Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

13 September 2013*

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds and economic resources — Restrictions on entry into, or transit through, the territory of the European Union — Rights of defence — Obligation to state reasons — Manifest error of assessment — Fundamental rights)

In Case T-383/11,

Eyad Makhlouf, residing in Damascus (Syria), represented initially by P. Grollet and G. Karouni, and subsequently by G. Karouni and C. Rygaert, lawyers,

applicant,

v

Council of the European Union, represented by G. Étienne and R. Liudvinaviciute-Cordeiro, acting as Agents,

defendant,

supported by

European Commission, represented by F. Castillo de la Torre and S. Pardo Quintillán, acting as Agents,

intervener,

APPLICATION for annulment of Council Implementing Decision 2011/302/CFSP of 23 May 2011 implementing Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 136, p. 91), of Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP (OJ 2011 L 319, p. 56), and of Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP (OJ 2012 L 330, p. 21), in so far as those acts concern the applicant,

THE GENERAL COURT (Sixth Chamber),

composed of H. Kanninen, President, S. Soldevila Fragoso (Rapporteur) and G. Berardis, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 8 February 2013,

* Language of the case: French.

gives the following

Judgment

Background to the dispute

1 The applicant, Mr Eyad Makhlouf, is an officer of Syrian nationality, with the rank of lieutenant-colonel.

2 Strongly condemning the violent repression of peaceful protests in various locations across Syria and calling on the Syrian authorities not to resort to repression, the Council of the European Union adopted, on 9 May 2011, Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the seriousness of the situation, the Council established an arms embargo, a ban on exports of material which might be used for internal repression, restrictions on the admission to the European Union of certain persons and entities responsible for the violent repression against the civilian population in Syria, and the freezing of their funds and economic resources.

3 The names of the persons responsible for the violent repression against the civilian population in Syria and of the persons, natural or legal, and entities associated with them are listed in the annex to Decision 2011/273. Under Article 5 of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the European Union for Foreign Affairs and Security Policy, may amend that annex. The applicant's name does not appear in that annex.

4 By Implementing Decision 2011/302/CFSP of 23 May 2011 implementing Decision 2011/273/CFSP (OJ 2011 L 136, p. 91), the Council amended Decision 2011/273 with a view, inter alia, to applying the restrictive measures in question to other persons and entities, the names of which were added to the list set out in the annex, which replaced the annex to the earlier decision. The name of the applicant was placed on that list, which includes various entries relating to, inter alia, the date of his inclusion on the list at issue, namely on '23.05.2011', his date of birth, his passport number, and the reasons 'Brother of Rami Makhlouf and GID [General Intelligence Directorate] Officer involved in violence against the civilian population'.

5 On 24 May 2011, the Council published a notice for the attention of the persons to whom restrictive measures provided for in Decision 2011/273 and in Council Regulation (EU) No 442/2011 concerning restrictive measures against Syria apply (OJ 2011 C 153, p. 8).

6 By Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273 (OJ 2011 L 228, p. 16), the Council provided that the scope of its application, including that of its annex, should also cover 'persons … benefiting from or supporting the regime, and persons associated with them, as listed in the annex'.

7 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP (OJ 2011 L 319, p. 56), the Council expressed the view that, in light of the gravity of the situation in Syria, it was necessary to impose additional restrictive measures. For the sake of clarity, the measures imposed by Decision 2011/273 and the additional measures were integrated into a single legal instrument. The name of the applicant features in line 20 of the table in Annex I to Decision 2011/782, with the same information and reasons as those set out in the annex to Decision 2011/273.

8 By Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP (OJ 2012 L 330, p. 21), the restrictive measures at issue were integrated into a single legal instrument. The name of the applicant is included in line 19 of the table in Annex I to Decision 2011/739, with the same information and reasons as those set out in the annex to Decision 2011/273.

9 On 30 November 2012, the Council published a notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2012/739 and Council Regulation (EU) No 36/2012, as implemented by Council Implementing Regulation (EU) No 1117/2012, concerning restrictive measures in view of the situation in Syria apply (OJ 2012 C 370, p. 6).

