Judgment of the General Court (Ninth Chamber) of 9 July 2014. — Mazen Al-Tabbaa v Council of the European Union. — Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds and economic resources — Restrictions on the entry into and transit through the European Union — Rights of defence — Right to an effective judicial remedy — Obligation to state reasons — Error of assessment. — Joined Cases T-329/12 and T-74/13.

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)9 July 2014 (*)(Common foreign and security policy — Restrictive measures taken against Syria — Freezing of funds and economic resources — Restrictions on the entry into and transit through the European Union — Rights of defence — Right to an effective judicial remedy — Obligation to state reasons — Error of assessment)In Joined Cases T-329/12 and T-74/13,Mazen Al-Tabbaa, residing in Beirut (Lebanon), represented by M. Lester, Barrister and G. Martin, Solicitor,applicant,vCouncil of the European Union, represented by S. Kyriakopoulou and V. Piessevaux, acting as Agents,defendant,ACTION for annulment of Council acts containing restrictive measures concerning the applicant, namely, initially, Council Implementing Decision 2012/256/CFSP of 14 May 2012 implementing Council Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ 2012 L 126, p. 9) and Council Implementing Regulation (EU) No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2012 L 126, p. 3),THE GENERAL COURT (Ninth Chamber),composed of G. Berardis (Rapporteur), President, O. Czúcz and A. Popescu, Judges,Registrar: S. Spyropoulos, Administrator,having regard to the written procedure and further to the hearing on 12 March 2014,gives the followingJudgment Background to the dispute1 The applicant, Mr Mazen Al-Tabbaa, is a Syrian businessman who claims to be from a distinguished family of Muslim intellectuals which has advocated democratic reform in Syria for many years. 2 On 9 May 2011, the Council of the European Union adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11) on the basis of Article 29 TEU.3 Article 3(1) of that decision provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of the persons responsible for the violent repression against the civilian population in Syria, and persons associated with them, as listed in the Annex thereto. 4 Article 4(1) thereof provides that all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, and natural or legal persons, and entities associated with them, are to be frozen. The detailed rules for that freezing are laid down in the other paragraphs of that article.5 On the same date, the Council adopted Council Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1) on the basis of Article 215(2) TFEU and Decision 2011/273. Article 4(1) thereof provides for the freezing of all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II thereto. 6 The list of 9 May 2011, annexed to both Decision 2011/273 and Regulation No 442/2011, included 13 persons, which did not yet include Mr Al-Tabbaa. 7 Decision 2011/273 was replaced by Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56). 8 Article 18(1) and Article 19(1) of Decision 2011/782 correspond to Article 3(1) and

Article 4(1) of Decision 2011/273 respectively, with the addition that the restrictive measures provided for therein also apply to persons and entities benefiting from or supporting the regime.
9 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1). 10 Council Implementing Regulation (EU) No 266/2012 of 23 March 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 87, p. 45) and Council Implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782 (OJ 2012 L 87, p. 103) state that, in view of the gravity of the situation in Syria, additional persons and entities should be included in the list of persons and entities subject to restrictive measures as set out in Annex I to Decision 2011/782 and Annex II to Regulation No 36/2012. 11 Thus, Implementing Decision 2012/172 and Implementing Regulation No 266/2012 refer, for the first time to the applicant, his name being spelt 'Mazen Al-Tabba', by name in their annexes with the following grounds:'Business partner of Ihab Makhlouf and Nizar al-Assad (subjected to sanctions on 23/08/2011); co-owner, with Rami Makhlouf, of the Al-Diyar lil-Saraafa currency exchange company, which supports the policy of the Central Bank of Syria.'12 Article 21(2) and (3) of Decision 2011/782 states:'The Council shall communicate its decision on listing, including the grounds therefor, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity with an opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity concerned accordingly.'13 Article 32(2) and (3) of Regulation No 36/2012 makes similar provision. 14 On 24 March 2012, the Council published in the Official Journal of the European Union the notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/782, as implemented by Implementing Decision 2012/172, and Regulation 36/2012, as implemented by Implementing Regulation No 266/2012 apply (OJ 2012 C 88, p. 9).15 The applicant did not bring any proceedings against those acts. 16 On 14 May 2012, the Council adopted Council Implementing Decision 2012/256/CFSP implementing Council Decision 2011/782/CFSP (OJ 2012 L 126, p. 9) and Council Implementing Regulation (EU) No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 (OJ 2012 L 126, p. 3). Those acts maintain the applicant's name on the lists with the following grounds:'Business partner of Ihab Makhlouf and Nizar al-Assad (subjected to sanctions on 23/08/2011); co-owner, with Rami Makhlouf, of the Al-Diyar lil-Saraafa (a.k.a. Diar Electronic Services) currency exchange company, which supports the policy of the Central Bank of Syria.'17 On 15 May 2012, the Council published in the Official Journal the notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2011/782, as implemented by Implementing Decision 2012/256, and Regulation No 36/2012, as implemented by Implementing Regulation No 410/2012 apply (OJ 2012 C 139, p. 19). 