out three types of transactions which, according to EIH, were not prohibited.

75 As regards the third category of transactions, this comprised transactions allegedly approved by the Bundesbank and, in particular, Third Way transactions. It is evident from the file in the proceedings before the General Court that EIH commented in writing on the lawfulness of such transactions in a document dated 9 January 2013, in reply to a question put by the General Court. EIH was also able to comment on this point at the hearing before the General Court, which was held on 20 February 2013. Its argument alleging breach of its rights of defence is therefore manifestly unfounded.

76 In paragraphs 124 to 128 of the judgment under appeal, the General Court interpreted Articles 7 to 10 of Regulation No 423/2007 and Articles 16 to 19 and 21 of Regulation No 961/2010. It did not err in law when it noted that the release of certain funds is an exception to the freezing of funds principle, that the competent authority must make an assessment on a case-by-case basis and that it is not, therefore, authorised to give general approval to a certain category of

transactions in respect of which the entities concerned would be relieved of the need to request authorisation on a case-by-case basis.

77 That conclusion follows from the clear, precise and detailed wording of those provisions, which provide, in each case, for the conditions for the release of funds to be scrutinised by the competent authority and for the Sanctions Committee or the Member States and the Commission, as appropriate, to be informed so that they may respond in accordance with the provisions applicable.

78 In paragraphs 132 to 141 of the judgment under appeal, the General Court assessed whether it was possible to regard as lawful transactions carried out via an entity not designated as being subject to restrictive measures, with the aim of making payments or, as in the context of the Third Way procedure, of settling the debts of entities that are designated as being subject to such measures. The General Court did not err in law when it held, in paragraphs 135 and 136 of the judgment under appeal, that transactions carried out via a non-designated entity are capable of infringing the prohibition laid down in Article 7(4) of Regulation No 423/2007 and Article 16(4) of Regulation No 961/2010 respectively, where they are carried out with a view to circumventing the prohibitory measures.

79 The General Court correctly concluded from that assessment, in paragraph 141 of the judgment under appeal, that 'the effectiveness of the combined provisions of Articles 7 to 10 of Regulation No 423/2007 and of Articles 16 to 19 and 21 of Regulation No 961/2010 would be compromised if a non-designated entity were free to carry out transactions via a non-designated entity for the purpose of settling debts or making payments on behalf of a designated entity. It follows from this that a non-designated entity must always satisfy itself as to the legality of such transactions by requesting authorisation from the competent national authority where appropriate'.

80 It follows from that analysis of those provisions by the General Court that the appellant was required to ask the competent national authority for specific authorisation in every case, including in the case of transfers of funds such as those referred to in Article 21 of Regulation No 961/2010. The appellant could certainly not have been unaware of that requirement since, as indicated in paragraph 73 of the present judgment, successive legislation provided for increased and ever stricter controls of financial transactions, and the appellant is a bank specialising in services and businesses relating to or in Iran. In addition, as the Advocate General noted in point 62 of his Opinion, the appellant knew that the transactions it was carrying out concerned entities designated as being subject to restrictive measures and that those transactions were therefore particularly suspect, as they made it possible to circumvent the freezing of those entities' funds.

81 In support of its argument that Third Way transactions were lawful, EIH produced a certain amount of evidence, such as emails received from the Bundesbank, letters sent by the Österreichische Nationalbank (Austrian National Bank) to the Wirtschaftskammer Österreich (Austrian Chamber of Commerce), and three audit reports. The General Court held, in paragraph 155 of the judgment under appeal, that the letters from the Österreichische Nationalbank were not relevant and, in paragraph 156 of its judgment, that one of the audit reports contradicted EIH's argument.

82 With regard to the emails from the Bundesbank, the General Court noted in paragraph 154 of the judgment under appeal that they predated the transactions referred to in the contested measures and that, in the absence of authorisations granted on a case-by-case basis, they did not suffice to demonstrate that the transactions carried out were lawful. Taking into account the requirements laid down in Articles 7 to 10 of Regulation No 423/2007 and Articles 16 to 19 and 21 of Regulation No 961/2010, the General Court correctly held, in the same paragraph, that a general, blanket approval that does not distinguish the nature of the precise transactions and the

designated entities concerned is insufficient.

83 Having regard to all those points, the General Court did not err in law when it held, in paragraph 157 of the judgment under appeal, that, 'contrary to what is claimed by [EIH], in the absence of authorisations granted on a case-by-case basis, the transactions referred to in the grounds of the contested measures are not lawful under Regulation No 423/2007 and Regulation No 961/2010, as appropriate. Accordingly, … the Council could legitimately base the adoption of restrictive measures against [EIH] on those transactions'.

84 In those circumstances, it is unnecessary to consider whether the General Court erred in law in paragraphs 145 and 147 to 149 of the judgment under appeal with regard to the first and second categories of transactions. Since the third category of transactions alone justifies the imposition of restrictive measures on the appellant, any error of law in relation to the first and second categories of transactions would have no bearing on the outcome of the dispute and cannot affect the operative part of the judgment under appeal.