Procedure and forms of order sought

10 By application lodged at the Registry of the Court on 21 July 2011, the applicant brought the present action for the annulment of Implementing Decision 2011/302.

11 By order of the President of the Sixth Chamber of the Court of 24 January 2012, the European Commission's application to intervene in support of the form of order sought by the Council, lodged at the Registry of the Court on 28 October 2011, was granted.

12 By observations lodged at the Registry of the Court on 5 January 2012, the applicant adapted his claims by requesting also the annulment of Decision 2011/782. By its rejoinder, lodged at the Registry of the Court on 3 April 2012, the Council took notice of the request made by the applicant.

13 By observations lodged at the Registry of the Court on 31 January 2013, the applicant adapted his claims by requesting also the annulment of Decision 2012/739, while acknowledging that the application for annulment of Decision 2011/782 had become devoid of purpose. By its observations on the document adapting the claims lodged at the Registry of the Court on 5 February 2013, the Council took notice of the applicant's request.

14 Upon hearing the report of the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral procedure.

15 The applicant and the Council presented oral argument and answered the questions put by the Court at the hearing on 8 February 2013. The Commission did not attend the hearing.

16 The applicant claims that the Court should:

— annul Implementing Decision 2011/302 and Decision 2012/739;

— order the Council to pay the costs.

17 The Council contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

18 The Commission supports the form of order sought by the Council.

Law

Admissibility of the applicant's requests to adapt his claims

19 As is apparent from paragraphs 4 to 9 above, since the date on which the application was brought, Decision 2011/273, as amended by, inter alia, Implementing Decision 2011/302, has been repealed and replaced by Decision 2011/782, which in turn has been repealed and replaced by Decision 2011/739. The applicant has requested leave to adapt his claims so that they cover also those latter two decisions, while subsequently ceasing to contest Decision 2011/782. The Council has not objected to the adaptation of the applicant's claims.

20 It must be borne in mind that, when a decision or a regulation of direct and individual concern to an individual is replaced, during proceedings, by another measure with the same subject-matter, this is to be considered a new factor allowing the applicant to adapt its claims and pleas in law. It would be contrary to the due administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application. Moreover, it would be inequitable if the institution in question were able, in order to counter criticisms of a measure contained in an application to the Courts of the European Union, to amend the contested measure or to substitute another measure for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity to extend his original pleadings to the later measure or to submit supplementary pleadings directed against it (see Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 46 and the case-law cited).

21 It is therefore necessary to acknowledge the admissibility of the claims against Decision 2012/739, which were submitted to the Registry of the Court on 31 January 2013, that is to say, necessarily within the period prescribed for bringing proceedings.

Substance

22 In support of his action, the applicant essentially puts forward four pleas in law, alleging, first, breach of the rights of defence and of the right to a fair hearing and to effective judicial protection, second, breach of the obligation to state reasons, third, a manifest error of assessment and, fourth, breach of the principle of proportionality, the right to property and the right to respect for private life.

The first plea in law, alleging breach of the rights of defence and of the right to a fair hearing and to effective judicial protection

23 The applicant claims that he has had sanctions imposed on him without his having previously been heard, having had the opportunity to defend himself or having any knowledge of the basis on which the measures at issue were taken, with the Council having failed to comply with its obligation to notify him of its decision, including the reasons why he was included on the lists at issue, either directly, since it was aware of his address, or by publishing a notice giving him the genuine opportunity to submit observations.

24 According to the applicant, in the context of decisions providing for restrictive measures against natural persons, the European Union authority at issue is required to notify the person or body concerned of the reasons for those measures, in so far as is at all possible, either at the time when the decision is taken to list those persons, or, at the very least, as soon as possible after that listing, so as to enable the persons to whom measures are addressed to exercise, within the time-limits, their right to bring an action.

25 The applicant asserts that, if it were held that the detailed publication of the allegations made against him might be in conflict with the overriding considerations of public interest relating to the security of the European Union and its Member States, or to the conduct of their international relations, the actual, specific statement of reasons for that decision ought to have been formalised and brought to his knowledge by any appropriate means. However, there was no evidence to show that, in the present case, such a publication was in conflict with such overriding considerations.