18 That notice, like the notice of 24 March 2012, states that the persons and entities concerned may submit a request to the Council, together with supporting documentation, that the decision to include them in the lists annexed to the acts referred to in the paragraph 17 above should be reconsidered. It also draws the attention of the persons and entities concerned to the possibility of challenging the Council's Decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, second paragraph TFEU, and Article 263, fourth and sixth paragraphs, TFEU.19 By letter of 24 May 2012 from the applicant's legal representatives to the Council, the applicant objected to his inclusion in the list of the persons subject to restrictive measures and asked to be provided with the documents on which the Council based its decision to include his name on the lists concerned and to be heard on the matter. Annexed to that letter is a letter from six members of the Syrian National Council expressing their support for the applicant and their surprise at his inclusion on the lists of persons subject to restrictive measures.20 Following the applicant's

reminders of 5 and 18 July 2012, emphasising the urgency of the matter, the Council replied by correspondence dated 26 July 2012, addressed to the applicant's legal representatives. In response to the request to be provided with the documents relating to the applicant's listing, the Council provided an extract from a listing proposal from a Member State concerning the applicant. The Council also refused the applicant's request for a hearing, relying on paragraph 93 of the Court's judgment in Case T-256/07 People's Mojahedin Organization of Iran v Council [2008] ECR I-3019. Procedure and forms of order sought21 By application lodged at the Registry of the General Court on 23 July 2012 the applicant brought the present action which was registered under number T-329/12. 22 In his application in this case, the applicant claims that the Court should: – annul Implementing Decision 2012/256 and Implementing Regulation No 410/2012, in so far as those acts concern the applicant; – order the Council to pay the costs. 23 The Council contends that the Court should: – dismiss the action as inadmissible or, at the very least, as unfounded; – order the applicant to pay the costs. 24 After the present action was lodged, the Council informed the applicant's legal representatives, by letter of 30 November 2012, of its decision to keep his name on the list of persons subject to the restrictive measures provided for in Annexes I and II to Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21) and Annexes II and IIa to Council Regulation No 36/2012, as implemented most recently by Council Implementing Regulation (EU) No 1117/2012 of 29 November 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 330, p. 9). On the same day, the Council also published the notice for the attention of the persons and entities to which restrictive measures provided for in Decision 2012/739 and Regulation No 36/2012, as implemented by Implementing Regulation No 1117/2012 apply (OJ 2012 C 370, p. 6).25 By documents lodged on 7 February 2013, the applicant submitted both an amended application for annulment of Decision 2012/739 and Implementing Regulation No 1117/2012 and a new action directed against those same acts, in Case T-74/13, by way of precaution in the event that the Court should declare the initial action inadmissible in the present case.26 By letter of 13 May 2013, the Council notified the applicant's representatives of its decision to retain his name on the lists concerned, and informed them of Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1) and Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739 (OJ 2013 L 111, p. 77).27 By letter lodged at the Court Registry on 22 May 2013, the applicant sought to extend his application for annulment in Cases T-329/12 and T-74/13 to include Implementing Regulation No 363/2013 and Implementing Decision 2013/185. 28 Next, by letter of 3 June 2013, the Council informed the applicant's representatives of its decision to maintain his name on the lists concerned and notified them of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14).29 Finally, by letter lodged at the Court Registry on 2 July 2013, the applicant requested leave to extend his application for annulment in Cases T-329/12 and T-74/13 in order to cover Decision 2013/255 and Implementing Regulation No 363/2013, as amended most recently by the corrigendum of 31 May 2013 (OJ 2013 L 127, p. 27).30 All those acts contained the same grounds as those set out in paragraph 16 above in respect of the applicant's name. 31 By letters lodged at the Court Registry on 25 June and 25 July 2013 the Council submitted its observations on the last two requests seeking to amend the forms of order sought. 32 By order of 14 January 2014, the President of the Ninth Chamber of the Court, after hearing the parties, joined Cases T-329/12 and T-74/13 for the purposes of the oral procedure, in accordance with Article 50 of the Rules of Procedure of the General Court.33 By measure of organisation of procedure of 21 January 2014, the Court requested the Council to provide it with all the evidence or information in its possession, confidential or otherwise, which may justify the inclusion of the applicant on the list of

