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Press and Information

**PRESS RELEASE No° 63/09**

9 July 2009

Judgment of the Court of First Instance in Joined Cases T-246/08 and T-332/08

*Melli Bank plc v Council*

**THE COURT OF FIRST INSTANCE UPHOLDS THE COUNCIL'S DECISION  
FREEZING MELLI BANK'S FUNDS**

*The Council was entitled to conclude that Melli Bank is owned or controlled by an entity  
identified as being engaged in nuclear proliferation*

Melli Bank is a UK public limited company, authorised and regulated by the Financial Services Authority ('the FSA'). It is wholly owned by Bank Melli Iran ('BMI'), an Iranian bank controlled by the Iranian State.

In order to give effect to a resolution of the United Nations Security Council concerning measures against Iran to prevent nuclear proliferation, the Council adopted a regulation<sup>1</sup> in 2007 providing for the freezing of the funds of the entities designated by the Security Council and of those identified by the Council of the EU as engaged in nuclear proliferation, and also for the freezing of the funds of the entities owned or controlled by them. The entities concerned are listed in an annex to the regulation.

On 23 June 2008 the Council adopted a decision<sup>2</sup> by which BMI and its subsidiaries, including Melli Bank, were entered in that list, with the consequence that their funds were frozen. The Council declared that BMI 'provid[ed] or attempt[ed] to provide financial support for companies which are involved in or procure goods for Iran's nuclear and missile programmes' and that it 'serve[d] as a facilitator for Iran's sensitive activities'.

Melli Bank brought an action against that decision before the Court of First Instance.

In its judgment today, **the Court** dismisses the action and **upholds the fund-freezing decision**.

*Whether the regulation is proportionate*

<sup>1</sup> Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1)

<sup>2</sup> Decision 2008/475/EC implementing Article 7(2) of Regulation No 423/2007 (OJ 2008 L 163, p. 29)

The Court finds that the freezing of the funds of entities owned or controlled by an entity engaged in nuclear proliferation does not infringe the principle of proportionality, in so far as it is appropriate and necessary to the attainment of the legitimate aim of maintaining international peace and security.

Thus, the Court considers that, when the funds of an entity identified as being engaged in nuclear proliferation are frozen, there is a not insignificant danger that that entity may exert pressure on the entities it owns or controls in order to circumvent the effect of the measures applying to it. That being so, freezing of the funds of entities owned or controlled by an entity engaging in nuclear proliferation is necessary and appropriate in order to ensure the effectiveness of the measures adopted vis-à-vis that entity and to ensure that those measures are not circumvented.

Furthermore, the Court considers that there are no suitable alternative measures for attaining that objective. In this respect, supervision measures are ex post measures concerning transactions already performed and are not, therefore, capable of preventing possible future transactions incompatible with the restrictive measures enacted.

Moreover, the Court is of the view that the prime importance of the preservation of international peace and security warrants restrictions, even of a substantial nature, of Melli Bank's right to property and right to carry on economic activity.

#### *The lawfulness of the decision*

The Court notes that BMI owns all Melli Bank's capital and can, therefore, appoint and replace that bank's directors. It can thus exercise influence over the applicant's staff. There is, accordingly, a not inconsiderable danger that BMI may be in a position to lead Melli Bank to carry out prohibited transactions, by putting pressure either on its directors or, through them, on the other members of its staff.

Moreover, none of the circumstances invoked by Melli Bank is capable of offsetting that influence. The facts that Melli Bank possesses legal personality, that BMI does not intervene in its day-to-day running and that it and its staff have complied with the restrictive measures in force and have not been the subject of disciplinary or regulatory measures in the past are irrelevant. Likewise, the mere existence of certain obligations imposed on the directors by virtue of the company law of England and Wales does not guarantee that those obligations will be performed. Lastly, the Court observes that the essential purpose of the banking supervision carried out by the FSA is not to ensure compliance with the restrictive measures imposed on certain entities but to maintain a stable, efficient and fair financial system. Although that purpose includes various aspects relating to financial crime, those are centred on money-laundering, fraud and insider dealing.

In consequence, the Court concludes that the Council correctly considered that Melli Bank was owned or controlled by an entity identified as engaged in nuclear proliferation.

The Court goes on to find that the decision does not run counter to the principle of equal treatment. Even if the Council had in fact omitted to adopt measures to freeze the funds of certain entities owned or controlled by entities identified as being engaged in nuclear proliferation, that fact cannot be relied on with advantage by Melli Bank for, by virtue of the principle of legality, no one may rely to his own benefit on an unlawful act committed in favour of another.

Lastly, the Court considers that that the statement of reasons for the decision, although exceptionally concise, is sufficient. Melli Bank was in fact able to identify the legal basis of the decision, the Council explained why it had considered that BMI engaged in nuclear proliferation and identified Melli Bank as a branch or subsidiary of BMI.

**REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.**

*Unofficial document for media use, not binding on the Court of First Instance.*

*Languages available: EN, FR*

*The full text of the judgment may be found on the Court's internet site  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-246/08>  
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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