

EUROPEAN COURT ANNULS SANCTIONS ON SEVEN IRANIAN COMPANIES

*Judgments in Joined Cases T-35/10 and T-7/11 Bank Melli Iran;
Case T-493/10 Persia International Bank plc;
Joined Cases T-4/11 and T-5/11 Export Development Bank of Iran;
Case T-12/11 Iran Insurance Company;
Case T-13/11 Post Bank Iran;
Case T-24/11 Bank Refah Kargaran;
Case T-434/11 Europäisch-Iranische Handelsbank AG;
Joined Cases T-42/12 and T-181/12 Naser Bateni;
Case T-57/12 Good Luck Shipping, and
Case T-110/12 Iranian Offshore Engineering & Construction Co. v Council*

In a decision released on 6 September 2013, the General Court, the European Union's second highest tribunal, ruled that sanctions had been wrongly imposed against the Iranian companies as part of its efforts to stop Iran from developing nuclear weapons, on the basis that the Council of the European Union did not "properly establish" that the companies "had provided support for nuclear proliferation."

Background

In order to apply pressure on Iran to end its proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems, the Council of the European Union adopted decisions and regulations freezing the funds of persons and entities identified by the Council as being involved in nuclear proliferation. The persons and entities concerned are named in a list annexed to each of those regulations, together with a statement of the Council's reasons for including each person or entity.

The applicants in the present cases - Bank Melli Iran, Persia International Bank plc, Export Development Bank of Iran, Iran Insurance Company, Post Bank Iran, Bank Refah Kargaran, Europäisch-Iranische Handelsbank AG, Naser Bateni, Good Luck Shipping and Iranian Offshore Engineering & Construction Co. v Council – had each had their names entered on the lists.

Those entities brought their challenge on a number of grounds, including breach of the obligation to state reasons, of its rights of defence and of its right to effective judicial protection, of the principles of sound administration and protection of legitimate expectations, and of the Council's obligation to review the restrictive measures adopted, in the light of the observations made, infringement of essential procedural requirements and error of law, breach of the principle of proportionality and of its right to property, breach of the principle of equal treatment.

Decision

In its decision, the General Court annulled the acts of the Council in so far as they concerned some of the applicants, while continuing the sanctions in whole or part against other entities.

The General Court annulled the sanctions against Post Bank Iran, Iran Insurance Company, Good Luck Shipping, Export Development Bank of Iran, Bank Refah Kargaran, Mr Bateni, Persia International Bank and Iranian Offshore Engineering & Construction Co. on the following grounds:

- In relation to Post Bank Iran, Iran Insurance Company, Good Luck Shipping and Export Development Bank of Iran, the Court found that the Council had not proved the facts of which it accused those four companies and that the Council could not, therefore, properly establish that they had provided support for nuclear proliferation.
- In relation to Mr Bateni, Persia International Bank and Iranian Offshore Engineering & Construction Co., the Court held that the Council made an error of assessment as the facts and evidence on which it relied did not by themselves justify the adoption and/or maintenance of the restrictive measures.
- In the case of Bank Refah Kargaran, the Court found that the Council breached the obligation to state reasons and the obligation to disclose to Bank Refah Kargaran the evidence used against it. The single reason given – that Bank Refah Kargaran had taken over ongoing operations from Bank Melli after Bank Melli became subject to restrictive measures – was not sufficiently detailed, since the Council did not identify any specific operation purportedly ‘taken over’ from Bank Melli and carried out by Bank Refah Kargaran. Accordingly, the Court annulled the acts of the Council imposing restrictive measures on Bank Refah Kargaran.

However, the General Court refused to annul the sanctions on Europäisch-Iranische Handelsbank and Bank Melli:

- In relation to Europäisch-Iranische Handelsbank, the Court annulled the acts of 23 May 2011 on the ground that the Council merely adopted the listing proposal of a Member State without evaluating the allegations contained within it. However, in adopting the December 2011 acts maintaining that bank on the list, the Council did not commit the same procedural error, and all the other arguments on which the bank relied were rejected by the Court, which held that the transactions carried out by Europäisch-Iranische Handelsbank on behalf of designated Iranian entities justified the adoption of restrictive measures against it. Consequently, those more recent acts were not annulled and the funds of Europäisch-Iranische Handelsbank remain frozen.
- The asset freezes imposed on Bank Melli were justified – Bank Melli had “ensured that scholarships were paid on behalf of the Atomic Energy Organisation of Iran (AEOI) after restrictive measures had been adopted against AEOI by the United Nations Security Council” – a fact which “constitutes support for nuclear proliferation”.

The sanctions will remain in place for at least two months pending any appeal to the European Court of Justice.

Comment

The decision in the present case further illustrates the willingness the General Court to annul sanctions where the Council has failed to provide sufficient evidence for the imposition of such sanctions.

It follows a number of significant decisions by the General Court in the last twelve months in which the imposition of sanctions has been successfully challenged by the entities concerned, including *Sina Bank v. Council* (Case T-15/11) (11 December 2012), *Bank Mellat v. Council* (Case T-496/10) (29 January 2013) and *Bank Saderat Iran v. Council* (Case T-494/10) (5 February 2013).

In addition, on 18 July 2013, the European Court of Justice upheld the ruling of the General Court in the case of *Kadi v Commission* (Case T-85/09), striking down Kadi's re-listing by the EU following the annulment of the Regulation listing him for the first time by the ECJ in *Kadi I*. This case considered the standard of review that European courts will apply in reviewing sanctions against named individuals and legal entities.

Update on Iran sanctions

As our previous alerts have reported, extensive sanctions have been imposed in relation to Iran by the United States, EU and the United Nations. These sanctions are extremely wide ranging, and are constantly changing – new sanctions were imposed by the EU in December 2012, and the US in July 2013.

For more detailed information on the latest sanctions imposed upon Iran, see our previous mailings [here](#) and [here](#).

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