persons subject to the restrictive measures, that it deems relevant to enable the Court to exercise its power of review in accordance with paragraphs 120 to 130 of the judgment in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Commission and Others v Kadi [2013] ECR (‘Kadi II’).34 The Council replied to that request by letter of 6 February 2014. Law Admissibility35 The Council maintains that Case T-329/12 and Case T-74/13 are both inadmissible.36 First, as regards the admissibility of the action in Case T-329/12, the Council states that the period of two months within which to bring an action, as laid down in Article 263 TFEU, has not been complied with and it notes that this is a mandatory time-limit for bringing proceedings.37 The Council submits in that regard that, although the initial action is formally directed against Implementing Decision 2012/256 and Implementing Regulation No 410/2012, in reality it seeks the annulment of Decision 2012/172 and Implementing Regulation No 266/2012, which mention the applicant’s name in their annexes for the first time. The two subsequent acts which are the subject-matter of the present proceedings merely confirm those acts. An action for annulment directed against an act which merely confirms a previous act, not challenged within the prescribed period, is inadmissible (Case T-253/02 Ayadi v Council [2006] ECR II-2139, paragraph 70).38 Consequently, the Council takes the view that the amendments to the applicant’s form of order lodged in Case T-329/12 are also inadmissible, by virtue of the case-law according to which such amendments may be declared to be admissible only in so far as the initial application is itself admissible (order of 20 November 2012 in Case T-120/12 Shahid Beheshti University v Council, not published in the ECR, paragraph 57).39 Second, as far as concerns the application lodged in Case T-74/13, the Council also challenges the admissibility of that action on the ground of lis pendens, since it refers to the same acts and the same cause of action as those in the amended application and the pleading containing the amendment of the form of order sought by the applicant in Case T-329/12 (see Joined Cases C-138/03, C-324/03 and C-431/03 Italy v Commission [2005] ECR I-10043, paragraph 64 and the case-law cited).40 The applicant challenges those arguments.41 As regards the admissibility of the action in Case T-329/12, it must be noted, first, that in Ayadi v Council, relied on by the Council, the Court stated that an act confirms an earlier act if it does not contain any new element as compared with the earlier act and has not been preceded by a review of the situation of the addressee of that earlier act. Thus, in the case which gave rise to that judgment, the Court held that new elements of that kind were present in the acts contested by the applicant and that the adoption of those acts by the Council demanded a review of the situation of the persons included in the lists annexed thereto (Ayadi v Council, paragraphs 71 to 79).42 Nevertheless, at the hearing, the Council argued essentially that there had been no such review of the situation of the persons included in the lists annexed to Implementing Decision 2012/256 and Implementing Regulation No 410/2012 in the present case, although those acts were adopted in May 2012, that is, nearly two months after the initial inclusion of the applicant’s name on the list of persons subject to the restrictive measures. Furthermore, there was no new element in those acts as compared with the first acts pursuant to which the applicant’s name had been included on that list.43 Those arguments cannot be accepted. 44 The Court of Justice has indeed confirmed that even in a case in which the person concerned is not mentioned by name by a subsequent act amending the list on which his name has been entered, and even if that subsequent act does not alter the ground on which that person’s name was initially entered on the list, such an act must be understood as evidence of the Council’s intention to maintain the applicant’s name on the list, which has the consequence that his funds remain frozen, given that the Council has a duty to examine that list at regular intervals (Case C-229/05 P PKK and KNK v Council [2007] ECR I-439, paragraph 103; see also, to that effect Case T-49/07 Fahas v Council [2010] ECR II-5555, paragraph 35, and Case T-15/11 Sina Bank v Council [2012] ECR, paragraphs 30 to 37).45 It must be noted that, in the present case, the Council also has a duty to examine the lists concerned at regular intervals, under

provisions similar to those in the acts at issue in the cases cited in paragraph 44 above. Article 32(4) of Regulation No 36/2012 provides that the Council must re-examine the lists at regular intervals and at least every 12 months, and Article 25 of Decision 2011/782 also provides that that decision is to be kept under constant review.46 Thus, Implementing Decision 2012/172 implementing Decision 2011/782 was replaced nearly two months after its adoption, by Implementing Decision 2012/256. Regulation No 36/2012 was initially implemented by Implementing Regulation No 266/2012 then, nearly two months after its adoption, by Implementing Regulation No 410/2012. Those new acts thus show the Council's intention to maintain the applicant's name on the lists of persons subject to the restrictive measures following a re-examination, even a brief one, of that situation.47 Therefore, the Council cannot reasonably claim in that regard that the first review of the applicant's situation took place in November 2012 and not in May 2012 when Implementing Decision 2012/256 and Implementing Regulation No 410/2012 were adopted. To accept such an argument would have the result that the admissibility of an action would depend on the discretion of the Council, according to whether or not it considers that it has in fact reviewed the maintenance on the lists at issue of the name of the person concerned, which would be contrary to the principle of legal certainty, as the applicant rightly submitted at the hearing. The Council cannot therefore claim that it has not reviewed the applicant's situation, contrary to its obligations, in order to gain an advantage concerning the admissibility of the action.48 Furthermore, as the applicant also rightly argues, by a Council Notice published in the Official Journal of 15 May 2012, he was expressly informed of his right to challenge the measures at issue provided for by the contested acts, either by requesting a review of his situation, by providing evidence in support of such a request, or by bringing an action before the General Court under the conditions provided for by Article 263 