26 Furthermore, in the absence of any mention in the contested decisions of the specific and actual reasons which justified them, the applicant was also not in a position effectively to defend himself before the Court.

27 The Council rejects the applicant's arguments.

28 The Council submits that, due to the precautionary nature and the purpose of the asset-freezing measures, their adoption cannot be the subject of a preliminary hearing of the persons concerned without thereby running the risk of jeopardising the effectiveness of those measures and, consequently, of the objective pursued by the European Union.

29 The Council points out that Implementing Decision 2011/302 was published in the *Official Journal of the European Union*. The same is true of the notice for the attention of the persons to whom the restrictive measures in question apply, which was published, contrary to what is claimed by the applicant, in the Official Journal (OJ 2011 C 153, p. 8). The Council adds that it was not in a position to notify the applicant individually of the contested decisions, since it did not have his personal contact details at its disposal.

30 Concerning the exercise of the review procedures available to the applicant, the Council contends that the applicant did not send a request for a review of the measure affecting him and did not ask to be notified of the evidence on which the decision taken against him had been based.

31 It should be recalled that the fundamental right to observance of the rights of defence during a procedure preceding the adoption of a restrictive measure is expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389), recognised by Article 6(1) TEU as having the same legal value as the Treaties (see, to that effect, Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 66).

32 It should also be noted that, according to settled case-law, the principle of effective judicial protection is a general principle of European Union law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, this principle having furthermore been reaffirmed by Article 47 of the Charter of Fundamental Rights (Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37, and 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 335; '*Kadi*').

33 In addition, having regard to settled case-law, it must be held in the present case that the effectiveness of judicial review, which must be able to address the lawfulness of the grounds on which, in the present context, the name of a person or entity is included on the lists forming the annexes to the contested decisions and leading to the imposition on those persons or entities of a series of restrictive measures, means that the European Union authority in question is required to communicate those grounds to the person or entity concerned, so far as possible, either when that inclusion is decided on or, at the very least, as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed, their right to bring an action (see *Kadi*, paragraph 336 and the case-law cited).

34 Observance of that obligation to communicate those grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Courts of the European Union (see, to that effect, Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 15), and to put the latter fully in a position in which they may carry out the review of the lawfulness of the European Union measure at issue which they are required to carry out under the Treaty (*Kadi*, paragraph 337).

35 Article 5 of Decision 2011/273 provides that the Council must communicate its decision, including the grounds for listing, to the person concerned, either directly, if the address is known, or through the publication of a notice, providing such person with an opportunity to present observations. Furthermore, that Article 5 provides that, where observations are submitted, or where substantial new evidence is presented, the Council must review its decision and inform the natural or legal person, entity or body concerned accordingly. Finally, the list in the annex to that decision is to be reviewed at regular intervals and at least every 12 months. Such provisions are, in principle, compatible with the requirements laid down in the case-law.

36 In the present case, following the adoption of Implementing Decision 2011/302, a notice was published in the Official Journal on 24 May 2011, thus giving the applicant the opportunity to submit observations to the Council.

37 The fact that that communication took place after the applicant had for the first time been included on the list of persons covered by the restrictive measures at issue cannot be held in itself to constitute a breach of the rights of defence.

38 In accordance with the case-law concerning the rights of defence, in particular the right to be heard with regard to restrictive measures, the European Union authorities cannot be required to communicate those grounds before the name of a person or entity is entered on the list imposing restrictive measures (see, to that effect, *Kadi*, paragraph 338).

39 Such prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by those decisions (see, to that effect, *Kadi*, paragraph 339).

40 In order to attain the objective pursued by the contested decisions, such measures must, by their very nature, take advantage of a surprise effect and, as the Court of Justice has previously stated, apply with immediate effect (see, to that effect, Case C-117/06 *Möllendorf and Möllendorf-Niehuus* [2007] ECR I-8361, paragraph 63, and *Kadi*, paragraph 340).