85 Consequently, the second ground of appeal must be rejected.

The third ground of appeal

The judgment under appeal

86 By its third plea in law at first instance, EIH maintained, in essence, that the Council had breached the principle of protection of legitimate expectations by failing to take account of the authorisations and approvals of the Bundesbank. In the alternative, it maintained that the Council had breached, in particular, the principle of legal certainty, in that it had entered EIH's name on the 2010 lists and on the list in Annex IX to Regulation No 267/2012 on the basis of transactions authorised or carried out in accordance with procedures approved by the Bundesbank.

87 In paragraph 176 of the judgment under appeal, the General Court held that the transactions referred to in the grounds of the contested measures were not authorised by the Bundesbank in accordance with the provisions of Regulation No 423/2007, that is to say, following a case-by-case assessment, with the result that the argument regarding breach of the principle of protection of legitimate expectations was unfounded. As regards the argument as to breach of the principle of legal certainty, the General Court held, in paragraph 179 of the judgment under appeal, that Regulation No 423/2007, and also Decision 2010/413, Regulation No 961/2010 and Regulation No 267/2012, set out clearly the conditions for designation as a person, entity or body subject to restrictive measures, specified the transactions prohibited and determined the conditions of authorisation, and that consequently their application was foreseeable by EIH.

Arguments of the parties

88 By its third ground of appeal, EIH submits that the General Court erred in law in rejecting the plea alleging breach of the principles of protection of legitimate expectations and legal certainty.

89 It maintains that the clear, precise and repeated assurances given by the Bundesbank preclude not only the imposition of any penalties under German rules implementing Article 16(4) of Regulation No 961/2010, but also the imposition of restrictive measures by the Council, which the General Court recognised could in principle be bound by a legitimate expectation arising out of the Bundesbank's assurances. According to the appellant, in view of the opinions relied upon in the context of the evidence presented to the General Court, the latter was plainly wrong to conclude that the relevant rules were unambiguous.

90 The Council contends that the third ground of appeal relies on the second ground of appeal and

must be rejected for the same reasons as those which it put forward to counter that second ground of appeal.

91 It notes that the appellant bases its arguments on case-law relating to the principle of protection of legitimate expectations in criminal matters, the imposition of fines or the recovery of State aid. However, the restrictive measures in the present case are not penalties but prospective precautionary measures. It argues that the risk that an entity may act reprehensibly may be sufficient (judgment in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 85). Moreover, the system of notification of certain decisions by competent national authorities does not bind the EU institutions or other Member States.

92 The United Kingdom submits that the views of a competent national authority do not amount to a representation by the Council, that the representations relied upon by EIH were expressed in general terms and did not amount to a sufficiently precise or specific assurance that the actual transactions completed by EIH were lawful, that commercial operators cannot invoke a legitimate expectation based on assurances that do not comply with the applicable rules and, lastly, that the provisions of Regulations No 423/2007 and No 961/2010 were unambiguous.

Findings of the Court

93 The principle of legal certainty requires that legislation be clear and precise and that its application be foreseeable for all interested parties (judgment in *France* v *Commission*, C-325/91, EU:C:1993:245, paragraph 26).

94 As noted in paragraph 77 of the present judgment, the legislation applicable in this instance was clear, precise and detailed. The General Court did not, therefore, err in law when, in paragraph 179 of the judgment under appeal, it held that that legislation was foreseeable by the appellant and, in paragraph 181 of that judgment, it rejected as unfounded EIH's argument as to breach of the principle of legal certainty.

95 As regards the argument regarding breach of the principle of protection of legitimate expectations, the General Court did not err in law in recalling in paragraph 174 of the judgment under appeal the case-law according to which the right to rely on that principle extends to any person in a situation where an EU institution has caused him to entertain expectations which are justified by precise assurances provided to him. However, if a prudent and alert economic operator could have foreseen the adoption of an EU measure likely to affect his interests, he cannot plead that principle if the measure is adopted (in addition to the case-law cited in paragraph 174 of the judgment under appeal, see judgment in *Alcoa Trasformazioni* v *Commission*, C-194/09 P, EU:C:2011:497, paragraph 71).

96 In the present case, it must be held that the wording of the legislation concerned was clear and left no room for any doubt that the transactions in question were subject to a regime of release and authorisation on a case-by-case basis, as described, inter alia, in paragraphs 76 and 77 of the present judgment. It is also necessary to bear in mind the finding already made in paragraph 73 of the present judgment, namely that the legislation applicable was adopted against a background of growing suspicion and of increased and ever stricter controls of financial transactions, a context of which the appellant could not have been unaware, given its status as a bank specialising in services and businesses relating to or in Iran. In that respect, the appellant must have known that the transactions carried out concerned entities designated as being subject to restrictive measures and that those transactions were therefore particularly suspect.

97 Lastly, it should be noted that, given that background, the restrictive measures at issue were imposed on the appellant solely for having carried out unlawful transactions. Accordingly, even

on the assumption that the general authorisations or approvals granted by the Bundesbank — in its capacity as the national competent authority designated by the Council — were capable of forming the basis of a legitimate expectation on the part of the appellant, such a legitimate expectation could not render lawful transactions that were expressly prohibited by the legislation at issue, and could not, therefore, preclude the adoption of those measures against the appellant.