TFEU. Therefore, the Council cannot claim, as it did at the hearing, that such an invitation should be understood as being conditional on whether the applicant has also challenged the first acts by which his name was included in the lists.49 The order of 4 May 1998 in Case T-84/97 BEUC v Commission [1998] ECR II-795, also relied on by the Council at the hearing, also cannot provide a basis for its argument that the acts challenged in the present case are purely confirmatory. First, that order was adopted in the area of trade defence and anti-dumping which is significantly different from that of the restrictive measures adopted in the context of common foreign and security policy with which the present case is concerned. Furthermore, as the applicant argued at the hearing, that order concerns the notion of 'interested party', a status which had been denied the applicant, a consumer protection organisation, in the administrative proceedings by an earlier letter, and not an ordinary decision to maintain certain measures against it following a review.50 In any event, the applicant's name does in fact appear in the annexes to Implementing Decision 2012/256 and Implementing Regulation No 410/2012, accompanied by grounds which were slightly amended as compared with those in Implementing Decision 2012/172 and Implementing Regulation No 266/2012, since the words 'a.k.a. Diar Electronic Services', intended to also designate the company Diyar lil-Saraafa, were added, which the Council does not deny. Therefore, the contested acts contain new elements, which is sufficient to establish that they are not confirmatory acts within the meaning of the case-law in Ayadi v Council.51 In the light of the foregoing, the Council's argument that Implementing Decision 2012/256 and Implementing Regulation No 410/2012 are purely confirmatory acts must be dismissed.52 Therefore, since the application in Case T-329/12 was lodged within the period prescribed for that purpose, the action in that case must be declared to be admissible.53 Second, it is appropriate to rule on the admissibility of the requests to amend the form of order submitted in Case T-329/12.54 It is to be borne in mind in this connection that, when a decision or a regulation of direct and individual concern to an individual is replaced, during the proceedings, by another act with the same subject-matter, this is to be considered a new factor allowing the applicant to adapt his claims and pleas in law. It would be

contrary to the principle of 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 contained in an application to the European Union judicature, to amend the contested act or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later act or of submitting supplementary pleadings directed against that decision (see People's Mojahedin Organization of Iran v Council, paragraph 46 and the case-law cited; judgment of 13 September 2013 in Case T-563/11 Anbouba v Council, not published in the ECR, paragraph 26). 55 Furthermore, in order to be admissible, a request to adapt forms of order must be submitted within the two-month period prescribed by Article 263 TFEU, sixth paragraph, extended on account of distance by 10 days as provided in Article 102(2) of the Rules of Procedure, which is applicable if a separate appeal is brought against the new acts referred to. That time-limit is a mandatory time-limit for bringing proceedings and must be applied by the European Union judicature in order to safeguard legal certainty and equality of persons before the law (see, to that effect PKK and KNK v Council, paragraph 101). It is, therefore, for the courts to ascertain, if necessary of their own motion, whether that time-limit has been observed (order of 11 January 2012 in Case T-301/11 Ben Ali v Council, not published in the ECR, paragraph 16). 56 In the present case, since the application was lodged, Decision 2011/782, as implemented by Implementing Decision 2012/256 in particular, has been amended and then repealed by Decision 2012/739 of 29 November 2012, Annex I to which continues to mention the applicant's name with the same grounds as those set out in paragraph 16 above, except that Mr Makhlouf's name has been spelt 'Makhlour' on a number of occasions. That decision was itself implemented by Implementing Decision 2013/185, then replaced by Decision 2013/255. Furthermore, Regulation No 36/2012, as implemented by Implementing Regulation No 410/2012, was then implemented by Implementing Regulations No 1117/2012 and No 363/2013. All those measures have been referred to by the pleadings containing the amendment to the form of order sought. Therefore, it is appropriate to examine its admissibility.57 As far as concerns the first request to amend the applicant's form of order in Case T-329/12, lodged as an amended application, it must be observed that it was lodged before the expiry of the period prescribed if the applicant had chosen to bring a fresh action against the acts referred to in that request, namely Decision 2012/739 and Implementing Regulation No 1117/2012.58 In accordance with the case-law in Joined Cases C-478/11 P to C-482/11 P Gbagbo and Others v Council [2013] ECR, paragraphs 59 to 62, the publication of the notice laid down in the provisions of the contested acts fixes the starting point of the period for bringing proceedings only where it was impossible for the Council to communicate the measures concerned directly.59 In the present case, the Council communicated both Decision 2012/739 and Implementing Regulation No 1117/2012 directly to the applicant's representatives by letter of 30 November 2012 and by publishing a notice in the Official Journal on the same day. It is therefore from that date that the two-month period prescribed in Article 263 TFEU began to run. That period, in both cases, extended by 10 days on account of distance pursuant to Article 102(2) of the Rules of Procedure, fixes the time-limit for bringing an action at 11 February 2013 at the earliest (order of 20 November 1997 in Case T-85/97 Horeca-Wallonie v Commission [1997] ECR II-2113, paragraph 25). The first pleading containing an amendment to the form of order sought is accordingly admissible, since it was lodged on 7 February 2013.60 As far as concerns the second request for amendment to the applicant's form of order, lodged by letter of 22 May 2013, that amendment was lodged before the expiry of the period with which the applicant was required to comply if he had chosen to bring a fresh action against the acts referred to in that request, that is, against Implementing Decision 2013/185 and Implementing Regulation No 363/2013.61 Those acts were