41 For reasons also connected to the objective pursued by Implementing Decision 2011/302, which included the name of the applicant on the list set out in the annex to Decision 2011/273, and to the effectiveness of the measures provided for by the latter, the European Union authorities were also not bound to hear the applicant before his name was included for the first time on the list set out in the annex (see, to that effect, *Kadi*, paragraph 341).

42 However, in relation to the adoption of Decision 2012/739, which is a subsequent decision retaining the name of the applicant on the list containing the names of persons subject to restrictive measures, the argument based on the element of surprise of those measures cannot validly be invoked (see, to that effect, *France* v *People's Mojahedin Organization of Iran*, paragraph 62).

43 Nevertheless, in the case which gave rise to the judgment in *France* v *People's Mojahedin Organization of Iran*, the Court of Justice held that that right to a prior hearing had to be respected because the Council had admitted new evidence against the organisation affected by the retention of the listing at issue.

44 In the present case, it must be noted that the Council did not admit any new evidence, that is to say, evidence about which the applicant had not already been informed following his initial listing, when his name was retained on the list at issue.

45 According to Article 5(3) of Decision 2011/273, '[w]here observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity concerned accordingly'. The applicant may, therefore, at any time, on his own initiative, be heard by the Council without a new express request being made prior to the adoption of each subsequent decision, in the absence of new evidence admitted in relation to him.

46 Furthermore, the Council published a notice in the Official Journal on 30 November 2012, that is to say, the day after the publication of Decision 2012/739. Consequently, in such circumstances, as the applicant had the opportunity over several months to challenge the evidence justifying the inclusion and retention of his name on the list covering persons subject to restrictive measures, no breach of his right to be heard can be established.

47 With regard to the applicant's argument that there was no individual notification of the decisions, it should be noted that Article 27(2) of Decision 2012/739 requires the decision to be directly and individually notified where the address of the person subject to the restrictive measures is known.

48 According to settled case-law, although an individual communication of that type of decision is, in principle, necessary, since the mere publication in the Official Journal is not sufficient, the Court must nevertheless examine, in each case, whether the fact that the statement of reasons for the contested decision was not individually brought to the attention of the applicant has had the effect of depriving the latter of an opportunity to be aware, in good time, of the reasons for the contested decision and to assess the validity of the measure freezing funds and economic resources adopted in his regard (see, to that effect, Case C-548/09 P *Bank Melli Iran* v *Council* [2011] ECR I-11381, paragraphs 52 to 56).

49 In the present case, it must be noted that, on 30 November 2012, the Council knew with certainty the address of the applicant and that of his lawyers since they were referred to in the application which initiated the present action.

50 Consequently, the Council should have individually notified the reasons for retaining the applicant's name on the list at issue in order to allow him to defend himself effectively and as rapidly as possible. However, it is apparent from the file that the applicant was enabled to defend himself effectively against the contested measures following their publication in the Official Journal, since he brought an action before the Court within the prescribed period.

51 Finally, concerning the lack of express mention in the contested decisions of the possibility of 'initiating an effective action', it should be recalled that such an action may be brought in the circumstances indicated in the second paragraph of Article 275 TFEU and in the fourth and sixth paragraphs of Article 263 TFEU, as is apparent from the present action for annulment. Furthermore, in the present case, the notices published by the Council expressly provided for the possibility of requesting a review by the Council and for that of bringing an action for annulment before the Court. That argument must, consequently, be rejected.

52 The first plea in law must therefore be rejected in its entirety.

The second plea in law, alleging breach of the obligation to state reasons

53 The applicant claims that the statement of reasons for an act of the Council which imposes restrictive measures must refer not only to the legal conditions for application of that act, but also to the actual and specific reasons as to why the Council considers, in the exercise of its discretion, that such measures must be adopted in respect of the person concerned.

54 The statement of reasons put forward by the Council for the inclusion of the applicant's name on the lists in the annexes to the contested decisions is, however, in the applicant's view, restricted to vague and general considerations and the Council failed to set out the actual and specific reasons why it took the view, in the exercise of its discretion, that the applicant had to be the subject of the restrictive measures at issue.