98 The General Court did not, therefore, err in law in paragraph 177 of the judgment under appeal when it rejected as unfounded the argument regarding breach of the principle of protection of legitimate expectations.

99 Consequently, the third ground of appeal must be rejected.

The fourth ground of appeal

Arguments of the parties

100 By its fourth ground of appeal, EIH submits that the General Court erred in law in holding, in paragraph 205 of the judgment under appeal, that EIH could not rely on Article 32(2) of Regulation No 961/2010 since it had carried out the unlawful transactions alleged by the Council. EIH notes that the aim of Article 32(2) is to protect undertakings which have infringed prohibitions in that regulation but did not know or have reasonable cause to suspect that they had done so.

101 EIH also disputes the General Court's conclusion in paragraphs 209 to 211 of the judgment under appeal that the adoption of restrictive measures was necessary in order to achieve the legitimate objective pursued. EIH had submitted that other measures could have been adopted, such as the Bundesbank no longer approving the Third Way procedure, or refusing authorisations under Article 21 of Regulation No 961/2010. According to the appellant, the General Court rejected the possibility of such measures being adopted on the ground that they could not ensure a sufficiently preventative effect.

102 The appellant asserts that the General Court failed to take into account the Bundesbank's duty of sincere cooperation as regards effective implementation of the sanctions regime. It states that it is, moreover, the responsibility of the EU institutions to take the necessary steps to avoid divergences of interpretation of the rules relating to the sanctions regime on the part of the competent national authorities. The appellant concludes that its designation as a person, entity or body subject to restrictive measures was a disproportionate measure, that the General Court wrongly characterised the factual position in law, and that it drew conclusions from the file which are substantially incorrect. It is also of the view that the General Court erred in law in concluding, in paragraph 210 of the judgment under appeal, that the approval system provided for in Article 21 of Regulation No 961/2010 was not able to ensure a preventative effect equivalent to the freezing of assets, when the two systems are in fact comparable.

103 The Council and the United Kingdom maintain that the General Court did not err in law in its interpretation of Article 32(2) of Regulation No 961/2010. Furthermore, that provision does not prevent the designation of any entity which meets the criteria for designation as an entity subject to restrictive measures, but only prevents such an entity from being held liable for unintended infringements. In the Council's view, the General Court did not err in law in holding that the restrictive measures at issue were proportionate. The Council notes that it may assess the risk of an asset flight in relation to a category of persons or entities designated as being subject to restrictive measures.

104 The Council and the United Kingdom contend, lastly, that the effect of the approval system laid down in Article 21 of Regulation No 961/2010 is not the same as that of an asset freeze. Once

assets are frozen, the risk of their use in violation of restrictive measures is, they maintain, smaller than the risk of violations associated with potentially very numerous transactions that would require authorisation.

Findings of the Court

105 The passages in the judgment under appeal that have drawn criticism in the context of the fourth ground of appeal form part of the General Court's response to the fourth plea in law raised before it, by which EIH submitted that the Council had breached the principle of proportionality, its right to property and its freedom to conduct a business.

106 EIH claimed, in particular, that requiring the designation of any entity identified as having assisted another entity subject to sanctions to evade or violate sanctions, notwithstanding the fact that such assistance may have been given inadvertently and may have been insignificant, was in breach of the principle of proportionality and was contrary to Article 32(2) of Regulation No 961/2010, which provides that the prohibitions set out in that regulation are not to give rise to liability on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe those prohibitions.

107 In paragraph 205 of the judgment under appeal, the General Court rejected that argument, noting that, as was apparent from the response to the second plea raised before it, the transactions referred to in the grounds of the contested measures were not lawful.

108 In so doing, the General Court did not err in law. There is no doubt that rejection of EIH's plea challenging the restrictive measures imposed on the ground that it had assisted entities designated as being subject to restrictive measures to evade or violate those restrictive measures is sufficient to justify the rejection of an argument founded on the alleged reasonable ignorance of the unlawful nature of the assistance given.

109 As regards the alternative measures proposed by the appellant, consisting notably in the Bundesbank no longer approving the Third Way procedure or in the Council suggesting to the Bundesbank that it modify its regulatory practice, these cannot be regarded as measures that would enable the desired objective to be achieved — namely to combat nuclear proliferation and the financing thereof — as effectively as the restrictive measures adopted in respect of the appellant. Thus, the General Court did not err in law in concluding, in paragraphs 210 and 211 of the judgment under appeal, that the adoption of the restrictive measures in respect of EIH was necessary in order to achieve the legitimate objective pursued.

110 Consequently, the fourth ground of appeal must be rejected as unfounded.

111 It follows from all the foregoing that since none of the grounds of appeal put forward by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

112 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

113 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

114 Since the Council and the United Kingdom have applied for costs and the appellant has been unsuccessful, the appellant must be ordered to bear its own costs and to pay those incurred by

the Council and the United Kingdom.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Europäisch-Iranische Handelsbank AG to bear its own costs and to pay those incurred by the Council of the European Union and the United Kingdom of Great Britain and Northern Ireland.**

[Signatures]

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* Language of the case: English.