notified to the applicant's representatives by letter of 13 May 2013, which means that the period within which to bring an action against that decision expired on 23 July 2013. Therefore, the second amendment to the applicant's form of order sought, lodged on 22 May 2013, is also admissible.62 Finally, as far as concerns the third amendment to the applicant's form of order sought, lodged by letter of 2 July 2013, it must be found that it was lodged before the expiry of the period with which the applicant was required to comply if he had chosen to bring a fresh action against the acts referred to in that request, that is against Decision 2013/255 and Implementing Regulation No 363/2013, as amended most recently by the corrigendum of 31 May 2013, implementing Regulation No 36/2012.63 Those acts were notified to the applicant's representatives by letter of 3 June 2013, which means that the period in which to bring an action against that decision expired on 13 August 2013. Therefore, the third amendment to the form of order sought, lodged on 2 July 2013 is also admissible.64 Finally, as regards the action in Case T-74/13, since it concerns the same measures as those which are referred to by the three amendments to the form of order sought in Case T-329/12, the same parties and the same cause of action, and that it was brought by the applicant only in the alternative, in case the action in Case T-329/12 were to be declared inadmissible, it must be held that there is no need to give a ruling. Substance65 In support of the action in Case T-329/12, the applicant puts forward, in essence, four pleas in law: first, manifest error of assessment by the Council in deciding to apply the restrictive measures adopted against him; second, breach of the duty to state reasons; third, infringement of the rights of the defence and the right to an effective judicial remedy; and fourth, infringement of his fundamental rights, including the right to property and freedom to conduct a business, and the right to respect for his reputation and his private and family life.66 In the first plea, alleging that the Council committed an error of assessment in applying the restrictive measures against him the applicant claims that there is no sense in which he can properly be described as being connected to or associated with the regime, responsible for the violent suppression of the civilian population, or a supporter or beneficiary of the policies of that regime, which is the only valid legal basis on which the Council could have included his name on the lists concerned.67 The applicant claims to have always been a vociferous opponent of the regime of Bashar Al Assad in Syria The members of his family are well-known opponents of the regime and have been threatened and arrested by the regime on a number of occasions. He claims to have been arrested and imprisoned himself for three months by the Syrian regime in 2008 on false charges and his first cousin was arrested by the Syrian security forces in February 2012 and is still missing.68 Accordingly, the applicant objects strenuously to the grounds put forward against him in the contested acts, as set out in paragraphs 11 and 16 above.69 First of all, the applicant submits that he is not a business partner of Mr Ihab Makhlouf or Mr Nizar al-Assad, and that he is not co-owner, together with Mr Rami Makhlouf, of Diar Electronic Services, of which he is merely a minority shareholder. Furthermore, he disputes the fact that Mr Makhlouf is the owner of that company and that he has interests in it. Finally, the applicant does not understand how the company concerned, a currency exchange company, supports the policy of the Central Bank of Syria.70 Moreover, the applicant summarises the negative effects for him resulting from the adoption of the contested acts and complains that he has written to the Council on a number of occasions requesting the documents and information on which the Council based its decision to list him in the acts at issue, without receiving any reply. The only information which was communicated to him after lodging the present action was the Council's letter of 26 July 2012 to which was annexed a proposal from an unidentified Member State to include his name on the lists at issue for the same reasons as those which appear in the contested acts.71 Finally, the applicant produces various testimonies and letters from members of the Syrian National Council, the Arab Publishers Association and former business partners from various countries in support of his arguments.72 In its defence,