55 According to the applicant, his profession, by itself, and family ties do not suffice as a basis for the Council's decision. Moreover, concerning the family ties, the onus was on the Council to establish that the applicant had taken part in the acts of which his relative is accused.

56 The Council rejects the applicant's arguments.

57 The Council takes the view that the applicant, as an officer of the General Intelligence Directorate, had full knowledge of the general and specific context in which the measures relating to him were adopted, in the present case the fact that the Syrian army was involved in violence against protestors.

58 The Council points out that it explicitly stated the reason for the inclusion of the applicant on the list at issue as being his membership of the Syrian general intelligence and his family ties, thus enabling him to understand why restrictive measures had been adopted in his regard and to prepare his defence.

59 Moreover, the fact that the applicant is also the brother of Rami Makhlouf, himself a cousin of President Bashar Al Assad, was an additional ground for including him on the list at issue.

60 According to consistent case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the European Union Courts and, second, to enable those Courts to review the legality of that act (Case C-199/99 P *Corus UK* v *Commission* [2003] ECR I-11177, paragraph 145; Case C-521/09 P *Elf Aquitaine* v *Commission* [2011] ECR I-8947, paragraph 148; and Case C-417/11 P *Council* v *Bamba* [2012] ECR, paragraph 49).

61 It is also settled case-law that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review (see, inter alia, Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala* [2008] ECR I-4951, paragraph 166; and Joined Cases C-539/10 P and C-550/10 P *Al-Aqsa* v *Council* [2012] ECR, paragraph 138).

62 Where the person concerned is not afforded the opportunity to be heard before the adoption of an initial decision to freeze funds and economic resources, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the person

concerned, at least after that decision has been adopted, to make effective use of the legal remedies available to him in order to challenge the lawfulness of that decision (*Council* v *Bamba*, paragraph 51).

63 Therefore, the statement of reasons for an act of the Council which imposes a measure freezing funds and economic resources must identify the actual and specific reasons why the Council considers, in the exercise of its discretion, that that measure must be adopted in respect of the person concerned (*Council* v *Bamba*, paragraph 52).

64 However, 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 may have in obtaining explanations (see, inter alia, *Al-Aqsa* v *Council*, paragraph 139).

65 It is not necessary for the reasoning to go into all the relevant facts and points of law, inasmuch as the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU 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 (*Commission* v *Sytraval and Brink's France*, paragraph 63; Case C-42/01 *Portugal* v *Commission* [2004] ECR I-6079, paragraph 66; and *Al-Aqsa* v *Council*, paragraph 140).

66 In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the scope of the measure concerning him (Case C-301/96 *Germany* v *Commission* [2003] ECR I-9919, paragraph 89; *Portugal* v *Commission*, paragraphs 69 and 70; and *Council* v *Bamba*, paragraph 54).

67 In the present case, it should be noted that the first three recitals in the preamble to Decision 2011/273 set out clearly the general reasons for the adoption of restrictive measures against Syria by the European Union:

> '(1) On 29 April 2011, the European Union expressed its grave concern about the situation unfolding in Syria and the deployment of military and security forces in a number of Syrian cities.
>
> (2) The Union strongly condemned the violent repression, including through the use of live ammunition, of peaceful protest in various locations across Syria resulting in the death of several demonstrators, wounded persons and arbitrary detentions, and called on the Syrian security forces to exercise restraint instead of repression.
>
> (3) In view of the seriousness of the situation, restrictive measures should be imposed against Syria and against persons responsible for the violent repression against the civilian population in Syria.'

68 That general context, referred to by Decision 2011/273, was necessarily known to the applicant, a professional soldier in the Syrian army.

69 Moreover, Article 6(1) of Decision 2011/273 provides that the annex is to include the grounds for listing the persons and entities concerned. Finally, Article 5(2) of Decision 2011/273 provides that the Council is to communicate its decision, including the grounds for listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing such person, entity or body with an opportunity to present observations.

