



Press and Information

Court of Justice of the European Union
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Judgment in Case C-124/20
Bank Melli Iran

The prohibition imposed by EU law on complying with secondary sanctions laid down by the United States against Iran may be relied on in civil proceedings

While that prohibition applies equally in the absence of a specific order or instruction by an administrative or judicial authority of the United States, it cannot however infringe the freedom to conduct a business of a person that it covers, by leading to disproportionate economic loss for that person

Bank Melli Iran ('BMI'), which has a branch in Germany, is an Iranian bank owned by the Iranian state. It concluded with Telekom, which is the subsidiary of Deutsche Telekom AG, established in Germany and approximately half of the turnover of which is derived from its business in the United States, several contracts with a view to the provision of telecommunication services which permits it to carry on its commercial activities. In 2018, the United States withdrew itself from the Iranian nuclear deal, signed in 2015, the aim of which was to control Iran's nuclear programme and lift economic sanctions against Iran. As a result of that withdrawal, the United States once again imposed, pursuant to the Iran Freedom and Counter-Proliferation Act of 2012, secondary sanctions against Iran and persons included on a list,¹ one of which was BMI. Since that date, it is once again prohibited for any person to trade, outside the territory of the United States, with any person or entity included in that list.

Following that decision, the European Union adopted Regulation No 2018/1100² amending the annex to Regulation No 2271/96³ so that it included the Iran Freedom and Counter-Proliferation Act of 2012. It prohibited, in particular, persons concerned from complying with the laws included in the annex or acts resulting therefrom (Article 5, first paragraph), unless an authorisation to be exempt from that prohibition was obtained, which could be granted by the European Commission where non-compliance with those foreign laws would seriously harm the interests of the persons covered by that regulation or those of the European Union (Article 5, second paragraph).

Since German law provided that 'any legal act contrary to a statutory prohibition shall be void except as otherwise provided by law',⁴ and Telekom had terminated, with effect from 2018, prior to their expiry, all of the contracts between it and BMI, without express reasons and without authorisation from the Commission, BMI challenged the termination of those contracts before the German courts. At first instance, Telekom was ordered to perform the contracts at issue until expiry of the notice period for ordinary termination. The ordinary termination of those contracts was however regarded as being consistent with Article 5 of the regulation. BMI then appealed to the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany), which made a preliminary reference to the Court of Justice requesting an interpretation of the first

¹ Specially Designated Nationals and Blocked Persons List ('the SDN list').

² Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ 2018, L 199 I, p.1).

³ Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ 1996 L 309, p. 1), as amended by Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ 2014 L 18, p. 1), and by Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 (OJ 2018 L 199 I, p. 1), which amended the Annex to Regulation No 2271/96 ('Regulation No 2271/96').

⁴ Article 134 du Bürgerliches Gesetzbuch (civil code).

paragraph of Article 5 of the Regulation, having regard, in particular, to Articles 16 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter') and the authorisation mechanism provided for in the second paragraph of Article 5 of the same regulation.

Findings of the Court of Justice

The Court of Justice, sitting as the Grand Chamber, finding that the first paragraph of Article 5 of the regulation is broadly drafted, holds, in the first place, that the prohibition on complying with the requirements or prohibitions laid down in the laws adopted by a third country in breach of international law applies even in the absence of an order or instruction directing compliance issued by a administrative or judicial authority. According to the Court, that interpretation is corroborated by the objectives of the regulation, which include protecting the established legal order and the interests of the European Union in general, with a view to achieving, to the greatest extent possible the objective of free movement of capital between Member States and third countries, as well as protecting the interests of the persons concerned. The Court observes that, given the threat of legal consequences that such a law imposes on persons to whom the requirements or prohibitions apply, the regulation would not be capable of counteracting the effects of those laws if the prohibition laid down in the first paragraph of Article 5 of the regulation were made subject to the adoption of orders by a foreign administrative or judicial authority.

In the second place, the Court finds that the prohibition laid down in the first paragraph of Article 5 is drafted in clear, precise and unconditional terms with the result that it may be relied on in civil proceedings, such as the present case. It confirms that a person covered by the regulation who does not have an authorisation granted by the Commission may, having regard to the first paragraph of that Article 5, terminate contracts concluded with a person on the SDN list without providing reasons for that termination. However, in the context of civil proceedings concerning the alleged breach of the prohibition laid down by the regulation, it is the person to whom the prohibition is addressed who has the burden of proving, to the required legal standard, that his or her conduct, in this case the termination of all contracts, did not seek to comply with the American legislation referred to in the regulation where, *prima facie*, that appears to be the case.

In the present case, the Court observes that the German law permits the party alleging that a legal act is null and void, as a result of the infringement of a statutory prohibition, such as that laid down in the first paragraph of Article 5 of the regulation, to rely on that nullity before the courts. It observes, however, that in this case, the burden of proof would fall, according to German law, entirely on the person alleging that infringement of Article 5 of the regulation, whereas the evidence at issue is not generally accessible to that person, making it difficult for the court seised to make a finding that there was an infringement of the prohibition laid down in the first paragraph of Article 5, thereby undermining its effectiveness.

Lastly, in the third place, the Court held that Articles 5 and 9⁵ of the regulation, read in the light of Articles 16 and 52 of the Charter, do not preclude the annulment of the termination of a contract, provided that that annulment does not entail disproportionate effects, including economic loss, for the person concerned. In the present case, in the absence of an authorisation within the meaning of the second paragraph of Article 5 of the regulation, the termination at issue, if proven to be contrary to the first paragraph of Article 5, is null and void under German law. However, where such an annulment is liable to entail a limitation of the freedom to conduct a business, it may only be contemplated in compliance with the conditions imposed by Article 52(1) of the Charter.

In that respect, as regards the condition of respect for the essence of the freedom to conduct a business, guaranteed by Article 16 of the Charter, the Court holds that the annulment of the termination of contracts concluded between BMI and Telekom does not have the effect of depriving the latter of the possibility of asserting its interests generally in the context of a contractual relationship, but rather of limiting that possibility. In addition, the limitation on the freedom to conduct a business resulting from the possible annulment of the termination of a contract contrary

⁵ Article 9 provides that 'each Member State shall determine the sanctions to be imposed in the event of breach of any relevant provisions of this Regulation. Such sanctions must be effective, proportional and dissuasive'.

to the prohibition laid down in the first paragraph of Article 5 of the regulation would appear, in principle, to be necessary in order to counteract the effects of the laws specified in the annex, thereby protecting the established legal order and the interests of the European Union in general.

The Court invites the referring court then, when assessing the proportionality of the limitation on the freedom to conduct a business enjoyed by Telekom, to weigh in the balance, on the one hand, the pursuit of the objectives of the regulation served by the annulment of a termination effected in breach of the prohibition laid down in the first paragraph of Article 5 of that regulation and, on the other hand, the probability that Telekom would be exposed to economic losses and the extent of those losses if it were unable to terminate its commercial relationship with BMI. Likewise, the fact that Telekom did not, subject to verification, apply to the Commission for exemption from the prohibition imposed by the first paragraph of Article 5 of the regulation is, according to the Court, also relevant in the context of that assessment of proportionality.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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