the Council submits, first of all, that the Court is called upon to carry out a limited review as far as concerns, in particular, the assessment of the conditions of appropriateness which serve as a basis for decisions imposing restrictive measures on the basis of the common foreign and security policy of the European Union.73 Second, regarding the issue as to whether the inclusion of the applicant's name on the lists concerned is well founded, the Council denies that the statement from the Syrian National Council, produced by the applicant, is capable of supporting his claims, since that statement is signed by only a few of its members, who are not members of its governing bodies.74 The Council further argues that the applicant is associated commercially with persons benefiting from or supporting the policies pursued by the Syria regime. The applicant's three business partners, Mr Rami Makhlouf, Mr Ihab Makhlouf and Mr Nizar Al-Assad, are very close to the regime, and are also included on the list of persons covered by the restrictive measures. Moreover, the Council argues that the applicant belongs to the category of persons supporting that regime as the co-owner of Diar Electronic Services, which supports the policy of the Central Bank of Syria.75 As a preliminary point, it is appropriate to respond to the Council's argument that the General Court may exercise only a limited review as regards the inclusion of the applicant's name on the lists of persons affected by the restrictive measures.76 It must be recalled that the Council has a broad discretion as to the evidence to take into consideration for the purpose of adopting economic and financial sanctions on the basis of the common foreign and security policy. As the European Union Courts 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 of the lawfulness of decisions to freeze funds and economic resources must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, 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, especially, to the assessment of the considerations of appropriateness on which such measures are based (see, to that effect, Case T-228/02 People's Mojahedin Organization of Iran v Council [2006] ECR II-4665, paragraph 159). 77 However, contrary to the Council's submissions, it cannot be argued that the limited review by the Court should also apply to the examination of the merits of an individual listing. Such an examination is part of the verification as to whether the facts are materially accurate and that there has been no manifest error of assessment of the facts, as laid down by the case-law cited by the Council (Case T-390/08 Bank Melli Iran v Council [2009] ECR II-3967, paragraph 36). Furthermore, considerations of effectiveness cannot justify relaxing the judicial review exercised of restrictive measures adopted against natural or legal persons (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 326, and judgment of 6 September 2013 in Joined Cases T-42/12 and T-181/12 Bateni v Council, not published in the ECR, paragraph 41).78 Moreover, as regards legal proceedings, the Court of Justice has stated that the right to an effective judicial review, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, also requires that, as regards the review of the legality of the grounds on which the decision to include or maintain the name of a specific person on a list annexed to an act providing for restrictive measures is based, the Courts of the European Union are to ensure that that decision, which affects that person individually, has a sufficiently solid factual basis (see, to that effect, Joined Cases C-539/10 P and C-550/10 P Al-Aqsa v Council and Netherlands v Al-Aqsa [2012] ECR, paragraph 68). That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (Kadi II, paragraph 119). 79 In that connection, it is for the Courts of the European

Union, in order to carry out that examination, to request the competent European Union authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination. That is because it is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded. For that purpose, there is no requirement that that authority produce before the Courts of the European Union all the information and evidence underlying the reasons alleged in the summary provided by the Member State which proposed the inclusion of that person's name on the list. It is however necessary that the information or evidence produced should support the reasons relied on against the person concerned (see, to that effect, Kadi II, paragraphs 120 to 122). 80 If the competent European Union authority finds itself unable to comply with the request by the Courts of the European Union, it is then the duty of those Courts to base their decision solely on the material which has been disclosed to them, namely, in this case, the indications contained in the narrative summary of reasons provided by the Member State which proposed the inclusion of that person's name on the list, the observations and exculpatory evidence that may have been produced by the person concerned and the response of the competent European Union authority to those observations. If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union are to disregard that reason as a possible basis for the decision to include the person's name on the list or maintain a listing (see, to that effect, Kadi II, paragraph 123). 81 If, conversely, the competent European Union authority provides relevant information or evidence, the Courts of the European Union must then determine whether the facts alleged are made out in the light of that information or evidence and assess the probative value of that information or evidence in the circumstances of the particular case and in the light of any observations submitted in relation to them by, among others, the person concerned (Kadi II, paragraph 124). 82 It is true that overriding considerations pertaining to the security of the European Union or of its Member States or to the conduct of their international relations may preclude the disclosure of some information or some evidence to the person concerned. In such circumstances, it is none the less the task of the Courts of the European Union, before whom the secrecy or confidentiality of that information or evidence is no valid objection, to apply, in the course of the judicial review to be carried out, techniques which accommodate, on the one hand, legitimate security considerations about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need sufficiently to guarantee to an individual respect for his procedural rights, such as the right to be heard and the requirement for an adversarial process (Kadi II, paragraph 125).83 To that end, it is for the Courts of the European Union, when carrying out an examination of all the matters of fact or law produced by the competent European Union authority, to determine whether the reasons relied on by that authority as grounds to preclude that disclosure are well founded (Kadi II, paragraph 126). 