70 In the present case, when the applicant was included for the first time on the list of persons subject to restrictive measures, in line 20 of the table annexed to Implementing Decision 2011/302, the Council had put forward the ground 'Brother of Rami Makhlouf and GID Officer involved in violence against the civilian population'.

71 While that statement of reasons is brief, it none the less complies with the rules of the case-law set out above. It allowed the applicant, a professional soldier with the present rank of lieutenant-colonel in the Syrian army, to understand the acts of which he was accused and to contest either the allegation that those acts had occurred or their relevance.

72 Such a statement of reasons is capable of allowing the applicant to defend himself and the Courts of the European Union to exercise their powers of review. As a result of that statement of reasons, the applicant was in a position to contest, for example, the tasks which he was alleged to have exercised and his links with Mr Rami Makhlouf.

73 It is also important to point out that the question of the statement of reasons, which concerns an essential procedural requirement, is separate from that of the evidence of the alleged conduct, which concerns the substantive legality of the act in question and involves an assessment of the truth of the facts set out in that act and the characterisation of those facts as evidence justifying the use of restrictive measures against the person concerned (see, to that effect, Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 26, *Bank Melli Iran* v *Council*, paragraph 88, and *Council* v *Bamba*, paragraph 60).

74 Thus, in the present case, review of compliance with the obligation to state reasons, which is intended to ascertain whether the notes provided by the Council in the contested decisions were sufficient to allow the evidence which led that institution to impose restrictive measures with respect to the applicant to be known, must be distinguished from examination of the merits of the statement of reasons, which would consist, if appropriate, in ascertaining whether the evidence relied on by the Council is established and whether it is capable of justifying the adoption of those measures (*Council* v *Bamba*, paragraph 61).

75 In view of the foregoing, the plea in law alleging breach of the obligation to state reasons must be rejected as unfounded.

The third plea in law, alleging a manifest error of assessment

76 According to the applicant, the ground put forward by the Council relating to his status as officer of the General Intelligence Directorate is factually incorrect because he has never belonged to the Syrian security or general intelligence services.

77 The Council takes issue with the applicant's arguments.

78 According to the Council, the General Intelligence Directorate of the Syrian army is one of the bodies of the Syrian state which is most involved in the ongoing policy of repression. Since the documents produced by the applicant come from the Syrian military authorities thus involved in the repression, the Council calls into question their impartiality, reliability and probative value.

79 The Council points out that the gathering of information about a military officer, who is a member of the intelligence services, with respect to whom discretion and confidentiality of his functions are to be expected, is complex, but that that fact cannot invalidate the grounds which it has presented.

80 First of all, it should be pointed out that the Council enjoys broad discretion in its assessment of the matters to be taken into consideration for the purpose of adopting economic and financial sanctions under the Common Foreign and Security Policy. As the Courts of the European Union may not, in particular, substitute their assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review carried out by the Court as to the lawfulness of decisions to freeze funds and economic resources must be restricted to establishing that there has been compliance with the rules governing procedure and the statement of reasons, that the facts are

materially accurate, and that there has been no manifest error of assessment of the facts or misuse of power. That limited review applies, in particular, to the Council's assessment of the factors as to appropriateness on which such decisions are based (see, to that effect, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 159).

81 The applicant claims, in essence, that the Council committed a manifest error of assessment in taking the view that he carried out tasks as an officer of the General Intelligence Directorate. In that regard, he provides a document from the General Command of the Syrian armed forces describing the different tasks which he carried out in the army and confirming in particular that, 'to date, [he] did not serve in any security destination during his military service'.

82 That document, dated 11 July 2011, is signed by a 'Major General' of the Syrian army, the director of administration of officers. The applicant's military career is therein described from 1 December 1995. According to that document, the applicant spent 16 years in the Syrian army. It should be noted that, in 2006, he was appointed 'Commander of … Confidentiality'. He was promoted in 2008 to the rank of lieutenant-colonel and appointed 'Chief of Staff Battalion' on 30 May 2011, at a time when the civilian population was being repressed by the Syrian army, one month after the adoption of Decision 2011/273.

83 Furthermore, at the hearing, following questions put by the Court, the applicant's representative was unable to refute the view that, as an officer of the Syrian army, a fact which the applicant does not contest, the latter could be considered to be associated with the regime.

84 Taking that evidence into account, and having regard for the fact that the document in question comes from the Syrian army, which is directly implicated by the contested decisions as a result of its role in the oppression of the civilian population in Syria, it must be held that the applicant has not provided any material evidence to justify a finding that the Council committed a manifest error of assessment.

85 The third plea in law must therefore be rejected.

The fourth plea in law, alleging breach of the principle of proportionality, the right to property and the right to respect for private life

86 The applicant claims that the restrictive measures adopted with respect to him are not proportionate to the objectives pursued by the Council in condemning the violence against the civilian population in Syria. Apart from the grounds relating to his profession and family ties, the Council has not, he submits, adduced any evidence in support of its argument that he took part in the repression of protests in Syria. Moreover, no proceedings have been brought against him.

87 According to the applicant, the restrictive measures consisting of a freezing of funds and economic resources interfere with the right to property. Such measures also preclude completion of acts which implement contracts concluded before the decision imposing those measures entered into force. Those measures are thus disproportionate, because the applicant is prevented from using funds which belong to him and from exercising the attributes of the right to property.

88 The applicant claims that the restrictive measures adopted with respect to him have a disproportionate effect on his private and family life such as to warrant the annulment of the contested decisions. He can no longer, in particular, maintain his family's standard of living, or obtain necessary care in one of the Member States of the European Union.

89 The Council rejects the applicant's arguments.

90 The Council contends that, in the light of the foreign-policy objective pursued by the European Union with regard to Syria, namely, the safeguarding of human rights during an armed repression of peaceful protest by the civilian population, the restrictive measures adopted are appropriate and necessary.

91 According to the Council, a measure freezing assets such as that at issue in the present case is a protective measure which cannot therefore be treated in the same way as a confiscation of the assets concerned.

92 The Council points out that the right to property is not an absolute right, but a right the exercise of which may be made subject to restrictions justified by the common interest, in accordance with the case-law. It takes the view that not only was it entitled to impose restrictions on the applicant's right to property, but also that those restrictions were appropriate measures in the light of the objective pursued.

93 With regard to the fact that the applicant cannot freely make use of the funds belonging to him, the Council points out that Decision 2011/273 provides that certain derogations may be granted. It also points out that the freezing of assets applies only to funds of the applicant which are situated within the European Union.

94 Concerning respect for private life, the Council submits that the objective of the restrictive measures which have been adopted is to put pressure on the persons affected for the purposes of safeguarding human rights. On that basis, the fact that those measures have an impact on the applicant's standard of living is thus logical in the light of the result sought and is, therefore, not a relevant argument.

95 Finally, according to the Council, the contested decisions provide expressly that derogations may be granted so as to take account of the basic and fundamental needs of the persons concerned. The medical grounds put forward by the applicant are capable of coming within that category, on the grounds of urgent humanitarian need, and it is, therefore, up to the applicant to make an application to that effect, in accordance with the procedure referred to in the decisions at issue. The application of those provisions is the responsibility of the competent authorities of the Member States.

96 The right to property is one of the general principles of European Union law and is enshrined in Article 17 of the Charter of Fundamental Rights. With regard to respect for private life, Article 7 of the Charter of Fundamental Rights recognises the right to respect for private and family life (see, to that effect, Joined Cases C-356/11 and C-357/11 *O and S* [2012] ECR, paragraph 76).

97 According to settled case-law, those fundamental rights do not, however, enjoy, under European Union law, absolute protection, but must be viewed in relation to their function in society (see, to that effect, *Kadi*, paragraph 355). Consequently, the exercise of those rights may be restricted, provided that those restrictions correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the rights thus guaranteed (see, to that effect, Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 21; *Kadi*, paragraph 355; *Bank Melli Iran* v *Council*, paragraphs 89, 113 and 114; and *Al-Aqsa* v *Council*, paragraph 121).