84 If the Courts of the European Union conclude that those reasons do not preclude disclosure, at the very least partial disclosure, of the information or evidence concerned, they are to give the competent European Union authority the opportunity to make such disclosure to the person concerned. If that authority does not permit the disclosure of that information or evidence, in whole or in part, the Courts of the European Union are then to undertake an examination of the lawfulness of the contested act solely on the basis of the material which has been disclosed (Kadi II, paragraph 127). 85 Conversely, if it turns out that the reasons relied on by the competent European Union authority do indeed preclude the disclosure to the person concerned of information or evidence produced before the Courts of the European Union, it is necessary to strike an appropriate balance between the requirements attached to the right to effective judicial protection, in particular respect for the principle of an adversarial process, and those flowing from the security of the

European Union or its Member States or the conduct of their international relations (Kadi II, paragraph 128). 86 In order to strike such a balance, it is legitimate to consider possibilities such as the disclosure of a summary outlining the information's content or that of the evidence in question. Irrespective of whether such possibilities are taken, it is for the Courts of the European Union to assess whether and to what extent the failure to disclose confidential information or evidence to the person concerned and his consequential inability to submit his observations on them are such as to affect the probative value of the confidential evidence (Kadi II, paragraph 129). 87 Having regard to the preventive nature of the restrictive measures at issue, if, in the course of their review of the lawfulness of the contested decision the Courts of the European Union consider that, at the very least, one of the reasons mentioned by the Member State which proposed the inclusion of the applicant's name is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself a sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of the contested decision. In the absence of one such reason, the Courts of the European Union will annul the contested decision (see, to that effect Kadi II, paragraph 130). 88 The applicant's first plea in law must be examined in the light of those considerations. 89 It must be stated, first of all, that the applicant took advantage of the opportunities offered to him by Article 21(2) and (3) of Decision 2011/782 and Article 32(2) and (3) of Regulation No 36/2012 to submit observations to the Council requesting it to review its decision and to inform him thereof.90 By letter of 24 May 2012, the applicant first addressed the Council in order to object to his inclusion in the list of the persons subject to restrictive measures and asked to be provided with the documents on which the Council had based its decision concerning him and to be heard on the matter. In that letter, he challenges the reasons for his inclusion on the lists in a detailed manner, that is, that he is a business partner of Mr Ihab Makhlouf and Mr Nizar Al-Assad and that he is co-owner, with Mr Rami Makhlouf, of Diar Electronic Services. He also denies that that company supports the policy of the Syrian Central Bank. Annexed to that letter is a statement from six members of the Syrian National Council which expresses their support for the applicant and their surprise at his inclusion on the list.91 In its letter of 26 July 2012 replying to the applicant, the Council did no more than produce a proposal to include the applicant's name on the list of persons affected by restrictive measures from a Member State, containing the same reasons as those which already appeared beside the applicant's name in the contested acts without any other information.92 Likewise, as a result of the applicant's arguments in the present action and, in response to the evidence he submitted, the Council has done no more than challenge the value of the statement of several members of the Syrian National Council, without adducing any evidence in support of the reasons mentioned for the inclusion of the applicant's name on the list of persons subject to the restrictive measures.93 It must be recalled that the Syrian National Council, one of the main opposition groups in Syria, has been recognised by the European Union as being the legitimate representative of the Syrian people. The fact that the statement by several of its members in support of the applicant does not come from its governing bodies is not sufficient to dismiss such a statement or to deny it any evidential value.94 The Council refers, as if the point were obvious, to the fact that the applicant is a business partner of Mr Ihab Makhlouf and Mr Nizar Al-Assad, without adducing any evidence in that regard, even though the applicant denies those allegations. The Council also states that the names of Mr Ihab Makhlouf and Mr Nizar Al-Assad have themselves been included on the lists of persons subject to the restrictive measures, without producing any evidence to explain how the applicant is connected to or associated in business with those persons.95 Likewise, the Council repeats in its pleadings that the applicant is the co-owner of Diar Electronic Services, which supports the policy of the Syrian Central Bank. Even assuming that, as a minority shareholder, the applicant may be regarded as co-owner of that company, the Council has not produced any evidence showing how that