98 Moreover, according to settled case-law, the principle of proportionality is one of the general principles of European Union law and requires that measures implemented through provisions of European Union law should be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (Case C-176/09 *Luxembourg* v *Parliament and Council* [2011] ECR I-3727, paragraph 61; Case C-380/09 P *Melli Bank* v *Council* [2012] ECR, paragraph 52; and *Al-Aqsa* v *Council*, paragraph 122).

99 In the present case, the freezing of funds and economic resources imposed by the contested decisions constitutes a temporary precautionary measure which is not designed to deprive the persons concerned of their property or of the right to respect for their private life (see, to that effect, *Kadi*, paragraph 358). However, the restrictive measures at issue undeniably lead to a restriction of the exercise of the right to property and affect the applicant's private life (see, to that effect, *Al-Aqsa* v *Council*, paragraph 120).

100 Concerning the appropriateness of the measures at issue with reference to an objective of general interest as fundamental to the international community as the protection of civilian populations, it appears that the freezing of the funds, financial assets and other economic resources, and the prohibition of entry into the territory of the European Union of persons identified as being involved in supporting the Syrian regime cannot, in themselves, be regarded as inappropriate (see, to that effect, *Kadi*, paragraph 363; *Bank Melli Iran* v *Council*, paragraph 115; and *Al-Aqsa* v *Council*, paragraph 123).

101 So far as the necessity of the measures at issue is concerned, it should be noted that alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the goal pursued, namely putting pressure on the supporters of the Syrian regime which is persecuting the civilian population, particularly given the possibility of circumventing the restrictions imposed (see, by analogy, *Al-Aqsa* v *Council*, paragraph 125).

102 Furthermore, it should be noted that Article 4 of Decision 2011/273 and Article 25(3) to (11) of Decision 2012/739 provide for the possibility, first, to authorise the use of frozen funds to meet essential needs or to satisfy certain commitments and, second, to grant specific authorisation to unfreeze funds, other financial assets or other economic resources (see, by analogy, *Kadi*, paragraph 364, and *Al-Aqsa* v *Council*, paragraph 127).

103 More specifically, Article 4(5) and (6) of Decision 2011/273 and Articles 7, 9, 14, 15 and Article 25(5) and (7)(b) of Decision 2012/739 deal with the question of performance and payment of contracts entered into before the applicant was included on the list at issue and authorise such payments under certain conditions.

104 With regard to the medical treatment referred to by the applicant, in accordance with Article 3(6) to (8) and Article 4(3)(a) of Decision 2011/273, Article 24(6) and Article 25(3)(e) of Decision 2012/739, the competent authority of a Member State may authorise the entry into its territory and use of frozen funds for medical and humanitarian purposes.

105 Finally, the maintenance of the applicant's name in the annex to the contested decisions cannot be classified as disproportionate on the ground that it is allegedly potentially unlimited, since such lists are subject to a periodic review designed to ensure that the persons who, and entities which, no longer meet the necessary criteria for inclusion are removed from the list at issue (see, by analogy, *Kadi*, paragraph 365, and *Al-Aqsa* v *Council*, paragraph 129).

106 It follows that, given the overriding importance of the protection of civilian populations in Syria and the derogations provided for by the contested decisions, the restrictions on the applicant's right to property and respect for private life caused by the contested decisions are not disproportionate.

107 The fourth plea in law must, therefore, be rejected and, consequently, the action must be dismissed in its entirety.

Costs

108 Under the first subparagraph of Article 87(2) of the Court's 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 applicant has been unsuccessful, he must be ordered to bear his own costs and to pay those incurred by the Council, in accordance with the form of order sought by the latter.

109 However, under the first subparagraph of Article 87(4) of the Rules of Procedure, the institutions which have intervened in proceedings are to bear their own costs. The Commission must, therefore, bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Eyad Makhlouf to bear his own costs and to pay those incurred by the Council of the European Union;

3. Orders the European Commission to bear its own costs.

Kanninen Soldevila Fragoso Berardis

Delivered in open court in Luxembourg on 13 September 2013.

[Signatures]