company supports the policy of the Syrian Central Bank, nor even on what grounds that would justify one of its shareholders being subject to the restrictive measures concerned.96 In those circumstances, since the Court is not in a position to verify whether the Council's allegations are well founded, on 21 January 2014 by measure of organisation of procedure, the Court requested the Council to provide it with any evidence or information in the Council's possession, confidential or otherwise, which could justify the applicant's inclusion on the list of persons subject to the restrictive measures, that it considers relevant to enable the Court to carry out a review in accordance with the case-law of the Court of Justice set out above.97 However, the Council's only response was to send the extract of the proposal to include the applicant's name on the lists concerned from a Member State which contains the same reasons as those which are set out in paragraph 16 above, without any other information.98 Therefore, given that there is no sufficiently precise and concrete evidence to support even one of the reasons mentioned in the contested acts to support the inclusion of the applicant's name on the list of persons subject to the restrictive measures which are annexed thereto, those acts must be annulled, in so far as they concern the applicant.99 Since the applicant's first plea is well founded, the action must be upheld, without there being any need to adjudicate on the applicant's other pleas. Temporal effects of the partial annulment of the contested measures100 As regards the temporal effects of the annulment of Annex II to Regulation No 36/2012 as amended by Implementing Regulation No 363/2013, in so as far as it concerns the applicant, it must be recalled that, pursuant to Article 60, second paragraph, of the Statute of the Court of Justice of the European Union, by way of derogation from Article 280 TFEU, decisions of the General Court declaring a regulation to be void take effect only as from the date of expiry of the period for bringing an appeal referred to in the first paragraph of Article 56 thereof or, if an appeal has been brought within that period, as from the date of its dismissal.101 Implementing Regulation No 353/2013, amending Annex II to Regulation No 36/2012, has the nature of a regulation, since the second paragraph of Article 2 thereof provides that it is to be binding in its entirety and directly applicable in all Member States, which corresponds to the effects of a regulation as provided in Article 288 TFEU (see, to that effect, Case C-548/09 P Bank Melli Iran v Council [2011] ECR I-0000, paragraph 45, and Sina Bank v Council, paragraph 84).102 As far as concerns Decision 2013/255, it must be noted that the annulment of that decision, in so far as it concerns the applicant, would result in the immediate disappearance of the applicant's listing from Annex I thereto.103 Under Article 264, second paragraph, TFEU, the General Court may, if it considers it necessary, state which of the effects of the act it has declared void are to be considered as definitive.104 In the present case, the existence of a difference between the date of effect of the partial annulment of Annex II to Regulation No 36/2012, as amended by Implementing Regulation No 363/2013, and that of Annex I to Decision 2013/255, would be likely to entail a serious threat to legal certainty, since both acts impose identical measures on the applicant.105 The effects of Annex I to Decision 2013/255 must therefore be maintained as regards the applicant until the partial annulment of Annex II to Regulation No 36/2012, as amended by Implementing Regulation No 363/2013, takes effect (see, to that effect, Sina Bank v Council, paragraph 89). Costs106 Under the first subparagraph of Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. 107 Since the Council has been unsuccessful in Case T-329/12, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant. 108 Under Article 87(6) of those rules, where a case does not proceed to judgment, the costs are in the discretion of the Court. 109 In the present case, account must be taken of the fact that the action in Case T-74/13 was brought by the applicant on a precautionary basis, since the Council challenged the admissibility of the action in Case T-329/12 in its entirety, which turned out to be completely unfounded. The costs incurred by the applicant in Case T-74/13 could therefore have

been avoided for the most part if the Council had not challenged the admissibility of the action in Case T-329/12.110 Therefore, the Council is ordered to pay three-quarters of the costs of the applicant in Case T-74/13, in addition to its own costs.On those grounds,THE GENERAL COURT (Ninth Chamber)hereby:1. Annuls Council Implementing Decision 2012/256/CFSP of 14 May 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria and Council Implementing Regulation (EU) No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, in so far as they concern Mr Mazen Al-Tabbaa.2. Annuls Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 and Council Implementing Regulation (EU) No 1117/2012 of 29 November 2012 implementing Article 32(1) of Regulation No 36/2012, in so far as they concern Mr Al-Tabbaa.3. Annuls Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 and Council Implementing Decision 2013/185/CFSP of 22 April 2013 implementing Decision 2012/739, in so far as they concern Mr Al-Tabbaa.4. Annuls Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria, in so far as it concerns Mr Al-Tabbaa.5. Orders the effects of Decision 2013/255 to be maintained as regards Mr Al-Tabbaa until the annulment in part of Implementing Regulation No 363/2013 implementing Regulation No 36/2012 takes effect.6. Declares that there is no need to adjudicate on the action in Case T-74/13.7. Orders the Council of the European Union to pay, in addition to its own costs, those incurred by the applicant in Case T-329/12 and three-quarters of the costs incurred by him in Case T-74/13.8. Orders the applicant to pay one quarter of his costs in Case T-74/13.BerardisCzúczPopescuDelivered in open court in Luxembourg on 9 July 2014.[Signatures]* Language of the case: English.

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